

Section 4 The so-called principle of restorative-revolutionary

Chapter 9

In the previous three Sections, we have excluded serious slanders to socialism and mentioned a summary of fundamental theories of socialism. Discussion of socialism is like this, so we are enough to give its outline. But when socialism is advocated in this country named 'Japan', strange one which we must interpret specially has been remained. It is so-called 'the theory of Japanese constitution'¹ and it is a terrible problem whether socialism conflict with the theory of Japanese constitution or not. This is not only problem to socialism, but any new thought is always questioned about it when it comes in Japan.

When it touches what this Roman pope of 'the theory of Japanese constitution' hates, it would be sentenced the strangulation at once. Because of this, political critics have been bound their tongues and been like slaves or serf under the despotic rules. And because of this, journalists have used extremely dishonorable words skillfully and flattered it and have not felt shames although they have used words like flatterers. Because of the theory of Japanese constitution, all people, from professors to teachers of primary schools, have disgraced all theory of ethics and morals, and Christianity and Buddhism have been corrupted and become religions that have worshiped idols; they have slandered and drive out other thoughts by reason that it has been dangerous for Japanese constitution by turns. If what they have said is truth, of course, it would be natural for today's socialists to be persecuted from scholars and the government by reason that socialism conflicts with the Japanese constitution.

But we should sigh is that socialists, of all people, have not made strict replies in the presence of this Roman Pope. At least, if they think that socialism conflicts with the Japanese constitution, they could fall silent to avoid dangers by declaration. But some of them say with sweet words that socialism doesn't conflict with it, the wicked others argues that socialism agree with it and shirks to be persecuted; they are shames seen in

¹ 'The theory of Japanese constitution' meant the argument that the sovereignty of Japan resided in the emperor (here, 'constitution' does not mean the fundamental law of a state but the structure of a state). In Japan before the World War II, the Emperor of Japan had been identified with the god (it is expressed as 'the living god'); so Japanese people had not been permitted to argue that the sovereignty of Japan had resided in another people.

only Japan. Especially, those who are called that they advocate National Socialism have made displays to intend to construct socialism on this ‘theory of Japanese constitution, so they can be said assassins of socialism. We shall insist this on the name of real socialism forever: spirits should be put into before the bodies are made. For European socialists, the first revolution has ended and their present duties are overthrowing economic differentials. For socialists of Japan that have been on the way of the Industrial Revolution, imminent duties are making our consciousness independent by driving away wild fancies rather than economic aspects that don’t have remarkable differentials. No, also for general people, understanding distinctions present national polity and forms of government clearly is important when they advocate socialism as actual problems; as long as we kneel on the ground like dogs under threats of ‘the theory of Japanese constitution’, socialism having only materialistic rash acts like these would be decomposed bodies left spirits however it cries public owning of lands and capitals.

But how situations today have been? Like monk soldiers of the old capital² had thronged to the Court carrying portable shrines, those who are shabby in government and cowardly scholars exercise swords of persecution and shoot off arrows of slanders hiding behind ‘the theory of Japanese constitution’ as their only tactics. And like once samurais who had guarded the Court had bowed to portable shrines which monk soldiers of the *Enryakuji* temple³ had had with an air of profound respect, made them calm down and admonished them, any principle or theory have no choice but to avoid ‘the theory of Japanese constitution’ in front of its portable shrine.

If so, some people would say that you would be adventurous people when they see that we put ourselves forward in front of this portable shrine and intend to fit arrows now. But we shall fulfill our duties calmly. Because, like the real god who had been able to give divine punishment had never existed in portable shrines of monk soldiers, those who have been installed in the portable shrines of ‘the theory of Japanese constitution’ and have insisted that those who have touched me have been disrespectful people are not real emperors of Japan but clay figures selfishly made by superstitions of they monk soldiers. Namely, Japanese emperors in ‘the theory of Japanese constitution’ are not their majesties emperors of the Great Japan of today’s constitutional nation, but clay figures in barbarous villages forged by ignorance to essences and legal principles of

² ‘The ancient capital’ points Nara city and ‘monk soldiers of the old capital’ mean monk soldiers of the Kōfukuji temple in Nara. From the ancient times to the medieval times, powerful temples had had armed their monks and when they had been dissatisfied with policies of the Court and so on, they had sent their monk soldiers and made the Court withdraw its policies. The Court had worried it because it had not had enough military powers and the *Kōfukuji* temple was a temple of Fujiwara family who had been the highest noble family in Japan.

³ ‘*Enryakuji* temple’ is one of the most famous temples in Ōtsu city in Shiga prefecture. It had been powerful along with *Kōfukuji* temple and had had monk soldiers.

nations, superstitions of *Shintonism*, slavish morals, reversed and fault interpretations of history.

Clay figures in barbarous villages, although they lie in front of socialism as enemies or they roll behind our camps of socialism, are disused to the world and movements of socialism and the Japanese emperors are in outside of them. Fearing clay figures is a custom done in uncivilized villages in the South Pacific—although each person also vies in taking these clay figures and tries to take profits out from those in the Eastern uncivilized villages—, so socialism is enough to step forward greatly and go under the truth. –What kind of the Roman Pope has existed in front of independence of thoughts?

We shall name what is called ‘the theory of Japanese constitution’ at first as the conclusion in this Section that it never means today’s Japanese constitution nor expresses history of past Japanese nations but clearly means ‘the principle of restorative-revolutionary’ that breaks today’s Japanese constitution. We don’t make what we like as an expedient to avoid persecutions because we believe that it would be dangerous to revolt these public opinions of the established theory from old times; because history of Japanese nations and present Japanese constitution don’t permit so-called ‘the theory of Japanese constitution’ to exist at all, (we argue like above-mentioned)⁴. Oh, 39 years have passed from the national great revolution⁵, none the less only a few people like us have been obliged to overthrow so-called the theory of Japanese constitution today. On earth, why things have been like these? We don’t say it as a socialist; but because it is bad like these to disgrace holiness of sciences everywhere. We argue like above-mentioned for the very holiness of sciences, never for socialism. No! For the theory of Japanese constitution itself! For Japanese history itself!

At first, we shall argue present constitution of Japan.

Following the theory of general scholars that distinguish national polities by where sovereignty resides, we must explain about studies of states and a principle of constitution which the substance of sovereignty resides in the state or the emperor⁶.

The truth can be the truth on everything. Socialism is not only the truth in economics, ethics, sociology, history, and philosophy but also jurisprudence. Namely, it advocates that sovereignty resides in the geographically limited society—that is, the state. –Jurisprudence of socialism is nationalism. So, it is a clearly mistake to argue monarchism or democracy based on jurisprudence in the period of individualism.

⁴ This part of parenthesis is filled up by translator.

⁵ It means the Meiji Restoration.

⁶ This points the dispute of the theory of the Emperor as the Absolute and as an organ government.

Hitherto, monarchism meant the principle that monarchs were the subjects that profits resided, and democracy was based on the grounds for an argument that nations were the final purpose as subjects that profits resided; those were individualistic thoughts in the sense that they have a fundamental thought that rights reside where each profit resides and purposes exist. Socialism—jurisprudentially speaking, nationalism—is the thought that regards states as purposes and subjects of rights that profits reside and argues that sovereignty resides in states. Since individualism has guessed that in the primitive age, individuals had existed without combining each other, if it has seen present social combinations from a viewpoint of individualism, it has naturally had no choice but to explain them by the theory of social contract. But since biological facts reveal that human beings have been social existence since the primitive age and the theory of social contract is a clearly mistake, it is unreasonable to argue monarchism and democracy over the place where sovereignty resides.

So, if we advocate monarchism or democracy based on jurisprudence in the period of individualism, we need to bring up the following; if we conclude that our societies or states have been organized for freedom and independence of individuals (namely, for purposes and profits of individuals), and imagine that sovereignty had been resided in each nation before societies or states had been organized (peacefully in an expression of Rousseau, or in the situation that man by nature often deceives other man in an expression of Hobbes), it would be brought up that sovereignty which we assumed that it had been individually before organizations of societies or states has resided after organizations of societies or states. But since that way of organization had been devised because no thought had existed except for the theory of social contract at that time, the argument of individualism on the place where sovereignty has resided has been meaningless because in today when the theory of social contract has been abandoned, it has argued conclusions, nevertheless its assumption has disappeared.

Of course, like the theory of Japanese constitution had had great meanings in the last days the Tokugawa Shogunate, the theory of social contract had been a foundation of every argument. By the time the French Revolution brought about, classes had not generated under equal laws like today, and laws themselves had shown that states had been class states. Also in assemblies, each class had confronted having each purpose and profit in each different resolution, so laws as unified nations like today had never been made; they had had characters of treaties by contracts of each class. So, it would have been a sole unavoidable conclusion for explanation of states and interpretation of laws in those days that the theory of social contract had been adapted in individualistic thoughts, although it would have been a groundless assumption that it had applied its

thought to the origin of states and the primitive societies; without this assumption, we would not have been able to interpret every social phenomenon.

But today's situations have not been so. Although organs of the state have been monopolized by one class because capitalists had developed and social classes have divided greatly and gotten to confront with each other, they are problems economics should deal with; seeing from jurisprudence, Japan is undoubtedly a unified state. Also, Japanese government formed by cliques of particular fiefs protects the Emperor and enacts laws bringing profits to its members' classes, and the Diet is perfectly at capitalists' beck and call, and enacts laws cooperating with the purpose of the class, it is natural that once laws are approved, jurisprudence should regard laws as Japanese laws *beyond the classes* without considering details of enactments. So, constitutions made by the theory of social contract in the medieval age had had characters like treaties between monarchs and nobles or monarchs and nations, but today's constitutions have never been ones like contracts. Monarchs and nations are two classes by conclusions of constitutions in the relationship of rights. Why monarchs' actions have restricted is not because they have had duties that have had to control themselves before nations' rights. Why nations have been made to bear duties is not because they have tried to satisfy with their monarchs' rights under requests of monarchs; that is, duties nations bear are based on the rights states require and rights monarchs insist on are based on duties states bear.

Japanese people and the Japanese emperor are not two classes that conflict by the treaty of rights and duties, but those rights and duties are not ones that these two classes directly bear or can require by their treaties. In short, rights and duties the Japanese emperor and people are not ones that each class directly confronts but ones to the Great Japanese Empire. For example, why Japanese people have had duties not to ignore government of the Emperor is not because the Emperor has had the right to require them to people directly but because *the state* has had the right to require them to people and they have had duties before the state. Why the Japanese emperor has had duties that he has not been able to ignore the will of the Diet and issue laws or ordinances is not because Japanese people have had the right to require them to the Emperor directly but because *the state* has had the right to require them to the Emperor and the Emperor has been made to bear duties by the state. –This is the very point distinguishing class states in the medieval age with nation-states in modern age (for the medieval history of class states, see the following historical interpretations).

Of course, we don't say that there have not been traces of class states such as monarchs, nobles, or the general public from the legal point of view today; and we don't

say that there have not been the cases that profits have resided in only monarchs or nobles by laws from particular point of view (especially view of politics). Because states are evolving organisms (see the paragraph that we have defined individuals in the Section 3, *The theory of biological evolution and social philosophy*.) and process of evolution cannot be distinguished artificially and clearly since the national polities or forms of government evolve according to growth of organisms. Jurisprudential foundations that today's states have not been regarded as class states like in the medieval age is in the point that monarchs or nobles have not existed as the residing subjects of profits which would have resided in states like the medieval age but they have institutionalized as profits residing to states for the purpose of states. For example, though it is supposed to be understood that profits that the Emperor bears no responsibility reside in the Emperor from a certain view, seeing from jurisprudence, they are shown from laws and regulations existing the purposes and benefits of states and reside in states. Also, it is supposed to be understood why only nobles and limited people have the right to be members of the House of Peers is because those profits reside in those classes like that, but since they are also based on laws and regulations existing the purposes and benefits of states, it is unavoidable as a jurisprudential view to understand that those profits reside in states.

Of course, it goes without saying that monarchs, nobles, or nations have had the purpose to live by themselves according to their positions equally and each has been subjects of rights because each has had profits residing to each. But those rights are so-called political powers and Monarchs' ones are the rights to ascend the throne having grave powers; nobles' ones are the rights to be members of the House of Peers having special powers or to elect its members and many nations' ones are the rights to get the positions of electors⁷ composing important organs when elections are done.

However, the rights to ascend the throne or to be electors never mean sovereignty itself but mean the rights to the positions to exercise sovereignty. So, in modern nation-states—in any despotic monarchical country or democratic country being able to do direct legislations⁸, monarchs and nations are never substances of sovereignty. Substances of sovereignty reside in the states and monarchs or nations exercise that sovereignty for the purpose that states are independent and survive by themselves. Hence, rights and duties of monarchs and nations are what directly conflict with each other contractually like class states, but ones to states. If so, that states have legal personalities as substances rights and duties reside is naturally led to, and it is a

⁷ It is thought that this 'electors' includes both the suffrage and eligibility for elections.

⁸ The meaning of this word, 'direct legislations' is not clear. Perhaps he would have assumed the system that nations would have legislated by such as referendums without through assemblies.

natural logical result that monarchs and nations constitute national organs for the purpose of existence and evolution of these legal personalities, too.

It is unreasonable to interpret that in the present constitution, monarchs and nations conflict with each other in the relationship of rights and duties and to conclude monarchs or nations substances of sovereignty unless we maintain the theory of social contract and conclusions of individualistic assumptions in the period of class states.

States had existed based on social solidarities of individuals from the beginning of the world and their members had slept under the purpose of states in the situation of primitive unconsciousness (see the paragraph that we have argued the primitive times in the Section 3, *The theory of biological evolution and social philosophy*). But those social solidarities had become properties of monarchs along with lands in the process of evolution until the medieval age, so state had legally been the objects of rights; namely, states had not been substances of sovereignty realizing their own purposes and profits but been the objects of rights following dispositions as properties such as marriages, successions, or cessions for the profits and purposes of monarchs.

In this age, since monarchs had governed states for their purposes and profits, where purposes had existed and profits reside in had been the subjects of rights and monarchs had been substances of sovereignty; and states had been objects of the reign. We shall name this country in the period that it had been objects of rights 'the patriarchal country' and regard it as the national polity in the medieval age. Whether we call today's national polity democracy or monarchy, we can never inherit, give, break, or kill territories and people freely as monarchs' properties like in the medieval age. Since even monarchs are members of their states, it goes without saying that states have had legal personalities. Hence, it is clear that monarchs have not been patriarchs standing out of states and owning them like in the medieval age, but they have been national organs as members of states. Namely, the period that state had remained the situations primitive unconsciousness has passed away, states have had clear consciousness, and have gotten to govern themselves for their own purposes and profits, so they have been substances of sovereignty as the subjects purposes have existed and profits have resided in. We shall name this 'nation-state' and regard it as present national polity.

Because national polities have not been classified in accordance with evolution, nor the point at issue whether states have had personalities or have been objects of rights have not been decided, today's those who have argued that sovereignty has resided in monarchs and who have argued that it has resided in states have contradicted themselves and have only repeated meaningless debates. In the first place, they have

fundamentally made mistakes in the way of studies of jurisprudence. National polities or forms or governments should never be interpreted supplementing superficial figures like Aristotle had expressed ‘the number of the rulers’⁹. Today’s jurisprudence has not indulged in static speculations like ancient Greece. National polities and forms of governments should be studied dynamically as that they have evolved—namely, social phenomena advancing historically.

If today’s constitutionalists took this attitude, they would not argue whether sovereignty of the *Reich*¹⁰ having evolved like today resided in each state of inside the Federation of states or in the *Reich* itself, nor whether the Britain was monarchy or democracy. Especially, a serious mistake about today’s most of countries named constitutional monarchy—it is a common mistake that those who have argued that sovereignty has resided in monarchs and who have argued that it has resided in states fall into— would not exist. Unless we dynamically study legal phenomena, nor think national polities or forms or governments as evolutionary ones, ancient and medieval national polities and forms or governments would entirely be abandoned outside the studies of jurisprudence; we would not be able to explain present national polities and forms of governments having inherited those evolutions. Because of this, Japan has had a superstition of ‘the theory of Japanese constitution’.

So, their interpretations are innumerable different, none the less because they consider Japan in accordance with the theory of evolution, they agree with the point that they cannot explain present national polities and forms of governments. See the states by the principle of the study of states evolutionally. If you do so, you will understand present national polities and forms of governments clearly and that scholars’ classifications that various views are jumbled together will have no worth. So, since a legal doctor, Professor Hodumi Yatsuka¹¹ doesn’t understand this point, he gave classifications of them up as hopeless, and got to insist as if neither national polities nor forms of governments couldn’t be classified.

He says this in his *Correspondence courses of Tokyo Imperial University*:

⁹ Aristotle classified forms of governments as three types of monarchy, aristocracy, and democracy (bad forms of them are tyranny, oligarchy, and mobocracy) in his *Politics*. ‘The number of the rulers’ would mean these classifications.

¹⁰ *Reich* was the German Empire.

¹¹ He was a famous constitutionalist in last days of 19-century and early days of 20th century Japan (1860-1912). He was a typical constitutionalist who advocated the theory of the Emperor as the Absolute. But, according to Dr. Ono Seiichiro, a scholar of criminal jurisprudence in 20th century Japan, ‘he distinguished national polities and forms of governments. He explained that: national polities meant distinctions of the national system based on where sovereignty resides in but forms of governments meant distinctions of formalities of governmental actions. The national polity of our Japan had a special feature in the point that it was “the pure” monarchy’ (Self-awakening development of Japanese principles of law, Yuhikaku, 1942, p.p. 85-86). So, he didn’t always deny distinctions of national polities and forms of governments.

National polities are determined by history, and they are not same. So, no universal national polity exists. And scholars cannot enumerate all kinds of national polities in advance. Where sovereignty resided in the past and shall reside in the future is determined by historical processes and can change variously. So, I believe that explaining national polities means arguing about particular countries or times, and I cannot generally and abstractly enumerate classifications of national polities. When I explain our constitution, I have no choice but to explain the national polity determined by our history.

Although professor Hodumi Yatsuka says, ‘national polities are determined by history’, it goes without saying that it is not a dynamic study and it is an argument to explain that since our history is unparalleled one in the world, our national polity is unparalleled one in the world. And although his ‘particular country’ points *special* Japan, we cannot be heard about what is called ‘particular times’. Accidentally, on the one hand, he says, ‘it is a special feature of our national polity that sovereignty of the government has constantly kept on residing in the unbroken line of Emperors’, on the other hand, he argues at once, ‘the Restoration recovered the sovereignty of the Emperors’; we cannot understand where those base exist. So, we would not be able to expect those who are quite short of historical knowledge like him a dynamic explanation about our national polity that insists that it is determined by history.

But it is very strange that a legal doctor, Professor Aruga Nagao¹² who is one of those who have argued that sovereignty has resided in monarchs and is regarded as an unparalleled historian, has not studied them based on the theory of evolution like Mr. Hodumi. Dr. Aruga is an authority among those who advocate have argued that sovereignty has resided in monarchs like Dr. Hodumi and argues where sovereignty resided in is determined by historical processes. And he is not contrary to his arguments; in an introduction of his *the science of the constitution*, he spends not a few pages to descriptions of history about Japanese people vs. the Imperial Household.

We believe where sovereignty resides in is determined by historical processes and national polities and forms of governments can be understood only by dynamic studies. And Dr. Aruga used meanings of historians and revealed the truth; it is a conventional view not thinking about history to regard all Japanese people as ancestors of *Amaterasu*

¹² He was a jurist and sociologist in 19th-20th century Japan (1860-1921). He held a secretary of the Privy Council, a chief of the Patent bureau in the Department of Agriculture and Commerce and so on, and gave lectures about constitution in Tokyo Special School (for this, see the note 11 in the Section 3, Chapter 6.) or in the Military Staff College. He turned to study the international law with the Sino-Japanese War as a turning point.

It is said that his method of study was a sociological positivism.

*Ōmikami*¹³ and to lay the foundation that Japanese sovereignty has resided in the Emperors to Japanese people only from this reason. When we saw that those who have argued that sovereignty has resided in monarchs like Dr. Hodumi became worthless before him, we expected *the science of the constitution* to give the theory of monarchy influential historical foundations. Perhaps, he would have expected that, too.

But when we see that he thinks the words of ‘sovereignty’, ‘reign’, or ‘the emperor’ in the present sense as unchangeable ones for 2,500 years and rather argues going against historical processes, we cannot help concluding that no scholar has studied states based on the theory of evolution in Japan.

Of course, we don’t deny that the oldest historical records, *Kojiki* or *Nihon Shoki* are important Bibles. But it is obviously and extremely indiscreet dogmatism to be based on them which are said that they had been edited after 14 centuries from the First emperor Jimmu¹⁴, to adopt a few words, ‘Toyoashihara no Mizuho no Kuni¹⁵ shall be the land where my ancestors shall ascend the throne. My grandson, ascend the throne and reign there. It would be no limit along with the universe that the Throne shall prosper and develop’¹⁶, and to put fundamental thoughts of the theory like Dr. Aruga.

Although this was expressed ‘the throne’ or ‘reign’ by the words after 14 centuries, why can we apply these words to today’s ‘sovereignty’ since forms and pronunciations of those words are resemble to what we have used today, and treat ancient times before 14 centuries and present times of after 10 centuries from that time alike? For a long time until *Kojiki* and *Nihon Shoki* had been edited—at least, for 10 centuries until Japanese people had contacted with foreign civilizations, they had not had letters; it had been primitive times that it had been said that they had remembered to record their predecessors’ speeches and actions by ropes. Suppose that; if letters have not existed for 10 centuries after today and history in the Meiji era by Mars’ words based on interchange between Mars after 14 centuries... Can ‘the throne’ or ‘reign’ of Mars written in *Kojiki* or *Nihon Shoki* in Mars’ words after 14 centuries explain the system of government in the Meiji era? Even if today’s us have recorded things by ropes and those

¹³ Amaterasu Ōmikami is the supreme goddess in Japanese myth. ‘Amaterasu’ means brightening on the heaven and ‘Ōmikami’ means a great god. She is the sun goddess and is regarded as the goddess of an ancestor of the Imperial Household.

¹⁴ The First emperor Jimmu was a legendary emperor in Japan. According to Japanese myth, the emperor Jimmu is said that he had ascended the throne in 660 B. C (see the note 13 in the Section 1). Since it is said that *Kojiki* had been edited in 712 and *Nihon Shoki* had been edited in 720, the times that they were edited had passed for 1,400 years the times that the emperor Jimmu had ascended the throne.

¹⁵ ‘Toyoashihara no Mizuho no Kuni’ is a beautified name of Japan. ‘Toyoashihara’ means the field growing reeds richly. And ‘Mizuho no Kuni’ means the country bearing fresh ears of rice.

The turn of phrase like this is seen in the second volume of *Kojiki*.

¹⁶ This sentence is in the attached volume in the second volume of *Nihon Shoki*. It writes that Amaterasu Ōmikami said her grandson Amatsuhikohikoho no Mikoto and sent him to Japanese territory.

ropes have been made of metal not corroding for 10 centuries, or even if our brains have amazingly evolved and our predecessors' speeches and actions for 10 centuries have been told from grandparents to grandchildren by speeches without mistakes, Mars' words shall only express thoughts of Mars; evolved nations after 14 centuries shall use Mars' words by thoughts after 14 centuries.

If so, the attitudes of Dr. Aruga that he dogmatically concludes that each 'sovereignty' in the period that we had not used the letters, in the period that we had gotten to use the letters by imports of Chinese civilization, and today importing European civilization does not change and evolve only by reason that 'the throne' or 'reign' are resemble to what we have used today, and doesn't mind applying today's relationship of government to the primitive age without the letters a few thousand years ago shows that he doesn't have a right to call himself as a historian at all.

We shall declare that; 'the throne' or 'reign' we have used are letters and thoughts having been imported from ancient China and it had not been clear that for a thousand years that our ancestors had lived primitive lives whether they had used phonograms, pictographs, or had not used the letters at all. At least, it is sure that the Emperor Jimmu had not been called 'the emperor' in a today's word and thought¹⁷ and their rights to their people should not be guessed from rights or powers of today's emperors, either (we insist on exclude the primitive age without letters for thousand years from political history. See the following historical interpretations).

In this way Dr. Aruga is such a historian that he thinks that if forms and pronunciations of the letters are the same, the contents have been the same from the ancient age. So, he ignores the rights of the emperors in the period that they had had lands and people as patriarchs and applies the rights of today's emperors to actions of the Emperor Yuryaku who had taken wives of subjects by his ownership, the Emperor Buretsu who had killed people of his possessions freely¹⁸, or the Emperor Goshirakawa¹⁹ who had given his lands to *samurais*, none the less had taken them and given a his favor concubine in reverse; he argues that they had been tyrant and not been impervious to reason, or their actions had been lack of benevolence and illegal. The

¹⁷ Japanese emperors had not been called 'emperors'. In ancient times, they had been called 'Ōkimi (the Great Kings)'. It was 7th century that they got to be called 'emperors'.

¹⁸ For the Emperor Buretsu, *Nihon Shoki* tells many cruel episodes. According to *Nihon Shoki*, he ordered people to climb trees and to cut down *the* trees or to shoot climbing people dead, or intended to cut stomachs of pregnant women and to see unborn children.

¹⁹ The emperor Goshirakawa (1127-1192) was the emperor in 12th century Japan. He was a transitional emperor that the Genji family and the Heishi family had scrambled with each other for political powers. He excelled stratagems and urged both families to battle with each other to maintain the Court, so it is said that Minamoto no Yoritomo commented that he was 'the greatest goblin in Japan'. But the Court didn't have enough military forces, so after the Heishi family had ruined, he could not control Yoritomo (because Yoritomo was more man of stratagems than him).

His favor concubine points Tango no Tsubone (Takashina Eiko).

emperors at that time had been owners of states who had been different from today's ones, and people had not had personalities and had been their properties of 'the Great Treasures' along with territories. On the other hand, some historians recognize the rights of the emperors at that time but criticize them by a viewpoint of today's sense like Dr. Aruga; in reverse, they apply the rights of the emperors at that time to today's emperors and argue as if they had been patriarchs who had been able to treat with territories and people freely. Today's emperors have constituted the privileged class having entirely different meanings with the emperors at that time, and they cannot cede their states by marriages with foreign monarchs. Neither can they divide states to a few Imperial princes, nor take people's properties out of their possessions; neither they hurt nor break their lives as 'the Great Treasures'. Nations who have only taken on rights and duties to states can ask states to help them from a drawn sword of the emperor, or exercise self-defenses. Namely, although the form and pronunciation of 'the emperor' have been the same, today's emperors have been one of national organs acting under the purpose and profit of the state as the privileged class of the state.

More minutely speaking, the emperors by the time the Meiji Restoration had not been the governmental organ of Japanese Empire like the emperor after the Restoration. Even if they had acknowledged themselves so only on their ideals, they had been patriarchal monarchs that had been able to deal with their people as objects of their rights on the legal facts. So, when the emperors had been the most powerful (like until the time that Fujiwara families had seized powers)²⁰, their territories and people had existed under the purpose and profit of them in the whole Japan; when they had been weak (like after Yoritomo had appeared)²¹, their territories and people had their territories and people had existed so in the extent that their influences had reached. They had been the subjects of sovereignty as the points that the purposes had existed and the profit had resided in (see the following interpretations about history). -Japanese national polity has not been the same for a few thousand years; the character of Japanese emperors has not unchangeable one from the old age to the present age.

Nevertheless, why do some people say about a Louis the 14th's word of '*L'état c'est moi*' whose had insisted naturally in the period of patriarchal countries, making introductory remarks, 'In our national polity...', 'it cannot be applied to Western national polities, but it can be applied to our national polity', and intend to apply it to today's national polity? The word of Louis 14th had not been able to apply to even the national polities in Western countries at that time; it had been able to apply to our

²⁰ It points the Heian era (794-1192).

²¹ It points from the Kamakura era to the Edo era (1192-1868).

national polity until the medieval times. But if they advocate it to today's national polities, it would not only be unreasonable whether in Western countries or in Japan, they would clearly show rebellions against states. –Don't they know that national polities have not only been different in the aspect of horizontal axis but also in the aspect of vertical axis²²?

If they argue that foreign national polities which they can reach for a twenty or thirty days and Japanese national polity are quite different like the heaven and earth, why aren't they aware that it is unreasonable to think that the national polity a few thousand years ago and today's one are perfectly same as a natural inference? They refer to the emperors, and then if they know that Russian emperors, Turkish emperors, and Belgian emperors are different each other. Why don't they think that the Emperor *Jimmu*, the Emperor *Godaigo*, and the *Meiji* Emperor are quite different ones although they are called 'the emperor'? They would interpret that 'miserable' has the same meaning with 'mizorehuru', which means 'sleet falls', if they are similar pronunciations of words and that 'soldier' has the same meaning with 'sōdya', which means 'yes'²³.

On earth, in jurisprudence, it is the most important to determine the contents of letters. Since in other natural sciences, the letters themselves such as oxygen, hydrogen, the stomach, or the heart don't change in accordance with geographical features either times, it is quite different from social sciences that concentrate on deciding the contents of scientific terms. Especially, societies have evolved and social phenomena have been different, none the less, above all of social sciences, jurisprudence has used words of the same forms and pronunciations still, and has made determining the contents of letters the final goal. Those who study laws from historical viewpoints must extremely recognize this point. If so, you must know that it would be a too impudent profession to argue the constitution from a historical viewpoint, if you forget that the content of the word, 'the emperor' had unlimitedly changed for a long time of a few thousand years. –Because Dr. Hodumi and Dr. Aruga have not known this point, one has understood the present emperor as the emperors in the period that they had had territories and people, and the other has thought the power of the Emperor Jimmu in the period without letters has been the same with one of the emperor in the period that he has had sovereignty as ownership.

Here, there is the point of our insistence that classifies states in accordance with evolution.

²² Though its meaning is not clear, he would have understood that evolution of powers is correlation times and spaces.

²³ In Japanese original text, one more sentence closes on the heels of this sentence, but that sentence has only meaning in Japanese words. So, I deleted it.

But even today's constitutionalists don't always classify Western countries according to historical evolution and times. Nevertheless, why do they always ignore the distinctions ancient age and today only when they argue about Japan, and consistently make the special introductory remark, 'in *our* national polity...' in their theories of the constitution from the introduction to the conclusion? –Because there is 'the imperial blood an unbroken line'. Since Japanese people have had this word of 'the imperial blood of an unbroken line', they have thought that national polities and forms of governments in Western countries had evolved in accordance with evolution of history, none the less only Japanese national polity and form of government has been put outside the law of evolution and have not evolved at all. So, when Japanese constitutionalists argue about the national polity in the theory of the constitution, they consistently interpret that sovereignty resides in the emperor in our national polity of an unbroken line, though they say that it is an argument to decide what national polity ours is, namely, where sovereignty resides in.

This can never be called an interpretation; it is an argument that since sovereignty resides in the emperor of an unbroken line, sovereignty resides in the emperor. It is a circular argument like when A is asked his or her age, he or she answers, 'my age is the same with B', and when B is asked his or her age, he or she answers, 'my age is the same with A'. Targets who we should laugh are not only jurists; moralists and philosophers have been struck their skulls from the side by a word of 'an unbroken line' and all of them have gotten mental retardations. Because of this, in Japan, states have not been classified in accordance with evolution.

For the imperial blood of an unbroken line, we shall clearly explain the following arguments of history²⁴. We are enough to appoint Mr. Hodumi Yatsuka here whose every deduction is based on a word of this 'unbroken line' in science of constitution. His brain has gotten pitiful mental retardation by a blow of this word. So, his all arguments about the constitution have no connection with each other either any system; he denies or overthrows what he mentioned for himself. And on the one hand, he refers to Takamagahara²⁵ at once and explains the theory of Shintonism; on the other hand, he goes down to the ground from Takamagahara at once and becomes a scientific scholar about myth.

In his especially bad arguments, he perfectly seems to abandon being the theory that sovereignty resides in monarchs in the argument about the essence of sovereignty and

²⁴ See the Chapter 11.

²⁵ Takamagahara is the heavenly world that is ruled by Amaterasu Ōmikami and innumerable gods live in Japanese myth

to advocate the theory that sovereignty resides in states; also in his words seeming to be the historical argument, on the one hand, he seems to advocate the theory that sovereignty had resided in the emperors; on the other hand, he seems to advocate the theory that sovereignty had resided in the Shogunates. Since he is a chief spokesman about the theory of Japanese constitution, we refer to his arguments most in this Section. Because I should study his theories as minute as possible, I read all his books he had published, almost all articles he had printed in various journals, and even correspondences in Tokyo Imperial University and other universities he mentions the same arguments every year. However, it goes without saying that it is impossible to find consistent thoughts from his contradicted words, and any psychiatrist would not be able to interpret these words coming out from his brain struck by a word of 'an unbroken line'. On the contrary, he has adopted the very view of states based on the theory that sovereignty resides in states in a concept of a state.

This point is not only Dr. Hodumi. All those who advocate the theory that sovereignty resides in monarchs plagiarize the definition about modern states in the definition of states, none the less they haven't realized it at all.

Dr. Hodumi and all people who advocate the theory that sovereignty resides in monarchs divide 'the subject of government' and 'the object of government', when they organize the science of constitution. And they regard the subject of government as the emperor and the object of government as territories and people. If they argue that states are organized by two factors of territories and people and the emperors are ones who reign states outside the states—we have previously said that territories and people had existed as objects of monarchs for their purposes and profits in the medieval times—like Seydel who advocates the theory that sovereignty resides in monarchs, the Great Japanese Empire that the Article 1 of the constitution prescribes 'the Great Japanese Empire shall be ruled by an unbroken line of the Emperor' would be organized by two factors of territories and people and would be the object of government like in the medieval times. If they advocate the theory that sovereignty resides in monarchs and divide the subjects and objects of governments, they must regard the Great Japanese Empire that is ruled as the state organized by two factors in the medieval times. Nevertheless, Dr. Hodumi and today's all people who advocate the theory that sovereignty resides in monarchs are perfectly based on a view of states about modern states and rather drive out Seydel. Dr. Hodumi says: states are human societies formed certain territories, *rulers*, and people. Subjectively seeing, states are the *subjects* of sovereignty.

The argument that subjectively seeing, states are the subjects of sovereignty is the

very thought based on the theory that sovereignty resides in states, isn't it? The thought that states are human societies formed three factors of territories, rulers, and people had not existed as a concept of states in the medieval times that monarchs had given their states to others as properties or inherited, so it is a concept of modern states that regards that sovereignty resides in states, isn't it? Because if states consist of three factors, it means that monarchs themselves are included in them and that monarchs give them to others or inherit them means giving themselves or inheriting themselves; it would be a contradiction. In the thought in the medieval times that monarchs are owners of states, when the word of 'my state' is used, the state would be formed by two factors.

Namely, in the medieval times, monarchs had been regarded as the subjects of governments ruling states from the outside and states had been regarded as the objects of governments ruled by them from a viewpoint of jurisprudence. But in modern thoughts Dr. Hodumi and so on have adopted, monarchs are regarded as one of elements of states, that is, are included in them as a member of them. So long as they had been outside the states, they would have been able to own states and rule them. So, states had been properties of monarchs and the objects of government. If they are inside the states, they would not able to own states; one element of states cannot be the subjects of governments to insist on ownership to states that include them. So, if you divide the subjects and the objects of governments and advocate the theory that sovereignty resides in monarchs, you must understand that the Great Japanese Empire the Article 1 of the constitution prescribes is formed by two factors of territories and people that had been the objects of rights in the medieval times. Nevertheless, if you regard that states have personalities and the substances of sovereignty, the Great Japanese Empire the Article 1 of the constitution prescribes would be the substance of sovereignty formed by three factors above-mentioned and you must interpret as follows; the Great Japanese Empire that is the substance of sovereignty and modern nation is exercised its sovereignty by an unbroken line of the emperor.

In addition, if you regard the emperor as the subject of government and the Great Japanese Empire as a modern nation having three factors above-mentioned, the Article 1 of the constitution would have to be rewrite, "Territories of the Great Japan not being a state and people shall ruled by an unbroken line of the Emperor". Because if you adopt a view of states based on the modern thought that states are formed by three factors, the emperor of what Dr. Hodumi and so on are called the sovereign would be included in the Great Japanese Empire, so dividing them the subjects and the objects and regarding the emperor as the subject of government mean putting one of three factors outside the

state. If so, the Great Japanese Empire the constitution points out would not be the unified nation but one that would be organized only by territories and people that are two factors of states. That is, so long as you understand that the state is formed by three factors including the ruler (and you adopt the medieval thoughts)²⁶, it would be incomprehensive that the emperor of the sovereign would rule the Great Japanese Empire including him. Both the Empire that the Article 1 of the constitution prescribes that the Great Japanese Empire shall be ruled by an unbroken line of the Emperor and the emperor would become the subject of government and the object of government, so the concept of government would contradict. In short, Dr. Hodumi and all other people who advocate the theory that sovereignty resides in monarchs have fallen into a dilemma; whether they adopt a view of states in medieval times that states are organized by two factors of territories and people as Seydel defined, or adopt the modern thought that states are organized by three factors but think that one factor of government have been held by an unbroken line of the emperor and correct that the Great Japanese Empire prescribed in the Article 1 of the constitution doesn't mean the state but territories and people.

However, this dilemma would have no effect only against Dr. Hodumi. Because when he says, 'subjectively seeing, states are the subjects of sovereignty', he doesn't mean the Great Japanese Empire of the state organized by three factors, but so-called one part of one factor—the emperor. Namely, he doesn't regard the state prescribed the Great Japanese Empire in the Article 1 of the constitution as the substance of sovereignty but an unbroken line of the emperor as the substance of sovereignty. Since he names the emperor as the state, his arguments are special.

But this confused use of letters is contrary to the definition that is the way to arrange thoughts orderly. Also, since it fundamentally confuses thoughts, he only disturbs jurisprudence. As long as the constitution being the result as a modern nation prescribes 'the Empire', it means a unified nation in modern thoughts organized by three factors like he defines, and as long as it prescribes 'an unbroken line of the Emperor', it similarly means the emperor whose pedigree has not broken. Nevertheless, if he insists on a view of states based on the theory that sovereignty resides in states, 'states, subjectively seeing, are the subjects of sovereignty' and names the emperor who is the subject of it as 'the state' freely, we cannot help appraising the Russo-Japanese War as the war done by only the emperor, not the war of the state, and cannot help arguing that losses of 60,000 people's lives²⁷ in that war are attribute to the emperor.

²⁶ This sentence of the parenthesis was supplemented by the translator.

²⁷ The ground of this number is not clear. In the Russo-Japanese War, the number of the death of Japanese

Since he uses letters in this way, even today's people who advocate the theory that sovereignty resides in states had no choice but to treat him well as a person not getting weak his excellent knowledge. When we speak and listen to the thought of 'state' in each language today, it goes without saying that it is always based on a view of states of modern thoughts that a state is a human society forming political groups on certain territories. Nevertheless Americans doesn't recall the Congress, either French don't recall the electorate when they talk about the nation, still less when we say 'the Great Japanese Empire', why do we recall the Imperial Throne or the Emperor like him?

If we say, 'the Throne is the state' like him, it would not be strange that the fields or horses and cows would be or people would come and go on the Throne, or many kinds of buildings would be; not all schoolchildren would not think that the Throne of Italy is the shape of the high boots, and the Throne of Japan is the shape of the dragon being a thousand miles. And if we say that the emperor is the state like him, some states would be handsome, the others would look very like Chinese yams; in one period, states would have run at their noses, and in the other period, states would have gone bald gradually. The state of Germany would have an extremely senseless moustache and make an arrogant speech, and the state of Britain would marry and kiss with a women. When the monarch is injured, the state would cry, 'ouch!' and when the monarch walk, the state would walk; when the monarch tours other countries, the state would move on the earth, would collide with other states, and would slide on the surface of other states. And the word of Frederick the Third, 'cutting down feet of the monarch when they are treated means that states lose their feet' would be the authority that should remember to be quoted in the science of the constitution of Dr. Hodumi.

Especially, to demonstrate the Louis the 14th's word of '*L'état c'est moi*' that is the authority of the authority, he would have to refer to various old books written in Latin and point out the facts like that a close adviser of Louis the 14th being equal to Mori Rammaru²⁸ was awarded a dagger to put in his bosom for self-defense because of achievements of following evacuations of *the state* or counting the number of breaking wind of *the state*. It would be incomprehensive that medical scientists say that the stomach, subjectively seeing, is the heart, or that it, objectively seeing, can be named the bladder; like that, the words of 'subjective', or 'objectively' should not be used to quite different ones like him.

What a confused view that the state seen subjectively and the emperor seen objectively are the same! –The word that states, subjectively seeing, are the subjects of

soldiers was about 120,000.

²⁸ Mori Rammaru (1565-1582) was a close adviser of Oda Nobunaga (for Nobunaga, see the note 7 in the Section 2).

sovereignty is the theory that sovereignty resides in states that subjectively points out that state are substances of sovereignty. There is not the word to be adopted by those who advocate the theory that sovereignty resides in monarchs who insist that the objective emperor is the substance of sovereignty, or to name the emperor the state.

On earth, Dr. Hodumi has insisted that the substance of sovereignty has been the Throne. But since all those who advocate the theory that sovereignty resides in states and some people who advocate the theory that sovereignty resides in monarchs—for example, a legal doctor and a professor of Kyoto Imperial University, Mr. Inoue Hisoka²⁹—had entirely overthrown his theory that the Throne has been the national institution, so he has seemed to insist today that the body of the emperor itself has had sovereignty. Though those who advocate the theory that sovereignty resides in states take up this point and controvert that if so, the state would ruin along with the death of the emperor, he answers very skillfully: *the emperor* has not died. I mean that the life itself of Amaterasu Ōmikami continuously extended by an unbroken line.

It is very skillful for him to have insisted on the extension of lives having scientific meanings and so that to have gotten around criticisms of those who advocate the theory that sovereignty resides in states. Individuals have extended and have not died forever. The life of Amaterasu Ōmikami is an unbroken line has not died forever and have existed today (in the Section 3, *The theory of biological evolution and social philosophy*, see the paragraph that we have explained about extension of individuals). So, we don't care whether the concept of 'sovereignty' he says had existed or not in the period of Amaterasu Ōmikami.

If sovereignty he says resided in today's emperor himself, sovereignty would not become extinct so long as the throne would be an unbroken line. Hence, we can enough recognize that the state he refers to has not become extinct. But individuals do not only extend but also breed innumerable. This is a serious problem for him and so on. As long as individuals increase by breeding and an abdicated emperor who has joined a Buddhist order, a retired emperor, and the active emperor exist, and all of them are alive, each three perfect subject of sovereignty would be and would conflict with each other; as soon as they die, each emperor would hold his (or her) sovereignty in his (or her) body and would take away to cemeteries. And if he says that the subject of sovereignty is the emperor and he (or she) is the state, at that time Japan that several emperors had existed would have been three states. And since the emperors who had

²⁹ Inoue Hisoka was a constitutionalist in 19th century Japan. He taught the constitution in Kyoto legal and political School (present Ritsumeikan University) and Kyoto Imperial University.

exiled to distant islands³⁰ had been the subjects of sovereignty and states, the state would have been exiled and died. And he would find an excuse that those abdicated emperors who have joined a Buddhist order had entered into temples covering the subjects of sovereignty by canonical robes, and they had beaten wood blocks and prayed to Amida Buddha as the Great Japanese Empire shaved heads.

Dr. Hodumi must say, ‘that’s right,’ to these assumptions. Because the extension of lives he says is an escape route discovered since it is difficult to maintain the theory that sovereignty resides in the Throne, he cannot argue that the emperors would not be the subjects of sovereignty because of abdicating the throne. And since it is not clear whether the life of the emperor shall be extended by the first-born son, or the second-born or the third-born son, if he argues that sovereignty is transmitted to only the life of the Crown Prince and is not transmitted to other sons, when the Crown Prince would be dethroned or die in his youth, the life that sovereignty was extended would become extinct and the emperor would not exist; the substance of sovereignty would become extinct and as the result, the state would become extinct. So, he must argue that sovereignty is extended to all imperial princes as a part of bodies. So, since the emperor Keikou³¹ had had seventy two children, seventy two subjects of sovereignty would have existed at that time and states that their lives had been extended would have existed. Hence, though seventy two imperial princes had settled in the provinces, had gotten local clans, and some had prospered getting heroes, and others had getting weak, and had gotten future feudal nobles, they would have to be regarded as those who had extended sovereignty of the emperor and bred.

Dr. Hodumi must say, ‘that’s right,’ to these assumptions. Because if he denies these, sovereignty of those who had not been the Imperial Family—for example, the empress *Suiko*³² who had been the empress of the emperor *Bidatsu*³³ and Soga no Iname³⁴ had made his daughter bear would have to be based on the sovereignty of the Emperor *Kougen*³⁵ whose life had extended to Takeuchi no Sukune³⁶ that had been the ancestor

³⁰ The emperor *Sutoku*, *Gotoba*, *Juntoku*, *Tsuchimikado*, and *Godaigo* were that examples. Further, the emperor Juntoku had exiled to the *Sado* Island which was a Kita’s birthplace.

³¹ He was the legendary emperor that it is said the twelfth emperor. *Kojiki* and *Nihon Shoki* write that he had about eighty sons and daughters. It is said that among them, seventy and some of them had been sent to the provinces.

³² She was the first empress written in historical records (554-628). She had made Shoutokutaishi a regent and made him some reformations.

³³ He was the emperor in the latter years of 6th century.

³⁴ He was a minister in the period of the emperor *Kimmei* (?-571) and conflicted with *Mononobe no Okoshi* over the introduction of Buddhism. The emperor *Suiko* was his granddaughter.

³⁵ He was the legendary emperor who is said that he was the eighth emperor.

³⁶ Takeuchi no Sukune was the legendary retainer who is said that he had served five emperors and rendered meritorious services. It is said that he was a great-grandson of the emperor *Kougen*.

of Soga families, since the life of the empress *Suiko* had not been from the Imperial Family but from Iname. Even today, the Imperial Household Law prescribes: when the Imperial Family doesn't have children of a direct line, the emperor shall be succeeded to collateral one. So, especially, the concept of 'an unbroken line' until today has never been narrow one that has tightly maintained the direct line. Since it is very wide one that the blood had been succeeded from innumerable collateral lines to innumerable collateral lines, sovereignty had not only transferred the emperors but also brothers or sisters of the emperors, nephews or nieces of the emperors, brothers or sisters of brothers or sisters, and nephews or nieces of nephews or nieces with lives. Hence, sovereignty had been extended to the emperor *Keitar*³⁷ who had hidden himself in the country and the emperor *Koukou*³⁸ who had left from the Imperial Family to *Genji* Family with lives and bred. Like that, the *Genji* Family who was a descendant of the emperor *Seiwa*, and the *Heisi* Family who was a descendant of the emperor *Kammu* were never those who disturbed the order of this country like they think. He must argue that all of them had been legitimate rulers extended the lives of the emperors. By their theory that monarchs and retainers have constituted one family dividing from *Amaterasu Ōmikami*, he would finally have to argue that all forty-five million Japanese people have been ones that have extended the her life, and we have been the substances of sovereignty. –This is the very democracy! This is the proverb that the same races shall reach democracy (we never infer like these to insult and make a fool of him. Compare the following parts that we shall follow up the blood by historical interpretations and argue that signs of political powers shall extend in accordance with historical progress).

If so, even he must reply, 'that's right', but he must not be invited to the world of democracy going on these inferences, so he must stop the certain place; the rulers have been restricted those who have especially ascended the throne among those who had bred and extended the life of *Amaterasu Ōmikami*. But it would be back where he started nevertheless he abandoned the insistence that sovereignty has resided in the body of the emperor and the theory that sovereignty has resided in the Throne. And it is clear that it is impossible to withstand the theory that sovereignty has resided in the Throne from controverts of those who advocate the theory that sovereignty resides in states, because it was abandoned by himself. He says: the Throne has been the national institution, so the emperor cannot exercise sovereignty until he ascends the throne by this national institution. This right to ascent the throne is only held by those who

³⁷ It is said that the emperor *Keitai* was the twenty-sixth emperor and ascended the throne met by *Ōtomo no Kanemura* from the *Echizen* (present Ishikawa prefecture), after the death of the emperor Buretsu.

³⁸ This is the unclear point. The emperor *Koukou* had not left from the Imperial Family. Perhaps, rightly speaking, it would be the emperor *Uda* (he had left the Imperial Family to the *Genji* Family a period of time).

belong to the limited line by the national institution and the rights that can be exercised by ascending the throne are the rights of the state that it exercises for the purpose and profit.

In addition, if we say that sovereignty has resided in the emperor himself or herself and they have not died by extensions of individuals like him, we don't have to argue only about our country having an unbroken line of the emperors and we can argue that even a dynasty that ruined in the three generations had extended sovereignty with lives of in the three generations. Since, even Britain and German, according to his argument, the Throne is the subject of government unless descendants shall become extinct, he would not have to focus his efforts in all his life to argue, 'I shall argue about our unparalleled national polity in the world', 'I shall argue about the constitution determined by Japanese history', or 'it is not necessary to compare or reason by analogy' to regard the emperor as the state.

At all, it forms the basis of a false to mistake every judgment because of a word of 'an unbroken line' and think that only Japan has been ruled by special science of states and historical philosophy. Needless to say, being different from races have been based on special variations by special circumstances, and people been different from races have had special political forms and they have been different from degrees and directions of evolution. Like in the period having closed the country, people had thought that those who had been different from races had not been the same human beings, it is extremely barbarous a view of states to think that only Japanese national polity has not evolved in accordance with process of history like in other states because it has had a little special political form. It is the people having very disgraceful knowledge that have consistently argued about the constitution from the introduction to the conclusion by the way of the theory, 'Revere the Emperor and expel the barbarians' still.

So, all those who advocate the theory that sovereignty resides in monarchs have constructed their theories on the fundamental thoughts of the theory that sovereignty has resided in states, since they have been ruled by a word of an unbroken line, nevertheless their views of states have been based on modern thoughts according to progress of social evolution. And, especially, the representative scholar, Dr. Hodumi has been indiscriminately confused everything such as the emperors, the throne, or the state. Organize the Article 1 of the constitution according to his theory. It would be extremely strange as the following: the territory of the Great Japan not being the state and people (if not, the Great Japanese Empire like in the medieval times formed by two factors of the territory and people not having personality) are private lands and slaves for the profit and purpose of the monarch. They shall be ruled by of an unbroken line of

the Great Japanese Empire. The Throne or the emperor is the Great Japanese Empire.

Today's all those who advocate the theory that sovereignty resides in monarchs must do as the following; whether they shall abandon their modern thoughts and alter the view of states in the medieval times or rewrite from the Article 1 of the constitution.

But you mustn't misunderstand. We never think that scientific principles of the science of the constitution are determined by letters of laws, either set up these dilemmas. So, of course, it would be the freedom of scholars that today's all those who advocate the theory that sovereignty resides in monarchs rewrite the word of 'the Great Japanese Empire' of the Article 1 of the constitution into 'the simple territory of not being the state and people'. Because any constitution can never be interpreted from intact letters of the law, so an interpretation of the constitution is deciding meanings of the letters of the law through smoothly considering the fundamental thoughts and many texts of the law expressing those thoughts. So, it would be freedom of Dr. Hodumi that he interprets the text of 'an unbroken line of the Emperor' as 'an unbroken line of the Great Japanese Empire'. Like that, as today's all constitutionalists, except for Dr. Hodumi, interpret and discard the sacred letter prescribed 'the Emperor shall be sacrosanct' as the meaningless one having followed in the emperors' footsteps historically; we must greatly argue about the Article 4 of the constitution in accordance with freedom of studying scientific principles; it prescribes that the Emperor shall be the head of state, control the sovereignty, and exercise the sovereignty by the provisions of this Constitution.

The problem is what the word of 'the head of state' means. If the word of 'the head of state' has only shown a trace having followed in the emperors' footsteps historically like a word of 'sacrosanct', scholars would not have to pay attention to this word. Because for example, even if the Article 1 of the constitution prescribed, 'the Great Japanese Empire profusely blooming cherry blossoms shall be ruled by the Emperor who is both a good warrior and a good scholar', the word of 'blooming cherry blossoms' or 'who is both a good warrior and a good scholar' have no meaning for jurisprudence. Since it is not that without cherry blossoms, the element of the Empire would be lack, either without being both a good warrior and a good scholar, it would not be qualified to ascent the Throne; it would be natural for jurists to think these words to delete. Does the word of 'the head of state' have this meaning? We believe so.

Despite, today's all constitutionalists in Japan have organized their arguments taking this word as a leading part. Though, of course, Dr. Hodumi adopts this as authority, Dr. Inoue, the same person who advocate the theory that sovereignty resides in monarchs,

argues that the head of state is ‘where national consciousness lodges’, and regards this word as Japanese national polity and that it is an only ground for an argument that sovereignty resides in the emperor. And even other people who advocate the theory that sovereignty resides in states argue that the Emperor is the supreme organ of state because of this word of ‘the head of state’. A leader of those who advocate the theory that sovereignty resides in states against Dr. Hodumi, a legal doctor, and a professor of Tokyo Imperial University, Mr. Ichiki Kitokuro³⁹ lays the groundwork for the classification of forms of government and argues that the state is the substance of sovereignty and Japanese form of government is monarchy. The word of ‘the head of state’ is the very fundamental thought for today’s constitutionalists.

However, it is not a problem to dispute the meaning of the text of ‘the head of state’. Rather, we must deeply suspect whether the head of state does exist or not. Does the head of state exist in the state? And, on earth, what is ‘the head of state’? In this point, we cannot agree with Dr. Inoue whom adopts an organic conception of nation and makes it a basis of his arguments. Of course, we advocate an organic conception of nation. But if you identify today’s our organic conception of nation and his organic conception of nation in the period that the word of ‘the head of state’ had been used, it would be the same that you would be confused alchemy of Arabian priests with chemistry in 19th century.

As we have mentioned in the Section 3, *The theory of biological evolution and social philosophy*, states are big individuals organized by human beings having spaces among the middle; they are organisms which have exist having their own purposes and have evolved. This real organic conception of nation advocated today is the truth that had been discovered in the period that the word of ‘the head of state’ had been used. A former organic conception of nation appeared as the reaction against a conclusion of one-side individualism having advocated until the French Revolution—it had entirely regarded nations or societies as artificial ones like machines and was the only other dogmatism—it compared a nation to a organism and named itself an organic conception of nation by it to say that nations were not mechanical ones but live ones. And this metaphor had been played with as playing of children. For example, they say that territories are skeletons, people are muscles, mail service and telegraphy are nervous systems and railway and shipping is an artery and a vein; soldiers or sailors are crows or fangs, and musicians or speakers are tongues.

Though those who were pleased with this metaphorical organic conception of nation

³⁹ Ichiki Kitokurō was a constitutionalist and a politician in 19th-20th century Japan. He was the founder of the theory of the Emperor as an organ of government.

the emperors or governments compared to a head or a neck, working class compared to hands or feet were the very most miserable existences. Though it goes without saying that the view of one-side individualism that regards states as machines is dogmatism, it also goes without saying that dogmatic metaphor like this should not exist, although it appeared as the reaction against an individualistic view of states. If you advocate an organic conception of nation not to reveal the truth but to use a metaphor comparing to one organism that has the neck, feet, the trunk, and the stomach like these today, you would have to say that changing speakers into soldiers or sailors would mean that tongues change into crows, and that working class being equal to hands and feet had cut the head of Louis the 16th of the head of state would mean that its state would have been an extremely strange organism being actively alive despite its hands had cut its own head. Since foreign useless monarchs have lived extremely luxurious lives and wasted costs of the Court of thirty million yen or fifty million dollars every year, it would greatly hit the mark to compare to octopuses which would eat their own tentacles⁴⁰. However, if we interpret like this, we would have to infer the emperors as octopuses, so Dr. Inoue seems to be able to argue about foreign monarchs, Japanese laws have not permitted him to do so⁴¹ (see the following parts for not having to identify present Japanese emperor with foreign monarchs).

Some people might compare today's states to Hobbes' Leviathans because they have been guarded by the army and navy. Certainly, it might be able to be said that their epidermises like crocodiles; but it would be a strange organism that the head of state of German crocodile would have a handlebar mustache. If we compare it to a horse, it would not have a tail; if we compare it to a cow, we would have to argue that the emperor would have horns. We should call on today's all constitutionalists some of whom have advocated the theory that sovereignty has resided in monarchs, and the others have advocated the theory of monarchs as organs of governments taking a word of 'the head of state' as a leading part.

What animals should states be compared to? What head of animals should the head of state be compared to? Though Japanese constitution was drafted by Mr. Ito Hirobumi⁴², since Mr. Ito had imitated Stein's⁴³ theories and returned to our country without original ideas, does he say that states are high human beings like him? Louis the 16th had been cut his head by a guillotine, he had *literally* gotten an only head of high

⁴⁰ It is traditionally said that octopuses eat their own tentacles when they are hunger.

⁴¹ Japanese criminal law had punished lese majesty at that time. So, Kita meant if he did argue so, he would have been punished.

⁴² The constitution of the Great Japanese Empire was drafted Ito Hirobumi, Inoue Kowashi, Ito Miyoji, Kaneko Kentaro and so on advised by a German lawyer, Roesler (Karl Friedrich Hermann Roesler, 1834-1894).

⁴³ Stein was a German constitutionalist in 19th century (1815-1890).

human beings, but in Japan, the emperors would not only be the head of human beings but also would be perfect people without losses. It was Bluntschli⁴⁴ that thought a metaphorical organic conception of nation out extremely; he compared the church to woman and the state to man. If today's constitutionalists don't abandon the conception of 'the head of state', they would approve a metaphorical an organic conception of nation. And since an organism having 'the head of state' hasn't done asexual reproduction like amoebas, they would have to decide that states would always have the distinction of sex like Bluntschli.

Then, we shall quest: is an organism of Japan male or female? According to Bluntschli, you would answer that it would be male. If so, how about Netherland? If it is male, the female head of state would stand on the male one, wouldn't it? And furthermore see that; in the male state of Britain, the female head of state of Victoria had ascended to the throne, and the head has changed into the male one by an enthronement of present king today⁴⁵. If so, Britain would be a very strange organism. And these organisms are monsters which cannot be seen in our human beings, although they are high grade. When we think back Japanese history like that, we cannot help regarding Japan as a strange organism like these, can we? If so, states are not cows, horses, neither crocodiles; they are not sexual organisms, either high human beings. 'The head of state' is not the head of human beings, the head of crocodiles having a handlebar mustache, neither an octopus. Namely, 'the head of state' that is not any organism is meaningless existence, so it should be abandoned as a meaningless one. It is not reasonable at all that despite today's constitutionalists have treated the text of 'sacrosanct' with an adjective having followed in the emperors' footsteps historically, they especially regard the text of 'the head of state' that has been a trace of a meaningless dogmatic metaphor like that as serious one and concentrate their discussion on this point.

Especially, these texts have dispositions of scientific principles. And in the principles of modern nations, states rule external lives and don't interfere in the inner parts of thoughts. Like states don't decide the truth of a medical science or chemical laws by laws, the Great Japanese Empire would not attempt to force us to adopt a metaphorical organic conception of nation that has been an old theory of a science of states to interpret the texts of constitution. It has happened to remain a trace of one thought having been influential when the constitution was enacted. So, for example, even if one provision prescribed that the Great Japanese Empire shall exist on the triangular earth and shall revolve around the moon by provisions of this constitution, it would not have

⁴⁴ Bluntschli was a scholar of public laws in 19th century German (1808-1881).

⁴⁵ At that time, British king was Edward the 7th.

compelling power to astronomers at all; like that, jurists can be independent outside those texts having dispositions on scientific principles of a science of states and can think freely.

We have believed by these insistences that the emperor has not been the head of state. And in comparison with spirits of the constitution and other provisions, we shall insist that the emperor shall not control the sovereignty. This insistence makes us drive out absolutely classifications of forms of governments that today's all those who advocate the theory that sovereignty resides in states.

Today's those who advocate the theory that sovereignty resides in states classify the forms of governments into monarchy and democracy. But it goes without saying that today's constitutional monarchy cannot be appraised rightly as long as they classify them like this. If 'the supreme organ' means the organ that have the highest powers, in constitutional monarchy of a modern nation, one group united the monarch with the national assembly would have the supreme organ having the highest powers. It is not monarchy, either republican system of government. Constitutional monarchy is not included in their two types of forms of governments; classifications of forms of governments should be altered three types. —This point is what we shall very strongly insist on.

See the provisions of the constitution. The Article 5 of the constitution prescribes, 'the Emperor exercises the legislative power by the approval of the Imperial Diet'; the Clause 1, Article 73 of the constitution prescribes, 'when it shall be necessary to be amended the provisions of this Constitution in the future, bills must be referred to the Imperial Diet by an Imperial command'. Despite these clear provisions are shown in front of us, we are surprised that constitutionalists interpret as if the monarch directly confront with the assembly like between those who enter into a contract based on thoughts in the period of class states and argue with each other by selfish interpretations. The problem shall be resolved by clarifying the meaning of 'the supreme organ' and interpreting. Today's constitutionalists have denied class states in the period of the theory of social contract, none the less they have thought that today's monarchs have directly confronted with people in the relationship of rights and duties. Like that, why they conclude that the supreme organ in Japan is only the Emperor is probably because they have been tied to the theory of Montesquieu of the separation of the three powers of administration that they would have abandoned as an unsupportable mistake, haven't they?

Of course, they don't regard the monarch as a simple chief of administration like the

theory of Montesquieu of the separation of the three powers of administration that argued that three powers were independent clearly. But if they don't think the monarch or the assembly and so on as an independent organ, it is unreasonable that they conclude this monarch as the perfect supreme organ. Of course, it is clear that the emperor in Japan is the chief of administration and when he commands the army and navy, he becomes each organ. Because one organ cannot be a perfect organ until it does actions having stages, and when he is the chief of administration or he commands the army and navy, he shall do perfect actions having stages.

However, in Japan, three powers have not clearly been independent like in the United States of America; the emperor has been the perfect organ as the chief of administration but the Diet has not been the perfect legislature by itself. It is a factor of legislature along with the Emperor. So, like the Diet is an only factor of it and is not the perfect organ, it goes without saying that the Emperor who is one of factors of it cannot be the perfect organ controlling the sovereignty. That is, the legislature cannot do perfect actions having stages as an organ until it is organized by the Emperor and the Diet. Since the Emperor in the Article 4 of the constitution exercises the legislative power by the approval of the Imperial Diet and unless he is approved by the Diet, he loses a factor of legislature, he cannot be the legislature exercising legislative power. Nevertheless, one scholar argues that since the Diet decides laws and the Emperor commands them, it is only an organ in the rear of the Emperor.

Of course, since the Diet which is a factor of legislature doesn't have the power commanding⁴⁶ laws, it goes without saying that it is not a legislature in itself. But the Emperor is not a legislature unless contents of laws are decided, either, because he cannot command laws. On earth, it is a bad example of a meaningless one that constitutionalists made to divide laws with two factors of contents and compulsion. Ones whose contents are decided but that have compelling powers cannot be named as laws. And ones whose contents are not decided, namely, that compel us to do nothing are not laws, either. The legislature that has the power to command nothing means one that has nothing to command; namely, it means that it is not a legislature.

Another constitutionalist say: the national supreme organ is the Emperor and the Diet is the second to it. And the constitutionalist explains the reason why the Diet must entirely depend on the order of the Emperor about the formation of the assembly⁴⁷. But

⁴⁶ This 'command' doesn't mean 'execute'. Kita seemed to have been influenced the thought that regarded laws as commands of sovereign. This thought was proposed by John Austin, a British jurist in 19th century. At that time, Terry (Henry Taylor Terry, 1864-1936) who taught in Tokyo Imperial University belonged to a school of Austin, so Japanese jurists were influenced by Austin's legal thoughts through him (For this point, see Dando Shigemitsu, *The foundation of jurisprudence*, Yuhikaku, 1996, p.p.299-301).

⁴⁷ The Article 7 of the constitution prescribed, 'the Emperor calls the Imperial Diet and commands the opening,

this is an unreasonable interpretation as if when ordinary people see that discussion begins after the speech of the Speaker, only the Speaker constitutes the Imperial Diet and other members are only additions. The Emperor bears the duty to call the Diet in a year⁴⁸ and organizes the legislature along with the Imperial Diet. And ‘the supreme organ’ means the organ which has the highest powers; namely, it means the organ which has the power to revise the constitution. In some other countries, the organ to revise the constitution is organized by other than the usual legislature, but in Japan, revision can only be done by appointed procedures and it can be done by the usual legislature. As an usual procedure of legislation doesn’t get a perfect one until the Emperor cooperates with the Diet, the supreme legislation of revision of the constitution cannot be done until the Emperor who has the right to submit a bill of revision of the constitution to the Diet and the Diet that approves by a majority of two-thirds or more of the two-thirds or more of all the members present of each House exist⁴⁹. That is, the Emperor and the Imperial Diet organize the supreme organ to be able to amend the constitution.

So, if you call the organ that expresses the national will the sovereign or the ruler, the Emperor is not the sovereign either the Diet is. We should regard the organ that unified those two factors as the sovereign or the ruler. If so, what is called the constitutional monarchy seen in many countries today should not be appraised as a deformed one of monarchy in two types of forms of governments like today’s constitutionalists have classify. Rather, it is democracy that makes equal majority and a privileged person the sovereign. That is, those who advocate the theory of the Emperor as an organ of government that thinks that the supreme organ is organized by one person are only variation of those who advocate the theory that sovereignty resides in monarchs. Especially, it is a clear contradiction that despite a legal doctor, Mr. Minobe Tatsukichi⁵⁰, who is remarkably excellent one of those who advocate the theory of the Emperor as an organ of government, concludes that the monarch is not one who controls the sovereignty, he has argue that the monarch in the constitutional nation has organized the supreme organ by oneself. It is extremely unreasonable that he names the British forms of governments as monarchy (for that today’s Japanese form of government is

the closing and the suspension of the meeting, and dissolution of the House of Representatives’.

⁴⁸ See the Article 41 of the constitution.

⁴⁹ The Clause 2, Article 73 of the constitution prescribed, ‘In the preceding paragraph, each House cannot be transacted in either House unless two-thirds or more of total membership is present. Decisions cannot be done by the Diet without the consent of the majority of two-thirds or more of all the members present’.

⁵⁰ He was a constitutionalist and a professor of Tokyo Imperial University (1873-1948). He is the most famous constitutionalist in the prewar days. He advocated the theory of the Emperor as an organ of government, protected a parliamentary system of government, and contributed to democratization in the Taisho era (1912-1926). But his theory was attacked the right-wing and the military authorities and oppressed (the Affair of the theory of the Emperor as an organ of government).

democracy, see where we shall explain in the following historical interpretation that the original meaning of the Meiji Restoration was the development of equalitarianism).

We agree with him whom concluded the Emperor is not one who controls the sovereignty. Because the view that the Emperor is one who controls the sovereignty seems to be deduced from the word of a science of states based on an organic conception of nation of 'the head of state', and contradicts to all other provisions of the constitution and its spirits. We don't have the ground to imagine whether Dr. Minobe clearly thought that today's Japanese constitution has remained the trace of a metaphorical organic conception of nation and denied the meaning of the letter of 'controlling the sovereignty' or not. But judging from his argument that he drives out an organic conception of nation, we want to believe that he would have argued from the higher standpoint than other people who would have advocated the theory that sovereignty would have resided in states.

For instance, Dr. Ichiki says: if we regard the monarch as the substance of sovereignty, we would not be able to understand various relationships. The monarch is the supreme organ of government and the controller of the sovereignty. The controller is not the subject of sovereignty, neither the organ exercising sovereignty. Namely, the organ that rules actions of sovereignty has the power to expand and contract its own powers by itself. Ones who have the right to expand and contract their own powers are those who have the right to amend the constitution. So, the controller of sovereignty is the supreme organ of government having the power to amend the constitution. That is, on the one hand, he argues as if the Emperor were one who could amend the constitution freely without the approval of the Diet; on the other hand, he argues the controller is not the subject of sovereignty, neither the organ of government. If we take a stand on him, we would not be able to interpret the controller. Dr. Minobe doesn't have these confused thoughts.

And he is also different from Mr. Soejima Giichi⁵¹ who is one of those who advocate the theory that sovereignty resides in states. Mr. Soejima argues this: the Emperor is the supreme organ among the national organs. So, it is certainly proper to regard the position of the Emperor as the head of state. That the Emperor controls the sovereignty is what shows the substantial reasons why the Emperor is the head of state. Since the Emperor has controlled the sovereignty of state, sovereignty of state has resided in only the Emperor. In our country where the Emperor exercises the sovereignty by himself or he creates the other organs, gives them his powers and makes them deputize, the Emperor is only one who controls the sovereignty. But this argument is only one that

⁵¹ He was a constitutionalist in the prewar days (1867-1947).

works hard at a dispute with other people who advocate the theory that sovereignty resides in monarchs over the letters on the science of states based on a metaphorical organic conception. Dr. Minobe doesn't do this rash action, either.

However, the argument that the Emperor is not one who controls the sovereignty should be concluded based on the other provision that provides that it is not impossible to organize the supreme organ only by the Emperor and to amend or to alter the provisions of the constitution that is the supreme legislation and spirits of the constitution. If we interpret the Japanese national polity as monarchy that organizes the supreme organ by one person like Dr. Minobe, it goes without saying that we would not be able to find bases of these conclusions and would have clearly contradictory thoughts. We think that why all those who advocate the theory that sovereignty resides in states have lost their ways in the dense fog of despotism and Dr. Minobe and so on fall into these contradictions are because they had remained to be careless about the essence of states.

We think: thoughts of the theory of sovereignty should not be understood only by the letters of jurisprudence. Its foundation of knowledge should be found in the science of states. Of course, the theory of the constitution is not the science of states. The essence of sovereignty is the problem of the science of states but the place where sovereignty is should be interpreted by expresses and spirits of the constitution. Especially, it goes without saying that we don't show interpretations of the constitution transcending the existing law based on the purpose and ideal of the state.

But it is also clear that the present constitution itself has been affected by the science of states at that time of enactment; for example, the word of 'the head of state' has based on the science of states in the period of the Reaction against the French Revolution and hence it cannot be understood without depending on a metaphorical organic conception of nation. And sovereignty is one that cannot be understood without depending on the theory of the essence of states. So, the attitude of Dr. Inoue whom concludes that the head of state means where national consciousness resides in to interpret today's states setting a metaphorical organic conception of nation as the foundation of thoughts—despite it is an assumption having become extinct entirely— would be proper as the order of thoughts because he has a certain belief about the essence of states and then reaches the interpretation of the constitution that is the fundamental law of the nation. Though, of course, it is not worth making an issue that Dr. Hodumi constructs the *Shintonic* theory of the constitution like a mirage on the very old science of states that regards that states are ones that had expanded and developed from a family, its way of study itself is enough proper.

Nevertheless, all today's those who advocate the theory that sovereignty resides in states haven't had these attitudes, and have reversed the starting point of study with the conclusion of study; for example, Dr. Ichiki regards the head of state as too esoteric one that is not the substance of sovereignty either the organ and shows incomprehensive interpretations which are *worthy of being a specialist* by a specialist. Also, Dr. Minobe shows a view of states taking an extremely temporary aspect that the interpretation of the state on the jurisprudence means how we think the state to interpret the existing laws without contradictions. If we induce the substance of states from constantly changeable ones like 'the existing laws' and are satisfied to think states as ones which only don't contradict with the existing laws, although it is an avoidable and temporary one because the science of states which shall be based on the foundation of thoughts after the individualistic view of states that regarded them as machines and the dogmatism of a metaphorical organic conception have been abandoned, it is impossible to hide that its interpretation is extremely temporary. Especially, to abstract the consistent jurisprudential thought of 'the state' from the artificial existing laws that have promulgated having contradictions and conflicts from the beginning, or have had no choice but to exist having contradictions and conflicts because of changing of the times is to try to work miracles.

How do we interpret the letter of 'sacrosanct' or 'the head of state' in provisions of the present constitution without contradictions, and what thoughts of states do we induce from these provisions filled with contradictions? If we infer the letter of 'sacrosanct' from the original meaning, we would induce the theory of the divine right of emperors or mysterious theory in *Takamagahara* like Dr. Hodumi. The state thought from literally inferring the text of 'the head of state' must induce the animal which has the neck, feet, the trunk, and the stomach like a metaphorical organic conception compares to. The concept of the state as the substance of the sovereignty is never induced from these provisions of the present constitution without contradictions like Dr. Minobe and so on insists on. Besides, if we regard the jurisprudential state as only an induction to think the existing laws without contradictions, it would be groundless to be expressed such an authoritative argument like the argument of Dr. Minobe; the monarch is not one who controls the sovereignty. The provision of the constitution that the Emperor controls the sovereignty has the character of scientific principles and government doesn't have the right to decide the official theory. So, scholars can freely revise and study the texts of the constitution. Because it clearly contradicts the Article 4⁵² of the present constitution, so

⁵² In Japanese original text, this part is 'the article 2'. But this would be a clear mistake because the Article 2 of the constitution prescribed the succession of the Throne.

the concept of the state that would be able to be induced by interpretations of the existing laws without contradictions is not very persuasive to revise and study the contradictory texts of the constitution at all.

We believe; why the state doesn't have the right to decide the official theory means that it cannot force us to adopt a metaphorical organic conception of one theory on the science of states like it cannot order us to believe the Ptolemaic system. Why constitutionalists can freely interpret the provisions of the constitution is because they have the independence of thoughts to decide which interpretations should be chosen according to spirits of the constitution when the provisions contradict each other. So, when the Article 4⁵³ of the constitution contradict with other important provisions of the Article 5 and the Article 73, we would freely be able to choose them according that each provision regards as spirits of the constitution—as the substance of state. If so, those who hold the metaphorical organic conception of nation or believe in *Shintonism* would be able to choose the Article 4⁵⁴ and ignore other provisions freely; on the other hand, we would be able to pay attention to the Article 5 and the Article 73 and to abandon the Article 4⁵⁵ freely. Why we can do so is because the letters of laws don't have compelling powers to spirits of the constitution and the science of states. As Dr. Minobe thinks, the text itself that the Emperor controls the sovereignty has never the character of scientific principles. It is natural that we must infer as the interpretation of laws that the Emperor is the only supreme organ controlling the sovereignty according to the Article 4⁵⁶ when other provisions of the Article 5 and the Article 73 haven't existed. The principles of the science of states and spirits of the constitution are judges who are asked to decide the selection when the texts of the law contradict with each other and so what is called a view of states of Dr. Minobe, which would be able to be induced by interpretations of the existing laws without contradictions, cannot be judges who hold these strict powers. And we have no choice but to interpret that it admits that texts of laws have no contradiction as long as we hold the view that Japanese constitution prescribes monarchy by one supreme organ. Hence, it is an unreasonable requirement to insist on free studies to the Article 4⁵⁷. To accomplish the argument of Dr. Minobe tightly, it is necessary to hold a clearly certain view of states and regard Japanese form of government as democracy whose supreme organ is organized by one privileged person and equal majority (For spirits of the constitution, see the following

⁵³ In Japanese original text, this part is 'the Article 2'. For this, see the note 52.

⁵⁴ In Japanese original text, this part is 'the Article 2'. For this, see the note 52.

⁵⁵ In Japanese original text, this part is 'the Article 2'. For this, see the note 52.

⁵⁶ In Japanese original text, this part is 'the Article 2'. For this, see the note 52.

⁵⁷ In Japanese original text, this part is 'the Article 2'. For this, see the note 52.

part about historical interpretations).

So, we insist that the former two types of forms of government that have been made by those who advocate the theory that sovereignty has resided in states should be abandoned and divided them into three types to interpret today's nation-state; first, it is the form of government whose supreme organ is organized by a member of the state having a privilege (form of government of Russia after the serf having been released and Japan by the time 23 years have passed from the Restoration⁵⁸ and so on). Second, it is the form of government whose supreme organ is organized by a member of the state having a privilege and equal majority (form of government of Britain, Germany, and Japan that after 23 years from the Restoration and so on). Third, it is the form of government whose supreme organ is organized by equal majority (form of government of France and the United States of America and so on).

We don't remain the distinction national polities and forms of governments by the thought like those who advocate the theory that sovereignty resides in monarchs. But we cannot agree that today's those who advocate the theory that sovereignty resides in states are confused them, either. Because the form of government means the form exercising the sovereignty and the substance of the sovereignty can reform and abolish the national organs (in monarchical countries, monarchical organs) or its procedure itself according to legal procedure established by the state (or the monarch) for its purpose and profit (namely, in the countries in the period that sovereignty resided in the monarch, for the profit of monarch, and in the countries in the period that sovereignty resides in the state, for its purpose). On the contrary, the national polity means the substance of the state and it determines the essence of the state whether the state is the substance of the sovereignty or the object ruled by the sovereignty. Nevertheless, today's those who advocate the theory that sovereignty resides in states who are careless to the science of states and don't try to classify states according to evolution have only applied the letter of 'the supreme organ' to the formal number of 'the number of the rulers' of Aristotle. Some people say that there is a distinction of national polities but there is no distinction of forms of government; the others say that there is a distinction of forms of government but there is no distinction of national polities. For example, Dr. Ichiki admits only the distinction monarchy and republican system of government and Dr. Minobe admits only the distinction the monarchical national polity and the republic national polity. That is, for today's those who advocate the theory that sovereignty

⁵⁸ In Russia, the Imperial command releasing the serf in 1861. In Japan, the Constitution of the Great Japanese Empire was promulgated after 23 years from the Meiji Restoration.

resides in states, the national polity and form of government are only another names used to the supreme organ of the same quality.

However, this argument cannot explain all states today. In China or Korea and so on, monarchs have never been the supreme organ existing for the purpose and profit of the state, neither the sovereignty has not been the right of the state. Government officials have been sold for their own interests by their ownership and territories and people have existed for the purpose of them; the degrees of evolution of these national polities are quite different national polities with European countries or Japan. Especially, because of this confusion they cannot explain today's all states, still less ancient and medieval states at all. Even if we only study countries that are called 'civilized countries' today and only one national polity of 'nation-state' has existed today, today's national polity of nation-state is the same with the ancient Greek states but its form of government is different from them and its form of government is very similar to the medieval states but its national polity is quite different.

In ancient Greek states, united powers of states, that is, the substance of the sovereignty had been exercised with nothing on and not having been exercised through the political forms, they had been exercised on individuals as disorder pressures. Forms of governments are political forms that secure freedom of individuals against united powers, but since these institutions had not existed in the ancient times, minority had been regarded as criminals, so they had gotten what is called tyranny of majority. And this age of tyranny of majority had always changed suddenly, born a dictator, and gotten the age of single tyranny; and the age had changed into the age of tyranny of majority. It had changed from despotism to despotism one after another and freedom of individuals had been entirely ignored under the pretext of the state. This national polity had been nation-state like today's one, but it had been what is called despotic form of government that had been quite different from today's forms of governments that have established forms exercising the sovereignty influenced by the theory of the separation of the three powers of administration.

Once the times had entered into the medieval age, the class-based assembly appeared and despotic form of government became extinct but each monarch and noble (in Japan, each *shogun*, landlord, or the emperor) had one's own purpose and profit and each territory and people existed as possessions for one's purpose and profit. This was the national polity of 'patriarchal national polity' that were entirely different from the ancient states. Namely, it was the national polity that sovereignty resided in monarchs that states were not the subjects of the sovereignty but the objects ruled and two factors of territories and people existed for the purpose and profit of owners of states.

So, if we say that there is the distinction of forms of governments but there is the distinction of national polities like Dr. Ichiki, we would have to identify class contracts in the medieval age with today's constitutional monarchy since the forms of governments in the medieval states is similar to today's ones despite they had been patriarchal states having been different from today's ones and would have to classify monarchs and nobles in the medieval age into today's national polities as national organs. Also, if we say that there is the distinction of national polities but there is the distinction of forms of governments like Dr. Minobe, we would have to expel national polities of patriarchal states in the medieval that he himself has admitted from the classifications of national polities or do a strange classification that we would make a new type of 'the patriarchal national polity' other than the monarchical national polity and the republic national polity. Why they identify the national polity with form of government in this way is because they have not evidently studied states according to their evolution.

So, we drive out the theory that sovereignty resides in states that has been jumbled without basis and advocate the theory that sovereignty resides in states on the factual theory of national personality. Of course, jurisprudential personality decides whether it is the subject of rights by recognition of laws without regard that it is factual or a fiction by laws, although the state is factual personality, unless the personality has been recognized in jurisprudence, it goes without saying that it cannot be called the subject of the sovereignty.

However, those who study laws in accordance with evolution must never be confused the fact that factual personalities have been recognized by laws and that ones not having personality have been given the personality by fiction of laws. –Evolution of laws means that factual personality is recognized as the legal personality. States in the period of patriarchal countries had been the objects of rights legally for the interests of those who had owned them, despite personalities had been factual, like the factual personalities had been regarded as slaves. So, in the medieval age, the purpose of 'for my nation' that states themselves had been independent had not required anything but every requirement had been done on the name of 'for my master' for the purpose and profit of those who had owned states. Though slaves had not been given legal personality, it is the fact that they had been factual personalities. Like that, though states didn't get the legal personality until they have evolved for a long time, it was the undeniable fact that our human beings have been factual personality from the age that our ancestors had differentiated from anthropoid apes, not to speak of the age of patriarchal countries, or the primitive age.

So, it is not a serious problem of only the science of states that treat with the evolution, the origin, the purpose, and the ideal of states whether the large personality of the state is based on a mechanical art of a legal fiction or is a factual one. It is also the fundamental thought for jurisprudence that is never neglected. Because if we say that the state is a fictional personality, the state itself could be dismantled or made to become extinct by laws; on the other hand, if we say that it is a factual personality, we could never make it become extinct although we would artificially enact any law. –Although it is said that the state was dismantled by the French Revolution of individualism, the state has existed in the shape of a social group. See what was destroyed was the rotten epidermal part and its framework has not been injured. –States had broken the laws that patriarchs had enacted for their own interests as factual personalities, although they had been put under the patriarchs, and had acted for their own purposes and profits. And as they evolved and got the legal personality, they got to reform and abolish laws going against their purposes and profits freely and got to make the foundation of every law by themselves.

Since today's those who advocate the theory that sovereignty resides in states have not had no knowledge about this fundamental point, they have regarded the state as an association. Why they have regarded the state as a fictional personality like an association is because they have been evidently based on the view of states of one-side individualism by the time the French Revolution had occurred and because of this, Dr. Hodumi has obstinately searched the family system for the origin of society and opposed to the above-mentioned argument. If you advocate the theory that sovereignty resides in states as the truth, you mustn't commit a blunder that you attack it by the old hypothesis of the theory of the origin of society like Dr. Hodumi and so on. –Socialism is also the truth on the jurisprudence. As we have explained in the previous Section, *The theory of biological evolution and social philosophy*, the national personality has its basis on the fact that societies are organisms, that is, they are large individuals that are organized by human beings having spaces among the middle as elements. Every social science is given the basis by biology.

But in the ancient Rome, the 'individual' had seemed to mean a private citizen and only individuals had been factual personalities; all the others had been regarded as fictional personalities by laws. It would have been inevitable to have had this thought because biology had enough developed at that time. Why those who advocate the theory that sovereignty resides in monarchs contradict themselves that they regard monarchs as the substances of the sovereignty, despite they regard states as legal personalities today, or those who advocate the theory that sovereignty resides in states argue that

they enough think states as means for convenience of consideration, counterattack that if the national personality is a fiction, the personality of the monarch could not help being a fiction and then slightly oppose to them is perhaps because they are taken foundations of their judgments in advance by the conception of individual in the period of ancient Rome since they contact with the Roman laws for studies of jurisprudence. So, even if they argue in extremely detail, their arguments are only the battles in the background by hypotheses. Even though some scholars say that existing the national personality is the same that a slave's personality had really existed, if they argue that it is only an actual one that today's laws have not recognized and the Great Japanese Empire is only ruled as the object for the purpose and profit of the Emperor, they would be consistent as scholars who would only treat with legal phenomena. We must argue by the texts and spirits of the constitution and history whether a today's state is a nation-state as legal personality or it has remained the patriarchal national polity, so it has not had the personality.

However, not only those who advocate the theory that sovereignty resides in monarchs but also even all those who advocate the theory that sovereignty resides in states have not seen the state in accordance with evolution, intact inherited the popular view as a conception of individual based on personality in the ancient Rome before the microscope invented, and grappled with it in the darkness. Because of this, opponents of those who advocate the theory that sovereignty resides in monarchs cannot say that a state is a possession of a monarch who doesn't have personality. And those who advocate the theory that sovereignty resides in states who seem to be same debaters as a matter of form cannot either say that a state is what a factual personality having life is recognized legally. So, they have been obliged to be satisfied with the argument that a state is the merely personality by a mechanical art or a legal fiction.

A state is not a mechanical one made by legal fiction but a factual personality that has had its own purpose and profit from the beginning. Personality acts for its own purpose and profit. Of course, when the monism of human beings shall be an established theory and socialism shall be realized in the whole world, the highest class of individuals shall be a personality that would have the purpose of existence and evolution of the whole human beings. And then we shall be able to expect as the ideal in the distant future that the global state of the whole world shall be realized by the personality as this individual of the highest class. But in the present degree of evolution, a state has had the purpose of personality as a individual in the shape of some degree of class individuals limited by races or geographical divisions. The today's nation-state has been one that has gradually raised its class of individuals from the ancient city-state and the

feudal state in the medieval age and then has gotten the today's large personality. This factual personality had been recognized as the legal personality in one time or one region or had existed as the objects of the sovereignty under the interests of their owners. However, today's all nation-state have clearly been recognized their factual personality by express provisions of laws or legal believes of people. –So, we have thought that states have been the places where profits have resided in and purposes have existed by the expression of 'for my nation' and have expressed by national believes that the national polity of our state has been based on the sovereignty of the people.

However, in the medieval age that states had been objects of the monarchs as their possessions under their purposes and profits, there had not been the word of 'for my nation' but the word of 'for my master' that had expressed that they had been ones of the sovereignty of monarchs. Saints in the Orient and Occident even in those days who had had noble thoughts had opposed against requests of monarchs who had been the legal substances of the sovereignty and had advocated interests of states for factual national personalities (see the parts where we shall argue the Confucian theory of the sovereignty of the state in the Section 5, *The enlightening movement of socialism*).

If we interpret that a national personality is merely a legal fiction, we would not be able to understand why saints did it for their states at the sacrifices of them at that time that laws to do a legal fiction had not existed; besides, if we human beings have battled with each other spilling blood for maintaining a legal fiction even today, it would be incomprehensible phenomena, wouldn't it? It is said that today's international wars have not been done for profits of monarchs under the name of the monarch like in the medieval age but for states. An individual of the class of a state that has not enough developed consciousness as compatriots and has been limited geographically has required it by laws and believes of people with the word of 'for my nation' for its own purpose and profit as an independent individual personality. And if we argue that this factual personality has not been recognized as a legal personality in today's degree of the evolution of Japanese society, we would have to think this: the duty serving in the army would not be the duty elements of nations would be liable to for the national purpose and nations would be those who would follow disposals of owners as slaves owned by the monarch. The Russo-Japanese War would not have been done for the purpose of the Great Japanese Empire but for the profit residing in the Emperor. Needless to say, these thoughts mistake interpretations of the constitution and contradict general thoughts that a large number of people have.

So, we study the state by the factual theory of the national personality in accordance with evolution and drive out all those who advocate the theory that sovereignty resides

in monarchs and those who advocate the theory that sovereignty resides in states who have rashly had groundless and meaningless disputes. It goes without saying that it is an extremely contradictory false to construct the theory of the sovereignty of monarchs on the today's view of states of modern nations like those who advocate the theory that sovereignty resides in monarchs. Also, the sovereignty of the state is not either given thanks to being given personality by a legal fiction like those who advocate the theory that sovereignty resides in states interpret. In the period of patriarchal countries, the sovereignty had resided in their owners; though the states had been factual personalities, they had been the objects legally. In the nation-state, states are factual personalities as the substances of the sovereignty and legal personalities.

The period of loyalty told by the word of 'for my master' was the medieval times of the theory of the sovereignty of monarchs. The period of patriotism told by the word of 'for my nation' is the modern times of the theory of the sovereignty of states (see the parts that we shall explain historical interpretations and the moral relationship the emperors with people).

Today's organic conception of nation that interprets human beings as large individuals having spaces among the middle drives out the metaphorical organic conception that leads the interpretation that 'the head of state' means where national consciousness resides in like Dr. Inoue from the academic world. We shall declare that: in any period of the ancient patriarchal despotism and in any period that the power of the emperors had been absolute and infinite, national consciousness has never resided in only a brain either other people had been like hands or feet not having spirits. Simply thinking, it is unreasonable to be able to be solidarity, relationship of obedience, politics or laws among those who don't have the same consciousness. Dr. Hodumi always says that the state can be united by the peculiar authority of the monarch. But if, like he does by choice, he means without changing the meanings of the letters freely that this 'peculiarity' is what one individual of the monarch has in his body by nature, power or authority are never peculiar ones of the monarch. Rather, they are unified powers societies have. Namely, why we see that monarchs have authority is because these unified powers push them up at the back; so, once they are divided from these unified powers, even the person who has the distinguished individual authority like the Emperor Godaigo can done nothing.

Of course, it is true that those who had been in the period that monarchs had exercised their absolute and infinite powers, like lovers had not love factual beauty but their ideals a few thousand times as much as factual beauty imagined in their brains,

had been feared of their own ideas that they had imagined monarchs as ones who had had more powers than their factual individual powers. But authority that individuals have by nature is limited, however heroes they are, and many of ones that are seen as the authority of the Japanese Emperor are ideas each person imagined and unified powers of states. That is, despite there had been innumerable revolutionaries like Dr. Hodumi and so on who had had a stubborn thought to return the national polity in the period of patriarchy, since the state finally realized the ideal of nation-state which had been shown in the Revolution in the first year of Taika⁵⁹ as a result of evolution, the Japanese Emperor has enough shown the unified power of the state as the important organ of the Great Japanese Empire. Even monarchs in the period of patriarchy who have regarded as 'ones who had been tyrant and oppressed people' by those who have criticized them by a viewpoint of today's sense would not have able to do anything by themselves contrary to fifty or sixty million times wills of majority as many as them; why they had been able to do so was because people had accepted their monarchs' rights for themselves or from force of habit.

Though those who had exercised the most despotic powers had been those who had combined chives of priests with monarchs in the period of the unity of the church and state, why people had obey their despotic rules is only because they had united by strong religious believes not because national consciousness had resided in only a brain of one person and the others had obeyed mechanically. Unless people had united by the social consciousness that they believe the same religion and received the belief that the despotic powers had shown ancestors' souls or the will of the God in their villages, any despotic power would not have been held. It goes without saying that monarchs' peculiar authority can never exist. So, even if we insist that monarchs' powers what are lent from people like the theory of social contract, it goes without saying that there is no contract laying the foundation of lending; even if we insist that those who lent their powers can take them back, it goes without saying that the argument that lent sovereignty has resided in individual people by nature before contract comes out from the revolutionary theory of individualism and it is fault. But it is clear that any individual has not had these powers as their peculiar ones by nature because the essence of power means a united strong power.

All patriarchal monarchs having exercised despotic powers in the Orient had been determined their prosperity or decline according how they had had this united strong power. Greek dictators had also flattered this united strong power and had held their powers. This solidarity that is the resource of power had been combined by social

⁵⁹ The Taika started from A.D.645.

instincts and had gotten to combine by clear social consciousness coming down in time. Though, in the primitive times, it was not clearly awakened consciousness but instinctively slept sociality, it was never contract based on the thought of selfishness like individualism sets up a hypothesis; neither combination nor obedience that a fear to authority obliged to do like Dr. Hodumi and so on explain. As human beings had had languages as social organisms even if we had not had contracts, we have combined from the beginning without authority and solidarity itself had had authority (still, see the Section 3, *The theory of biological evolution and social philosophy*). Needless to say, it is trivial for Dr. Inoue to argue that national consciousness lodges in the head of state because it is based on the organic conception that does a dogmatic metaphor. It is a worthless hypothesis for Dr. Hodumi to insist that people unite under the authority of the monarch like the individualistic theory of social contract he refutes by choice; he only reverses presupposition and conclusion. It is not that only the monarch has the national consciousness and others obey him (or her) mechanically; organs are created or become extinct by the degree of an awakening of the national consciousness and evolution. Solidarity does not exist under the authority but as the substance of authority.

However, it is necessary for this national consciousness to be expanded in accordance with historical evolution to be recognized by laws and to wake as a political power. The most primitive communities of hominids would have been republic and equal, but because those societies had perfectly been united by social instinct and had been peace without political systems, no one had had political powers.

But once we human beings had entered into the period of ancestor worship that had maintained greatly expanded villages by the authority of ancestors' spirits in the long subsequent evolution (any race has always experienced at least once), patriarchs had waken to political powers as those who had represented the wills of ancestors in the first place. Besides, once slavery had appeared by struggles with other villages and struggles for lands had gotten to occur, states having factual personality—like lands and slaves had resided in monarchs—have gotten to exist for monarchs' interests as possessions of them. These are sprouts of patriarchal national polity or monarchal national polity; not understanding Aristotle's three types of nations as ones based on superficial numerals and dynamically seeing in accordance with evolution, monarchy is the first stage of evolution. Aristocracy can be regarded that it has expanded an awakening to this political power, though it has been limited to few classes, and besides, democracy is what those awakenings have been expanded to majority and is the third stage of evolution.

Since Japan is the same state with others and has evolved from the ancient times according to the stream of history, even if her speed of evolution is a little different from others according that she had been isolated from others, only Japan does not part from the principles of the science of states entirely. And since Japanese had already experienced the period of republic and equal primitive age in other lands and immigrated there holding a family national polity⁶⁰ having evolved the agricultural age, though it goes without saying that the master of that national polity had not been like ‘the emperors’ who had been given posthumous titles after ages, we can enough imagine that they had brought sprouts of patriarchal or monarchal national polity and come unless we interpret all the oldest records as meaningless. But as the population had increased, the family system formed a framework of social system at that time had fallen into confusion, the great family developed in parallel with royalty had made their families and slaves unite by force, and they had gotten to confront with the other great family, royalty.

Now that things had come to such a pass, a revolutionary who had had knowledge among the royalty⁶¹ worked out utopian plans to realize the ideal state—like ones that utopian socialists often tried to realize in a rising nation— and aimed at forming civil national polity that sovereignty resided in the state and monarchal autocracy that constituted its organ. However, in this uncivilized period, it goes without saying that an ideal state remained only an ideal; that ideal has been finally achieved by the Meiji Restoration in the remote future. At that time, what was established actually was a patriarchal nation that sovereignty resided in the monarch and all the emperors during the long period until the end of the medieval age were ones as patriarchal monarchs. Also, there were innumerable patriarchal monarchs named ‘great men’, ‘feudal lords’, or ‘shogun’ along with them and they battled with each other. However, by the time the end of the epoch that Fujiwara family had ruled, the emperors had existed as patriarchs who had had the whole Japanese territory and people as ‘the Great Treasures’; even if regency and *kanpaku* (a adviser to the emperor) had been actually had their own way, and the emperors had actually exercised their sovereignty to only the small areas of the Kinki district⁶², it had been legally undoubted for the emperors to have been the only those in power as the only monarchs. This was the first stage of evolution that one person woke at political power.

⁶⁰ Perhaps it means a form of small community.

⁶¹ It means the Emperor Tenji (626-671). He ruined the great family, Soga family and carry out large scale reforms.

⁶² The Kinki district is the area constituted present Kyoto, Osaka, Shiga, Hyogo, Nara, Wakayama, and Mie Prefectures.

By settling *Kokushis* (local governors) in the countries and development of powerful clans, many other patriarchal monarchs had appeared and they had existed during the medieval age until nation-state has been established by the Restoration. In the medieval Europe, the Roman Pope, the Emperor of the Holy Roman Empire, kings, and nobles had engaged in melees one after another over the supreme sovereignty, but it had not been the sovereignty either the political power in the today's sense. However, each emperor, king, or noble had had the sovereignty as an owner of his or her territory and people, and had treated with his or her state as the object of ownership expanding or reducing the sovereignty by inheritance, donation, or marriage; each person had woken his or her political power by being the subject of the sovereignty. Like that, in Japan, the Imperial Household had had the sovereignty as 'the Roman Pope in *Shintonism*' on the *Shintonic* faith and 'the Emperor of the Holy Roman Pope in Kamakura' called the 'Shogun' by the form that the Pope had conferred the coronal had also had the sovereignty along with 'kings' or 'nobles'⁶³ in the Age of Civil Wars and in the feudal system. Each had dealt with his territory and people as the owner and the subject of the sovereignty, and had engaged in melees over the supreme sovereignty.

Thus, the national polity that a man of power had been the subject of the sovereignty was the patriarchal national polity and it goes without saying that it was different from today's nation-state. Neither, needless to say, can the emperor, the king, or the noble be identified with today's man of power. But the period when those patriarchs had gotten to have the sovereignty is come under the second stage of evolution that an awakening to political powers had been expanded to the class of landlords, that is, nobles. This second stage had lasted for a very long time in any country; in Japan, it had lasted until the Meiji Restoration. And the Meiji Restoration has denied the government having monopolized only by the noble class by innumerable peasant uprisings and the so-called theory of Japanese constitution of lower samurai class and made an awakening to political powers expand the large majority. It reached the principle of democracy that 'government obeyed the public opinion' and entered into the third stage of evolution. The national personality woken by competitions among the states has grown out of the position that had put up with as the objects of government for a long time under the barbarous form of the principle of excluding foreigners, has used the words 'the Great Japanese Empire' or 'for my nation', has held up that states has had purposes, and has gotten to express that states has been the subjects of rights that profits have belonged to.

This national polity of nation-state and democratic form of government having

⁶³ It means Daimyo.

regarded the state as the subject of the sovereignty was maintained by national legal believes and political morals of the Emperor for 23 years after the Meiji Restoration. The Restoration completed the first stage when the Constitution of the Empire clearly wrote as the statute that the state was the subject of the sovereignty and the present national polity and form of government has been legally recognized (see the following historical interpretations and the parts that explained the historical philosophy of the theory of social evolution in the Section 3, *The theory of biological evolution and social philosophy*).

That is why we inferred from the previous argument of Dr. Hodumi that the sovereignty has resided in the emperor himself or herself and it has been transmitted to a unbroken line by extensions of individuals that it diffused the whole nations by reproductions of individuals and reached democracy. Especially, Dr. Inoue is intelligent one who advocates the theory that sovereignty resides in monarchs who pointed that the theory of Dr. Hodumi that sovereignty resides in the Throne and explained most clearly that the sovereignty resided in the emperor himself. Though those who advocate the theory of the sovereignty of states criticized to him, 'if the sovereignty resided in the emperor himself, the state would become extinct along with death of the emperor', he did a refutation that is the most worthy of scholars and enough confronted without making a sorry display of himself like Dr. Hodumi that refers to Takamagahara and argues that an unbroken line of the emperors shall continuously last forever without a break. He says: the subject of the sovereignty is the Emperor, but the sovereignty and the state shall not become extinct along with death of the Emperor but the subject of the sovereignty shall be renewed. If you understand that a renewal of the subject of the sovereignty is an extinction of the sovereignty, you would not be able to maintain the argument that the sovereignty would reside in the state by your logic because present all people would die. This refutation more than drives back the confutation from a view of states that regarded them as machines of the groundless theory of the sovereignty of the states. But at the same time, this reveals that today's those who advocate the theory of the sovereignty of states and those who advocate the theory of the sovereignty of monarchs such as Dr. Inoue have been preoccupied with jurisprudence based on individualism before and after the French Revolution.

There is the truth in socialism. We insist this by socialism: the sovereignty that is the right of the state does not reside in the Emperor and people who are elements of the state. Those who are renewed along with extinction of elements are men of powers, not the subjects of the sovereignty. The Emperor of one of elements of the state is not the subjects that profits gotten by exercise of the sovereignty resides in. Also, nations are

not the subjects of the rights to exercise the sovereignty regarding nations as the final goal. In modern times, states have been recognized as the subjects of the rights that the purpose of existence and evolution and the profit corresponding to it reside in; their supreme organs have been organized by one privileged element, equal many elements, or one privileged element and equal many elements have not been the subjects of the rights but have exercised the sovereignty of states for their purpose and profit. Human societies of states having historical continuity have never become extinct jurisprudentially. Elements can be renewed but states themselves cannot be renewed. Namely, states are the subjects of the sovereignty (so, don't misunderstand. 'Social democracy' regards that people are awakened by individualism and spread political powers to all elements of states as an ideal; it doesn't mention the despotism that the sovereignty resides in nations like a mistaken individualistic theory of revolution. It, like the name of 'socialism' shows, insists that the sovereignty resides in states. And it intends to give all elements of states political powers, to maintain, or to acquire democracy that is the element of the supreme organ to maintain the sovereignty of states, to satisfy the purpose of states, and to make profits belonging to states perfect).

The summary of the above-mentioned is that:

Today's our national polity is not one when the state had existed for monarchs' profits as their properties but one of nation-state that national factual personality has been recognized as the legal personality. The Emperor is not one like in the period when he or she had had the state organized two factors of the territory and people. As Dr. Minobe includes the Emperor into people in the broad sense, he is the existence who is the same with other elements of people as one element of the state but has large privileges. Subjects are not properties when they had existed as 'the Great Treasure' under the emperors; they are subjects of the state in the sense that they have the rights and duties to it as its elements. Out form of government is not monarchy in the sense that one privileged nation rules. Neither is it pure democracy that equal people rule. That is, it is what is commonly called the constitutional monarchy that is organized by one element and equal elements of the state and the monarch and people rule in cooperation. So, neither only the Emperor nor only people can be called the sovereign. Those who use the sovereignty of the state as the sovereign for its profits organize the supreme organ. These reveal the present national polity and the present form of government laws express. Namely, it is socialism in the sense that the sovereignty resides in the state and democracy in the sense that nations (in the broad sense)⁶⁴ have had political powers.

⁶⁴ It points the Emperor and people.

Seeing like this, it is unreasonable to criticize that socialism conflicts with the Japanese constitution because it is a revolutionary principle. Why it introduces itself a revolutionary principle is because it intends to overthrow patriarchal monarchal countries in an economic aspect and to make economic materials that are resources of lives of states profits residing in states in the rights of states for the purpose of existence and evolution of states. It has an impossible restoration to strip factual personality of any individual and to make him or her slave today, hasn't it? It is nothing else but the so-called theory of Japanese constitution of a principle of restorative-revolutionary to ignore the legal personality that the large factual personality of the state has gotten after a long evolution and think it the object of rights for profits of the monarch; Rather, we socialists must be defenders of the present Japanese constitution today and in the future.

Why do we say that we intend to overthrow it? Since the form of government is the organ to use the sovereignty, the state shall make it evolve in accordance with its purpose and profit. But we don't know how it shall evolve in the future; shall it become as today's democratic form of government is, the monarchy organized only one privileged person, or the pure democracy? Or shall its society amazingly evolve and establish the paradise on earth because every form of government shall be unnecessary? These are not problems having no relation to the theory of Japanese constitution. We are enough to decide the place where the sovereignty resides following to Dr. Hodumi who says, 'the theory of Japanese constitution is the theory of the sovereignty'. Also, we understand his discretion fearing the code of publication that provides that those who publish books to intend to plot form of government to change shall be sentenced to two years'⁶⁵ imprisonment and daring not to publish his correspondence course of the university because he intends to overthrow the present constitution that the sovereignty resides in the state, to make the territory and people the private land and slaves of the Emperor, to restore the state the object of rights which is the ownership of the Emperor, to destroy the present democracy, and to make it form of government that the absolute and infinite patriarch rules.

Let us go where the logic of the theory of the sovereignty of the state goes at any cost! The constitution expected to take the way that the state had profits fitting the purpose of existence and evolution and prescribed the Article 73 the procedure when it reformed and abolished the national organs. So, it goes without saying there are many times to follow this procedure. However, in the period that the sovereignty resided in the monarch, it would have the proper right although he or she broke laws he or she

⁶⁵ The Article 26 of the code of publication prescribed like this (but the expression was different from the text).

enacted by his or her own sovereignty by other laws by his or her own sovereignty as well. Like that (like Dr. Hodumi who regards today as the national polity that the monarch has the sovereignty can be consistent to insist that the Emperor has the freedom to promulgate laws contradicting the provisions of the constitution or to abolish the constitution by his rights not according to the procedure of the Article 73), in today or in the future that the sovereignty resides or shall reside in the state, although other provisions contradicting the provisions of the procedure are or shall be enacted, or although other serious legislations conflicting other provisions of the constitution not according to prescribed procedures are or shall be done, it is or would be based on the rights of the state exercising the sovereignty of the state. The state has the perfect freedom to form or abolish its national organs according to its own purpose and profit. Because in laws that mean exercising the sovereignty of the state alike, only the Article 73 has especially had the more important meaning than present other provisions, but it has not had the power to deny or annul other many laws that would be enacted. Like today's laws and ministerial ordinances that ignore the spirits of the constitution divert the freedom of speech, assembly, and association not according to the procedure of the Article 73⁶⁶ and then the state achieves substantial amendments of the constitution, although she would establish important national organs by other laws other than the national organs of the constitution, it is the result of exercising the sovereignty of the state as the same and occurs because laws are not different what is important and what is not (so, why today's those who advocate the groundless theory that the sovereignty resides in states are not consistent their arguments in this point like those who advocate the theory that the sovereignty resides in monarchs is the very because they are not consistent in their thoughts of the sovereignty. They have no choice but to sigh it).

But don't misunderstand us those who regard states as almighty. A principle that regard states as almighty points the thought in the period that states had been permitted to intervene the thoughts and inner lives of nations. We just say that jurisprudence of socialism is nationalism because it insists that today's states have been substances of the sovereignty having the perfect freedom within the limits of ruling the outer lives of nations. But it is another question with legal principles what kind of things we can say exercising of the sovereignty fitting the purpose and profit of the state as a matter of course and it is just the will of those in power who occupy the position to exercise the sovereignty of the state. Namely, legal principles are not concerned whether the will of those in power are actually exercised for the purpose and profit of the state or

⁶⁶ It points the enactment of the code of the security police

not. –Hence, we say that the theory of the constitution means the theory of decision by strong powers (see the parts of class consciousness that have been explained in the Section 2, *Ethical ideal of socialism*, and the parts of class conflict that shall be explained in the Section 5, *The enlightening movement of socialism*).

So, although some people pretending to be socialists insist that they shall take states apart to atomic individuals once and reorganize societies, they are individualists in the period of the French Revolution and it goes without saying that it mustn't be confused with socialists. Socialists are clearly aware that present states have been the national polities that the sovereignty has resided in states and just intend to be the will of the powerful by long times and great efforts. Why do we say that we overthrow and renew the national polity? So, under the will of the powerful like today, we have the duty to be persecuted in the name of the sovereignty of the state (see the part that the right of persecution shall be explained in the Section 5, *The enlightening movement of socialism*).