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## **Rational Choice Theory and International Communication: A Proposal for a New Interpretation of Article 21 of the Japanese Constitution**

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### **Abstract**

In this article, I propose a new interpretation of the Japanese communicative dimension and of Article 21 of the Japanese Constitution (which protects freedom of expression) based on rational choice theory as the theoretical framework. This new approximation proceeds from the assumption that the rationality of an actor (an individual actor or a collective actor like Japan) depends on the capacity of this actor to access and process information. The rationality of this being that the capacity to understand is an ability to satisfy one's own hierarchy of preferences. Therefore, this research proposes a new interpretation of Article 21 of the Japanese Constitution as a constitutional commitment of Japanese society to guarantee its level of rationality as a complex society. To do this, in this research I will offer a deep taxonomic identification and description of rational choice theory evolution and its three complementary formulations (the positive political theory, social choice theory and public choice theory), an approximation of the communicative dimension of Japan and a new interpretation of Article 21 of the Japanese Constitution in the light of the rational choice theory.

### **I Introduction**

In this article, I will historically reexamine and taxonomically clarify the complex and sometimes confusing intellectual landscape of behavioral studies. It will start from the original formulation of rational choice theory by its pioneer Herbert A. Simon and will continue with the complementary formulations of the positive political theory, social choice theory and public choice theory. In each

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stage, the pioneering founders of each branch or school as well as the main contributions that have defined the new identity of each formulation and its possible application to the communicative field will be identified.

In continuation, in this research I will offer an approximation to the Japanese communicative field, identifying some phenomena, issues and patterns that have demarcated this dimension and its evolution in Japanese society. In continuation, the study will analyze Article 21 of the Japanese Constitution, which protects freedom of expression, as well as the subsequent legal development and judicial interpretation. Finally, the investigation will propose a new interpretation of Article 21 based on the rational choice theory as a theoretical framework and will explore the new possibilities that this approach offers to scholars, decision-makers and communicative actors.

## **II Rational choice theory and its relations with communication**

The theoretical framework that I propose to use to analyze communication as a social phenomenon in a political community is rational choice theory. This will also be used to analyze the principal legal incarnation to protect the human dimension, communication, in Article 21 of the Japanese Constitution. Starting from the theoretical framework's root, we can describe rational choice theory as a model designed for studying human decisions, which was developed in the 1950s by different economics scholars under the theoretical framework of game theory developed by von Neumann and Morgenstern. This theory was developed to provide a minimum common foundation for all humans and social situations that would help to explain why these actors make the choices that they make, even though many of these choices contradict their own forecasts and expectations.

The study of the evolution of this model presents variations and alternative formulations throughout its history that makes it harder to identify the boundaries of each articulation or branch. Regardless of these obstacles, this article states that it is possible to identify and accept original groundwork in the form of common assumptions that gave birth to all subsequent philosophic reformulations of the initial core. These bases or assumptions can be gathered into three main principles that rule all human actions: 1) any individual who makes a decision has a hierarchy of preferences to satisfy, 2) the behavior of the actor is rational which is understood as the search for utility satisfaction reflected in its hierarchy of preferences and 3) ultimately, all the collective decisions are based on the individual.

According to this common groundwork, it is possible to realize a series of

deductions that reflect the extraordinary complexity of human society and its relation with communication. Firstly, there is the awareness that every decision a person or community makes is an action in itself, like a decision to communicate information is, in the end, a decision to perform a communicative act. Consequently, it is possible to use the term actor to refer to the subject that makes a decision. Secondly, the actors have objectives that are not limited to a black and white binomial voting system but have a hierarchy of preferences in which their optimal option will occupy the first position, the subsequent most desired outcome will occupy the second position, and so on. For example, in political communication, this can be expressed by the fact that voters do not follow a simple voting selection whereby one political party is considered perfect and another inferior but are given a choice from a list of different political parties that gradually fit their ideology for better or for worse, occupying different positions in relation to the desired outcome. This interpretation of the political behavior of voters as hierarchical (following an A, B, C... sequence) instead of binomial (yes-or-no approach) opens the door to social negotiation through communication.

In this sense, the relationship between the hierarchy of preferences that exists in the actor's mind and the action performed by him establishes two conclusions: a) it is not possible to know the true hierarchy of preferences of a subject until he makes his choice and b) the choice will always reflect their true hierarchy of preferences. These statements indicate the reason political polls tend to fail to accurately forecast the real behavior of voters. These limitations in the internal knowledge of the structure of preferences that affect the subject are not only evident in the field of political communication but also in commercial communication when market studies fail to describe the final behavior of consumers despite them having acted in accordance with forecasts about their future actions. This can be seen in the example of a consumer in a consumer study that states that eco-friendliness is the most important product characteristic for him. However, at the moment of purchase he chooses a non-environmentally friendly product because it is cheaper or has other advantages. In short, the actors do not know what they really want until they have made their choice. Only when they make that choice do the actors' desires become clear.

This limitation of knowledge about an actor's hierarchy of preferences is expressed by the set of potential ordinal articulation targets rather than cardinal ones. This implies that, in most scenarios, actors do not have preferences with strong pre-established allocations; their preferences are configured in a sequential order when it comes to determining the behavior of the actors.

The third assumption concerning methodological individualism may be perhaps the most surprising in an investigation of international communication. In fact, through the adaption of this model to the communication field, a solid and empirical foundation for the study of international affairs is achieved both from the viewpoint of dynamics and its actors.

This methodological individualism that advocates a collective whole however complex (such as government, country or international organization) can be decomposed in a sequential order to the simplest level - the individual. Thus, by studying the hierarchy of preferences of each individual actor, it would be possible to identify the global articulation in a collective hierarchy of preferences and therefore the behavior of society.

The consequence in the communication field implies that by studying the informative hierarchy of preferences of the communicative actors that make up a society (be they media, government spokespeople or social network users), it would be possible to understand the informative ecosystem that they form.

### ***Rational choice theory***

The theory of rational choice, however, faces a series of misunderstandings from the social science fields that accuse it of methodological arrogance on one hand and an alleged denial of human altruism due to the influence of its theoretical framework on the other. Successive pieces of work and applications under this model have shown that these fears were unfounded. Firstly, the methodological formulation of rational choice refers to a gradient, cognitive process or trend rather than marking an end point that is logically unattainable. It would never be possible in practice to perfectly know all of an individual's preferences, but this methodological individualism indicates that a greater understanding, even without perfect knowledge, would enhance the understanding of the behavior of society.

Due to these misgivings about an alleged excessiveness of the model that would cloud the validity of results, it should be remembered that the rational choice theory began from a study of actors' restrictions. Herbert A. Simon was a pioneer in the development of this model and won the Nobel Prize in Economics in 1978. In 1955, he started this trend through a study of the limitations in the rationality of actors due to the cost of acquiring and processing information<sup>1)</sup>—a

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1) Herbert A. Simon, "A Behavioral model of Rational Choice", *The Quarterly Journal of Economics*, Volume 69, Number 1, February 1955, pp. 99-118. Note that previously published works of Simon have already covered the phenomenon of decision-making in ↗

phenomenon that shows that information is a fundamental part in any study on human behavior, and it is possible to understand communication as a reducer of these costs—which will increase the rationality of the actors involved in a communication scenario. The communication, therefore, is closely related to both the chronological origins of rational choice and its formal structure.

Similarly, the objections regarding the alleged inability of the model to take into account the altruistic social behaviors also already appeared in the reception of the game theory developed in 1944 by von Neumann and Morgenstern,<sup>2)</sup> a pioneering work that acted as an intellectual background for the birth of rational choice. This game theory was also based on previous work from von Neumann, published in 1928,<sup>3)</sup> showing that all the intellectual progress has been made based on previous methodological and conceptual works. Replicas were made both from this theoretical framework and from the model of rational choice. The search for satisfaction in the hierarchy of preferences by the actor does not imply that this preferred strategy is specifically used as a particular benefit to the detriment of the rest. In fact, an actor who takes a perfectly altruistic strategy will be operating under the same principles as others who opt to look at all costs of their own material benefit: the satisfaction of the particular hierarchy of preference and the adaption of their external behavior.

With the original foundations established, the model of rational choice branched into an amalgam of alternative formulations during the following decades that dramatically increased the confusion and difficulty of analysis and identification of the different trends and proposals. This is due to two phenomena that occurred simultaneously. Firstly, many of the contributions of the original model were articulated in the form of objections and additions without self-

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\management and other areas but did not develop his pioneering theoretical framework. See Herbert A. Simon, *Administrative Behavior: A Study of Decision-Making processes in Administrative Organization*, (New York: Macmillan, 1947). See Herbert A. Simon, "Mathematical Biology of Social Behavior", *Econometrica*, Volume 19, Number 3, July 1951, pp. 357-358.

- 2) An updated version of Game Theory was published in 1953 after its initial formulation in 1944 and appeared in John von Neumann and Oskar Morgenstern, *Theory of Games and Economic Behavior*, (Princeton: Princeton University Press, 1953).
- 3) In the same way, the previous 1928 work of von Neumann "On the Theory of Parlor Games" was updated and published in 1959 after the popularization of game theory. John von Neumann, "On the Theory of Parlor Games", in *Contributions to the Theory of Games*, Volume IV, Annals of Mathematical Studies Series (AM-40), ed. A. W. Tucker & R. D. Luce, (Princeton: Princeton University Press, 1959), pp. 13-42.

identification that would allow them to be catalogued. That is, many authors from a variety of fields would add to the theory or change it but would not label themselves as creators of a new branch of rational choice. This led to a critical mass of literature under the same name representing a wide range of theories. Secondly, the opposite effect also occurred. Many scholars labelled their work as a new branch of rational choice theory when in fact they could not be considered as a creation that is truly independent from the original formulation.

These two phenomena have greatly hindered the work of communication theorists when it came to addressing the study of these proposals and applying them to new social fields. This factor could explain the surprising absence of an intensive application of the model to the media field. But as a taxonomic approximation with the intention to clarify the theoretical landscape, this research proposes to identify the three different branches that were born as modifications of the original rational choice formulation (positive political theory, social choice theory and public choice theory) and analyze the boundaries between them, cataloging each one according to its main characteristics, authorships and the field in which they would best fit.

From this point, the original formulation (rational choice theory) and the positive political theory have generally been associated with the so-called freshwater school (sometimes called sweetwater school), which gets its name from the universities in the USA by the Great Lakes (Universities of Chicago, Rochester, Minnesota and Carnegie Mellon). On the other hand, the social choice theory and public choice theory have been associated with the saltwater school due to the universities on both coasts of the USA where these branches were developed (Berkeley, Harvard, Princeton, Columbia, Yale and the University of Pennsylvania).

Generally, the freshwater school seeks to explain why players act while the saltwater school seeks to describe how the players are interrelated. By using a simile that links the natural sciences, one could argue that if the theories of choice were meteorological science, the freshwater school would try to explain the weather through a study of individual particles, and the saltwater school would do the opposite and center on the study of large amounts of air or clouds and how they relate to each other. Thus, rational choice theory, as the original formulation, focuses on the incentive and answer system of individuals. The social choice theory on the other hand, as an alternative formulation (and to a certain extent the opposite formulation), focuses on the completely opposite niche: the relation that was shown between collectivities such as societies, nations and cultures.

Continuing with the rational choice theory, Gary Becker, who won the Nobel Prize in Economics in 1992, can be identified as the second largest contributor to this field with his work *The Economics of Discrimination* (1957).<sup>4)</sup> This author studied phenomena such as discrimination, crime,<sup>5)</sup> marriages,<sup>6)</sup> families,<sup>7)</sup> organ donations<sup>8)</sup> and other ethically challenging social scenarios<sup>9)</sup> from an economic perspective. This allowed the application model of study to be used profusely since it offered a systematic and formal approach to the incentive systems and responses of economic actors (social actors after the application of Becker's work).

In the search for the chronological origin of this model, great confusion and uncertainty in the academic literature regarding who should be considered the pioneer exists. Sometimes Becker has been pointed out as the first formal contributor to the discipline. However, this investigation has concluded that it is Simon who deserves this honor. In 1955, he published academically a model of study of rational choice, while in the same year Becker released a version on discrimination with a similar title that had not yet been published (which could be a source of academic confusion that has been dragging on since).

The third author in the study and development of rational choice was Anthony Downs. Downs studied the costs of acquisition and information processing that actors must face when acting rationally in his work *An Economic Theory of Democracy* (1957).<sup>10)</sup> Simon studied this phenomenon by describing it as a condition that affects actors and Downs elaborated on this approach, dynamically addressing it as a calculation of what actors should consider to decide whether it is

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4) Gary Becker, *The Economics of Discrimination*, (Chicago: University of Chicago Press, 1957).

5) Gary Becker, "Crime and Punishment: An Economic Approach", *Journal of Political Economy*, Volume 76, Number 2, April 1968, pp. 169-217.

6) Gary Becker, "A Theory of Marriage: Part I", *Journal of Political Economy*, Volume 81, Number 4, July-August 1973, pp. 813-846.

7) Gary Becker, *A Treatise on the Family*, (Cambridge: Harvard University Press, 1981).

8) Gary Becker and Julio Jorge Elias, "Introducing incentives in the market for live and cadaveric organ donations", *Journal of Economic Perspectives*, Volume 21, Number 3, Summer 2007, pp. 324.

9) Gary Becker, "A Theory of the Allocation of Time", *Economic Journal*, Volume 57, Number 299, September 1965, pp. 493-517.

10) Anthony Downs, *An Economic Theory of Democracy*, (New York: Harper, 1957). Note that a brief summary of this work was published as a journal article in: Antony Downs, "An Economic Theory of Political Action in Democracy", *Journal of Political Economy*, Volume 65, Number 2, April 1957, pp. 135-150.



worth acquiring such information. This author suggests that there may be social scenarios in which the cost of acquiring and processing information exceeds the benefit from operating with it, which the rational decision would not report. Downs describes this as the ‘voting paradox’ and uses it as a basis to study the weight of each voter in the final outcome of an election as something so small it is possibly not worth the effort to make an informed policy choice and therefore not worth voting.

Downs developed his contribution to rational choice theory in studying different social phenomena like the geographical distribution of population,<sup>11)</sup> environmental communication,<sup>12)</sup> urban development<sup>13)</sup> and the political, cultural and sociological implications of the democratic system.<sup>14)</sup> Additionally, these contributions can be widely applied in the fields of political, social and institutional communication as this research proposes.

Jon Elster, as the fourth main contributor to the rational choice discipline, can be considered as the most unruly and unorthodox contributor of all. He belongs to the second generation of rationality theorists, publishing his work *Ulysses and Sirens: Theory of Imperfect Rationality* in 1977.<sup>15)</sup> Elster began his contributions when the other three theories (positive political theory, social choice theory and public choice theory) and equivalent theories were already functioning by proposing in each theory his objections, additions and modifications to the original formulation. This showed his participation in this model clearly as going over an intellectual journey from the basics of rational choice (methodological individualism and simple actors) towards positions closer to the saltwater school (incorporating some of his own elements in this study of the social phenomena such as irreducible complexity like moral norms and traditions). Far from being an impediment to the development of theories of choice, the evolution of Elster’s work expanded the channel of communication between both schools.

11) Anthony Downs, “Alternative Futures for the American Ghetto”, *Daedalus*, Volume 97, Number 4, ‘The Conscience of the City’ Series, September 1968, pp. 1131-1378.

12) Anthony Downs, “Up and Down with Ecology – Issue-Attention Cycle”, *Public Interest*, Number 28, 1972, pp. 38-50.

13) Anthony Downs, “The Challenge of Our Declining Big Cities”, *Housing Policy Debate*, Volume 8, Number 2, 1997, pp. 359-408.

14) Anthony Downs, “The Evolution of Democracy: How Its Axioms and Institutional Forms Have Been Adapted to Changing Social Forces”, *Daedalus*, Volume 116, Number 3, ‘Futures’, Summer 1987, pp. 119-148.

15) Jon Elster, “Ulysses and Sirens: Theory of Imperfect Rationality”, *Social Science Information – Sur Les Sciences Sociales*, Volume 16, Number 5, 1977, pp. 469-526.

Elster made several significant contributions to the communicative model like the pact of Ulysses, which refers to the cognitive limitations that self-impose the forecast for a future state in which the rationality is limited. This proposal takes its name from a scene of the *Odyssey* in which Ulysses, on the advice of Circe, asks to be tied to the mast of his ship and have wax put in the ears of the sailors to avoid the temptation to succumb to the singing mermaids.<sup>16)</sup> The key role that communication plays as a covenant of Ulysses in this scenario is only possible if previous communication existed to warn the rational actor of the limited rationality behavior he will have.

This author also provided a conception of elective procedures, not as a result of rationality or a pure and holistic hierarchy of preferences, but as a result of the interaction of a set of mental sub-systems (like nuts and bolts) involved in the decision-making system of the actor. These sub-systems relate to each other by constantly seeking information of the world (through a communicative activity), generating a series of beliefs as a result of the previous factor and managing frustration when expectations do not match the result obtained. Elster used (as usual) a classic graphic example to illustrate this phenomenon that he called “adaptive preference formation”: Aesop’s fable of the fox and the grapes.<sup>17)</sup>

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16) “But I with my sharp sword cut into small bits a great round cake of wax, and kneaded it with my strong hands, and soon the wax grew warm, forced by the strong pressure and the rays of the lord Helios Hyperion. Then I anointed with this the ears of all my comrades in turn; and they bound me in the ship hand and foot, upright in the step of the mast, and made the ropes fast at the ends to the mast itself; and themselves sitting down smote the grey sea with their oars. [...] So they spoke, sending forth their beautiful voice, and my heart was fain to listen, and I bade my comrades loose me, nodding to them with my brows; but they fell to their oars and rowed on. And presently Perimedes and Eurylochus arose and bound me with yet more bonds and drew them tighter. But when they had rowed past the Sirens, and we could no more hear their voice or their song, then straightway my trusty comrades took away the wax with which I had anointed their ears and loosed me from my bonds.” (12.165-192). A. T. Murray, trans. E. Capps, T. E. Page & W. H. D. Rouse (Eds.). *The Loeb Classical Library*, (London: William Heinemann, 1919). In [www.theoi.com/Text/HomerOdyssey12.html](http://www.theoi.com/Text/HomerOdyssey12.html).

17) Aesop’s fable of the fox and the grapes (sometimes titled ‘The Sour Grapes’) corresponds to number 15 in the Perry Index and is as follows: “One hot summer’s day a Fox was strolling through an orchard till he came to a bunch of Grapes just ripening on a vine which had been trained over a lofty branch. ‘Just the things to quench my thirst,’ quoth he. Drawing back a few paces, he took a run and a jump, and just missed the bunch. Turning round again with a One, Two, Three, he jumped up, but with no greater success. Again and again he tried after the tempting morsel, but at last had to give it up, and walked away with his nose in the air, ↗

Elster continued developing his interdisciplinary approach incorporating different theoretical frameworks like game theory and analytic Marxism<sup>18)</sup> and enriching his proposal. This openness to new ideas led him to study other factors that affect the behavior of individuals, like emotions,<sup>19)</sup> traditions<sup>20)</sup> and culture,<sup>21)</sup> allowing him to develop a more integrative model for the study of human rationality and conduct.<sup>22)</sup>

### ***Social choice theory***

The emergence and evolution of the model of social choice was mainly due to the work of Kenneth Joseph Arrow, who won the Nobel Prize in Economics in 1972 (shared with John Hicks). In 1959, he published an article “*Rational Choice Functions and Orderings*”, which consisted of a formal proposal regarding the model of rational choice.<sup>23)</sup> It criticized this model by considering that it is not possible to articulate a set of individual preferences into a collective function that would satisfy all members.

Research continued on this subject through followers of this movement: John Harsanyi (Nobel Prize in Economics in 1994 shared with Nash and Selten) and Amartya Kumar Sen (Nobel Prize in Economics in 1998). The former contributed by optimizing the model of game theory to encode the strategies of the players with imperfect information.<sup>24)</sup> The latter devoted his work mainly to the field of

↘ saying: ‘I am sure they are sour.’ ‘It is easy to despise what you cannot get.’ Aesop. *Fables, retold by Joseph Jacobs*, Vol. XVII, Part 1, The Harvard Classics, (New York: P.F. Collier & Son, 1909-14), Bartleby.com, 2001. In [www.bartleby.com/17/1/](http://www.bartleby.com/17/1/).

18) Jon Elster, “Marxism, Functionalism, and Game Theory: The Case for Methodological Individualism”, *Theory and Society*, Volume 11, Number 4, July 1982, pp. 453-482.

19) Jon Elster, “Emotions and Economic Theory”, *Journal of Economic Literature*, Volume 36, Number 1, March 1998, pp. 47-74.

20) Jon Elster, “Rationality, Morality, and Collective Action”, *Ethics*, Volume 96, Number 1, October 1985, pp. 136-155.

21) Jon Elster, “Norms of Revenge”, *Ethics*, Volume 100, Number 4, July 1990, pp. 862-885.

22) Jon Elster, *Nuts and Bolts for the Social Sciences*, (Cambridge: Cambridge University Press, 1989).

23) Kenneth J. Arrow, “Rational Choice Functions and Orderings”, *Economica*, Volume 26, Number 102, New Series, May 1959, pp. 121-127. This work was based on a previous research developed nearly a decade before by the RAND Corporation, an American think tank that had an important role during the Cold War due to its development of the mutual assured destruction (MAD) doctrine.

24) John C. Harsanyi, “Games with Incomplete Information Played by ‘Bayesian’ Players, I-III. Part III. The Basic Probability Distribution of the Game”, *Management Science*, ↗

social development. Sen worked on an economic theory of development through which he conducted an economic approach to the problems of poverty, scarcity and inequality in the world.<sup>25)</sup> He applied this theory to the study of the Bengal Famine of 1943, which enabled him to counter the wrong international belief that famine and poverty always originate from low production.<sup>26)</sup> Sen found that, on the contrary, it was caused by obstacles in the social generation of incentives for the commercial distribution of goods and services.<sup>27)</sup>

Sen also devised a concept of capabilities that address social inequalities from a much broader and comprehensive perspective. This approach distinguishes between three types of equality: equality of opportunity (conceived as the absence of legal discrimination such as freedom of the press for the whole of society), situational equality (which implies the same level of purchasing power or material wealth), and equality of autonomy (which means that two or more players have the ability and skills to perform certain actions encompassing multiple dimensions by themselves).<sup>28)</sup> This led to the development of the Human Development Index (HDI)<sup>29)</sup> that originally used quantitative tools to analyzed variables like life expectation, education and per capita income. Different reformulations of the original idea have been progressively adapted to analyze more complex dimensions such as freedom of speech or political freedom.<sup>30)</sup>

### ***Positive political theory***

The positive political theory was started by William Harrison Riker in 1962 with his work *The Theory of Political Coalitions*,<sup>31)</sup> which was based on the

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↘ Volume 14, Number 7, Theory Series, March 1968, pp. 486-502.

25) Amartya Kumar Sen, *Collective Choice and Social Welfare*, (San Francisco: Holden-Day, 1970).

26) Jon Elster, "Famines", *World Development*, Volume 8, Number 9, September 1980, pp. 613-621.

27) Jon Elster, *Poverty and Famines: An Essay on Entitlement and Deprivation*, (Oxford: Clarendon, 1981).

28) Jon Elster, *Inequality Reexamined*, (Oxford: Oxford University Press, 1992).

29) See United Nations, United Nations Development Programme, *Human Development Report 2015. Work for Human Development*, 2015, Human Development Reports Series. In <http://report.hdr.undp.org/>.

30) Jon Elster and Sudhir Anand, "Human Development and Economic Sustainability", *World Development*, Volume 28, Number 12, December 2000, pp. 2029-2049.

31) William H. Riker, *The Theory of Political Coalitions*, (New Haven: Yale University Press, 1962).

previous work of Lloyd Shapley (who won the Nobel Prize in Economics in 2012) and Martin Shubik about the different power that each member in a coalition should have. This previous collaborative work, "A Method for Evaluating the Distribution of Power in a Committee System", was published in 1954.<sup>32)</sup>

In this study, Riker developed the concept of minimum winning coalition (MWC) to refer to the structure of a group that, in a voting system, is capable of winning the minimum number of members so that the value obtained in this collective action is divided between fewer participants. This conceptual contribution was later studied in more depth<sup>33)</sup> and was applied to different political scenarios like the inner mechanism of the House of Representatives,<sup>34)</sup> voter's behavior,<sup>35)</sup> political philosophy behind the federalism tradition<sup>36)</sup> and even a new endorsement for the MAD doctrine and nuclear dissuasion.<sup>37)</sup>

As can be seen, Riker's work is relevant to not only domestic politics but also different international relations' scenarios as it is possible to identify the complex relationships between national actors (like Japan, China and Taiwan in East Asia) and sub-national actors (nationalist movements, media or individual politicians) as a system of potential coalitions. These hypothetical coalition members should calculate the incentives and risks of participating in a political and communicative coalition (implicitly or explicitly) with another actor involved in this scenario.

Riker developed the concept of "heresthetics"<sup>38)</sup>, which refers to an actor

32) Lloyd S. Shapley and Martin Shubik, "A Method for Evaluating the Distribution of Power in a Committee System", *The American Political Science Review*, Volume 48, Number 3, September 1954, pp. 787-792.

33) William H. Riker, "Minimum Winning Coalition", *The American Political Science Review*, Volume 71, Number 3, 1977, pp. 1056-1059.

34) William H. Riker and Donald Niemi, "The Stability of Coalitions on Roll Calls in the House of Representatives", *The American Political Science Review*, Volume 56, Number 1, March 1962, pp. 58-65.

35) William H. Riker and Peter C. Ordeshook, "A Theory of the Calculus of Voting", *The American Political Science Review*, Volume 62, Number 1, March 1968, pp. 25-42.

36) William H. Riker, *Federalism: Origin, Operation, Maintenance*, (Boston: Little-Brown, 1964).

37) William H. Riker and Bruce Bueno de Mesquita, "An Assessment of the Merits of Selective Nuclear Proliferation", *The Journal of Conflict Resolution*, Volume 26, Number 2, Conflict and International Security, June 1982, pp. 283-306.

38) The expression "heresthetics" comes from merging two words: the Greek root of "heresy" (*haireisis* (αἵρεσις)) meaning "choice" or "opinion" and "aesthetic" (αἰσθητικός), which is the branch of philosophy that deals with the creation and appreciation of beauty in art and

changing the environmental conditions so that the player's rational choice that is to be influenced is the thing he wishes for most.<sup>39)</sup> This proposal is in accordance with the principles of the communicative trend of public diplomacy, soft power of international actors, and formation of new nations as a coalition of smaller actors.<sup>40)</sup>

### ***Public choice theory***

Finally, the public choice theory began, which was partly driven by Riker and formally driven by the work of James Buchanan (who won the Nobel Prize in Economics in 1986) and Gordon Tullock in *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, published in 1962.<sup>41)</sup>

These authors developed a theoretical contribution that completed the model of communication analysis proposed by this investigation to be applied to the study of Article 21 of the Japanese Constitution. This contribution focused on the way in which individuals negotiated between themselves to achieve agreements that enabled collective action. In this sense, they state that: "Collective action must be, under our postulate, composed of individual actions. The first step in our construction is, therefore, some assumption about individual motivation and individual behavior in social as contrasted with private or individualized activity. Our theory thus begins with the acting or decision-making individual as he participates in the processes through which group choices are organized. Since our model incorporates individual behavior as its central feature, our "theory" can perhaps best be classified as being methodologically individualistic."<sup>42)</sup> As it can be seen in this work, Tullock and Buchanan studied constitutionalism, identifying the "constitutional" decisions such as who organizes and defines the shape of the future performance of a community and the "operative" decisions like those derived from a previous procedural foundation for decision-making. Therefore, this conceptualization makes this branch perfect for its final application to the study of the

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\nature. By merging these two terms, Riker wanted to symbolize the art of achieving the modification of the choice of others. The word, however, has undergone several changes. For example, in later works Riker removes the final "s", so it appears as "heresthetic".

39) William H. Riker, *The Art of Political Manipulation*, (New Haven: Yale University Press, 1986).

40) William H. Riker, *The Strategy of Rhetoric: Campaigning for the American Constitution*, (New Haven: Yale University Press, 1996).

41) James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, (Michigan: University of Michigan Press, 1962).

42) *Ibid.* p. 6.

Japanese Constitution.

As a deepening of these approaches of collective bargaining, the authors identified two types of costs associated with these processes: “external” costs, which refer to the loss of income suffered by players when decisions that affect them are taken by others over whom they have no control, and “decision-making”, which refers to the costs involved in a collective bargaining process. Thus, a decision made by an absolute dictator would have a minimum decision-making cost and a maximum external cost. The opposite situation where a decision is made unanimously by a community would have maximum decision-making cost and minimum external cost. This interpretation of the constitutional phenomena is based on an economic vision of the political negotiations, leading to the quantitative analysis of each actor’s negotiation strength.<sup>43)</sup> This also led to Buchanan developing a coherent and uniformed methodology to study other political phenomena of a country’s inner mechanisms, like taxes,<sup>44)</sup> public budgets,<sup>45)</sup> public debts<sup>46)</sup> and even the philosophical issue of the struggle between freedom and order in a society.<sup>47)</sup>

In the same way that occurred in Downs’ study on his hypothesis of rational ignorance, a similar situation occurs in this scenario: there comes a point in which the cost of continuing to negotiate an agreement exceeds the cost involved in not adding more decision-making actors to the coalition. Therefore, all constitutional procedures can be analyzed as a calculation towards the optimal equilibrium point in a negotiation within a society to adopt a political position in response to internal or external challenges. Hence, these contributions are very useful for studying freedom of speech in general and the interpretation of Article 21 of the Japanese Constitution in particular as they allow studying in a way in which a group of Japanese citizens negotiate through the communicative field to find a solution to the political and social challenges that they have to face as a nation in the domestic

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43) James M. Buchanan, *Cost and Choice: An Inquiry in Economic Theory*, The Collected Works of James M. Buchanan (20 Vols.), Volume 6, (Indianapolis: Liberty Fund, 1999-2002).

44) James M. Buchanan, *The Power to Tax*, The Collected Works of James M. Buchanan (20 Vols.), Volume 9, (Indianapolis: Liberty Fund, 1980).

45) James M. Buchanan, *Public Finance in Democratic Process*, The Collected Works of James M. Buchanan (20 Vols.), Volume 4, (Indianapolis: Liberty Fund, 1967).

46) James M. Buchanan, *Public Principles of Public Debt*, The Collected Works of James M. Buchanan (20 Vols.), Volume 2, (Indianapolis: Liberty Fund, 1958).

47) James M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan*, The Collected Works of James M. Buchanan (20 Vols.), Volume 7, (Indianapolis: Liberty Fund, 1975).

field or international sphere.

### **III Communication and Japanese social cohesion**

The social cohesion of Japanese society can be analyzed employing the theoretical frameworks of rational choice, whether in its original formulation or in the other three complementary branches (the positive political theory, social choice theory and public choice theory). A possible approach to this field is to analyze the public opinion of different Japanese demographic groups and use the aforementioned formulations and theoretical frameworks to interpret their results.

This can lead to a big picture of the ways in which the different demographic groups, each one defined by its own main interest and social goals, can negotiate with other social groups in the communicative social sphere to convince the other groups that their objectives can bring the greatest public good. For example, when a successful company creates jobs and benefits in a certain region but also a high level of pollution, environmentalist groups can try to change public opinion by pointing out the external cost that the company will have pay if there is no reduction in its pollution. In the same way, the social groups that benefit from the success of that company (company workers, shops benefiting from its activity, stakeholders of the company, etc.) can try to persuade the public through the communicative field that a severe reduction in its activity would damage the creation of jobs and general economic health of the region. Finally, both parties would find an equilibrium point in that society that would be the optimal balance (for that region's public opinion) between the protection of the environment and economic development. Consequently, the politicians and decision-makers would act in accordance with the equilibrium point reached to be reelected at the next election, and, as a result, the communicative negotiation inside the social community would lead to a consensual decision that shows how to face a political challenge.

Of course, this does not imply that the equilibrium point reached will be the best option chosen *per se* or that all the communicative actors have the same communicative negotiation strength. For example, a company can have more economic strength than environmental groups and can use this advantage to overcome its adversaries. Or environmental groups can count on the support of international organizations that can escalate the communicative debate to a global magnitude, causing a public relations problem for the company that can lead it to self-reduce its pollution without the need for an external public power obliging it to do so. In any case, the communicative dimension is essential to obtain the best



outcome when there are two or more conflicting social interests.<sup>48)</sup>

Japan has also had to face security challenges due to external threats, like international terrorism, North Korea and territorial conflicts with other nations. This has led to a public and political debate on the role of Japan with respect to security,<sup>49)</sup> especially the legitimacy of Japanese re-militarization,<sup>50)</sup> the constitutional approaches to achieve this objective<sup>51)</sup> and the modernization of the

48) On March 11, 2011, after a magnitude 9.0 earthquake and subsequent tsunami, the Fukushima Daiichi nuclear plant was severely damaged, and the subsequent public debate about the equilibrium between Japanese energy security and environmental and human protection, is an example of the communicative clash between different political positions. Since the world has also become globalized in the communicative dimension, this public debate has consequently become global, leading to different countries in the world questioning the risks of nuclear energy. See Bettina B. F. Wittneben, "The impact of the Fukushima nuclear accident on European energy policy", *Environmental Science & Policy*, Volume 15, Number 1, January 2012, pp. 1-3. Also, the media interpretation of this phenomenon is different depending on the country and media company; mostly the media interpretation is from a domestic point of view. See Robert Cox, *Environmental Communication and the Public Sphere*, (Los Angeles: SAGE, 2013), p. 153.

49) See Paul Midford, *Rethinking Japanese Public Opinion and Security: From Pacifism to Realism?*, Studies in Asian Security Series, (Stanford: Stanford University Press, 2011).

50) This debate is based on the possible re-interpretation of Article 9 of the Japanese Constitution: "1) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. 2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized." Article 9, Japanese Constitution, (日本国憲法第9条, *Nihonkokukuenpō dai kyū-jō*). Enacted May 3, 1947. [http://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

51) The Japanese government reinterpreted this article without using Article 96 of the Japanese Constitution (which is designed for constitutional amendments), allowing the Japan Self-Defense Forces to defend their allies if war is declared on them. In September 2015, the Japanese Diet legally allowed the JSD to provide material and logistic support to its allies even in a situation of international combat. This led to a political and public debate in Japanese society that revealed the public opinion agreement and social cohesion regarding these topics in the communicative dimension with respect to a phenomenon that was previously mainly studied by scholars and policy-makers. For a historical perspective on Article 9 of the Japanese Constitution and its impact on public debate in Japan, see Mark Chinen, "Article 9 of the Constitution of Japan and the Use of Procedural and Substantive Heuristics for Consensus", *Michigan Journal of International Law*, Volume 27, Number 1, 2006, pp. 55-114. DOI: <http://dx.doi.org/10.2139/ssrn.1357622>. According to a survey conducted by NHK on April, 2016, only 22.1% of the people surveyed replied that "amendment [of Article 9] is necessary," while 39.2% considered that "amendment is ↗

Japanese intelligence services.<sup>52)</sup>

The challenges that Japan as a society and an economic global power has to face are, therefore, discussed publicly. Consequently, Japanese society can be studied according to its different public opinion manifestations and the way in which they are expressed. In this sense, the resolution of international issues that Japan has had to deal with can be found (at least as an important factor) in the domestic field. This opens the door to the application of rational choice (and its subsequent derivations) as a methodological tool to understand, describe and analyze the role of Japan in the international dimension: any collective phenomena (like those in international relations) are based on the individual. Therefore, by analyzing the way in which individuals (in this case, Japanese citizens) interact, debate and negotiate in accordance with their points of view and interests in the communicative field, it could be possible to better understand the international dimension and the role that Japan can develop in it. In conclusion, in this interpretation, the freedom of expression that is protected in Article 21 of the Japanese Constitution plays a fundamental role by guaranteeing this process in Japanese society.

#### IV Article 21 of Japanese Constitution: Freedom of Expression

Freedom of expression is protected by Article 21 of the Japanese Constitution: “Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.”<sup>53)</sup> This shows the importance that the Japanese Constitution gives to the communicative dimension as a fundamental pillar of the democratic system, at least in the theoretical dimension.

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unnecessary.” Of those who supported the amendment of the Article 9, the most popular reason was that “the Constitution should state clearly that Japan can maintain the capability required for its self-defense” (55.1%), followed by “It should allow participation in UN-backed military operations” (22.6%). Of those who opposed to the amendment of Article 9, the most often reason was “It is the most important provision of our pacifist Constitution (65%), followed by “We can address issues by way of constitutional interpretation without resorting to amendment” (15.0%), and in third position “It would open the door to the use of force overseas” (12.4%). Nippon.com, *The Article Debate 9 at a Glance*, August, 31, 2016. <http://www.nippon.com/en/features/h00146/>

52) Juan Luis Lopez-Aranguren, “The Communicative Dimension and Security in Asia-Pacific: A communicative-viewing proposal for reform of the Japanese Intelligence Services”, *UNISCI Discussion Papers*, Volume 41, May 2016, pp. 29-52. DOI: [http://dx.doi.org/10.5209/rev\\_RUNI.2016.n41.52673](http://dx.doi.org/10.5209/rev_RUNI.2016.n41.52673)

53) Article 9, Japanese Constitution. *Ibid.*

This constitutional protection of freedom of expression is rooted in the Japanese political system since its creation after the Second World War. As Shigenori Matsui states: "After the World War II, the General Headquarters (GHQ) of the Supreme Commander for the Allied Powers (SCAP), believing that these restrictions on freedom of expression were greatly responsible for the emergence of extreme militarism in Japan, was so determined that full protection of freedom of expression would be vital to future development of democracy in this country. It thus ordered abolitions of all statutes and regulations restricting these freedoms. And it even ordered immediate release of those detained under these statutes when it found that the Japanese Government had no intent of such release. The protection accorded to freedom of expression by the Japanese Constitution apparently reflects this history."<sup>54)</sup> But the subsequent legislative development and judicial resolutions, in which this statement has been traditionally interpreted in Japanese contemporary history, open the door to a more nuanced approach.

In this constitutional codification, freedom of expression appears as a philosophical statement in the first phrase and as an ambiguous protection against its limitation in the second one: it bans censorship but does not define *what* censorship is. Moreover, its own formulation presenting two communicative limitations to be avoided (censorship and violation of secrecy of communication) can cause a conflicting interpretation. What happens if a journalist obtains leaked ministerial communication that is of public interest and publishes it? Is this communication protected by the constitutional ban on censorship or is publishing it illegal because it is considered a violation of the communication's secrecy?

The Japanese legal precedents and jurisprudence establish two separate categories of considering what can be a legal restriction of communication, i.e. whether it is censorship. The first category is content-based restriction, meaning a restriction based on the nature of the message (obscenity, political communication, defamation, and so on). The second category is content-neutral restriction, meaning the circumstances in which the communicative activity was exercised (time, place and manner). In many cases, the content-based restrictions on communicative activities imposed by Japanese courts have been upheld later in the Supreme Court of Japan on the basis that it is not censorship, therefore allowing strict restriction of the communicative dimension. In the *Custom Inspection Case*<sup>55)</sup> 1984, in which a

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54) Shigenori Matsui, "Freedom of Expression in Japan", *Osaka University Law Review*, Volume 38, February 1991, pp. 13-42, pp. 13-14. <http://hdl.handle.net/11094/8543>

55) Supreme Court of Japan, grand bench, 12 December 1984, 38 *Minshu* 1308.

publication was prohibited from being imported to Japan by an administrative agency because it was considered to be against *good morality*. The Supreme Court dictated that, as the prohibition was applied *after* the work had been published, it should not be considered as a form of censorship.

In the *Ienaga School Textbook Review Case*<sup>56)</sup> there was a similar conflict between the communicative dimension and the limited governmental interpretation of the freedom of expression constitutional protection. The Ministry of Education, Science and Technology of Japan has the power to review the drafts of textbooks used at schools before publication. Although ministerial disapproval of a textbook does not imply a ban on its publication as a general work, it vetoes it from being used as a textbook in class. In this case, a history professor called Saburo Ienaga had his high school textbook disapproved by a minister because it included a description of bio-chemical experimentation performed by the Japanese army in China during the Pacific Wars and was ordered to delete that description. The Supreme Court of Japan upheld the veto of his textbook considering that it was not a form of censorship since Ienaga's work could be published anyway, despite not being able to be used as a textbook in high schools. Despite this resolution, the Supreme Court considered that the order to delete the description was inappropriate.<sup>57)</sup>

Political communication is also restricted compared with Western standards. The common campaigning practice of door-to-door canvassing is prohibited, and the distribution of texts, documents and other political material is very limited by law.<sup>58)</sup> And with respect to political extremism, the Supreme Court has also been firm in limiting its communicative activities. In the *Riot against the Return of Okinawa Case*,<sup>59)</sup> an Okinawa leader of a radical student movement against US American military bases in Okinawa spoke to demonstrators, encouraging them to attack police officers. Then, around 400 radical students attacked the police station in the National Railroad (now Japan Railway) Shibuya Station. They started fires, injured several police officers, and killed one police officer. The leader who urged

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56) Supreme Court of Japan, 3<sup>rd</sup> petty bench, 16 March 1993, 47 *Minshu* 3483.

57) The Supreme Court of Japan, grand bench, 11 June 1986, 40 *Minshu* 872.

58) The elections are rigorously regulated by the Public Office Election Act. The prohibition on door-to-door canvassing appears in the article 129 and the limitation to the distribution of political materials appears in the article 142 of the Act. Shigenori Matsui, *The Constitution of Japan: A contextual Analysis*, Constitutional Systems of the World, (Oxford: Hart Publishing, 2011), p. 200.

59) The Supreme Court of Japan, 2<sup>nd</sup> Petty Bench, 28 September 1990, 44 *Keishu* 463.

the radical students to commit arson was prosecuted in accordance with the Subversive Conduct Control Act. The Supreme Court upheld his conviction, considering that his speech threatened public safety.<sup>60)</sup> Even decades after the incident, Okinawan political activist groups have been trying to re-open the case, alleging the innocence of the riot leader, Fumiaki Hoshino.<sup>61)</sup>

Regarding the content-neutral restriction of freedom of expression, the pronouncements of the Supreme Court of Japan have not been very different from the content-based restriction cases. Posters and advertisements posted on streetlamps, trees, walls and in other public places are prohibited by both local ordinances and the Anti-Public Display Act, which was upheld by the Supreme Court.<sup>62)</sup> A similar decision was made when the property was private.<sup>63)</sup> In general, it can be affirmed that the Supreme Court interpretation for the content-based scenario and the content-neutral scenario lead to a similar outcome. In conclusion, and as Shigenori Matsui highlights: “[...] It can be said that from the beginning the Supreme Court has adopted a very deferential attitude towards speech regulation. Although the adoption of the interest-balancing approach in the 1960s might have indicated the possibility of change, the Supreme Court has not showed any significant change. The fact remains that the Supreme Court has never ever struck down any statute restricting freedom of expression as unconstitutional”.<sup>64)</sup>

Considering these circumstances, the communicative dimension in a society cannot be limited to its legal codification. It is also closely related to other factors like the economic development, level of education, security and even anthropology of its society as long as the final outcome depends mainly on how the citizens, in this case Japanese citizens, use their freedom of expression. As Beer states: “Why freedom of expression is relatively strong in Japan or any country cannot be ascertained simply by looking at laws, constitutional provisions, and judicial decisions. The reason and reality are most effectively unearthed by empirically well-founded, *ecological* analysis of factors such as social culture, institutions of government and law, economic conditions, political values and commitments, and

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60) Shigenori Matsui, *Ibid.* p. 200.

61) William Andrews, “Wife fights decades-long battle to free Shibuya riot leader Hoshino”, *The Japan Times*, November 18, 2013, <http://www.japantimes.co.jp/community/2013/11/18/issues/wife-fights-decades-long-battle-to-free-shibuya-riot-leader-hoshino/>

62) The Supreme Court of Japan, Grand Bench, 18 December 1968, 22 *Keishu* 1549.

63) The Supreme Court of Japan, Grand Bench, 17 June 1970, 24 *Keishu* 280.

64) Shigenori Matsui, *Ibid.* p. 210.

historical serendipity. Free speech is nowhere permanently established and uniformly or fully enjoyed.”<sup>65)</sup> And concludes: “Freedom of expression on a particular topic at a given time exists in a constitutional culture in part because of widespread trust in the system and a national consensus that inherent equal dignity of each person requires protection of each individual’s freedom in law and politics”.<sup>66)</sup>

Shigenori Matsui also points out the importance of the anthropological and cultural dimension in Japan in exercising this communication by stating that: “Japanese society places more weight on harmony of society than individual autonomy. Even though society prefers a consensus-building type of decision-making, strong dissent is not usually welcome for the sake of preservation of harmony. It is assumed that everyone is ready to accept the decision of the majority, although often the majority will attempt to accommodate the voices of the minority. Those who insist on taking the minority view are likely to be viewed as weird or even disruptive of the harmony of the group.”<sup>67)</sup> He continues exploring the social and decision-making mechanisms of Japanese society that led to a limitation in the spectrum of messages to achieve more solid social harmony: “In such a society, it is likely that it may be difficult to expect that everyone should respect the dissenting voice, no matter how unreasonable or even dangerous that voice would appear. It might be believed that freedom of expression should be subject to restrictions necessary to maintain the harmony of society. That may be the reason why the Diet has imposed various restrictions on freedom of expression in Japan. The Supreme Court might have also shared the same ideology.”<sup>68)</sup>

In the light of this situation, the rational choice theory can be used to conduct a reinterpretation of Article 21 of the Japanese Constitution and, by extension, of the jurisprudence that has been derived from it. With regard to this theory, freedom of expression is necessary in a society because the citizens need to share, communicate, discuss and adopt new ideas about the challenges that they, as a society, will have to face. In this sense, both the capacity to receive and process information is, by all means, based on the freedom to share such information. Note that not only the capacity to receive new information but also the capacity to process it depend on this legal protection. In each iteration, the information shared

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65) Lawrence W. Beer, “Freedom of Expression: The Continuing Revolution”, *Law and Contemporary Problems*, Volume 53, Number 2, Spring 1990, pp. 39-69, p. 40.

66) *Ibid.*

67) Shigenori Matsui, *Ibid.* p. 210-211.

68) Shigenori Matsui, *Ibid.* p. 211.

is usually communicated in a more concise form than its previous form, therefore reducing the costs of the new audience to process it and liberating resources for a more complex interrelation of concepts and discourses in the communicative field.<sup>69)</sup> The more information is accessed and processed, the more rational a society would become in satisfying its hierarchy of preferences.

In this interpretation, the constitutional protection of freedom of expression could be considered as a *Ulysses Pact*, in which a society guarantees that, even under strong political or economic pressure, it will always provide a minimum level of information access and information processing capacity to keep itself rational in confronting internal or external challenges.

## **V Conclusion**

Rational choice has had a complex development from its original formulation in the pioneering work of Herbert A. Simon to the development of the other three complementary branches: the positive political theory, social choice theory and public choice theory. Each theory contributes towards a different approach to behavioral studies. Despite the complex taxonomic landscape of these behavioral studies, they share a common root that can be found in rational choice theory, which is part of the intellectual framework of game theory developed by John von Neumann and Oskar Morgenstern.

This theoretical framework of rational choice and its derived formulations can be used to analyze the communicative dimension of a society like Japan. Rational choice states that an actor will be more rational as he increases his capacity to receive and process information. This rationality is interpreted as his ability to satisfy his own hierarchy of preferences.

Therefore, if we apply the rational choice theoretical framework to the case of Japanese communication, Japanese society would be more rational in facing domestic or international challenges as it would be able to increase its capacity to obtain and process information. In doing so, the different actors that form the Japanese society, from individuals to collective actors like cultural groups, political parties or companies, are able to share, discuss, analyze and learn from other

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69) For example, the format of weather forecast information presented on TV has been adapted to reduce the cost of processing. The previous format was more technical and costly. In the same way, political, social, economic or cultural information, despite being susceptible to being manipulated for ideological objectives, usually plays a role in reducing the cost to access and understand these topics for the general audience, for example, in a didactic newspaper's summary of a long and complex judicial process.

communicative actors to face, as a society, the challenges that affect Japan.

In this interpretation, Article 21 of the Japanese Constitution (which protects freedom of expression) can be seen as a *Ulysses Pact* where Japanese society agrees with itself to guarantee to always keep the capacity of accessing and processing information at least at a minimum level to keep itself rational.

Despite the clear protection that Article 21 of the Constitution of Japan has with respect to freedom of expression and the subsequent ban on censorship, the reality is that the further legal development and judicial interpretation has been intensely restrictive towards the exercising of this right. The Supreme Court of Japan has had an important role in this situation by not considering different restrictions on freedom of expression as censorship by avoiding the constitutional ban on censorship, which Article 21 uses to protect freedom of expression.

According to the rational choice theoretical framework that this research is applying, this restrictive legal limitation of the communicative dimension on Japanese society would produce a limitation to its rationality as a political and social actor. This limitation would lead to fewer options being considered to face the problems that Japanese society is facing as well as a weaker processing capacity in analyzing these options.

This new rational choice-based reinterpretation of Japanese communication in general and of Article 21 of the Japanese Constitution in particular can offer a new approach to this field for scholars, policy-makers and communicative actors. The possibility of this holistic approximation of the role that communication plays in a society as a fundamental part of its rationality makes a more integrative study of Japanese society possible.

Some interpretations have pointed out that this legal limitation is based on an anthropological dimension with respect to the purpose of maintaining strong social cohesion or social harmony in Japanese society. This conflict or balance between behavioral strategies and Japanese social singularities opens the door to further studies on the relation between Japanese society, communication and political dimensions. This fruitful field of study can shed some light on not only the academic understanding of Japan as a complex society but also the comprehension of a society of information that has become globalized.

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