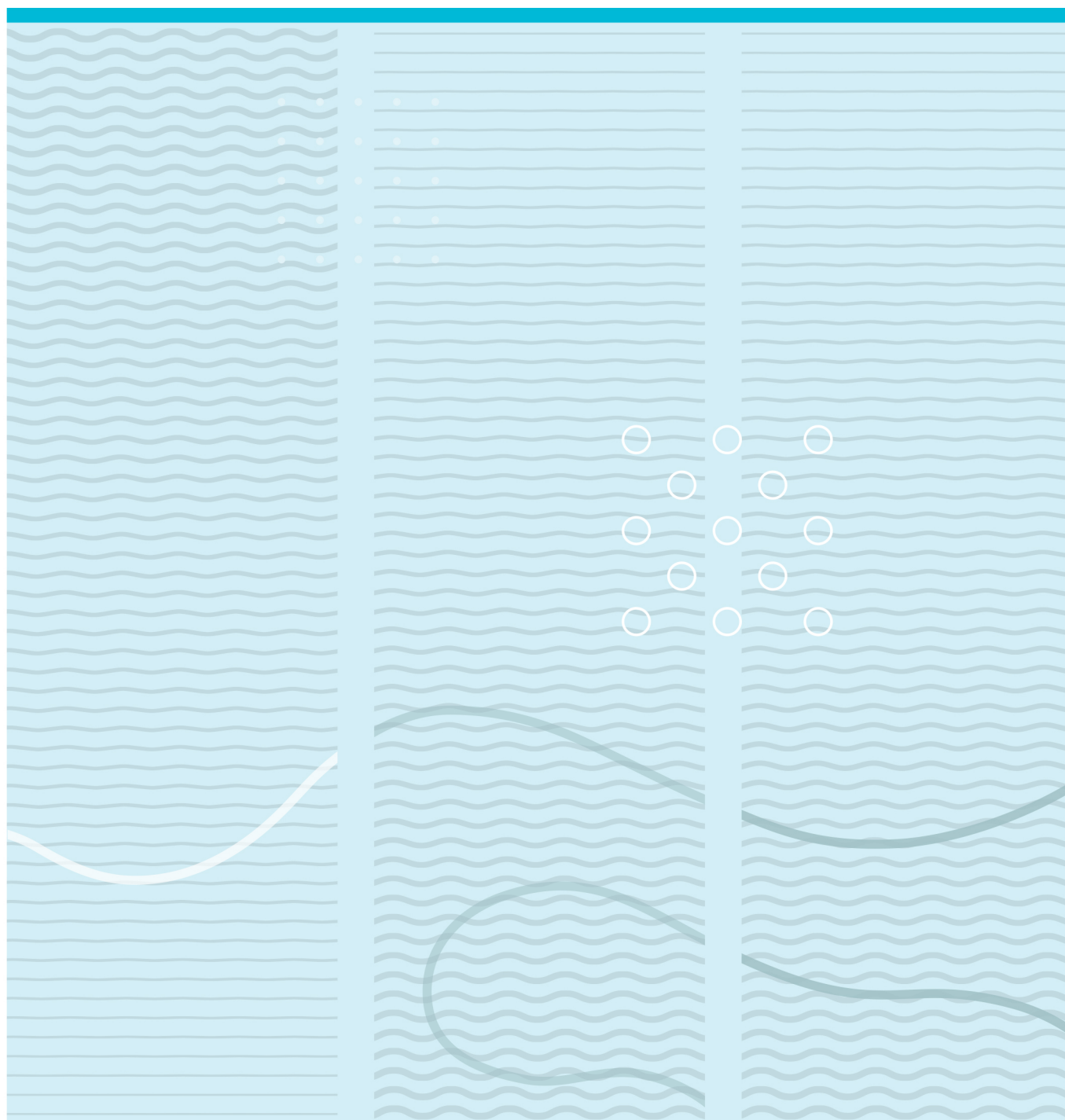


Aya Kato

**Power, politics and debate on the Convention on the Rights of the Child
Article 12 in Japan: barriers to implementation in education**



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This thesis is worth 45 study points

Abstract

This thesis examines tensions between the right of child democratic participation as an ideal encapsulated in the United Nations Convention of the Child Rights (CRC) and how this ideal has been implemented in Japan. Despite ratification of the CRC in 1994, the provision of Article 12 has not been endorsed in the national law of education. The thesis questions are a) Why is the CRC Article 12, ‘the right of the child to be heard’, not endorsed in Japanese education law? b) What are the obstacles preventing the full implementation of the CRC Article 12 in Japanese education? Derrida’s ‘hospitality concept’ is used as a theoretical framework to explore the possibility of including children and youth in the *demos*. The thesis presents and analyses Parliamentary debate data since 1991 to 2016 and interviews with policymakers and school authorities. Laclau and Mouffe’s discourse theory is applied in the Parliamentary data analysis. This thesis concludes that the Japanese government has prioritized public order at school over students’ individual human rights, and prioritized students’ contribution to the nation state over their democratic participation. These two norms have underpinned government policies since the late 1950s. The Japanese state has continued to emphasize economic growth and has opposed collective political action. An ideological ‘allergy’ towards collective protest since the Cold War provides the background to this policy, since Japanese society experienced large-scale and socialist-inspired student protests during this period. One party’s power domination since 1955 and the U.S.A.’s post WW2 democratization and military policy, which intended to contain communism in Japan, has supported this approach. Currently, in line with an economic policy which emphasizes ‘global’ competitiveness, students’ democratic action is intentionally labelled as ‘socialist’ in a political discourse that favours economic liberalism.

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List of Acronyms and Abbreviations

CRC	United Nations Convention on the Rights of the Child
DPJ	Democratic Party of Japan
GHQ	General Headquarters, the Supreme Commander for the Allied Powers
JCP	Japan Communist Party
JSP	Japan Socialist Party
LDP	Liberal Democratic Party
MEXT	Ministry of Education, Sports and Technology
MOFA	Ministry of Foreign Affairs
NFP	New Frontier Party
SDP	Social Democratic Party
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN Committee	United Nations Committee on the Rights of the Child

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Oslo

1 INTRODUCTION

1.1 Purpose of the thesis

Although the concept of human rights is commonly referred to when we want to speak of justice and morality for humanity and society, there is a paradox at its heart. When we consider how this concept is realized in international legal treaties, we see that although human rights are guaranteed by the state, at the same time it is the state that often violates them. This thesis will examine the tensions between the rights of child participation as an ideal contained in the United Nations Convention of the Rights of Child (CRC) (Article 12) and how this ideal is actually implemented in one nation state, Japan. The thesis will focus on one policy area: education.

CRC Article 12 is known as ‘the right of the child to be heard’ (Committee on the Rights of the Child, 2009, p. 3). The full text of Article 12 is as follows (United Nations, 1989):

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The CRC was adopted by the United Nations in 1989. Ratifying CRC is a sign for acknowledgment of the respect to child’s human rights and democracy. However, it does not necessarily lead government’s democratic progress all over the world. (Osler & Starkey, 2005, pp. 29-30). Article 12 is known as ‘the right of child participation’ (Committee on the Rights of the Child, 2009, p.4) but, at the same time, many scholars understand it as ‘the right to child democracy’ (Verhellen, 1992, p.81; Freeman, 2000, p.287; Kilkelly et al., 2005, p. 20; Alderson, 2008, p.109; Parkes, 2013, p.39 & p.148). Article 12 is considered to be one of the

core values of CRC but there has been controversy as to how it has been implemented in national contexts, especially in the area of education (Lundy, 2007, p. 928; Osler & Starkey, 2010, p. 104; Parkes, 2013, p.125). Japan ratified CRC in 1994 but it has not been endorsed in the national legal system because policymakers have been unable to agree on its value. It was finally endorsed in the child welfare law in 2016. (*Jido fukushi ho*: The Child Welfare Act, 1947, § 1-2 , [amended in 2016]) . However, it has not yet become part of Japanese education law.

1.2 Motivation

I have chosen this topic because the debate over CRC Article 12 raises a fundamental question: how should we understand and practice children's *right to democracy*?

I first learned about this Article and its scope in one of my course lectures. I was born and educated in Japan. Although it is long since I was at school and I myself am the mother of a six-year-old girl, I did not have any prior knowledge about the United Nations provision that children have the right to speak on matters affecting them. Of course, there is a democratic school council in every Japanese school, and it is very common that schools publish a school newspaper. However, the scope of Article 12 extends beyond these typical 'democratic' aspects of school life.

At the same time as I was learning about this Article, my daughter's nursery in Oslo had just started a small experiment. This involved abolishing 'lunch time' and opening a small 'café' in the classroom. Children were allowed to choose at what time to have lunch and could come and sit in the 'café' when they wanted to. The nursery soon got a lot of questions from parents about this change in policy, but I soon realized this was a way of putting Article 12 into practice. The nursery explained to parents that 'children have the right to decide when is the best time to stop playing and eat. "Eating" should not be forced.' This is a very small example, but I understood that they were trying to create a situation where young children, from the age of 2, could freely express their views. They tried to provide a tiny 'democratic' occasion where children could decide by themselves and not hesitate to express their views to adults. I tried to find out how this Article has been discussed in Japan. Surprisingly, I could not find any relevant material from civil society. However, I found a lot of discussion in Parliamentary debates. When I discovered this difference in awareness between the public and political spheres, I

suspected there might be a political obstacle to implementing the Article. This was the first thing that triggered my interest.

In the international legal context, post-WW2 human rights discussions begin with the Universal Declaration of Human Rights (UDHR) (United Nations, 1948). UDHR was drafted in the hope that the calamity of the Second World War should never be repeated (Nickel, 2007, p.7). As far as human rights policy is concerned, Japan's national legal system is based on its Constitution (The Constitution of Japan, 1946). Japan was one of Axis powers during the War, and its Constitution was drawn up in the aftermath of the war. This meant that the process of making the Constitution was synchronized with the drafting of UDHR. Briefly stated, the core values of the Constitution of Japan are three fundamental principles: pacifism; popular sovereignty; and respect for fundamental human rights (ibid). This means that fundamental human rights and democratic participation are supreme constitutional principles. As far as children's rights are concerned, some CRC rights were already legislated in the Constitution or in other laws before CRC was ratified. I find this very interesting: although Article 12 is interpreted as a democratic value, why it is not endorsed in the Japanese legal system, which is subject to a constitution that prioritizes popular sovereignty?

I think that Article 12 has been controversial in Japan for two reasons. Firstly, the Article's abstract nature makes it difficult to implement in practice. The Article does yet not provide an exact definition of what 'democratic value for children' means. Secondly, the process of implementing Article 12's 'democratic value' in the sphere of education easily leads to political conflict, since there is a fundamental challenge to the authorities' views of 'democracy'. We see that the core value of Article 12 requires democratic practice in any area affecting the child. However, when it comes to educational matters, there are other countries where policymakers are unwilling to endorse Article 12 (Lundy, 2007, p. 928; Osler & Starkey, 2010, p. 104; Parkes, 2013, p.125). Every education law has a political nature, since education is a fundamental concern in every nation state. Education is a reflection of the state's values. Hence, I presume that there are political barriers to endorsing this democratic value in education laws.

In this thesis, I focus on the process of implementing Article 12 in Japan and discuss the controversial aspects of this process. I explore how government authorities have interpreted this right and what are the obstacles to implementing it. This thesis aims to shed light on the political discourse about children's right to democracy. My focus is on the policy-making process.

1.3 Research question

This thesis attempts to examine Japanese policymakers' understanding of children's rights, through their interpretation of Article 12 of CRC, 'the right of the child to be heard'. In light of this, I want to answer the following research questions;

Principle research question:

Why is CRC Article 12, 'the right of the child to be heard', not endorsed in Japanese education law?

Subsidiary question:

What are the obstacles preventing the full implementation of CRC Article 12 in Japanese education?

1.4 Outline of the thesis

Chapter Two presents the background of this thesis's main theme, by presenting an overview of the international and national policy contexts. In Chapter Three, I examine previous academic research, mainly focusing on the scope of CRC Article 12 and its legitimacy, and factors that hinder its implementation. These processes have been discussed in previous research. In Chapter Four, I outline the theoretical framework underpinning my research. Chapter Five deals with methodology: research design, the data-gathering process, my position, and the limitations of this research. The next two chapters are concerned with data analysis. In Chapter Six, I discuss findings by employing discourse analysis while Chapter Seven uses interview analysis. Chapter Eight provides a conclusion to my research question about Japanese policymakers and the endorsement of CRC Article 12. I will also discuss possible further research.

2 CHILD PARTICIPATION RIGHTS- INTERNATIONAL AND JAPANESE POLICY

In this chapter, I examine the policy context with regards to CRC Article 12. First, I briefly reflect the background of CRC; I focus on Article 12, and identify its provision. Secondly, I summarize how the Japanese government has responded to endorsing this Article in education law after ratification CRC. Periodic reports from Japanese government and a report from the United Nations Committee on the Rights of the Child (UN Committee) are examined. This chapter aims to contextualize the difference between the core value postulated in Article 12, and the Japanese government's policy position on endorsing Article 12 in its education policy.

2.1 International policy

The CRC was adopted by the United Nations in 1989. It is the most widely recognized of all international human rights conventions, and is ratified by 195 nations. The only two states that have not ratified it are South Sudan and the United States. (United Nations, 2015). Historically, the rights of the child were first recognized in the Geneva Declaration (1924) (Verhellen, 2000, p.64). The practical drafting of the CRC at the United Nations began in 1978 and the document was adopted in 1989 (Verhellen, *ibid.*, p. 72; American Academy of Political and Social Science, 2011, p.263). The process started because there was a felt need to establish young people's concrete legal status and address the fundamental question of whether human rights should apply to children (Verhellen, *ibid.*, p.74). The aim of the CRC is often expressed in terms of the three 'Ps': provision, protection and participation (Lansdown, 1994, p. 36; Stern, 2017, p.4). Protection had traditionally been regarded as fundamental to children's rights, the right 'not to be abused, exploited, or denied access to fundamental rights and the fulfilment of needs' On the other hand, the concept of 'participation', which was focused on in the drafting process, is a more progressive one. (Stern, 2017, p.5). Poland took the initiative in the drafting of the CRC document (Verhellen, 2000, p.72-74). One of significant features of the CRC is that economic/social rights and civil/political rights legislation are covered by the same international convention (Osler & Starkey, 1996, p. 20). Cohen (1992, p.62) has analyzed the drafting process of Article 12 and other participatory Articles. He says that this work was begun at a time of political tension between East and West, a tension that had lessened by the time the CRC was adopted. Among the participatory rights, Article 13 to 15 (freedom of expression,

freedom of thought, conscience and religion and freedom of association) were proposed by the United States. However, Article 12 was proposed by Poland. (ibid., p.62-65). When we look at the whole process, we clearly see that Article 12 was drafted independently from the part of the document that dealt with freedom of expression (Article 13). However, it must not be forgotten that, in practice, these two rights are closely related.

Among the other articles in the CRC, Article 12 has considerable implications, both for young people and society as a whole. In 2009, the United Nations Committee on the Rights of the Child published General Comment 12. This comment was only concerned with Article 12 (Committee on the Rights of the Child, 2009). The UN Committee explained why it was necessary to consider Article 12 separately. The committee stated that there were political and economic obstacles to the implementation of the Article, and there were variations from nation to nation:

‘A widespread practice has emerged in recent years, *which has been broadly conceptualized as “participation”*, although this term itself does not appear in the text of article 12. This term has evolved and is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes.’ (ibid., § 3) (my emphasis).

Briefly stated, General Comment 12 identifies Article 12 as the right to ‘*participation*’, even though this term is not used in the original text. In this comment, the authors stress that children are ‘subjects of rights’ and their views should be respected ‘in all matters affecting the child’ (ibid., § 1) and ‘given due weight in accordance with age and maturity’ (ibid.). The UN Committee defined this right as ‘the right of the child to be heard’ (ibid.). The committee considered it to be ‘one of the four general principles of the Convention’ along with other rights such as ‘the right to non-discrimination, the right to life and development, and the primary consideration of the child’s best interests’ (ibid., p. § 3). It is not clearly explained why they chose to stress the right ‘to be heard’ in this comment. One might assume that by using this formulation, 20 years after the adoption of the CRC, the UN Committee wanted to say that it was not enough that children were allowed; they should be allowed to have real influence

In its General Comment 12 (2009), the UN Committee demanded that all member countries put the provisions of Article 12 into their domestic legislation (Committee on the Rights of the Child, 2009, § 65). UNICEF (2004) claims that in order to ensure children’s rights are

implemented, they must be established in a firm legal framework(p. 4). Norway is one example of a nation where the CRC is fully endorsed in domestic law: ‘The Convention has been embedded in Norwegian legislation in the Human Rights Act, cf. Item 2. And if there is discord between the Convention and other legislation, the Convention shall have precedence, cf. Article 3 of the Human Rights Act.’ (Royal Norwegian Ministry of Children, Equality and Social Inclusion, 2015, p.8).

2.2 Japanese national policy

2.2.1 Article 12 in Japanese legislation

Japan ratified the CRC in 1994. However, the full rights of the Convention were not endorsed in the national legal system until 2008 (a number of CRC rights were already part of the Constitution or other legislation). The Child and Youth Development Promotion Act (*Kodomo wakamono ikusei shien ho* [The Child and Youth Development Promotion Act], 2008, §2-2) endorsed Article 12 in 2008, and it was also later endorsed in the amendment to The Child Welfare Act, the principle piece of welfare legislation for children, in 2016 (*Jido fukushi ho* [The Child Welfare Act] § 1-2 (Amended 2016)). However, the rights embedded in Article 12 have not been endorsed in any education legislation. There is an inconsistency here that is problematic. We see that a right is endorsed in welfare legislation but not in education law, even though, for practical purposes, there is no neat division between the spheres of child welfare and education.

Saito (2000) examines the necessity for domestic legislation of the CRC in Japan. Generally, there are two ways in which international law is put into domestic legislation; adoption and transformation.ⁱ The Constitution of Japan is an example of adoption. Adoption implies that an international convention is applied without any need for domestic legislation. However, the subjects of international law are the states that sign up to conventions such as the CRC. The individual cannot not directly possess rights legislated into international law (pp.60-61). In short, ‘it is approved that the state parties are legally bound by the conventions in the relation with other states.’ (ibid., p.60). Hence, for international conventions to be applied, it is necessary for governments to pass domestic laws. Saito identifies eight educational areas where the provisions of Article 12 are not applied, areas where children’s views are not respected; 1. school rules; 2. disciplinary actions; 3. decisions on curricula and textbooks; 4. grade repetition;

5. choice of school; 6. choices of handicapped students; 7. school facilities and equipment: 8. school events. (ibid., p.67-68)

2.2.2 The UN Committee's response to the Japanese Government

I now want to focus on the history of Japanese government policy and the reactions of the UN Committee. The Government has submitted a number of periodic reports, from 1996 to 2017 (The Japanese government, 1996; 2001; 2008; 2017). In response, the UN Committee has published three Considerations of Reports (Committee on the Rights of the Child, 1998; 2004 and 2010). In these responses, particularly those that are concerned with the general principles of Article 12, the UN Committee is worried about the stress that Japanese children experience when competing for places in higher education (ibid., 1998, § 156). There is also criticism of official policy towards the difficulties that children of Korean origin (ibid., § 147). The Committee states that 'traditional practice and attitudes' are obstacles to the full implementation of Article 12 (ibid., § 706). The UN Committee is also concerned about the issue of child abuse. They recommend a comprehensive and multidisciplinary strategy for preventing any child abuse (ibid., 1998, § 153 & 174; 2004, § 37 & 38; 2010, § 49) that is the result of 'traditional' attitudes to children and a lack of respect for their views (ibid., 2004, § 27 & 28). The most recent Consideration Report, from 2010, strongly urges the full implementation of Article 12 (ibid., 2010, § 8, 43 & 44). We see that the UN Committee is repeatedly concerned about the Japanese Government's lack of attention to children's opinions, especially in child welfare services, guidance centres, and schools. The UN repeatedly states that this is because 'traditional views', which do not respect the child as a 'human being', stand in the way of implementation (ibid., § 43). The UN Committee strongly recommends 'comprehensive' legislation in order not only to endorse Article 12 but also to fully recognize the values of the convention (ibid. 1998, § 141; 2004, § 11; 2010, § 12) and establish consistency between the work of different government departments (ibid. 1998, § 142; 2004 § 11-13; 2010 § 12).

2.2.3 MEXT 1994 Administrative Notice concerning the CRC

Before reviewing the Japanese government's periodical reports, I want to focus on one important document, an administrative notice put out by the Ministry of Education, Sports and Technology (MEXT) (Table 1.)ⁱⁱ. This document was sent to teachers and school authorities just four days after the CRC was ratified in 1994 (Ministry of Education, Culture, Sports,

Science and Technology, 1994). With regard to Article 12, this notice provides information and guidance to the school authorities about how children can express their views at school. This advice is limited to ‘educational purposes’ (§ 4 & 5). The same notice points out that the right of children to be heard is limited in special situations, such as expulsion or suspension from school (§ 5). Here, I have to mention that the Japanese system of administrative notices has been regarded as problematic. Basically, Japanese ‘administrative notices’ are not legally binding documents; they are sent out by published by high-level ministries or other public

4. From CRC Articles 12 to 16, although the basic right to be heard and freedom of expression et al. are allowed, it is possible to instruct or guide pupils or students, and frame school rules for educational purposes, to a necessary and reasonable extent.

School rules are clear regulations for pupils or students for their healthy school life, as well as for their growth and development. These rules are the responsibility of each school.

As school rules are related to daily educational instruction, they should take account of pupils’ and students’ situations, their parents’ or guardians’ ways of thinking, local conditions etc.

5. Regarding Article 12 § 1, although the right to be heard must generally be given due weight, according to the age and maturity of the child, it is not always guaranteed that children’s views will be taken into account.

In schooling, the pupil’s or student’s actual situation must be considered, according to the age and maturity of the child. They should be instructed so that their education in a more detailed and sufficient way.

Table 1. MEXT 1994 Administrative Notice on the Convention on the Rights of the Child (Excerpt. Emphasis added and translation by the author)

bodies for the purpose of helping employees in lower echelons to interpret specific laws. However, these documents are usually influential in determining which procedures are followed.ⁱⁱⁱ

2.2.4 Review of Japanese Government’s periodic reports and the UN Committee’s responses

I now want to briefly review the periodic reports from the Japanese Government that are about the place of Article 12 in the education system. The Japanese government’s attitude with regard to Article 12 is consistent, from the first report to the most recent one. Government policy, based on the 1994 administrative notice, has not changed. (The Japanese Government, 1996, §

69; 2001, § 122; 2008, § 205; 2017, § 38). In short, MEXT, the ministry in question, has not changed its policy since the CRC was ratified. The 1996 report is of particular interest. Here, it is stated that this notice to educational institutions ensures ‘full attention is paid to the student’s condition *individually* with an opportunity to listen to the student carefully about the situation and his/her views’ (ibid., 1996, § 69). The third report, from 2008, says ‘Aspects such as the formulation of school regulations and organization of curricula do not *personally* involve *individual* children and are not considered to be subject to the right of expressing their opinions as provided for in Article 12’ (ibid., 2008, § 205). A similar sentence is found in the latest report, in 2017 (ibid., 2017, § 38). Briefly stated, the Japanese Government’s policy is that Article 12 in school should respect *individuals*, and there should also be respect for student council meetings when they state their views on different topics (e.g., revisions to school rules). However, in fundamental decisions about school rules or curricula, children’s opinions are not effectively to be taken into account. In each report, the terms *individually* or *personally* are frequently repeated.

Let us briefly contrast Japanese educational policy and welfare policy. It took time for the government to recognize Article 12 in its national legal framework after ratification. In 2016, in the amendment to The Child Welfare Act, it was endorsed in this fundamental welfare law for children (*Jido fukushi ho* [The Child Welfare Act]§ 1-2, Amended 2016). The main purpose of this amendment was to prevent child abuse, which had been on the rise for two decades (Ministry of Wealth, Health and Welfare, 2011). The Japanese government finally responded to one of main concerns of UN committees since 1998 (Committee on the Rights of the Child, 1998, § 153 & 174; 2004, § 37 & 38; 2010, § 49) by endorsing Article 12. In fact, prior to this amendment, Article 12 was endorsed in The Child and Youth Development Promotion Act (*Kodomo wakamono ikusei shien hō* [The Child and Youth Development Promotion Act], 2008, §2-2), in 2008. However, the UN Committee criticized this law since ‘there are no comprehensive child rights law in place’ (Committee on the Rights of the Child, 2010, § 11). As far as the amendment to the Child Welfare Act is concerned, the response of the UN Committee has not yet been published. This amendment could be understood as the first practical implementation of Article 12 into Japanese law.

Although there is a strong contrast between these two major areas of education and welfare, the UN Committee has been urging the Japanese government to improve its policy in both of these areas. On the one hand, MEXT policy has meant that there has been no progress in implementing Article 12 in the education system for over 23 years. On the other hand, improved

legislation has been passed in the welfare system, in an attempt to prevent child abuse. Nao (2017) examines the background to the passing of the Child Welfare Act legislation. According to her, to prevent increasing child abuse, the Japanese UNICEF Committee put a lot of pressure on Yasuhisa Shiozaki, Minister of Health, Labour and Welfare at the time (ibid., p.152).

2.2.5 Public Awareness of Article 12

The UN Committee has expressed concern about the lack of public awareness of Article 12 (Committee on the Rights of the Child, 1998, § 67; 2010, § 23). There is no comprehensive research data about the extent to which the authorities or the Japanese public are familiar with Article 12. However, keyword research on the database of *The Yomiuri Shimbun*, Japan's best-selling newspaper (over 9.000.000 copies) (The Yomiuri Shimbun, 2018a), brings up only seven articles about Article 12 since Japan's ratification (Yomiuri Shimbun, 2018b). Compared to this, the Parliamentary debate database shows that this issue was debated in 97 plenary sessions and committees, from 1994 until the Child Welfare Law amendment in 2016 (National Diet Library, 2018). We can conclude that the public are not familiar with Article 12, and this is why the UN Committee has urged the Japanese Government to run a campaign to raise public awareness. According to Kita (Kita, 2000, pp.223-224, cited in Nao, 2017, p.150), 'the public campaign of comprehensive CRC has been done by various levels of national, local government, citizen or employees' organization and at the child-parent level.' However, although such campaigning has given publicity to CRC, the focus has been on children generally, all over the world. There has been no real focus on the specific situation of Japanese children. Other campaigns stress children's obligations and responsibilities rather than their rights (ibid.).

We must conclude that the only substantive discussion about Article 12 has taken place at the national political level.

2.3 Summary

As I have shown above, the Japanese government has resisted the urgings of the UN to embed child participation rights in education law. The government argues that *individual* child rights are already protected under the Constitution or existing education legislation. The UN Committee has asked the Japanese government to revise school decision making processes, in order to take children's rights into account. However, the government continues to emphasize

individual rights and to resist changes that might allow children to express themselves *collectively*. According to the UN Committee, one possible reason for the Japanese government's reluctance may be its respect for *traditional values*, which do not give children the same right to be heard as adults. The UN Committee has continually urged Japan to campaign seriously in order to raise public awareness of the Article. On the other hand, the implementation of Article 12 has been frequently discussed in Parliament. In the next chapter, I will examine how CRC Article 12 has been discussed by academic researchers.

3 LITERATURE REVIEW

As I have said in Chapter Two, the UN Committee now officially defines Article 12 as ‘participation rights’ (Committee on the Rights of the Child, 2009). As the UN Committee acknowledges, this is a ‘unique provision in a human rights treaty’ (ibid., § 1); the CRC Article 12 puts forward a new human rights value. I will look at three aspects of how academic researchers have discussed Article 12: 1. the scope of Article 12; 2. young people’s right to participation; 3. young people’s right to democracy. Researchers have examined two issues regarding young people’s human rights: the right to *participate* and the right to *democracy*. I aim to examine the core values of the CRC Article 12 and to discuss the obstacles that stand in the way of ensuring that young people’s participation rights and democratic rights are framed in national legal systems. This process will lead me on to establishing my theoretical framework, which is the subject of the next chapter.

3.1 The scope of Article 12

Nickel classifies ‘elements of rights’ into four categories: ‘right-holders’; ‘scope (object)’; ‘addressees’; and ‘weight’ (Nickel, 2007, pp. 22-23). If we use Nickel’s classification, Article 12 may be understood as is shown in Table 2. The right-holders of Article 12 are ‘every human up to eighteen years’ (United Nations, 1989, Article 1) ‘who is capable of forming his or her own views’. Scope is ‘the right to express those views’ ‘in all matters affecting the child’. Addressees are ‘State Parties’. Weight is ‘being given due weight in accordance with age and maturity’ (ibid., Article 12).

The addressees of CRC are defined as ‘State Parties’. This is potentially paradoxical since although rights are assured by the government, it is the government that may violate them (Parkes, 2013, p.47; Osler, 2016, p.62). The UN Committee identifies the barriers to implementing Article 12 not only in education, but in other areas, especially ‘economic and political’ ones (Committee on the Rights of the Child, 2009, § 5). Lundy gives three reasons for why Article 12 may not be endorsed by educational systems: 1. The child’s competence is underestimated ; 2. The political power relationship between the young and the authorities; 3. A prioritizing of curriculum policy. (Lundy, 2007, pp. 929-930).

1. Right Holders	Child: every human up to eighteen years who is capable of forming his or her own views
2. Scope	The rights to express those views in all matters affecting child
3. Addressees	State Parties
4. Weight	Being given due to weight in accordance with the age and maturity of the child

Table 2 Article 12, understood in terms of Nickel's 'elements of rights' (Nickel, 2007, p.22-23)

The term 'child' is broadly defined. The CRC defines a *child* as any human up to the age of eighteen (United Nations, 1989, Art.1). The UN Committee recognizes the difficulty of defining children's maturity, when it comes to implementing of Article 12 (Committee on the Rights of the Child, 2009, § 30). The committee concludes that the child's capacity to express his/her views should be considered in a 'reasonable and independent manner' (ibid.). Henaghan (2017) criticizes the fact that Article 12 has two expressions that can have negative consequences: the word 'capable', which suggests that children have a limited ability to express their views; and the reference to 'age and maturity', which potentially limits the weight that should be given to these views (p.541). According to Parkes' investigation (2013) into the UN Committee's General Comment 12 (Committee on the Rights of the Child, 2009, § 20-21.), the expression 'capable of forming their own views' does not suggest any limitation. It rather places an obligation on State Parties to ensure that young people of any age have the greatest possible opportunity of expressing their views, in a variety of ways (Parkes, 2013, pp.32-33). As Henaghan suggests, although it is not possible for children's views to always be direct determinants, they must be 'listened to and respected' (Henaghan, 2017, p.541).

In order to be as clear as possible on what I mean by 'age', I will use Hart's terms (1992) in the rest of my thesis: 'child' indicates the pre-teenage years; 'teenagers' are from thirteen to eighteen; 'young people' denotes both age groups(p.4).

3.2 Young people's right to *participation*

Five articles in the CRC deal with young people's *participation* rights: Article 12 - 'respect for views'; Article 13 - 'freedom of expression'; Article 14 - 'freedom of thought, belief and religion'; Article 15 - 'freedom of association'; and Article 17 - 'access to information' (Parkes, 2013, p.39). Participation is considered to be the most significant value in children's rights debates (Hart, 1992, p.4; Lundy, 2007, p.928; Alderson, 2008, p.78). When the CRC was drafted, there was consideration given to how to define the areas of life where young people should have participation rights. It was initially thought that Article 12 should guarantee that young people should have the right to express opinions in spheres such as 'religion, political and social beliefs, matters of conscience, cultural and artistic matters, marriage, choice of occupation, medical treatment, education, travel, place of residence, and recreation' (Detrick, 1992, p. 226, cited in Parkes, 2013, p.29). However, according to Parkes (Parkes, *ibid.*, p.29), such a list might exclude some types of activity, and so the final draft did not define specific areas. The eventual formulation simply stated 'in all matters affecting the child' (United Nations, 1989, Art.12(1)).

Researchers have broadly discussed the idea of young people's participation. Hart (1992) emphasizes the value of enabling young people and those who assist them to have influence 'in the public domain: school, community groups, other organizations or informal groups beyond the family' (p.4). Young people's participation contributes to their protection, individual development, and toleration of others. It also improves outcomes and accountability in decision-making processes that affect them (Alderson, 2008, p.109; Lansdown, 2011, pp.5-9). The institutions that are expected to examine their practice are healthcare, education, social and legal services, and the family (Alderson, *ibid.*). Parkes (2013) examines the benefits for young people, as well as for the rest of society. She argues that young people should not just be contrasted to adults, nor should they be seen as merely potential or inferior members of society. She confirms that young people have needs, and that they have the capacity to express their own views (p.13). When it comes to education, Lansdown (2011) makes five significant suggestions: 'involvement of children in individual decisions affecting their education; the introduction of child-centered learning; the establishment of democratic structures within school; opportunities for children to inform the development and implementation of education legislation and policies; and support for national student organizations' (p.100).

Parkes examines a number of models for young people's participation: models proposed by Hart (1992), Shier (2001), Treseder (1997) and Lundy (2007). (Parkes, 2013, p.17-23). The first three models propose phased levels of participation, not only for Article 12, but for other participatory rights. Hart (1992) classifies the different levels of participation in eight steps, in a 'ladder of participation': 1. Manipulation; 2. Decoration; 3. Tokenism; 4. Assigned but informed; 5. Consulted and informed; 6. Adult-initiated, shared decisions with children; 7. Child-initiated and directed; and 8. Child-initiated, shared decisions with adults (p. 8). He problematizes the lower three rungs of the ladder: the first rung means participation without purpose; the second rung involves consultation without feedback; and the third rung has little or no input from the child. He categorizes these first three types as 'non-participation' (ibid., p.8-14). Shier comments that Hart's model defines not only levels of genuine participation, but also what kinds of situations should be classified as 'non-participation' (Shier, 2001, p.110 cited in Parkes, 2013, p.17). These three levels of 'non-participation' are often found in the public domain (e.g. at school), and it is sometimes believed that they involve genuine participation. Both Shier and Treseder's models conceptualize levels of participation, in the context of the CRC Article 12. Parkes comments that Treseder's model does not take into account the scope of the CRC (Parkes, ibid., p.19) and notes that Shier's model goes beyond the provisions of Article 12 (ibid., p.22). Lundy's model (Lundy, 2007, p.932) differs from the other models. She proposes that four significant conditions must exist for young people to express their views: 1. space, arenas need to be created in which views can be expressed; 2. a voice, children must be helped to express their views; 3. an audience, views must be listened to; 4. Influence, views must be put into action. This model is relevant for two reasons. Firstly, it is especially relevant for Article 12, and can be linked to the other rights contained in CRC such as; non-discrimination (Art. 2); the best interests of the child (Art. 3); the right to information (Art. 13); the right to guidance from adults (Art. 15); the right to be safe (Art. 19). Secondly, this model is non-hierarchical. Parkes (2013) praises Hart's 'ladder of participation' model, because it is able to define 'non-participation'(pp.24-25). However, she is largely critical of the other level-qualification models (Hart, 1992; Shier, 2001; Treseder, 1997), since they measure participation hierarchically, according to how old young people are. She criticizes these age-oriented levels, which ignore the fact that Article 12 makes no age distinctions (Parkes, 2013, pp.23-24). She also claims, citing Kirby and Gibbs (Kirby and Gibbs, 2006, p.211), that these models do not propose any ways by which young people can be helped to participate at the different levels. Parkes finds Lundy's model useful. It has a special relevance to Article 12, it can be linked to with other CRC participation articles and it has the capacity to

facilitate participation at all levels, even though it is specifically concerned with education. In conclusion, Parkes points out that all these models largely limit their discussions to educational or local settings, whereas the Article should be broadly applied across a range of different contexts. She concludes that for the implementation of Article 12, a fundamentally new model of participation is needed, one that can deal with all of the provisions of the CRC (Parkes, 2013, pp.24-25). As yet, an ideal model for Article 12 does not exist.

3.3 Young people's right to *democracy*

The CRC defines a number of participatory rights, and Article 12 has a special position in this piece of international legislation. In line with freedom of thought (United Nations, 1989, Article 13), expression (ibid., Article 14) and association (ibid., Article 15), those are endorsed in the CRC, the Article 12 is often discussed in the context of young people's *civil and political* rights (Kilkelly et al., 2005, p. 20; Osler & Starkey, 2010; p.101 Quennerstedt, 2010, p.623). The CRC's fundamental goal is often understood as ensuring the '3Ps'; provision, protection and participation (Lansdown, 1994, p. 36; Stern, 2017, p.4). However, Quennerstedt (2010) argues that this description veils the real meaning of the CRC. She insists that the document must be understood in the same way as we understand human rights for adults: civil, political and social rights. Even though the '3P' formulation was used to help young people understand the meaning of the CRC, this expression may prevent societies from revising their traditional understandings of young people, namely that they are vulnerable and must be protected (pp.632-624). Verhellen (2000) shares Quennerstedt's view, and states that five articles are *political* rights: Article 12 - 'freedom of opinion'; Article 13 - 'freedom of expression'; Article 14 - 'freedom of religion and conscience'; Article 15 - 'freedom of association'; and Article 17 - 'freedom of access to information' (p.79). A number of scholars discuss Article 12 from the perspective of young people's *democratic* participation (Verhellen, 1992, p.81; Freeman, 2000, p.287; Kilkelly et al., 2005, p. 20; Alderson, 2008, p.109; Parkes, 2013, p.39). Parkes discuss its significant role for young people, in encouraging them to exercise and respect democracy (Parkes, ibid., p.148). Verhellen (1992) wants young people to have full legal status (pp. 79-80). He claims that young people should be considered as having *civil* rights. In his words, young people's autonomy and self-determination is dependent on their legal status. He insists that 'the right to participate in democratic policy-making processes, the right to self-determination and the right to assert, these rights independently are the main pillars of human rights' for young people (ibid., p.81).

As for the implementation process, Kilkelly et al. claim that young people's civil rights and freedoms, including Article 12, have been disregarded and restrained (Kilkelly et al., 2005, p.10). Education policymakers have been particularly unwilling to endorse the Article (Lundy, 2007, p. 928; Osler & Starkey, 2010, p. 104; Parkes, 2013, p.125). Freeman (2000) argues that the CRC should put a greater value on young people's *citizenship* and Article 12 should be revised so that children can have real political influence(p.287). Citing Lucker-Babel (Lucker-Babel,1995, p. 396), Freeman suggests that children should be engaged in local decision making processes, such as decisions about the construction of new roads (Freeman, 2000, p.288) .

3.4 Young people's maturity and competence in pedagogical and political contexts

The fundamental discussion about how to implement the CRC is centered around the question of children's competence (Verhellen, 1992, p.79). Doubts about children's physical, intellectual and emotional maturity are a major obstacle to recognizing them as right-holders with views of their own (ibid., p.81). As I have discussed above, there are two different areas in which young peoples' competence is considered: young people's right to *participate* and their right to *democracy* (civil rights). Although these two rights sound the same and are interrelated, they basically belong to different dimensions. The right to *participate*, (even though in some cases there is a confusion with the right to *democracy*), basically refers to young people's autonomy and self-determination in issues that matter (Verhellen, 1992, p.81). In this sense, young people's *maturity* for self-expression is discussed in terms of a competence. The degree of *maturity* is demonstrated in different pedagogical contexts. According to Henaghan(2017), research on childhood has shown that young people are capable of expressing their views at an exceedingly young age (p.541). For example, Hart(1992) points out that even infants can exert influence through crying or moving (p.4). Alderson et. al (2005) discuss how the rights of the Article may be applied to premature babies, who are capable of expressing their views by moving or making sounds. Their research is based on examples of the behavior of babies in Neonatal Intensive Care Units (NICU) (pp.43-46). Not only age, but ways of expression matter in assessing young people's competence. Non-verbal forms of expression should also be recognized (Parkes, 2013, pp.32-33; Henaghan, 2017, p.541).

The competence of young people to take part in *democracy* as *citizens*, in other words, 'political maturity' (Earls, 2011, p.10) , is more controversial. As Earls claims, *citizenship* is a 'clutter' word. 'A variety of connotations and aspirations are embraced in its definition' (ibid.).

Ailwood et.al discuss citizenship in a similar way to Earls (Ailwood et.al, 2011, p.642). According to Earls(2011), citizen competence, as understood in Article 12, is a matter of ‘having the skills to assess and act with others to attain the common good’ (p.11). Even though young people do not have the right to vote, they have ‘opinions and preferences and capacities for deliberation and social action’ (ibid). Generally, in the adult world, obstacles to obtaining this type of citizenship involve questions of nationality, ethnicity and gender. In the case of young people, age is the obstacle (ibid.). Morrow (2002) points out that young people are excluded from ‘social life of the community’ simply because of their age (p.179). However, empirical research proves that young people have the political maturity to exercise citizenship by expressing their views. Henaghan (2017) refers to Doel-Mackaway’s research in Australia (Doel-Mackaway, 2016, p.2 cited in Henaghan, ibid, p.547). In accordance with Lundy’s four requirements for participation (Lundy, 2007, p.932), Doel-Mackaway conducted interviews with young Aboriginals, aged 10 to 17. She asked them about policies related to Aboriginals and found that her young respondents could make significant contributions to the political discussion (Doel-Mackaway, 2016, pp.246-248 cited in Henaghan, 2017, p.547). This means that young people of this age are politically mature, if, as Lundy suggests, the right conditions are provided (Lundy, 2007, p.932).

3.5 Legitimacy for young people’s right to democracy

Related to *citizenship*, *democracy* is a precious value in modern/postmodern society, and it has already been broadly discussed. It is difficult to identify what shape of democracy is conceptualized in Article 12. According to Mouffe(2005), democracy is the concept that distinguishes ‘who belongs to the demos and who is exterior to it’ (p.39). Thus, it is possible for young people to exercise democracy if they are liberated from age-marginalization, as Earls (2011, p.10) suggests in his discussion of the CRC. The young are kept outside the democratic boundary because of doubts about their competence (Verhellen, 2000, pp.79-81). However, there is empirical evidence of their political maturity (Doel-Mackaway, 2016, pp.246-248 cited in Henaghan, 2017, p.547). Verhellen suggests liberating young people from being excluded by giving them full legal status (Verhellen, 2000, pp.12-44). This discussion is one of the issues that are at the heart of debate about the CRC, especially Article 12 (for example, Matthews and Limb, 1998; p. 67; Shier, 2001, p.108; McCafferty, 2017, p.328).

Previous research has discussed young people's legitimacy and competence for democracy, in terms of Article 12. However, the biggest challenge for me in exploring the research is to find democratic theoreticians who propose a new theoretical framework for young people's democratic participation. Reynaert et. al., (2009) problematize the mainstream suggestion that Article 12 is 'preoccupied with highlighting the childhood image of the competent child' and that this 'pedagogical conception' was founded on the view of children's 'autonomy and vulnerability' and developed as a strong counter-argument for young people's rights, considering children as 'social actors, as active agents and autonomous, independent human beings' (Reynaert et. al., 2009, pp.520-521). They make the point that young people's right to participate is now considered 'the new norm in policy and practice, without questioning or problematizing this new norm' (ibid., pp.528). After reviewing 107 articles about young people's rights (ibid., p.520), they criticize the arguments for liberating young people, since these arguments over-emphasize young people's autonomy and vulnerability. These arguments, made by pedagogues, produce dogmatic views and would benefit from drawing upon insights from other academic disciplines, such as Political Science or Philosophy.

However, political philosopher James Bohman (2011) suggests that Article 12 can be legitimated if we approach it from another perspective. He argues that 'nondomination' and 'intergenerational justice' are rationales for Article 12. He discusses 'nondomination' by referring to Amartya Sen's capability approach (Sen, 1992) and Philip Pettit's 'rights of communication' (Pettit, 1997). In short, young people's democratic right should be assured in order to give them 'agency freedom...to attain their various goals, including justice' (Sen, 1992, p.111, cited in Bohman, 2011, p.132), and young people need corresponding 'power' in order to counter the 'power of arbitrary' (Pettit, 1997, p.69, cited in Bohman, 2011, p.135). According to him, Article 12 gives young people agency to exercise freedom and supports their empowerment and their right to resist domination by using 'communicative freedom' (Bohman, 2011, p.136). Bohman's discussion, based on Sen and Pettit, seems to share the view we find in the so-called 'pedagogical' context, the view criticized by Reynaert et.al. (2009, p.520), that nondomination can be achieved through exercising freedom by means of self-expression. Bohman's suggestion could counter Reynaert et.al.'s critique, which demands an interdisciplinary academic rationale for Article 12. Moreover, Bohman presents one more nondomination perspective, by using the concept of 'intergenerational justice'. He develops this perspective from Edmund Burke (Burke, 1790). According to Bohman, popular sovereignty should be understood as democracy exercised by the 'temporary possessor' (Bohman, 2011, p.137). He insists that democracy is a continuous historical process that

connects past, present and future actors. Each generation has past/future- oriented rights and obligations. The present possessor is influenced by past possessors, and, in many cases, present polity is linked to past injustice and harm. Through reconsidering the legacy of past generations, the present possessor can change current politics. Present possessors should have future possessors in mind when they act politically, and future possessors should be free from the domination of present possessors (ibid., pp.137-138.). For example, environmental issues involve decisions that will affect future generations (ibid., p.137). Each possessor must free him/herself from the domination of previous generations in order to exercise genuine democracy. From this perspective, democracy currently has an asymmetric bias; there is no respect for the future (ibid., p.138). Bohman claims that under Article 12 young people have a *right to democracy* in order to avoid domination from the adults who are the present possessors. This ‘intergenerational justice’ is Bohman’s third rationale for liberating young people from domination.

However, the relative lack of interest in Article 12 shown by theoreticians of democracy causes problems at the level of implementation. Stern (2017) discusses this issue, referring to a Swedish case. Since the Swedish government started a strategy to address Article 12 as ‘the democracy article’ in 1999 (p.145), various questions were raised. ‘What is meant by “democracy”? Who takes part in democratic processes: power, influence, a feeling of inclusiveness?’ (ibid., p.149). These ‘democracy’ discussions also raise the question of ‘whether or not children are citizens in every sense of the world’ (ibid.). According to Stern, even though young Swedish people’s voices are reflected in various pieces of legislation and policy, the presence of those voices is regarded as a ‘good thing’ rather than a ‘necessary thing’. She compares the hierarchical bias, where young people are ‘subordinated to adults’, to ‘the gender order, where women are subordinate to men.’ (ibid., pp.149-150). The Swedish case suggests that even though democratic participation is demanded by young people, full citizenship is still fully or partly denied them, in the same way as the nation state refuses to give citizenship to refugees or others excluded from the *demos*. As I have pointed out, only a few political theorists, such as Earls (2011) or Bohman (2011), have discussed young people’s democratic rights in the context of Article 12. According to Stern (2017), historically ‘from Robert Dahl to John Rawls’ (Cohen, 2005, p.221 & 223, cited in Stern 2017, p.78), democratic theorists have not concerned themselves with children’s democratic participation (Stern, ibid., p.78).

3.6 Summary

The CRC Article 12 has proved problematic, because of its wide range, and because of the concepts of ‘weight’ and ‘age’. These points make this Article problematic, both theoretically and practically. Basically, Article 12 contains two contradictions. Firstly, although the Article has a very broad definition of ‘young people’s age’ (0 to 18), it also states that the weight given to children’s views should take account of their age and maturity. Thus, the *competence* of young people is questioned. Secondly, Article 12 is about the right to participation and the right to democracy. However, the addressees of the Article are State Parties. Here is another fundamental contradiction: how can the state guarantee young people democracy, since democracy is exercised by the *demos*, but the State has the power to define the *demos*? Where is the *legitimacy* for claiming democratic rights from the state? Previous academic literature has mainly discussed how these two contradictions might be reconciled, in order to implement Article 12. In short, young people’s *competence* and *legitimacy* for democracy remain main concerns in implementing of the Article.

4 THEORETICAL FRAMEWORK

This chapter presents the theoretical framework underpinning my thesis. I will use Jacques Derrida's concept of 'hospitality' (Derrida, 1997: 2000) as my theoretical perspective to underpin my analysis in Chapter Five. As I have discussed in Chapter Three, the fundamental demand of Article 12 is that society accept young people's democratic participation in a world that has been dominated by adults. In Bohman's words, it is adults who are the 'present possessors' of democracy (Bohman, 2011, pp.137-138). Derrida's 'hospitality' concept addresses the question of justice when society faces a newcomer. He claims it is necessary to open society's boundaries for these unfamiliar persons/things. Through discussing the concept of 'hospitality', I aim to clarify why we have to open our doors to young people who have been excluded from society, and whose democratic participation has been restricted.

4.1 Citizenship and Derrida's concept of 'hospitality'

As Earls (2011) and Stern (2017) suggest, young people are alienated from citizenship on grounds of age, and we can compare them with other groups who have been marginalized in our democracies because of their nationality, ethnicity and/or gender. Jacques Derrida discusses the boundary of citizenship which divides citizen from noncitizen, by using the concept of 'hospitality' (Derrida, 1999; Derrida & Dufourmantelle, 2000). According to Baban and Rygiel (2017), 'the border between citizen and noncitizen' has been created in 'necessarily hierarchical' ways (p.101) through the state's power to put in place qualification processes. Baban and Rygiel claim that a distinctive feature of Derrida's 'hospitality' concept is that he views the question of qualification for citizenship from the perspective of the alien rather than from the perspective of the powerful (ibid., p.104). I find this perspective useful for the main theme of my thesis. Derrida's concept of 'hospitality' helps us to address the question of why society should accept young people as citizens, and as claimants of democratic rights.

Derrida's notion of 'hospitality' was a central part of his argument that the state had to open its boundaries to provide asylum or refuge (Derrida & Dufourmantelle, 2000, p. 17). He developed the concept when he considered how we could justify accepting someone who is alienated from society. The concept of 'hospitality' has been adopted in a number of fields, such as law (Stronks, 2012), gender (Davids, 2014) and education (Ruitenberg, 2011). In all of these fields, there is a concern for people alienated from society, such as immigrants, women

or students. Historically, the state has restricted or denied the democratic rights of excluded groups, because of differences in nationality, ethnicity and/or gender. My thesis is concerned with exclusion on grounds of age, and I want to explore why ‘hospitality’ should be shown to young people, in order to give them justice and invite them into the democratic sphere. I examine Derrida’s ‘hospitality’ concept in detail and discuss how the concept can be applied to the notion of citizenship.

4.2 ‘Hospitality’ and ‘Unconditional hospitality’

Derrida is well-known for his rhetorical devices. ‘Hospitality’ is one of his rhetorical expressions, and is primarily employed in his discussion of why we must display justice in accepting alienated people into society. He presents the concept of ‘hospitality’ in *A Word of Welcome* (Derrida, 1999) and *Of Hospitality* (Derrida & Dufourmantelle, 2000). Derrida’s discussion is developed through the so-called method of ‘deconstruction’. According to Still (2010), deconstruction is a theoretical procedure that goes beyond and finds hidden realities or justice by contrasting two opposed concepts; for example, ‘self and other, private and public, inside and outside, individual and collective, personal and political’ (p.4). Haddad (2010) states that by applying the procedures of deconstruction, “text” is to be understood not simply as literal writing on a page, but [can be] extended to any structure involving inscription and repetition understood in a very wide sense, including institutions, consciousness, and experience’ (p.115). An outcome of Derrida’s deconstruction process is that ‘two original terms are shown to share a relation to a new “concept” that exceeds them both’ (p.117). Hence, the concept of ‘hospitality’ is an attempt to find a new institutional, conscious and experimental reality outside of the text, through contrasting two conflicting concepts where there is ‘an unresolved tension’ (ibid.).

Derrida starts this discussion by proposing ‘unconditional hospitality’ (Derrida, 1999, p.48). He puts forward an extreme, ideal situation and asks whether it is possible for the host to welcome the completely unknown ‘other’ without there being any identification process (Derrida, ibid., pp. 45-54; Derrida & Dufourmantelle, 2000, p.15). Ruitenberg, in his discussion of Derrida’s ‘unconditional hospitality’ (Ruitenberg, 2011, pp. 31-32) states that usually, in a situation where a host is a welcoming guest, hospitality will be given to the stranger after he has said who or what he is. According to Ruitenberg, in this ordinary welcoming situation, the host is ‘who is aware of her or his indebtedness to the guest.’ Through receiving hospitality, the

guest admits his debt to the host (ibid., p.31). However, Derrida's notion of hospitality imagines very different conditions. Derrida (1999) names this type of hospitality 'unconditional hospitality'. In 'unconditional hospitality', the host is required to welcome a guest who is not yet identified (Ruitenberg, 2011, p.32). This means that, unlike the normal practices of hospitality, the host does not feel indebted, nor does the guest feel s/he has a debt to the host. This is the basic definition of Derrida's 'unconditional hospitality'. Through this concept, he poses an extreme ideal: could we welcome an unknown guest without any process of identification? He applies his technique of deconstruction in contrasting 'unconditional hospitality' and 'conditional (ordinary) hospitality'. To the question about the possibility of unconditional hospitality, Derrida's answer is, 'we must say yes' (Derrida, 1999, p.29 & 35). I will return later to why we also 'should say yes'.

Next, Derrida discusses this hospitality in relation to citizenship. 'Citizenship is given or refused on the basis of territorial law or the law of blood relationship, the foreigner is a foreigner by birth, is a born foreigner.' (Derrida & Dufourmantelle, 2000, p.87). This is the metaphor Derrida uses to describe alienated people outside of society, e.g. 'the deported, the expelled, the rootless, nomads'(ibid.). In usual hospitality situations, the host will open the door after asking a guest who and what she is. In a similar fashion, the state gives citizenship to people who have certain qualifications. However, Derrida demands that society offer 'unconditional hospitality'. He challenges fundamental understandings of whether society should accept newcomers who do not have the required qualifications. As I mentioned above, this is his deconstruction procedure; he draws our attention to the boundary that divides ordinary hospitality, which requires the guest to identify himself, and 'unconditional hospitality', which requires no such identification. He applies this procedure to the question of citizenship, raising questions about the boundary between someone who is qualified for citizenship and someone who is not. He claims that we should consider the extreme possibility of welcoming the alien into our society without the screening process that citizenship usually requires. Of course, this may not be possible in the real world. However, Derrida aims to reveal the power that the state exercises when it submits the alien to undergo a citizenship screening process. Through the process of labelling another person an 'alien', the state tries to justify a process that distinguishes 'us' from 'the other'.

Moreover, Derrida asks 'what becomes of the welcome when the subject-host takes on the attribute of being hostage?' (Derrida, 1999, p.58). Hospitality without any identification means that there is no indebtedness between host and guest (Ruiteberg, 2011, p.31). Hence, the

relationship between host and guest becomes an equal one. Baban and Rygiel (2017) explain that ‘Derrida turns the logic of hospitality upside down by indicating that the act of hospitality is not something that the host offers, but is, instead, the stranger’s right to claim’ (p.104). Through contrasting ‘unconditional hospitality’ and ‘usual hospitality’, Derrida wants to find out what distinguishes ‘us’ from ‘the others’; in other words, what divides ‘citizen’ from ‘noncitizen’.

He also refers to notions of ‘law’ and ‘right’. ‘Absolute hospitality should break with the law of hospitality as right or duty’ (Derrida & Dufourmantelle, 2000, p.25). This sentence means that, generally, domestic law gives the citizen rights and duties. However, this ‘law’ itself may justify refusing to admit or include alienated people, in the name of right and duty. Derrida tries to break down the justifications of the nation state and develop a law based on a new conception of justice. Stronks (2012) applies the notion of hospitality to immigration law. He refers to the relationship between ‘Law’ and ‘law’:

‘In other words, hospitality is a self-contradictory concept. It does matter whether laws or the Law prevails. If the Law is given too much space, hospitality can easily turn into xenophobia, which relates to the collusion of power and hospitality. After all, the power of the host implies that he will select and filter the visitors and guests as he would otherwise lose the sovereignty of his home (because, for example, too many people would enter his home or someone would take over his power). This power consequently implies a certain inclusionary and exclusionary force at the very threshold of the right of hospitality.’ (p.75)

In this way, Derrida enables us to think about what really distinguishes the citizen from the non-citizen. His perspective shows us the boundaries of citizenship.

4.3 ‘Hospitality’ in the context of Article 12

In chapter Three I cited Earls (2011), who states that young people are alienated from decision-making processes because of their age. Ruitenberg discusses Derrida’s notion of ‘hospitality’ in relation to school (Ruitenberg, 2011, p.32) and, in a similar fashion, I think it is possible to apply the concept to the relationship between young people and the state. I would argue that young people, on grounds of age, are alienated from democratic procedures just as immigration laws alienate people from residence on grounds of nationality. As I discuss in Chapter Three, young people have been marginalized from democratic participation.

I think it is possible to apply the concept of ‘unconditionality’ to Article 12. Using Derrida’s vocabulary, the unfamiliar stranger to be welcomed is the child, and the place where the child should be shown ‘hospitality’ is the world of democratic procedure: school, judicial procedures, politics and other decision-making processes that matter to the young. We need to consider why our society, as ‘host’, should open its democratic door to young people, or ‘guests’. We should consider what divides the adult citizen from the young non-citizen, or what divides the present possessor of democracy from the future possessor. Derrida states: ‘The law of hospitality, the express law that governs the general concept of hospitality, appears as a paradoxical law, pervertible or perverting.’ (Derrida, 1999, p.25). What Derrida says here is directly applicable to Article 12. Let us apply what Derrida says: Article 12, the law of (genuine) hospitality, requests the state to open the border of democracy for young people. This means that Article 12 requests the State Party to genuinely show ‘hospitality’ to young people. However, a number of states, for example Japan, adhere to the ‘paradoxical (national) law’ with its rights and duties. Derrida continues, ‘The law of absolute hospitality commands a break with hospitality by right, with law or justice as rights.’ (ibid.) This sounds as if he is denying right or justice, the very foundation of the law. However, he goes on to say that this process is able to ‘set and maintain it in a perpetual progressive movement’ (ibid.). This is very core of his concept of ‘unconditional hospitality’. Through his invitation to newcomers, without submitting them to any identification process, he intends to reveal the real obstructive behavior of the nation state and work to reconstruct its values and rules of justice.

Derrida’s concepts are relevant to the implantation of Article 12 in national legal systems. National law guarantees ‘rights’ to citizens. However, here there is a paradox. The law that grants rights to citizens excludes unqualified non-citizens outside the nation’s borders. Of course, generally, there is a reason why we have to distinguish between citizen and non-citizen. Discussion of Article 12 suggests that it is only age which defines the current border between young people and adults. However, as research suggests, age does not necessarily correlate with competence. From this assumption, it is natural to presume there are other factors that exclude young people from democratic participation. According to Haddad (2010), Derrida’s ‘unconditional hospitality’ concept ‘demonstrates how norms cannot serve as the basis for an ethics, politics, or religion that would be beyond the threat of destabilization.’ (p.128). Following Haddad’s interpretation, it would seem that there are some norms that stand in the way of young people’s democratic participation. It is these norms that I aim to discover in this research project.

4.4 Summary

In this chapter, I have discussed the theoretical framework of my thesis. Derrida's 'hospitality' concept is adopted as a lens through which the theme of this thesis can be viewed. The concept leads me to try and identify the real obstacles that prevent the implementation of Article 12 into national law. What are the 'norms' which exclude young people from democratic participation? In order to investigate this question, I will present my data and analytical methods in Chapter Five.

5 METHODOLOGY

In this chapter, I will present my methodological design. Firstly, let me restate my research questions:

Why is the CRC Article 12, 'the right of the child to be heard', not endorsed in Japanese education law?

What are the obstacles preventing the full implementation of the CRC Article in Japanese education?

In answering these questions, I will outline my research objectives:

To *identify* how policy-makers understand democracy for young people, as encapsulated in the provision of Article 12;

To *consider* how policymakers differentiate between young people and adults in terms of citizenship;

Through this process, I want to *identify* the factors that obstruct the endorsement of Article 12 in Japanese education law.

In the sections below, I present my research design and show my data collection and analysis strategies. I also discuss ethical considerations.

5.1 The researcher's role: from objective standardization to subjective nuances

According to Fine et. al. (2000), the researcher's role has historically been 'neutralized, minimized, standardized, and controlled' (p.108). However, they also emphasize our reflexivity in the research project (ibid., p.109). From a postmodern perspective of decentered identity, research should not emphasize 'common' biases but 'different' nuances. The value of conducting qualitative research is that it examines phenomena which are difficult to access (Silverman, 2006, p.43). Following these writers, I believe the qualitative approach is the most suitable one for my thesis, which aims to identify complex differences in the interpretations of CRC Article 12. In their attempt to counter the skepticism sometimes expressed by quantitative researchers, Gergen and Gergen (2000) suggest qualitative research has four components; reflexivity, multiple voicing, literary styling, and performance. In short, they believe that the

researcher's personal reflections can enrich his/her work. And they encourage multi-voicing, which can provide conflicting interpretations that prevent biased conclusions. They also insist that findings should be expressed in such a way to avoid singularity, and that the researcher be performative in his/her research, transcending the boundaries, for example, between insider and outsider, researcher and researched (pp.1026-1027). I believe that discourse analysis and my interviews, which I discuss in detail in later chapters, enable multiple voicing. And the mapping style will help to prevent a singularity of findings. Moreover, my own Japanese background and experience will enable me to examine my data in depth; historically and culturally. My position in this project is not a traditionally objective one, but a subjective one, which prioritizes the identification of nuanced differences in interpretations of the CRC Article 12. I kept writing a diary throughout my research. It helped me to be reflexive in the procedures or conversations with my informants, and findings from data analysis.

5.2 Research design

According to Hancké (2010), social science has three essential steps: to 'engage with an existing debate'; to enable the 'construction of a puzzle'; and to find the 'most convincing solution', (p.234). In chapters Two to Four, I discussed the 'existing debates', both in the attempt to implement the Article and in the work of researchers. This chapter describes the other two steps: my thesis construction design and my strategies for answering the research question. First of all, I aim to investigate my research question from a constructivist perspective. In a post-modern context, there is not an emphasis on social construction; it is rather language itself that matters. For some researchers, language has a significant meaning for understanding the social world (Bryman, 2012, p.540). According to Parsons (2010), 'constructive arguments claim that people do one thing and not another due to the presence of certain "social constructs": ideas, beliefs, norms, identities, or some other interpretive filter through which people perceives the world' (p.80). Buckler (2010) explains the postmodern position in social science: 'we live within dominant "discourses"- linguistic structures that condition not only our views of the world but also our self-understandings, how we see our place in the world and what we see to be the opportunities and choices available to us'. (p. 170) In these social discourses, each subject's identity is given 'in the structures within which we operate and though which we see the world.' (ibid.). Following Buckler, I would say that Article 12 does not identify any concrete subject - of course, it is concerned with young people but, they are contextualized according to their role; son/daughter, student, member of the local community, citizen with full legal status but maybe

without the right to vote. Individuals are identified differently, depending on the context. Moreover, their identity depends on their beliefs or thoughts about specific issues. At the same time, the policymakers that I have investigated also have different identities in different contexts. Their identities are decentered and reflexive in the discourse. This is a post-modern perspective. For example, when reporting on a political figure, I focus more on the content of his/her speech (discourse) than on his/her membership of a political party. However, I do give the political party.

From this post-modernist position, it is natural to adopt discourse analysis. My thesis does not aim to identify ultimate justice and evil, what is wrong and what is right in the area of my research. Rather, as Foucault (2000) claims, ‘it would be wiser to consider that those with whom one disagrees have made a mistake, or that one hasn’t understood what they were trying to do.’ (p.297). In that sense, this thesis emphasizes the different ways in which policymakers have interpreted the CRC Article 12. My research aims to contrast these understandings of Article 12 in Japan. As discussed in Chapter Two, this issue is not often discussed at the public level but is frequently debated in Parliament. Hence, I have investigated the official Diet (Parliament) records in order to access this data.

5.3 Sample

5.3.1 Parliamentary debates

The Japanese government has archived all debate data since 1922. This data is available in digital format (National Diet Library, 2018) and can be searched by using keywords. I used the combined keywords ‘the right to be heard’ and ‘child, pupil, or student’ to find the appropriate debates. The period I searched was from April 9, 1991 (when the keyword ‘the right to be heard’ was firstly recorded) to May 6, 2016 (when the Child Welfare Act was amended in order to include the provisions of Article 12). The debates were recorded in 97 plenary sessions and committees. In ordering this data, I have followed the categorization used by The Northern Ireland Commissioner for Children and Young People (NICCY) (Kilkelly et al., 2005, p. 15). NICCY organized their research information into six categories, related to children’s lives and specific areas where their rights are implemented: 1. General measures of implementation; 2. Family life and alternative care; 3. Health, wealth and material deprivation; 4. Education; 5. Leisure, play, recreation, culture and the arts; and 6. Youth justice and policing. I have added

two further categories: 7. General policy making process; and 8. Others. Table 3 shows this categorization and the number of debates. I have investigated 53 debates from the category of ‘Education’. Besides these 53 debates, I use the discourse categorized in ‘general implementation’ and ‘general policy making process’ to comprehensively examine how policy-makers interpret the CRC Article 12. Hence, the discourses which I analyze include 73 debates, at plenary sessions and permanent or special committees in the Diet.

Themes	Debates
1. Education	53
2. General implementation	16
3. Family life and alternative care	14
5. Health, welfare and material deprivation	5
6. Criminal justice and policing	4
7. General policy making process	4
8. Play and leisure	0
9. Others	4
Total	100 ¹

Table 3 Frequency of political debates about the right of the child to be heard.

Period: 9/04/1991 (when key word ‘the right to be heard’ was firstly recorded) – 26/05/2016

**1 Though the political debates were recorded in 97 plenary sessions and committees, three belong to two different categories. Thus, the total number of debates is counted as 100.*

5.3.2 Interviews

I also interviews, in order to collect data that went beyond the Parliamentary debates. Initially, I had planned to conduct interviews with policymakers in the summer of 2017, in Japan. I made a candidates who had head key roles in the 97 debates, and tried to arrange interviews with MPs, references at the Parliament debates and central MEXT government officials. However, it was difficult to gain access to these people, for two reasons: firstly, I had limited access to policymakers; and secondly, there was a number of big political scandals in 2017, involving MEXT government officials. Table 3 gives an overview of interviewees.

Policymakers: I intended to interview five candidates through formal procedures, by contacting their offices, but there was no positive response. It is not easy to access Japanese public figures because of the size of the population (they have always plenty of requests from citizens), and there is a closed climate for academic research. However, using personal contacts, I was able to talk to two key figures from the debates; a former Member of Parliament (currently a mayor

of a municipality in Greater Tokyo), and a member of the Child Welfare Act revising committee. In the case of the former Member of Parliament, I was at a social event he was hosting and managed to talk to him. I later followed up this conversation with a formal interview.

MEXT Government officials: I wanted to interview MEXT government officials. However, in February and May in 2017, there were the big scandals known as ‘the Kake and Moritomo scandals’ (The Guardian, 2017). These concerned the establishment of new private schools. In each case, two school operators who had a close relationship with Prime Minister Abe and his wife were suspected of benefitting from their connections (ibid.). In one of these scandals, ‘former top education ministry bureaucrat Kihei Maekawa reaffirmed ... his assertion that top officials in the government manipulated key decision-making processes to [benefit] a close confidant of Prime Minister Shinzo Abe.’ (Osaki, 2017). This claim has created a climate of suspicion between the cabinet office and MEXT. I initially tried to contact officials through an acquaintance in MEXT. However, she gave up on trying to introduce her colleagues because of the political tensions. In short, members of MEXT were sensitive about discussing MEXT policies and political issues. However, my acquaintance herself finally agreed to be interviewed.

My thesis aims to focus on decision-making processes in central government. Initially, I did not intend to interview anyone outside of central government. The reason why I did not plan interviews for members of local councils is that any legislation concerning municipal by-laws must accord with national law (*Chihō Jichi Hō* [Local Autonomy Act], 1947, § 14.2). This means that until national law is amended, there is no practical legislation at the local level. However, because there were challenges in finding central government policymakers, I conducted three interviews with people working at the local level: one civil servant engaged in education policy and two schoolteachers.

I adopted convenience and snowball sampling (Bryman, 2012, pp.201-202), because of the above-mentioned access challenges. However, as Bryman suggests, it is not possible to generalize from findings which are gathered in convenience and snowball sampling. Such data can only be used in connection with other findings (ibid., p.202). Therefore, I have used the Parliamentary debate data to outline the answer for my research question, and I have used interview data to complement findings from the Parliament discourse analysis. Table 4 shows participants’ sex, professional role and the dates of interviews. I use fictional names to ensure anonymity.

No.	Participant	Sex	Professional role	Date of interview
1	Mariko	F	Preschool teacher	02.07.2017
2	Asako	F	Vice-principal at Secondary High school	10.07.2017
3	Takashi	M	Member of Child's Welfare Act revising committee	10.07.2017
4	Yuki	F	MEXT government officials of	18.07.2017
5	Ken	M	Local government officials	03.08.2017
6	Hitoshi ^{iv}	M	Mayor of a municipality in Greater Tokyo, formerly a MP	03.08.2017

Table 4 Interviewees - overview

5.4 Fieldwork

Both open-ended and face-to-face interviews were conducted. An open-ended interview has relatively few questions, and the interviewee is then allowed to respond freely, with the interviewer simply responding to points that seem worthy of being followed up' (Bryman, 2012, p.471). In my case, because the interviewees had different professional roles and varying degrees of knowledge of my research topic, it was difficult to prepare a common set of questions. According to Silverman, an open-ended interview allows participants to be talkative and one can obtain nuanced data (Silverman, 2006, p.112). Considering the purpose of my thesis, which was to identify different understandings of the CRC Article 12, flexible interviews would allow me to gather detailed data. Thus, I believe open-ended interviews were most suitable for my research. The face-to-face style has the advantage of producing lively engagement between interviewers and respondents. Because of my schedule and its limitations, one respondent (No.3 Takashi) gave answers by e-mail. All interviews were in Japanese, which is the mother tongue of all interviewees and myself. I recorded my interviews by digital recorder and made full transcripts in Japanese. All quotations in Chapter Seven are my translations into English.

5.5 Discourse analysis

I adopt discourse analysis for investigating Parliamentary debate data, in accordance with the theory established by Lacau and Mouffe (2014). In their 'Hegemony and socialist strategy: towards a radical democratic politics', they outline how we can understand politics or society through discourse. According to them, no practical 'society' exists (ibid., p.82). The unity of society is postulated in discourse, in the shape of the aggregation and disaggregation of elements of words. Hence, this discursive 'social' is constantly 'overflowing' (ibid., p.100)

Every social practice consists of discursive articulation, because the social is constructed in different people's thoughts or beliefs (ibid., p.100). In their theory, they regard the differential points of discourse as important, and call the process that focuses on these points as 'articulation' (ibid.). Articulation practice means 'the construction of nodal points which partially fix meaning' (ibid.) of overflowing discourse. The reason why they use the word 'social' instead of 'society' is there is no absolute situation which we can label as 'reality' (ibid, p.123).

In order to practice discourse analysis, specific terms are adopted: 'floating signifiers' and 'signifiers' (ibid., p.99). A 'floating signifier' is a term which may change its meaning according to context. A 'signifier' is a term that contextualizes 'floating signifiers'. For example, in a discourse, the term 'child' has an important meaning. Hence, we could regard 'child' as a 'floating signifier'. Next, we could find a term that contextualizes 'child'. The term may be 'vulnerable', 'to be protected', 'innocent', 'potential' or 'silly' and so forth. Then we can reconstruct and re-categorize the term 'child' in accordance with these various 'signifiers'. This process, that Laclau and Mouffe label 'articulation', leads us to understand how 'child' has a real meaning in a discourse. Thus, they do not give much emphasis to who is speaking, but rather to what is spoken. Under this assumption, people's identity is not absolute but contextualized in relation with others. (ibid., p.101) According to Laclau and Mouffe, this is 'a game of overdomination' (ibid., p.108). Through this process of contextualization, discourse continues fighting in defense of hegemony.

5.6 Interview analysis

When it came to analyzing the interview data, I used an interpretive approach. According to Max Weber (1947), 'sociology is a science which attempts the interpretive understanding of social action in order thereby to arrive at a causal explanation of its course and effects' (p.88). Interpretivism emphasizes 'empathic understanding of human action' rather than the forces behind the action (Bryman, 2012, p.28) Interpretivism draws on hermeneutic phenomenology, which is concerned with 'the question of how individuals make sense of the world around them' (ibid., p.29). Interpretivism is a suitable approach for my research, which aims to find out how policymakers understand the provisions of Article 12.

5.7 Ethical considerations

The parliamentary debate data are fully open and speakers' names are in the public domain, so there is no limitation in using these debates for academic purposes. I initially contacted all interviewees by e-mail, describing and explaining the aim of my research (See Appendix 1). I used a digital recorder, with the permission of the interviewees, and obtained their verbal consent to use the content. I sent transcripts to interviewees who had not given full consent, and got their agreement to use the data. Although this research is about young people's human rights, I did not ask for any personal information about any child nor did I ask about any real-life child. My thesis is about political issues, therefore some of the answers I got were politically sensitive. Hence, I have preserved confidentiality and anonymity to protect my interviewees from any professional repercussions. One interviewee is a public figure and might be identified from his answers. However, he accepted this possibility and allowed me to use his conversation data.

5.8 Limitations

There were certain limitations in conducting my research. Firstly, it was difficult to carry out my fieldwork as I had initially planned. As I mention above, access to people in key positions was harder than I had expected. I had to make several attempts to arrange meetings with available interviewees. Since policymakers' schedules are frequently altered, depending on the political situation, it was impossible to arrange schedules before I made my field trip to Japan. In addition, the interviewees did not all live in the same part of the country. Some live in Tokyo but others live in regional cities, and time and cost management affected my interview schedule. Secondly, Japanese is an especially contextualized language, and spoken sentences often have no subject or object. This makes it hard to analyze Parliament data, which is conversational and contextualized. I believe the method of Laclau and Mouffe (2014) helped me to interpret this contextualized debate. However, because of the contextualized features of the Japanese language, findings may reflect my own interpretations. Finally, the translation from Japanese into English was also challenging, both in Parliament discourse and interviews. Specially, since interview data is potentially emotional, it was not easy to capture the informant's feelings in precise English words.

5.9 Summary

This chapter has discussed about theoretical and practical answers relating to the research project. I turn now to my analysis of Parliamentary debates in Chapter Six.

6 PARLIAMENTARY DEBATE ANALYSIS

In this chapter, I analyze and discuss Parliamentary debates, using discourse analysis. The discussions in Parliament are contextualized. The CRC or Article 12 is not always the central part of the agenda of the plenary sessions or committees I investigate. As I explained in Chapter 5, all of my data was found by keyword research and I categorized it according to the context where the term ‘right of young people to be heard’ is spoken. Hence, the cited Committee’s name is not always obviously linked to the subject of my thesis. For example, it is quite common that the term ‘right of young people’ comes up in the Committee on Foreign Affairs or some other committee.

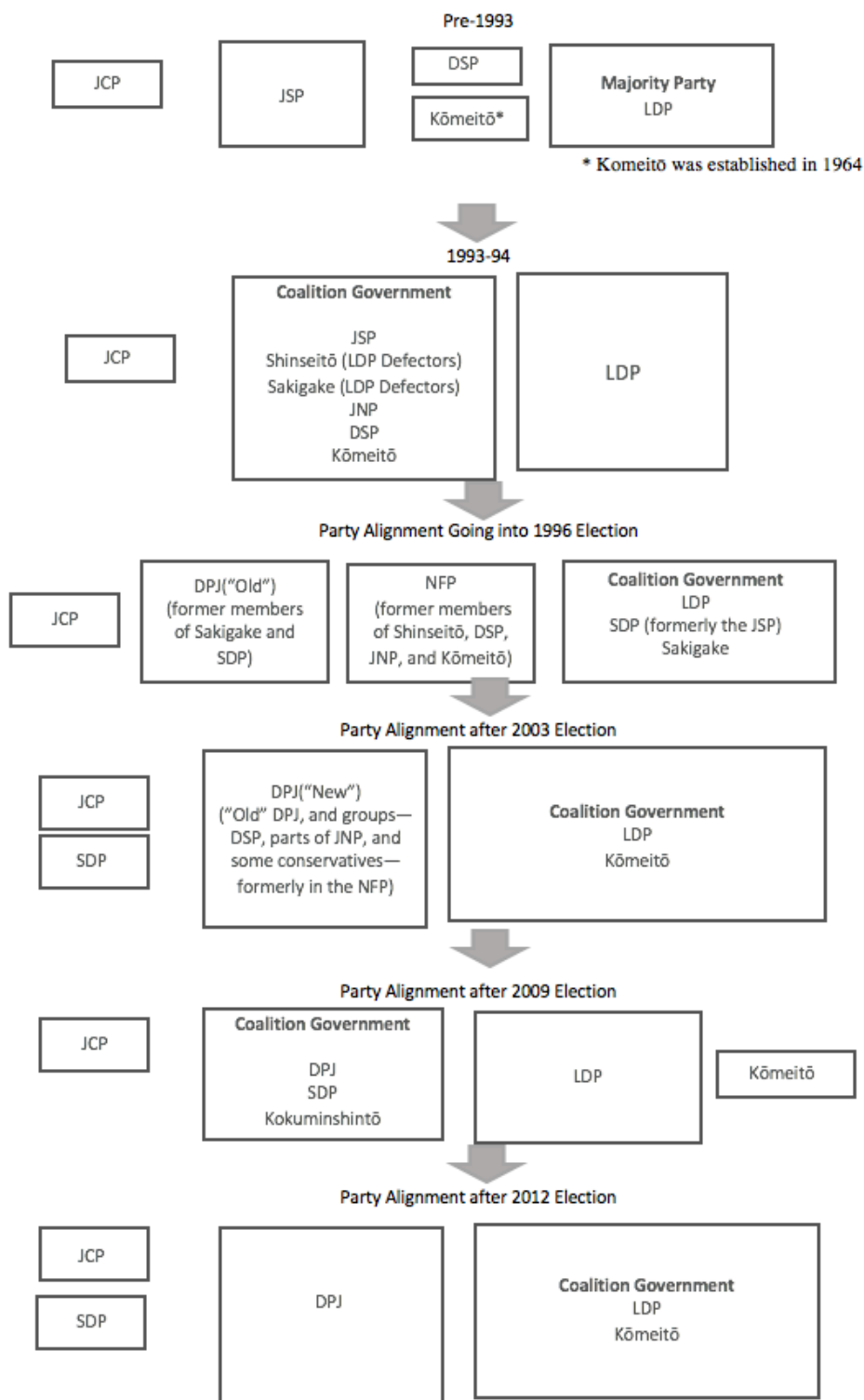
In order to understand the context of these debates, I believe it is important to provide an overview of Japanese politics, as it relates to issues of young people’s democratic rights or democratic participation in education. In the next section, I briefly introduce the basic political framework and the significant protest movements in Japan after World War Two.

6.1 Context

6.1.1 The 1955 political system and protest movements in Japan

In 1955, the Left and Right Socialist Parties in Japan merged in preparation for an upcoming election, to become the Japanese Socialist Party (JSP). The Liberals and the Democrats followed with their own merger and became the Liberal Democratic Party (LDP) (Scheiner, 2006, p.37). Since then, the LDP has been the dominant ruling party (not always as a single party, often in coalition), except for two periods from 1993 to 1994 and from 2009 to 2012 (*Shushokantei* [Prime Minister of Japan and His Cabinet], 2018). Figure 1 shows changes in Japan’s party system (Scheiner, 2006, p.40) from 1955 until 2017.

‘The LDP’s precursors had dominated the Japanese government since the pre-war period, and the LDP’s formation meant that a single party was in control. ... power proved to be impressive glue; the party remained largely intact for decades. That power helped hold the party together is hardly shocking. However, the LDP not only stayed together but also warded off nearly every electoral challenge over the next five decades: Between 1955 and 2005, the LDP was out of power for a total of ten months and 20 days.’ (ibid., 2006, p.1)



DPJ: Democratic Party of Japan

DSP: Democratic Socialist Party

JCP: Japan Communist Party

JNP: Japan New Party

LDP: Liberal Democratic Party

NFP: New Frontier Party

SDP: Social Democratic Party (formerly the JSP)

*Excluding minority party

Figure 1 Changes in Japan's Party System 1955-2017 (Scheiner, 2006, p.40, post- 2009 election information added by the author)

According to Scheiner (2006), the LDP was ‘by and large conservative and represented agriculture, and small and big business’ (p.37). In contrast, the JSP was supported by workers, mainly through various labour unions, and has consistently been a second choice in elections, appealing ‘along class lines, taking a confrontational approach to “monopoly capital”’ (ibid.) This political structure is called the ‘1955 political system’. The JSP was the second largest party until the Democratic Party of Japan (DPJ) was formed in order to become a ‘more unified opposition front against the LDP’ in the early 2000s (ibid., p.45). In 1960, there were large protests against renewing the U.S.-Japan Security Treaty (*Anpo Treaty*). Scheiner observes:

‘there was hope on the left that opposition to the treaty would lead to an electorally successful Socialist Party. Instead, it was the LDP that was successful, changing the terms of the debate to focus on economic growth and Prime Minister Ikeda’s “Income Doubling Plan”’ (ibid., p.38).

This LDP strategy defused democratic conflict by promoting the economic growth that created the well-known Japanese economic miracle. Since then, the LDP has been the dominant party, prioritizing economic policy. The JSP, on the other hand, has had an ideological appeal. ‘Especially its continued call for dictatorship of the proletariat (was) seen as anachronistic at a time in which most Japanese, workers as well as executives, were benefitting from Japan’s economic growth.’ (ibid.) Accordingly, the JSP’s voter support reached its peak in 1958 at the time of the big protests against the U.S.-Japan Security Treaty. It has never won more than 24 percent of the votes in the Lower House since 1966, apart from its victory in the 1989 Upper House election (ibid.).

6.1.2 The Teacher’s Union in Japan under the 1955 political system

As well as the 1955 political system I have discussed above, I believe I need to say something about the Japanese Teachers’ Union (*Nikkyōso*). This is because *Nikkyōso* is often referred to when Article 12 is discussed Parliament. According to Kamiya (2008), ‘*Nikkyōso* is the country’s largest federation of teacher unions in terms of members’. It consists of teachers from kindergarten to university. Most of its members work in the state sector and at its peak, in 1958, an overwhelming 86.3 percent of all state school teachers belonged to *Nikkyōso*. However, interestingly, ‘*Nikkyoso*’ has been controversial in the Japanese academic context. R.W. Aspinall’s *Teachers’ Unions and the Politics of Education in Japan* was published, in English, in 2000. This book is the only serious academic attempt to analyze the role of this teaching union. Aspinall explains why there has been no previous research, citing Ichikawa:

‘One reason for the reluctance of Japanese scholars to explore these issues is that research on controversial topics tends not to be regarded seriously by Japanese pedagogues. In addition, taking sides on delicate question can place Japanese scholars in an awkward position and may even have negative repercussions for their careers.’ (Ichikawa, 1984, p.246, cited in Aspinall, 2000, p. 3)

Aspinall briefly explains the history and role of *Nikkyōso* (Aspinall, 2000, pp.1-2):

‘Since its creation in 1947, *Nikkyōso* had always seen itself, along with its political allies, as fulfilling the vital role of defending the post-war democratic settlements against reactionary attack from the right. Reforms carried out during the American Occupation of Japan from 1945 to 1952 were regarded by some of liberating and democratic and by others as foreign impositions out of step with domestic traditions and customs. *Nikkyōso* ... very soon became the enemy of foreign interference and nostalgic for traditional prewar Japanese values. Thus, the battle for control over the nation’s education system was one taken particularly seriously by both opposing camps.’

Nikkyōso established a strong relationship with the JSP during the 1955 political system. It collaborated with other trade unions, supported the JSP financially, mobilized support and provided candidates (ibid., p.158). This was in spite of the fact that the 1950 Local Public Service Law (*Chihō Komuin Hō* [Local Public Service Law], 1950, § 36) banned ‘local public service personnel from becoming officers in a political party or from election campaigning in support of a party’ (Aspinall, 2000, p.158), and the 1948 Law regulating political funds (*Seiji Shikin Kisei Hō* [Law Regulating Political Funds], 1948, § 21) prevented ‘organizations like labor unions from directly contributing to political parties’ (Aspinall, 2000, p.159). In short, regardless of its ideological position, its political influence has been strong and sometimes its engagement has been practiced in a legal ‘gray zone’. It is also the case that ‘*Nikkyōso*’ is often associated with what many Japanese regard as an anachronistic socialist ideology.

I now want to briefly summarize *Nikkyōso*’s main policies and history, as they relate to my thesis. In order to establish a democratic society and prevent fascism and ultra-nationalism, the American occupation authorities wanted to thoroughly reform Japanese society (ibid., p.25). According to Aspinall, the American occupation authorities ‘were both optimistic and ethnocentric in their view that any country would benefit if it adopted their own, American set of ideals and laws’. Even though most of the Japanese education authorities at the time shared democratic values and cooperated to establish a new ‘democratic’ educational system, ‘there were also groups and individuals on both the left and right who were opposed to the main thrust

of the reforms' (ibid.). *Nikkyōso* engaged in the struggle, opposing certain state authorities. *Nikkyōso* was established in 1947 with a membership over 446,000, 98 percent of the country's elementary school teachers (ibid.). Its most significant feature is the radical ideology of its members: 'Never send our children to the battlefield again' (ibid., p.186). Aspinall claims 'it is unusual for such a union to have its very identity so closely bound up in a particular radical ideology' (ibid., p.185). With the coming of the end of the Cold War and the collapse of the JSP because of external and internal political changes (ibid., pp.162-166.), *Nikkyōso* was split into two organizations in 1989 (ibid., p.1), *Nikkyōso* and *Zenkyō* (All-Japan Council of Teachers and Staff Union). After this split, the latter came to support the Japanese Communist Party (JCP) (ibid., p.171). The 'new' *Nikkyōso* started to cooperate with other political parties than the JSP at both national and prefectural levels. It even co-operated with the LDP, which had previously been its major adversary (ibid., pp.169-171). Significantly, at the time of Japan's ratification of the CRC, *Nikkyōso*'s power was declining and it was no longer a real counter to the LDP or MEXT. Even the slogan 'never send our children to the battle field again' was quietly dropped by *Nikkyōso*, and taken up by *Zenkyō* (ibid., p.186).

6.1.3 'The *Anpo* Protests': students' protest movements from the late 1950s to the 1970s

It is also important to reflect on symbolic student political actions, which were experienced in the late 1950s and the early 1960s. In 1952, the U.S.- Japan Security Treaty (*Anpo* Treaty) (The Ministry of Foreign Affairs of Japan, 2018) was ratified. This secured the US military presence in Japan. According to Ando (2014), the purpose of this treaty was to defend Japan from Communist countries' military attacks. The U.S.- Japan Security Treaty was signed at the time of the San Francisco Peace Treaty, which officially ended the Allies' occupation. However, the Cold War had just started, and at this time, Japanese military policy was co-ordinated with the military priorities of the U.S.A. One of the democratic reforms made in post-war Japan was a labour law (*Rōdō Kumai Ho* [Labour Union Act], 1949), enacted in 1949, that guaranteed workers' rights such as collective bargaining and the right to strike (Ando, 2014, p.28). However, the Supreme Commander of Allied Powers (SCAP) soon shifted policy in order to combat Japanese protest movements; there was a fear that Communism might grow in Japan. The late 1940s to early 1950s brought the Cold War to Asia, with the 1949 Chinese Communist Revolution and the Korean War in 1950 (ibid.). Mass protests or strikes broke out as opposition to the new policies intensified. For example, there was opposition to the Anti-Subversive

Activities Law (1952) or the educational policy reforms of 1953, 1954 and 1957-9 (Barshay, 1998, pp.311-312). These mass protests reached their peak in the Anpo Protest. Ando describes the political climate:

‘Japan started to negotiate with the USA the revision of the *Anpo* Treaty in the late 1950s...from the perspective of the USA was to require Japan, its economically expanding junior partner in the Asian region, to share some of the burden of security in the Far East. Some Japanese conservative elites welcomed the offer of some degree remilitarization from the USA, but many ... were concerned that Japan’s remilitarization would be facilitated by the revision of the *Anpo* Treaty.’ (ibid.)

Boosted by global anticolonial movements, protests against revision of the *Anpo* treaty grew among ‘nuclear disarmament groups, anti-military base groups, women’s groups, farmer’s unions, and youth groups’ (ibid., p.29) from the late 1950 until 1960. The largest strikes in Japanese history on 22 June 1960 mobilized 6.2 million workers who protested against the ruling Kishi government and the revised U.S.- Japan Security Treaty (Jesty, 2012). 1960 was also a symbolic year for student protest actions. Student groups, mainly consisting of university students but often including high school students, staged radical protest actions, such as blockading the airport in protest against Prime Minister Kishi’s meeting with President Eisenhower (Ando, 2014, pp.28-29). The peak of the student action was on 15 June, when the protest was finally ended after 1,500 protesting students clashed with police armed with water cannons and tear gas.

This violent conflict caused the death of Michiko Kamba, a female Tokyo University student (ibid., p.31). On the political left, this incident took on symbolic importance as an ‘undemocratic way of decision-making over the Treaty’, on a par with the intervention of police in the Parliament (ibid., p. 33). Despite these protests, the revised *Anpo* Treaty was ratified on 23 June, 1960 (National Archives of Japan, 2018). From the late 1960s to 1970, there was a second wave of student protests against the renewal of the U.S.-Japan Security Treaty. By the end of 1969, more than 10,000 young people had been arrested, and over 1,000 imprisoned. (The New York Times, 1970). According to Jesty (2012), these protest actions caused deep left-right divisions. Initially, student protest movements were influenced by the Japanese Communist Party (JCP), which was sympathetic to the Chinese Communist Party and protested against U.S. domination (Ando, 2014, p.34). The JCP had already changed their protest policy from armed struggle to legal activities in 1955, but some young activists formed new, more radical groups. At the time of the 1960 ratification of the revision of the U.S.- Japan Security

Treaty, there were two main groups of protestors. One of these was affiliated to the JCP, while the other was independent (ibid.). After the U.S.- Japan Security Treaty protests, some young activists engaged in guerrilla activities and secret military training (ibid., p.35)^v.

I have discussed the basic post-war political framework and two important political issues: the role of the teachers' union and the *Anpo* Protest. As Scheiner points out (Scheiner, 2006), as a consequence of the political structure and LDP dominance after the 1960 revision of the U.S.-Japan Security treaty, the major ideological struggle was between economic liberalism and socialism (p.28). The basic political situation has influenced the Parliamentary discourse on the CRC Article 12. In the following section, I will begin my Parliamentary discourse analysis, following the theory of Laclau and Mouffe (2014) that I discussed in Chapter Five.

6.2 Analysis

6.2.1 The analysis process

By using discourse analysis, I investigate how policymakers discuss 'floating signifiers' (Laclau and Mouffe, 2014), key terms where opposing discourses confront each other. I found nine 'floating signifiers' in the debates; 1. subject of right; 2. rule and public order; 3. educational considerations; 4. MEXT; 5. society and the nation state; 6. international society; 7. The future and globalization; 8. domestic legalization; and 9. the right to political activities. I have put these nine floating signifiers into four discourse categories; 1. The discourse on right, rule and discipline; 2. The discourse on the role of education, society and the nation state; 3. The discourse on internationalization; 4. The discourse on democratic participation and its legislation. In Figure 2, 3, 4 and 5, I outline these discourses. In the next section, I will begin to analyze the parliamentary debates according to this categorization, addressing each of the 'floating signifiers' in turn. For each of them, I discuss how policymakers respond positively and/or negatively to Article 12, the right of the child to be heard, and express opinions on matters affecting children.

We are dealing with issues of child participation and child democracy. So this is why I have laced my discussion in the wider context of democracy and politics in twentieth century Japan.

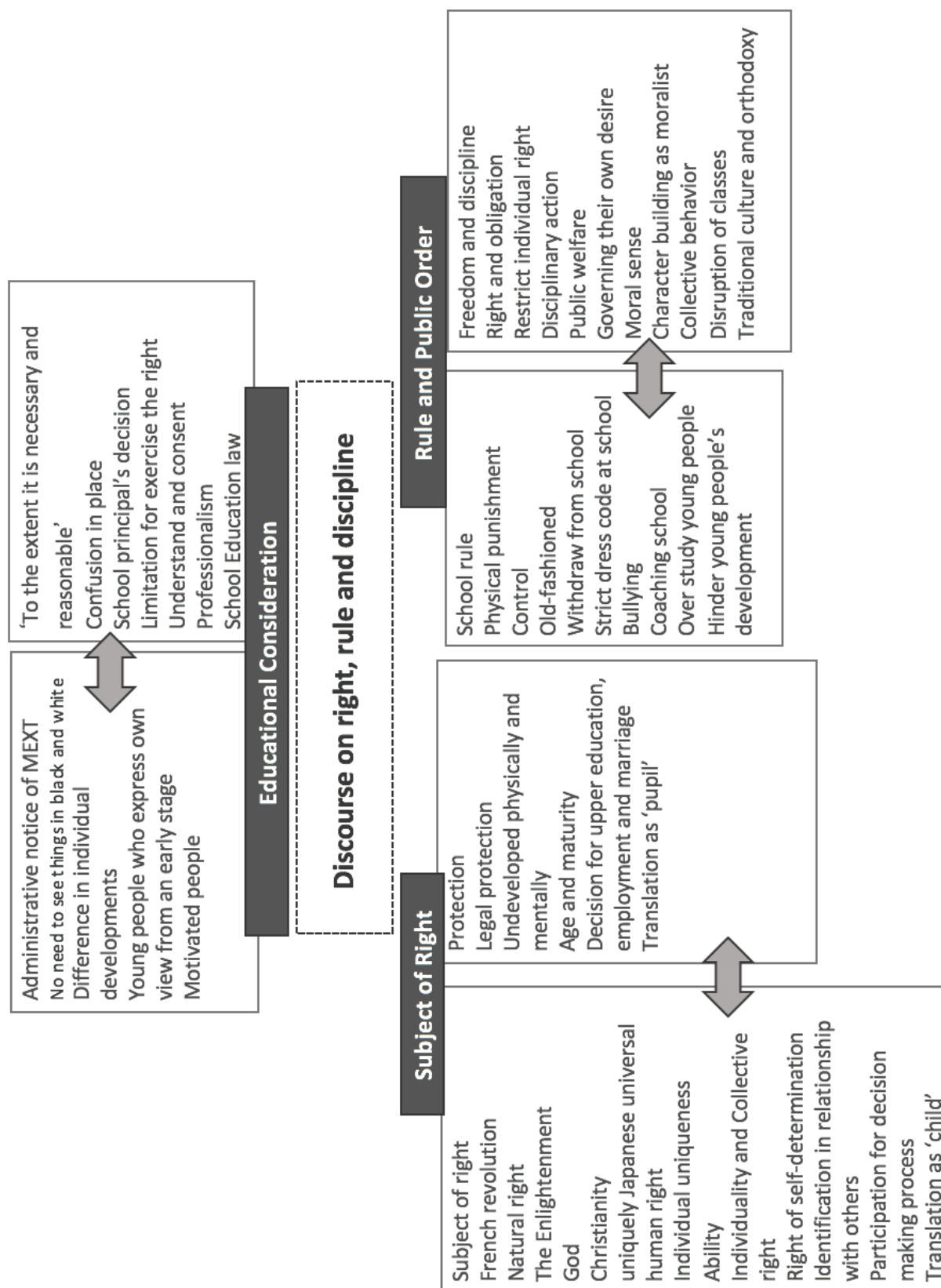


Figure 2 Parliamentary debate discourse: Discourse on right, rule and discipline

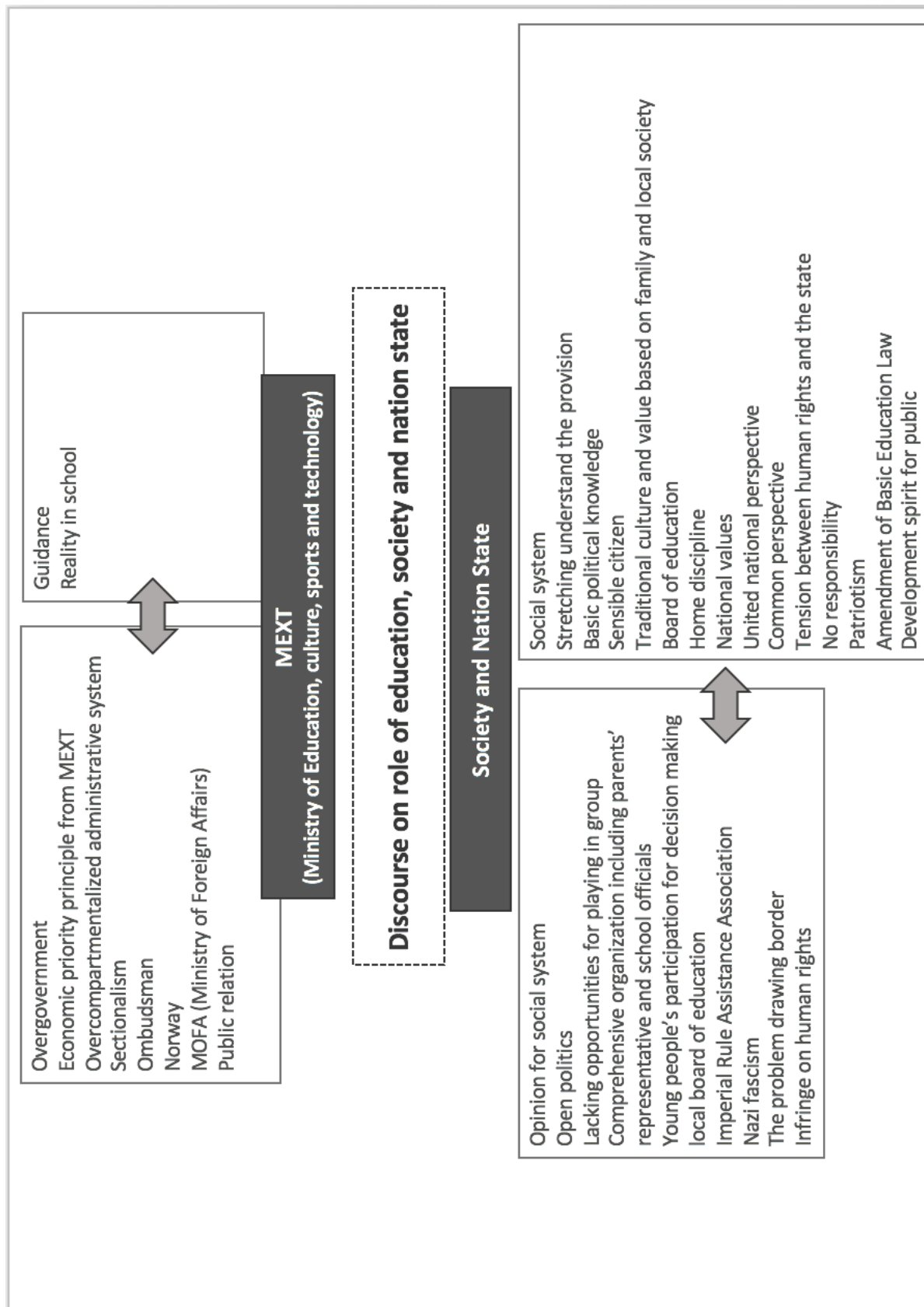


Figure 3 Paliamentary debate discourse: Discourse on role of education, society and the nation state

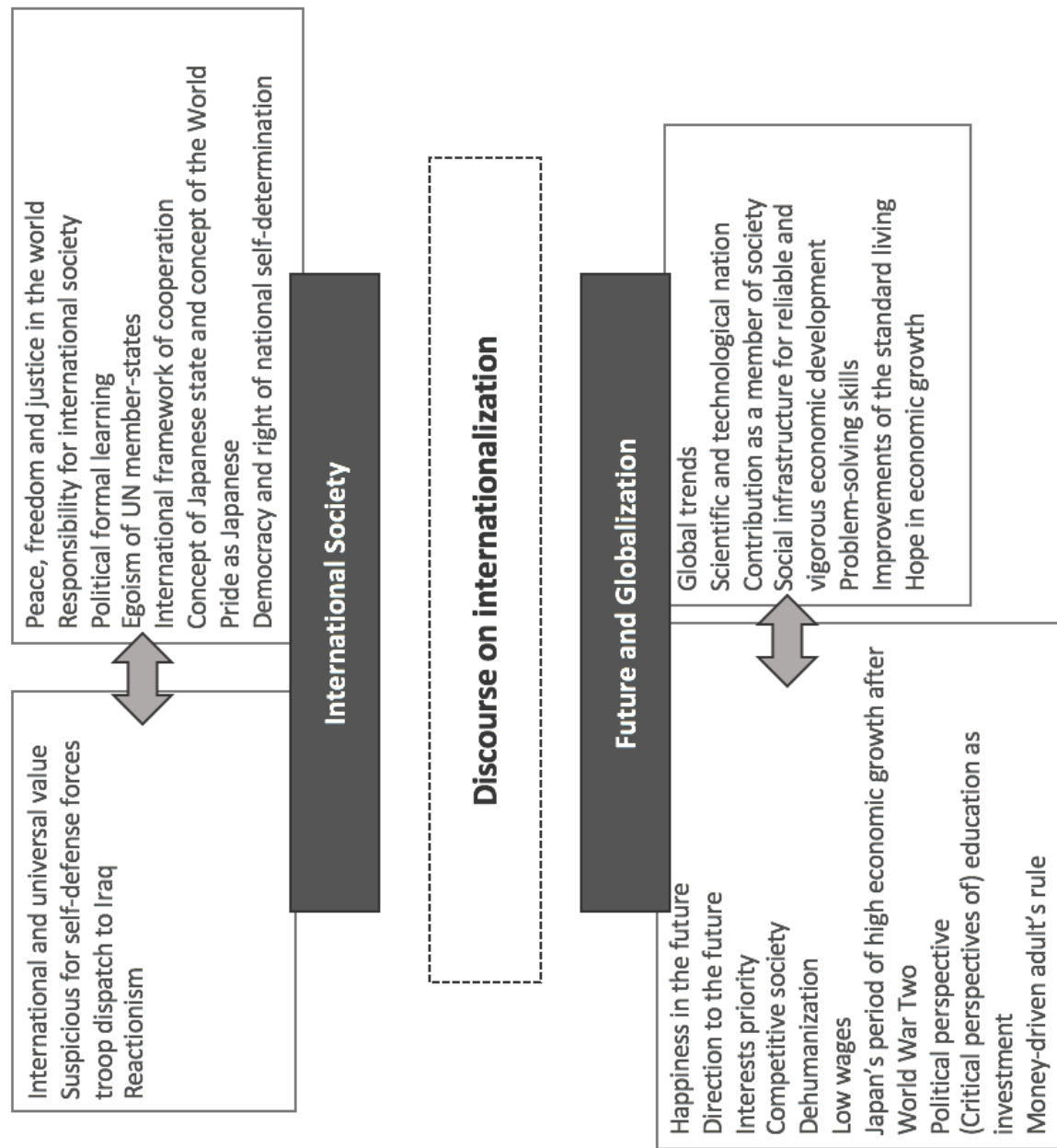


Figure 4 Parliamentary debate discoursee: Discourse on internationalization

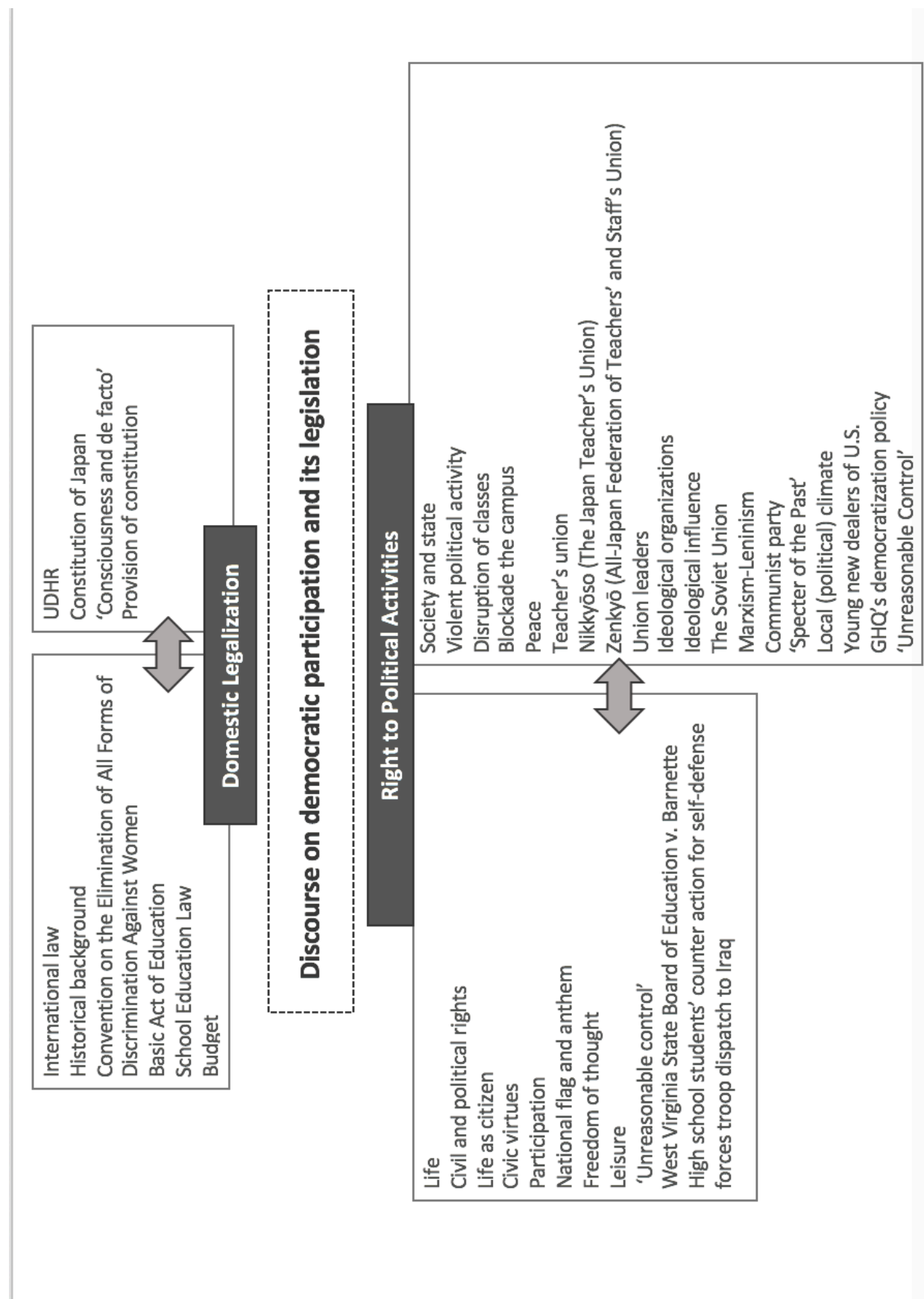


Figure 5 Parliamentary debate discourse: Discourse of democratic participation and its legislation

6.2.2 The discourse on right, rule and discipline

Firstly, I will examine three discourses. Here, the ‘floating signifiers’ (Laclau & Mouffe, 2014, p.120) are *Subject of right*, *Rule and public order*, and *Educational considerations*. I categorize these three discourses as the *Discourse of right, rule and discipline*. I am mainly concerned with the competence of young people and their legitimization as subjects of right. This type of discourse is close to that of Verhellen’s and his followers (Verhellen, 2000, Matthews and Limb, 1998; p. 67; Shier, 2001, p.108; McCafferty, 2017, p.328). All insist on young people’s full legal status, and they base this on the belief that young people have their own autonomy and are capable of decision-making (See Figure2).

Subject of Right

As far as ‘subject of right’ is concerned, people in favour of the child being the subject of right use the following terms: subject of right; French revolution; natural right; The Enlightenment; God; Christianity; uniquely Japanese universal human right; individual uniqueness; ability; individuality and collective right; right of self-determination; identification in relationship to others; participation in the decision making process. Basically, these discourses recognize young people’s independence and their individual and collective identities in decision-making processes. There are nuances of interpretation on the subject of human rights. There are several claims that human rights are natural rights, as was stated in the French revolution. (Komori, JSP, Committee on Foreign Affairs no.12, 21May,1993) (Takano, NFP, Research Commission on the Constitution, 3 March, 2000)^{vi}.

Another perspective considers how legitimacy has been framed in terms of the western Enlightenment, and tries to reconstruct Japanese universality (Kakizawa, LDP, Committee on Foreign Affairs no.12, 21May,1993). This perspective does not claim that there are so-called Asian values, which emphasize Asian uniqueness and are inconsistent with western human rights values (Ghai, 1998, p.68). It rather discusses how the concept of human rights might be generalized in the Japanese context. There is also the discussion about how we should recognize the identity of the subject. On one hand, the concept of the ‘right of self-determination’ (Nagai, Reference/University professor, Committee on Foreign Affairs no.10, 19 May,1993) sounds as if Kantian rationality is being emphasized (Butler, 2000, p.15. On the other hand, the identity of the subject of right must be understood in terms of the relationship with others (Abe, JCP, Committee on Education, Culture, Sports, Science and Technology no.9, 24 May 2001). The

former understanding of the subject reflects the modern view, while the latter is close to postmodern decentering of identity (Laclau and Mouffe, 2014, p.102).

The opposite group of terms are: protection; legal protection; undeveloped physically and mentally; age and maturity; and decisions about higher education, employment and marriage. These terms reflect a skeptical perspective on the competence of young people to be the subject of rights, due to their lack of maturity. These terms effectively restrict the range of Article 12, by limiting decision-making rights in future education, employment and marriage.

The Japanese word for ‘child’ [*kodomo*] is frequently discussed in this discourse. The translation was made by the Ministry of Foreign Affairs, which translated the CRC into the “Convention of ‘pupil’ [*jidō*]’ rights’ in Japanese. Government officials explain that they have used ‘pupil’ because this is the word used in other domestic laws. For example, The Child Welfare Act is rendered as the ‘Pupil [*jidō*] Welfare Act (Yoshizawa, Government officials of MOF, Committee on Education No.4, 7 April, 1992). However, the term ‘pupil’ [*jidō*] basically describes primary school students. Therefore, this official translation is frequently criticized for limiting the range of right holders who, in the CRC, are from age 0 to 18 (For example, Kobayashi, JSP, Committee on Education No.4, 7 April, 1992). This translation decision shows that government officials are afraid of giving secondary or high school students democratic power.

Rule and public order

The second term in this category is ‘rule and public order’. Those who have negative views advocate control-oriented education and use the following expressions: school rules; physical punishment; control; old-fashioned; suspension and expulsion; a strict uniform code; bullying; crammer school; young people over-studying; hindering young people’s development. The struggle to get into higher education is the issue which the UN Committee pointed out in its Consideration Report of 1998 (Committee on the Rights of the Child, 1998, § 156). The Consideration Report linked this state of affairs to the school authorities’ ‘traditional views’ (ibid., § 43). The UN Committee does not give a detailed explanation of what ‘traditional views’ mean, but it is presumed they refer to the education policy which prefers control in school, through measures such as a strict dress code, physical punishment or the penalty of expulsion. This discussion was often held in the early part of the period I have studied, before and right after the Japanese ratification of CRC (For example, Utsunomiya, Committee on Education No.2, 17 February 1992). As I showed in Chapter Two, the 1994 MEXT notification says the following (Ministry of Education, Culture, Sports, Science and Technology, 1994);

‘From Article 12 to 16 of CRC, although it is regulated such as the rights to be heard or the right to freedom of expression et al., basically in schooling, *it is possible to instruct or guide pupils or students and regulate school rules for achieving the educational purpose within the necessary and reasonable range*. School rules are clear regulations for pupils or students for their healthy school life as well as their growth and development. These rules *should be regulated on the responsibility and decision of each school*.’ (my emphasis)

MEXT accepts that pupils or students have the right to be heard, but that this right can be limited if it comes into conflict with the right to protection. Investigating the words that express negative attitudes to Article 12 in this discourse helps us to understand the hidden intention of the MEXT notification; freedom and discipline; rights and obligations; restricting individual rights; disciplinary action; public welfare; governing their own desire; moral sense; moral character building; collective behavior; disruption of classes; traditional culture and orthodoxy. These discourses contrast rights and obligations, and rights and public order. They worry that schools may not be able to keep order, if students have the right to freely express their views.

‘Educational consideration’

The expression ‘educational consideration’ is a piece of bureaucratic jargon. Similar terms (‘educational purpose’ and ‘instruct educationally’) are used in the MEXT 1994 administrative notice (ibid.), which I mentioned in Chapter Two. Two opposing viewpoints co-exist. One is expressed by terms such as: ‘to the extent it is necessary and reasonable’; chaos; the school principal’s decision; limitations to the exercise of rights; understanding and consent; and professionalism. The other viewpoint uses terms such as: administrative notice of MEXT; no need to see things in black and white; differences in individual development; young people who express their own views from an early stage; and motivated people. They discuss what is really ‘educational’ for young people and whether their maximum right to express themselves is guaranteed, in accordance with their maturity, or whether limits need to be set to prevent classroom chaos (Yano, LDP, Committee on Foreign Affairs no.7, 10 June, 1993) and allow principals to control their schools (Sakamoto, Government officials of MEXT, Committee on Education No.2, 21 November, 1991).

These three discourses correspond to reports and communication between the Japanese Government and the UN Committee. The UN Committee has repeatedly requested that the

Japanese Government give young people greater opportunities to express their views at school, and that ‘traditional’ views should not remain unchallenged. It is not clear what ‘traditional’ precisely means but it is presumed that school authorities’ basic policies emphasize order and discipline.

6.2.3 The Discourse on the role of education, society and the nation state

Here, I focus on the discourse on education, society and the nation state. Floating signifiers here are MEXT, society, and the nation state (See Figure3).

MEXT

In the discourse on MEXT, Article 12 is referred to by using negative terms about administrative procedure; overgovernment; economic rationality; an overcompartmentalized administrative system; sectionalism; and the 1994 administrative notice (Ministry of Education, Culture, Sports, Science and Technology, 1994). The centralization of administrative power is expressed by terms such as ‘sectionalism’ or ‘MEXT’s over-administration of schooling’ (Doi, JSP, Committee on Foreign Affairs no.13, 26 May, 1993). In this discourse, debates have drawn in the office of the children’s ombudsman, which aims to establish an independent institute for overcoming MEXT sectionalism and make it easier for young people to express their views (ibid.).

MEXT is often contrasted with the Ministry of Foreign Affairs (MOFA). Since MOFA is the competent ratification authority and periodically reports to the CRC, policymakers often ask about the different stances of MEXT and MOFA on Article 12 (ibid.). It is thought that MOFA is more sympathetic to Article 12, and this is because of its expertise in matters of international law. On the other hand, MEXT sees its role as one of giving guidance, so as to prevent confusion in schools (Yano, LDP, Committee on Foreign Affairs no.1, 29 March, 1994). The lack of any public awareness campaign for young people about Article 12 is also pointed out, and linked to the role of MEXT (Takano, NFP, Committee on Foreign Affairs no.11, 23 April, 1998).

Society and the nation state

Here, I examine the floating signifier ‘society and the nation state’. The point of conflict in these discussions is the extent to which an individual’s value is prioritized in society. In short, the agenda in this discourse is the relationship between individual identity and society or the

nation state. Positivity towards Article 12 is correlated with these terms: opinions about society; open politics; infringement of human rights; Imperial Rule Assistance Association^{vii} and Nazi fascism. These terms emphasize that young people's democratic participation will bring about an openness in society or politics, and if this participation is infringed, there is a risk of totalitarianism. The concern about totalitarianism is strongly expressed in the terms 'Imperial Rule Assistance Association' and 'Nazi fascism' (Komori, JSP, Committee on Foreign Affairs no.12, 21 May, 1993). They fear that restricting young people's democratic participation will ultimately lead to a totalitarian society, as Japan experienced in World War Two.

In contrast to this discussion, negative attitudes to Article 12 are expressed by the following terms: social system; extended interpretation of the provision (of Article 12); the sensible citizen; basic political knowledge; national values; a common perspective; tension between human rights and the state; no responsibility; developing public spirit; and patriotism. These terms emphasize that young people should learn about democracy. However, they must also prioritize their membership of society and the nation state: they need to develop a public spirit rather than merely focusing on individual freedom (Tomon, SDP, Committee on Foreign Affairs no.6, 23 April, 2003). The strong concern of this perspective is expressed in the phrase 'tension between human rights and the state' (Kakizawa, LDP, Committee on Foreign Affairs no.12, 21 May, 1993).

Community is a key terms on both sides of the discourse. There are some shared understandings: e.g. young people lack opportunities to play and socialize because of the competition to get into higher education, and they go to crammer schools, rather than learning about communal and social life (Kawamura, LDP/Minister of MEXT, Committee on Budget no.12, 17 March, 2004). There is also a shared concern that the lack of social experiences leads to serious problems like bullying, suicide as a result of bullying, and other pressures (Hosaka, Reference/Journalist, Committee on Foreign Affairs no.10, 19 May, 1993). The need for young people to join the discussion that is trying to do something about this competition pressure is also addressed. For example, it is suggested students should attend Local Educational Board meetings. This could be one of the ways of implementing Article 12 (Sanuki, Reference/University Professor, Committee on Education, Culture and Science no. 14, 25 June, 2001).

On the contrary, negative voices prioritize traditional values of the family, local community or society and insist on strong home discipline (Tōyama, Minister of MEXT, Plenary Session no. 32 of the Upper House, 15 June, 2001). It is believed that loyalty to the local community

and family discipline nourish patriotism. It is claimed that the Basic Education Act of 1947 (*Nihon Horei Sakuin* [Japanese Law Index], 2018), adopted just after World War Two, put too much emphasis on the individual (Machimura, LDP, Special Committee on Basic Act on Education no.3, 24 May, 2006), and that the spirit of democracy must be practiced in order to develop the state and contribute to bring about world peace in the so-called ‘international society’ (Kawamura, LDP, Special Committee on Basic Act on Education No.3, 24 May, 2006). The central issue in this discussion is the position of young people in education and which of two contrasting images of the child must be prioritized: the independent individual, or the potential citizen who is loyal to the nation.

6.2.4 The discourse on internationalization

This third discourse is categorized as the ‘discourse on internationalization’. Floating signifiers are: international society; and the future and globalization. In these debates, policymakers discuss how to adopt UN international human rights policy into domestic human rights or educational policies, and also how young people should be educated to be members of the so-called ‘international society’. These themes are also discussed in the context of economic globalization (See Figure 4).

International society

The main issue here is about the role of citizens in the international society. This theme is connected to the discussion of terms such as ‘society and the nation state’, which I discussed in the last section. The language of those who emphasize the national values employs the following terms: peace; freedom and justice in the world; responsibility for international society; the egoism of UN member-states; an international framework of cooperation; the concept of the Japanese state and the concept of the World; pride in being Japanese; and democracy and the right to national self-determination. The opposite perspective is discussed through the use of terms such as: international and universal values; suspicions about self-defence force troops being dispatched to Iraq; and reactionism. The term ‘international society’ in this context is linked mainly to international military cooperation for world peace. The main opposition in this confrontation is between ‘democracy’ of the individual and state sovereignty. Legislators discuss which aspect of ‘democracy’ should be prioritized: young people’s individual democracy in Japan, or democracy in Japan’s international relationships, in the name

of state sovereignty. One lively discussion has been about the sending of Japanese self-defence forces troops to Iraq from 2004 to 2009 (Ministry of Defence, 2018)^{viii}. At some schools, students also discussed the government's decision to dispatch these troops. Moreover, high school students organised signature-collecting campaigns, requesting the withdraw of foreign troops, including Japanese self-defense forces, from Iraq. As far as these current issues are concerned, it is claimed that there is no formal political procedure for hearing students' opinions about government decisions (Hayashi, JCP, Committee on Education no.2, 18 March, 2004). The debate is about priorities: either to establish opportunities for young people to be heard, or to let them learn the necessity of so-called international military co-operation (Kawamura, LDP/Minister of MEXT, Committee on Education no.2, 18 March, 2004).

The future and globalization

Partly linked to the discussion of 'internationalization', Article 12 is also debated in relation to the idea of the desirable citizen in our age of economic 'globalization'. Since Japan's period of rapid economic growth after World War Two, the governments have prioritized economic growth. In this discussion, the harmful impacts of rapid economic growth are debated. Support for Article 12 claims that this economics-centered policy is creating a competitive society, and the educational system is especially competitive. There is no formal system by which young people can request any changes to this dehumanizing situation, even though Article 12 guarantees their right to be heard (Shimazaki, JSP, Committee on Education no.2, 17 February, 1993).

These concerns are expressed in the following terms: future happiness; shaping the future; prioritizing interests; the competitive society; dehumanization; low wages; Japan's period of rapid economic growth after World War Two; (critical perspectives of) education as investment; and money-driven adult governance. Legislators and policymakers are critical of an educational policy that over-emphasizes economic growth, seeing the education of young people as primarily an economic investment for the future (Yamauchi, SDP, Committee on Education, Culture and Science no.3, 27 February, 2002).

By contrast, negative views about Article 12 are discussed by referring to economic globalization and the need to strengthen international competitiveness. These views are connected with the following expressions: global trends; the scientific and technological nation; one's contribution as a member of society; a social infrastructure for reliable and vigorous economic development; problem-solving skills; improvements in the standard of living; and

the hope of economic growth. They do not necessarily deny the value of democracy but claim the importance of a balance between individual rights and the citizen's contribution to society. In this debate, there is a stress on future citizens re-establishing economic competitiveness in this 'global' age, together with scientific and technological development (Kosaka, LDP/Minister of MEXT, Special Committee on Basic Act on Education No.4, 26 May, 2006).

6.2.5 The discourse on democratic participation and its legislation

The final discourse is about the core issue of what democratic participation for young people really means. There is also the discussion about how domestic legislators consider the relationship between CRC provision and the Constitution. I name this 'the discourse on democratic participation'. Floating signifiers here are: domestic legalization; the right to take part in political activities. (See Figure5)

The right to take part in political activities

In the discourse on 'the right to political activities', legislators often mention terms such as 'ideological organization', 'union leaders' and 'teachers' union'. These expressions are sometimes clearly identified as '*Nikkyōso* (The Japan Teacher's Union)', or '*Zenkyō* (All-Japan Federation of Teachers' and Staff's Union)'. In this discourse, active supporters insist on young people's right to participate in society, using terms such as the following: civil and political rights; the life of the citizen; freedom of thought; and participation. By contrast, negative views of the right to engage in political activities stress the following: violent political activity; campus blockades; teachers' union; *Nikkyōso* (The Japan Teacher's Union); *Zenkyō* (All-Japan Federation of Teachers and Staff Union); union leaders; ideological organizations; ideological influence; the Soviet Union; Marxism- Leninism; Communist party ; 'specter of the past'; and GHQ (General Headquarters, the Supreme Commander for the Allied Powers) democratization policy.

I found extreme ideological left-right conflicts in this discourse. Basically, negative expressions about young people's right to political activities were dominated by anti-socialist and anti-communist perspectives. Expressions such as 'Marxism-Leninism' or 'Communist party' are often identified with 'violent political activity', 'campus blockades' and 'teachers' union'. The word 'blockade the campus' or 'violent political activity' reminds us students protest movement during *Anpo* Protest. As I discussed above, in the history of Japanese

democratic protest movements, the political action of *Nikkyōso* and the protests against the revised *Anpo* Treaty have made a lasting impression on Japanese society. This discourse is surprisingly powerful in the Parliamentary debates, even though the Cold War has ended (For example, Machimura, LDP, Special Committee on Basic Act on Education No.3, 24 May, 2006). Legislators also refer to ‘GHQ’s democratization policy’ (Ōmae, LDP, Special Committee on Basic Act on Education No.4, 26 May, 2006). In the context where this term was discussed, I found strong resistance to the GHQ’s earlier policy of enacting labor laws and promoting freedom of association as one of the means of democratization just after World War Two.

Here I want to reflect again on the Japanese government’s periodic reports to the UN Committee. As I discussed in Chapter Two, the Japanese government has displayed a consistent stance in all periodic reports, claiming that collective decision-making such as the formulation of school regulations and the organization of curricula do not *personally* involve *individual* children. Thus, it is not considered that children have the right to express their opinions on such matters and, here, the provisions of Article 12 do not apply (The Japanese Government, 1996, § 69; 2001, § 122; 2008, § 205; 2017, § 38). When young people’s political rights are discussed in Parliament, they are correlated with the extreme ‘collective’ protests that Japanese society experienced in the Cold War. These contexts are often connected with the Teachers’ Union (*Nikkyōso*) or ‘ideological group’ (Yano, LDP, Committee on Foreign Affairs no.7, 10 June, 1993). Young people’s participation is associated with terms such as ‘Communism’ and ‘Marxism-Leninism’. Hence, the most plausible reason why the Japanese government has recognized the ‘individual’ right of young people’s right in the context of Article 12, and denied the collective right, comes from this strong ideological allergy to the political ‘left’ stance that prioritizes labour rights and freedom of association.

Domestic legalization

The final discourse is about the ‘domestic legalization’ of Article 12 in the education system. The debate focuses on the relationship between the CRC, as international law, and the Constitution. A positive view of domestic legislation is correlated with ‘Convention on the Elimination of All Forms of Discrimination Against Women’ (Inui, Democratic Reform Party, Plenary session of Upper House no.20, 28 May, 1993). In short, in the debate, young people are considered marginalized from democratic participation in the same way as women, and policymakers refer to the need for legislating Article 12. Another interesting point is that, in

relation to the Constitution, it is also argued that the provision of Article 12 should be respected as an individual right but not as a collective one (Kakizawa, LDP, Committee on Foreign Affairs no.12, 21 May, 1993). The point here is not that it is a matter of the western, ethnocentric individualism that cultural relativists criticize (The Executive Board, American Anthropological Association, 1947, p.539). The discussion refers to the framework of the Japanese Constitution (Kakizawa, LDP, Committee on Foreign Affairs no.12, 21 May, 1993). As I discussed in Chapter One, there are three main pillars of the Japanese Constitution: pacifism, fundamental human rights; and popular sovereignty (The Constitution of Japan, 1946). The ‘individual’ interpretation of Article 12 refers to the modal structure of the Constitution. As name of the Convention shows, the CRC is a convention for ‘human rights’ of children. Policymakers discuss Article 12 in terms of the implementation of young people’s ‘human rights’. Since fundamental human rights, one of main provisions of the Japanese Constitution, are categorized separately in its modal structure from popular sovereignty (another pillar of the Constitution) (The Constitution of Japan, 1946), some policy-makers insist that Article 12 cannot be applied collectively since, in the Constitution, fundamental human rights are (theoretically at least) assured individually. I cannot say that this claim is pure sophistry, since there is an academic discussion about whether democracy should not be understood from a ‘human rights’ perspective. (For example, Douzinas, 2000, p.107; Mouffe, 2000, pp. 1-4; Miller, 2015, pp.2-3;). However, when it is considered practically, Article 12 is a part of international law which Japan has ratified, and, as Article 12 ensures ‘collective rights’ as well as individual rights, this claim does not make sense. According to *Every child’s right to be heard: A resource guide on the UN committee on the rights of the child general comment no.12*, published by Save the Children and UNICEF as a guide for implementing Article 12, ‘through *collective organization* children can learn self-protection, self-representation and self-advocacy.’ (Lansdown, 2011, p.141). Hence, from a legal perspective, the ‘individual right’ claim is misunderstood and illegal. However, as I mention above, theoretically, there is a problematic point, as some scholars point out, in the relationship between human rights and people’s sovereignty. This issue needs a greater academic focus.

6.3 Overview of the discourse analysis

As discussed above, the discourse over the implementation of Article 12 in the education system reveals value conflicts, expressed in various ways in the Parliamentary debates. Figure 6

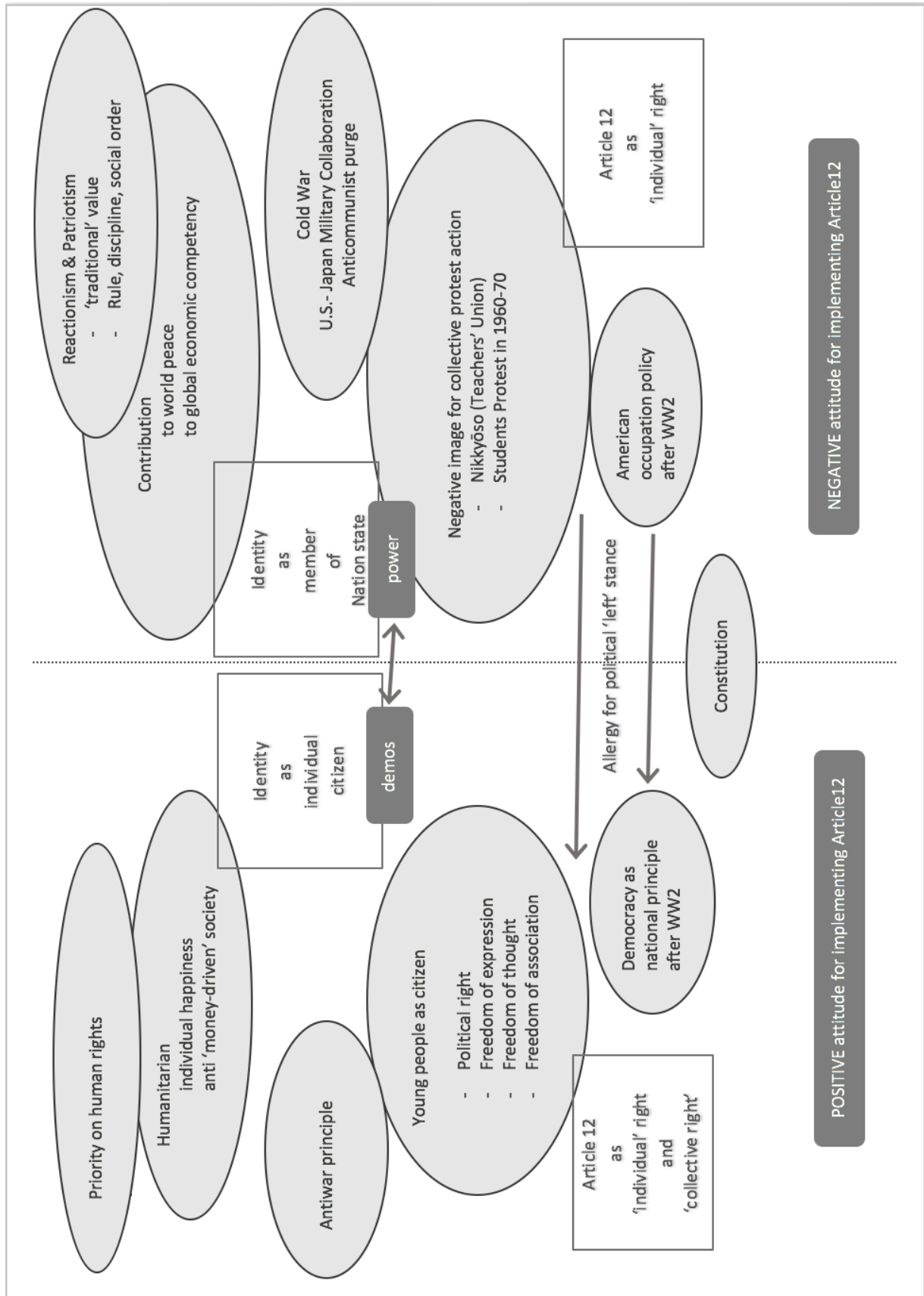


Figure 6 Overview of the Parliamentary debates

provides an overview of these four discourses. In conclusion, I have found four main points in the discursive data that can help us to understand barriers to the implementation of Article 12.

1. **Article 12 as young people's democratic right:** Regardless of positive or negative attitudes towards its implementation, Article 12 is understood as young people's democratic right.

2. **Article 12 as an 'individual right' or as a 'collective right'?:** Even though there is a shared view of Article 12 as a democratic right among policymakers, there is disagreement as to whether this right is individual, or both individual and collective. Some policymakers claim that fundamental human rights are categorized separately from popular sovereignty, which is another pillar of the Constitution (The Constitution of Japan, 1946). As I mention above, there are several scholars who insist democracy should not be understood as a 'human right' from a theoretical perspective. (For example, Douzinas, 2000, p.107; Mouffe, 2000, pp. 1-4; Miller, 2015, pp.2-3;). Some policymakers likewise claim that 'individual' young people's rights should not be realized through collective democratic actions. However, from an international legal perspective, this interpretation is problematic (Lansdown, 2011, p.141). With regard to the 'individual' claim, there is another significant context for understanding this argument. I discuss this in the next section.

3. **Political protest action and ideological conflict:** Correlated with the discussion above, as to whether it is an 'individual' or 'collective' right, there is a strong aversion to political protest activity, especially in the educational sphere. Debates about Article 12 are often linked to Nikkyōso or the student protest movement of the 1950s and 70s. This does not only reflect fear about schooling being disrupted, but also a fear of ideological conflict. The protest actions of Nikkyōso or students' organizations flourished during the Cold War. Even though the Cold War is over, the left- right conflict is still present in the Parliamentary debates.

According to my discourse analysis, the background to this conflict is complicated. Democratization policy in Japan after World War Two was mainly led by the U.S.A. As I discuss above, democratic policies such as collective bargaining and the freedom to strike were encouraged just after the War, (Ando, 2014, p.28) However, the Supreme Commander of Allied Powers (SCAP) shifted policy soon afterwards in order to constrain Japanese protest movements. This was part of attempts to counter Communism, following the rise of Communist countries in Asia (ibid.). This policy shift proved to be controversial in Japanese political life. Discourse analysis shows post war Japanese democracy was fragile and complex.

Democratisation was led by the Americans but at the same time constrained by the U.S.A in the post-war period. The dominant LDP succeeded in dampening this serious conflict between the government and the *demos* by prioritizing economic growth (Scheiner, 2006, p.38). However, even after the Cold War, democratic collective actions have been labelled ‘anachronistic’, ‘socialist’ or ‘communist’. In the Parliamentary discourse, Shii, the JCP Chairman challenged arguments that compared the JCP to the Soviet Union: ‘we do not think the political system in the Soviet Union was a socialist one.’ (Special Committee on Basic Act on Education No.3, 24 May, 2006). However, since the most significant collective protest movements are correlated in the educational sphere with socialist images of *Nikkyōso* and the *Anpo* Protest Movements, this anachronistic socialist view of democratic participation has been an excuse for not legislating Article 12 into education law.

As I discussed in Chapter Three, democratic theory, which is should be applied to the issue of young people’s democratic participation, is not comprehensively discussed in the context of Article 12. The discourse analysis shows that the Japanese debate is easily affected by the domestic political climate.

4. Identity as a citizen or as a member of the nation-state: When Article 12 is discussed, it is often linked to the issue of identity. There are two opposite values in the debate: identity as an individual citizen, or identity as a member of the nation-state. From their different positions, policymakers discuss to what extent Article 12 should be prioritized. Basically, the ‘individual citizen’ claim insists that young people should express their views in order to do something about the dehumanized situation they confront. This situation is the result of an overly competitive educational system and the money-driven adult governance that created the post-war economic miracle. There is concern that this tendency will worsen because of increased competition in the so-called ‘global economy’. By contrast, the ‘member of nation-state’ claim comes from two different directions. One is from reactionism or nostalgia, a disillusionment with the individual freedom that post-war democratic reform brought about. Proponents of this view support retrospective traditional values, referring them to rule, discipline or public order. Those who emphasize ‘traditional values’ are against implementing young people’s democratic right, since they are concerned that it disrespects traditional public order. They emphasize contribution to society rather than individual freedom.

Another rationale of this claim is ‘internationalization’. ‘Internationalization’ has two different aspects: contributing to world peace, in short, military cooperation for an ‘international society’; and contributing to economic competitiveness in the ‘global economy’.

Properly speaking, these two perspectives should be discussed separately. However, they are often discussed, with political intentions, in the context of ‘internationalization’. Since collective political actions are often linked with the image of *Nikkyōso* or *Anpo* protest movements in the discursive sphere, their antiwar ideology is easily and intentionally labelled as ‘the old fashioned anti-internationalization’ policy. This claim of ‘anti-internationalization’ is connected with the image of ‘socialism’, with the impression of an outdated economic policy, contrasted the current age of a ‘global economy’. Hence, when seen in the light of LDP policies that prioritize economic growth, the emphasis is on how young people can contribute to the nation-state and uphold traditional societal values. These are more important than individual human rights.

6.4 Summary

As I have discussed above, from a discourse analysis of Parliamentary debates, four main points emerge: 1. Article 12 as a democratic right; 2. Interpretations that stress either an individual right or a collective right; 3. Political protest action and ideological conflict; and 4. Identity as a citizen or as a member of the nation-state. Article 12 is recognized by policymakers as a democratic right. However, when it comes to its implementation, there are different interpretations, mainly dependent on different perspectives on ideology and identity. Conflict based on ideology and notions of citizen’s identity obstruct the introduction of Article 12 into Japanese education law. In the next chapter, I examine my interview data.

7 INTERVIEWS ANALYSIS

In this chapter, I analyze the interview data that I collected in the summer of 2017. As I said in Chapter 4, because of the limited sample, interview data is used to complement findings from the discourse analysis. The summer holiday was the only time I could make a research trip to Japan. As I mentioned in Chapter 5, because of the limited access to potential interviewees, the interview research was based on a reduced number of five respondents. Ideally, it would have been better to conduct interviews after my Parliamentary discourse analysis, in order to more effectively frame my questions. However, because of the scheduling problems, I had to conduct both interview and discourse analysis simultaneously. Therefore, my interview questions were not necessarily based on the findings from the Parliamentary discourse. However, the data which was obtained through open-ended interviews helps to understand the background of Parliamentary debates and supports discourse analysis findings. In the next section, I summarize some observations from the interviews.

Table 4, from Chapter 5 provides an overview of interviewees.

No.	Participant	Sex	Professional role	Date of interview
1	Mariko	F	Preschool teacher	02.07.2017
2	Asako	F	Vice-principal at Secondary High school	10.07.2017
3	Takashi	M	Member of Child's Welfare Act revising committee	10.07.2017
4	Yuki	F	Government officials of MEXT	18.07.2017
5	Ken	M	Local government officials	03.08.2017
6	Hitoshi	M	Mayor of a municipality in Greater Tokyo, formerly a MP	03.08.2017

Table 1 Interviewees - overview

7.1 The 'traditional' view of childhood and education

As discussed in Chapter Six, the 'discourse on right, rule and discipline' is one of the categories frequently debated in Parliament. Hitoshi is a former MP (he belonged to the JSP at that time) and is now mayor of a local municipality. He points out a reluctance to use 'human rights' among the education authorities and in Japanese society in general:

‘The allergy to the term “human rights” is deeply rooted in Japanese schools or society. It is feared that endorsing human rights will lead to the collapse of the society of vertical human relationships, which consists of features such as public order and discipline, command and obedience... Schools are the place where the vertical relationship is especially solid.’ (Hitoshi, 03.08.2017)

This tendency to emphasize order and discipline rather than individual rights was found in the interviews with people involved in education, i.e. the two teachers whom I interviewed. Mariko, who is a preschool teacher, said:

‘Depending on the occasions, I think we are both positive and negative about hearing the children’s voice...The most probable difficulty is, I guess, for teachers to change their minds, there are many times when we could learn from listening to them, but this takes second place to discipline.’ (Mariko, 02.07.2017).

These interviews were conducted before I knew the findings from the Parliament debates. I did not use any terms, such as ‘rule and discipline’, in my questions. However, both of those respondents used the words ‘rule’ or ‘discipline’. It would seem that the school authorities contrast the concept of rule and discipline with the concept of the ‘right to be heard’.

7.2 Legislation policy from the perspective of MEXT

This thesis’s key issue is the endorsement of CRC in national law. One of the interviewees, Yuki, a government official at MEXT, has an academic background in international law. She mentioned the relationship between international law and domestic law in the context of the CRC. As I explained in Chapter Five, because of a big scandal connected with MEXT, I could not get access to any MEXT officials who had been engaged in discussing CRC. Therefore, her view is not necessarily that of an expert in this area, but more generally that of a MEXT bureaucrat:

‘Since international law has a weak legal binding, if we violate it, we might be criticized by international society but there is no punishment...Usually, it is not judged illegal only on the basis of international law. International law tends to be conceptual and moral.’ (Yuki, 18.07.2017)

The last sentence is interesting, because even though she is not an expert on CRC, she describes very well what has happened to the CRC in Japan. She continues:

‘Interpretation rights and translation rights of international law belong to MOFA...Hence, if public opinion is moulded and consequently there is endorsement in domestic law, as the case of the endorsement of Article 12 in Children’s Welfare Law, since that Ministry [Ministry of Health, Labour and Welfare] has more responsibility for it, then the situation will change.’ (Yuki, 18.07.2017)

Legalization in specific areas is the responsibility of the relevant Ministry. Therefore, without domestic legislation, a Ministry is not accountable for the issue. The reluctance to implement the CRC could delay its concretization in policy terms. In this way, the CRC has been ‘conceptual and moralistic’ for 24 years since its ratification, without it being put into domestic legislation. However, according to Yuki, if there is not domestic legislation, it is still legally possible for each school to do extra things in addition to the government curriculum guidelines and to practice, in some way, Article 12.

‘It is not possible to reduce the subjects listed in the government curriculum guidelines, but it is possible to include subjects in addition to those in the curriculum guidance. Although it is possible, it must be practically difficult...With such additions, it depends on the management ability of each headteacher, if we are to practice Article 12 without domestic legislation.’ (Yuki, 18.07.2017)

There is criticism that research about CRC sometimes tends to over-emphasize domestic legislation (Kilkelly, 2012, p.188). However, Yuki’s answer gives an interesting insight into the practical perspective of a governmental and educational official: she reveals that without domestic legislation, there is no accountability for where responsibility lies for the CRC Article 12.

7.3 Continuing reluctance to allowing young people’s democratic participation

In order to explain the background to the education system’s prioritizing of ‘rule and discipline’, Hitoshi pointed to the influence of the student protest movements. He himself had a special experience that relates to CRC Article 12. As I discussed in Chapter Six, from the late 1950s until the 1970s, there were strong student protests, objecting to the revision of the Japan-U.S. Security Treaty. At that time, Hitoshi was a secondary school student. In 1971 he was the plaintiff in a court case, where he claimed that his school report, which was used in his application to higher education, had violated his freedom of thought and

conscience, his freedom of opinion, his freedom of expression, and his right to peaceful assembly. The report prevented him from applying for higher education by reporting his engagement in the protest campaign against the Japan-U.S. Security Treaty (*Songai Baishō Seikyū Jiken*: [The claims for compensation], 1988).^{ix} In parliamentary debates, Hitoshi's voice has been the most insistent one in arguing that Article 12 be endorsed in the educational system. Since he lost his case at the Supreme Court in 1988 (*Hanrei Jihō* [Precedents Times], 1988, p. 65), his passion for the legislation of Article 12 comes from his strong belief that if CRC Article 12 had existed at that time, he might have won his case. He talked about the student protest movement and its effect on the endorsement of the CRC Article 12:

'I belong the last generation who experienced the student protest movement. The protest was accompanied by objections to the school system at that time...After then, a "normalcy bias" has been shared among school authorities, reflecting the student protests: [The authorities claim]"It happened, but we successfully contained it."' (Hitoshi, 03.08.2017)

The last sentence which I cite above is very interesting. He uses the term 'normalcy bias' to describe reactions to the student protest movement. I interpret this term as meaning that education authorities now understand that the student protest movement 'just occasionally happened and was experienced it as unusual but we returned to our usual lives.' He continued:

'After that, approaching the 1980s, [the authorities] problematized the troubling secondary school students...At many schools, order was disturbed. In order to quieten things, they prioritized "controlled education", emphasizing discipline....Specially, towards 1990s, the dominant policy was to restrain protesting students. It was at exactly the same time as the CRC was ratified by the Japanese government.' (Hitoshi, 03.08.2017)

As I found in the Parliamentary debates, the antipathy towards students protest from 1960s to 1970s influenced the endorsement of the CRC Article 12. According to Hitoshi's expression of 'normalcy bias', there was less interest in young people's democratic participation, especially in the education sphere. As I discussed in Chapter Six, the Parliamentary discourse shows that the political climate has an aversion to young people's democratic participation, as a result of the student protest movements from the 1970s. Hitoshi points out that this is deeply-rooted:

'We experienced a regime change, but a fundamental paradigm shift on social values did not follow it...The mentality, which is shared by young people, to conform to the

dominant mood, prevents the endorsement of ‘the right to be heard’ or other CRC articles. Since this tendency has been formed and continues from generation to generation through the educational policy, it must be difficult for the Japanese to implement policies such as Article 12.’ (Hitoshi, 03.08.2017)

On being asked about who might lead any policy to implement Article 12, Ken, a local government official, gave his opinion that it is not MEXT officials (Ken, 03.08.2017).

7.4 Summary

In this chapter, I analyzed the interview data. The reluctance of policymakers and school authorities to implement the ‘right to be heard’ is rooted in their experience of students protests from the late 1950s to 1970s, and of secondary school student disturbances in the 1980s. Rule and discipline has been prioritized, in order to maintain order. This view has been shared by both education authorities and especially teachers. This perspective was promoted by the ruling LDP party and has been passed from generation to generation, through education policy. The value of ‘rule and discipline’ has become strongly rooted in society, and even though the LDP has twice been out of power for short periods, it has been difficult to change the political climate. This political and social climate does not support implementing Article 12, and this reluctance is shared by policymakers and school authorities. Hence, there is need for legislation if Article 12 is not supported by public opinion. It is a vicious circle. Policy prevents any change in public opinion, and so there is no strong public demand for change. Without domestic legislation, MEXT is not clearly accountable, so Article 12 has not been practiced in schools. To conclude, these observations from interview data support the findings from the Parliamentary debates. In the next section, I turn to the conclusion of this thesis.

8 CONCLUDING REMARKS

In Chapter Six and Seven, I have presented findings from my analysis of Parliamentary discourse and interview data. This thesis aims to examine the ways in which policymakers understand the CRC Article 12. I also want to identify the factors that are obstacles to implementation. I have investigated the data by applying Derrida's theory of unconditional hospitality. As I discussed in Chapter Four, this theoretical lens has focused on the norms (Haddad, 2010, p.128) that prevent young people's democratic participation. Findings from my data analysis suggest that there are two main 'norms' that obstruct the endorsement of the CRC Article 12 into Japanese education law.

8.1 Two norms that are obstacles to young people's democratic participation

1. The prioritizing of public order over individual human rights.

Although policymakers recognize that Article 12 gives young people the 'right to democracy', there is strong resistance to implementing it 'collectively'. According to the UN Committee (Committee on the Rights of the Child, 2010, §43), the Japanese government's attitude embodies a 'traditional view'. It could just be said that an emphasis on discipline is part of a 'traditional' approach to education. However, the background to this policy is more complicated, as I show in Chapters Six and Seven. The strong reluctance to guarantee 'collective' democratic rights comes from the change of political climate after World War Two. After the Japanese society experienced strong political protests during the 1950s to 1970s, particularly among students, a policy designed to avoid any repetition of these 'disorders' and maintain order in state public schools has been developed by the educational authorities. This policy has enjoyed strong political support, since it is strongly influenced by the LDP's long term domination and is affected by U.S.A.'s policies in the 'post war' process. It is not clear what the UN Committee really means by 'traditional view', in its response to the Japanese government (ibid.). However, I believe that the resistance to endorsing Article 12 in domestic legislation is a political matter, rather than the result of 'traditional' cultural or social values.

2. The prioritizing of the interests of the nation state over democratic participation

The policy of regarding young people's economic contribution to the nation state as more important than their democratic participation is another 'norm' that is found in the data analysis. The LDP's policy of giving priority to the economy has been successively established since the time of the *Anpo* Protest. This policy is now justified by appeals to 'global economic competitiveness'. There is a tension between the development of young people's democratic participation and the importance of their 'economic contribution' to the nation-state. While Japan's economic policy is one of economic liberalism, young people's democratic participation tends to be given an anachronistic 'Marxist- Leninist' label. This 'labeling' process in the political discourse is associated with another label, that of 'anti-internationalization'. This label is applied to the response to Japan's military contribution to the so-called 'international community'. Here too we find the conflicting ideological images of socialism and economic liberalism.

These two 'norms' are found in the data analysis. Using Derrida's conceptual lens, I would argue the real barrier which prevents young people's democratic participation does not come from their identity as children, but from more complex historical and political factors. In short, policymakers are not skeptical of the political competence of young people. It is rather the case that since they know young people have democratic competence, they are reluctant for them to exercise it because they are afraid it will challenge present political orthodoxy. It is this which stands in the way of young people's democratic participation.

8.2 Limitations to my research and future work

As earlier research suggests (Lundy, 2007, pp. 929-930), the obstacles for the implementation of CRC Article 12 in Japan are political ones. The discourse and interview analysis show the complexity of the political factors that influence educational policy. I will now present the limitations of my research and suggest possible directions for future research that can serve to support the practical implementation of CRC Article 12.

1. Young people's voices

I only use data from policymakers and education authorities, since my initial interest was in the process of legislation. The data openly exists in the political sphere, and this is not surprising, since it is political factors that are the obstacles to the implementation of Article 12. However, because young people are the subject of these rights, further research is needed about young

people's awareness, understanding and need for democratic participation in terms of Article 12 in the Japanese context.

2. Limitations of an interdisciplinary research method

As I discussed above, the background to this issue is more complicated than I had initially imagined, and my research has become interdisciplinary. I have had to follow legal, pedagogical, educational, socio-political and linguistic lines of development. International relationships and defence policy are also relevant. My approach and findings have been wide, but maybe lack depth. Moreover, my academic background is in political science and, since the discursive analysis draws on a postmodern approach, I have had to work in a new research field. The design of the research and its analysis proved new and challenging for me. My discursive analysis covered a long period, from 1991 to 2016. I did not develop a periodic approach to examine differences over history, because of time limitations. My findings from the data are broad, but I have not, to any great degree, explored historical events outside of the discourse.

3. Comparative research

Because of the time considerations, I have focused on how Article 12 has been implemented in education. Interestingly, as I discussed in the last chapter, Article 12 has recently been endorsed in young people's welfare legislation. Comparing the welfare and education spheres might give fresh understandings. An international comparison would also provide further insights.

4. Democratic theory and young people's participation

As I have explained in Chapter Three, democratic political theorists have not addressed the situation of young people. As my data analysis shows, a model for young people's democratic participation in terms of the CRC Article 12 is needed. The fact that no such model has been offered (Cohen, 2005, p.221 & 223; Stern, 2017, p.78) allows policy-makers to interpret the provision of Article 12 in any ideological and political manner they choose.

8.3 Concluding remarks

The endorsement of CRC Article 12 in Japan faces complicated obstacles. The issue is, fundamentally, a political one. The 'subject of right' in Article 12 is young people, and it is the young who should primarily be demanding this right. However, since young people are not part of the *demos*, their voices cannot be heard or listened to. To enable democratic change,

Derrida's perspective of 'unconditional hospitality' is valuable (Derrida, 1999; Derrida & Dufourmantelle, 2000).

We have to challenge the contradictory aspects of the political structure, in order for the State Parties in power to recognize the existence of a new *demos*.

Notes

ⁱ ‘The term of “adoption” is understood as a process by which international treaties are incorporated *en bloc* into the domestic legal system without being transformed into domestic law. Sometimes “adoption” is equated with “automatic application” or “direct application”. Adoption is conducted either by an implied or an explicit domestic act ... Transformation, unlike adoption, refers in most scholarly writings not to the international treaty as a whole but is conducted selectively as individual treaty provisions are transformed into national law through an ad hoc legislative act and others are omitted from transformation.’ (Björn, 2009, pp.358-359)

ⁱⁱ After it was amalgamated with other departments, in 2001, the Ministry of Education was renamed as the Ministry of Education, Culture, Sports, Science and Technology (MEXT). Throughout this thesis, I use MEXT in order to be consistent.

ⁱⁱⁱ There are several judicial cases waiting to be brought to the courts on the question of whether administrative notices are legally binding or not (*Pachinko kyuyuki kazei tsutatsu henkō jiken hanketsu* [The changing rule in administrative notification taxation on pinball game], 1958). Academically, it is understood that they are not legally binding (Matsuo, 2010, p. 79).

^{iv} My original agreement with the informant was that he maintains his anonymity. Subsequent to the interview this informant requested his name be listed in this thesis. I am grateful to Nobuto Hosaka, Mayor of Setagaya in Greater Tokyo, for his insights to the political debate on children's participation rights.

^v One of these streams later became ultra-violent group ‘the Japanese Red Army’, known as several guerrilla operations. According to the Japan Times, ‘with the Popular Front for the Liberation of Palestine (PFLP), the group carried out a string of deadly attacks around the world, including the 1972 machine gun and grenade attack at Israel’s Lod Airport that killed 26 people and wounded 80.’ (The Japan Times, 2017)

^{vi} The speech at the Parliament’s debate is referred to as follows: (Speaker’s name, MP’s political party or profession, Committee’s name at the National Diet, Date).

^{vii} The Imperial Rule Assistance Association (IRAA) was ‘a national integration entity [in Japan]...created by the second Konoe cabinet in October 1940. All the political parties at that time were dissolved and integrated into the IRAA, with Prime Minister Konoe becoming the Association’s first president. Other official citizen mobilization organizations, such as the Great Japan Patriotic Industrial Association and the Great Japan Women’s Association, were then consolidated into the IRAA. The IRAA controlled all aspects of people’s lives until it was dissolved and became the Volunteer Corps in 1945.’ (Takai, 2016)

^{viii} ‘Of these measures in support of the Bush administration’s policies, the most politically significant have been the dispatch of military forces to the Indian Ocean and Iraq...[There was] the announcement of a regional doctrine that proclaims the right of preemptive attack. All three of these initiatives bring very significant long-term cost and risks (not least, financial in the case of missile defense), as well as increased rather than decreased strategic uncertainty.’ (Tanter, 2005, p.157). ‘Japan’s decision to send Self-Defense Forces troops to Iraq, coupled with the decision to introduce a missile defense system, marks a major turning point for the nation’s defense and security policy. Never in its 50-year history has the SDF been mobilized for noncombat duties in a foreign country in a de facto state of war’. (Nabeshima, 2004)

^{ix} The judicial precedent with regard to tension between Constitution and secondary school student’s human rights. In 1971, the plaintiff was a public secondary school student, 15 years at that time, and applying for several public high schools. The applications demanded grades of studies and educational report’, describing students’ school life. His subjects’ studies grades were enough level to pass all high schools which he applied for, but he failed the examination. He brought a case to court. Because he believed that his failure in the high school application was caused by ‘educational report’. In his ‘educational report’, it was described that: 1. He organized the political association in his school, called ‘All-Campus Joint Struggle League (*Zenkyoto*)’; 2. Published group organ; 3. Distribute political handout during the school festival and 4. He also joined the Marxist- Leninist meeting, held by university students. Moreover, he was graded as ‘C’ in the column of his school life on the report, the worst level of evaluations with regard to such as ‘basic life customs’, ‘public-spirited’ and ‘self-control’ because of his actions

described above. His case was pending in the court for 16 years. He won in the trial court in 1972, lost in the appeal trial in 1982 and finally lost at the Supreme Court in 1988. (*Hanrei Jihō* [Precedents Times], 1988, p. 65).

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Appendices

Appendix 1: Letter requesting an interview (English translation from Japanese) and sent by email to prospective interviewees

My name is Aya Kato, master student at University College of Southeast Norway.

I'm researching about the implementation process of the United Nations Convention of the Rights of the Child for my master thesis, especially interested in the Article 12 'the right to be heard'. It will be very appreciated if I could interview about your opinion about this issue.

Research procedure is following the official guidance of Norwegian Center for Research Data. Your privacy will be protected. I will anonymize the content of interview data. You cannot be identified easily in my thesis.