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SUMMARY OF CONTENTS**

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**Zeitgenössische Wahrnehmung von der sogenannten  
„Goldenen Bulle“ (1356), vornehmlich in der  
Regierungszeit Kaiser Karls IV.**

Daisuke YOKOKAWA\*

Die sogenannte „Goldene Bulle“ von Kaiser Karl IV., die bekanntlich 1356 das Heilige Römische Reich als Wahlmonarchie festgeschrieben hat, ist von der Forschung so eingeschätzt, dass sie zuerst schweigsam ignoriert würde. Um diesen Befund zu überprüfen, behandelt der Verfasser in diesem Aufsatz, wie die Zeitgenossen die „Goldene Bulle“ vor allem in der Regierungszeit Kaiser Karls IV. wahrnahmen.

Die Beteiligten selbst sahen die „Goldene Bulle“ unterschiedlich: während die Kurfürsten sie als eine Reihe von Privilegien oder eine Privilegiensammlung wahrnahmen, versuchte der Kaiser konsequent, sie als kaiserliche Gesetze zu zeichnen. So nahmen die beiden die „Goldene Bulle“ zwar wahr, aber nicht als einen „Reichsgrundgesetz“, sondern bloß als eine der rechtlichen Ressourcen.

In der Goldenen Bulle heben sich die bestimmten Ordnungsvorstellungen über Kaiser, Reich und Kurfürsten hervor. Wir können sagen, dass dies von den Bemühungen des Kaisers stammt. Karl IV. machte seine Gestalt als Gesetzgeber bekannt, indem er die „Goldene Bulle“ als kaiserliche Gesetze

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hervorhob.

Diese Bemühungen, vor allem die Ordnungsvorstellungen, übten breite und schwerwiegende Einflüsse aus. Dagegen hatte man überhaupt nur wenige Sorge um die „Goldene Bulle“ als Texte. Jedoch, wenn auch sporadisch, benutzte man sie als einen geschriebenen Text, gegebenenfalls sehr bewusst. Darüber hinaus kann man darauf hinweisen, dass sie um 10 Jahren nach ihrem Erlaß stärker einheitlich wahrgenommen wurde als vorher.

Schließlich schienen diese Punkte zu den späteren Vorstellungen von der „Goldenen Bulle“ zu führen, dass sie die Ordnungen des Reichs —noch breiter als wirklich— bestimmen sollte.

## Developments of the Proportionality Analysis in Canadian Constitutional Law

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The purpose of this article is twofold. One is to elucidate the proportionality analysis in Canadian constitutional law, known as the “*Oakes test*”. The other is to derive the knowledge from the Canadian experience in order to construct the appropriate analytic framework for the justification of the limitation on the constitutionally guaranteed human rights in Japan.

Section 1 of the *Canadian Charter of Rights and Freedoms* contemplates that constitutional review of legislation under the *Charter* should proceed in two stages. In the first stage, the court decides whether the challenged law limits the rights and freedoms guaranteed by the *Charter*. In this stage, the burden of proving all elements of the breach of a *Charter* right rests on the person asserting the breach. In the second stage, the court decides whether the limits can be justified under the section 1 of the *Charter*. At this stage, the burden of proof shifts to the government (or other party) seeking to support the challenged law.

In *R. v. Oakes*, [1986] 1 S.C.R. 103, Dickson C. J. laid down the criteria known as the “*Oakes test*”. There are four criteria to be satisfied by a law that qualifies as a reasonable limit that can be demonstrably justified in a free and democratic society; (1) sufficiently important objective, (2) rational connection between limit and objective, (3) least drastic means, (4) proportionality between effects of measure and objective. The *Oakes test* provides the basic framework for analysis, and is applied flexibly, with

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sensitivity to the context to the particular law at issue.

The two stage review, the distribution of the burden of proof, and the proportionality test applying flexibly with sensitivity to the context of the particular case, are elements of sufficient importance for construction of the appropriate analytic framework in Japan.

## The Tokugawa Creation of the *ezochi*: States, Territories and Maps

Edward Kieran BOYLE\*

This essay shall examine the period between the delineation of an area known as the *ezochi* and its incorporation as Hokkaido by the new Meiji state in 1869, while focusing on the role of cartography in ontologically creating Japan in the early modern era. The general narrative of national modernization has provided the paradigm within which the connections between the state and its cartography have been analyzed, which occludes the manner in which cartographic practice enabled the creation and mobilization of both territory and the state itself. A map must be considered as both “a determined cultural outcome” and as “an element of material culture”, and from this should emerge a critical history of cartographic practice as contingent on social, cultural and technical relations at particular times and places, as operating within a “certain horizon of possibilities”. It is through outlining this ‘horizon’ in the case of the *ezochi*, and emphasizing that this horizon was not static but shifting over time, that a non-teleological history of the Japanese mapping of this territory becomes possible.

Early Tokugawa cartography served to not only (re)produce and extend *ritsuryō* Imperial space, but to define a barbarian area outside of this space, known as the *ezochi*. This is a process of cultural production that serves to authorize itself, that creates the *ezochi* as a bounded territorial space available for representation while rebounding the territorial authority of the state within this political space. The *ezochi* is thus rendered extant from both within and without, a cartographic cultural production of a political

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space that ultimately conceals the politics of its own creation. Keeping the focus consciously comparative shall serve to underline how a study of the cartographic creation of territory by a state has a wider resonance beyond its narrow empirical specificity, while not merely reducing the maps to a marker of something else. The manner in which different states create different territorial spaces, and the way in which different territories are created by the state remains a topic of vital importance.

The history of mapmaking in and of the *ezochi* is bound up with the spatial ideas that underpinned the maps. The territorial extent over which authority could be claimed and exercised was created on the map, while the knowledge structure within which this mapping was undertaken provided the codes of its own cartographic discourse. This discourse served to structure knowledge claims about territory, allowing knowledge to be made commensurable across the territorial expanse of the state's claims. In such cartography we note the state effect, the creation of the state through the combined discursive and institutional reflections of its activity. It is through such activity that there emerges a 'bounded' society as discursively and institutionally co-structured with the state itself, which enables the state's policies aimed at the control, regulation and government of the social world. What we see in such cartography is not merely the manner in which the state makes its territory legible, and thus exploitable, by the state, for through the material production of its territory the state makes itself.

This piece seeks to demonstrate that, firstly, cartography cannot be seen as merely a representation of space, but as a means by which spaces are produced. Secondly, I emphasize the importance of appreciating that representation on cartographic material is bound up with culturally-, as well as functionally-, determined spatial ideas, and that a deeper engagement with these fundamental ideas may be required if we are to recontextualize the production of maps within the history of their making. Thirdly, I seek to stress that cartography should not be reduced to merely reflecting greater material, cultural or state forces, but that it has a part in creating the very forces it seeks to represent.