

LAW 160: The Constitution of Japan and Law

Spring Semester 2010: Monday and Wednesday, 15:30-16:50 (NB. not 16:45)

Instructor: Tetsuya Toyoda Office : C16 E-mail: toyoda@aiu.ac.jp

Office hours: Mondays 14:00-15:00 and Wednesdays, 10:00-12:00

Course Goals

This course has two primary goals:

1. Students will acquire basic knowledge of the history and the present features of the Constitution of Japan.
2. Students will be able to present their own opinions about the future of the Japanese constitutional system in their own words.

Course Description

The main subject matter of this course is the actual constitution of Japan, in effect from May 3, 1947. It is, as is any other constitution, deeply embedded in its historical context: namely, the Surrender of 1945 and the subsequent US Occupation. Article 9, entitled "renunciation of war", is the most salient feature of the postwar constitution and one of targets of constitutional revisionism. This course helps students to have their own opinions on constitutional questions. Examination of constitutional provisions occasionally leads us to issues of other branches of the Japanese law, such as criminal procedure law or social welfare law.

Class Activities

- 1) Questions and class discussions based on assigned reading
Carefully read in advance assigned pages of the textbook or other materials.
- 2) Textbook presentations
Oral presentations based on scholarly writings.
- 3) Case reports
Presentations based on analytical reading of decisions of the Supreme Court.

Prior Academic Preparation

None. Knowledge of Japanese is desirable but not indispensable.

Evaluation

1st In-class essay (May 7): 10%	2nd In-class essay (June 2): 10%
Textbook presentation: 10%	Case report: 10%
Participation in class discussions: 10%	Final Exam: 50%: Three-hour exam

Course Materials

Course materials will be provided.

Course Schedule (*Modifications may be necessary depending number of participants.*)

April 12. Course Introduction

I. THE MEIJI CONSTITUTION AS A PREHISTORY TO THE FULL CONSTITUTIONALISM

April 14. The Making of the Meiji Constitution

Required: Lawrence W. Beer and John M. Maki, *FROM IMPERIAL MYTH TO DEMOCRACY: JAPAN'S TWO CONSTITUTIONS, 1889-2002*, (2002), pp. 7-18.

April 19. The Theocracy under the Meiji Constitution Required: Ibid, pp. 18-32.

April 21. The "Unconditional" Surrender Required: Ibid, pp. 53-64.

[No Class on April 26]

April 28. The End of the Theocracy Required: Ibid, pp. 64-73.

May 7. 1st In-class essay test

II. STUDENT PRESENTATIONS ON THE 1947 CONSTITUTION

May 10. Review of the first in-class essay

May 12. Collaborative Creation of the 1947 Constitution Required: Ibid., pp. 77-93.

May 17. Writing the SCAP Draft

Required: Shoichi Koseki, "A Week in a Secret Room: Writing the SCAP Draft" (Ch. 4 of his *The Birth of Japan's Postwar Constitution*, 1997), pp. 68-82.

May 19. The Features of the SCAP Draft Required: Koseki, pp. 82-94.

May 24. Struggle for Japanization of the Draft Constitution

Required: Koseki, "The Struggle to Japanize the American Draft" (Ch. 6 of his *The Birth of Japan's Postwar Constitution*, 1997), pp.111-122

May 26. Accommodation to the Defeat Required: Koseki, pp. 122-137.

May 31. Three major characteristics of the present constitution

Required: John M. Maki, "The Constitution of Japan: Pacifism, Popular Sovereignty, and Fundamental Human Rights", Percy R. Luney, Jr. and Kazuyuki Takahashi (eds.), *Japanese Constitutional Law*, (1993), pp. 39-55.

June 2, 2nd In-class essay test

III. THE CONSTITUTIONAL ALLOCATION OF POWERS

June 7. The Parliamentary Cabinet System

Required: Hitoshi Abe, *The government and politics of Japan*, 1994, pp. 14-32.

June 9. On-going Systemic Reforms

Required: Kazuyuki Takahashi, "Ongoing Changes in the Infrastructure of a Constitutional System - From 'Bureaucracy' to Democracy", Daniel Foote (ed.), *Law in Japan*, (2007), pp. 237-256.

June 14. The judicial review Required: Tomatsu, "Judicial Review in Japan" (2001)

IV. STUDENT PRESENTATIONS ON HUMAN RIGHTS JUDICIAL DECISIONS

June 16. Human rights in its variety

Required: Oda, *Japanese Law*, 2nd ed., 2001, pp. 102-126.

[No Class June 21 and 23]

June 28. Equality (I): The share in the inheritance of an illegitimate child (1995)

June 30. Equality (II): Equality of foreigners in local government (2005)

July 2. Equality (III): Nationality Act case(2008)

July 7. Equality (IV): Election Law case (1976)

July 12. Status of Foreigners: McLean Case (1978)

July 14. Social Rights: Horiki Case (1982)

July 21. Final class discussion and course evaluation

Required: Yoichi Higuchi, "The 1946 Constitution: Its Meaning in the Worldwide Development of Constitutionalism", id. (ed.), *Five Decades of Constitutionalism in Japanese Society*, 2001, pp. 1-8.

Final Exam (Wednesday, July 28, 15:30-18:30, three hours)

(In case of time conflict, the test schedule will be adjusted individually.)