

# The Birth of the Parliamentary Democracy in Japan: An Historical Approach

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## I. INTRODUCTION

Japanese constitutional legal history does not constitute a part of the obligatory legal curriculum in Hungary. There are limited numbers of researchers and references available throughout the country. However, I am convinced that neither legal history nor comparative constitutional law could be properly interpreted without Japan and its unique legal system and culture.

Regarding Hungarian-Japanese legal linkages, at this stage I have not found any evidence of a particular interconnection between the Japanese and Hungarian legal system, apart from the civil law tradition and the universal constitutional principles; I have not yet encountered the Hungarian “Lorenz von Stein” or “Hermann Roesler”.

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Conducting legal research on a foreign and culturally totally different nation is on the one hand very interesting, but on the other hand is rather challenging: as I deal with EU law and work for the Hungarian central administration, the scope of my study focuses on rather theoretical and historical issues, with some lessons for the present times.

Modern Japanese legal and constitutional history has been thoroughly investigated in the past few decades, by Western scholars outside Japan as well. Outstanding references have become available throughout the world.

However, it might be added that while a group of works focuses primarily on the civil law traditions that influenced Japan under the *Meiji* period, another group of studies puts the “current” Japanese constitution in the centre of their research. All in all, following nearly a decade of research on different aspects of Japanese law, I have the impression that the historical approach does not always enjoy enough attention in Japanese constitutional law. Post-war Japan cannot be interpreted without pre-war Japan, and focusing primarily upon the *Shōwa* Constitution might lead to a one-sided approach.

In the following, I will try to give an overview of how the current parliamentary democracy was born, focusing overwhelmingly on the constitutional regulations. I will cover both the era of the *Meiji* Constitution and the post-war period, focusing primarily on the constitutional relations and separation of powers between the emperor, the Cabinet and the Parliament.

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## II. STATE AND SOVEREIGNTY IN THE *MEIJI* ERA

### 1. *The Birth of Modern Japan: The First Written Constitution of 1889*

Following the *Meiji* restoration (1867-1868), the young emperor and a group of military oligarchs realised that the only way of preserving Japan's independence, revising the unequal treaties<sup>1</sup> and avoiding colonisation was the modernisation of the Japanese nation-state and the establishment of a modern legal system.

A set of reforms was launched by the emperor in April 1868 in the famous Charter Oath in Five Articles,<sup>2</sup> which opened the way for the introduction of “deliberative assemblies”, the abolishment of “evil customs of the past” and the different cultural, scientific and political Western missions. The Charter Oath also reinforced the role of Shintōism, as it became the obligatory state religion headed by the emperor.

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1 See more on the so-called *ansei* five-power treaties of 1858 and their consequences by I. NISH (ed.), *The Iwakura Mission in America and Europe: A New Assessment* (Tokyo 1998) 19-24; K. TAKII, *The Meiji Constitution, The Japanese Experience of the West and the Shaping of the Modern State* (Tokyo 2007) 1-48.

2 D. KEENE, *Emperor of Japan: Meiji and His World, 1852-1912* (New York 2002) 137-141.

The reform process between 1869 and 1889 included the set-up of a complete legal system: the civil, criminal, commercial and procedural codes, as well as the constitution. It was spread out over three different but heavily interdependent levels: Japanese missions overseas, foreign advisors in Japan and domestic clashes.

The first, biggest and longest Japanese overseas official mission led by Ambassador Tomomi Iwakura left for Yokohama in December 1871 and returned to Japan in September 1873. The Iwakura embassy met with the political leadership of the United States of America and numerous European countries, particularly England, France and Germany. The aim of the embassy was to gain first-hand insight into Western civilization and also to request a postponement of the negotiation on the unequal treaties. The most important lesson for the embassy was the realization of the significance of constitutions and constitutional order in a nation-state.<sup>3</sup>

Concerning the second level, the first foreign advisors arrived in Japan in 1873, particularly from France, and the first modern legal codes of *Keihō* (Penal Code)<sup>4</sup> and *Chizai-hō* (Former Code of Criminal Procedure)<sup>5</sup> were adopted by 1880 based on drafts prepared by the Paris professor Gustave Émile Boissonade, who was also in charge of the first draft of the *Minpō* (Civil Code)<sup>6</sup>, except for chapters on family law and succession.

Regarding domestic politics, the 1870s could be characterised by a struggle between three different spheres of interests: military, industry and popular sovereignty. The first two objectives were likely to become unified under the *Meiji* political motto of *fukoku kyōhei* (富国強兵) – i.e. enrich the country, strengthen the military – but they did indeed become temporarily united during the competition with the so-called *Jiyū minken undō* (自由民権運動) (popular rights movement).

Following the suppression of the greatest civil war of the *Meiji* period, the *Satsuma* rebellion in 1877, which was a culmination of local uprisings by disgruntled ex-*samurai*, the most severe political crisis broke out in 1881. A proposal by the government member Shigenobu Ōkuma to convene a national assembly within two years based on a British-style government was too radical for the other group of political leaders, and he was temporarily dismissed. The crisis<sup>7</sup> ended with the promulgation of an Imperial Rescript on the establishment of a national assembly by 1890 – i.e. the radical demands of the popular rights movement were not fulfilled, but a gradual constitutionalism based on the Prussian model was introduced.

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3 TAKII, *supra* note 1, 43-48.

4 *Keihō*, Law No. 45/1907 as amended by Law No. 47/2011; Engl. transl. available at <http://www.japaneselawtranslation.go.jp> (as of 2009; last retrieved 2 July 2012).

5 *Chizai-hō*, Cabinet Decree No. 37/1880, replaced by the *Keiji soshō-hō*, Law No. 131/1948.

6 *Minpō*, the relevant provisions were later contained in Law No. 89/1896; Engl. transl. available at <http://www.japaneselawtranslation.go.jp> (as of 2009; last retrieved 2 July 2012).

7 See more on the crisis and the case of the planned privatization of the *Hokkaidō* Colonial Office in: K.H. KIM, *The Age of Visions and Arguments. Parliamentarianism and the National Public Sphere in Early Meiji Japan* (Harvard 2007) 288-318.

Following the Imperial Rescript, Hirobumi Ito was sent to Europe to study primarily the Prussian constitutional traditions, so he spent most of his time in Berlin and Vienna discussing with Rudolf von Gneist, Albert Mosse and Lorenz von Stein. Following Ito's return to Japan in 1883, the constitutional process reached its final stage: the first proposals were drawn up, and a modern government was established in 1885 by the abolishment of the feudal *Dajō-kan*.

The *Meiji* Constitution was drafted by a Japanese expert group with the assistance of the German Hermann Roesler. The first written Constitution of Japan, the *Dai-nippon teikoku kenpō* (Constitution of the Empire of Japan)<sup>8</sup>, was promulgated on 11 February 1889 and entered into force on 29 November 1890. At the same time, on 11 February 1889, several other acts were promulgated including the *Kyū-kōshitsu tenpan* (Former Imperial Household Law)<sup>9</sup>, which in fact was regarded as a constitution, so the *Meiji* period was characterized by a dual structure of written constitutions.

The *Meiji* Constitution, though it was a gift of the emperor to his subjects, symbolized the birth of modern Japan and a modern legal system and also paved the way for the long-wished revision of the unequal treaties.

## 2. Sovereignty in the Meiji Era

The *Meiji* Constitution contained first the Imperial Oath Sworn (*Tsuge-bumi*), the Imperial Prescript on the Promulgation of the Constitution, and the Preamble (*Joyu*), followed by Chapter One on the emperor and Chapter Two on the “rights” and duties of the subjects. Altogether the Constitution consisted of 76 articles in seven chapters.

The *Meiji* Constitution codified the so-called *Tennō* system, i.e. *Tennō*-above-all or the divine principle. Arts. 1-17 of the first chapter of the Constitution listed the emperor's powers. The following are worth quoting:

Art. 1. The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.

Art. 3. The Emperor is sacred and inviolable.

Art. 4. The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.<sup>10</sup>

These provisions should be highlighted, since Art. 1 firmly recognised the old legend that the emperor was the lineal descendant of *Jinmu*, 660 BC, who is regarded in *shintō*

8 *Dai-nippon teikoku kenpō*, the so-called *Meiji* Constitution, is a law of 1889 without an official number; Engl. transl. available at <http://www.ndl.go.jp/constitution/e/etc/c02.html> (last retrieved 2 July 2012).

9 *Kōshitsu tenpan*, is a law of 1889 without an official number and was ultimately replaced by the identically-named Law No. 3/1947.

10 Available at <http://history.hanover.edu/texts/1889con.html> (last retrieved 2 July 2012).

belief as a direct descendant of the sun goddess, *Amaterasu*. Art. 1 read in conjunction with Art. 4 gives the complete interpretation of the term *Tennō* by providing that sovereignty rested with the emperor: *Tennō* means heavenly sovereign. The Constitution established limited constitutional monarchy and treated the emperor as an omnipotent religious head of the nation (emperor worship).

The Constitution recognized the monarchical principle as a result of the Prussian influence, which was decisive in the constitutional process after 1881. The status of “*König*” in the Prussian model was totally different from the British model whereby “the Parliament could do anything”; it also differed from the French constitutions, which focused on fundamental rights and transformed the era of the second (1848-1852) and third republics (1875-1945). Moreover, it followed the enactment of the Prussian Constitution of 1848, the so-called *oktroierte Verfassung*, as neither a directly elected assembly nor the Japanese people were consulted during the adoption of the *Meiji* Constitution.

The emperor’s scope of powers was defined broadly but not exhaustively, as was confirmed by Hirobumi Ito’s commentary.<sup>11</sup> The sovereignty belonged to the *Tennō*, who was

the holder of the power to rule over and govern the country, and compared with the sovereigns of other countries, He ha[d] the unique position of being the absolute centre of the nation and of the state.<sup>12</sup>

However, this superiority of the emperor was not equal with exercising direct influence over the activities of the Cabinet. This has been also underlined in the following:

According to the customary practices established under the *Meiji* Constitution, the emperor did not have the ability to overturn national policy decided upon by the government and supreme commanders. From when the *Meiji* Constitution was promulgated in 1889 until the present time, the emperor directly made a decision on national policy only once: the imperial decision to end the war in 1945.<sup>13</sup>

### 3. Separation of Powers under the *Meiji* Constitution

The *Meiji* Constitution established a limited constitutional monarchy. The emperor was the only sovereign, and therefore the popular sovereignty was not recognized. What about the separation of powers and checks and balances between the state organs? According to this constitutional principle that dated back to the Enlightenment and was

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11 “In the Constitution is given a general outline of these sovereign powers, and as to the particulars touching them, only the essential points are stated, in order to give a general idea of what they are.” H. ITO, *Commentaries on the Constitution of the Empire of Japan* (Transl. by M. ITO) (Tokyo 1906) 35.

12 S. FUJII, *The Essentials of the Japanese Constitution: A General Survey of the Japanese Constitution* (Tokyo 1940) 122.

13 T. TAKEDA, *Did the Emperor of Japan Really Fall from Being a Ruler to a Symbol?*, available at [http://www.apa.co.jp/book\\_report2/02.html](http://www.apa.co.jp/book_report2/02.html) (last retrieved 2 July 2012).

articulated by the French Baron Montesquieu, the legislative, executive and judicial functions of the government should be divided between separate state organs.

The *Meiji* Constitution did not guarantee any independence between the different state organs – namely the Cabinet, Parliament and the judiciary – as all of them were dependent largely upon the emperor. The judicature was regarded as part of the emperor's executive power; he appointed the judges himself. Moreover, the judicature was controlled by the executive.

The constitutional provisions on the Cabinet were codified in a separate chapter of the *Meiji* Constitution, without providing any democratic control over its activity.

Art. 55. The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.

(2) All Laws, Imperial Ordinances, and Imperial Rescripts of whatever kind, that relate to the affairs of the state, require the countersignature of a Minister of State.

It follows that the *Meiji* Constitution incorporated ministerial responsibility as such in Art. 55 (2) with the compulsory ministerial countersignature, but the Cabinet was collectively and politically not responsible for the Diet but for the emperor. Art. 10 of the *Meiji* Constitution also stipulated that the appointment and dismissal of the Cabinet members belonged to the competence of the emperor. However, this was put in question numerous times, particularly when the army and the navy tried to abuse his competence.

### III. THE ROLE OF *TEIKOKU GIKAI* UNDER THE *MEIJI* CONSTITUTION (明治憲法 *MEIJI KENPŌ*)

#### 1. *Composition of the Teikoku Gikai* (帝國議會)

The *Meiji* Constitution established a bicameral parliamentary system: the House of Peers (*Kizoku-in*), which originally consisted of 251 members of the imperial family and orders of nobility nominated by the emperor; and the House of Representatives, whose 300 members were directly elected according to the Law on Election of 1889 by adult Japanese male property holders who paid more than 15 yen in annual taxes. These conditions restricted the entitled voters to altogether nearly 450,000 men, which represented one per cent of the population of Japan. This low representation scheme, primarily from the wealthier part of the society, suggests that the interests of the large sum of farmers would be considered on a local level rather than the national level. However, prefectural assemblies were also managed by centrally appointed governors.

The Imperial Diet was convoked every year by the emperor around December, and its session lasted about three months. This could be prolonged or extended with an extraordinary session by Imperial Order.<sup>14</sup>

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14 Art. 42 of the *Meiji* Constitution.

The *Meiji* Constitution granted the members of the Imperial Diet with immunity, except in cases of in flagrante delicto or offenses connected with a state.<sup>15</sup> Moreover, freedom of speech was granted, but basically only within the Diet. It follows from the *Meiji* Constitution that when a member made public his speech delivered in the Diet, it was considered an abuse of freedom of speech, which in fact reflects the human rights concept and stage of political independence in the *Meiji* period.

However, a certain autonomy of both houses was recognized within the limits of the Constitution, the *San'gi-in-hō* (Former National Diet Law)<sup>16</sup> and the *Kizoku-in-rei* (Imperial Ordinance concerning the House of Peers)<sup>17</sup>, since they determined the rules necessary for the management of their internal affairs. The quorum for the debates and voting was one-third of the whole number of members, and laws were usually adopted by an absolute majority of the members, with the exception of the eventual amendment of the constitution, which would have required a two-thirds majority in both Houses.<sup>18</sup>

Concerning the political significance of both the Houses in the *Meiji* period, the House of Peers was considered an equilibrium between political parties, as the representation of the higher classes and as a permanent<sup>19</sup> support for the emperor. The House of Representatives played a more active role both in legislation<sup>20</sup> and budget matters<sup>21</sup> and provided a floor for the political battlefields that are the indispensable characteristics of forming modern societies.

## 2. Competences of the Teikoku Gikai

The *Meiji* Constitution contained detailed provisions regarding the competences of the Imperial Diet, but in fact the *Meiji* era was about a strong Cabinet and a weak Diet.<sup>22</sup> The legislative power was carried out by the emperor “with the consent of the Imperial Diet.”<sup>23</sup> It follows that basically all statutes required the support of the majority of the members of the Imperial Diet; in other words, there was no act without the Diet.<sup>24</sup>

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15 Art. 53 of the *Meiji* Constitution

16 *San'gi-in-hō*, Law No. 2/1898, replaced and put out of force by the *Kokkai-hō*, Law No. 79/1947.

17 *Kizoku-in-rei*, Imperial Ordinance No. 11/1889.

18 Arts. 46-47 and 72 of the *Meiji* Constitution.

19 In contrast to the House of Representatives, the House of Peers could not be dissolved.

20 A law required the support of both Houses: for example, the universal manhood suffrage bill was not adopted until the *Taishō* era; though it was passed by the House of Representatives in 1911, it was rejected by the House of Peers.

21 According to Art. 65 of the *Meiji* Constitution, the budget had to be “first laid before the House of Representatives.”

22 T. MIYAZAWA, Kenpō [Constitutional Law], in: TANAKA (ed.) *The Japanese Legal System* (Tokyo 1976) 634.

23 Art. 5 of the *Meiji* Constitution.

24 Note: The Former Imperial Household Law belonged to the prerogatives of the emperor and could therefore not be discussed or amended by the Diet; see Art. 74 of the *Meiji* Constitution.

However, there were numerous limitations to this constitutional principle since foreign treaties, declarations of war or states of siege were in the competence of the emperor,<sup>25</sup> whereby the Diet was not in a position to deliberate on these issues. The limits of the Diet powers were regulated clearly in the Constitution concerning financial matters, where the consent of the Diet was not required for:

- the expenditures of the Imperial House, except in cases of an increase thereof;<sup>26</sup>
- the already fixed expenditures based by the Constitution or the effect of law upon the powers appertaining to the emperor.<sup>27</sup>

Moreover, Art. 71 of the *Meiji* Constitution provided that “[w]hen the Imperial Diet has not voted on the Budget, or when the Budget has not been brought into actual existence, the Government shall carry out the Budget of the preceding year.” This means that if the Cabinet had submitted the previous year’s budget to the Diet again, the Diet’s vote would not have been constitutionally required. Such a provision is not uncommon even in today’s constitutional monarchies or parliamentary republics, and if we look back to the militarism and industrial developments of the second part of the *Meiji* period, we should not think that such a provision was a real limitation to the powers of the Imperial Diet. Art. 71 of the *Meiji* Constitution should be rather interpreted as a minimum guarantee for the continuous application of state financial mechanisms.

The competences of the Imperial Diet, when it was not in session or could not be convoked due to extreme domestic circumstances like natural disaster or rebellion, were carried out by the emperor or the Cabinet. According to the relevant provisions<sup>28</sup> of the *Meiji* Constitution, the emperor was entitled to issue Imperial Ordinances in the place of law, and the Cabinet was authorized to take all necessary financial measures by means of Imperial Ordinances. However, these measures of both the emperor and the Cabinet were considered legal if urgent need or necessity measures were required for the maintenance of the public safety, and the adopted ordinances were approved by the Imperial Diet at its next session. If the Imperial Diet declared the measure invalid, then it was considered void *ex nunc*. The only limit on the emperor’s and Cabinet’s necessity ordinances was a future approbation of the Imperial Diet, which, as the practice has shown, was granted. Moreover, the existence of necessity ordinances was generally accepted – for example, in Prussia – although the conditions concerning its force or admissibility were strictly defined.<sup>29</sup>

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25 Arts. 13 and 14 of the *Meiji* Constitution.

26 Art. 66 of the *Meiji* Constitution.

27 Art. 67 of the *Meiji* Constitution.

28 Arts. 8 and 70 of the *Meiji* Constitution.

29 For example, Art. 63 of the 1850 Constitution of Prussia provided that such special ordinances “which do not contravene the constitution, may be issued with the force of the law”, available at <http://www.verfassungen.de/de/preussen/preussen50-leiste.htm> (last retrieved 2 July 2012).

As we have stated above, the *Meiji* period was about a strong Cabinet and a weak Diet. In reality, it also referred to the governments under this era which were considered as transcendental<sup>30</sup> without any real parliamentary control or political support. However, the Imperial Diet was not totally separated from the sovereign and the Cabinet as it was enabled under the Constitution to present addresses to the emperor or to make representation to the government,<sup>31</sup> and according to Art. 38 it was also entitled to initiate projects of law. It follows that the *Meiji* Constitution incorporated the *Tennō* principle but also established a state organ that had at least a consultative role in *Meiji* politics. Some pre-war authors also argue that ministers of states assumed political responsibility to the *Gikai*<sup>32</sup> as the government had to answer the questions of the members of the *Gikai* and was also represented at Diet sessions. Such a truly indirect responsibility should be interpreted in a narrow sense, and this enjoyed temporary legitimacy only under the *Taishō* period.

It must be added, as it has been stated concerning the competences of the emperor, that the provisions on the Imperial Diet were not exclusive, since for example there was no reference to a non-confidence vote or its constitutional outcome, but at the end of 1897 the then prime minister Masayoshi Matsukata and his cabinet had to resign following a motion of non-confidence proposed by the House of Representatives. The background for the vote was – briefly – very simple: the prime minister tried to push through a bill without the parties' consent.<sup>33</sup> This political affair occurred only once in *Meiji*, but clearly shows that the Imperial Diet was gaining larger and larger political relevance, especially after the first Sino-Japanese war.

#### IV. THE TEMPORARY DEMOCRACY IN THE 1920S

Following the death of Emperor *Meiji* in 1912, the throne passed to his eldest son, Yoshihito, who reigned for only a short period because of health problems. His eldest son, Hirohito, became regent in 1922. The *Taishō* period (1912-1926) is often labelled the *Taishō* democracy due to the amended election law and introduction of the British-modelled cabinet system. It must be added that the 1920s also brought about a decade of less expansive militarism, and Japan was under the signatories of the Washington Naval Conference regime incorporated in the so-called four-, five- and then nine-power treaties and also later of the Kellogg-Briand (Peace) Pact of 1928.

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30 J. BANNO, *Democracy in Pre-War Japan Concepts of Government, 1871-1937* (transl. A. FRASER) (New York 2001) 88-91.

31 Arts. 49 and 40 of the *Meiji* Constitution.

32 FUJII, *supra* note 12, 274-275.

33 KEENE, *supra* note 2, 535.

### 1. *The Nearly 14 Years of the Cabinet System*

The birth of the *Taishō* democracy is related to the first major political crisis of the era, whose origin goes back to 1900 when Prime Minister Aritomo Yamagata ordered that candidates for the army and navy ministers of state should come from active-duty generals.

In late 1912, the army minister resigned on the grounds that the Cabinet had refused to endorse the army's plan for a budget increase. Following the resignation of the army minister, Prime Minister Saionji and his cabinet also stepped down. Then the question arose as to who should be appointed by the emperor to prime minister and what position the navy and army would have towards a new Cabinet.

The problem culminated when the navy refused to nominate its minister on the grounds that Prime Minister Katsura would not expand the fleet.<sup>34</sup> Instead of negotiating, the prime minister allegedly had the emperor issue an imperial order saying that the navy should cooperate with the Cabinet and provide a minister of state. This step of the prime minister was regarded as involving the emperor in political conflicts or even manipulating the throne. As a consequence, large opposition political parties emerged within the House of Representatives and tabled a no-confidence vote against the prime minister.<sup>35</sup> The prime minister was not able to avoid the no-confidence vote and therefore fulfilled the demands of the so-called friends of constitutional government and resigned on 20 February 1913.

The greatest significance of the crisis was that parties gained real political power. The anti-Katsura factions were united in the *Seiyū-kai*, and its opposition formed the *Dōshi-kai*, heralding the dawn of a British-style parliamentary system in Japan with two main political actors along two different ideologies.

Moreover, after the crisis, the Cabinets and prime ministers could not serve as only transcendental state organs, and their political success depended largely upon the support of a parliamentary force, notably the *Seiyū-kai*.

Afterwards, in 1918, a serving political party leader, Takahashi Hara, became prime minister, symbolizing the real start of the British-modelled Cabinet system in Japan. However, this start was not peaceful, since in 1921 the prime minister was assassinated; but at least until the shootings of ex-Prime Minister Hamaguchi in August 1931 and his predecessor in February 1932, the Cabinet system was rooted in Japan.<sup>36</sup>

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34 S. LARGE, *Emperors of the Rising Sun* (Tokyo, New York, London 1997) 90-94; A. MORGAN YOUNG, *Japan in Recent Times 1912-1926* (Westport 1973) 228-232.

35 It must be noted that the *Taishō* period was under the regime of the *Meiji* Constitution, which was not amended until 1946.

36 P. DUUS, *Party Rivalry and Political Change in Taishō Japan* (Cambridge 1968) 32-39.

## 2. *Universal Manhood Suffrage: General Election Law of 1925*

The origin of movements for universal manhood suffrage goes back to the last years of the nineteenth century, following the first Sino-Japanese war of 1894-95, with the establishment of the League for Establishing Universal Manhood Suffrage (*Futsū Senkyo Kisei Dōmei-kai*) in 1897. This started to raise public awareness and convince members of the diets of the significance of the issue to improve the public legitimacy of the House of Representatives.

Meanwhile, the number of the members of the House of Representatives was gradually enlarged, first to 376 in 1900; this number also reflected the increasing influence of the House. The *Shūgi-in gi'in senkyo-hō* (Electoral Law)<sup>37</sup> was amended repeatedly to decrease the yearly direct tax-paying requirements of the voters, and the size and mandates of electoral districts were also changed as part of the reforms.<sup>38</sup>

As a result of the activities of the League, the bill for universal manhood suffrage was adopted by the House of Representatives in March 1911, but was refused by a majority of the members of the House of Peers.

Following the Great War, the golden age of industrialization and economic developments that had started in the middle of the *Meiji* period suffered its first main challenges as the demand for Japanese exports fell and prices of products in Japan underwent an inflationary spiral. Particularly, the rise of the rice price caused difficulties for farmers and people living in rural areas and led to peaceful demonstrations first, then to severe riots throughout the country that encompassed nearly two million people altogether. The riots led to a collapse of the government and revitalized the opposition to universal suffrage. It must be noted that the Hara Cabinet expanded the electoral rights so that in the 1920 elections of the House of Representatives more than 5 per cent of the total population was eligible to vote, which was a great difference compared to the 1 per cent of 1890.

The final stage of the movement for universal suffrage started in 1922 when the opposition parties submitted a bill calling for the *Futsū senkyo-hō* (Universal Manhood Suffrage Law)<sup>39</sup>. As this bill became a pre-condition for a coalition between the *Seiyū-kai* and *Kensei-kai* parties in 1924, in March 1925 the bill was adopted by both Houses of the Imperial Diet and was promulgated by the emperor on 25 March 1925. The amended Electoral Law now extended universal male suffrage to all male citizens over the age of 25, with the exception of active members of the army and navy, heads of noble families, and certain categories of poor people living on funds.<sup>40</sup>

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37 *Shūgi-in gi'in senkyo-hō*, Law No. 37/1889, put out of force by Law No. 100/1950.

38 B.D. RAMSDELL, *The Japanese Diet: Stability and Change in the Japanese House of Representatives 1890-1990* (New York 1992) 5-7.

39 *Shūgi-in gi'in senkyo-hō* as amended by Law No. 47/1924; *Futsū senkyo-hō* is an unofficial name for the amended, new Electoral Law.

40 H.S. QUIGLEY, *The New Japanese Electoral Law*, in: *The American Political Science Review* 20 (1926) 392-395, available at <http://www.jstor.org/stable/1945155?seq=2> (last retrieved 2 July 2012).

The adoption of the above-mentioned bill brought about two further important factors in regard to both the birth and early death of Japanese democracy.

The first factor related to the establishment of bipolarized parliamentary factions. In 1927 two anti-*Seiyū-kai* factions merged and established the *Minseito*, which enjoyed a majority within the House of Representatives compared to the ruling *Seiyū-kai* faction. This led to the dissolution of the House, and the forthcoming election of February 1928 was not only the first held under the universal suffrage law but was also preceded by real political campaigns run by the two main political forces.

The second factor resulted in a great deal of contradictions during its application. The suffrage law had its political price since the House of Peers would give its support to the bill only if the Peace Preservation Law was adopted by the House of Representatives. According to the *Meiji* Constitution, a bill required the consent of both Houses to become a law, so the package deal was reached in the case of suffrage law and peace preservation, where the latter was considered particularly an anti-communist and anti-left-radical measure.

The Peace Preservation Law became the reference for harsh state police reactions against associations that allegedly aimed at altering the *kokutai*, the traditional national polity, whereby concepts of nation, emperor and state were closely interrelated. Moreover, the act was later amended to provide for the death penalty instead of imprisonment for a maximum of ten years and was applied to a wide range of political opponents, particularly in the 1930s and early 1940s.<sup>41</sup> It should be added that the amendment of the act in 1928 was not based upon a Cabinet or Diet bill but in fact was a formal approval of a necessary ordinance issued by the emperor in accordance with Art. 8 of the *Meiji* Constitution.

The early 1930s started with the war against Manchuria and the assassinations of prime ministers, causing the military and navy to fall out from the control of the executive branch and the emperor. The period of aggressive military expansion led to a crisis in constitutional politics: the end of party cabinets, rise of military, and the period of the so-called dark valley (*kurai tanima*) from 1931 to 1945.

## V. CONSTITUTIONALISM IN THE OCCUPATION PERIOD AND AFTERWARDS

### 1. *The Constitutional Process: SCAP Draft and Its Parliamentary Approval*

In the battles of World War II, Japan was defeated. Emperor Hirohito accepted the Potsdam Declaration in his famous radio speech of 15 August 1945, just days after the horrors of Hiroshima and Nagasaki. The defeat was followed by occupation. For the first time in her modern history, Japan was occupied by a foreign authority, the Allied

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41 DUUS, *supra* note 36, 202-204., L. BEER / J. MAKI, *From Imperial Myth to Democracy* (Tokyo 2002) 30-32.

Powers. This gave large practical competence to the local US Supreme Commander, General *Douglas MacArthur*, who wanted to rapidly establish a democratic and peaceful nation. The *Meiji* Constitution, seen as a symbol of pre-war Japan and a barrier in this process, therefore had to be abolished or at least completely amended.

The first drafts for the amendment of the *Meiji* Constitution were already prepared in the autumn of 1945. The first proposals of the Government Committee to Study Constitutional Problems, led by a former university professor and Minister of State Jōji Matsu-moto, were published at the end of January 1946. In the meantime, several proposals were drafted among the committee members, particularly by Toshiyoshi Miyazawa, but none of these proposals would have substantively changed the constitutional role of the emperor.<sup>42</sup>

Hirohito officially renounced his divinity (*ningen sengen*) on 1 January 1946, a step that would not have even been imaginable in the early 1940s. On February 3, 1946, MacArthur presented his so-called three principles, which would retain the emperor as the head of state, insert the peace clause and abolish feudal elements of the Japanese state. With the retention of the emperor, MacArthur realized that the person of Hirohito could provide continuity between the old and the new Constitutions, between pre-war and post-war Japan, and thereby contribute to the smooth recovery of the nation.

The Japanese government submitted its proposal for the revision of the Constitution to the Supreme Commander of the Allied Powers (SCAP) on February 8, but the reaction to it was rather shocking for the Japanese side. On February 13, the Japanese Cabinet was given a response: a totally new SCAP draft, or more precisely MacArthur's staff draft, was issued. Nine days later the SCAP draft was accepted by the meeting of the Japanese Cabinet.<sup>43</sup>

The second phase of the constitutional process started with the publication of the draft Constitution in Japanese on 7 March, following intense discussion between the SCAP and the Japanese government regarding certain Japanese expressions. The parliamentary phase of the constitutional reform began only in June due to the April elections and the resignation of the newly elected prime minister. It must be noted that in spring 1946, the Japanese people's attitude depended not upon the constitution but on a more serious everyday issue: starvation.

The House of Representatives started to discuss the bill to revise the *Meiji* Constitution, submitted in conformity with its Art. 73, at the end of June. Thorough committee discussions took place before it adopted the amended bill on 24 August with an overwhelming majority and put it forward to the House of Peers.

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42 S. KOSEKI, *The Birth of Japan's Postwar Constitution* (New York 1997) 50-55.; R.E. WARD, *The origins of the present Japanese Constitution*, in: TANAKA (ed.) *The Japanese Legal System* (Tokyo 1976) 642-649.

43 KOSEKI, *supra* note 43, 60-110.; BEER / MAKI *supra* note 41, 78-84.

In the discussions, several amendments were adopted concerning Art. 9, the definitions of sovereignty, the respect of women's rights, the election of the prime minister by the House of Representatives and the right to life.

In the House of Peers, the committee phase of the discussion started on 30 August. Finally, on 6 October the amended bill was adopted by House. Following the debate of the House of Peers, the most important amendment was the introduction of the so-called civilian clause, whereby Cabinet members should be civilians. The next day the bill was approved by the great majority of the House of Representatives, and following the consultation with the Privy Council it was promulgated by the emperor on 3 November 1946 and entered into force on 3 May 1947.<sup>44</sup> The democratization of the defeated Japan was carried out formally and absolutely in conformity with the *Meiji* Constitution.

## 2. *Shōchō* (象徴) *Emperor: A Mere Symbol?*

Although the content of the Constitution (日本國憲法 *Nihon-koku kenpō*)<sup>45</sup> changed completely, in many aspects the structure resembles the *Meiji* Constitution.

First of all, chapter one, as before, includes the provisions (eight articles now instead of seventeen) concerning the emperor.

Art. 1. The Emperor shall be the symbol of the State and the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Art. 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Art. 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

Comparing Arts. 6 and 7 of the Constitution on the competences of the emperor with the related constitutional provisions on European kings or queens, one thing must be underlined: although their functions and competences are in many aspects similar, the provisions on human rights or on the parliament precede in every case the provisions on the emperor.

According to the text, the previous head of the empire became the symbol of the state and the unity of the people. The imperial family lost all its religious prerogatives, but it must not be forgotten that Emperor Hirohito remained on the throne until 1989, and both before and after the war he was called *Tennō* (天皇), whose original meaning sounds

44 O. NISHI, *The Constitution and the National Defense Law System in Japan* (Tokyo, 1987) 118-121.

45 Japanese Constitution of 3 December 1946; Engl. transl. available at [http://www.kantei.go.jp/foreign/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html) (last retrieved 2 July 2012); translations given are taken from here.

like heavenly sovereign. It must be noted that the original Chinese meaning of this character was “pole star in Heaven as a term of Taoism.”<sup>46</sup>

Regarding the term *Tennō*, Yanabu’s paper remembers that in 1946, when the House of Representatives considered the bill for the Constitution, the special state minister Tokujiro Kanamori was once asked about the meaning of the translated word *shōchō* and was not able to provide a proper answer. In addition, Professor Higuchi concludes that the meaning of the translated word *shōchō* does not seem to be equivalent to the original term of “symbol”.<sup>47</sup>

If we agree that the emperor is more than a symbol, it must be based on the fact that several pre-war legal provisions and customs have also been upheld to some extent in the framework of social traditions in the second half of the twentieth century.

This refers particularly to the separation of religion and state. The emperor was deprived of all his previous religious prerogatives concerning Shintōism by the Constitution and the Imperial Household Law of 1909; enthronement ceremonies were formally abolished in 1946. What happened in the evening of 22-23 November 1990? The traditional great food offering (*Daijō-sai*) ceremony was performed by the new emperor on the basis of long tradition according to the provisions of the abolished act. A secret ceremony based on pre-war imperial norms was carried out, showing “that the imperial institution is grounded not in a rational political consciousness but in impregnable tradition”.<sup>48</sup>

Moreover, if we look at the issue of imperial succession, particularly concerning the numerous female newborns (princesses) of the Imperial Family until September 2006, or the post-war everyday application of the traditional Japanese calendar (*Gengo*), which follows the kingship of the emperors, it should be pointed out that the emperor is not just a mere symbol of the state, but in some aspects represents continuity between *Meiji*, *Shōwa* and *Heisei* Japan. This was not foreseen, at least on the level of the written Constitution.

These short explanations might have proven that the symbolic role of the emperor and the sovereignty of the Japanese people in everyday life is interpreted “slightly” differently from the original concept of the Allied Powers in 1946.

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46 A. YANABU, The Tennō system as the symbol of the culture of translation, in: Japan Review 7 (1996) 147-157; available at <http://202.231.40.34/jpub/pdf/jr/IJ0708.pdf> (last retrieved 2 July 2007).

47 Y. HIGUCHI, The Constitution and the Emperor System: Is Revisionism Alive? In: LUNEY / TAKAHASHI (eds.), Japanese Constitutional Law (Tokyo 1993) 61-62.

48 K. TAKAMI, From Divine Legitimacy to the Myth of Consensus: The Emperor System and Popular Sovereignty, in: HIGUCHI (ed.), Five Decades of Japanese Constitutionalism in Japanese Society (Tokyo 2001) 11.

### 3. *Popular Sovereignty and the Separation of State Powers*

Following the Preamble's proclamation about popular sovereignty, Art. 1 of the Constitution conferred the sovereign power upon the Japanese people. This was the first time in Japan's history that popular sovereignty enjoyed a constitutional guarantee. However, it must be noted as formal remark to the editors of the Constitution that popular sovereignty is codified between the provisions on the emperor. The emperor as a symbolic system and popular sovereignty are cores of Japanese democracy, but they refer to two totally different issues within one sentence: the emperor and sovereignty.

Moreover, looking at other constitutions, we must admit that democratization is always ensured through the majority principle. However, the difference between the American approach and Japanese reality is touched upon in Art. 1, where it says that the emperor's position is derived "from the will of the people with whom resides sovereign power". Contrary to the American notion of popular sovereignty, the Japanese did not elect their emperor and could not remove him from office.<sup>49</sup> Again, the term "will of the people" usually refers to national assemblies or directly elected officials, but not to monarchs and thousand-year-old dynasties, where origin is the first important decisive factor for the position. In the case of Japan, all possible "candidates" for crown prince should be members (male descendants) of the Imperial Family.

Reading Art. 41 of the Constitution, which stipulates that the "Diet shall be the highest organ of the state power", in conjunction with the second part of Art. 1, whereby the Japanese people are the source of sovereign powers, we can conclude that the constitutional framework of a democratic society has been established.

Moreover, following the limitations of the *Meiji* Constitutions concerning separation of state powers, including the appropriate checks and balances mechanisms, in the case of the Constitution a brand new constitutional monarchy was established.

According to Arts. 65 and 66 of the Constitution, executive power is vested in the Cabinet, which should be collectively responsible to the Diet. In addition, the House of Representatives is constitutionally entitled to pass a no-confidence resolution, or to reject a confidence resolution, whereby the Cabinet should resign en masse unless the House of Representatives is dissolved within ten days. The executive and legislative branches are strongly interrelated and the "will of the people" may lead to the resignation of the Cabinet before its four-year mandate expires.

Finally, according to Art. 76 of the Constitution, all judicial power is vested in a Supreme Court and the inferior courts. Judges became independent not just organically but also personally, as they are bound only by the Constitution and the laws. The Constitution also introduced the possibility of the judicial review<sup>50</sup> of any law, order, regula-

49 K. INOUE, *MacArthur's Japanese Constitution: A Linguistic and Cultural Study of Its Making* (Chicago 1991) 187.

50 In the so-called *Sunakawa* case – among others – the Supreme Court held that highly political treaties fell outside the scope of constitutional review. Supreme Court, 16 December 1959,

tion or official act on constitutional grounds, where the Supreme Court constitutes the final forum.

This constitutional framework corresponds to democratic societies. The three different branches of state powers have their clearly defined competences, responsibilities and checks, whereby none of them is able to carry out all state powers independently from the others. We can add that the Diet became stronger politically more significant, the judiciary enjoys more independence and the Cabinet bears the political responsibility with all its consequences.

## VI. *KOKKAI* (国会) AS THE HIGHEST ORGAN OF STATE POWER

### 1. *The Role of the Diet*

The bicameral National Diet, consisting of the House of Representatives and the House of Councillors, both directly elected, became the highest organ of state power and the sole law-making organ of the state.

The 480 members of the House of Representatives (衆議院 *Shūgi-in*) are elected for four years upon universal suffrage law, whereby since 1946 every Japanese adult citizen above the age of 20 is eligible to vote. The election system is a mixed electoral system whereby two-thirds of the members are elected from single-seat constituencies.

The membership of the House of Councillors (参議院 *Sangi-in*) was changed from imperial family members, nominees and nobles to 242 directly elected members serving for six years, with half of them elected every third year.

Candidates running for parliamentary elections should be at least 25 years old in the lower house and 30 years old in the upper house.

The composition of the Houses represents the “will of the people”, or at least the mandate of the members is dependent solely upon the “will” of the electors.

Concerning the several functions of the National Diet, Art. 41 of the Constitution mentions law-making power in first place, whereby the National Diet is the sole law-making organ in Japan. Every bill requires the support of the majority of the members of both Houses to become a law, with the following constitutional exceptions. Generally, when the House of Councillors does not agree with the position of the House of Representatives, the latter’s proposal becomes a law when at least two-thirds of the House members present approve the bill. It follows that by a two-thirds majority the Lower House can overrule the Upper House.

In the case of the state budget, the Constitution provides the following: similarly to the *Meiji* Constitution, the budget must first be submitted to the House of Representatives. Moreover, the House of Councillors’ objections are constitutionally limited,

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1959(A) No. 710, available at <http://www.courts.go.jp/english/judgments/text/1959.12.16-1959-A-No.710.html> (last retrieved 2 July 2012).

since a decision of the House of Representatives becomes law if the House of Councilors does not take a final decision within thirty days after the receipt of the budget passed by the House of Representatives. There is, of course, the possibility to convene a joint committee of both Houses, but if there is no agreement between the Houses, then the preceding regulation applies.

Last but not least regarding law-making competences, the Diet's role in the Constitution amendments should be mentioned. Chapter nine of the Constitution puts all the competences in this regard to the Diet and the people. According to the relevant article, amendments to the Constitution should be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House, and should thereupon be submitted to the people for ratification. This article has not yet been applied, though the first Government Commission on the Constitution was set up in 1957. Both Houses have investigated this issue in the past ten years and published reports in 2005, but no bill has so far gone through both Houses.

These examples undoubtedly confirm that all legislative power is conferred upon the Diet. There is no bill that can become law contrary to the will of the people represented by the majority of the members of the House of Representatives. The Constitution and the budget constitute the two main exclusive legislative competences. In the former, the Diet is controlled finally by the people; in the latter, the highly political and economic considerations prevail and lead to on-going stormy discussions that are part of old democratic traditions.

## 2. *The Status of the Members*

The provisions concerning the legal status of the members of the Diet are regulated in the Constitution, the *Kokkai-hō* (Law on the Diet)<sup>51</sup> as well as the procedural rules of the Houses.

Regarding constitutional provisions, equal treatment of the members should be mentioned. According to Art. 47 of the Constitution, there should be no discrimination between the members because of race, creed, sex, social status, family origin, education, property or income. Women members were first elected in 1946. The Constitution also guarantees, as the *Meiji* Constitution, that no person can become a member of both Houses simultaneously.

Members of both Houses, as well as the Cabinet and the standing committees, are also empowered to introduce a bill. In the House of Representatives, the support of at least twenty members is required to that end, while in the House of Councilors a minimum of ten signatures is necessary for a bill. In the case of budget issues, higher support is required: 50 and 20 respectively.<sup>52</sup>

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51 *Kokkai-hō*, Law No. 79 of 1947, as amended by Law No. 111/2011; Engl. transl. available at <http://www.sangiin.go.jp/eng/law/diet/index.htm> (last retrieved 3 July 2012).

52 Art. 56 of the Law on the Diet.

Besides legislative functions, the second important issue is the control of the executive. In this field three different types of initiative should be emphasized. The first is the so called no-confidence vote, mentioned above, which requires the support of 50 members. The second type refers to questions and interpellations to the government. The third stipulates that each House may conduct investigations related to government and may demand the presence and testimony of witnesses and the production of records.<sup>53</sup>

Contrary to the *Meiji* Constitution, members of the Diet are granted all rights of immunity. They are exempted from apprehension while the Diet is in session and the members are not held liable outside the House for speeches, debates or votes cast inside the House. A member can be apprehended only in case of an *in flagrante delicto* or with the consent of a two-thirds majority of the House he or she belongs to. These two elements constitute real immunity for the members.

The members are entitled to appropriate annual payment<sup>54</sup> and other allowances – retirement, travel and mailing allowances – as provided by the law.<sup>55</sup>

A further group regarding the status of members concerns provisions on incompatibility. Art. 39 of the Law on the Diet contains the relevant provisions stipulating that a member cannot hold concurrently an official post in the Government or in any local public entity. It follows that this provision foresees a clear distinction between the legislative and executive branch, however the second part of this article provide for a large scale of still compatible governmental positions.<sup>56</sup>

Thus, the post-war parliamentary system established a constitutional monarchy where the highest state organ is exercised through the directly elected National Diet, which is the sole law-making body, with exclusive competence for the adoption of the state budget and the Constitution. The Diet is an independent state organ and not subordinate to the will of the government. Moreover, members of the Diet enjoy full independence from both the executive and the judicature, in conformity with the provisions on immunity.

## VII. CONCLUSIONS: MODERN VS. DEMOCRATIC JAPAN

Japan's first written constitution was the *Meiji* Constitution, or the Constitution of Imperial Japan, which entered into force on 29 November 1890. It was the first modern written constitution of Asia based upon Prussian traditions. The centre of the Constitution was the emperor who was the sovereign, sacred and inviolable, and regarded as the religious head of the Shinto state religion. This was also symbolized by the fact that the Imperial Household Law belonged to the exclusive competence of the emperor and stood in equivalent force to the Constitution.

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53 Arts. 63 and 63 of the Constitution.

54 Art. 49 of the Constitution.

55 Arts. 35-38 of the Law on the Diet.

56 H.H. BAERWALD, *Japan's Parliament: An Introduction* (Cambridge 1974) 134-138.

There were certain elements of constitutionalism, however, since a Diet was elected by universal suffrage (though only by high taxpayers) and had to be consulted in legislation. The Cabinet was responsible for the emperor and carried out the executive power. The independence of the judiciary was rather restricted since it fell under the Cabinet's control.

The emperor's mythical role as head of the Shinto state religion and emperor worship ranked him far above ordinary citizens. His authority and divinity was the centre of the pre-war *Meiji* constitutional order.

The *Meiji* Constitution established a limited constitutional monarchy but not an absolutist one, though in the 1920s and 1930s it was severely tested as it ceded the floor for the nearly fourteen years of the *Taishō* democracy and also for the roughly fourteen years of the *Shōwa* extreme militarism. The *Meiji* Constitution was not amended, but the executive – and primarily the army and the navy – were able to exercise control over the state without any real checks and balances.

The post-war constitutional framework corresponds to democratic societies: the three different branches of state powers have their clearly defined competences, responsibilities and checks, whereby none of them is able to carry out all the state powers independently from the others. We can add that the Diet became stronger and politically more significant, the judiciary enjoys more independence and the Cabinet bears political responsibility with all its consequences.

Although popular sovereignty is granted by the Constitution and the Diet became the highest organ of state power and the sole law-making organ, the practical side of popular sovereignty seems to have developed in a unique Japanese way. It follows that not just the person of the emperor was retained in the post-war period, but also some of its pre-war prerogatives continue to be applied as part of unwritten but deeply rooted social traditions.

Finally, this formal remark can express much more in this context: Arts. 1 of both the *Meiji* and *Shōwa* Constitutions begin with the emperor whose competence, though constitutionally restricted in the post-war period, could in fact not be simply defined or described through legal provisions since it is carried out “from the will of [the Japanese] people”.

In the *Meiji* period, a system of selective modernization took place under the motto of “Western technique, Japanese spirit” (*wakon yōsai*); this led to a developed industry, a strong military and a modern legal system that was the precondition to treating Japan as a modern state. But above the significant foreign influences in various aspects (navy, army, Constitution, legal codes, etc.), a large part of Japanese society and daily life was still governed by the old spirits.

In the post-war period, during the occupation, Japan had no room for selective reform. Less than 100 years after the arrival of the American Commodore Perry, the country had to reopen its state system and codes to foreign powers, this time called Allied

Powers. Japan was defeated and its constitutional system was overwritten based on an American model, which established democracy for the first time in her history.

As before, however, this democracy in its spirit Japanese: free elections take place and Cabinets come and go, but there is one person who cannot ever be removed “from the will of the people” since his position stems from a “lineal succession unbroken for ages eternal”.

#### SUMMARY

*Japanese constitutional legal history does not constitute part of the obligatory legal curriculum in Hungary. There are limited numbers of researchers and references available throughout the country. However, I am convinced that neither legal history nor comparative constitutional law could be properly interpreted without Japan and its unique legal system and culture.*

*Modern Japanese legal and constitutional history has been thoroughly investigated in the past few decades, also outside Japan by Western scholars. Outstanding references have become available throughout the world. However, it might be added that while a group of works focus primarily on the civil-law traditions that influenced Japan under the Meiji period, another groups of studies put the “current” Japanese Constitution in the centre of their research. All in all, following nearly a decade of research on different aspects of Japanese law, I have the impression that a historical approach concerning Japanese constitutional law does not always enjoy enough attention. Post-war Japan cannot be interpreted without pre-war Japan, or focusing primarily upon the Shōwa Constitution might lead to a one-sided approach.*

*Japan’s first written constitution was the Meiji Constitution, or the Constitution of Imperial Japan, which entered into force on 29 November 1890. It was the first modern written constitution of Asia, based upon Prussian traditions. The centre of the Constitution was the emperor, who as the sovereign was sacred and inviolable and was regarded as the religious head of the Shintō state religion. This was also symbolized by the fact that the Imperial Household Law belonged to the exclusive competence of the emperor and stood in equivalent force to the Constitution. The Meiji Constitution established a limited constitutional monarchy but not an absolutist one. However, in the 1920s and 1930s it was severely tested as it ceded the floor for the nearly fourteen years of the Taishō democracy and also for the roughly fourteen years of Shōwa extreme militarism.*

*The post-war constitutional framework corresponds to democratic societies: the three different branches of state powers have their clearly defined competences, responsibilities and checks, whereby none of them is able to carry out all the state powers independently from the others. We can add that the Diet became stronger and politically more significant, the judiciary enjoys more independence and the Cabinet bears political responsibility with all its consequences.*

*Although popular sovereignty is granted by the Constitution and the Diet became the highest organ of the state power and the sole law-making organ, the practical side of popular sovereignty seems to have developed in a unique Japanese way. It follows that not just the person of the emperor was retained in the post-war period, but also some of its pre-war prerogatives continue to be applied as part of unwritten but deeply rooted social traditions.*

#### ZUSAMMENFASSUNG

*An ungarischen Universitäten ist die japanische Verfassungsrechtsgeschichte nicht Teil des juristischen Pflichtprogramms; nur wenige Forscher und Quellen sind dazu im Land verfügbar. Ungeachtet dessen ist der Autor der Auffassung, dass sich weder die Rechtsgeschichte noch das vergleichende Verfassungsrecht ohne Japan, sein einzigartiges Rechtssystem und seine einzigartige Kultur vollständig verstehen lassen. Die jüngere (verfassungs)rechtliche Geschichte Japans ist in den letzten Jahren gründlich untersucht worden, auch von westlichen Wissenschaftlern außerhalb Japans. Ausgezeichnete Quellen sind weltweit zugänglich geworden. Allerdings muss hinzugefügt werden, dass ein Teil der Arbeiten sich vor allem auf die zivilrechtlichen Traditionen konzentriert, die Japan während der Meiji-Zeit beeinflussten, während andere die „gegenwärtige“ Verfassung in den Blickpunkt ihrer Forschung stellen. Insgesamt hat der Autor – nach fast einem Jahrzehnt der Forschung zu verschiedenen Aspekten des japanischen Rechts – den Eindruck, dass einem historischen Ansatz in Bezug auf das japanische Verfassungsrecht nicht immer genug Aufmerksamkeit beschieden ist. Das Japan der Nachkriegszeit kann nicht ohne das Japan der Vorkriegszeit verstanden werden; anders gesagt: Die Beschränkung auf die Verfassung der Shōwa-Zeit kann zu einseitigen Denkansätzen führen.*

*Japans erste geschriebene Verfassung war die Meiji-Verfassung bzw. die „Verfassung des japanischen Kaiserreichs“, die am 29. November 1890 in Kraft trat. Sie war die erste moderne geschriebene Verfassung Asiens und basierte auf preußischen Traditionen. Mittelpunkt der Verfassung war der Kaiser, der als Staatsoberhaupt heilig und unantastbar war und als religiöser Führer der Staatsreligion, des Shintō, angesehen wurde. Dies zeigte sich auch an der Tatsache, dass das Gesetz über den kaiserlichen Haushalt zu den ausschließlichen Kompetenzen des Kaisers gehörte und gleichen Rang wie die Verfassung hatte. Die Meiji-Verfassung begründete keine absolutistische, son-*

*dern eine konstitutionelle Monarchie. Diese wurde jedoch in den zwanziger und dreißiger Jahren auf harte Proben gestellt, da sie die Bühne fast vierzehn Jahre lang der Taishō-Demokratie und weitere ca. vierzehn Jahre dem Ultrationalismus und Militarismus der Shōwa-Zeit überlassen musste.*

*Der verfassungsrechtliche Rahmen der Nachkriegszeit entspricht dem demokratischer Gesellschaften: Die drei staatlichen Gewalten haben klar definierte Kompetenzen und Verantwortlichkeiten und kontrollieren sich gegenseitig, wobei keine von ihnen die Staatsgewalt ohne die anderen ausüben kann. Ferner ist das Parlament mächtiger und politisch bedeutender, die Judikative genießt größere Unabhängigkeit und das Kabinett trägt die politische Verantwortung mit all ihren Folgen.*

*Obwohl durch die Verfassung die Volkssouveränität garantiert und das Parlament das höchste Organ staatlicher Macht ist, scheint sich in der Realität die Souveränität des Volkes auf eine spezifisch japanische Art und Weise entwickelt zu haben. Dies wird nicht nur darin deutlich, dass der Kaiser als Person im Nachkriegsjapan weiter eine Rolle spielt, sondern auch darin, dass einige seiner Vorrechte aus der Vorkriegszeit als Teil ungeschriebener, aber tief verwurzelter sozialer Traditionen weiterbestehen.*