

Law Making Power in Japan - Legislative Assessment in Japan

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In South Korea, it is said that the flood of bills by the members of parliament, the degradation in the quality of legislation, and the contents of bills are of serious concern. The United States Constitution, the French Constitution, and the German Constitution have been the main sources studied in Japanese constitutional studies after the current Japanese Constitution was promulgated in 1946. Nowadays, comparative approaches and studies of the constitutions of neighbors and allies, such as Korea and other Asian countries, are being undertaken in Japan.

In this paper, I will first describe the basic framework of the governmental structure for law-making power under the Japanese parliamentary system. Second, I will analyze the Japanese perspective of re-regulation through a brief comparison between the Japanese and Korean governmental systems. Third, I will complete an overview of economic regulation and the Cabinet in Japan.

I. Problems with the legislative process in Japan

1. Legislative power in Japan

Article 41¹⁾ of the Japanese Constitution stipulates that the sole and highest legislative power belongs to the Diet. Unlike the Korean National Assembly, the Japanese parliament has two houses: the House of Representatives and the House of Councillors.²⁾ There are 475 members in the House of Representatives, and 242 in the House of Councillors. The Korean National Assembly has 300 members.³⁾

While the Korean Constitution adopted the presidential system⁴⁾, the Japanese Constitution adopted the parliamentary system. In Japan, the prime minister is

1) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.41. (Japan).

2) The original draft of the South Korean Constitution stipulated two houses of parliament; but after, it was changed into one house.

3) DAEHANMINKUK HUNBEOB [HUNBEOB][CONSTITUTION] art. 41(2).(S.Kor.).

4) DAEHANMINKUK HUNBEOB [HUNBEOB][CONSTITUTION] art. 66. (S.Kor.).

selected from among the members of the Diet, and referendums are not allowed, except in residential votes for statutes only covered by a prefecture and constitutional amendment.⁵⁾ The term “sole” in Article 41 of the Japanese Constitution does not mean that the Diet is legally the highest entity controlling other governmental branches such as the administrative and judicial branches.⁶⁾ Rather, it means that the legislature is connected to the people through voting; it is in a democratically central position for decision-making, and thus the word “sole” is just a politically eulogistic name with no legal authority.⁷⁾ The “statutes” passed by the Diet in Article 41 mean that legislation is generally applied to the people and abstractly to the case, which provides predictability and equality.⁸⁾

As stated above, the Japanese Constitution adopted a parliamentary system, and ministers appointed by the prime minister⁹⁾ have their own administrative branches.¹⁰⁾

Unlike the presidential system, the administrative branch exists on the Diet's confidence.¹¹⁾ The leader of the ruling political party takes the position of prime minister under the Japanese parliamentary system. Thus, the composition of the cabinet is subject to the political power balance of the ruling party.

Following the U.S. committee system, members of both houses of the Diet belong to committees for particular fields,¹²⁾ and are expected to specialize in a certain area. The plenary session is open to the public, but the committee may be closed.¹³⁾ The

5) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.67, 95, 96. (Japan).

6) This perspective was developed in the Urawa case regarding Article 62, the power of the Houses of the Diet to investigate and shape policies. Yuichiro Tsuji, *Legal Issues Presented in a Recent Japanese Book Scanning Case*, 64 *Tsukuba Journal of Law and Politics* 73 (2015).

7) TOSHIHIKO NONAKA, MUTSUO NAKAMURA, KAZUYUKI TAKAHASHI, KATSUTOSHI TAKAMI, *KENPO II (Constitution II)* 71 (Yuhikaku 2012) [hereinafter, NONAKA ET.AL. VOL.II].

8) *Id.* At 78-80.

9) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.67 (Japan).

10) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.68. (Japan).

11) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.69. (Japan).

12) Kokkai Hou [Japanese National Assembly Act], Law No.79 of 1947 (now No.86 of 2014), art. 41, 42 (Japan).

13) Kokkai Hou [Japanese National Assembly Act], Law No.79 of 1947 (now No.86 of 2014), art. 52

decision-making and composition of the committee are largely subject to the political faction.

The plenary sessions for the House of Councillors are nominal in Japan. The upper house is expected to filter the bills and monitor the deliberations of the lower house.¹⁴⁾ In Japanese parliamentary history, the upper house was once expected to be representative of occupational and regional voters. Today, political parties write the agenda and they discipline and control their members in both Houses of the Diet under party platforms.

After rapid economic growth in the Japanese economy, many people moved out of rural areas to larger cities, which led to vote value disparity in many electoral districts. The aging population of Japan is increasing while the population of rural areas is continually decreasing with economic growth. Until 2009, the Japanese Supreme Court likely focused on occupational and regional representatives¹⁵⁾, and accepted more than four times disparity in both 2006¹⁶⁾ and 2009.¹⁷⁾ In 2012¹⁸⁾ and 2014,¹⁹⁾ however, the Japanese Supreme Court held the unconstitutional state decision called “*Iken Jotai*,” which is similar to the Non-Conformity of Constitution decision that can be held by the Korean Constitutional Law Court, under the principle of one vote per person in unequal electoral constituencies. The upper House’s function of filtering bills is now being lost in Japan.

Except vary rare bills, such as the peace and defense bills of 2015, most bills are passed without any trouble in the plenary sessions. Deliberations are mainly made

(Japan).

14) NONAKA ET.AL. VOL.II, *supra* note 7 at 82.

15) KOJI SATO, *KENPO {Constitution}* 406-443 (Seibundo 2011) [hereinafter KOJI SATO].

16) Saiko Saibansho [Sup. Ct] October 4, 2006, Heisei 17 (gyo tsu) no.247, 60(8) Saiko Saibansho Minji Hanreishu [Minshu] 2696 (Japan).

17) Saiko Saibansho [Sup. Ct] September 30, 2009, Heisei 20 (gyo tsu) no.209, 63(7) Saiko Saibansho Minji Hanreishu [Minshu] 1520 (Japan).

18) Saiko Saibansho [Sup. Ct] October 17, 2012, Heisei 23 (gyo tsu) no.64, 241 Saiko Saibansho Minji Hanreishu [Minshu] 91 (Japan).

19) Saiko Saibansho [Sup. Ct] November 26, 2014, Heisei 26 (gyo tsu) no.155, 68(9) Saiko Saibansho Minji Hanreishu [Minshu] 1363 (Japan).

in the committees. The problem of law-making power in the Japanese Constitution is that members of the Diet are often influenced not only by their political party but also by interest groups so that even the presence of representative specialists in the committees may not be so productive. This will be reviewed in greater detail in the next chapter.

2. The Cabinet Legislation Bureau

Although Article 41 of the Japanese Constitution announces that “sole” legislative power belongs to the Diet, the Cabinet is also able to submit bills to parliament.²⁰⁾ A bill submitted by the Cabinet²¹⁾ can be freely amended and abolished in parliament, which does not infringe on the sole law-making power of the Diet.

The Cabinet Legislation Bureau (*Naikaku Hensei Kyoku* or CLB) under the Cabinet office functions as a constitutional gatekeeper for the administrative branches. The ministry prepares bills and waits for review by the CLB. The CLB has played a leading role in writing bills and announcing public statements of constitutional interpretation. It was established in 1952 as an administrative branch and has made a formal governmental announcement for the interpretation of the Japanese Constitution.

For the review of the CLB before submission of bills to the Diet, its members are selected from five ministries: the Ministry of Justice; the Ministry of Finance; the Ministry of Internal Affairs and Communications; the Ministry of Economy, Trade, and Industry; and the Ministry of Agriculture, Forestry, and Fisheries. These officers are legal specialists in their own fields. The director of the CLB is not a minister, but the director. Thus, the director is not required to have the consent of the Diet. Japanese governmental officers are generally recruited via examination and appointed through the National Personnel Authority.²²⁾

20) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.72. (Japan).

21) Naikaku Hou [Japanese Cabinet Act], Law of 5 of 1947 (Now No. 33 of 2015). art 5. (Japan).

3. The Legislative Bureau in the two Houses of the Japanese Diet

In Korea, the number of bills passed from the 12th to 19th National Assembly increased from 222 to 5405. This shows an active law-making process in Korea.²³⁾ Director Jun Kim argues that a regulatory impact assessment should be applied to bills written by members of the National Assembly.

The Japanese Diet consists of two houses, the House of Representatives and the House of Councillors,²⁴⁾ which were established in 1948 by the Diet's Legislation Bureau (*Gin Housei Kyoku*) in the National Assembly Act (*Kokkai Hou*).²⁵⁾ the Legislation Bureau's purpose is to assist members of the House of Representatives and Councillors in their legislative activities.²⁶⁾ The Legislative Bureau for the House of Representatives consists of a staff of 82 people divided into six departments with fourteen divisions. The Legislative Bureau for the House of Councillors consists of a staff of 75 divided into five departments with twelve divisions. They help members of the Diet to formulate or revise bills, as well as conduct research on legal matters.

The Commissioner General in the House of Representatives (*Shugin Housei Kyokuchou*) is selected with the consent of the House's members and is appointed by its chairman, the *Shugin Gicho*.

The CLB review is made by legal specialists, but it takes a long time before the

22) Their appointment does not generally need the approval of the Diet. The vice minister (*Jimu Jikan*) is the highest officer who requires the Diet's approval. The highest person in the ministry is the minister who is appointed by the Cabinet.

NIHONKOKU KENPO[KENPO][CONSTITUTION], art.68. (Japan).

23) Jun Kim, *Legislative Impact Assessment at the National Assembly of Korea*, Working paper, November, 2015 at 2015 KLRI International Conference, Theme: Nordic Countries' Better Regulation and Legislation Impact Assessment.

24) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.42. (Japan).

25) *Giin Housei Kyoku Hou* [The House of the Diet Legislation Act], Law No. 92 of 1948 (Japan).

26) *Kokkai Hou* [Japanese National Assembly Act], Law No.79 of 1947 (now No.86 of 2014), art. 131(1). (Japan). A Legislative Bureau shall be established in each House to assist Diet members in drafting bills.

bill is submitted. The Legislative Bureau of the Diet works together with politicians. It is quicker but not as perfect as the CLB.

4. The prime minister and law-making power

There is another unique political character of law making in the history of Japanese prime ministers. Many Japanese prime ministers have been former government officials. After working in various ministries, they ran for public offices. Therefore, their experiences have been central to writing bills with each ministry that they belonged to.²⁷⁾ For example, Prime Minister Shigeru Yoshida, who led a restoration period in Japan, used to be a diplomat who lived in China for around 20 years. The Yoshida administration concluded the San Francisco Peace Treaty and the Japan U.S. Treaty in 1951, which took effect in 1952. Prime Minister Hayato Ikeda, who led a period of economic growth in Japan beginning in 1954, used to be an officer in the Ministry of Finance. These prime ministers generally have trusted strongly in the abilities of governmental officers to write bills and shape policies.

Prime Minister Kakuei Tanaka was a strong leader in shaping a policy called the Plan for Remodeling the Japanese Archipelago (Building a New Japan, *Nihon Rettou Kaizou ron*). Its purpose was to develop and reallocate industrial regions and to shape traffic and telecommunication networks, and also to work at decentralization. Tanaka was a student of Shigeru Yoshida; he did not graduate college, but wrote many bills and influenced the next generation of young politicians. He said that study and hard work to pass bills in the Diet made young representatives specialists in law making.

Tanaka was criticized for the connection of his bills with interest groups such as the construction industry, and for bringing large benefits to his own constituency. He was arrested in the Lockheed bribery scandal of 1976. The Supreme Court found

27) SHIGENORI MATSUI, *THE CONSTITUTION OF JAPAN* 108 (Hart Publishing 2011) [hereinafter *Matsui*].

him guilty in 1995. Corruption and politics came to light in this case, which was responsible for the amending of the National Assembly Act (*Kokkai Hou*).²⁸⁾

The Diet requires 20 members in the House of Representatives and 10 members of the House of Councillors to propose a bill. If the bill requires a budget, 50 members of the House of Representatives and 20 members of the House of Councillors must propose it.²⁹⁾ Its purpose is to ensure the quality of the legislation that a member must bring.

The Political Funds Control Act (*Seiji Sikin Kisei Hou*)³⁰⁾ was enacted in 1948, and drastic revisions were made after the Tanaka scandal. It requires members of the Diet to prepare a balance of payment report and provides open access to the general public.

5. Bill-writing by the members of the Diet

The members of each House of the Diet receive an annual expenditure allowance by statute.³¹⁾ For example, members of the House of Councillors receive around 21,300,000 yen annually. They are eligible to employ a maximum of three public secretaries. These secretaries are presumed to be governmental officers. One of the three is called the policy secretary (*Seisaku Tanto Hisbo*), as outlined in the National Assembly Act.³²⁾ The candidate needs to pass an examination before becoming a policy secretary. The salary of the policy secretary is paid by the House to which the representative belongs. Three secretaries are under the direction and order of

28) Kakuei Tanaka served as prime minister from 1972 to 1974, and contributed much to the restoration of diplomatic ties between Japan and China in 1972 with the signing of the Japan-China Joint Communique.

29) Kokkai Hou [Japanese National Assembly Act], Law No.79 of 1947 (now No.86 of 2014), art. 57, 57-2. (Japan).

30) The Political Funds Control Act (*Seiji Sikin Kisei Hou*), Law No. 194 of 1948.

31) Kokkai Giin no Saihi, Ryohi, oyobi Teate tou ni kansuru Houritsu [Law for annual expenditure for the members of the Diet], Law No. 80 of 1947 (now No. 36 of 2015), art.1,11,11-2, et al. (Japan).

32) Kokkai Hou [Japanese National Assembly Act], Law No.79 of 1947 (now No.86 of 2014), art. 132(2) (Japan).

the members of the Diet, not the Houses of the Diet. The policy secretary receives between 320,000 to 549,000 yen per month, which is subject to the law regarding secretaries for members of the Diet.³³⁾ His or her job is to help the member of the Diet to shape policy.

The National Diet Library (*Kokkai Toshokan*) is also helpful for members of the Houses of the Diet. Its purpose is to keep records of books and materials and support the business of members of the Diet, while providing the Japanese people, and the administrative and judicial branches, with library services.³⁴⁾

The Research and Legislative Reference Bureau (*Rippo Kousa Kyoku*) was established in the National Diet Library for deliberation of the committee of both Houses of the Diet.³⁵⁾ Some Japanese constitutional scholars are selected to instruct the officers in the National Diet Library.³⁶⁾

6. Interest groups and law-making power

Most bills in Japan are submitted by the Cabinet, and few of these have passed in the history of the Japanese Constitution. Statutes are to be passed only by the representatives of the people.³⁷⁾ In the process of legislation, interested parties and specialists take part in public hearings.

In the United States presidential system, the President and Secretaries can't attend to the parliament. They would show up to opine in the public hearing based on the request of the Congress. In Japanese parliamentary system, the ministers are

33) Kokkai gin no Hisho no Kyuyo tou ni kansuru Houritsu [Law regarding secretary for members of the Diet], Law No. 49 of 1990, (now No. 3 of 2016), art.3, et. al. (Japan).

34) Kokuritsu Kokkai Toshokan hou [The National Library Act], Law No. 5 of 1948, (now No. 40 of 2016), art.1. (Japan).

Kokkai Hou [Japanese National Assembly Act], Law No.79 of 1947 (now No.86 of 2014), art. 130. (Japan).

35) *Id.* Art.15.

36) Prof. Toshiyuki Munesue moved to the National Diet Library in 2013. Prof. Katsutoshi Takami served from 2002 to 2005.

37) NIHONKOKU KENPO[KENPO][CONSTITUTION], preamble. (Japan).

to be summoned in the committee. It is not so promising to see interest groups working together friendly with other groups. Some interest groups may take part in public hearings to draft new bills due to their expertise. Some public hearings are ceremonial with no fruitful discussion, which to some extent still gives nominal accountability and legitimacy to Japanese democracy.³⁸⁾ Public hearings do not involve the legal power to bind the legislature, but rather are only advisory.³⁹⁾

In 2015, the number of statutes drafted by the CLB has been 66, and the number of statutes submitted by the members of the Diet has been only 12.⁴⁰⁾ The number of statutes passed in the Diet depends on the composition of its two Houses. Compared to the National Assembly in Korea, if a twisted Diet⁴¹⁾ occurs, it is more difficult to pass the bill.

Compared to Sweden's regulatory Impact Assessment Act,⁴²⁾ the Japanese parliament does not have an equivalent. The CLB and the Legislative Bureau undertake this role more actively in Japan than the Legislative Bureau of the two Houses. There are continuing studies regarding legislative assessment in Japan.⁴³⁾

According to Prof. Masahito Tadano, who is a French constitutional law scholar, the more the European Union government expands its units, the more diverse and complicated its domestic legislative authority and power become. It also needs the coordination of diverse languages beyond various geographic boundaries. Lobbyist

38) ASANO ET. AL. *SIN KOKKAI JITEN { NEW CONCISE DICTIONARY OF THE NATIONAL DIET OF JAPAN}* 69 (Yuhikaku 2014).

NONAKA ET.AL. VOL.II, *supra* note 7 at 98.

Farber & Frickey, *The Jurisprudence of Public Choice*, 65 *Tex. L. Rev.* 873, 890-900 (1987).

39) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.41. (Japan).

Kokkai Hou [Japanese National Assembly Act], Law No.79 of 1947 (now No.86 of 2014), art. 51. (Japan).

40) ASANO ET.AL, *supra* note 38 at 257-269.

The Cabinet Legislation Bureau, available at <http://www.clb.go.jp/english/index.html>.(last visited on 28 in July).

41) A twisted Diet means that the two Houses of the Diet are controlled by different parties.

42) Jessika van der Sluijs, *Regulatory Impact Assessment, The Swedish example*, Working paper, November, 2015 at 2015 KLRI International Conference, Theme: Nordic Countries' Better Regulation and Legislation Impact Assessment.

43) MATSUI, *supra* note 27 at 109.

activity is more active. These are reasons why research is needed for the assessment of legislation, and why better government is expected.⁴⁴⁾ How to coordinate and organize various interests is vital to policy making and legislation. Bureaucrats are needed in part in European law making.

Professor Makoto Ohishi, who is also a French constitutional law scholar, mentioned legislative assessment in advance, which relates to judicial review power; this reviews legislative fact and discretion after a suit comes to court. Judicial review works to influence similar future legislation.⁴⁵⁾

II. Constitutional decision and judicial review theory in Japan

1. Two types of governmental regulation and judicial review

According to Nobuyoshi Ashibe, who studied the U.S. Constitution and contributed largely to Japanese constitutional research after World War II, the term “welfare of the public”⁴⁶⁾ in Articles 12⁴⁷⁾, 13, 22, and 29 has meaning for the government regarding two types of intervention: the night watchman state and the social welfare state.⁴⁸⁾

In the night watchman state, government regulation is implemented to prevent infringement on others’ rights and to maintain constitutional order. The duty of

44) Masahito Tadano, *Better statute (mieux légiférer): Social and economic change and legitimacy of governance in France*, 8(3) *Kigyō to Hō soūzō*, 41-(2012).

45) Makoto Ohishi, *Naikaku Hōsei kyōku no Kokusei Chitsujō keisei kinō* [The function of national policy making of the Cabinet Legislation Bureau], 6 *Journal of Public Policy Studies* 7 (2006).

46) NOBUYOSHI ASHIBE, *KENPO (6th edition) {CONSTITUTION}* 100 (Iwanami Shoten 2015) [hereinafter *ASHIBE*].

47) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.12. (Japan).

48) ASHIBE, *supra* note 46 at 15,81,103,131,193.

the government is to maintain a laissez-faire market. The old government, characterized as a negative state, was expected to not intervene in the freedom of contracts, and not to get involved in the individual's domain.

The rights provided by the government were rights such as freedom of expression in Article 21,⁴⁹⁾ and the idea that “no person shall be compelled to testify against himself,” as outlined in Article 38.⁵⁰⁾ The old government watched over contracts between private citizens, intervening only in cases of breach of contract. After the industrial revolution in the Meiji era in the late 18th century, the business and working classes were born into Japanese society, and freedom of contracts functioned to infringe on the freedom of economically and socially vulnerable people.

In the modern state, the Japanese Constitution is characterized by not only this negative state, but also a positive state. In a social welfare state, the government exercises two types of intervention in the market.⁵¹⁾ The first is negative regulation, wherein the government intervenes in the market to remove danger and maintain safety. The standard of judicial review for negative regulation is that the party alleging that the regulation is unconstitutional needs to prove that its purpose is important, the means to achieve the goals are important, and no other alternatives exist.

The second type of government intervention is positive regulation wherein the government intervenes in the market to protect socially and economically fragile people for a socially harmonized nation. Regulations with positive purposes are presumed to be constitutional, and their purpose legitimate. The court holds such interventions unconstitutional only if the regulation is clearly in violation of the

49) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.21. (Japan).

50) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.38. (Japan).

51) ASHIBE, *supra* note 46 at 226-230.

Mustuo Nakamura, *Freedom of Economic Activities and the Right to Property*, PERCY LUNEY AND KAZUYUKI TALAHASHI, JAPANESE CONSTITUTIONAL LAW 259 (University of Tokyo press 1993).

JOHN HALEY, THE SPIRITS OF JAPANESE LAW 178-184 (The University of Georgia Press 1998).

constitution.

This standard for judicial review by Ashibe has dominated and influenced constitutional research in Japan. However, today, German-style judicial review is becoming more influential in Japan. It is called “Three-Step Review.”⁵²⁾

Regulations for intervention in the market have been reviewed from the perspective of Japanese constitutional and administrative law scholars. The judicial review for the abovementioned, two types of governmental intervention will be discussed in Chapter III.

The Japanese judiciary adopted concrete judicial review,⁵³⁾ not the German-style, abstract review⁵⁴⁾, under which the Korean Constitutional law court was established.⁵⁵⁾ The number of unconstitutional decisions under the Japanese Supreme Court has been so small that it has been a controversial topic among Japanese constitutional law scholars.⁵⁶⁾

2. Important constitutional cases

Several cases are reviewed from the standpoint of constitutional economic liberty in this chapter. Compared to Korean constitutional law court decisions, the number of unconstitutional decisions is much smaller in Japan.⁵⁷⁾ In the first two cases, the

52) The leading German constitutional law scholars in Japan are Tsuyoshi Koyama, Toru Mouri, Kenji Ishikawa, Joji Shishido.

TSUYOSHI KOYAMA, *KENPOU JOU NO KENRI NO SAHYOU {MANNER OF CONSTITUTIONAL RIGHTS}* (New edition) (Shougakusha 2012).

KENJI ISHIKAWA, *JYU TO TOKKEN NO KYORI-KARL SHUMITT SEIDOTAIHOSHOURON SAIKOU {PRIVILEG ZWISCHEN FREIHEIT UND PRIVILEGE, KARL SCHIMITT INSTITUTIONELLE GARANTIE}* (Nihonhouronsha 2007).

JOJI SHISHIDO, *KENPO KAISHAKURON NO OUYOUTO TENKAI (2nd edition) {DEVELOPMENT AND APPLICATION OF CONSTITUTIONAL INTERPETATION}* (Nihonhyouronsha 2014).

53) Saiko Saibansho [Sup.Ct] October 8,1952, Showa 27 (ma) no.23, 6 (9) Saiko Saibansho Minji Hanreishu [Minshu] 783.

54) Yuishiro Tsuji, *Constitutional Law Court in Japan*, 66 Tsukuba Journal of Law and Politics 65 (2016).

55) DAEHANMINKUK HUNBEOB [HUNBEOB][CONSTITUTION] art. 111-113.(S.Kor.).

56) Yuichiro, *supra* note 54 at 65, 81.

57) *Id.*

Japanese Supreme Court reviewed interventions into existing businesses.

The Japanese Supreme Court reviewed two distance regulations, one for pharmacies, and the other for small markets. In distance regulation for pharmacies, the Court held the regulation by the Pharmaceutical Affairs Law⁵⁸⁾ to be unconstitutional. The government argued that its regulation was to promote public welfare because without this regulation, serious competition among pharmacies would occur and the quality of the medicine would be degraded; the price declined, endangering the public's lives and health. The Court determined this was too speculative to determine causation.⁵⁹⁾ Ashibe declared this to be a negative purpose regulation for economic freedom.⁶⁰⁾

In the small market regulation case, the Osaka prefecture passed an ordinance regulating the required distance between markets for small retailers. The aim of this regulation was to prevent detrimental competition among small retailers in the same locations. The Japanese Supreme Court⁶¹⁾ held that this regulation was constitutional on the grounds that its purpose was to protect socially and economically fragile people. Although choice of occupation is protected under Article 22,⁶²⁾ which includes the freedom to conduct one's own business, the freedom of that business may be restricted by the public welfare. Ashibe declared this to be a positive purpose regulation, which is presumed to be constitutional.⁶³⁾

Other constitutional cases include the Forest Act (*Shinrin Hou*),⁶⁴⁾ which prohibited requests for divisions from a party having property less than half as large as the forest in question. The Supreme Court⁶⁵⁾ held this provision of the Forest

58) Iyakuhin, Iryokiki tou no Hinshitu Yukousei oyobi Anzensei no kakuho tou ni kansuru Houritsu[Japanese Pharmacy Act], Law No. 145 of 1960 (now No. 50 of 2015) art. 6. (Japan).

59) Saiko Saibansho [Sup.Ct] April 30,1975, Showa 43 (gyo Tsu) no.120, 29(4) Saiko Saibansho Minji Hanreishu [Minshu],572.

60) ASHIBE, *supra* note 46 at 226-.

61) Saiko Saibansho [Sup.Ct] Nov. 22,1972, Showa 45(Gyo A) no.23, 26(9) Saiko Saibansho Keiji Hanreishu [Keishu],586.

62) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.22. (Japan).

63) ASHIBE, *supra* note 46 at 227-230.

64) Shinrin Hou [Japanese Forest Act] Law No. 249 of 1951 (now No. 69 of 2014) art.186 (Japan).

Act to be unconstitutional. The government argued that the purpose of the Forest Act was to prevent the division and subsequent degradation of forests, which would in turn make their management more difficult. The Court held that the means to achieve the goal was to prohibit a request from an owner having less than half the amount of the total property, which was judged to be unreasonable. The Supreme Court did not use dichotomy of purpose as negative and positive, but used a reasonable and necessary standard.

For public bath regulation, the purpose of the regulation was to improve public health, as Japanese people did not have their own baths in their homes. Families went out together and to enjoy public baths. Today, the number of home bathtubs has increased and the number of public baths has dramatically decreased. Thus, the Supreme Court changed the interpretation of the purpose of the Public Bath Act⁶⁶⁾ from public health maintenance to the protection of small business through a series of decisions.⁶⁷⁾

An oversimplified United States constitutional analysis is insufficient to explain these cases.⁶⁸⁾ German constitutional law uses a three-step review to analyze these cases.⁶⁹⁾

These cases illustrate several lessons for regulation. First, the regulations were established in the Diet where interest groups such as NGOs or large companies conflict and where legislation is a product of compromise.⁷⁰⁾ The purpose provision in Article 1 camouflages the statutory protections of interests. Therefore, the judiciary is required to review the purpose and means carefully.

65) Saiko Saibansho [Sup.Ct] April. 22,1987, Showa 59(O) no.805, 41(3) Saiko Saibansho Minji Hanreishu [Minshu],408.

66) Saiko Saibansho [Sup.Ct] Jan. 26,1955, Showa 28(A) no.4782, 9(1) Saiko Saibansho Keiji Hanreishu [Keishu],89.

67) Saiko Saibansho [Sup.Ct] Jan.20,1989, Showa 61(A) no.1140, 43(1) Saiko Saibansho Minji Hanreishu [Minshu],1.

68) ASHIBE, *supra* note 46.

69) *Id.*

70) Farber & Frickey, *Symposium on the Theory of Public Choice: Legislative Intent and Public Choice*, 74 Va. L. Rev. 423(1988).

Second, every statute becomes outdated. The social and economic facts supporting the legislation are also subject to judicial review. If it is obsolete, the judiciary renders it unconstitutional, sending a message to the legislature to amend it in parliament. This is called “legislative fact theory,” and is helpful in reaching consensus among Justices of the court and sending messages to the Diet by avoiding serious conflict with law-making power.

Third, a regulation to protect a business regardless of the businessperson’s effort or ability is subject to judicial review of the regulation, which can hold the law to be unconstitutional.

As the Internet develops more rapidly, Internet content providers such as Amazon and Rakuten are changing their marketing dramatically. They are selling various goods on their websites. The Pharmaceutical Affairs Law⁷¹⁾ has prohibited the sale of pharmaceutical products on websites by order of the Ministry of Health, Labor, and Welfare. One Internet company, Kenko.com, brought suit, alleging that this ministerial regulation was arbitrary and capriciously illegal. The Ministry argued that face-to-face shopping in that realm was necessary so that pharmacists could see the patients’ faces for medical checks. The Supreme Court held the Ministry’s decision illegal in 2013.⁷²⁾

After its decision, an amendment of the Pharmaceutical Affairs Law was proposed to prohibit online shopping because behind this move some existing interest groups were trying to protect existing interests. From one perspective, the interest of the consumer might be neglected by this pressure. For senior citizens and people with disabilities, shopping on the Internet is helpful. Thus, the new Pharmaceutical Affairs Law was amended in 2013, enabling online shopping for pharmaceutical products.

After Japanese Constitution came into force, governmental regulation was led by

71) Iyakuhin, Iryokiki tou no Hinshitu Yukousei oyobi Anzensei no kakuho tou ni kansuru Houritsu[Japanese Pharmacy Act], Law No. 145 of 1960 (now No. 50 of 2015). (Japan).

72) Saiko Saibansho [Sup.Ct] Jan.11,2013, Heisei24(Gyo Hi) no.279, 67(1) Saiko Saibansho Minji Hanreishu [Minshu],1.

the Cabinet and ministries. Administrative state issues have arisen in Japan as well. Using the plausible rationale of protecting compromised or vulnerable people, the role of the administrative powers has been emphasized. Determining how to constrain large and growing administrative power is one of the important missions of Japanese constitutional legal study today.

III. Economic liberty and regulation in Japan

1. The history of Japanese economic regulation and the Cabinet

The Japanese Meiji government earned indemnity through the Sino-Japanese War of 1894 to 1895, and the Russo-Japanese War of 1904 to 1905. The goal of the Meiji government in this period was to create a wealthy and a militarily strong country, so industrial development was a national priority. The Meiji Constitution had no provisions for social rights and the government prioritized policies for a strong state. Big financial family groups were created. Mitsui, Mitsubishi, Sumitomo, and Yasuda were called the big four financial combines, "*Zaibatsu*." In these large groups of companies, families invested and controlled management. These companies dominated the oligopolistic market.

After defeat in the Second World War, the Japanese government accepted the Potsdam Declaration in 1945. A condition for ceasing the war was to establish a democratic government. The Japanese government and officials of the General Headquarters, the Supreme Commander for the Allied Powers (GHQ, SCAP), worked together to draft the current Constitution.⁷³⁾

The GHQ was seriously concerned about the monopoly and oligopolistic market

73) The origin and history of Japanese Constitution. Birth of Constitution of Japan [English]. <
<http://www.ndl.go.jp/constitution/e/index.html> >

of the *Zaibatsu* because these large conglomerates economically supported the military during the war. The GHQ and the Japanese government removed all employees who had worked for the military state from public services. The most powerful people were out of office, and the young generation succeeded in growing the economy for a certain period of time.

In 1947, the Antitrust Act (*Dokusen Kinshi Hou*)⁷⁴⁾ was formulated. Its purpose was the prevention of private monopolies, unreasonable restraint on trade, and unfair business practices. It is often referred to as the “economic constitution.”

In 1951, Prime Minister Yoshida signed the San Francisco Peace Treaty and restored its sovereignty the next year. In 1950, during Yoshida’s tenure, the Korean War broke out and later accelerated Japan’s rapid economic growth in the 1960s. The Ikeda administration formulated the “Income Doubling Plan” (*Shotoku Baizou Keikaku*). One of his policies was to liberalize trade and allow foreign investment in Japan.

Even after the dissolution of the *Zaibatsu*, the large companies got together again, and the government supported them in certain areas. Eleven large companies that were the target of the dissolution order were absorbed into six banks: Mitsui, Sumitomo, Mitsubishi, Fuyo, Sanwa, and Dai Ichi Kangin. Those six large groups have now substantially diminished, and the independence of individual companies was enforced in the 2000s.

There are several fields in which the government intervened in the market even after World War II. In financial regulation, for example, the Japanese government has used the convoy system, called *Goso Sendan Housiki*, wherein the government protects its “ships,” keeping pace with the slowest ship. The government intervened in the market to keep pace with the banks and protect them from competition. The Financial Service Agency (*Kinyu Cho*) prioritized the interests of the entire

74) Shiteki Dokusen no Kinshi oyobi Kousei Torihiki no Kakuho ni kansuru Houritsu, [Anti Trust Act], Law No. 54 of 1947. (Japan).

business of banks until late 1990.⁷⁵⁾

In 1996, the Ryutaro Hashimoto Administration proposed a reform called the "Financial Big Bang" to destroy the convoy system after the economic bubble burst in Japan in 1991. Free, fair, and global principles were rendered. New business was encouraged to activate the financial, insurance, and banking markets. The disclosure and provision of information for rules of self-regulation and accountability became necessary. Accounting standardization and legalization occurred to develop derivatives.

As another example, just before the collapse of the bubble economy, the national Japan Railway Company (JR) was divided into six regionalized companies, while its businesses were divided into 12 companies.

Before 1985, telecommunications were dominated by the Nippon Telegraph and the Telephone Public Corporation, called *Den Den Kosha*. The government privatized it, citing the free competition principle as its main policy.

Administrative power in Japan has encouraged economic growth and made reform in the private market, which was criticized as an administrative state by Japanese constitutional law scholars. The law-making power held by the members of the Diet has been a mere façade, which was a main concern as well.

2. Decision-making in the Cabinet

The Meiji Constitution was similar to the Prussian Constitution in that the Emperor⁷⁶⁾ had strong powers, while the Imperial Diet⁷⁷⁾ was just a supporter of the Emperor. The current Japanese Constitution followed the English model of the

75) Yoshihiro Miwa and Mark Ramseyer, *The Legislative Dynamic*, DANIEL FOOTE, *LAW IN JAPAN* 179 (University of Washington Press 2007).

76) DAINIHON TEIKOKU KENPO [Meiji Constitution, Constitution of the Empire of Japan], art.1. (Japan).

77) DAINIHON TEIKOKU KENPO [Meiji Constitution, Constitution of the Empire of Japan], art.5,7. (Japan).

Cabinet and parliamentary system. The highest person in the Cabinet is the prime minister, who has the authority to appoint and remove the ministers. The Cabinet has power to make decisions to shape policies.

The Cabinet's mission is to implement the statutes and make general and basic policies for politics, as well as to direct and supervise the administrative branches. It is impressive to see Professor Masanari Sakamoto who has divided it into three roles.⁷⁸⁾

The highest layer is administration, which makes, directs, and supervises policy via Article 65.⁷⁹⁾ The second layer comes from the management function that maintains and develops the organization to implement administrative purposes efficiently. The third layer is implementation of statutes and regulations on the front line by inferior officials. This understanding is one of several interpretations of Article 65 and 72⁸⁰⁾ of the Japanese Constitution.

Generally, Japanese constitutional studies have focused on Cabinet leadership, as the Meiji government lost control by the interference of the ministries in the military.⁸¹⁾ Bureaucrats have played a leading role in the executive branches in Japan.⁸²⁾

The prime minister was just the highest among other colleagues, and had no power to remove the ministers who were against him under the Meiji Constitution; thus, they needed to resign as a whole.

Under the current Japanese Constitution, through frequent changes in the Cabinet, there is a risk of myopic goals being achieved. Regulation and re-regulation are the mid and long term goals of the basic and general policies, and are expected to be shaped by the Cabinet and the Diet together.

78) MASANARI SAKAMOTO, *KENPO 1 CLASSIS (CONSTITUTION 1 CLASSIC)* 195 (Yushindo 2000).
KOJI SATO, *supra* note 15 at 481.

NONAKA ET.AL. VOL.II, *supra* note 7 at 166.

79) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.65. (Japan).

80) *Id.* art.72.

81) DAINIHON TEIKOKU KENPO [Meiji Constitution, Constitution of the Empire of Japan], art.11,55.(Japan).

82) NONAKA ET.AL. VOL.II, *supra* note 7 at 165.

For Japanese politics, the Liberal Democratic Party (LDP) was in power from 1955 to 1993, when Prime Minister Morihiro Hosokawa formed a coalition party Cabinet. This change of the ruling party was a big challenge for the Japanese government to establish mid, and long term policies in Japan in 1993.

3. Energy and the Cabinet

From 2009 to 2012, the Democratic Party (*Minsbu Tou*) was the ruling party and advanced deregulation in the environmental area to encourage innovation and create new energy resources. In March, 2011, the Fukushima earthquake occurred during the Naoto Kan administration, and the possibility of renewable energy received attention. The operation of nuclear power plants in Japan was stopped. The primary agenda of the Democratic Party was to abolish nuclear power by the 2030s.

Shinzo Abe took power in the election of the House of the Representatives in December 2012, and the LDP government changed the Democratic Party's energy policy and resumed nuclear power plant policies under new regulations.

Before the Fukushima earthquake, control of electric power was divided according to geographic regions, with only one company in control of the grid and the production of the electricity in each designated region. Its market was monopolized by the government, which fixed the price of electricity. The electricity price was determined by a multiple of the cost. The higher the cost, the higher the price. The motivation to reduce the cost did not work.

The Abe Cabinet took over the Noda administration's policy in part. The Abe Administration announced a basic energy plan in 2014, wherein dependence on nuclear power was minimized, not abolished. Electrical power production, distribution, and transmission would be separated. The Abe administration announced that the nuclear plant was the base of electric power in Japan. The nuclear power plant, with new safety regulations, would be reactivated.⁸³⁾ The ratio

of renewable power will grow up to 20% by 2030, which is the reference goal. The fast-breed nuclear reactor Monju was planned to be activated again to work as a center of international research. In 2013, around ten thousand defects were found, and testing was prohibited. The Japanese government ordered the Japan Atomic Energy Agency to be replaced by another entity to manage Monju in November 2015.

The administrative regulation that was delegated through the Diet's statutes might lose accountability and full deliberation among the Japanese people. The provision of information and accountability may be necessary to reactivate nuclear plants. Today, as the administrative state grows larger, the function of decision-making in the parliament and the strengthening of judicial review should be discussed in Japan.

4. The budget, screening system, and political bargaining

The Cabinet submits a budget plan to the Diet every year.⁸⁴⁾ The Meiji Constitution allowed last year's budget plan to pass even though it was not approved by the Diet. Today, the Japanese Constitution does not accept the previous year's budget; the Cabinet needs to submit budget plans in ordinary Diet sessions every year.⁸⁵⁾

While the Democratic Party was the ruling party until 2012, the Government Revitalization Unit (*Gyosei Sashin Kaigi*) was established from 2009 to 2012 in order to reduce the budget. Each ministry prepares and submits its budget plan to the Ministry of Finance. The committee, which consists of Diet members, scholars, and specialists, screens the plans.

83) Genkai and Ikata nuclear plants scheduled to be reactivated by the end of 2016.

84) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.72(5).

85) DAINIHON TEIKOKU KENPO [Meiji Constitution, Constitution of the Empire of Japan],art.71.

NONAKA ET.AL. VOL.II, *supra* note 7 at 347-.

KOJI SATO, *supra* note 15 at 534-.

The government needs to issue deficit bonds post-1994 when the economic bubble burst. Article 4 of the Japanese Finance Act⁸⁶⁾ prohibits the issuance of deficit bonds. It has one exception: that the government may issue deficit bonds only for public works spending, public debt, and borrowing debt on the condition of approval by the Diet. In 1965, for the supplementary budget, only one year of special public debt was legislated in the Diet, and deficit bonds were issued.

In 2012, a fiscal cliff occurred in Japan.⁸⁷⁾ The Special Act to issue public debt became the hostage of political bargaining. The opposing LDP insisted on dissolution of the House of Representatives on the promise of party leader talks in August 2012. Then Prime Minister Noda told Abe that he would dissolve the House of the Representatives. Abe, the leader of the LDP, insisted. Forty percent of the budget was covered by deficit bonds. If it was not passed in the Diet, the local government could not have functioned because it depended on regional delivery taxes, which were allocated from the central government.⁸⁸⁾

In 2013, the country's debt exceeded one quadrillion yen. Abe established the Council on Economic and Fiscal Policy (*Keizai Zaisei Simon Kaigi*) as a Cabinet Office for Macroeconomics to replace the Government Revitalization Unit. Japan's economic revival headquarters handles microeconomics, and industrial competitiveness meetings are regularly held.

5. The economy and the ruling party

Under the parliamentary system, the Japanese Constitution was adopted, and the Cabinet changed economic regulations so often that it became difficult to make mid

86) Zaiseihou [Japanese Finance Act], Law No. 34 of 1947 (now No. 152 of 2002), art.4.

87) Zaisei no Gake Semaru [Fiscal Cliff occurring], The Nikkei Shimbun, (October 25, 2012).

Akaji Kokusai Houan no Seiritsu [Establishment of a deficit (covering) government bond], The Nikkei Shimbun, (November 5, 2012).

88) Hachi doufukun Kisai Maedaoshi Akaji kokusai hou medo tatazu [Eight prefectures raise a loan. Deficit covering bonds is unclear], The Nikkei Shimbun, (October 25, 2012).

and long-term proposals. From 1955 to 1993, the Japanese LDP maintained its conservative, ruling party status. Inside, the LDP's right and left factions fought each other for control of the party. For example, Prime Minister Ryutaro Hashimoto, from 1996 to 1998, adopted Milton Friedman's philosophy. The financial convoy system *Goso Sendan* by the Ministry of Finance was abolished. Hashimoto believed that Friedman saved the Japanese economy.

However, the next prime minister, Keizo Obuchi, was also selected from the LDP in 1998, and his administration lasted from 1998 until 2000, when he passed away. He followed John Maynard Keynes' philosophy. Obuchi created public works and tried to create demand.

Prime Minister Junichiro Koizumi from the LDP revived the policies suggested in Milton Friedman's work. He served as prime minister from 2001 to 2006. During his administration, the central government was reorganized from one office with 22 ministries and agencies into one office with 12 ministries and agencies. Junichiro Koizumi dissolved the parliament and asked voters in 2005 for privatization of the postal service.

Japan's postal service was a national public service, and Junichiro Koizumi tried to pass a bill to privatize it. This bill was passed in the House of Representatives, but it was defeated in the House of Councillors. Koizumi dissolved the House of Representatives with Article 7(3)⁸⁹⁾ of the Japanese Constitution in 2005, and subsequently won the election. His campaign was "Break The LDP". It meant that Koizumi fought with fraction inside LDP. Japan Post was created, and in November 2015 it had a plan to list in the stock market. His privatization plan took around ten years to implement.⁹⁰⁾

Koizumi followed Friedman's philosophy of neoliberalism, which dictated that people may do anything as long as it does not infringe on other people's freedom.

89) NIHONKOKU KENPO[KENPO][CONSTITUTION], art.7(3). Dissolution of the House of Representatives.

90) MATSUI, *supra* note 27 at 109-113.

It influenced the interpretation of the term “public welfare” in the Japanese Constitution. The core of the administration’s business is defense and diplomacy; the individual is expected to fend for himself.

Ironically, the LDP drafted a new Constitution⁹¹⁾ because the original purpose of the LDP was to establish a new Constitution for the Japanese people, free from outside coercion, such as that of the GHQ. It lamented over the rampant individualism. It emphasized the interest of the community and loyalty to the government.

In December 2012, Abe took over the administration from the Democratic Party. He allocated 1.9 trillion yen to enhance the competitive power of companies as the country’s highest priority. The government believed that the more competitive the companies became, the more earnings, wages, and corporate taxes would increase.

The Japanese National Institute of Health was established and 1.2 trillion yen was invested in advanced medical research and development. For example, four billion yen was assigned to 3D printer development.

Conclusion

Article 41 declares that sole law-making power is vested in the Diet, which has two Houses. The House of Councillors was created to moderate the power of the lower house and work to filter unnecessary bills. Due to the movement of people from rural to urban areas following the Korean War and Japan’s subsequent economic growth, the vote value disparity issue has arisen. The judiciary has accepted around four times disparity among constituencies during elections for the House of Councillors. The aging of Japanese society is increasing while the population in rural

91) The LDP’s draft of New Japanese Constitution, art.12: The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

area is decreasing. Meanwhile, party discipline has strengthened, and the upper House's function of moderating the power of the lower house has weakened.

Japanese history after World War II shows that *Zaibatsu* were dissolved for a while, and the young generation was a big factor in promoting free and fair competition.

The Japanese prime ministers following World War II used to be governmental officers of the ministries, and worked together to enact reforms. The CLB has gained stable power under a strong LDP since 1955.

The Legislation Bureau and the National Diet Library helped the members of the Diet to write bills. The number of bills by the CLB now outnumbers that of the LB and NLD. The members of the Diet are able to hire policy secretaries to shape public policy. Compared to the number of bills written by members of the Korean National Assembly, this number is too small in Japan. Prime Minister Kakuei Tanaka passed many bills, but was criticized that his bills reflected the interests of his electoral constituency and interest groups, who requested the minimum number of members of the Diet to submit the bills. The Political Funds Control Act was provided in 1948, and drastic revision was made after the Tanaka scandal. It requires members of the Diet to prepare a balance of payment report and grant open access to the general public.

Having adopted the American model of judicial review, the Japanese Supreme Court has held around 10 statutes to be unconstitutional since 1947. These Supreme Court decisions illustrate several lessons for regulation.

First, the regulations were established in the Diet where interest groups conflict and where legislation is a product of compromise. The purpose provision in Article 1 camouflages the statutory protections of special interests. Therefore, the judiciary is required to review the purpose and means.

Second, every statute becomes outdated. The social and economic facts supporting the legislation are also subject to judicial review. If it is obsolete, the judiciary renders

it unconstitutional, sending a message to the legislature to amend it in parliament. This legislative fact theory is helpful to persuade other justices and constitute majority opinion.

Third, regulations to protect businesses regardless of the efforts or abilities of their owners should be under judicial review, which can hold the law unconstitutional.

The administrative power of the government has been of concern in Japan. Using the plausible rationale of protecting compromised or vulnerable people, the role of the administrative powers has been emphasized. Determining how to constrain the large and growing administrative power of the government is one of the important missions of Japanese constitutional law study today.

Even though frequent change of the Cabinet, regulation and re-regulation to be the mid and long term goals of basic and general policies, and be expected to be jointly shaped by the Cabinet and the Diet.

From 1955 to 1993, the Japanese LDP maintained its ruling party status as a conservative one. Inside, the LDP's right and left factions fought each other for dominance of the party. The LDP has changed its economic policies in accordance with the changes of its political leaders.

The administrative regulations that were delegated through the Diet's statutes might lose accountability and acceptance among the Japanese people. The provision of information and accountability may be necessary to reactivate old nuclear plants.

The Japanese Constitution adopted the parliamentary system, and the Cabinet frequently changed economic regulations, which made it difficult to enact mid and long term proposals.

The legitimacy of the branches of government is grounded in the people's will.⁹²⁾ The discussion of constitutional scholars would be helpful to bridge the gap between the people and the government. Comparison and study of other Asian nations' legal systems would be helpful in the review and amelioration of our own.

92) NIHONKOKU KENPO[KENPO][CONSTITUTION], preamble.

Abstract

Article 41 declares that sole law-making power is vested in the Diet, which has two Houses. The House of Councillors was created to moderate the power of the lower house and work to filter unnecessary bills. Due to the movement of people from rural to urban areas following the Korean War and Japan's subsequent economic growth, the vote value disparity issue has arisen. Party discipline has strengthened, and the upper House's character as regional or vocational representative has weakened.

Japanese history after World War II shows that Zaibatsu were dissolved for a while, and the young generation was a big factor in promoting free and fair competition.

The Japanese prime ministers following WWII used to be governmental officers of the ministries, and worked together to lead reforms.

The Legislation Bureau and the National Diet Library helped the members of the Diet to write bills. The number of bills by the CLB now outnumbers that of the LB and NLD. Compared to the number of bills written by members of the Korean National Assembly, this number is too small in Japan.

Unlike Korean Constitutional law court, the Japanese Supreme Court has held around 10 statutes to be unconstitutional since 1947. These Supreme Court decisions illustrate several lessons for regulation.

Even though frequent change of the Cabinet, regulation and re-regulation to be the mid and long term goals of basic and general policies, and be expected to be jointly shaped by the Cabinet and the Diet in the parliamentary system.

The legitimacy of the branches of government is grounded in the people's will. The discussion of constitutional scholars would be helpful to bridge the gap between the people and the government. Comparison and study of other Asian nations' legal systems would be helpful in the review and amelioration of our own.

Key Words

Law Making Power, Cabinet Legislation Bureau, the Legislation Bureau, the National Diet Library, Interest Group, Upper House, Judicial Review, Constitutional Law Court, Administrative State, Market

국문초록

일본의 입법권 - 일본에서의 입법평가

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일본 헌법 제41조는 입법권은 오로지 두 개의 원(院)으로 구성된 의회에 부여한다고 선언한다. 참의원은 하원의 권한을 조절하고, 불필요한 법안 제출을 견제하기 위해 창설되었다. 한국전쟁과 그 후 일본의 경제성장으로 인해 사람들이 농촌에서 도시로 이동하면서 투표가치의 불균형이 쟁점으로 떠올랐다. 정당 규율은 강화되고, 상원의 지역적 또는 직무 대표성은 약화되어 왔다.

제2차 세계대전 이후 일본사(日本史)는 한동안 재벌이 해체되고 젊은 세대가 자유롭고 공정한 경쟁을 촉진하는 중요한 요소로 떠올랐다.

제2차 세계대전 이후 일본 수상들은 각 성의 정부 관료들이었으며 개혁을 주도하기 위해 함께 노력했다.

법제국 및 국립의회도서관은 의회 의원들의 법안 작성을 도왔다. 내각법제국이 제안한 법안 수는 오늘날 법제국과 국립의회도서관이 제안한 법안 보다 많다. 한국 국회의원들이 작성한 법안의 수와 비교할 때, 일본에서의 이 숫치는 매우 작다.

한국의 헌법재판소와는 달리, 일본 최고재판소는 1947년 이래 약 10개의 법령에 대해 위헌 결정을 했다. 최고재판소 결정은 규제에 대한 몇 가지 교훈을 보여준다.

내각의 잦은 변경에도 불구하고 규제와 재규제는 기본적인 정책의 중장기 목표에 의한 것이며, 의회제도 하에서는 내각과 의회 공동으로 이루어질 것으로 기대된다.

정부 부처의 합법성은 국민의 의지에 기초한다. 헌법학자들의 논의는 국민과 정부 사이의 격차를 연결하는 데 도움을 준다. 다른 아시아 국가의 법체계를 비교연구 하는 것은 일본 법체계의 검토와 개선에도 도움이 될 것이다.