A STUDY OF JAPANESE JUDICIAL REVIEW SYSTEM

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Chapter 1. Introduction

(1) Definition of Constitution

A constitution may be defined as the basic law governing the relationship between the governmental power and citizens in a society. Still, this definition can have the following three different meanings. The first is the written constitution named as such for the society. In this sense, England does not have the constitution. The second is the constitution in a real sense regardless of the form of government. Every society—even medieval European societies and Tokukawa (德川) Japan—has its constitution. The constitution in this sense may exist in the form of the tradition, custom, statutory provisions, and decrees as well as the written constitution. The constitution in the third meaning is based on the following assumptions; political power derives its origin from the citizens and it should be so exercised as to serve and guarantee the rights and liberty of citizens. From these assumptions, the constitution in the third meaning has the provisions, which guarantee the the rights and freedom of citizens as the fundamental human rights, on the one hand, and the provisions, in which the governmental power structures are so organized, and by which their powers are so exercised, as to protect and guarantee the rights and freedom of citizens to the maximum on the other. The Bill of Rights is an example of the former provisions, and the doctrines of separation of power, check and balance, and judicial review system, the latter example. Especially the constitution in the third meaning is characterized by the facts that it is invariably a written constitution (with an exception for

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(1) Kiyomiya Shiro, Kenpo (法律, 憲法), pp.1—22.
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England) and that it has a provision for its amendment which is made much harder to be realized than an ordinary legislation is. And these two characteristics are also for the protection of the fundamental rights and freedom of individuals, by clarifying the scope of the governmental power and the conditions for its exercise and declaring the rights and freedom in a written document and making the conditions for their change difficult. It is usually to the third meaning of constitution that the term constitution refers in the Western literatures. A constitution as a Western ideology is necessarily a written constitution (except for England), but the reverse is not true (e.g., the constitutions in communist countries).[2]

The Japanese Constitution of 1947 is, needless to say, a constitution of the third meaning. Obviously, however, this does not mean that the written constitution represents exactly the political reality in Japanese society. There may be discrepancies between the written constitution and the “living” constitution constitute in a real sense.

In this paper, I will try to trace trends of Japanese judicial review system mainly by surveying constitutional decisions and suggest factors that caused the trends, and the probable course of the future development.[4] However, I will not attempt a value judgment about the Japanese judicial review system. It will be treated as given in the political system.

I am basically taking the approach of political jurisprudence in which courts are viewed as political agencies and judges as political actors.[5] Judges or courts make law rather than find it.[5] In doing so, judges or courts share with other power holders (e.g., legislators and chief executives) the political power and responsibility to make policy decisions that realize certain preferred values for the society. This is true especially in connection with the constitutional

(2) Loewenstein’s ontological classification of constitution is worth mention. The normative constitution, the nominal constitution, and the semantic constitution. See Loewenstein, Karl. Political Power and the Governmental Process, 1965. p.147 ff. The constitution as a Western ideology in my definition may coincide with the normative constitution, as far as Western societies are concerned. The written constitution, which may be the constitution of my third meaning, is always involved in the discussion of either nominal or semantic constitutions. And the “living” constitution may be compared with the written constitution.

(3) Lasswell “conceived of law as authoritative decision, hence as a fundamental feature of the decision process within the process of every body politic.” He suggests the following five methods of approach to legal process: clarification of goals, ascertainment of trends, probable course of future development and invention and assessment of policy alternatives for the purpose of maximizing goals. Arens, Richard, and Lasswell. Harold D., In Defence of Public Order, p.9; Lasswell, Power and Personality, pp. 202−205.


(5) This is what the legal realists say about law. E.g., Frank, Jerome, Law and Modern Mind; the same author’s Courts on Trial; Schur, Edwin M., Law and Society, pp.43−50.
law. Thus, the constitutional law is always in the process of making.

(2) The Japanese Constitution

The Japanese Constitution provides a system of British style parliamentary cabinet government and yet introduces an independent American style judiciary vested with the power of judicial review.\(^{(6)}\)

The Constitution places a great emphasis on the rights and freedoms of citizens by including the detailed provisions of the rights and duties of the people.\(^{(7)}\) Thus, the Constitution poses as its goal the protection and preservation of the rights and freedoms guaranteed to the people, of which, however, "the public welfare" is carved out.\(^{(8)}\)

We will shortly see constitutional decisions centering around the interplay between the rights and freedoms of the people and "the public welfare." Through the seemingly narrow door of "the public welfare,"\(^{(9)}\) many factors, ranging from national security to the public "law and order", enter the scene of the interplay.

Needless to say, the public welfare factors are repugnant to the rights and freedoms of the people, which, nevertheless, have to know how to reconcile with the public welfare factors. The rights and freedoms of the people cannot exist without the very foundation of society being preserved. At the same time, democracy, which the Japanese Constitution purports to establish in Japan, cannot survive without the protection of the rights and freedoms of the people, which are in fact expressed in the form of rights and freedoms of minority in political process.

\(^{(6)}\) The Constitution Art. 81 provides, "The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act." Art. 98 provides, "The Constitution shall be the supreme law of nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have force or validity."

\(^{(7)}\) The Constitution, Chapter 3, Art. 10 to 40.

\(^{(8)}\) The Constitution, Art. 12 provides, "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." And Art. 13 provides, "All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs." The term, public welfare, appears again in other provisions of the rights and freedoms, e.g., Art. 22 and 29.

\(^{(9)}\) For the meaning of the public welfare, the scope of its applicability, etc., See Miyazawa Toshiyoshi, *Kempo (憲法解釈,憲法)*, p. 214 ff.; Suekawa Hiroshi, ed., *Kihon dekinikento kokyonohukushi (基本人権と公共の福祉)*, 1957.
Broadly speaking, the rights and freedoms of the people, which the Japanese Constitution provides, as "eternal and inviolate rights" consist of the rights to freedom and the so-called social rights. The rights to liberty include equality, the right to speech, press, assembly and association, freedom of thought and conscience, freedom of religion and academic freedom. The social rights include the right to maintain the minimum standards of wholesome and cultured living, the right to receive equal education, the right to work, the rights of workers to bargain and act collectively, etc.

The meaning which the social rights have vis-a-vis the rights to freedom in political process is that the social rights aim at the perfection of the rights to freedom, especially, political equality. Otherwise, the latter can be meaningless or even a hindrance to democracy, with the growing serious socio-economic inequality in society. An extreme substantive inequality in turn may jeopardize democratic form of government.\(^{10}\)

(3) Judicial Activism and Restraint

The written United States Constitution has remained unchanged over a long period of time. However, it has been experiencing major changes in its meaning. The changes that do occur in the form of the court's constitutional decisions and through practices of other branches of government indeed reflect the very fundamental transformations of socio-economic foundation for the political system, of which the court is a part.

As long as the basic goals of the court are the same as those of other political actors (e.g., legislature), the court will accept the policies of other decisions and will exercise judicial restraint in dealing with the acts of other branches of government. However, when the majority of the court disagree with the decisions of legislative policy makers, then it will tend to become judicially activist and to express its conflicting opinions through the device of judicial review. Thus, the court becomes activist when its decisions conflict with those of other policy makers and the court exercises judicial restraint when it accepts the decisions of other policy makers.\(^{11}\) This definition of judicial activism and restraint is independent of whether the court, the cabinet or legislature is serving conservative or liberal values.\(^{12}\) Thus, as the

\(^{10}\) "In order to make the rules of the game effectively valid, some compensating mechanism is necessary; and this mechanism can only be substantive norms. Rules of the game never exist by themselves, but always presuppose substantive norms" (e.g., the gradual supplementing of the legal and political rights of citizenship by social rights). Dahrendorf, Ralf, *Essays in the Theory of Society*, Chapter 8, Market and Plan, esp., p. 222.

legislature’s decisions may serve either conserval or liberal values, so the court’s activism or restrain may serve either values.\(^{13}\)

In any case, through the court’s activism and restraint, the constitutional norms, especially those related to the rights and freedoms of the people, is being continuously created. The Japanese Constitution as one of the most liberal has the detailed provisions of the bill of rights to begin with. Thus, the courts are continuously expected to be, at least in the provisions of the Constitution, in the position to serve liberal values, which are expressed in the bill of rights, and to play the role of liberal forces to check any encroachment on the bill of rights by the other branches of government. Indeed, the courts, above of all, the Supreme Court and its Justices, would have to function like Plato’s philopher-kings to live up to the expectations of the Constitutionally stated ideals, including the very preservation of its democratic political system.

As I will point out later, it appears to me that, especially, the Supreme Court basically serves conservative values, and many critics claim that the bill of rights is in the process of “cavitation”.\(^ {14}\) This does not seem to be surprising in the light of traditional value system, authoritative social structures including political party systems, lack of individualism as existing in the West, and elitism in Japanese politics.

### Chapter 2. Constitutional Decisions

(1) In my discussion of the trend of the Japanese judicial review system, I will largely introduce major decisions related to the constitutional issues. However, I do not think that the approach which relies only on the analysis of constitutional decisions is sufficient for the study of my topic, albeit necessary. It should be supplemented by the analysis of such behavioral factors as social origin, education, experience, etc. of judges, social and political struct-

\(^{12}\) See p. 94 infra.

\(^{13}\) The U.S. Supreme Court’s series of anti-New Deal legislation decisions are famous examples of activism serving conservative values. See Panama Refining Co. v. Ryan, 293 US 388 (1935); Railroad Retirement Board v. Alton R.R. Co., 295 US 330 (1935); Schechter Poultry Co. v. US, 295 US 495 (1935); Carter v. Carter Coal Co., 298 US 238 (1936). The definition is quite different from the conventional view that the court is a conservative force checking liberal tendencies in the other branches of government. The 1954 decision of Brown v. Board of Education is the most famous example of activism serving liberal values. See 347 US 482 (1954). See Schubert, ibid.

\(^{14}\) E.g., Matsushita, Gendai Nikkon no Suijiteki Kosei (松下，現代日本の政治的構成)，p. 18; Ienaka Saburo, Reikishika no mita Kenpo Kyōiku Mondo (家中三郎，憲政観の見た憲法教育問題)，p. 14.
tures, and value system, including procedures for the appointment of judges, especially, Supreme Court Justices, of which I will try only a little.

Constitutional decisions will be analyzed in the following order: decisions related to the provisions for the governmental power and those related to the provisions for the rights and freedoms; and in the latter, in turn, political freedoms first and social rights the next.

(2) Judicial Review Power

It was not necessarily clear whether the judicial review power was granted only to the Supreme Court or even to lower courts with the Supreme Court as the last resort, according to the Constitution Article 81. However, the issue has been resolved in favor of the latter opinion through court practices. The Supreme Court confirmed this. Needless to say, the Supreme Court’s constitutional decisions are the most important. However, lower court’s constitutional decisions are less important and yet show a greater dynamism than that of the Supreme Court’s decisions. In many important constitutional issues, a sharp division of opinion between the Supreme Court and lower courts has not infrequently occurred.

In the words of Article 81, it was also unclear whether an abstract constitutional issue (constitutionality of a law, order, regulation or official act, or a provision there of) could be brought to a court for the decision of its constitutionality without the presupposition of the existence of a concrete dispute between parties (the characteristics of a constitutional court, separated from the supreme court, like that in the West Germany’s Basic Law) or a court could decide the constitutionality of a law, order, regulation or an official act only in connection with its adjudication of a concrete dispute between parties (the U.S. style judicial review). This question was resolved by the Supreme Court in a famous case, Keisatsu Yobitai Iken Soshya (警察救援隊違憲訴訟), in which the Japanese Socialist Party Chairman, Suzuki Mosaburo, filed a suit directly to the Supreme Court against the State as the defendant.

15 The Supreme Court (hereafter SC) judgment 1.2. 1950(Criminal Case Report, hereafter CrR, 4.2.87). The SC held, in a criminal case in which the defendant charged with the violation of Food Control Act argued that only the SC had judicial review power, “for a judge to decide the constitutionality of a certain law or order in his adjudication of a concrete case by applying the law or order to it is a duty entrusted to him by the Constitution and it does not make any difference whether he is a judge of the SC or a judge of a lower court.” Jurist, Suppl. (ジュリスト 別冊), No.21, pp.196~197. And also SC decision 8.10.1952 Suppl.(Civil Case Report, hereafter GJR, 6.9.783); SC decision 15.8. 1953(GJR 7.4.305). Kiyomiya, Shiro, ibid, pp.297~306; Kaneko Hajime, Saihangu(兼子一, 職判法), pp.72~84; Otsuka Akira, “Ikenrippu Shinsaken”(大権席, 憲審法審査權), Horitsujiho(法律時報), No.481, pp.150~156; Yokota Kisaburo, Iken Sinsa(憲審三掌, 憲審審査), pp.1~16.
asking for the confirmation of nullity of every and all acts which the State did for the purpose of establishing and maintaining Keisatsu Yobitai, the predecessor of the Self-Defense Forces. The Supreme Court struck out the suit, by saying, “In our system, a court can be asked for its adjudication only when there is a dispute involving a particular person’s concrete legal relations, and it is groundless in terms of constitution and law to interpret that a court is empowered to judge the constitutionality of an abstract law or order separated from such a concrete dispute.”

It can be easily noticed that in the above two issues—the kinds of court that can exercise judicial review power and the requirement of existence of a concrete case before court as the condition for the exercise of the power—the American pattern has been closely followed. Consequently, the Supreme Court’s constitutional ruling is deemed not to have the same effects that a special constitutional court’s ruling on a statute or a provision thereof has. It does, however, constitute in fact a precedent to be followed in later cases by courts, although the doctrine of stare decisis is not recognized in Japan and thus the ruling does not have a binding authority.

The causé célébre of all are related to the Constitution Article 9 (the Renunciation of War Clause). In the so-called Sunagawa (孫権) case in which the defendants, who participated in demonstration protesting the expansion of the U.S. Sunagawa base, were charged with the violation of the Special Criminal Law (Art. 2) because they crossed some restricted areas of the base, the trial court acquitted them on the ground that “what our State allowed the U.S. troops to stay” was against the Constitution and thus the Special Criminal Law Article 2 was repugnant to the Constitution Article 81 (No Punishment Without Due Process Clause).

Upon a direct appeal, however, the Supreme Court in fact accepted the constitutionality of the Administrative Agreement which was the basis for the Special Criminal Law by using what amounted to a doctrine of political question. “The Security Treaty in issue can be said to be of the political nature of high degree that is significantly associated with the very foundation of the existence of our nation as a sovereign state. Therefore, the legal judgment

(17) The so-called Date Hanketsu (伊達判決), Tokyo Dist. Ct., judgment 30.3.1959 (Lower Ct. CR 13.3.776). Under the premise that the stationing of the U.S. troops is against the Constitution Art. 9 Sect. 2 the 1st Sentence (Renunciation of the Possession of the Military Forces), the Special Criminal Law accompanying the Administrative Agreement based on the Japan-U.S. Mutual Assistance and Security Treaty Art. 3, was declared unconstitutional. Tabat Shinobu, ed., Kenpo Hanrei Sogo Kenkyu (田畑信男, 臨法判例総合研究), pp. 11~12.
of its constitutionality or unconstitutionality is of such a nature that is not suitable for the judgment of courts of justice whose duty is purely in the administration of justice and, accordingly, is not within the scope of judicial review power of the courts "unless the constitutionality and thus the nullity is clearly recognized at a glance" (underlined). It is proper to interpret that it is subject, in the first place, to the judgment of the Cabinet, that has the power to conclude treaties, and the National Assembly, that has the power to approve them, and finally entrusted to the political criticism of the people who have the sovereign power. Thus, these matters have nothing to do with the question of whether the constitutionality of the Security Treaty or the acts of the Government based on the latter is a preliminary issue as in this case or not. . . . . . (18)

The famous Entuujiken (憲庭事件), which had enjoyed such a wide publicity, ended up with judicial restraint with the results of the constitutionality of Jiedai (自衛隊) implicitly recognized. In the case, the defendants, who were charged with the violation of the Self-Defense Forces Law Art. 121, because they cut off communication lines owned by the Self-Defense Forces, asserted their being non-guilty on the ground that not only the Art. 121 but also the entire Self-Defense Forces Law are repugnant to the Constitution Art. 9 and the Preface, and thus void. However, the trial court, Sapporo District Court, after four years of trial, elusively avoided to pass on the constitutionality by way of a statutory interpretation of the Art. 121, in which the defendant’s conduct did not constitute the violation of the Art. 121, with the statement that "it is improper and, moreover, impossible to pass a judgment on the constitutionality" since "judicial review of unconstitutionality can be exercised only to the extent to which it is necessary for the judgment of a concrete litigation." The public prosecutors decided not to appeal. (19)

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(18) SC judgment 16.12.1959(CrR 13.13.3225). Jurist, Suppl., No. 21, pp. 202~203. Three Justices, Kotani (甲谷), Okuno (奥野) and Takahashi (高橋) in their dissenting opinions asserted that the courts are empowered to judicially review the constitutionality of the Security Treaty. However, they concurred with the majority in reversing the case only because there is nothing unconstitutional in the treaty. The case was thus reversed and remanded. Thereupon, the Tokyo District Court passed a guilty judgment (27.5.1961), against which both parties appealed to the Tokyo Higher Court, which affirmed the judgment (15.2.1962).

In another case in which the delivery of a military base was claimed, the Hokuoka Higher Court denied the assertion that the land lease contract for the stationed troops in issue is void because of the unconstitutionality of the Security Treaty, following the Supreme Court’s doctrine of political question (5.3.1960, Case R. 230.7327). Takanu, ibid., pp. 12~15 and pp. 219~221. About legal issues related to the Security Treaty in general, see Hotetsuziko, Enlarged Issue, May, 1969: Yokota, ibid., pp. 83~92, 283~285, 653~655, etc.

(19) The defendants who had a cattle ranch suffered damages, miscarriage and decrease of milk pro-
There is a case in which the Supreme Court exercised judicial restraint by using the doctrine of political question, with more articulate languages, after the Sunagawa decision. In the case, the Supreme Court held, "the issue of whether the dissolution of the House of Representatives, which actually occurred, is legally void because the constitutional provisions on which the dissolution was based were wrongfully applied, or whether the dissolution is void because the advice or approval of the Cabinet which was constitutionally necessary was defective when the power of dissolution was exercised, is not subject to judicial review of the court." And it went on saying;

"Even in the system of separation of power in our Constitution, the exercise of judicial power is naturally subject to a certain degree of limitation and thus it cannot be immediately judged that every and all State acts can be subject to judicial review without any limitation. Any State act of a highly political nature that is directly related to the basis of the State authority should not be interpreted to be within the scope of the judicial review power of the court, even if it constitutes a legal dispute and thus it is legally possible to judge whether it is in force or null, and its judgment should be entrusted to such political departments as the Government and the Diet that are responsible to the people and finally to the political decision of the people. Such a limitation to the judicial power should be interpreted to be the limitation that is immanent in the constitutional essence of the judicial power, although there is no explicit constitutional provision for that, in the light of the highly political nature of the State act in issue, the nature of the court as a court of justice, procedural..."
limitations necessarily accompanying an adjudication, and the like, which are coming from the doctrine of separation of power."{(20)}

It was ruled by a lower court that the House's approval of apprehension of its members charged with crimes (e.g., bribery), the effectiveness of which was conditioned by a certain period of time limitation, was unlawful (and unconstitutional under the Article 50).{(21)} The same court declared that the issue of whether an act (e.g., assault and battery occurred at the floor) of a Diet member is within the scope of the acts for which the Constitution Article 51 (the privilege of non-liability) protects him from being liable should be subject to the judgment of the courts.{(22)} However, the Supreme Court held that the non-liability privilege

\[(20) \text{SC 8.6.1960 (CrR 14.7.1296). The Third Yoshida Cabinet dissolved the House of Representatives on August 28, 1952. Thereupon, Tomoebchi, a member of the House, instituted a suit to ask for the confirmation of his status as a member of the House of Representatives and for the payment of salary until the time when his term would expire, on the ground that the House could be dissolved only under the precondition of a non-confidence resolution for the Cabinet as provided in the Constitution Article 69, but the dissolution in issue was based only on Article 7 and the dissolution was not legally decided at the Cabinet meeting. The Tokyo Dist. Ct. (19.10.1953) and the Tokyo Higher Ct. (22.9.1954) did not buy the doctrine of political question but reviewed the constitutionality of the dissolution in issue. As a result, the Tokyo Dist. Ct. came to judge the dissolution as unconstitutional and therefore void on the ground that the dissolution lacked the advice of the Cabinet. But the Tokyo Higher Ct. reversed the District Court's judgment and dismissed the suit on the ground that the dissolution was properly advised and approved by the Cabinet. Four Justices, Kotani, Okuno, Kawamura, and Ichisaka, dissented on the ground that courts are empowered to review the constitutionality of a House dissolution but concurred with the majority in dismissing the appeal because they found no thing unconstitutional in the dissolution in issue. Jurist, Suppl. N.s. 21, pp. 204-205; Tabata, ibid, pp. 221-223; Yokota, ibid, pp. 92-96.}
\[(21) \text{Tokyo Dist. Ct. decision 6.3.1954 (Case Report 22.3). The Tokyo District Prosecutors Office requested the Tokyo Summary Court to issue a writ of arrest of a House member charged with bribery on February 16, 1954. The Summary Court in turn requested the Prime Minister for its approval, which was passed by the Cabinet. The Cabinet in turn sent its request of the approval to the House, which resolved to approve the arrest on the condition that it was effective until March 3, when the budget bill was to be pending, so that a member would not be missed in the discussion. On February 24, the Summary Court issued the arrest writ, whereupon the arrest took place immediately. On March 2, an attorney for the congressman filed a motion to the Tokyo District Court to repeal the arrest, on the ground that an approval of arrest conditioned by a period of time limitation was against the Constitution Art. 50 and the Diet Law Art. 33. The District Court dismissed the motion and, at the same time, judged as unlawful and as void the part of the House's approval that was conditioned by a period of time limitation. Jurist Suppl. N.s. 21, pp. 170-171.}
\[(22) \text{Tokyo Dist. Ct. judgment 22.1.1962 (Case R 297.7). A, B, and C, who were members of the House of Councillors, inflicted assault and battery on the chairman of the House Operation Committee, of which A and B were members and C was not a member, and 4 guardmen, at the Committee meeting. The court declared that the privilege of non-liability of Diet members includes not only such essential activities as speech, discussion and voting as enumerated in Art. 51, but also an act which can be deemed an expression of opinion in the House and which}
is not applicable to a local assembly.\(^{(23)}\)

(3) Political Freedom

Now let us turn to the classical freedoms. The criminal provisions, by which one who kills or injures his or his spouse's lineal ascendant is more severely punished than an ordinary murderer or injurer,\(^{(24)}\) have constantly been declared constitutional\(^{(25)}\) against the expectation of many lower courts and scholars.\(^{(26)}\) It may prove significant for the future development that two Justices dissented in the Supreme Court decision. The Supreme Court rule was recently challenged again by a lower court.\(^{(27)}\)

The statutory provision that prohibited public officials from engaging in a public election campaign also has been declared constitutional;\(^{(28)}\)

"Non-elected public officials are servants of the whole community. This is the reason why the State Public Officials Law Article 102 prohibits non-elected public officials from engaging in political activities which might result in favoritism, especially, for a party or a faction and, thus, even if..."

\(^{(23)}\) SC judgment 32.5.1949(Case R 482.14). Here an violent act was committed by local assemblymen in the assembly. It appeared to me that in the decision the Supreme Court confused the issue of whether a local assemblyman should have the privilege of non-liability like the constitutional privilege for Diet members with the issue of whether a local assemblyman's criminal act committed at the assembly session should depend on the information or a charge of the assembly for its prosecution. The Supreme Court have denied both the issues after all. *Horitsucho*, No.463. pp.57~63 with Hokama Kan's comment.

\(^{(24)}\) Criminal Code Art. 200 and 205 Sec. 2.


\(^{(26)}\) For example, Wagatzuma Sugao, "Horitsu", *Sengo Nihonshoshi* (我妻栄, 法律, 昭和日本小史), pp. 417~418.


public officials are differently treated from an ordinary citizen in this respect, it has a rational ground and is compatible with the need of the public welfare and not against the Constitution Article 14" (Equality Before Law Clause).\(^{29}\)

A similar rationale has been utilized in order to deny public official "the basic rights to labor" (the rights to organize and to bargain and act collectively), as will be indicated later. However, Asahigawa District Court challenged the Supreme Court's opinion on the ground that the State Public Officials Law Article 102 is violative of the Constitution Art. 21 (Freedom of Speech) and Art. 31 (Due Process Clause).\(^{30}\)

As another example of Art. 14 (Equality Before Law) case in the sphere of social rights, the provision of the National Pension Law by which a couple received the amount of old age pension for two less 3,000 Yen than the amount that they would separately have received was declared constitutional.\(^{31}\)

Equality before law, however, has been constantly interpreted by the courts as equality in an application of law stage, but also as equality in law itself\(^{32}\) (Therefore an inegal law should not be enacted in the first place. If it applies only in an application stage, the equal protection clause will not be applicable in legislation). In this connection, one interesting Supreme Court decision is related to the problem of population-wise inequality of electoral districts. The Supreme Court accepted the justiciability of the issue.\(^{33}\) However, it held that

\(^{29}\) Ibid.

\(^{30}\) Asahigawa Dist. Ct. judgment 25.3. 1968 (Case R 514. 20). "The evils coming from public officials' political activities is not uniform according to the contents of their tasks, their positions and patterns of their activities. Political activities of officials in public enterprises, the contents of whose official activities are precisely prescribed in detail, done in their free time, without intervening in the administrative process, and, without any intention to utilize State facilities, to pretend a public duty or to harm a fair administration, clearly do not entail much evils. The uniform prohibition of those activities regardless of their circumstances is not within the scope of the necessary and minimum degree of restriction but rather a punishment for an act." Haritsuziha. No. 476, pp. 56~69 with Ichihara's note

\(^{31}\) Tokyo Dist. Ct. judgment 13.7. 1968 (Case R. 533. 21). See National Pension Law Art. 79 2, Sec. 5.

\(^{32}\) Kozima Katsushi's comment. Jurist. Suppl. No. 21, pp. 18~19; Toi Doidakako, Hono moto no hyodo, Tabata, ibid, p. 26 ff. SC judgment 6.10.1948 (CrR 2.11.1275); SC judgment 11.10.1950, note (25) supra; SC judgment 7.6.1950 (CrR 4.6.956), etc.

\(^{33}\) Previously the U.S. Supreme Court had refused to review the issue of legislative apportionment as constituting a political question. See Colegrove v. Green, 328 US 549 (1946). However, the Court found an obstacle in the doctrine of political question. In Baker v. Carr, it ruled that malapportionment of state legislatures may constitute a violation of the Equal Protection Clause, and that federal courts are empowered to give remedy (369 US 186, 1962). In a series of later decisions of the Court, the one-man-one-vote principle has been established. See Gray v. Sanders, 372 US 369 (1963); Wesberry v. Sanders, 376 US 1 (1964); Reynolds v. Sims, 377 US 533 (1964).
the existing apportionment of electoral districts was not against the Constitution Art. 14, because the apportionment of electoral districts was a matter of legislative policy. Generally speaking, the distinction between a criticism of a public policy and an act of agitation as a crime, in another word, a line between speech and deed, is hard to draw. The Supreme Court seems to have sustained as constitutionally valid a sweeping interpretation of the criminal provision of the Food Emergency Measure Law which provide punishment for one who agitates not to deliver the major foods to the Government.

(34) As is known of the result of the House of Councillors election in electoral districts held in July 1962, it happened that, e.g., 4 were elected with 5,922 voters in Tokyo District whereas one was elected with 362,182 voters in Totsuori Ken District, and thus the percentage rate of the elected against the total voters was 1 for Tokyo to 4.088 for Totsuori. The nullification of the election was sought for on the ground that the Table II of the Public Election Law, which provided for the numbers of the members of the House of Councillors for each electoral district, were repugnant to the Constitution Art. 14, Art. 44 Proviso, and Art. 15 Sec. 3. “Although it is desired that, above of all, the number of the House members is so provided for each electoral district as to be proportional to the number of voters, and although it is undeniable that an important of the factors to consider in the distribution of the House members to the electoral districts is the ratio of the numbers of voters, it does not prohibit to add the other various factors in the consideration. For instance, in the Constitution Art. 46 providing for the election of half of the Councilors in every three years, it is difficult to reduce the number of Councilors in each district further than the present minimum of 2 regardless of the number of voters and the size, and historical backgrounds of electoral districts, distribution of Councilors according to public administrative districts and the other various factors are worthwhile consideration. It is not unreasonable to decide the apportionment of the number of the Diet members in consideration of those factors. In what percentages the number of Diet members should be provided for each electoral district is a matter of legislative policy which belongs to the power of the Diet, the legislature, unless an extreme inequality is generated in the enjoyment of the right to vote of voters regarding to the number of the Diet members in electoral districts, and it is impossible to judge it as repugnant to the Constitution Art. 14 Sec. 1 and, thus, as void only on the ground that the apportionment of the Diet members is not proportional to the number of voters.” SC judgment 5.2.1964 (CrR 18.2.270). Jurist, Suppl. No.21, pp.28~29 with Yamamoto’s comment; Yokota, ibid, pp.367~370.

(35) SC judgment 18.5.1949(CrR 3.6.839).” the people should not abuse the fundamental human rights guaranteed to the people by the new Constitution and have the responsibility to use them always for the public welfare(Art. 12). Therefore, even the freedom of speech in the new Constitution should not be relegated to the unlimited self-indulgence of the people but always made compatible with the public welfare. As shown, the act that the people criticize the governmental policies and attack their misadministration is within the speech and other freedoms of expression, in so far as its method does not harm the public welfare. However, the act of agitation not to deliver, regarding to the sale and deliver of major foods to the Government as ordered on the basis of the provisions for the fulfillment of the purpose of the Foods Control Law which the State enacted in order to secure the major foods for all people, under the circumstance of the shortage of foods, was not the act of criticizing the Governmental policies and attacking their misadministration but amounted to the act of persuasion not to implement one of the legally important duties which the people have, and harms the public welfare. Therefore, since the act is beyond the scope of the freedom of speech and is to be judged morally wrong
Zenakuren's application for the use of a park controlled by the Public Welfare Minister to have a May day mass meeting was denied by the Minister in 1951. The Tokyo District Court reversed the denial on the ground that, *inter alia*, the denial violated the freedom of assembly. However, the Tokyo Higher Court and Supreme Court concurred the original denial on the procedural ground that it lacked a justiciable interest since May 1 was already over. Still, the Supreme Court did not forget to express its opinion as part of dictum that the denial was not against the Constution but rather a proper exercise of the power to control.\(^{36}\)

Another important issue area is related to the municipal public safety ordinances. Since Osaka City enacted the so-called public safety ordinance in July, 1947, which was designed to control parades, demonstration, and mass assemblies by requiring a filing of a report or a permission for assemblies, mass parades, etc., big cities have followed the precedent of Osaka to have similar ordinances, which were utilized especially to control leftist political activities.\(^{37}\) To begin with, Kyoto District Court declared the (newly amended) Kyoto City Public Safety Ordinance as unconstitutional and went on to suggest the principle of "the minimum and specified scope of restriction", according to which the constitutionality of a given restriction on the freedom of assembly and association could be judged.\(^{38}\) The Kyoto decision became a criterion for the constitutionality of a public safety ordinance. Thus, the impact of the Kyoto decision was felt not only in lower court's cases,\(^{39}\) but also in the

in social life, the punishment of the act as a crime is not against the provision of the Constitution Art. 21. "With the statement, the Supreme Court affirmed the lower court's guilty judgment. The same or a similar attitude has been followed in the later cases: SC judgment 19.1.1990 (CrR 4.1.23); SC judgment 9.1.1992 (CrR 6.1.4); SC judgment 29.8.1992 (CrR 8.5.1053); SC judgment 27.4.1994 (CrR 8.4.555); SC judgment 20.5.1994 (CrR 8.5.692); SC judgment 30.11.1955 (CrR 9.12.2545); SC judgment 21.2.1962 (CrR 16.2.107); etc. *Jurist*, Suppl., No. 21, pp.34-35 with Yokokawa Hiroshi's comment.

In the famous *Lady Chatterley's Lover* case, the Supreme Court affirmed the conviction of the defendants (publisher and translator), *inter alia*, on the ground that the freedom of expression is not absolute and thus not permitted when it is against the public welfare, and that it is not impossible to prohibit a obscene literature and sale of an obscene literature because of the constitutional provision against a prior censorship. SC judgment 13.3.1957(CrR 11.3.997). *Jurist* Suppl. No. 21, pp.36-37 with Ugai's comment.

\(^{36}\) SC judgment 23.12.1953 (CrR 7.13.1561). Justice Kuriyama dissented on the ground that the denial was unlawful. In any case, the changed political environments during the Korean War may have influenced the Supreme Court decision. *Jurist*, Suppl., No. 21, pp.50-51. Wagatzuma, *ibid*.

\(^{37}\) Wagatzuma, *ibid*, p.419 ff.


\(^{39}\) For instance, Tokyo Higher Ct. judgment 15.9.1954 (Higher Ct. CrR 7.10.1507) (The Kyoto decision formed the main point of the ratio decidendi of the Tokyo Higher Court's decision);
Supreme Court’s Nikata Public Safety Ordinance decision, in which the Supreme Court sustained the ordinance as constitutional, saying, “a general requirement of a prior permission, but not a simple prior notice requirement, for march or mass demonstration is not permitted as violative of the Constitution,” but “a requirement of a prior permission” is permissible only with regard to a specific place and method under the reasonable and clear criteria for the purpose of maintaining public order or preventing a serious harm to the public welfare”, and, thus, permission may be denied “when a clear and immediate danger to public safety is anticipated.”

Then, however, the Supreme Court appears to have retreated from its own 1954 decision with its emphasis on “law and order”, saying:

“It is characteristic that an expression of opinion through a collective activity is supported by forces of collectivity composed of a number of attending people, that is, a kind of potential, physical forces. Those potential forces are of such a nature that they can be very easily mobilized possibly either according to prearranged schedules or accidently by an incitement, agitation and the like from within or without.

“It is clear, in the light of the law of mob psychology and the experience in reality, that in such a case, even peaceful and quiet masses may be occasionally involved in a vortex of excitement and exasperation, in a worse case, become a mob as a matter of minute, and override law and order by forces, so that there can be the danger that there may develop such a situation that not only leaders of masses but also police forces cannot control. Therefore, although a prior regulation with regard to printed materials, which can be called an expression of opinion in a pure sense, that is, a censorship, is prohibited by the Constitution Article 21, Sec. 2, it is after all unavoidable that a local public corporation shall take in advance a necessary and minimum degree of measure for the maintaining of law and order in providing against an unpredictable situation in consideration of the local conditions and other various situations by way of the so-called public safety ordinance.”

“It is proper that the finding of whether, in an official act of permission or non-permission, a situation of such a case exists is at the discretion of the public safety commission”.

In this respect, however, there are some lower court decisions which clearly challenged the Supreme Court’s opinion.

SC judgment 10.5.1955 (CrR 9.6.907) (About Tokuyama Shi Public Safety Ordinance requiring a prior permission); SC judgment 30.3.1955 (CrR 9.3.562) (About Saitama Ken Ordinance requiring a prior notice); SC judgment 1.2.1955 (CrR 9.2.119); Tokyo Dist. Ct. judgment 6.5.1958 (1st Instance CrR 1.4.683) (Declared as unconstitutional); Gihu Dist. Ct. judgment 27.1.1959 (Lower Ct. CrR 1.1.140); etc.

(40) SC judgment 21.11.1954 (CrR 8.11.1866)
(41) SC judgment 20.7.1960 (CrR 14.9.1243). Horitsujiho, No. 21, pp. 52-53 with Abe’s comment; Tabata, ibid.
(42) Kyoto Dist. Ct. judgment 23.2.1967 (Case R 480. 4); Tokyo Dist. Ct. judgment 10.5.1967;
A course change by the Public Safety Commission in its act of permitting marches nearby the House buildings was enjoined by the Tokyo District Court at the outset, but the court repealed the injunction on the very next day, upon receiving an official protest from the Prime Minister.\(^{(43)}\)

The conviction of those defendants, who delivered street speeches without a prior permission on the ground of the Road Traffic Control Law and other regulations, was sustained as constitutionally valid by the Supreme Court.\(^{(44)}\) The provision of the Public Election Law which prohibited a house-to-house visit in election campaign was frequently challenged but has been sustained as constitutionally valid by the Supreme Court\(^{(45)}\) and lower courts.\(^{(46)}\) However, there is a lower court’s decision which declared the provision in issue as unconstitutional.\(^{(47)}\)

Another provision of the Public Election Law which prohibits an election campaign prior to candidacy registration was supported by the Supreme Court as compatible with the Constitution.

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Kyoto Dist. Ct. judgment 3.4.1968 (Case R 518.37). In the first and third cases cited above, the Kyoto Dist. Ct. declared the Kyoto Public Safety Ordinance as unconstitutional, and went on to suggest the following criteria; (1) specification of the target of the regulation, (2) clarification of standards for the official act of permission, (3) provision for the remedy procedures when permission is reserved, and (4) whether the requirement is of a notice system.

It seems that in those two cases the Kyoto Dist. Ct. followed the 1954 SC decision in the face of the 1960 SC decision. In another case, however, the Kyoto Dist. Ct. sustained the same Public Safety Ordinance as constitutionally valid by following the 1960 SC decision (Kyoto Dist. Ct. 4.9.967, Case R 495.40) *Horitsu sho*, No. 463, pp. 59~63 with Hokama’s note; *Horitsu sho*, No. 476, pp. 56~89 with Ichihara Shozaburo’s note.


\(^{(44)}\) SC judgment 21.11.1967 (CrR 21.9.1245). The street speeches sponsored by the Japanese Communist Party Kitami District Committee was held in Kitami City on March 23, 1958. The trial court passed non-guilty judgment on the ground that the responsible people for the organization which sponsored the street speech and thus was required to file an application for the permission, rather than the defendants, should be blamed. The appellate court reversed the trial decision.


\(^{(46)}\) E.g., Tokyo Dist. Ct. judgment 27.3.1967 (Case R 493.73).

\(^{(47)}\) Myoji Summary Ct. judgment 12.3.1968 (Case R 512.76). The rationale of the decision is roughly as follows; The freedom of speech cannot be curtailed unless there is a “clear and imminent danger.” This doctrine should be applicable not only to the contents of speech but also to the forms of speech like a house-to-house method. *Horitsu sho*, No. 476, pp. 72~80 with Ichihara’s note.
Art. 21. (48)

In connection with the Freedom of Learning Clause (Constitution Art. 23), the so-called "Poporo drama team" case (ポポロ劇団事件) is worth noting. (49) In the case, the Supreme Court indicated that "universities were traditionally granted autonomy in order to guarantee freedom of knowledge in university," and that while "university's autonomy covers employments of professors and researchers, freedom of researches by professors and others, and publication and teaching of research results," students and facilities were merely enjoying "benefits from the freedom and autonomy" of university. It distinguished a meeting for "scientific researches and their publication" from that for "political and social activities" and declared that the latter was not protected by the Art. 23. (50)

Constitutional decisions related to the constitutional rights of a criminal are least impressive. First of all, in Japan, there is not such a dynamic case as Escobedo and Miranda decisions in the United States. (51) The right to counsel (or state-appointed counsel when one cannot afford to hire him) is guaranteed only to the defendant, who is already indicted, by the Constitution Art. 37 Sec. 3. (But the right to counsel is extended to the suspect in the process of investigation by the Criminal Procedure Law Art. 30 ff.)

It is held sufficient that defendant is given a chance to exercise himself his right to counsel as provided in the Constitution and that the exercise of his right to counsel is not hindered or that a state-appointed counsel is provided to him when one is positively requested for, and it is not viewed as a constitutional duty to inform him of his right to counsel. (52)

(48) SC judgment 23.3.1969 (Case R 553.24).
(49) Ienaka Saburo, Rekishi no miia Kenpo Kyoiku Mondai, pp.259~269; Kobayashi Naoki, "Gakumonnou Jiyuto Daigakuno Jichi," Horitzuiho, No. 404, pp. 4~11, etc.
(50) SC judgement 22.5.1963 (CrR 17.4.370). The drama in issue, which borrowed its main theme from the "Matukawa Incident" (松川事件), was legally performed under the authorization of the Tokyo University administration in a university building as part of anti-colonialism day activities, especially for the purpose of collecting campaign funds for the Matukawa Incident case. In any case, those students, who were charged with the crime of interference with public official's activities, were found not-guilty by the trial court (Tokyo Dist. Ct. judgment 11.5.1954), with the support from the appellate court (Tokyo Higher Ct. judgment 8.5.1956), on the ground that the students' acts (arrest of 4 plain clothesmen who sneaked in the room, forcing them for a letter of apology, taking their memo looks from which it was found that activities of students, faculties, students' organizations, etc. had been closely watched, wire-tapped, etc., for a long time within the campus) constituted a justifiable act for the protection of autonomy of university and thus lacked illegality. Supreme Court reversed and remanded the decision for retrial. Jurist, Suppl. No. 21, pp. 84~85 with Yuuki Kotaro's comment.
(52) SC judgment 30.11.1949 and 2.11.1949; SC judgment 23.6.1950 (CrR 4.6.106). (The essence of the decision: it is sufficient that the court provides a counsel to the defendant when one is
The majority of the lower courts and the Supreme Court have been sustaining the duty of a car driver to report of an accident occurred as compatible with the privilege against self-incrimination, even if there is an indictment based on the report.\(^{(53)}\)

The Constitution clearly adopts the voluntariness rule for the admission of confession as evidence (Art. 38 Sec. 2). Thus, the decisions simply center around the interpretation of the constitutional provisions.\(^{(54)}\) The Supreme Court sustains as constitutional a search and seizure warrant the contents of which are quite sweepingly described and thus which could be termed as a "general warrant" of old England in American standards.\(^{(55)}\) The Supreme Court says that it is not required by the Constitution but only by the Criminal Procedure Law to write the title of the crime charged in a search and seizure warrant, and the requirement of the specification of the place and the objects for search and seizure are satisfied with "Tokyo Teachers Union Headquarter" and with "Minutes, Diaries of Struggle, Directives, Notices, Communication Documents, Reports, Memos and the Whole Other Documents and Objects Deemed Related to this Case" without specifying further.\(^{(56)}\) Arrest without a warrant under requested for. When the defendant did not positively request for a counsel and did not so even at the court room, it is not unconstitutional that a state-appointed counsel was not provided to him, although he merely mentioned that he did not hire a counsel because of poverty, when he was told of his right to counsel; SC judgment 21.12.1951 (CrR 5.13.2604) (The gist of the decision is: when the counsel appointed by the defendant resigned before the opening of the trial, the defendant did not ask for the delay or change of the court hearing day for the purpose of appointing another counsel, and, moreover, there is no evidence that the court did hinder his appointment of a counsel, there is no violation of the Constitution Art. 37 Sec. 3, even if the court concluded the trial hearing on the same day); SC judgment 1.4.1953 (CrR 7.4.713); SC judgment 19.6.1957 (CrR 11.6.1673). Jurist, Suppl., No. 21, pp. 110～111 with Atsumi Toyo's comment. Cf. Douglas v. California, 372 US 354.

\(^{(53)}\) Kobe Dist. Ct. judgment 22.6.1959 (Lower Ct CrR 1.6.1464); Kagoshima Summary Ct. judgment 7.7.1959 (Lower Ct. CrR 1.7.1594); Tokyo Dist. Ct. 14.12.1959 (Case R 211); SC judgment 2.5.1962 (CrR 16.5.495)

Those declaring unconstitutional: e.g., Kobe Dist. Ct. Otsuka Branch Ct. judgment 28.5.1959 (Lower Ct. CrR 1.5.1320); Gihu Dist. Ct. judgment 27.3.1968 (Case R 514.89) Jurist, Suppl., No. 21, pp. 118～119 with Suzuki's comment.

\(^{(54)}\) SC judgment 1.7.1966 (CrR 20.6.537) (Confession induced by a promise as inadmissible); SC judgment 13.6.1958 (CrR 12.9.2009) (Confession made during a cruel interrogation); SC judgment 31.5.1957 (CrR 11.5.1579) (Confession made at the forfeiture of foods); SC judgment 13.9.1962 (CrR 17.8.1703) (Confession made during an interrogation while handcuffed); etc.


\(^{(56)}\) SC judgment 29.7.1958 (CrR 12.12.2776). In the case, a search and seizure warrant, which was issued by a Tokyo Summary Court judge to conduct search and seizure respectively in the Teachers Union Japan Headquarter and the Tokyo Headquarter in connection with the charge of the violation of the Local Public Officials Law resulting from a general strike conducted by the Union in 1958, was challenged in terms of whether the specification of contents of the
exigent circumstances is supported as constitutional by the Supreme Court.\(^{57}\) The admissibility of confession made during illegal custody (arrest without warrant) was sustained by the Supreme Court and, thereby, the exclusionary rule in American law was rejected.\(^{58}\) Of course, search incident to arrest was sustained as constitutional by the Supreme Court.\(^{59}\)

Electronic eavesdropping was upheld as not unconstitutional by a Higher Court.\(^{60}\) There has been no case yet in which wire-tapped conversation introduced as evidence was constitutionally challenged.

Admissibility of results of polygraphic test as evidence was upheld by the Supreme Court.\(^{61}\) Entrapment theory with the origin of intent test in American law was clearly rejected by the Supreme Court.\(^{62}\)

(4) Social Rights

Now let turn to social rights. In the famous *Asahi* case, the Supreme Court stated that (1) the right to receive subsistence allowance from the State (welfare funds) is personal and thus cannot be inherited (even the part of the subsistence allowance that was already in default while the beneficiary was living), (2) that the "minimum standards of wholesome and cultivated living" clause (Constitution Art. 25 Sec. 1) is merely a declaration of the responsibility of the State to guarantee the people the realization of such a living and does not directly provide an individual with a specific right to claim, which will be realized only by

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\(^{60}\) Tokyo Higher Ct. judgment 17.7.1953 (Case R 9.3). In the case, *inter alia*, the public welfare clause, and the fact that the use of force was not involved, the electronic device was installed with consent of the manager of the building, and that the device was attached to the outer wall of the room in which the victim, a communist party member, was living, etc., were emphasized in the reasoning of the decision. *Jurist*, Suppl., No. 21, pp. 102~103, with Danaka’s comment.

\(^{61}\) SC judgment 8.2.1968 (CrR 22.2.55).

legislation, and (3) that the decision of what constitutes a wholesome and cultivated living is entrusted to the rational discretion of the Minister of Welfare whose improper exercise of the discretionary power may entail a political responsibility to the Government but does not raise a legal problem.  

It is indeed worth noting that the Clause of Social Rights, e.g., Constitution Art. 25, 26, 27 and 28, are recognized by the courts and scholars as "programmatic provisions", for the realization of which the Government is responsible through legislation, rather than as provisions of specific rights (e.g., like rights to speech, assembly and association) which an individual citizen can legally claim even without such legislation. The same notion was expressed in a case related to the Constitutional provision of "compulsory education with no charge" (Art. 26), in which parents of a second grader claimed for the refund of the costs of textbooks used in compulsory school education for which they paid previously and asked for an injunction against the future collection of the textbook costs on the ground that the State should finance the textbooks which are used for compulsory school education. Basically

(63) SC judgment 24.5.1967 (CrR 21.5.1043). The plaintiff in this case was hospitalized in a State-owned sanitarium and at the same time receiving the maximum amount of subsistence allowance decided by the Minister of Welfare, 600 Yen a month. However, since it was known that he was receiving 1,500 Yen a month as a support from his own brother, 600 Yen allowance a month was cut off and he was charged 900 Yen a month for his medical expenses (1,500 Yen less 600 Yen) by the decision of the local welfare officer. He filed a protest to the governor and the Minister of Welfare in vain. The trial court (Tokyo Dist. Ct.) repealed the dismissal decision of the Minister on the ground that the minimum standards of living (600 Yen a month) was insufficient for the standard of wholesome and cultivated living and therefore against the Protection of Living Law (Art. 8 Sec. 2 and 2). Tokyo Higher Ct. reversed the trial court's decision on the ground that the minimum standards of living cost 670 Yen a month and yet a little insufficient standard (600 Yen is 10% less than 670 Yen) was not unlawful in the light of the necessarily increased taxes, which will be levied on the people, and their resentment resulting therefrom, etc.

Because the plaintiff died while his case was pending in the Supreme Court, and his inheritor, it was decided, could not succeed to the case, the suit was concluded. Jurist, Suppl., No. 21, pp. 144~145 with Sugimura Toshimasa's comment; Horitsucho, No. 457, July, 1967 (The whole volume was devoted to the problems related to the Asahi case), especially see Iken Rippo Sin-sakkeno Megutte, pp. 31~55.


(65) SC judgment 26.2.1964 (CrR 18.2.343). The Government "is expected to give consideration to, and make an effort to, reduce, as far as possible," the burden of parents for text books and other expenses besides tuition. "But this is a matter which should be solved as a legislative policy question in consideration of the financial and other situations of the government and is not a matter which can be provided by the above articles of the Constitution,"
the same rationale is underlying behind decisions related to the state-appointed counsel system, as I have already indicated.

From the very early stage of the Occupation Era, it seems that many labor disputes and related matters have been brought to the courts, symptomatic of the situations of that time, including difficulties in living conditions, psychological confusions, and other factors. Thus, the job of courts, especially the Supreme Court, seems to have been in forming and defining a right place for the Constitutional right of workers to organize, to bargain and act collectively (Art. 28) in national life. The Supreme Court seems to have perceived strike rather negatively as “a non-fulfilment of contractual duty to provide service” than positively as a confrontation or pressure for the improvement of labor conditions on the equal footing with employers in the bargaining process. From the viewpoint, the so-called “production control”, picketing, and resort to violence were all held illegal as improper methods of strike. Since the right of workers to organize and act collectively is for the maintaining and improving of labor conditions and toward employers, a strike for political purposes was declared unlawful.

As I have already indicated in connection with the Equality-Before-Law Clause, public officials and workers who are in public enterprises are, by statute, denied their right to bargain, act collectively, and/or organize. And the Supreme Court has sustained those cases.


(67) SC 15.11.1950, ibid. After their failure to obtain a satisfactory settlement, the union workers took over the operation of the factory themselves. The company(employer) destroyed the power transformer in an effort to prevent their take-over. The union workers decided to sell the company owned iron plates to get operation funds for the facility repairing, wages, etc. They were charged with embezzlement because of the sale. Other “production control” cases are: SC judgment 18.7.1951 (CrR 5.8.1491); SC judgment 27.2.1953 (CrR 7.2.348).

(68) SC 28.5.1958 judgment, ibid. The Supreme Court did not draw a line between a lawful picketing and an unlawful one as in the American cases: Vegelahn v. Gunner, 167 Mass. 92 (1896); Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies, Inc., 312 US 287 (1941); In re International Longshoremen’s and Warehousemen’s Union, CIO, Local 6, 79 NLRB 1487 (1948); etc.

(69) SC 18.5.1949 judgment, ibid.


(71) Policemen, firemen, coast guards, Judicial personnel, and prison warden are denied the right to organize and to bargain and act collectively (State Officials Law Art. 108~2 Sec. 5, Art. 108~5 Sec. 2, Art. 98 Sec. 2; Local Public Officials Law Art. 52 Sec. 5, Art. 55 Sec. 2, Art. 37 Sec.
Chapter 3. An Analysis of Trends and Some Projection

(1) What stands out from my rather rough survey of constitutional decisions in terms of judicial review? From the beginning of the Constitution, the question of the enlargement of federal jurisdiction was not involved.¹¹ In the United States, "judicial review of congressional legislation appeared in the young republic in the first quarter of nineteenth century by virtue of John Marshall's intent to enlarge the federal jurisdiction."¹² The judicial review power in an unitary state, Japan, was rather designed to protect enlarged local autonomies as well as individual rights and freedoms which were constitutionally provided against the totalitarian features and tendencies of the society.¹³

Japanese courts in general have been basically exercising judicial restraint, serving the conservative values which the majority (i.e., the Liberal Democratic Party) was endorsing in the form of legislation and other governmental acts, with a significant exception found in lower court's decisions. Especially, the Japanese Supreme Court has never declared as unconstitutional any statute which was passed by the Diet, with the only exception of the so-called "Red Purge Decree" case,¹⁴ as far as I know.

1: Organizational Law of Boeisyo Art. 61, Jiritsui Law Art. 64, etc.). State public officials in public enterprises(e.g., national or local railroads, post office, national forestry, printing of stamps and others, alcoholic monopoly, etc.) and local public officials in local public corporations enterprises are denied the right to strike (Law of Labor Relations in Public Enterprises Art. 17: Law of Labor Relations in Local Public Enterprises Art. 11). Non-enterprise state public officials and local officials are denied the right to bargain and to strike (State Public Officials Law Art. 98 Sec. 2, Art. 108-5 Sec. 2: Local Public Officials Law Art. 37 Sec. 1, Art. 55 Sec. 2).

(72) Decree No. 201 Case, SC judgment 8.4.1953 (CrR 7.4. 775); SC judgment 26.10.1966 (CrR 20. 8.901); etc.

(73) Cf. Gibbons v. Ogden, 9 Wheaton 1(1824); McCulloch v. Maryland, 4 Wheaton 19(1827); Fletcher v. Peck, 6 Cranch 87(1910).

(74) Loewenstein, ibid, p. 245.

(75) Cole, Taylor, "Three Constitutional Courts: A Comparison", Eckstein and Apter, Comparative Politics, pp.164~175. In this article, the author discussed the same problems in the context of the constitutional courts of three European countries: West Germany, Austria and Italy. He shows a quite dynamic picture of the developments of those courts. This picture seems to be different from what I have described of the Japanese Supreme Court's constitutional decisions.

(76) SC judgment 22.7.1953 (CrR 7.7. 1962). The SCAP (Supreme Commander of the Allied Powers) prohibited the editing, printing, publishing, carrying and possessing of Akahata and the like kind of literatures in 1950. But the defendant violated this order and therefore was charged with the violation of the 1945 decree No. 325 (decrees for the punishment of those
of. Still, it should be noted that the case was politically a dead issue since the occupation was legally terminated and the decree was no more in force when the case in issue was brought to the Supreme Court.

Of course, the constitutionality of a statute or the other governmental acts is presumed in principle, unless the circumstances contrary to the presumption clearly exist. Accordingly the court’s ruling of unconstitutionality should be cautiously exercised. Therefore, the fact that the Supreme Court has not held any law as unconstitutional, by refusing to play an activist who obstruct the objectives of occupation) which was based on the 1945 Rescript No. 542. He was found guilty by the trial and appellate courts. However, the Rescript No. 542 was abolished by the 1947 Law with the Peace Treaty made effective on April 28, 1952. But the 1952 Law No. 137 reserved the right to punish against those acts committed prior the abolition of the Decree No. 325. The Supreme Court declared that the Decree No. 325 was a blank delegation of power clause in criminal law and lost its force with the Peace Treaty made effective and thus the Law No. 137 was an ex post facto law, violative of the Constitution Art. 39. Jurist. Surple., No. 21, pp. 226~227 with Kawakami’s comment; Abe Shosai and others, Kenpo Shi-ryosho (Horseback Officer, Constitutional Data), 1966, pp. 89~90; Wakatsuna, ibid, pp. 389~390 and 419. See also Seirei Shonhyakunijugogo Saikosaishanketsuo Domiruka, Horitsu sho, No. 280, pp. 80~86.

(77) In this connection, a series of the Supreme Court’s decisions concerning the constitutionality of confiscation of the innocent third person’s property (boat) used for the committing of a crime (smuggling) are worth mention. The criminal provision involved here is the new Tariff Law Art. 118, Sec. 1 (the previous Tariff Law Art. 83, Sec. 1). It was held that the confiscation of the third person’s property is not unconstitutional on the ground of the Constitution Art. 29 because the Tariff Law provision for the confiscation should be so interpreted as to be applicable only when the third person knew in advance that his property was going to be used for the crime: SC judgment 27.11.1957 (CrR 11.12.3132). Later, the Court ruled that the defendant should not be allowed to raise a constitutional defence on the ground of the Constitution Art. 31 that the third person was not given chances to defense himself against the confiscation of his property: SC judgment 19.10.1960 (CrR 14.12.1574).

Eventually, the Court came to declare that the confiscation of the third person’s property is unconstitutional, violative of the Constitution Art. 29 and 31, and that the defendant can be allowed to raise the unconstitutionality of the confiscation for his own defence. See SC judgment 28.11.1962; SC judgment 12.12.1962. Horitsu sho, No. 266, pp. 52~61. But it is not clear from the words of the decision whether the Tariff Law provision in point was declared unconstitutional in so far as, and to the extent that, a third person’s property was involved, or whether the lower court’s decision was declared unconstitutional. This question and other related problems of its interpretation raised quite a controversy among scholars. See Tanikuchi Masayuko, Ganzeiho Shoteino Mushabetsuboshi oyobi Sono Boshuhunono Baino Tsuzoni Gansuru Kakukiteiwa Kenpo Sanjuichizo to Nijukuzoni Hiansuru, Horitsu sho, No. 266, pp. 48~51: Mushabetsuboshi no Ikenhanketsuo Mektte, a symposium, Horitsu sho, No. 268, pp. 10~29; Ido Masami, Kenpono Kenkyu (Investigation, Study), pp. 203~222. The Supreme Court, however, has taken the latter opinion. If it took the former opinion, the Supreme Court should have sent the original copy of the decision to the Diet and notified the decision in the official gazette, according to the Supreme Court Regulations for the Conduct of Business Art. 14. In any case, it actually sent such a document to the Diet for a reference for the future legislation. See Ido Masami, ibid.
role which some lower courts have not rarely assumed, is not important as such but as symptomatic of certain phenomena in the society of which the court system is part.

The constitutional doctrines which the courts have employed in exercising judicial restraint include the doctrine of political question as in the cases related to the House dissolution and to the Renunciation of War Clause, the avoiding of constitutional issues by confining oneself strictly to the interpretation of statutes in issue as in *Erie* case, the principle of the public welfare as in the civil liberty cases and the notion of "programmatic provision" as in the social right cases. However, we can read from the use of those doctrines certain social and political limitations inherent in the Japanese judicial review system, if we follow more closely the legal structure and the socio-political background of the court system functioning in Japanese society.

In terms of their structure in the constitutional framework and in the socio-political context, the courts are not equipped with the authority and legitimacy to deal with the issues of house dissolution and rearmament or external security. In another word, those issues are beyond the competence of the court system. In a figurative sense, the courts were asked to play a role of the *genro* (元老) in the era of *Taisho* democracy in connection with those issues. The Supreme Court constantly refused to assume the role. However, what remains is that functionally the Supreme Court supported the majority in political process. And it would not be too far-fetched to think that the very fact that the political questions related to political process such as House dissolution are frequently raised telltale that Western style democratic process and institutions embodied in the Constitution (e.g., the majority rule) are not fully internalized in the value system of the Japanese people or at least some segments of the society. The frequent discussions of constitutional amendments—even within the LDP organization—may evidence this situation.\(^{78}\) The provisions related to governmental structures including judicial review system as well as the bill of rights are pro and con included in the discussions for the constitutional amendment.\(^{79}\)

This is more true of those decisions related to the civil rights, especially the right to speech, assembly and association. Here, the Supreme Court is empowered to exercise judicial review in terms of formal structure. However, the Supreme Court is functionally a part of the majority

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\(^{79}\) Ibid; Suzuki Yatsukura, *Kenpo no Riron, Kaiken Mondai no Kaimen* (鈴木, 憲法の理論, 改憲問題の解明), esp., p. 201 ff.
in political process by exercising judicial restraint. Many would refer to the Supreme Court's judicial restraint in those issue areas—for example, in public safety ordinance cases—as a conservative or anti-liberal attitude toward the civil rights.\(^{(80)}\) This is true. It seems, however, that there is more than that. Here, the right to speech, assembly and association in fact presents itself as the "plus" in Professor Scalapino's equation, "parliamentarism-plus", if we follow the cases more closely. In his own words,

"The 'plus' refers to the fact that they are quite willing to go beyond parliamentarism if it does not produce the results they desire. To them, legitimate tactics represent a continuum from the Diet to the streets, from elections to sit-downs, demonstrations, and even violence."\(^{(81)}\)

Indeed the parliamentarism-plus and related questions (e.g., law and order) are clearly reflected in the public safety ordinance cases and the Supreme Court's preoccupation with the public welfare notion. Thus, both the public safety ordinance cases including the Diet member's violence at the floor, and the house dissolution cases are symptomatic of the two different sides of the same phenomena, that is, the fact that democratic political process prescribed in the Western constitutions are not totally internalized in Japanese value system.\(^{(82)}\) It can be seen that social norms, which are in conflict with the formal constitutional norms, are functioning in society. What the Supreme Court did is that it have shared the values and policies of the ruling elites in Japanese society.

A social system consists in a combination of the structure of action and the values which inspire action.\(^{(83)}\) In Japan, the formally introduced Western democratic institutions including the judicial review system do not seem to be supported by corresponding values. The prevailing Japanese value system endorses the merits of consensus rather than the majority rule in decision-making processes. Indeed Japanese political parties are a kind of federations of independent leader-follower groups rather than pyramidal organizations, as frequently pointed out by Western scholars.\(^{(84)}\) To cite another passage from Professor Scalapino's article is in order;

\(^{(82)}\) See, for example, Wada Hideo, *Kenpo no Gendaiteki Danmen* (和田英夫, 宪法の現代的断面), 1961, p. 282 ff.
\(^{(83)}\) Daniel S. Lev's then unpublished article, *Structures and Values in Indonesian Law*.
"Thus the right of the majority to govern is not accepted by all, nor is the right of the minority to oppose. Indeed, with regard to the latter point, if the rights of the minority are not clearly staked out on the one hand, neither are their responsibilities. The interaction between violence and suppression continues in some measure. The socialist minority gravitate toward "parliamentarism plus", the plus representing a willingness to go beyond parliamentarism if it appears politically profitable. The majority, on the other hand, often ignore or deal contemptuously with the minority, unless forced to take action against them. There is a one-and-one-half party system in Japan: one party that knows only how to govern and a half party that knows only how to oppose. Despite the existence of a full-fledged parliamentary system, Japan has not yet had a change of political administration by way of national elections. Nor is it clear that any such change will occur in the foreseeable future."[85]

The fact that the Supreme Court have shared the values and policies of the ruling elites may mean that the sectors isolated in the political process have been turned away even by the judiciary from the full participation in the institutionalized democratic political system. The aspiration of the written constitution is not met by the "living" political system. The solution of those problems may be beyond the capacity of the "living" political system.

A similar statement can be made of the rights and freedoms, which were granted by the Meiji (明治) Oligarchs and later the occupation forces rather than fought out by a revolution. Survey reports always indicate a low level of internalization of the rights and freedoms.[86] Especially with regard to the rights of a criminal defendant, it seems clear that the Supreme Court is not up to the expectation of the Constitution, for example, as compared with the performance of the U.S. Supreme Court.

In terms of the constitutional provisions, the Japanese Constitution presupposes a full-fledged social welfare state. Of course, it may be quite right, in terms of legal doctrine, to assert that the people cannot have a legal right to claim a certain amount of social welfare funds without social legislation. Japan is presently the third ranking world economic power! But what actually turned out from the Supreme Court's Asahi decision seems to be the fact that individuals still have to rely upon their family, relatives and other primary groups for their meaningful welfare and the majority (Government) refused to fully assume the burden for the realization of the values embodied in the Constitution (e.g. social justice) at the public expenses. In the Asahi case, the fact that the plaintiff was receiving a certain

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(85) Scalapino, "Environmental and Foreign Contributions", *ibid.*, p. 88.
mount of allowance from his brother was acknowledged by the Government and thus his right to receive welfare funds was affected by the fact, with the support from the appellate court and the Supreme Court. The Court seems to have endorsed the view that social rights are no more than a grace or grant from the Government. The realization of social justice—a certain degree of socio-economic equality—is a requisite for viable democracy. The same thing can be asserted about the state-appointed counsel system.

From the analysis there emerge the two sets of two dimensions to explore: political and socio-economic dimensions, and governmental intervention and non-intervention dimensions. In political dimension non-interventionism is deemed liberalism while in socio-economic dimension governmental interventionism is usually equated with liberalism today. Thus, we have the following $2 \times 2$ box out of four possible combinations:

<table>
<thead>
<tr>
<th></th>
<th>Political Dimension</th>
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<tbody>
<tr>
<td></td>
<td>Intervention</td>
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<tr>
<td>Socio-Economic</td>
<td></td>
</tr>
<tr>
<td>Intervention</td>
<td></td>
</tr>
<tr>
<td>Non-Intervention</td>
<td></td>
</tr>
<tr>
<td>Socio-Economic</td>
<td></td>
</tr>
<tr>
<td>Non-Intervention</td>
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</tr>
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</table>

Now we may be able to classify societies along the above four combinations line. The Japanese conservative majority, which the Supreme Court has continuously supported, seems to fall in the left-bottom cell.

The Supreme Court’s constitutional cases related to political freedoms should be understood in close conjunction with the de-facto rearmament policy in the form of Self-Defence Forces. To this should be added the national government’s increasing tendency of functional centralization, especially the centralization tendency of police power out of the initially decentralized police system. It appears that the Supreme Court tends to support the majority in political process in favor of state power vis-a-vis an individual’s rights and local autonomy.

In socio-economic dimension, the Supreme Court’s cases related to social rights should be analyzed in the intervention-non-intervention continuum in conjunction with the tendency of amalgamation efforts—reemergence of the zaibatsu (財閥)—within Japanese industry backed by the conservative majority, moving away from a program of strict governmental economy under the SCAP impetus.

(2) Many lower courts not infrequently assumed the role of a judicial activist. However,
the Supreme Court has been continuously exercising judicial restraint and thereby serving conservative values which were represented in governmental legislation. What factors explain this trend? First, the political outlook of the Supreme Court's Justices is identical with that of leaders of the parliamentary majority. For one thing, twelve out of the present fifteen Justices are Tokyo University graduates and all of them are Law Department graduates. Average year of their birth is 1903. Five are from Tokyo (See the Table attached). This information, albeit too fragmental, seems to reinforce the belief that their political outlook is identical with that of the ex-officials, leading Cabinet and Diet members, especially in terms of their bureaucratic attitude, elitism and the like. (87) (I should have a similar information of previous Supreme Court Justices)

The former Supreme Court Chief Justice, Yokota Kisaburo(横田清三郎) made a remark in public, while he was in office, to the effect that lower courts very often passed judgment of unconstitutionality, which should be exceptional in the light of the doctrine of separation of power and which should be rendered with caution. (88) The former Chief Justice, Yokota Masatoshi(横田正俊), also made a similar remark in public. (89) These remarks can be interpreted as a good evidence for the attitude of the Supreme Court Justices toward judicial review system and toward the lower court’s judicial activist role. Such remarks had aroused quite a controversy even among Japanese to the effect that the remarks could be interpreted as a threat to the independence of lower courts in judicial review since the Supreme Court has the supervisory power over the lower courts and also it has the power to appoint lower court judges (That is, the Cabinet appoints them as designated by the Supreme Court). (90)

Secondly, the appointment procedure for Supreme Court Justices—the appointment of Justices by the Cabinet and the appointment of Chief Justice by the Emperor as designated by the Cabinet—is such that the identical political outlook can be easily secured from the Supreme Court Justices. (91)

And the tradition of conceptual jurisprudence (92) in Japanese legal education, especially bar

(88) Yomiuri(読売), May 9, 1964; Iken Rippo Shinsaken o Mekutte, Horitsujo, No. 458, pp. 33~55.
(89) Asahi Shinbun(朝日新聞), May 16, 1967; Iken Rippo Shinsaken o Mekutte, ibid.
(91) Kobayashi Naoki, Kenpo o Yoru, pp. 176~194; Ienaka, ibid, pp. 162~167. See Law of Courts Art. 39 and others.
examination, may also have greatly influenced the attitude of judicial restraint. To this should be added the universal phenomena of conservatism in the legal profession. Generally speaking, lawyers are among the conservative forces of society. And law itself is generally deemed as "a great stabilizing force, the purpose of which is to improve the predictability of future outcomes of present human decisions, rather than as an instrument for helping to bring about social, economic, and political change." (92)

In any case, the Supreme Court’s continuous refusal to play a judicial activist role may in part strengthen the polarization which has been growing in Japanese society by frustrating the aspiration of at least some segments of the society and by isolating them, with one pole for the support of Western democracy and with the other pole frustrated with it.

The fact that lower courts not infrequently assumed judicial activist role amply evidences the situation in that they responded to a certain need of the society. Here a generational gap may be also operating between the Supreme Court Justices and the lower court judges. The polarization may in turn jeopardize the democratic form of government on which the court system is based.

(3) It may be that the Supreme Court’s attitude of judicial restraint will continue for the time being unless those factors, which are directly conducive to the attitude, and, basically, Japanese socio-political structures and value system are greatly changed. And it is unlikely that in the foreseeable future that such changes will easily come true. In this connection, obviously the Japanese future, which will be reflected in constitutional cases brought to courts for judicial review, seems to hinge greatly upon the issues of (1) external security and rearrangement and (2) economic performance of the Government (or, reversely, depression) including social legislation, when judged from the existing trends of the constitutional cases. While Japan has been quite successful in the economic growth there has been no basic solution to such problems as overpopulation, foreign markets, and many other matters related to production and the living standard. Indeed both the two issues are closely related to the very national life of Japanese. So the future of Japanese democratic political system will in a large measure depend also upon the developments of those factors and upon its performance, to cope with them without falling victim to a totalitarian one. The developments of those factors will give in various ways stress to the Governmental power and performance including

(93) Schubert, ibid, p.132.
social legislation, and also have a great impact to the polarization of population and to the tendency of violence in social and political processes, which may in turn strain political freedoms and social rights. Needless to say, the developments will affect also the performance of the courts in terms of realization of the values embodied in the written Constitution. The performance of the courts in turn will feedback the ongoing process in society.

Another factor for the future development of the constitution is the increasing internalization of constitutional norms and values in Japanese value system, \(^{(94)}\) which will be enhanced under favorable environmental conditions. The performance of the judicial review system may reinforce the process of internalization or deteriorate it.

What is implied here is that stability of Japanese \textit{democratic} political system is largely in flux. It has not been seriously tested yet. Japan is a nation in which such socio-economic structural features as industrialization, urbanization, wealth and education all favor the establishment of a stable democracy. They are requisites for a stable democracy, but they are not sufficient conditions for it. One too obvious caveat is in order:

\begin{quote} 
"...there can be no assurance of securing particular social values by innovations in institutional structures. It is the easy and seductive assumption that if some particular institution of government is frustrating an objective that is sought, the remedy must surely lie in abolishing or changing the form of that institution. A companion illusion is that any ideal can be permanently assured by establishing an institution—a specialized agency—to serve that ideal.\(^{(96)}\)"
\end{quote}

Likewise, it must be recognized that the same social goal that has been surely achieved by an institution(e.g., judicial review system) in a polity cannot be as a matter of course secured in another society only by importing the same structural form of institution to the latter society.

\((94)\) Arikura, \textit{ibid.}, pp.346~350.
Table I. The Present Supreme Court Justices

<table>
<thead>
<tr>
<th>NAME</th>
<th>YEAR of BIRTH</th>
<th>TOWN of ORIGIN</th>
<th>UNIVERSITY ATTENDED</th>
<th>FORMER OCCUPATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ishida Kazuto (石田和幸)</td>
<td>1903</td>
<td>Hukui</td>
<td>Tokyo U Law Dept.</td>
<td>Judge of Tokyo Higher Ct., Judge of Tokyo Dist. Ct., SC Secretary-General</td>
</tr>
<tr>
<td>Irie Toshiro (久江俊郎)</td>
<td>1901</td>
<td>Tokyo</td>
<td>Tokyo U Law Dept.</td>
<td>Director of Legislative Office, Member of House of Peers Chief Judge of Toyo Higher Ct.</td>
</tr>
<tr>
<td>Murakami Tomokazu (村上稠一)</td>
<td>1906</td>
<td>Tokyo</td>
<td>Tokyo U Law Dept.</td>
<td></td>
</tr>
<tr>
<td>Kusaka Asanosuke (草岡義之)</td>
<td>1900</td>
<td>Ishikawa</td>
<td>Tokyo U Law Dept.</td>
<td>Prosecutor, Supreme Prosecutors Office</td>
</tr>
<tr>
<td>Osabe Kingo (尾部靖)</td>
<td>1901</td>
<td>Kanagawa</td>
<td>Tokyo U Law Dept.</td>
<td>Prosecutor, Vice-Prosecutor General</td>
</tr>
<tr>
<td>Kido Yoshihiko (城戸義彦)</td>
<td>1900</td>
<td>Hukuoka</td>
<td>Nihon U</td>
<td>Doc. of Jur., Attorney</td>
</tr>
<tr>
<td>Tanaka Jirou (田中二郎)</td>
<td>1906</td>
<td>Hiyogo</td>
<td>Tokyo U Law Dept.</td>
<td>Emer. Prof. of Tokyo U., Doc. of Jur.</td>
</tr>
<tr>
<td>Shimomura Saburo (下村三郎)</td>
<td>1903</td>
<td>Tokyo</td>
<td>Tokyo U Law Dept.</td>
<td>Judge, Official of Ministry of Justice, SC Secretary-General</td>
</tr>
<tr>
<td>Irokawa Kotaro (色川幸太郎)</td>
<td>1903</td>
<td>Chiba</td>
<td>Tokyo U Law Dept.</td>
<td>Attorney Vice-President of Japanese Attorneys Association</td>
</tr>
<tr>
<td>Osumi Kenichiro (大隅健一郎)</td>
<td>1904</td>
<td>Aichi</td>
<td>Kyoto U Law Dept.</td>
<td>Emer. Prof. of Kyoto U., Doc. of Jur.</td>
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<tr>
<td>Matsumoto Masao (松本正雄)</td>
<td>1901</td>
<td>Ehime</td>
<td>Tokyo Commerce College</td>
<td>Attorney</td>
</tr>
<tr>
<td>Iimura Yoshimi (飯村義実)</td>
<td>1901</td>
<td>Nagano</td>
<td>Tokyo U Law Dept.</td>
<td>Attorney, Member of the Board of Director of Chugai Pharmaceutical Manufacturing Co. Judge, SC Secretary-General</td>
</tr>
<tr>
<td>Sekine Koiso (関根小五郎)</td>
<td>1905</td>
<td>Niikata</td>
<td>Tokyo U Law Dept.</td>
<td></td>
</tr>
</tbody>
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