

THE CONSTITUTION OF JAPAN

Japan boasts the second largest economy in the world and almost two thousand years of history. Yet, its first modern constitution, the Meiji Constitution, was not enacted until comparatively recently (1889). Since then, following World War II, Japan adopted its current Constitution, the Japanese Constitution of 1946. This book is designed to explain the outline of Japan's Constitution, together with a number of its unique characteristics and to offer an historical background and context which help explain its significance. Major topics covered include the constitutional history of Japan, fundamental principles of the Constitution, the people and the Emperor, the Diet and legislative power, Cabinet and executive power, and the Judiciary and judicial power. Also discussed is the protection of fundamental human rights, individual rights—including freedom of expression, economic freedoms and social rights—pacifism and national defence, and the constitutional amendment and reform. Although the Japanese Constitution was enacted under the strong influence of the United States Constitution, many of its features are very different. For instance the existence of an Emperor, the long dominance of a conservative party over the Government, the relatively strong power of government bureaucrats, the absence of a leadership role in the Prime Minister, the small role the judiciary play in solving constitutional disputes and the struggle over national defence. Written in an accessible style and comprehensive in content, the reader will find this account of the constitutional law of Japan both unique and stimulating.

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In the era of globalisation, issues of constitutional law and good governance are being seen increasingly as vital issues in all types of society. Since the end of the Cold War, there have been dramatic developments in democratic and legal reform, and post-conflict societies are also in the throes of reconstructing their governance systems. Even societies already firmly based on constitutional governance and the rule of law have undergone constitutional change and experimentation with new forms of governance; and their constitutional systems are increasingly subjected to comparative analysis and transplantation. Constitutional texts for practically every country in the world are now easily available on the internet. However, texts which enable one to understand the true context, purposes, interpretation and incidents of a constitutional system are much harder to locate, and are often extremely detailed and descriptive. This series seeks to provide scholars and students with accessible introductions to the constitutional systems of the world, supplying both a road map for the novice and, at the same time, a deeper understanding of the key historical, political and legal events which have shaped the constitutional landscape of each country. Each book in this series deals with a single country, and each author is an expert in their field.

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The Constitution of Japan

A Contextual Analysis

Shigenori Matsui



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Preface

Japan is the second largest economy in the world. In its history of almost two thousand years, Japan did not have any notion of constitution, which binds the government, until 1889. After the Meiji Restoration in 1868, Japan, which used to be a country governed by samurai warriors, started modernization and introduced the Western notions of law and legal system. It was a bold attempt, since the government had to invent the Japanese word for 'freedom' or 'right' in order to introduce the Western notions of law and rule of law. The government also had to grant property rights to individuals. The Meiji Constitution, enacted in 1889, was the first modern constitution, modelled after the Prussian Constitution. It was the constitution predicated upon the sovereign and sacred power of the Emperor. Japan managed to build a powerful state under that constitution.

After the defeat in the Pacific War, Japan enacted the current constitution, the Japanese Constitution, in 1946. Modelled after the United States' Constitution, this Constitution provides for liberal democracy under the popular sovereignty principle, with an elaborate Bill of Rights. It also boldly declared the renunciation of war and a ban on armed forces, manifesting a deep commitment to pacifism. Japan has managed to rebuild the country under this constitution to become one of the leading countries of the world.

The purpose of this book is to explore the basic contours of the Constitution of Japan in its historical, societal and political contexts. This book is designed to give a brief outline of the structure of government. It is also designed to give an overview of the protection of individual rights. Although Japan managed to build a democratic state under the Japanese Constitution, there are many areas where one can question whether the Western notions of constitution and rule of law are actually accepted in Japan. Japanese people are very good at learning Western cultures and technologies and adapting them to the tradition and society of Japan. The Constitution may be said to be 'Japanized' in this sense. This book will present the image of the Constitution quite different from Western countries, adapted to the tradition and society of Japan.

I would like to thank Professor Andrew Harding and Professor Peter Leyland for their encouragement and help enabling me to finish this book. I would also like to thank my students, Victor Tsao, Anthony Seepish and Colin Trehearne, and Kerry Sloan of the University of Victoria for their editorial assistance. Special appreciation is also due to the late Professor Steve Salzberg of the Faculty of Law, University of British Columbia, who gave me the opportunity to teach Japanese constitutional law with him and also to Professor Veronica Taylor, Professor Stuart Jay and Professor Toshiko Takenaka of the University of Washington Law School, for providing me with the opportunity to teach comparative constitutional law. Finally, I would like to thank my wife Chika, and my two children, Ayana and Haruto, for allowing me to come across the Pacific Ocean to Vancouver. Without their help, I would not have been able to finish this book.

Shigenori Matsui
Vancouver

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