

CONSTITUTIONAL REVOLUTION IN JAPANESE LAW, SOCIETY AND POLITICS pdf

1: "Constitutional Revolution in Japanese Law, Society and Politics" by Lawrence W. Beer

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Before Chinese characters were adopted and adapted by the Japanese, the Japanese had no known writing system with which to record their history. Chinese characters were known to the Japanese in earlier centuries, but the process of assimilation of these characters into their indigenous language system took place in the third century. This was due to the willingness of the Japanese to borrow aspects of the culture of continental civilisations, which was achieved mainly via adjacent countries such as the Korean kingdoms rather than directly from the Chinese mainland empires. These immigrants, wherever they came from, had significant influence on the development of Japan. It is theorized by some that the flow of immigrants was accelerated by both internal and external circumstances. The external factors were the continuing political instability and turmoil in Korea, as well as the struggle for central hegemony amongst the Chinese dynasties, kingdoms, warlords, invasions and other quarrels. These disturbances produced a large number of refugees who were exiled or forced to escape from their homelands. Immigrants to Japan may have included privileged classes, such as experienced officials and excellent technicians who were hired in the Japanese court, and were included in the official rank system which had been introduced by the immigrants themselves. It is conceivable but unknown that other legal institutions were also introduced, although partially rather than systematically, and this was probably the first transplantation of foreign law to Japan. Nonetheless, Japanese society could not have functioned without some sort of law, however unofficial. The most noted of these is The Record on the Men of Wa, which was found in the Wei History, describing the Japanese state called Yamatai or Yamato ruled by the Queen Himiko in the second and third centuries. According to this account, Japanese indigenous law was based on the clan system, with each clan forming a collective unit of Japanese society. A clan comprised extended families and was controlled by its chief, who protected the rights of the members and enforced their duties with occasional punishments for crimes. The law of the court organised the clan chiefs into an effective power structure, in order to control the whole of society through the clan system. The form of these laws is not clearly known, but they may be characterised as indigenous and unofficial, as official power can rarely be identified. Yamatai must have been the first central government which succeeded in securing the required power through the leadership of Queen Himiko, who was reputed to be a shaman. This leads to the assertion that Yamatai had its own primitive system of law, perhaps court law, which enabled it to maintain government over competing clan laws. As a result, the whole legal system formed a primitive legal pluralism of court law and clan law. It can also be asserted that this whole legal system was ideologically founded on the indigenous postulate which adhered to the shamanistic religio-political belief in polytheistic gods and which was called kami [7] and later developed into Shintoism. First, some Korean law must have been transplanted, albeit unsystematically; this can be seen by the rank system in court law and the local customs among settled immigrants. Second, official law was not clearly distinguished from unofficial law; this was due to the lack of written formalities, although court law was gradually emerging into a formal state law as far as central government was concerned. For these reasons, it cannot be denied that a primitive legal pluralism had developed based on court and clan law, partially with Korean law and overwhelmingly with indigenous law. These traits of legal pluralism, however primitive, were the prototype of the Japanese legal system which developed in later periods into more organised legal pluralisms. Modern developments and Japanese law today[edit] The early modernization of the Japanese law was primarily based on continental European legal systems and lesser Anglo-American elements. After the Second World War, the Japanese legal system underwent major reform under the guidance and direction of Occupation authorities. American law was the strongest influence, at times replacing and at times overlaid onto existing rules and structures. The Constitution, criminal procedure law, and labor law, all crucial for the

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protection of human rights, and corporate law were substantially revised. The present national authorities and legal system are constituted upon the adoption of the Constitution of Japan in 1946. The Constitution contains thirty-three articles relating to human rights and articles providing for the separation of powers vested into three independent bodies: Article 41 of the Constitution provides that "the Diet shall be the highest organ of State power, and shall be the sole law-making organ of the State. Under the current constitution, the Emperor does not have the power to veto or otherwise refuse to approve a law passed by the Diet. For more serious crimes long terms of confinement or possible death penalty in a penal institution, summary courts have jurisdiction. Judges seriously consider precedent, especially any pertinent Supreme Court decisions, thus making understanding of precedent essential to practice. Those on family and succession retain certain vestiges of the old patriarchal family system that was the basis of Japanese feudalism. It was in these sections that most of the postwar revisions were made. At that time it was considered no longer necessary or desirable to pay such homage to the past, and the sections dealing with family law and succession were brought closer to European civil law. It remained substantially unchanged even after the American occupation in except for the fifth family law and sixth sections inheritance law which were fully revised during the occupation.

Contracts[edit] Japanese contract law is based mostly on the Civil Code, which defines the rights and obligations of the parties in general and in certain types of contract. Kawashima writes that Civil Code theory requires the contractor to "complete the work" of construction at the agreed price, and that until then the contractor bears the risk of all expenses. But he notes that pre-war public works contracts had stipulated a possible shifting of a burden from the contractor to the owner of the works in the event of an act of God, albeit at the discretion of the owner. Uchida further argues that the Japanese legal system now reveals communitarian values that deviate from the "modern" *kindaiteki* paradigm of values of individualism and freedom, but which should now be seen as normatively appealing. These are seen as expressing an underlying "principle of continuity" in contractual relations that is incompatible with classical or modern contract law.

Automobile Accident Compensation in Japan. In the United States, the comparable figure was 10 percent. The disparity did not reflect passivity on the part of Japanese accident victims. They commonly made claims based on tort law and they received compensation from negligent drivers and their insurance companies. The litigation rate was low, Tanase said, because Japan provides non-litigious methods of assessing fault, advising victims of their legal rights, determining the appropriate level of compensation, and ensuring payment. These include Traffic Accident Dispute Resolution Centers, which along with courts, provide mediation services. Claimants can also turn to a network of consultation centers operated by governments, the bar association, and insurance companies. The mediation services and advice centers work effectively because the Japanese judiciary works hard at developing clear, detailed rules that guarantee virtually automatic, predictable, moderate compensation for most accident victims. This contrasts with the American tort system, where the legal rules concerning both liability and non-economic damages "pain and suffering" are stated in general terms, leaving a great deal to the judgment of constantly rotating lay juries—which in turn makes courtroom outcomes variable and difficult to predict. This made the insurance system more like a quasi-public social insurance program, Tanase argued, guaranteeing moderate benefits for the injured. Tanase estimated that legal fees comprised only two percent of the total compensation paid to injured persons and that mediating and claims process costs amounted to about 0.5 percent. In the United States, according to a survey in the late 1970s, 24 percent of individuals hurt in motor vehicle accidents involving potential defendants hired a lawyer, and the figure went up to 57 percent for victims with "serious injuries" fractures, burns, or worse. When the claimant hires a lawyer, the defendant or her insurance company generally employ a lawyer too. In consequence, according to two big studies of motor vehicle accident tort claims not just lawsuits, payments to lawyers equalled 47 percent of the total personal injury benefits paid by liability insurers to third-party accident victims. This expense drives up the cost of insurance to the point that huge numbers of drivers are uninsured or underinsured, which means that victims of their negligent driving will get little or nothing from the tort system. The Japanese system, he pointed out, enabled especially aggressive claimants to obtain disproportionately higher compensation. And he feared that

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the low litigation rate and the emphasis on standardization would result in the stagnation of legal development, since courts were not constantly pushed to consider new arguments and improve the law. Thus, Tanase concluded, "Paradoxically, the very success of the Japanese elite in disarming the legal weaponry of the people inadvertently breeds the seed for its failure: People, he argues, want not only compensation for serious injuries caused by the negligence of others. Many landlords are forced to "buy out" their tenants if they wish to demolish buildings to make way for new development: Despite this emphasis on tenant rights, the government exercises a formidable eminent domain power and can expropriate land for any public purpose as long as reasonable compensation is afforded. Narita International Airport is another well-known example of eminent domain power in Japan. The reformed Code came into effect in 1999. After an initial complaint to the court, the Court schedules the first session of the oral proceeding. The court clerk serves a summons on the defendant to notify him of the date of the first session, along with a copy of the complaint and documentary evidence. At the first session of the oral proceeding after the filing of the complaint and answer, the judge decides whether the case should proceed under the Preparatory Proceeding. A Preparatory Proceeding is closed to the public and held chiefly to identify the key issues of the dispute. In a complex dispute, there are usually multiple Preparatory Proceedings. The Oral Proceedings are held in open court, either by a single judge or three judges. After the close proceedings, the court renders a judgment on the merits of the case. Under Japanese law the basic types of companies are:

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3: Constitutional Revolution In Japanese Law, Society And Politics » Brill Online

Modern Japan has experienced two constitutional revolutions, one from the latter half of the nineteenth century until , and the other since By 'constitutional revolution' is meant a.

His recent research explores the mobilization and countermobilization of rights in various empirical contexts including the recognition of indigenous peoples and the politics of same-sex marriage. He also researches at the intersection of philosophy and law. He is the author of *The limits to union: Katharina Heyer heyer hawaii*. Her research investigates the globalization of disability rights: To that end she is completing a book manuscript, *Enabling Rights: David Johnson davidjoh hawaii*. Two of his publications are *The Japanese Way of Justice: She has lectured at many universities in the U. She is author of Escape From Paradise: Religion and Sex in American Public Life. War, Memory, and Nostalgia in the American Christmas. She also writes occasional pieces for online publications, including Religion Dispatches and Civil Beat. Here are a few: How does a social complaint become a legal matter? How do juries decide the price of civil justice? What is the consequence of free or affordable attorneys for the poor? In what ways is law biased towards men? What helps explain the incarceration rates in different countries? Why do so many criminal cases end in plea bargains? What is justice and how is it codified? How have colonized people accepted and rejected Western law? What can we learn about law from film and television? Who polices the police? Is mediation a more effective way of achieving justice than going to court? What shapes beliefs that Americans are sue-happy? How do judges interpret the law? What inspires social movements to use the law for social change? Are human rights instruments enforceable?*

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6: Law and Revolution - Nimer Sultany - Oxford University Press

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