

## DOCUMENT RESUME

ED 354 204

SO 022 883

AUTHOR Parisi, Lynn S.  
 TITLE The Constitution and Individual Rights in Japan: Lessons for Middle and High School Students.  
 INSTITUTION ERIC Clearinghouse for Social Studies/Social Science Education, Bloomington, IN.; National Clearinghouse for United States-Japan Studies, Bloomington, IN.  
 SPONS AGENCY Office of Educational Research and Improvement (ED), Washington, DC.  
 REPORT NO ISBN-0-941339-17-3  
 PUB DATE 92  
 CONTRACT RI88062009  
 NOTE 123p.  
 PUB TYPE Guides - Classroom Use - Teaching Guides (For Teacher) (052) -- Information Analyses - ERIC Clearinghouse Products (071)

EDRS PRICE MF01/PC05 Plus Postage.  
 DESCRIPTORS Civil Liberties; \*Constitutional Law; Cross Cultural Studies; Foreign Countries; Foreign Culture; Intermediate Grades; \*International Law; International Studies; \*Law Related Education; Learning Activities; Middle Schools; Political Science; Secondary Education; Social Studies; World History  
 IDENTIFIERS \*Japan; \*Japanese Culture

## ABSTRACT

The four teaching units of this publication focus on Japanese constitutional law and history, while providing opportunities for comparison with the constitutional experience of the United States. The four units have been designed as a comprehensive course of study that emphasizes understanding of the historical and cultural context of contemporary situations and issues. While each unit is designed to complement and build upon the preceding units, each activity and unit is self-contained and may be used alone as well as in combination with other resources. The first of the four units is entitled Social and Political Traditions in Japan. It contains three activities: (1) The world according to Confucius, (2) Geography and perceptions of individual society. The second unit, called The Meiji Constitution, contains two activities: (1) The Meiji Constitution in historical context, and (2) Comparing principles of government in the Meiji and U.S. Constitutions. Unit 3, The 1947 Constitution, also contains two activities: (1) Dictating change: a simulation, and (2) Bringing democracy to Japan. Finally, activities in the fourth unit, Individual Rights in Contemporary Japan, are the following: (1) Comparing constitutional rights in Japan and the United States, (2) The tug of war between law and custom: the Fukuoka patricide case, and (3) A half-step behind: the evolution of women's rights in Japan. A 16-item bibliography of teacher background materials and additional readings is included. (DB)

ED354204

883

022

130

ERIC  
Full Text Provided by ERIC

U.S. DEPARTMENT OF EDUCATION  
Office of Educational Research and Improvement  
EDUCATIONAL RESOURCES INFORMATION  
CENTER (ERIC)

This document has been reproduced as  
received from the person or organization  
originating it.

Minor changes have been made to improve  
reproduction quality.

Points of view or opinions stated in this docu-  
ment do not necessarily represent official  
OERI position or policy.

BEST COPY AVAILABLE

**The Constitution and Individual Rights  
in Japan:  
Lessons for Middle and  
High School Students**

**by Lynn S. Parisi**

*ERIC Clearinghouse for Social Studies/  
Social Science Education  
and  
the National Clearinghouse for  
United States-Japan Studies*



## ***Ordering Information***

This publication is available from:

Publications Manager  
ERIC Clearinghouse for Social Studies/Social Science Education  
2805 East 10th Street, Suite 120  
Bloomington, Indiana  
47408-2698  
(812) 855-3838  
FAX: (812) 855-0455

ISBN: 0-941339-17-3

Funding for the development of this publication was provided by the Office of Educational Research and Improvement, U.S. Department of Education, under contract number RI88062009. The opinions expressed do not necessarily reflect the positions or policies of OERI or ED.



**ERIC, Educational Resources Information Center, is an information system sponsored by the Office of Educational Research and Improvement, within the U.S. Department of Education.**

# CONTENTS

ABOUT THE AUTHOR .....	v
FOREWORD .....	vii
ACKNOWLEDGMENTS .....	ix
INTRODUCTION .....	1
HISTORICAL OVERVIEW by Fred Czarra .....	9
UNIT ONE: Social and Political Traditions in Japan	
•Activity One: The World According to Confucius .....	11
•Activity Two: Geography and Perceptions of Individual Space in Japan .....	18
•Activity Three: The Individual in Japanese Society .....	20
UNIT TWO: The Meiji Constitution	
•Activity One: The Meiji Constitution in Historical Context .....	30
(included in this activity is a copy of the Meiji Constitution)	
•Activity Two: Comparing Principles of Government in the Meiji and U.S. Constitutions .....	45
UNIT THREE: The 1947 Constitution	
•Activity One: Dictating Change: A Simulation .....	47
•Activity Two: Bringing Democracy to Japan .....	51
(Included in this activity is a copy of the 1947 Constitution of Japan)	
UNIT FOUR: Individual Rights in Contemporary Japan	
•Activity One: Comparing Constitutional Rights in Japan and the United States .....	57
•Activity Two: The Tug of War Between Law and Custom: The Fukuoka Patricide Case .....	64
•Activity Three: A Half-Step Behind: The Evolution of Women's Rights in Japan .....	96
BIBLIOGRAPHY .....	112

## About the Author

Lynn S. Parisi is a senior staff associate at the Social Science Education Consortium (SSEC) in Boulder Colorado, where she directs the Rocky Mountain Region Japan Project. She is past co-director of the Constitutional bicentennial project, "The Ideas and Ideals of the Bill of Rights Around the World," through which this curriculum unit was developed.

Ms. Parisi received her MA in Asian Studies from the University of Oregon and MAT and BA degrees from Duke University. Prior to her work in curriculum development and teacher training with SSEC, she taught social studies and English in the United States and Japan. In addition, she worked at the ERIC Clearinghouse for Social Studies/Social Science Education as the Assistant Director for User Services.

She has written several curriculum units and lesson plans on this topic. Some of these include: "*Japan in the Classroom*"; "*The Faces of Japan: Teachers Guides I and II*"; "*Our World, Its Land, and People*"; and "*Teaching about Law and Culture*."

## Foreword

During the past ten years, there has been a remarkable renewal of interest in teaching and learning in schools about constitutionalism and individual rights. The recent bicentennials of the U.S. Constitution and Bill of Rights have prompted much of this current concern for curricular emphasis on these traditional sources of our civic culture. Democratic revolutions around the world have also sparked renewed attention to constitutional democracy in America. It seems that Americans today are becoming increasingly aware of the global reach of core ideas in their civic heritage, such as constitutionalism, ordered liberty, and human rights.

Lynn S. Parisi has provided in this publication ideas and activities to enhance the awareness and understanding of American learners about constitutional developments and individual rights in Japan. Connections and comparisons of constitutionalism in Japan and the United States are addressed throughout Parisi's work. Thus, she enables American students to learn how the Japanese use ideas on constitutional democracy in ways that are similar to and different from the way Americans apply these concepts.

During the past seven years, the ERIC Clearinghouse for Social Studies/Social Science Education (ERIC/ChESS) at Indiana University has emphasized, in its publications and database building activities, education about constitutionalism and individual rights. This volume by Lynn S. Parisi, a very talented curriculum developer and teacher, is a first-rate contribution to the ongoing mission of ERIC/ChESS to improve the civic education of American students.

—John J. Patrick  
Director, ERIC Clearinghouse  
for Social Studies/Social Science  
Education; Director, Social Studies  
Development Center, and Professor  
of Education, Indiana University



## Acknowledgments

The lessons and activities in this book were developed during the 1990-91 school year as a part of the "Ideas and Ideals of the Bill of Rights Around the World" project. This project—undertaken by the Social Science Education Consortium (SSEC) with funding from the Commission on the Bicentennial of the U.S. Constitution—worked with scholars, secondary social studies teachers, and curriculum developers to develop materials and train teachers in a cross-cultural approach to the study of the U.S. Constitution. Designed primarily to address the need to include teachers of world history, world cultures, and world geography in the bicentennial celebration of the Constitution, the project conducted training workshops on the origins, principles, and applications of the Bill of Rights in U.S. government and society, as well as the significance of this document in the framing and exercise of government in other nations.

Over the course of the school year, 40 selected Colorado teachers took part in the project, which included a mini-institute on the U.S. Constitution and a series of one day workshops, each focusing on the influence of the U.S. Bill of Rights on the guarantee and exercise of individual rights in another country. Other countries examined during the institute were Canada, Mexico, Nigeria, France, and the Soviet Union. The UN Universal Declaration of Human Rights provided a final case study. The teachers participating in the project pilot tested curriculum materials and provided valuable feedback on successful units and lessons.

In addition to the classroom teachers instrumental to this project, a number of project staff and consultants made significant contributions to the development of this curriculum package. Barbara Miller, co-director of "Ideas and Ideals of the Bill of Rights Around the World" not only guided and inspired the overall project but also offered untiring advice and review on the development of this unit. As chief consultant to the project, Dr. John Patrick, Director of the Social Studies Development Center at Indiana University, served many roles. Dr. Patrick helped to conceptualize the original project, served as faculty at the initial teacher institute and shared his expertise and guidance on all curriculum development. His extensive knowledge of the U.S. Constitution was critical to the project; that knowledge and his strong support were greatly appreciated. Dr. Patrick, as well as Timothy Cheek, Assistant Professor of History, Colorado College; Richard Rice, Associate Professor of History, University of Tennessee at Chattanooga; Hiroshi Motomura, Associate Professor of Law, University of Colorado; and Linda Wojtan, Co-Coordinator of the National Precollegiate Japan Projects Network, carefully critiqued the Japan Constitution unit and provided invaluable suggestions, refinements, and resource recommendations. Jackie Johnson, staff associate at SSEC and teacher in Cherry Creek (CO) schools, contributed lesson ideas and strategies.

Appreciation is also due to Kathleen Woods Masalski, Coordinator of the New England Program for Teaching About Japan at the Five Colleges Center for East Asian Studies in Amherst, MA, for including this curriculum in a one-day workshop on the U.S. and Japanese Constitutions for New England area educators during Fall 1991. The workshop provided an important forum for further field testing and revision of the



materials. Several teachers who took the role of master teachers in field testing and then demonstrating those curriculum materials at the workshop deserve special thanks. They are: Virginia Ahart, Hampshire (MA) Regional School District; Russell Carrier, Springfield (MA) Public Schools; Clifford Fonsh, Amherst (MA) Regional Public Schools; and Robert Hansbury, Belchertown (MA) Public Schools.

For their assistance in the production of this activity book, I wish to thank SSEC staff members Laurel Singleton, for her careful editing, and Cindy Cook, for her excellent preparation of the manuscript. I am grateful to the staff of the National Clearinghouse for United States-Japan Studies and the ERIC Clearinghouse for Social Studies/ Social Science Education for making this material available to educators and for their care in final preparation of the publication.

Finally, I wish to thank the United States-Japan Foundation for providing funds to support the publication and distribution of this book.

**Lynn Parisi, Director  
Rocky Mountain Region Japan Project  
Social Science Education Consortium**

# INTRODUCTION

## **The International Democracy Movement and the Study of the U.S. Constitution**

The early 1990s has been a period of profound and sweeping political transition around the world. Among the radical changes we have witnessed in the past few years are the reunification of Germany, the dissolution of the Soviet bloc and of communist governments in Eastern Europe, and, most recently, the disintegration of the Soviet Union. In Eastern Europe and former Soviet republics, new governments are being established. Many of these governments are examining the U.S. Constitution and looking to the example of U.S. government as a potential model for national democratic reform.

This movement, coming as it does towards the conclusion of our own nation's four-year Constitutional bicentennial celebration, raises important and interesting questions about the exportability of fundamental political philosophies and governmental structures that have worked so well for over 200 years in the United States. Is the U.S. Constitution a document with universal applications—a model that can be adopted and transplanted successfully around the world? Or, is the success of this particular constitution in this country attributable to a blend of national and historical circumstance, experience, and cultural and philosophical heritage—a model that has worked for this nation but may not work equally well superimposed on a nation with a very different social and political tradition?

As the national restructuring and democracy movements around the world continue to focus attention on the exportability and applicability of U.S.-style constitutional government in diverse cultural and national settings, it becomes increasingly relevant to infuse a cross-cultural or international dimension into classroom teaching about our constitution and government. Through such an approach, students can explore and come to appreciate the vital interrelationship between culture, history, and governance. They can begin to analyze why the U.S. Constitution has worked for this country and under what conditions it may or may not be successfully transplanted.

## **Japan as a Case Study in Comparative Constitutions**

Within this context, the current Japanese constitution and Japanese constitutional history present one valuable and instructive case through which to consider the U.S. Constitution as an international export.

While U.S. constitutional tradition goes back 200 years, to the founding of the nation, Japan is relatively new to constitutional government. Japan traces its national history to the fourth century AD, but the country adopted its first formal, national constitution in 1889. That constitution, the Meiji Constitution, bore little resemblance to

the U.S. blueprint for government, as Japanese society bore little resemblance to U.S. society. Framers of the Meiji Constitution conscientiously chose to model their document after the German constitution, which they believed was the most adaptable to the traditions and needs of the Japanese state. In just a few of its contrasts with the U.S. Constitution, the Meiji document affirmed the sovereignty of the Japanese emperor, not the people; provided for an executive branch with power over the legislative and judicial branches; and emphasized duties and obligations of Japanese subjects rather than individual rights.

Following Japan's defeat in World War II, the Japanese government, under the direction of the Supreme Commander for the Allied Powers (SCAP) Douglas MacArthur, adopted a constitution closely modeled after the U.S. document. Written in large part by the American staff at SCAP headquarters, the 1947 Showa<sup>1</sup> or MacArthur Constitution embodied U.S. rather than Japanese ideals for a post-World War II rebirth of Japan as a democratic nation. The document, written in English and translated into Japanese, superimposed political concepts such as popular sovereignty, equality before the law, balance of powers, and individual rights on a society that had operated under quite different, even contradictory, political and social structures for hundreds of years. The significant gap between Japanese political and social reality on the one hand, and the provisions of the new constitution on the other hand, made that document a truly alien blueprint for Japanese government when it was adopted in 1947.

While Japan recognized the 45th anniversary of the Showa Constitution in 1992, there have been periodic rumblings as to the appropriateness of this governmental plan for contemporary Japan. In recent years, as the United States has celebrated its bicentennial, Japan has witnessed several constitutional controversies. For example, in 1990, Shinto-based enthronement ceremonies for Emperor Akihiro challenged the separation of church and state set forth in the 1947 Constitution. In 1991, the Japanese government struggled over a suitable and constitutional response to the Persian Gulf War, raising fundamental questions concerning Article Nine of the Constitution, which forbids Japan's maintenance of offensive military troops. On the one hand, the fact that the Japanese government and people have considered so seriously such challenges to the letter and spirit of the 1947 Constitution may be seen as an indication of the degree to which the document has genuinely taken root in the country. Yet these same recent challenges have sparked some national critics to condemn the 1947 Constitution as "an old suit of clothes that no longer fits."<sup>2</sup>

In the classroom, a comparative study of the U.S. Constitution and its offspring, the Japanese Constitution of 1947, offers an opportunity to explore and appreciate the critical role of culture, history, and values in shaping both the description and actual practice of government, the relationship between people and their government, and the conception and exercise of individual rights and responsibilities. Comparative analysis raises timely questions concerning the degree to which our document can and has served as a workable model for government in other nations. How have the ideas and principles of the U.S. Constitution and Bill of Rights been imported, adapted, and integrated into the political, social, and legal systems of other nations? Under what cultural and historical circumstances can such a transfer take root? Analyzing how our U.S. model of

government has been adapted, interpreted, and practiced in a country such as Japan encourages students to reflect upon and better understand the workings of their own country's political philosophy and political system, while at the same time learning about the government, culture, and history of other nations.

## **An Introduction to the U.S. and Japanese Constitutions in Cultural Context**

Political scientists generally concur that, for a constitution to work, it must be in accord with the nation's history, traditions, and sociopolitical values. Given this rule of thumb, the experiences of the United States and contemporary Japan make an intriguing comparative study of two very different countries functioning effectively under very similar constitutions.

The United States, for its part, offers a clear case of a constitution embodying national thought and experience. The Constitution and Bill of Rights are genuinely American documents—products of 18th-century European Enlightenment philosophy filtered through the American colonial experience and the American Revolution, as well as the lessons of government under the Articles of Confederation.

In its preamble and throughout the document, the U.S. Constitution reflects the principle of popular sovereignty—that government is created by and takes its authority from the people. The Constitution itself is the contract through which people agree to give up some of their rights in order to preserve others. The Bill of Rights, in proscribing limitations on government, reflects late 18th-century Americans' fresh experience with a tyrannical government and their continuing distrust of government. Perhaps in part because of the circumstances of its development, the U.S. Constitution today is valued and praised as a "living document;" that is, one which is applied, interpreted, and practiced in the daily workings of government and society.

In contrast to the U.S. case, Japan's current constitution—the Showa or MacArthur Constitution of 1947—could not be more out of tune with national history, philosophy, or values. This document, urged upon Japan by the Allied Occupation under Douglas MacArthur, effected a radical break with Japan's past.

In the occupation of Japan, MacArthur sought to eliminate the authoritarianism and militarism that had made Japan's role in World War II possible and to provide in its stead a basis for stable, peaceful, and democratic government. Toward this end, MacArthur instructed the Japanese government to substantially revise the Meiji Constitution which had been in place since 1889. The Japanese, essentially satisfied with their existing document, made only minor and, to MacArthur, wholly unsatisfactory revisions. MacArthur then assigned to his American staff the task of drafting a completely new document to govern Japan. Not surprisingly, the document that was finally produced responded to American experience and ideals, often in complete contradiction to Japan's history, traditions, and value system.

The 1947 Constitution established a government based on popular sovereignty in a nation firmly rooted in the principle of the sovereignty and divinity of its emperor. It mandated the separation of church and state to a nation in which Shinto—a religion very different in form and substance from Western religions—had come to be acknowledged as a state religion. In its chapter on rights and duties, the 1947 document detailed and guaranteed a broad spectrum of individual rights—a cornerstone of the U.S. political philosophy—to a society that de-emphasized the individual and had no indigenous tradition of individual entitlement as distinct from societal welfare.

Further, the 1947 document transplanted the principle of social and legal equality in a nation whose social and political structure had, for centuries, rested on Confucian principles of hierarchy and authoritarianism. In one of its most significant challenges to Japanese tradition, the constitution mandated equality of the sexes within family affairs to a society with Confucian values of filial piety, male authority, and patrilineage.

## **The Endurance of Japan's 1947 Constitution**

Given the benchmarks of a viable constitution, the 1947 Constitution should not have lasted long past the conclusion of the Allied Occupation in 1952. In observing the very obvious gaps between the new constitution and Japanese tradition, informed observers widely predicted that the 1947 Constitution and the government it created would steadily be dismantled throughout the 1950s. Instead, the evidence indicates that, over the past four decades, the Japanese people and government have increasingly embraced the constitution and made it their own.

Today, the document is still in place with no major modifications. And, while aspects of the document are currently under debate, such debate reflects the seriousness with which the Japanese consider the document. Why and how did a document articulating a philosophy and structure of government and society so alien to the Japanese become established in that country? There are several theses to explain the relative longevity and effectiveness of Japan's current constitution.

According to Professor John Maki, a key to understanding the durability of this foreign-designed and -imposed constitution lies in understanding the Japanese psyche during a unique period in the nation's history. In the period following World War II, the Japanese were traumatized and humiliated by their military defeat. Disillusioned with the government that had led them into a disastrous war, the Japanese people rejected the traditional order and sought to distance themselves from their past. Rather than reject the 1947 Constitution as alien, the Japanese responded by using it as a blueprint and tool for reforming and redefining their society.<sup>3</sup>

Analyzing the 1947 Constitution from a cultural and linguistic perspective, Kyoko Inoue presents a contrasting explanation for the endurance of the 1947 Constitution. According to Inoue's analysis, Japanese translators of the 1947 document, written originally in English, encountered political concepts of which they had no knowledge. They translated these concepts in ways consistent with their own knowledge base and

Japanese political experience, often with the result that the translation had different meaning than the American authors had intended. For example, the English version of Article 24 of "The Rights and Duties of the People" established equality of the sexes, a radical break from fundamental Japanese values and social organization. Yet, when translated into Japanese, this article took on the substantially different meaning of fulfillment of each sex within proper roles—a meaning compatible with Japanese tradition.

Inoue concludes that if the Japanese had really understood the democratic ideas of the U.S. version of the constitution, it would have been very difficult for them to accept the document. And, if MacArthur had understood the Japanese translations, he would not have approved the final version. The ultimate acceptance of the document was a reflection of mutual misunderstanding and misinterpretation by the Japanese and Americans.<sup>4</sup>

## Overview of Activities in This Curriculum Unit

The relationship between culture and government touched upon in this brief comparative discussion of the U.S. and Japanese constitutions is developed more fully in the four teaching units that comprise the remainder of this publication. Taken as a whole, the four units focus on the Japanese constitutional experience, while providing explicit opportunities for comparison with the United States. The four units have been designed as a comprehensive unit of study which emphasizes understanding of the historical and cultural context of contemporary situations and issues. However, while each unit is designed to complement and build upon the preceding units, each activity and unit is self-contained and may be used alone as well as in combination with other resources.

The activities in this program are intended for use in upper middle and high school classrooms. In world history, world cultures, or Asian studies courses, teachers may introduce a cross-cultural, comparative approach into the study of government by infusing the activities into curriculum units on Japanese history, government, or society. In U.S. history, government, foreign policy, or civics courses, these materials can also assist teachers in adopting a cross-cultural approach to the study and appreciation of their own government, encouraging students to consider the question of the exportability of government and the relationship between national experience and the exercise of government. Each of the four units in this program is described briefly below.

**Unit One: Social and Political Traditions in Japan** provides a brief introduction to some of the essential elements of Japanese culture necessary for understanding traditional Japanese political and social philosophy and practice. Specifically, activities in the unit help students understand Confucian values of authority, social hierarchy, and social cohesion that strongly influenced traditional Japanese government and society, as well as other cultural and situational factors contributing to an emphasis on social harmony and cooperation rather than individual rights in Japan.



World history and geography teachers with ample time to focus on Japanese history and culture will want to use this brief unit in conjunction with other materials to provide a richer introduction to Japanese culture. However, U.S. history and government teachers should find this unit adequate for providing students with a cultural foundation from which to explore the Japanese constitution in a comparative government unit.

**Unit Two: The Meiji Constitution** focuses on the group that governed Japan from 1889 through World War II. By first exploring how the Meiji Constitution embodied fundamental Japanese philosophies and values, students will be able to better appreciate the radical departure from tradition represented by Japan's 1947, U.S.-styled constitution. In Activity One, students are introduced to historical factors precipitating the writing of the Meiji Constitution. They then apply knowledge gained about fundamental Japanese philosophy and values from Unit One to analyze the relationship between culture and government as reflected in the Meiji Constitution. In Activity Two, students apply their knowledge of the U.S. Constitution to identify aspects of traditional Japanese government in the Meiji Constitution that were at odds with goals for democratic reform held by the U.S. Occupation forces in Japan following World War II.

**Unit Three: The 1947 Constitution** contains two activities focusing on the historical circumstances surrounding the writing and ratification of Japan's 1947 Constitution. Through a simulation and a guided reading, students identify the objectives of Douglas MacArthur and his staff in framing the constitution, identify fundamental tensions between U.S. ideals and Japanese social and political reality of the time, and recognize compromises on both sides in the creation of the final document.

**Unit Four: Individual Rights in Contemporary Japan** considers individual rights in contemporary Japan. Following a comparison of constitutionally-guaranteed rights in Japan and the United States, two case studies guide students in an exploration of the letter and spirit of the "Rights and Duties" Section of Japan's 1947 Constitution. In one case study, students consider a Japanese Supreme Court case concerning Japan's adoption and interpretation of the U.S.-imported principle of individual equality before the law. In another case study, students explore the evolution of women's rights—on paper and in practice—in contemporary Japan.

A bibliography of teacher background materials and additional readings completes the publication.

## NOTES

<sup>1</sup>The 1947 Constitution is sometimes referred to as the Showa Constitution because it was enacted during the reign of the Showa Emperor, Emperor Hirohito. It is sometimes referred to as the MacArthur Constitution, after its American architect.

<sup>2</sup>Miura, Shumon. "The Enthronement Controversy." *Japan Echo*. Volume XVII, no. 4 (Winter 1990): 41.

<sup>3</sup>Maki, John. "The Japanese Constitutional Style" in Dan Henderson, ed., *The Constitution of Japan. Its First Twenty Years, 1947-67*. Seattle: University of Washington Press, 1968.

<sup>4</sup>Inoue, Kyoko. *MacArthur's Japanese Constitution. A Linguistic and Cultural Study of Its Making*. Chicago: University of Chicago Press, 1991.

# HISTORICAL OVERVIEW

By Fred Czarra

In considering the historical and cultural development of the United States and Japan for the last two hundred years, many contrasts are clear.

Geographically, the two nations could not be more dissimilar. Japan, a series of islands in East Asia, covers a land area similar to the eastern United States. The United States, on the other hand, was shaped out a large, lightly populated, land mass stretching from the Arctic Ocean to the southern tip of South America.

The modern nation of Japan can trace its history back several thousand years. Over the course of its history Japan has periodically separated itself from much of the world, contributing to a relatively clear historic, cultural, and economic identity. As a nation, the United States is relatively young and has been very much a part of world commerce and culture since the 18th century. The United States, through slavery and immigration, has populated its territories with groups from around the world: Africa, Latin America, Europe, Asia. Its native population has diminished. Diversity in people, ideals, and ideas characterize the United States population while Japan has experienced the opposite by maintaining a common culture that has demonstrated a strength of purpose. A large portion of Japan's population is native, and immigration is difficult.

During the mid-nineteenth century, the United States made official contact with Japan in an effort to open trade. The effort was only partially successful since Japan was quite dissimilar in both attitude and political organization. Japan was organized into local units of political power called daimyo. A Shogun, the most powerful daimyo, exercised central control over the country. This feudal system of organization was ill-suited to central decision making, a necessity for international trade.

In the 1870s and 1880s, a few decades after open commercial exchange with the West was established, Japan began to consider a formal, centralized constitution. Prior to this time the only document that served as a "constitution" was a seventeen-article collection of Confucian-influenced moral and religious instructions for government officials written in 604 A.D. by Prince Shotoku. In the late 1860's, at the beginning of the Meiji Restoration, the Japanese abolished the shogun-daimyo system and politically organized their nation by prefectures, comparable to states in the United States. Also at this time, class distinctions were eliminated and compulsory primary education was instituted along with other reforms.

In considering models for a new constitution, the Japanese sent officials to Europe to study the governments of other nations. The Japanese were considering a written constitution incorporating Western principles of limited government. Many of Japan's new leaders under the Meiji government felt that a constitution was necessary not only to unite the country, but to present the country as a modern state on a par with Western nations.

After many drafts and years of discussion, the Meiji Constitution was promulgated in February of 1889. The Constitution was granted by the Emperor and was based on the

Emperor's divine sovereignty and supreme political power. The Meiji Constitution, in the main, was vague about what it intended and was not a democratic document. It was a compromise between two contradictory principles: sovereignty of the divine emperor and parliamentary government with established rights of the people. As time went on, it was left up to future generations to choose between the emergence of a strong parliamentary system or an absolutist, militaristic regime under the cover of imperial sovereignty. While it did appear, for a short time, that a parliamentary initiative might prevail the history of Japan in the first half of the 20th century has proved that militarism prevailed.

In 1945, after decades of military expansion in East Asia and involvement in a global war, Japan stood defeated and occupied by military personnel from the United States. General Douglas MacArthur, the Supreme Commander of the Allied Powers, instructed Japanese leaders to revise the Meiji Constitution. The Americans drafted a model constitution which the emperor, who had renounced his divinity, approved. Debate ensued in the Japanese legislature, or Diet, through much of 1946. In May of 1947, the new constitution went into effect.

---

Fred Czarra is the International Education Consultant for the State Superintendents of Schools at the Council of Chief State School Officers in Washington, DC.

## Unit One: Social and Political Traditions in Japan

### ACTIVITY ONE: THE WORLD ACCORDING TO CONFUCIUS

**Introduction:** Confucianism was a philosophy that entered Japan with the introduction of Chinese civilization around the 7th century, becoming a dominant mode of thought in the early Tokugawa period, around 1600. Confucianism reinforced many indigenous Japanese beliefs while offering a conceptual framework for the ordering of government and society. In this activity, students analyze selected Confucian analects on family, society, and government to gain an understanding of traditional Japanese values and practices.

**Objectives:** Students will be able to:

1. Describe some values and practices fundamental to Confucianism.
2. Explain how Confucian philosophy contributed to traditional Japanese social and political thought and practice.
3. Apply Confucian teachings to the solution of hypothetical dilemmas in traditional Japanese society.

**Grade Level:** 7-12.

**Materials:** Handout #1, "Confucianism in Japanese Social and Political Thought," Handout #2, "Analysis Sheet" (optional), and Handout #3, "Dilemmas."

**Time Required:** 1-2 Class periods

**Procedure:**

1. To open the lesson, ask students what they know about Confucianism. Where did it start? What did Confucius teach? Students may know that Confucianism started in China. They will probably identify Confucianism as a religion.
2. Explain that, while commonly identified as a religion, Confucianism may more accurately be described as a social philosophy. Through his stories, or analects, Confucius taught about rules of conduct which, if followed by families, society, and government, would contribute to a smoothly-functioning world. In this activity, students will consider how Confucian teachings were adopted by Japanese society and government and how these teachings contributed to the value structure and the social organization of the people in traditional Japan.

3. Distribute Handout #1, "Confucianism in Japanese Social and Political Thought," to all students and have student read Part A for class or homework. Discuss the reading in class by having students identify the five social relationships in Confucianism and how they worked. Why was Confucianism easily adopted by the Japanese people as a social philosophy and by the government as a political philosophy? How did Confucianism reinforce existing beliefs and government goals? Was the ideal society Confucius sought to create best described as egalitarian or hierarchial? What attitude towards authority did Confucius try to instill in people?
4. Divide the class into nine groups, assigning each group to read and analyze one of the Confucian analects provided in Part B of Handout #1. Each group should take responsibility for acting out the story in a way that illustrates the message or guidelines Confucius sought to convey about proper behavior.
5. Ask groups to act out their stories. Debrief each skit by asking the class to identify the Confucian guideline or message about government or social relations illustrated in the story.

As an alternative to the skits, students may complete and discuss the optional worksheet provided in Handout #2, "Analysis Sheet."

**Handout #2 Answer Key:** 1. Stories I, IX; 2. If children behave well towards their parents, they will be obedient and respectful of authority in public life; 3. Stories III, IV, VII, VIII; 4. The emperor should treat his subjects with dignity and affection, provide a moral example, promote those who are worthy, and use their labor properly; 5. Story VI; 6. Stories III, IV, VII, VIII.

6. To conclude the activity, provide students with the four hypothetical situations described in Handout #3, "Dilemmas." As a class, consider how people in a Confucian society would respond in each situation.

### Reference for Part A of Handout #1:

Hane, Mikiso. *Japan: A Historical Survey*. New York: Charles Scribner's Sons, 1972.

Martin, Roberta, ed. *China: A Teaching Workbook*. New York: Columbia University East Asian Institute.

McNeill, William H., and Jean W. Sedlar, eds. *Classical China*. New York: Oxford University Press, 1970.

Waley, Arthur. *The Analects of Confucius*. New York: Vintage Book, n.d.



## CONFUCIANISM IN JAPANESE SOCIAL AND POLITICAL THOUGHT

### Part A

K'ung-fu-tzu, or Master K'ung—the man who came to be known in the West by the romanized name Confucius—was a Chinese philosopher believed to have lived around 500 B.C. Confucius offered his students rules and guidelines of behavior. Confucius' teachings became so fully integrated into the lives of the Chinese that they became a practical doctrine, designed to preserve a political and social system of order and stability.

According to Confucius, the world of nature follows certain immutable laws. Everything in nature is a piece contributing to an ordered whole. Things in nature cannot exist alone; they exist only as a component of the whole universe, dependent on other things around them. As such, everything in the natural world has a proper place in relationship to everything else.

Confucius taught that in the orderliness and smooth-functioning of the natural world lay a model for achieving order in human society. Just as there is a proper order for all things in the universe, there is a proper order to human society. This order could be achieved if every person knew his or her proper place and upheld the responsibilities of that place. Through his definition of five basic human relationships, Confucius provided a guide for ordering the family and society as a whole, which he perceived as an extended family. These five relationships outlined the responsibilities and obedience of:

- child to father
- wife to husband
- friend to friend
- subject to ruler
- younger to elder brother

In Confucian society, the husband and father was the unquestioned authority in all familial relationships. All family members had a duty to obey and respect the male head of household. Just as the male head of household was supreme within the family, the ruler was the unquestioned authority for the extended family, which was society at large. All people had the responsibility of honoring and obeying their ruler. However, this responsibility worked in two ways. The ruler also had responsibilities to his people. The ruler had to protect, insure the welfare of, and set a good example for the people through of his own actions. Confucius taught that if the ruler were honest, his people would also be honest, but if the ruler were corrupt, how could he expect anything different from his subjects? Confucius taught that if everyone upheld these basic relationships, social and political order would prevail.

In time, Confucianism spread and was adopted by the people of other Asian countries. Confucianism appealed to the Japanese in part because it reinforced the Japanese people's reverence for nature and sought to find in nature models for the human-made world.

Moreover, as a political doctrine, Confucianism's emphasis on the supreme authority of the ruler was a very useful tool in reinforcing the status and authority of Japan's imperial house. In the early 1600s, Confucianism became the political doctrine of the Tokugawa government, which sought to unify Japan in a feudal system. Confucianism was used to justify the Tokugawa's feudal, hierarchical class structure, with the emperor at the top, and feudal lords, officials, and commoners in descending social rank.

### Part B

Confucius on social relationships and government:

- I. Master Yu said, "Those who in private life behave well towards their parents and elder brothers, in public life seldom show a disposition to resist the authority of their superiors. And as for such men starting a revolution, no instance of it has ever occurred. It is upon the trunk that a gentleman works. When that is firmly set up, the Way grows, and surely proper behavior towards parents and elder brothers is the trunk of Goodness." (1:2)
- II. The Master said, "A country of a thousand war-chariots cannot be administered unless the ruler attends strictly to business, punctually observes his promises, is economical in expenditure, shows affection towards his subjects in general, and uses the labor of the peasantry only at the proper times of the year." (1:5)
- III. The Master said, "Govern the people by regulations, keep order among them by chastisements, and they will flee from you, and lose all self-respect. Govern them by moral force, keep order among them by ritual and they will keep their self-respect and come to you of their own accord." (2:3)
- IV. Chi K'ang-tzu asked whether there were any form of encouragement by which he could induce the common people to be respectful and loyal. The Master said, "Approach them with dignity, and they will respect you. Show piety towards your parents and kindness toward your children, and they will be loyal to you. Promote those who are worthy, train those who are incompetent; that is the best form of encouragement." (2:20)
- V. Duke Ting (died 495 B.C.) asked for a precept concerning a ruler's use of his ministers and a minister's service to his ruler. Master K'ung replied

- saying, "A ruler in employing his ministers should be guided solely by the prescriptions of ritual. Ministers in serving their ruler, solely by devotion to his cause." (3:19)
- VI. Duke Ching of Ch'i asked Master K'ung about government. Master K'ung replied saying, "Let the prince be a prince, the minister a minister, the father a father and the son a son." The Duke said, "How true! For indeed when the prince is not a prince, the minister not a minister, the father not a father, the son not a son, one may have a dish of millet in front of one and yet not know if one will live to eat it." (12:11)
- VII. Chi K'ang-tzu asked Master K'ung about the art of ruling. Master K'ung said, "Ruling (cheng) is straightening (cheng). If you lead along a straight way, who will dare go be a crooked one?" (12:17)
- VIII. The Master said, "If the ruler himself is upright, all will go well even though he does not give orders. But if he himself is not upright, even though he gives orders, they will not be obeyed." (13:8)
- IX. Confucius said, "In serving his parents, a son may gently remonstrate with them. When he sees that they are not inclined to listen to him, he should resume an attitude of reverence and not abandon his effort to serve them. He may feel worried, but does not complain."

---

Analects appear in Wade-Giles translation. All translations and annotations from Arthur Waley, *The Analects of Confucius*. London: George Allen and Unwin, Ltd., 1983; reprinted by Vintage Books, New York.

**ANALYSIS SHEET**

Use the Confucian analects, or stories, from Handout #1 to answer the questions below.

1. Which stories illustrate Confucius' ideas about the responsibilities of a child to his father?
2. According to Confucius, how does the proper relationship between parent and child transfer to the ideal relationship between a subject and ruler?
3. Which stories illustrate Confucius' ideas about the responsibilities of a ruler to his subjects?
4. Specifically, what responsibilities did a ruler have to his subjects?
5. Which stories emphasize the importance of the ruler's setting a moral example for the people?
6. Which stories present the Confucian belief that if everyone fulfills his proper position in society, society will run smoothly?

**DILEMMAS**

For each of the situations below, describe how people in a Confucian society might respond and why.

1. A group of villagers is harvesting the crop in the fields when a messenger rides up on horseback to announce that taxes are going up; the villagers must now give over one-half of their crop as taxes to the ruler.
  
2. A young man is informed by his father that a marriage partner has been found for him. His future bride will be the daughter of a neighboring family. Although the son has no feelings for his designated bride, the dowry from this marriage will enable his family to expand their landholdings.
  
3. A landlord calls on all able-bodied men to help fight a war with a rival landlord. The time is the height of the planting season. The men are needed at home to care for the rice crop.
  
4. A *samurai* is ordered by his *daimyo* (feudal lord) on a mission, which the samurai thinks will be a suicide mission.

## Unit One: Social and Political Traditions in Japan

### ACTIVITY TWO: GEOGRAPHY AND PERCEPTIONS OF INDIVIDUAL SPACE IN JAPAN

**Introduction:** Students conduct a simulation to appreciate population density and space pressures on the Japanese. They hypothesize about how lack of space might have influenced notions about the individual and individual freedom in Japanese society. This brief activity provides a graphic introduction to Activity Three on Japanese social relations.

**Objectives:** Students will be able to:

1. Understand the relationship between land area and population density in Japan.
2. Explain why Japan is a crowded nation.
3. Simulate population density in Japan and the United States.
4. Make inferences about social relationships and values based on population comparisons.

**Grade Level:** 7-12.

**Time Required:** 1/2 class period

**Materials:** 3 chairs

**Procedure:**

1. Ask students if they can imagine 5 billion people. Can they imagine 240 million people? 120 million people? Explain that some numbers are so large it is hard to grasp what they mean.
2. Tell students that Japan has more than 120 million people. Explain that these people live in an area a little smaller than California. It is not just the number of people that makes Japan crowded, however. Geography and climate have made many places uninhabitable. The island of Hokkaido in

---

Activity adapted from Elgin Heinz. "Using Statistics About People and Places," in *Opening Doors: Contemporary Japan*. New York: The Asia Society, 1979, p. 129.



northern Japan is both mountainous and cold. Few people live there; the Japanese think of this island as their frontier, their unexplored wilderness. While the climate is better on the other Japanese islands, inland mountains force most people to live in the low coastal areas of each island.

3. Explain that the class will conduct a simulation to get a better idea of the land and population of Japan and the United States. The simulation compares Japan and California, a state with the approximate land area of Japan. Set out three chairs, explaining that each chair represents approximately 50,000 square miles, or a total of 150,000 square miles, the approximate size of California. Write these statistics on the chalkboard for reference.
4. Ask for three student volunteers. Explain that each volunteer represents approximately 10 million people. Together the three students represent the population of California, approximately 30 million people. Ask the students to sit on the chairs. Did each student get his or her own space? Do they feel comfortable? Do they have enough room?
5. On the same three chairs, now representing the size of Japan, ask 12 volunteers to sit. Remind students that this group represents 120 million people close to Japan's estimated population of 124 million. Next, quickly remind them that most of Japan's land is not habitable because of mountains, etc., and that to get an accurate picture of Japan's population density, all 12 people would need to be confined to 1/6 of Japan's area, or about 1/2 of a chair.
6. Debrief the simulation by asking students what images they get of Japan's population density. Of the United States' population density? What space luxuries does the United States have that Japan does not? Ask students to consider population density in each country and hypothesize about personal relationships and interactions in the two countries. Why might it be especially important for people to get along with each other in Japan? In which society would they expect more emphasis on individual space or freedom? Why? From this activity, the class may move directly into Activity Three.

## Unit One: Social and Political Traditions in Japan

### ACTIVITY THREE: THE INDIVIDUAL IN JAPANESE SOCIETY

**Introduction:** This lesson, which includes a lecture, discussion, and dilemmas, assists students in understanding the Japanese value of societal or collective, rather than individual, welfare. Students recognize Japan's cultural emphasis on individual duties and responsibilities rather than individual rights and freedoms. The lesson provides a foundation from which students will consider the rights and duties of the Japanese as expressed in the 1889 Meiji Constitution and the 1947 Showa, or MacArthur, Constitution in Units Two and Three.

**Objectives:** Students will be able to:

1. Compare and contrast the cultural values and concepts underlying the individual's role in society, as expressed in American and Japanese proverbs.
2. Analyze and apply a set of "rules" or values for getting along in Japanese society.
3. Appreciate the importance of collective welfare and individual duties and responsibilities in Japanese society.
4. Hypothesize how a long cultural tradition that emphasizes the collective welfare over individual well-being would influence the legal guarantee of individual rights in Japan.

**Grade Level:** 7-12.

**Time Required:** 1 class period

**Materials:** Handout #1, "Rules For Getting Along in Japanese Society," and Handout #2, "Situations."

---

Handouts #1 and #2 and portions of the teacher background explaining these two handouts are reproduced from: *How to Get Along in Japanese Society*, by Professor Judith Berling, Midwest Program for Teaching About Japan, Indiana University, Bloomington, Indiana.

### Procedures:

1. Write the following proverb on the chalkboard:

The squeaky wheel always gets the grease. (Western)

Ask students to explain what they think this proverb means. Students should note that the proverb implies that one must speak up, be assertive, or make himself or herself noticed to get what he or she wants or needs. Ask students to comment on what they think the proverb reflects about the role of the individual and/or the value placed on individual wants and needs in our society.

2. Next, write the following proverb on the chalkboard:

The nail that sticks up gets hammered down. (Japanese)

Again, ask students to explain what they think the proverb means. Students should be able to explain that in this case, calling attention to one's self is seen as a negative trait; one who calls attention to himself or herself is put back in place, made equal with the rest. What do students think this proverb reflects about the role or value of the individual in Japanese society? How does this view compare with the Western view reflected in the previous proverb?

3. Present the information in the **Teacher Background Notes, Part A**, through an introductory lecture. Main points to stress are the Japanese traditional emphasis on the collective good rather than individual good and the resulting emphasis on individual duties and responsibilities rather than individual rights. Students should recognize a distinct contrast between this social orientation and the relationship between the individual and society as a whole in the United States.

If students have completed Activity One on Confucianism, ask them to comment on how Confucian principles and values are reflected in the relationship between the individual and society in Japan.

4. Distribute Handout #1, "Rules for Getting Along in Japanese Society." Explain that, while no list of rules can convey the complexity of a society, this hypothetical list of simple rules reflects real Japanese social values and principles that the Japanese use to guide their social interactions. Read through and discuss each rule with the class, using the **Teacher Background Notes, Part B** to inform and guide discussion.

5. Once students understand the set of rules, divide the class into five small groups and distribute Handout #2, "Situations," assigning one situation to each group. Each group will read the situation and decide how it would be solved, using the "rules" to support their decision.
6. Ask each group to report on its situation and how it was resolved, citing the rules it used to make its decision. The **Teacher Background Notes, Part C**, provide the probable solutions for the hypothetical situations.
7. To extend the lesson, have the class or small groups generate a parallel set of rules for getting along in American society. How did the rules they created differ from the Japanese rules? How would the situations be resolved in the United States?
8. Close the lesson by having the class refer to the two proverbs. Do the Japanese rules provided in this activity reinforce the message of the Japanese proverb? How or how not?

Given this social orientation and values, would students expect Japan to have a strong political/legal tradition of individual rights and freedoms? Ask students to explain.

### Teacher Background Notes

#### Part A: **Basic Values In Japanese Society: Collective Vs. Individual Welfare, Individual Duties Vs. Individual Rights**

Collective rather than individual well-being is a fundamental principle or value in Japanese society. Group needs and welfare are perceived as more important than individual needs or wants. To the Japanese mind, an individual's sense of identity—his very legitimacy as a person—is tied to his membership in and work towards the goals of the groups to which he belongs, be they family, company, school, or nation.

This emphasis on the collective good in Japanese society may be tied to traditional notions of the Japanese people as a national family all descended from an original emperor; to the economic and social pressures and demands of a population living so closely together in a small geographic space; and to Confucian principles of social cooperation and order.

A corollary to this ideal of collective welfare is a social emphasis on individual duties and obligations rather than individual rights and freedoms. People are taught to think about and behave according to what they can do to promote the general welfare, rather than what they are entitled to as individuals. In the Japanese view, individual rights

and freedoms are, by definition, selfish and self-serving because they require one to put his or her own needs before those of the group. As such, they may often be counterproductive to group welfare.

### **Part B: Explanation of the Rules for Getting Along in Japanese Society**

FOR RULE 1. The Japanese sense of self does not rest on the individual but on the social self, as a member of an ongoing family line, a resident of a village, a worker in a company. They see the Western view of the individual as rootless, lonely, and depressing. They want to be part of an ongoing human stream. This is our most fundamental problem in understanding the Japanese, for our notions of self-fulfillment and happiness are excessively individualistic, and we see risking loneliness or unpopularity in a noble cause as the highest of human activities. The Japanese would see the highest good as being able to convince the group to recognize the moral demands of life.

FOR RULE 2. Social pressure in Japanese society supports the traditional values. Since they do not put self-fulfillment first, it is natural that they should dissuade "wrong-headed rebels" who are threatening to give up the all-important sense of belonging for some individual whim that may not prove very satisfying. The young and restless are counseled to be patient and maintain their ties with family, friends, and work until their point is seen and understood, if ever. The cost of alienation is simply too great a risk for some "selfish" purpose, and they do not want the person to end up lonely and bitter.

FOR RULE 3. Each person, depending on his or her place in society, has certain obligations and certain modes of behavior expected of him/her. So long as he/she fulfills these rules, he/she belongs and is accepted. Far from seeming oppressive, these rules give the individual an easy way of belonging. Contrast this with American society in which there are very few rules, and belonging (especially to family and/or peer group) depends on intangible feelings, sense of compatibility, and so on. The Japanese find American society very difficult, because one is never sure when one belongs, or exactly what is expected.

FOR RULE 4. The lifetime employment system in Japan offers great security for the individual. Once you are hired, you are "safe," and you need not worry about belonging. Likewise, family and social ties are much more enduring in Japan: friends are friends for life. The cost of alienation from family or friends is much higher. A "healthy" individual is expected to remain part of the same group for life, and he/she feels great acceptance in having this stable group of old friends and family.

FOR RULE 5. This rule states the concept of "face." "Face" is the person's reputation for integrity. However, when one loses "face" by an unacceptable social act, the lost of "face" is not merely the person's shame, but also reflects on his group and, in particular, on the leader responsible for the group. The group and the leader are responsible for that person's behavior. This group responsibility not only determines

group culpability, but it means that the group and the leader take much more responsibility for guiding the member's behavior than in our culture; a team member is not just a member because of a "contract," but rather the group works together to give each other guidance and support.

FOR RULE 6. This value comes from Japan's feudal tradition, and it represents one aspect of the reciprocal relationship involved in the strong loyalty to group and superiors expected in Japanese society. It is not a matter of loyalty to an arbitrary dictator; the burden of the leader is very heavy. He is very responsible for the actions and character of those under him. An error by an underling is ultimately his responsibility, and he must assume public responsibility for it. To prevent such disasters, the Japanese leader understandably takes a strongly paternalistic interest in those under him.

FOR RULE 7. Japanese society is hierarchical, and the levels are determined by age and seniority. Again, the Japanese view of the individual determines this. IN the Western sense, competition on the basis of individual ability and achievement makes all the sense in the world, since our society seeks to maximize fulfillment of each individual according to his capabilities. However, if group identity and belonging are more important than individual success, then you want the rules for "advancement" not to undermine the sense of team solidarity, the sense of mutual trust and belonging. Thus, you try to minimize competition within the group, while maximizing the success of the group as a whole. If one knows that one will belong to the team for life, and will benefit from team success, it makes less difference how long it takes to get to the top, or whether one is recognized as a "star."

FOR RULE 8. Here again we confront our Western difficulty in dealing with the Japanese concept of self. We tend to believe that groups (family, offices, country, etc.) should be organized to allow individuals maximum freedom to pursue their interests, ambitions, dreams, and ideals; if we are "held back" by job or by friendships, we will tend to counsel people to leave them behind, take a risk, and "follow their start," to do *what's best for them*. In Japan, some people do this, but the cost has traditionally been very great—one is cut off from friends and family; people tend to see one as selfish and unduly ambitious; there is nowhere to turn when one is done. The best parallel, perhaps, is our reaction to someone who would betray friendships, use people, and step on anyone in his way to succeed. It is not that the Japanese do not dream dreams, but that they are very aware of the cost in loneliness and suffering.

FOR RULE 9. The Japanese family is not just the living members, but all of the ancestors and descendants; it is a family line. They will thus be very loathe to gamble the family wealth (land, business, etc.) in a venture that is the dream of one individual. They want to insure a future, not just for the next generation, but for many generations. Likewise, a business will be suspicious of short-term solutions to problems; they will ask workers and management to make more sacrifices for the long-term. (A good example is the lower take-home pay of Japanese workers, who accept certain benefits in place of salary benefits, to insure the expansion and strength of the company.)



FOR RULE 10. Because of our concept of individuality and individual fulfillment, we tend to see life-as "the individual against the system," and we calculate how to play the rules of the system so as to get the most for ourselves. In Japan, because the concept of self is more social or group-oriented, it is more satisfying to work for group fulfillment. They don't feel that they are making some tragic sacrifice in subordinating individual interests for group interests; they feel an enormity of sacrifice when their individual interests drive them to alienate themselves from a group.

### Part C: Resolutions of the Situations

1. Yoshi should remarry and work in the lumber company. He has obligations to his family to provide descendants, and to the family business to keep it prospering for posterity. **Note:** For Yoshi, having brothers who could step in and carry on the family line would be another matter: he still might be under family pressures to carry on the business, but if he persisted they would probably give in provided another son was able to carry on. They might even give him some money to get his car dealership going, if that investment did not threaten the family's long-term prosperity.
  
2. Mr. Hirai will not support the promotion of Midori over her coworkers for a number of reasons. To begin with, most of business is, as Thomas Edison said of genius, "1 percent inspiration and 99 percent perspiration." A manager's primary function is to make sure that people work well together. This is particularly true in Japan. Midori's talents have been identified as artistic, not managerial. Furthermore, Japanese sex roles are clearly and narrowly defined. There are talented women, strong-willed women, and ambitious women in Japan (just as there are everywhere else), and such women are hard to hold back, but the Japanese ideal of youthful femininity includes submissiveness and not dominance. Men are expected to dominate women and in most circumstances would find it very difficult to be subordinate to a woman. Mr. Hirai will not wish to introduce such tensions into his work group unnecessarily. Finally, most Japanese women expect, and are expected, to get married and quit work in their mid-twenties. Mr. Hirai too will expect Midori to leave soon. He fears a promotion would only disrupt her friendship with coworkers while she remains on the job. Furthermore, a promotion might make her appear too aggressive or self-assertive and, therefore, undesirable as a marriage partner. Mr. Hirai hopes to help Midori by introducing her to a suitable young man. In short, while he may wish to acknowledge Midori's excellence, he will feel that promotion is not the way to do it and will support the promotion of a man. **Note:** Many Japanese corporations have a two-tiered hiring system. Only men are hired as regular employees. All women are hired as temporary employees and are not entitled to standard pay raises, benefits, etc. In such a company Midori could not be considered for promotion.

3. Takashi will join Yamamoto Machine Tool, the more personal (some might say more paternalistic) company. The Japanese regularly choose to invest their work relations with complex emotional ties, often of a family-like nature. Japanese generally prefer working arrangements that go beyond a strictly contractual exchange of labor for money. Japanese national surveys show that more than three-quarters of the respondents would rather have an employer who showed a personal interest in them, even if he demanded extra work. A similar number of people say they would accept lower wages in exchange for a family-like atmosphere with outings and sports days.
4. Not only would the principal ask the teacher to publicly apologize and resign, but he himself would resign because he is responsible for his teachers. He would take responsibility on himself. His resignation might not be accepted, but it would be expected.
5. He would betroth one of his daughters to a promising young man and *ask the young man to take his family name*. In other words, the man would not be his son-in-law, but his adopted son. Thus, all of their children would have the family name and could carry on the family line.

**RULES FOR GETTING ALONG IN JAPANESE SOCIETY**

1. You are a team member. When the team wins, you win. When the team loses, you lose. (You are a member of several teams—family, village, place of work, country.)
2. Team members must obey the rules of the team, or they will be “benched.” Their teammates expect them to “play fair,” or they will not associate with them.
3. Team members are expected to play their role faithfully and perform their function for the team.
4. You cannot switch teams; you belong to a team for life.
5. If one team member makes a mistake or gets into trouble, the reputation of the entire team is ruined. The mistake is simply not his or hers. Thus, team members will work together to try to avoid all mistakes.
6. The team leader is responsible for the whole team; he assumes *public* responsibility for their errors. They, in turn, are personally responsible to him. Since no one is expected to change teams, the team leader cannot simply “get rid of” a bad player; he must work very hard to build a first-rate team with the players he has.
7. First, second, and third string are determined by age (seniority). People of the same age have the same rank, and they “move up” together. This promotes internal cooperation and teamwork, rather than jealousy and competition to “get ahead.”
8. The best rewards in life are for good team work. Individual success may be nice, but it is not shared and does not increase one’s sense of belonging to the team. Individual success is permitted as long as it does not threaten one’s commitment to the team and one’s solidarity with team members.
9. A team is defined not only by its present members; it has a tradition. It includes players of the past and potential players of the future. The short-term success of the moment is never allowed to endanger the built-up reputation of the team, or its possibilities for future success. Thus, the team not only wants to win this game and this pennant, but—most importantly—to prepare for the best possible record over the long term.
10. Team spirit requires the good will and total commitment to the team of all its members. They cannot make a show of team spirit while secretly thinking only of themselves.

### SITUATIONS

1. Yoshi is the only child of a wealthy family that owns a lumber company. His wife, whom he loved dearly, died in childbirth just a year ago. He has no desire to remarry; he loved his wife too much. Taking another wife would seem an insult to her memory. However, his parents want him to marry again, because they want a grandchild to inherit the lumber company. Actually, Yoshi does not like the lumber business. If he had his way, he would move to Tokyo and become a car dealer.

What would Yoshi do? Support your decision with the rules you have.

2. Mr. Hirai is chief of the design department in a large company that manufactures ready-to-wear clothing. He takes a deep interest in all his employees and feels a responsibility for their personal contentment as well as for the smooth functioning of his department. The group of five men and three women who entered the department together three years ago have finished their period of internship. The time has come for one of them to be promoted to subsection chief. In informal discussions among the supervisors, Midori, one of the young women, has been noted as having unusual talent in design. Not only does she have excellent design skills, but it has become clear that she is able to anticipate fashion trends. Midori's fashion sense might be very profitable for the company.

Would Mr. Hirai promote Midori? Support your decision with the rules you have.

3. Takashi is finishing his last year in trade school, where he is learning to be a machine tool operator. He received offers from two small companies for jobs following graduation but is not sure which to choose. Hirano Tool and Die pays better. Mr. Hirano expects a good day's work for his money, but he does not press employees into extra services. Mr. Hirano certainly does not try to interfere in people's personal lives. When the work day is over, everyone is free to lead his own life. At Yamamoto Machine Tool, on the other hand, the wages are not as good, but there are a number of special benefits like an annual company outing and a company baseball team. Mr. Yamamoto frequently takes workers out for dinner and drinks, although it is very difficult not to go even if you would rather not. While Mr. Yamamoto frequently asks employees to work late or give up vacation days, even when there are rules against it, he is equally likely to bend rules to help a worker who has personal problems.

Which company would Takashi join? Support your decision with the rules you have.

4. The seventh-grade teacher, Sato sensei, used some extremely offensive language in the classroom. The shocked students told their parents, who have come to complain to the principal, Mr. Tanabe.

What would Mr. Tanabe do? Support your decision with the rules you have.

5. Mr. Akiyama, founder of a number of successful restaurants, has no sons to inherit his empire, only three daughters.

How would Mr. Akiyama go about ensuring an heir? Support your decision with the rules you have.

## Unit Two: The Meiji Constitution

### ACTIVITY ONE: THE MEIJI CONSTITUTION IN HISTORICAL CONTEXT

**Introduction:** In this activity, students study the historical context of the Meiji Constitution, Japan's first modern, national constitution. Students are introduced to the historical factors precipitating the writing of the constitution through a brief lecture. They then use knowledge gained about fundamental Japanese philosophy, values, and national experiences from Unit One to analyze the Meiji Constitution.

**Objectives:** Students will be able to:

1. Describe factors leading to the promulgation of the Meiji Constitution in 1889.
2. Analyze the Meiji Constitution as an expression of Japanese political and social traditions, values, and national experience.
3. Hypothesize which essential elements of the Meiji Constitution would conflict with political and social goals of the United States in reforming a defeated Japan in the 1940s.

**Grade Level:** 7-12.

**Time Required:** 1-2 class periods

**Materials:** Student notes and worksheets from Unit One, Handout #1, "The Constitution of the Empire of Japan," Handout #2, "Analyzing the Meiji Constitution."

**Procedure:**

1. Review with students what they learned in Unit One about fundamental Japanese social and political values and traditions. Students should be able to explain how the emperor came to be the ultimate authority in Japan, discuss elements of Confucian philosophy reflected in Japanese social and political organization, and talk about the relationship between the individual and society in Japan.
2. Provide students with a brief lecture on the details of the Meiji Restoration and Constitution, as outlined in the **Teacher Background Notes**.

3. Introduce the activity by explaining that the success or workability of a constitution is directly related to how well it fits a nation's history, social and political values, and practices. In this activity, students will apply what they have learned about traditional Japanese culture and values to analyze the Meiji Constitution, Japan's first constitution, and to decide whether that document effectively embodied national values, character, and traditions.
4. Divide the class into pairs or small groups. Distribute Handout #1, "The Constitution of the Empire of Japan," and Handout #2, "Analyzing the Meiji Constitution." Groups will conduct a preliminary analysis of the Meiji Constitution by answering the questions about the first three sections of the Constitution (Preamble, The Emperor, Rights and Duties of Subjects) contained in Part A of the analysis sheet.
5. Using the answer key as a guide, discuss student findings in class. Students should have discovered that the constitution emphasizes the importance of ancestors and descendants, the unbroken line of the imperial throne, the ultimate authority of the emperor, the sovereignty that rests with the emperor and not the people, and the limitations of all individual rights by laws or by perceptions of national good.

Focus discussion on the rights and duties section of the document. If all rights can be limited by existing or new laws, what protection do the people have in exercising their rights? How effective do students think the rights section of the Meiji Constitution was? Given what they know about the relative importance of the individual and society as a whole in Japan, do students think the Japanese objected to the limits on their rights? Why or why not?

6. Turn students' attention to Part B of Handout #2. For an in-class or homework assignment, students should write an essay in which they analyze the Meiji Constitution as a product of Japanese history and culture.
7. When students have completed their assignment, have them present their arguments in class. Did students generally find the document to be a reflection of the culture? Students may want to know that most scholars believe this to be the case. Professor John Maki has cited continuity with Japan's historical past as the key to the Meiji Constitution's success. In his book, *Japan: Images and Realities*, political scientist Richard Halloran states: "There is not better example of Japanese substance expressed in Western form than this constitution. It crystallized Japanese concepts of national character, sovereignty, social order, and the function of



government into a Western-style document not known before in Japan. The constitution embodied Japan's unique national essence, with the emperor at its center; it embraced the sum of Japan's religious, moral, ethical, and social thought" (page 24).

**Handout #2: Answer Key:** 1. The Japanese people were all said to have descended from the original emperor. Honoring the national ancestors, the unbroken imperial line, was essential to the identity, the very legitimacy of the Japanese nation; 2. Sovereignty—authority to govern—rested with the emperor; 3. Right to rule, to convoke and dissolve the legislature, to issue Imperial Ordinances in emergencies, to command the army and navy, to declare war and make treaties, to confer titles of nobility and rank, to order amnesties and punishments, and so on (See Articles I-XVII); 4. Military service, taxation (Articles XX-XXI); 5. Liberty of residence, trial by judge, privacy, private property, religion, petition (Articles XXII-XXX); 6. All; 7. Freedom of residence limited by law (XXII); freedom from search and seizure limited by cases provided for in law (XXV, XXVI); private property limited by interests of public welfare (XXVII); freedom of petition limited by proper respect for authority and by special rules (Article XXX); 8. Laws and ordinances have the power to limit the exercise of rights granted in the constitution, thus, the constitution would appear not to regard itself as the highest law; 9. The welfare of the state. Students should note that the constitution elaborates more rights, but because so many are limited by the interests of public welfare, respect for authority, peace and order, and so on, the result is a constant emphasis on duties; 10. No checks and balances; 11. The constitution created a strong executive in the emperor and his advisors, who had complete control of the military and could override the legislature.

### Teacher Background Notes:

With the arrival of U.S. Commodore Perry and his "black ships" in 1853, Japan was confronted with the threat and challenge of dealing with the industrialized world of the West, from which it had severed all contact in 1639. Japan chose a path of rapid industrialization as the most viable response to this challenge. The growing pressure for political, social, and economic change in the 1850s led to the ultimate downfall of the Tokugawa shogunate, which had been declining after almost two centuries of rule over a feudal Japan. Political power was ostensibly returned to the imperial throne in 1868 with the Meiji Restoration. While power was actually held by the emperor's cabinet, the emperor once again became the symbol of national political power.

Among the sweeping political, social, and economic changes undertaken by the new government in its effort to industrialize Japan was the writing of a national constitution, begun in 1886. The Japanese studied many national models for their constitution. They rejected the model offered by the United States because its fundamental principle that sovereignty rested with the people was incompatible with Imperial rule, a cornerstone of Japanese history. The U.S. model also emphasized individual rights. The Japanese ultimately turned to the German constitutional model as



the one most adaptable to the traditions and needs of the Japanese state. The Japanese Constitution was promulgated in February 1889 as a gift from the Meiji Emperor to his people.

For additional background information, see Bito Musahide and Akio Watanabe, *A Chronological Outline of Japanese History*. Tokyo: International Society for Educational Information, Inc., n.d., pp. 1-21; "The Meiji Constitution," excerpted from Mikiso Hane, *Japan: A Historical Survey*. New York: Charles Scribner's Sons, 1972, pp. 319-321.

## THE CONSTITUTION OF THE EMPIRE OF JAPAN

(Meiji Constitution, 1889)

### The Preamble

Having, by virtue of the glories of Our Ancestors, ascended the throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favoured with the benevolent care and affectionate vigilance of Our Ancestors; and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, a fundamental law of State, to exhibit the principles, by which We are to be guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

The rights of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in future fail to wield them, in accordance with the provisions of the Constitution hereby granted.

We now declare to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law.

The Imperial Diet shall first be convoked for the 23rd year of Meiji and the time of its opening shall be the date when the present Constitution comes into force.

When in the future it may become necessary to amend any of the provisions of the present Constitution, We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it, according to the conditions imposed by the present Constitution, and in no otherwise shall Our descendants or Our subjects be permitted to attempt any alteration thereof.

Our Ministers of State, on Our behalf, shall be held responsible for the carrying out of the present Constitution, and Our present and future subjects shall forever assume the duty of allegiance to the present Constitution.

---

Siemes, Johannes. *Hermann Roseler and the Meiji State*. Tokyo: Sophia University in cooperation with Charles E. Tuttle Company, 1968. pp. 53-252.

### The Emperor

- Article I: The Empire of Japan shall be ruled by Emperors of the dynasty, which has reigned in an unbroken line of descent for ages past.
- Article II: The succession to the throne shall devolve upon male descendants of the Imperial House, according to the provisions of the Imperial House Law.
- Article III: The person of the Emperor is sacred and inviolable.
- Article IV: The Emperor being the Head of the Empire the rights of sovereignty are invested in him, and he exercises them in accordance with the provisions of the present Constitution.
- Article V: The Emperor exercises the legislative power with the consent of the Imperial Diet.
- Article VI: The Emperor convokes the Imperial Diet, opens, closes, and prorogues its, and dissolves the House of Representatives.
- Article VIII: In case of urgent necessity, when the Imperial Diet is not sitting, the Emperor, in order to maintain the public safety or to avert a public danger, has the power to issue Imperial Ordinances, which shall take the place of laws. Such Imperial Ordinances shall, however, be laid before the Imperial Diet at its next session, and should the Diet disapprove of the said Ordinances, the Government shall declare them to henceforth invalid.
- Article IX: The Emperor issues, or causes to be issued, the ordinances necessary for the carrying out of the laws, or for the maintenance of public peace and order, and for the promotion of the welfare of his subjects. But no Ordinance shall in any way alter any of the existing laws.
- Article X: The Emperor determines the organisation of the different branches of the Administration; he fixes the salaries of all civil and military officers, and appoints and dismisses the same. Exceptions specially provided for in the present Constitution or in other laws shall be in accordance with the respective provisions bearing thereon.
- Article XI: The Emperor has the supreme command of the army and navy.
- Article XII: The Emperor determines the organisation and peace standing of the army and navy.

- Article XIII: The Emperor declares war, makes peace, and concludes treaties.
- Article XIV: The Emperor proclaims the law of siege. The conditions and operation of the law of siege shall be determined by law.
- Article XV: The Emperor confers titles of nobility, rank, orders, and other marks of honour.
- Article XVI: The Emperor orders amnesty, pardon, commutation of punishments, and rehabilitation.
- Article XVII: The institution of a Regency shall take place in conformity with provisions of the Imperial House Law.
- The Regent shall exercise the supreme powers which belong to the Emperor in his name.

### **The Rights and Duties of Subjects**

- Article XVIII: The conditions necessary for being a Japanese subject shall be determined by law.
- Article XIX: Japanese subjects shall all equally be eligible for civil and military appointments, and any other public offices, subject only to the conditions prescribed by Laws and Ordinances.
- Article XX: Japanese subjects are amenable to service in the army or navy, according to the provisions of law.
- Article XXI: Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.
- Article XXII: Subject to the limitations imposed by law, Japanese subjects shall enjoy full liberty in regard to residence and change of abode.
- Article XXIII: No Japanese subject shall be arrested, detained, tried or punished, except according to law.
- Article XXIV: No Japanese subject shall be deprived of his right of being tried by judges determined by law.
- Article XXV: Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his permission.

- Article XXVI: Except in cases provided for in the law, the secrecy of the letters of Japanese subjects shall not be violated.
- Article XXVII: The rights of property of Japanese subjects shall not be violated. Such measures, however, as may be rendered necessary in the interests of the public welfare shall be taken in accordance with the provisions of the law.
- Article XXVIII: Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.
- Article XXIX: Japanese subjects shall, within the limits of the law, enjoy liberty in regard to speech, writing, publication, public meetings, and associations.
- Article XXX: Japanese subjects may present petitions, provided that they observe the proper form of respect, and comply with the rules specially provided for such matters.
- Article XXXI: The provisions contained in the present chapter shall not interfere with the exercise, in times of war or in case of national emergency, of the supreme powers which belong to the Emperor.
- Article XXXII: Each and every one of the provisions contained in the preceding articles and of the present shall, in so far as they do not conflict with the laws or the rules and discipline of the army and navy, apply to the officers and men of the army and of the navy.

### **The Imperial Diet**

- Article XXXIII: The Imperial Diet shall consist of two Houses: the House of Peers and the House of Representatives.
- Article XXXIV: The House of Peers shall, in accordance with the Ordinance concerning the House of Peers, be composed of members of the Imperial Family, of Nobles, and of Deputies who have been nominated by the Emperor.
- Article XXXV: The House of Representatives shall be composed of members elected by the people, according to the provisions of the Law of Election.

- Article XXXVI: No one can at one and the same time be a member of both Houses.
- Article XXXVII: Every law requires the consent of the Imperial Diet.
- Article XXXVIII: Both Houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law.
- Article XXXIX: A Bill, which has been rejected by either the one or the other of the two Houses, shall not be again brought in during the same session.
- Article XL: Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.
- Article XLI: The Imperial Diet shall be convoked every year.
- Article XLII: A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by Imperial Order.
- Article XLIII: When urgent necessity arises, an extraordinary session may be convoked, in addition to the ordinary one.
- The duration of an extraordinary session shall be determined by Imperial Order.
- Article XLIV: The opening, closing, prorogation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses.
- In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.
- Article XLV: When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution.
- Article XLVI: No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one third of the whole number of the Members thereof is present.
- Article XLVII: Votes shall be taken in both Houses by absolute majority. In the case of a tie vote, the President shall have the casting vote.

- Article XLVIII: The deliberations of both Houses shall be held in public. The deliberations may, however, upon demand of the Government or by resolution of the House, be held in secret sitting.
- Article XLIX: Both Houses of the Imperial Diet may respectively present addresses to the Emperor.
- Article L: Both Houses may receive petitions presented by subjects.
- Article LI: Both Houses may enact, besides what is provided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.
- Article LII: No Member of either House shall be held responsible outside the respective Houses, for any opinion uttered or for any vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any similar means, he shall, in the matter, be amenable to the general law.
- Article LIII: The Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, excepting cases of flagrant derelicts, or of offenses connected with a state of internal commotion or with a foreign trouble.
- Article LIV: The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

### **The Ministers of State and the Privy Council**

- Article LV: The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.
- All laws, public ordinances, and imperial rescripts, of whatever kind, that relate to the affairs of state require the counter-signature of the Minister of State.
- Article LVI: The Privy Council shall, in accordance with the provisions for the organisation of the Privy Council, deliberate upon the important matters of State, when they have been consulted by the Emperor.



### **The Judicature**

- Article LVII: The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.
- The organisation of the Courts of Law shall be determined by law.
- Article LVIII: The judges shall be appointed from among those who possess proper qualifications according to law.
- No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment.
- Rules for disciplinary punishment shall be determined by law.
- Article LIX: Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provision of law or by the decision of the Court of Law.
- Article LX: All matters that fall within the competency of a special Court shall be specially provided for by law.
- Article LXI: No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the administrative authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by a Court of Law.

### **Finance**

- Article LXII: The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law.
- However, all such administrative fees or other revenue as are in the nature of compensation for services rendered shall not fall within the category of the above clause.
- The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the Budget, shall require the consent of the Imperial Diet.

- Article LXIII: Existing taxes shall, in so far as they are not altered by new laws, continue to be collected as heretofore.
- Article LXIV: The annual expenditure and revenue of the State shall, in the form of an annual Budget, receive the consent of the Imperial Diet. Any expenditure which exceeds the appropriations set forth under the various heads of the Budget or those not provided for in the Budget, shall be referred subsequently to the Imperial Diet for its approval.
- Article LXV: The Budget shall be first laid before the House of Representatives.
- Article LXVI: The expenditure in respect of the Imperial House shall be defrayed every year out of the National Treasury, according to the present fixed amount for the same, and shall not hereafter require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.
- Article LXVII: The fixed expenditure based upon the supreme powers of the Emperor and set forth in this Constitution, and such expenditure as may have arisen by the effect of, or as appertains to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.
- Article LXVIII: In order to meet special requirements the Government may ask the consent of the Imperial Diet to a certain amount as a continuing expenditure fund, for a previously fixed number of years.
- Article LXIX: In order to supply unavoidable deficits in the Budget, and to meet requirements unprovided for in the same, a reserve fund shall be established.
- Article LXX: When there is urgent need for the adoption of measures for the maintenance of the public safety, and when in consequence of the state either of the domestic affairs or of the foreign relations, the Imperial Diet cannot be convoked, the necessary financial measures may be taken by means of an Imperial Ordinance. In such cases as those mentioned in the preceding clause the matter shall be submitted to the Imperial Diet at its next session for its approval.
- Article LXXI: When 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.

Article LXXII: The final account of the expenditure and revenue of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board.

The organization and competency of the Board of Audit shall be determined by law separately.

### Supplementary Rules

Article LXXIII: When it has become necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order.

In the above case, neither House can open the debate, unless not less than two-thirds of the whole number of Members are present, and no amendment can be passed, unless a majority vote of not less than two-thirds of the Members is obtained.

Article LXXIV: No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

No provision of the present Constitution can be modified by the Imperial House Law.

Article LXXV: No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article LXXVI: Existing legal enactments, such as laws, regulations, ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Article LXVII.

**ANALYZING THE MEIJI CONSTITUTION****Part A**

Handout #1 contains the Meiji Constitution of 1889. Answer the questions below to learn about the first three sections of that constitution—The Preamble, The Emperor, and The Rights and Duties of Subjects.

1. According to the Preamble, what is one of the most important historical characteristics of the Japanese?
2. According to the Meiji Constitution, who or what is the source of authority?
3. List five of the emperor's powers.
4. Which articles deal with the duties of the people? What are these duties?
5. List five basic rights that the people enjoyed under this constitution.
6. Articles XXII through XXX list the rights of Japanese subjects. In how many cases in these articles is some limit or condition put on the exercise of these rights by the people?
7. What limitation is put on liberty regarding residence?  
on freedom from search and seizure?  
on private property?  
on religion?  
on freedom of petition?
8. According to the section on rights and duties of subjects, which seems to have higher authority, the constitution or laws and ordinances? Explain your answer.
9. In general, subjects' freedoms in Meiji Japan were curtailed by what other goal? In your own opinion, does the section on rights and duties of the people give greater emphasis to rights or duties? How does this correspond with traditional Japanese views on the individual in society?
10. Is there any provision for checks and balances/balance of power between the emperor (the executive) and the legislature? If so, what?
11. How do you think this document may have allowed the growth of the strong military dictatorship that developed in Japan prior and through World War II? Cite articles from the constitution.

### Part B

In the 1880s, Hirobumi Ito, a Japanese politician, advised that if Japan's experiment with a Western-style document such as a constitution were going to work, that document would have to be a product of the Japanese experience; that is, the constitution would have to embody Japanese concepts of national character, political and social order, and function of government.

According to Ito, **“In the framing of our constitution, our aims must be determined by the ideal of government which conforms with our country's geography, customs and sentiments of the people, and the spirit of the times.”**

In this activity, you should apply what you learned in Unit One about the three important strands in traditional Japanese thought—the role of the emperor, Confucianism, and the individual in society—to analyze the Meiji Constitution in light of Ito's statement. Decide whether you think the Meiji Constitution did or did not fulfill Ito's prerequisites for a workable constitution. Prepare an essay in which you argue for or against the Meiji Constitution as a reflection of Japanese experience and culture. Address each of the three traditions. Cite examples from the constitution that support your position.

## Unit Two: The Meiji Constitution

### ACTIVITY TWO: COMPARING PRINCIPLES OF GOVERNMENT IN THE MEIJI AND U.S. CONSTITUTIONS

**Introduction:** This exercise provides an extension to Activity One and a lead-in to the next unit on the Showa (MacArthur) Constitution of 1947. Students are provided with the context for the Constitution of 1947. They are asked to apply their knowledge of the U.S. Constitution and the U.S. government to identify concepts in the Meiji Constitution that would contradict American democratic principles and values.

**Objectives:** Students will be able to:

1. Review and discuss fundamental principles of democratic government as set forth in the U.S. Constitution.
2. Compare and contrast the powers and functions of the branches of government, and the rights and duties of citizens, as articulated in the Meiji and U.S. Constitutions.
3. Identify specific aspects of the Meiji Constitution and the Japanese form of government between 1889 and 1945 that the United States would want to change in order to establish democracy in Japan during the Occupation.

**Grade Level:** 7-12.

**Time Required:** 1-2 class periods, depending on time needed to review the U.S. Constitution

**Materials:** U.S. Constitution (available in the back of most U.S. history and government textbooks), and the Meiji Constitution from Activity One.

**Procedure:**

1. Introduce the exercise by explaining that the Meiji Constitution functioned from its promulgation in 1889 through World War II. When Japan was defeated by the Allied powers in World War II, a primary goal of the Occupation forces under U.S. General Douglas MacArthur was to rid Japan of the constitution and the political and social structure which had allowed the military dictatorship to flourish. The Occupation forces, essentially the United States, wanted to build a fledgling democracy in Japan.

2. Take the opportunity to review with the class essential principles of government set forth in the U.S. Constitution which would be particularly relevant in comparing our form of government to that of Japan's under the Meiji Constitution. These would include the concepts of popular sovereignty, separation of powers and checks and balances, separation of church and state, judicial review, and individual rights. Make sure students have a basic understanding of why these concepts are important in our system of government, of what our constitution says about these concepts, and how it ensures them.
3. Divide the class into four groups. Using sections of the U.S. Constitution and their own knowledge of that document as a guide, each group will identify aspects of the Meiji Constitution that they think the United States would object to and want to change in its effort to make Japan a democracy following World War II. Each group will focus on a different aspect of government set forth in the constitutions, as follows: group 1, the preamble and emperor (executive); group 2, the legislature; group 3, the judiciary; and group 4, rights and duties.
4. Allow one class period for group work. Groups should present their arguments to the class as a whole.



## Unit Three: The 1947 Constitution

### ACTIVITY ONE: DICTATING CHANGE: A SIMULATION

**Introduction:** In this simulation, the class is divided into two groups, each of which assumes the role of a separate classroom of students. One class is in the position of being an exemplary class, held up as a model of good behavior for the school. The other class is a "problem" class, constantly in trouble and disciplined by the teacher and administration. When the exemplary class is given the assignment of creating a set of rules to help reform the other class, students analyze the factors that must be considered to make such an assignment work. Students then transfer their experience in this simulation to the historical case of the United States writing a new constitution for Japan in 1947.

**Objectives:** Students will be able to:

1. Identify barriers to and preconditions for successful group change efforts.
2. Recognize points of view.
3. Transfer and generalize information from a simulation experience to a historical case.

**Grade Level:** 7-12.

**Time Required:** 1-2 class periods

**Materials:** Handout #1, "Mrs. Mendoza's Class Profile," and Handout #2, "Mr. Schank's Class Profile."

**Procedure:**

1. Ask students if they have ever been in the position of being compared to more industrious, better behaved, or otherwise "more ideal" students. What were their reactions to such comparisons? Did they feel admiring and imitative or perhaps resentful or apathetic? If someone in authority wanted them to change their behavior, what would be the best way to achieve this change—that is, how could an authority figure encourage a student to change?
2. Explain that you will be dividing the class into two groups to consider different points of view and different strategies for bringing about changes in behavior/discipline of a hypothetical "problem" class. Divide the class

into two groups and distribute Handout #1, "Mrs. Mendoza's Class Profile," and Handout #2, "Mr. Schank's Class Profile," to respective groups.

3. Have students read their group profile. Then ask volunteers from each group to describe their group and their group task in the simulation.
4. Allow groups time to work together to complete their assignment. Group 1, Mrs. Mendoza's class, should devise rules for Mr. Schank's class and a plan for implementing them. Group 2, Mr. Schank's class, should devise a list of relevant characteristics about their class that may explain their behavior and a list of conditions under which they might change.
5. When the groups have finished their respective assignments, ask a volunteer from Group 2 to report their work, followed by Group 1. To what extent did Group 1's rules and implementation plans account for Group 2's characteristics? How would Group 2 respond to Group 1's rules? With the information now collected, could Group 1 create a more workable plan? Is there another way that a workable plan could have been devised?
6. Ask the class to generate a list of general guidelines or preconditions for embarking on a reform effort such as they simulated.
7. Ask students to offer comments on how their hypothetical experience compares to the case of the United States and Japan following World War II. Students should know that the Allied forces defeated Japan in August 1945 and immediately thereafter established Occupation forces in the country, under the command of U.S. General Douglas MacArthur. One of the Occupation's chief goals was to replace Japan's old constitution and governmental structure with a new structure that would provide for a democratic country. Japan's government wrote a new constitution, but MacArthur rejected it because it failed to make sufficient democratic reforms. MacArthur's staff then wrote a constitution for Japan.

**MRS. MENDOZA'S CLASS PROFILE**

You are the students of Mrs. Mendoza's sophomore history class, a model class. Your class is well-behaved with no discipline problems. The class has undertaken numerous community and school service projects, which are an example to the rest of school (e.g., recycling, school cleanup efforts, and so on). You are proud of your reputation, even though you are only sophomores in your first year in the school. You believe your success is based on commonly-held goals and class cooperation. Because you are models in the school, the principal has come to Mrs. Mendoza's class and asked you to create a plan to help improve Mr. Schank's senior history class. That class had been causing a lot of trouble for the teacher and disrupting other classes in the hall. In other words, the principal would like Mrs. Mendoza's class to remake Mr. Schank's class in its own image. Using the questions below as a guide, develop rules and guidelines to reform this classroom and a plan for putting the guidelines into practice.

1. What is your goal for Mr. Schank's class?
  
  
  
  
  
  
  
  
  
  
  
2. Is there any information you should know about Mr. Schank's class if you want your plan to work? If so, what?
  
  
  
  
  
  
  
  
  
  
  
3. What rules or guidelines would you make for Mr. Schank's class?
  
  
  
  
  
  
  
  
  
  
  
4. How would you implement your plan? That is, how would you teach Mr. Schank's class your rules and insure that they follow the rules?

### MR. SCHANK'S CLASS PROFILE

Mr. Schank's senior history class has developed a reputation as a discipline problem. Many members of the class show little interest in the study of history or in schoolwork in general. Members of the class are often in the guidance counselor's or principal's offices for causing problems. In class, teaching and learning proceed very slowly because of so many disruptions. Although Mr. Schank has other classes he considers successful, he has had little success in working with this class. He and the principal have decided that a peer model and peer pressure, as provided by the students of Mrs. Mendoza's class, may offer an avenue for improvement. Using the questions below as a guide, take the role of students in Mr. Schank's class to identify the causes of your difficulties as a class.

1. What would you identify as the three biggest problems in your class? What causes these problems?
2. What information should someone know about your class if they wanted to work with you to change?
3. How do you think the problems in your class might be corrected or improved?

## Unit Three: The 1947 Constitution

### ACTIVITY TWO: BRINGING DEMOCRACY TO JAPAN

**Introduction:** Through a reading and discussion, students consider the social and political context in which the Japanese Constitution of 1947 was written. Students identify motives and considerations of U.S. General Douglas MacArthur and the U.S. Occupation forces in designing a constitution for postwar Japan. They also identify internal and external pressures on the Japanese to accept a largely foreign-dictated constitution. The activity is designed for use after students have completed their study of World War II through V-J Day.

**Objectives:** Students will be able to:

1. Identify internal and external factors that led the Japanese to accept the 1947 Constitution.
2. Discuss ways in which MacArthur and the U.S. Occupation forces reconciled American goals for postwar Japan with Japanese cultural, social, and political realities.

**Grade Level:** 7-12.

**Materials:** Handout #1, "Bringing Democracy to Japan."

**Time Required:** 1 class period

**Procedure:**

1. The questions listed below had to be answered by the United States after the surrender of Japan on August 14, 1945. Meeting in small groups, students should discuss and write down at least one reason for their answer to each question.

**Question: Once Japan is occupied, should the Japanese government be totally abolished and replaced by the direct rule of American military authorities?**

(In Germany the Nazi government had disintegrated as Allied troops closed in on Berlin. Following Germany's defeat, the Allies set up military governments to rule

---

Adapted with permission from *Bill of Rights in Action*, Volume 3, Number 4, Spring 1987. Constitutional Rights Foundation, Los Angeles.

in their respective zones of occupation. In Japan, however, the emperor, national legislature (called the Diet), ruling cabinet, and the entire government bureaucracy all remained in place at the time of the surrender.)

**Question: Should the United States insist that Japan change its constitution in order to establish a democracy?**

(Japan had a written constitution, a "gift" of the Emperor Meiji in 1889. In many respects its wording made it similar to many Western constitutions. However, the Japanese Constitution made the emperor, not the people, the sole source of political authority. Thus, the Meiji Constitution was a blend of western political thought and Japanese traditions that had developed over the centuries.)

2. Ask several groups to volunteer their responses to the two questions. Discuss reasons cited. Explain that students will now complete a short reading assignment that will introduce them to the conditions under which the 1947 Constitution was written and the process of its creation. Distribute Handout #1, "Bringing Democracy to Japan," to all students and have them read the material.
3. Once students have completed the reading, they should meet in the same groups they did earlier. Each group should again answer the initial questions, but this time according to how the United States, and particularly MacArthur, decided them. Students should identify from their reading at least one reason for their answers.
4. Remind students of the framework from which they analyzed the Meiji Constitution in Unit Two; that is, that constitutions tend to work if they accurately reflect national history, values, and practice. Based on Japanese criteria, do students think the 1947 Constitution should have worked for Japan? Have students explain their answers. Discuss how traditional attitudes about authority might have encouraged the Japanese to accept the MacArthur Constitution. What postwar conditions and attitudes in Japan may have helped the Japanese emperor and the people accept a constitution that outlined a political system so foreign to their tradition?
5. Pose the following question to the class: Do you think that the experience in occupied Japan proves that the U.S. Constitution can be transplanted to any other land? Why or why not?

**Additional Reading:**

Benedict, Ruth. "Post V-J Day Japan," in *The Chrysanthemum and the Sword*. Boston: Houghton Mifflin, 1946.

## BRINGING DEMOCRACY TO JAPAN

### The Occupation

In July 1945, shortly after Germany had surrendered, the Allied leaders met at Potsdam near Berlin to discuss postwar policies. Among these was the decision to occupy Japan once victory had been achieved in the Pacific. The Allies also agreed that the Occupation should bring about the complete disarmament of Japanese forces and the trial of Japanese war criminals. The Potsdam Agreement further called for democratic reforms in Japan's government. Finally, the Allies declared that the Occupation would end only when all these conditions had been achieved and a "peacefully inclined and responsible government" had been established in Japan.

Immediately after the Japanese announced their decision to surrender, General Douglas MacArthur was appointed the Supreme Commander for the Allied Powers to oversee the occupation of Japan. Although he was technically under the authority of an Allied powers commission, MacArthur took his orders from Washington. Rather than establishing an American military government to rule Japan during the occupation, MacArthur decided to employ the existing Japanese government. To do so, he issued various direct orders to Japanese government officials, but allowed them to manage the country as long as they followed the Occupation goals developed in Potsdam and Washington, D.C.

MacArthur realized that imposing a new order on the island nation would be a difficult task even with Japanese cooperation. MacArthur believed that foreigner's dictation of radical changes to 80 million resentful people would be impossible.

Having decided to keep the Japanese national legislature (the Diet), the cabinet, and the bureaucracy in place, MacArthur next faced the question of Emperor Hirohito. The Russians and British wanted Emperor Hirohito tried and hanged as a war criminal. MacArthur advised Washington against needlessly angering the Japanese by destroying the sacred symbol of their emperor. MacArthur later wrote in his autobiography, "... I would need at least one million reinforcements should such an action be taken ... Military government would have to be instituted throughout all Japan, and guerrilla warfare would probably break out."

At his first meeting with MacArthur, Emperor Hirohito assumed full responsibility for the wartime actions of Japan, knowing that this admission could mean his execution. Eventually the United States and other Allied powers agreed with MacArthur not to treat Emperor Hirohito as a war criminal, with one important condition. On New Year's Day 1946, four months after the Occupation had begun, Emperor Hirohito renounced the belief that he was a divine or godlike being:



The ties between us and our people have always stood upon mutual trust and affection. They do not depend upon mere legends and myths. They are not predicated on the false conception that the Emperor is divine and that the Japanese people are superior to other races and fated to rule the world.

These words, while shocking to most Japanese, smoothed the way for the more than six years of Occupation that were to come.

Under the U.S. Occupation policy carried out by MacArthur, wartime Prime Minister Tojo and six other leaders were tried and hanged for war crimes. The Japanese military establishment was dismantled and 200,000 military and civilian leaders, including the majority of existing Diet members, were banned from holding any public office. The large industrial monopolies that had fueled the war effort were broken up. Even government support for Shinto, the official Japanese religion, was eliminated.

At the same time, MacArthur promoted the development of democracy in Japan. He suspended Japanese laws restricting political, civil, and religious liberties. He ordered the release of political prisoners and abolished the secret police. He announced a general election to be held in April 1946, only seven months following the surrender. He also called for the Japanese Diet to pass a new election law to provide for free democratic elections, including, for the first time in the history of Japan, the right of women to vote. In addition, under MacArthur's direction, the growth of labor unions was encouraged, large landholdings were broken up, and the education system was reformed.

Surprisingly, these developments were accepted by the Japanese. Of course, Japan was under the control of armed U.S. troops. Still, the ordinary Japanese, seeing death and destruction all around, seemed to conclude that the old way of doing things failed. The Japanese were disgusted with the military dictatorship that they perceived as having gotten them into a disastrous war. They continued to suffer from the atomic bombings of Hiroshima and Nagasaki. The defeat in the war was a national humiliation, felt by all Japanese. The cumulative experience of World War II made the Japanese emperor receptive to radical changes, and his eventual cooperation enabled the Japanese politicians and people to be receptive to radical changes.

### **A New Constitution**

The Meiji Constitution of 1889 had concentrated actual political power in the hands of a small group of government leaders responsible to the emperor, not the people. From the early 1930s to the end of the war, the military dominated this governing group.

Before 1945, democracy, as Americans know it, had little chance to develop in Japan. No free elections or real political parties existed. Women were denied equal rights. From an American viewpoint, although the Meiji Constitution listed a number of individual liberties, few were meaningful. For example, even though the constitution

guaranteed free speech, it did so with the stipulation that it be within the "limits of the law." Thus, the government could and did pass laws to prohibit what it considered "dangerous thoughts." Such restrictions, while offensive to American viewers, were not perceived the same way by the Japanese, who had a long tradition of personal effacement for the national good.

Early in the Occupation, MacArthur saw the need to drastically change the Meiji Constitution. In his autobiography, MacArthur argued:

We could not simply encourage the growth of democracy. We had to make sure that it grew. Under the old constitution, government flowed downward from the emperor, who held supreme authority, to those to whom he had delegated power. It was a dictatorship to begin with, a hereditary one, and the people existed to serve it.

MacArthur communicated his views to the leaders of the Japanese government who formed a committee to rewrite the Meiji Constitution. After four months' work, on February 1, 1947, the committee had produced a revision with only minor word changes. For instance, in the rewrite the emperor became "supreme" rather than "sacred".

MacArthur refused to accept the Japanese revision. He gave his own people the task of writing a "model constitution" that would then be used by the Japanese in preparing another revision, which he wanted completed before the Japanese general election scheduled just two months away. He saw the election as a test of whether the Japanese would accept democratic changes in their political system.

The job of writing MacArthur's "model constitution" fell to the Government Section of his General Headquarters. A team of about a dozen army and navy officers (all with special training in government) plus a few civilian experts met secretly to discuss, debate, and write their model for a new Japanese constitution. The team members used a 1939 edition of a book on world constitutions as their main reference. Most of the final wording was drafted by three army officers, all lawyers. This "constitutional convention" lasted six days.

The resulting constitution borrowed from the British system in establishing a cabinet and prime minister who were responsible to the elected Diet. The guarantees of individual rights included wording similar to that found in the U.S. Bill of Rights. One part, guaranteeing equal rights, even went beyond the legal protections U.S. citizens enjoyed at that time. Other provisions sounded not only American but positively New Dealish. For example, workers received the right "to organize and to bargain and act collectively. . . ."

Perhaps the most unique part of the "model constitution" was the "no-war clause." According to Article 9: ". . . The Japanese people forever renounce war as a

sovereign right of the nation and the threat or use of force as a means of settling international disputes." Article 9 went on to abolish all land, sea, and air military forces. This article was included as the result of a suggestion made by Prime Minister Shidehara to MacArthur. Shidehara believed that this provision would show the rest of the world that Japan never intended to wage aggressive war.

To the Japanese, however, the most radical change from the Meiji Constitution was the removal of the emperor as the source of all government authority. In the "model constitution" the people, acting through the elected Diet, were supreme. MacArthur decided to preserve the position of emperor, but merely as "the symbol of the State and of the unity of the people."

The Japanese government leaders were shocked by the radical changes proposed in the "model constitution." In particular, they found it hard to accept the idea of "rule by the people," which conflicted with the centuries-long Japanese tradition of absolute obedience to the emperor. On February 22, Emperor Hirohito ended the deadlock by commanding that the "model" become the basis for the new constitution of Japan. "Upon these principles," Emperor Hirohito said, "will truly rest the welfare of our people and the rebuilding of Japan."

On March 6, the Japanese cabinet accepted the new constitution. This was followed by statements of approval by Emperor Hirohito and General MacArthur, who later called the document "the most liberal constitution in history."

The constitution was widely publicized and enthusiastically discussed by the Japanese people, especially during the days leading up to the April general election. When the Diet met during the summer of 1946, the newly elected legislators debated and then voted final approval. Japan's new democratic constitution went into effect May 3, 1947.

Has Japan's democratic constitution been a success? MacArthur himself called it "probably the single most important accomplishment of the Occupation." Others have since criticized MacArthur for unnecessarily forcing the Japanese to renounce their political traditions and accept democracy too rapidly.

In 1952, the American Occupation of Japan ended. The Japanese were again an independent people, free to run their country as they wished. Since then, the Japanese have changed or done away with a number of the reforms instituted by MacArthur. One reform remains firmly in place: the "MacArthur Constitution." For 40 years, it has never been revised or amended. In the words of Japanese scholar Rinjiro Sodei: "Clearly the constitution has sunk its roots among the people."

## Unit Four: Individual Rights in Contemporary Japan

### ACTIVITY ONE: COMPARING CONSTITUTIONAL RIGHTS IN JAPAN AND THE UNITED STATES

**Introduction:** Although the Japanese Constitution of 1947 was modeled after and to a large degree dictated by the United States, this document still contains components that reflect a tempering of the United States-perceived ideal with Japanese tradition. It also contains elements that surpass anything in the U.S. document, particularly in the area of individual rights. In this activity, students identify similarities and differences between key articles in the 1947 Constitution of Japan pertaining to "Rights and Duties of the People" and the amendments pertaining to individual rights in the U.S. Constitution.

**Objectives:** Students will be able to:

1. Identify and discuss key individual rights guaranteed in the 1947 Japanese Constitution.
2. Compare and contrast these rights in Japan with similar rights provided for in the U.S. Constitution.

**Grade Level:** 7-12.

**Time Required:** 1 class period

**Materials:** Amendments to the U.S. Constitution (These are available in the back of most U.S. history and government textbooks.) Handout #1, "The Constitution of Japan, 1947," and Handout #2, "Comparing Individual Rights in Japan and the United States."

**Procedure:**

1. Given what students have learned in Unit Three about the circumstances surrounding the writing and adoption of the Japanese Constitution of 1947, would students expect that document to look a lot like our constitution? Why or why not? Students will probably answer that the document will resemble our own because it was written largely by MacArthur's staff during the Occupation of Japan following World War II.

Can students hypothesize about which aspects of the Japanese Constitution would still contrast with our own, based on Japanese traditions?

2. Explain that the class will examine articles of the Japanese "bill of rights," which appears as Chapter III of the Constitution and is titled, "Rights and Duties of the People." Students will analyze how these rights are similar to and different from rights protected by the U.S. Constitution.
3. Distribute Handout #2, "The Constitution of Japan, 1947," to all students. Ask students to highlight or note the following articles: 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 26, 27, 34. Explain that these articles address some of the individual rights provided for in the current Japanese Constitution.
4. Have students work in pairs or small groups and use Chapter III of the Japanese Constitution and the amendments to the U.S. Constitution to complete Handout #2, "Comparing Individual Rights in Japan and the United States."
5. Discuss student findings in class. For which Japanese rights/duties did students find no counterparts in the U.S. document? (Articles 12, 13, 23, 24, 26, 27) Examine each of these articles individually. How can students account for the inclusion of these rights in the Japanese document and not in our own? (Answers will vary. For example, Article 13 was necessary to initially establish a foundation for individual rights by acknowledging the Japanese as individuals, a racial departure from tradition. Article 24 seeks to discredit traditional Japanese practices of arranged marriage for the good of the family, and other laws and customs that denied women rights to property, inheritance, and so on. Several other articles outline social and economic rights and duties, such as the right and duty to work. Such rights are not addressed in the U.S. Constitution, which focuses on protections from government, not entitlements vis a vis government.)
6. For which articles did students find counterparts in the U.S. Constitution? (Students should note Article 14 — Amendments 13 and 14; Article 15— Amendment 15; Article 19—Amendment 1; Article 20—Amendment 1; Article 21—Amendment 1; and Article 34—Amendment 5.)

Discuss differences in the wording of the provisions in the two constitutions. Which one goes into more detail? Why might this be so? What might differences of wording or detail imply about the exercise of these rights in the two countries? For example, would Japan's unfamiliarity with individual rights require a more detailed description or explanation of these rights? Look at specific provisions of the Japanese rights (e.g., specific discussion of freedom of religion in Article 19, reference to peers and peerage in Article 14.) Which Japanese traditions do each of these specific statements address?

7. From what students know about Japanese social and political history, which of the article addressing individual rights guaranteed by the 1947 Constitution would seem most foreign or hard to accept for the Japanese? Have students support their answers. Some possible answers include:

\*Freedom of religion—for almost 20,000 years Japan had a national religion, Shintoism.

\*Establishment of the Japanese people as individuals and all the rights related to freedom of speech and press.

\*All rights related to equality under the law and equality of men and women—Japan was traditionally a hierarchial society.

**The Constitution of Japan, 1947****CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE**

- ARTICLE 10. The conditions necessary for being a Japanese national shall be determined by law.
- ARTICLE 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.
- ARTICLE 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.
- ARTICLE 13. 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.
- ARTICLE 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status, or family origin.
- ARTICLE 15. The people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof. Universal adult suffrage is guaranteed with regard to the election of public officials. In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.
- ARTICLE 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.
- ARTICLE 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.
- ARTICLE 18. No person shall be held in bondage of any kind. Involuntary servitude, except as a punishment for crime, is prohibited.
- ARTICLE 19. Freedom of thought and conscience shall not be violated.
- ARTICLE 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the States, nor exercise any political authority. No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity.



- ARTICLE 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.
- ARTICLE 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare. Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.
- ARTICLE 23. Academic freedom is guaranteed.
- ARTICLE 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.
- ARTICLE 25. All people shall have the right to maintain the maximum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.
- ARTICLE 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.
- ARTICLE 27. All people shall have the right and the obligation to work. Standards for wages, hours, rest, and other working conditions shall be fixed by law. Children shall not be exploited.
- ARTICLE 28. The right of workers to organize and to bargain and act collectively is guaranteed.
- ARTICLE 29. The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.
- ARTICLE 30. The people shall be liable to taxation as provided by law.
- ARTICLE 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.
- ARTICLE 32. No person shall be denied the right of access to the courts.
- ARTICLE 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

- ARTICLE 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.
- ARTICLE 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.
- ARTICLE 36. The infliction of any torture by any public officer and cruel punishment are absolutely forbidden.
- ARTICLE 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. At all times, the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.
- ARTICLE 38. No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. No person shall be convicted or punished in cases where the only proof against him is his own confession.
- ARTICLE 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.
- ARTICLE 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

## COMPARING INDIVIDUAL RIGHTS IN JAPAN AND THE UNITED STATES

Complete the chart below by first analyzing the provisions in the Japanese Constitution's Rights and Duties of the People and then comparing these rights provided in the amendments to the U.S. Constitution.

Selected Japanese Rights	What Article Guarantees	U.S. Counterpart - No or Yes? If Yes, Amendment Number	If Yes, Differences
Article 12			
Article 13			
Article 14			
Article 15			
Article 19			
Article 20			
Article 21			
Article 22			
Article 23			
Article 24			
Article 26			
Article 27			
Article 34			

## Unit Four: Individual Rights in Contemporary Japan

### ACTIVITY TWO: THE TUG OF WAR BETWEEN LAW AND CUSTOM: THE FUKUOKA PATRICIDE CASE

**Introduction:** In this case study activity, students consider the tension created when the new political values and principles of the 1947 Constitution were superimposed on often-contradictory traditional values, customs, and laws. Students consider an actual Japanese Supreme Court case involving the sentencing of a son convicted of killing his father. The case was considered by the Japanese Supreme Court in 1950, just three years after the new constitution took effect. The case emphasizes the conflict between the traditional concept of filial piety, and laws that had grown up to protect this concept, and the principles of democracy and individuals rights granted by the 1947 Constitution.

**Objectives:** Students will be able to:

1. Describe the conflict or tension between long-standing Japanese traditions and new legal requirements of the 1947 Constitution.
2. Analyze a legal case exemplifying this conflict.
3. Appreciate different rates of change between law and practice.

**Grade Level:** 7-12.

**Time Required:** 1-2 class periods

**Materials:** Handout #1, "The Fukuoka Patricide Case." Handout #2, "Briefing a Legal Case." Handout #3, "Formal Judgment of the Supreme Court of Japan Re: Fukuoka Case," or Handout #3a, "Judgment of the Supreme Court of Japan Re: Fukuoka Case: A Summary." Handout #4, "The Constitution of Japan, 1947."

**Procedure:**

1. As advance preparation, the teacher may want to read Parts B and C of the Teacher Background Notes, on guidelines for using case studies.
2. Review the context in which Japan adopted a new constitution in 1947. Some questions to consider in this review discussion include the following: Who had been responsible for the writing of this constitution and why? How was the constitution a departure from Japanese tradition? What aspects of Japanese society and politics did the constitution seek to change and with what did it plan to replace them? In what ways, if any, did the new constitution seek to temper new ideas with traditions? To what extent do

students think the constitution was committed to blending old and new? To what extent was it successful in doing so? Have students cite examples from the constitution that reflect a blending of old and new. For example, the Emperor was retained, but he was no longer sacred or the source of sovereignty; the constitution articulated rights of the people, but in Article 12 it established an ultimate goal of balancing rights with public welfare.

3. Remind students of the premises they used to analyze the Meiji Constitution in Unit Two: that is that constitutions tend to work if they accurately reflect national history, values, and practices. Based on these criteria, do students think the 1947 Constitution should have worked for Japan? Have students explain their answers. What postwar conditions and attitudes in Japan may have helped the Japanese accept a constitution that outlined a political system so foreign to their nation? (The humiliation of defeat, disillusionment with the military government, respect for MacArthur, MacArthur's respect for the importance of the emperor, and general recognition of the need for change. See Unit Two, Activity 2.)
4. Present to students the idea that the 1947 Constitution required the Japanese to drastically change their thinking and actions on many issues. Because of this, the constitution offers an intriguing case study in what has been called the "tug of war" between law and custom. Present, as a short lecture, information on this "tug of war" provided in Part A of the Teacher Background Notes.
5. The Fukuoka patricide case, which illustrates the "tug of war" between law and custom under the 1947 Constitution, can be conducted as a mock Supreme Court hearing or case study analysis. Conduct the activity as a mock hearing by the following means:
  - a. Divide the class into three groups, explaining that students will work in these groups to present and decide an actual case involving the principle of equality under the law—a new concept introduced to the Japanese in the 1947 Constitution. The case came before the Japanese Supreme Court in 1950. Assign group 1 the role of the defense, group 2 the role of the prosecution, and group 3 the role of the Supreme Court.
  - b. Distribute Handout #1, "The Fukuoka Patricide Case," and Handout #2, "Briefing a Legal Case," to students in all three groups. Allow students time to read the entire case presented in Handout #1. As a class, identify the facts, issues, and arguments presented in the case description, having students complete Handout #2 as the class proceeds through the discussion. Make sure that all students understand the issues in the case. The main issue is whether patricide is to be punished with a more serious sentence than other wrongful deaths. The critical underlying issues are whether such

differential sentences undermine the principle of equality under the law and, on another level, whether the Constitution is to function as the highest law of the land.

Before moving on, ask students if they can explain why this case represents a “tug of war” between law and custom. What law is in conflict with what custom?

c. Assign group 1 and group 2 to study their positions more carefully and to use the brief arguments presented in the case description as a basis from which to develop full arguments that they will present to the Supreme court in support of their position at the mock hearing. Group 3 should examine both sides more thoroughly. Each group may want to refer to notes and materials from previous units and to additional background material on Japanese culture in their texts and other sources. Library research time may be useful.

d. To prepare for the mock hearing, group 1 and group 2 should each pick two spokespersons, each of whom will be responsible for presenting one or two of the main arguments in defense of their respective groups’s position. Remind the groups that their presentations should expand upon and explain the arguments briefly presented in the case description, not just repeat them. Group 3 should select four or five students to act as Supreme Court judges to hear the case. Together, group 3 should create four to five questions to ask the defense and prosecution about their positions. Each of the judges should take responsibility for one questions during the hearing.

e. Conduct the hearing, with the prosecution stating its case first, followed by questions from the judges, the case for the defense, and final questions from the judge.

f. Allow group 3 five to ten minutes to meet and decide the case. Remind group 3 to be mindful of its role as Japanese judges and to try and consider the case the way they think Japanese judges of the time would. The judges should then report their decision and supporting reasons to the class.

g. Distribute Handout #3, “Formal Judgment of the Supreme Court of Japan Re: Fukuoka Case,” the actual resolution and majority opinion on the case to the class. Because the language of this actual decision is somewhat complicated, you may choose to substitute Handout #3a, “Judgment of the Supreme Court of Japan Re: Fukuoka Case: A Summary,” instead. How did the class decision compare to the real decision? Were students surprised by the actual decision? Why or why not? What were the key issues in the judges’ decision? Do students think the timing of the case, just three years after the constitution was adopted, was

relevant in the decision? How do students think the case might be decided today, some 40 years after the adoption of the constitution?

6. To conduct the activity as a case study analysis, follow the following steps:
  - a. Distribute Handout #1 and Handout #2. Invite students to work alone or in small groups of two or three to read and analyze the case and complete Handout #2. Discuss the case in class, focusing discussion on student understanding of the facts, issues, and arguments (see Procedure #5b.)
  - b. Return students to their small groups to reach a decision on the case. How do they think the Supreme Court would have decided the case and why? Invite several groups to report their decision and reasoning to the class.
  - c. Distribute Handout #3 to each student and discuss the actual decision as a group. (See Procedure #5g.)

## TEACHER BACKGROUND NOTES

### Part A: Law and Custom: A Tug of War?

In general, laws are passed to uphold important values in a society. In this case, laws reflect what the people in a society already believe or do. For example, laws requiring people to reach a certain age before they can marry reflect generally accepted norms in our country. Laws against actions such as theft or murder also reflect our values. But in some cases, nations pass laws to try and force people to change behavior. In this case, laws do not reflect already-held values but ideals toward which to work. A good example of such a law in the United States was the amendment to the U.S. Constitution prohibiting the sale or drinking of alcoholic beverages. Because this law was at odds with social practice and attitudes, it was widely ignored in the nation and was eventually repealed. Sometimes such laws fail. In other instances, the laws continue to be enforced until, gradually, social change takes place and attitudes and actions reflect the law.

Through the 1947 Constitution and especially that constitution's guarantee of individual rights, the Japanese were directed towards major political and social changes. The question arises as to how such law has been translated into actual practice.

The transition from law on paper to law in practice can be a difficult and uncertain process. Japan, like all societies, has a variety of religious and social traditions and customs that impinge upon formal laws, shape and modify them, and influence how they will be interpreted, followed, and enforced. Often, age-old practices, reinforced by traditional values, overshadow or outlive new formal laws.



The position of the individual as well as certain segments of the population such as women have undergone tremendous change in Japan since World War II. The laws reflect that change. Social attitudes and practice, however, have often not changed as quickly or easily as laws. People often continue tradition and custom long after laws require something else. The Fukuoka Patricide case exemplifies the tension—or tug of war—between law and practice in the early days of Japan's new constitution.

### **Part B: Guidelines for Using Case Studies**

("Guidelines for Using Case Studies" excerpted with permission from *Teaching about the Law*, by Ronald A. Gerlach and Lynn W. Lamprecht. Cincinnati: W.H. Anderson Co., 1975), pp. 148-161.

In using legal case studies with students, attorneys and other resource people must be careful to use terms and situations that are familiar to students. While it is useful for such resource persons to have basic grounding in law, the underlying issues and conflicts inherent in legal cases may be more important than the particular decisions or statutes involved. The following discussion, which was prepared for teachers, contains suggestions and guidelines for structuring case studies as well as a rationale for using them in a classroom setting.

From the very beginning, the successful use of the case method approach to the study of law has involved three essential ingredients: (1) lively cases, (2) capable instructors, and (3) involved students. The selection of appropriate legal cases has been a crucial aspect of the approach. Not every case involving a legal decision or interpretation can be considered a "good" case. Cases that are chosen must center upon significant legal questions that persist and recur in human experience and the law. The cases must also pose a variety of possible alternative solutions and provide dramatic interest for the student.

The instructor, in turn, must be properly prepared and well informed on the subject if the approach is to be utilized successfully. The instructor must serve as a facilitator rather than an authority figure in the learning process. Through the use of questioning, the instructor raises doubt in students' minds on a particular legal issue. This procedure helps to clarify student thinking and reasoning and assists the students in resolving the conflict. The instructor should judiciously avoid imposing conclusions or personal biases upon students. When a particular position has not been adequately considered, the instructor may express a point of view to the class, but it should be identified as such.

Finally, the active involvement of the student in analyzing a legal case is crucial to the approach. Participating in class discussions in which a particular legal problem is

identified and sides are taken, points of view are stated, considered and weighed, and decisions are formulated and evaluated, remains the primary means by which students develop their own critical thinking ability. This is how an understanding of the law evolves from the case method of teaching.

The case study approach to the teaching of legal concepts and issues encourages teacher and students to engage in one or more of the following activities: (1) a statement or review of all the facts of a particular case; (2) an investigation or treatment of the issues and arguments of that case; and (3) an analysis or consideration of the decision, including the legal reasoning behind and implications of the ruling.

- Step 1: Review of the Facts  
—What are significant facts in the case?
- Step 2: Investigation of Issues/Arguments  
—What legal issues are involved?  
—What arguments might be presented?
- Step 3: Consideration of Decision and Reasoning  
—What would you decide? Why?  
—What was the court's decision?  
—Why did the court come to that conclusion rather than another one?

As a discussion leader, an instructor utilizing the case method approach must provide the class with the necessary background information and materials they need. He or she should pose questions that encourage students to: (1) rationally examine a case—facts, issues, arguments, decision; (2) express and explore, as well as be able to explain and support, alternative points of view; (3) focus upon points of major importance and reflect upon the consequences of each; and, perhaps more importantly, (4) clarify their own thinking and values. Questions should promote the interchange of ideas among students and call for student thought rather than simple "yes/no" responses or the repetition of facts. The classroom questions should point out assumptions or weaknesses in reasoning, have a logical sequence or rational order, be clear and direct, and be within the answering capabilities of the students. In addition, questions should build on the class preceding responses and ideas as well as its initial interests.

In addition to performing the roles of diagnostician and discussion leader, the teacher must act as a "climate-maker." That is, the teacher must develop and maintain a friendly and nonthreatening classroom environment in which students are encouraged to think logically, to consider alternatives freely, and to express themselves honestly while studying a case. In order to develop a favorable classroom atmosphere in which to use the case study approach, the teacher must refrain from dominating class discussion by

repeating, commenting on, or asking questions of the same respondent following each remark. Rather, questions and comments should be redirected to other members of the group or class. Also, biases of the instructor regarding a case should be contained; when they are expressed, they should be clearly open to class review and analysis.

By capably serving as diagnostician, discussion leader, and "climate-maker" in the case study approach, the teacher plays a key role in the instructional process. In performing these functions, the teacher is the primary guide to productive learning about the law.

The procedures described below provide several examples of how legal cases might be used to promote discussion in the classroom. More specifically, these procedures are designed to: (1) illustrate how the case approach lends itself to a variety of teaching styles and uses; (2) demonstrate how this approach encourages student thinking at the higher cognitive levels of analysis; and (3) suggest several cases and concepts that might be examined by social studies classes.

One way in which an instructor can promote the study of a legal case is to provide the class with a handout describing the facts, issues, arguments, court reasoning, and decision. After asking several questions designed to test general comprehension of the information contained in the handout, the teacher should center the discussion on student evaluation of the decision. These procedures are outlined in Diagram 1:

**DIAGRAM 1**  
**Students Given Entire Case**

Students Case Handout includes:

1. Facts
2. Issues
3. Arguments
4. Reasoning
5. Decision

Class discussion centers on:

1. Ascertaining student comprehension of the facts, issues, arguments, decision included in handout.
2. Student evaluation of court decision and reasoning.

A second way a teacher might use a legal case in the classroom is to give the students a handout describing only the facts, the issues, and the arguments. In contrast to the first set of procedures, the teacher asks the students to reach their own decision on

the case in light of the arguments and facts presented to them in the handout. Finally, the actual court's decision and reasoning in the case are introduced and compared with the students' position. These procedures are outlined below in Diagram 2:

**DIAGRAM 2**  
**Students Given Only Facts, Issues, Arguments**

Students Case Handout includes:

1. Facts
2. Issues
3. Arguments

Class discussion centers on:

1. Ascertaining student comprehension of the facts, arguments (included in the handout)
2. Student evaluation and evaluation of court decision and reasoning.

An alternative strategy for encouraging class discussion of the court's decision and reasoning is to provide the students with a handout describing the facts, issues, and arguments of a case along with unmarked quotes taken from the majority decision and dissenting opinions. After posing several questions designed to test student understanding of the material contained in the handout, the teacher asks the students to select the opinion with which they most agree and to give reasons for their choice. These procedures are outlined in Diagram 3:

**DIAGRAM 3**  
**Students Given Unmarked Questions**

Students Case Handout includes:

1. Facts, issues, arguments
2. Unmarked judicial opinions

Class discussion centers on:

1. Ascertaining student comprehension of the facts, issues and opinions.
2. Student selection/justification/evaluation of court opinion.

Perhaps the most challenging way in which a teacher can present a legal case to a class is to give the students only the facts of the case. Following some initial

comprehension questions, the instructor asks the students to identify the issue(s) involved in the case, to develop arguments for both sides, and to decide the case on the basis of the arguments. This procedure is outlined in Diagram 4:

**DIAGRAM 4**  
**Students Given Only the Facts**

Students Case Handout includes:

1. Facts

Class discussion centers on:

1. Ascertaining student comprehension of the facts (found in handout).
2. Promoting student identification of the issues, preparations of arguments, development of a decision, and evaluation of decision.

An alternative strategy to having the entire class develop arguments for both sides would be to divide the class into committees or "law firms" and have the firms prepare arguments for the plaintiff and defendant. Their arguments can then be presented to the class for consideration and discussion.

Although the case study approach has a number of distinct advantages for classroom use, it is not without its limitations as an instructional method. For example, the case approach assumes that the students possess certain background information and that they will be able to comprehend the facts of the case under consideration. If these two conditions are not fulfilled, a lesson based upon a case study would be unproductive and frustrating to both teacher and students.

In addition, the case method approach requires that students make independent judgments regarding a particular legal case, problem, or issue. Students must also permit their judgments to be scrutinized and challenged. As a result, they may exhibit an initial hesitancy and/or inability to study a legal case or to critique each other's views. If student inhibitions do arise, and temporarily impede the educational process, a teacher's patience and guidance are needed to override the problem.

**Part C: Strategies for Helping Students Deal with Facts, Issues, Decisions, and Opinions**

Excerpted with permission from *Juvenile Justice: A High School Curriculum Guide*.

Sewell N.J.: Institute for Political Legal Education, 1974, pp. 4-6.

This resource expands the basic case-study approach by suggesting additional ways to help students differentiate between facts and opinions. A form for briefing a legal case (Activity 2, Handout 2) is also provided.

Students should be asked to list the facts in a case. They should be made aware of the importance of this exercise, since everything else in the case hinges on an accurate accounting of the facts involved. The teacher can ask students to enumerate the facts according to the following categories:

1. Uncontroverted facts—those not subject to challenge or dispute (students should point to specific citations in the case).
2. Implied or inferred facts—those which logically follow the uncontroverted facts (students should justify the inferences or implications they have made; they may not be right, but at least they should be reasonable assumptions).
3. Missing facts—other things, which one needs to know before reaching a decision, that were not stated in the case.
4. Important facts—as opposed to irrelevant or inconsequential facts.

A number of strategies can be used in presenting the facts. Sometimes the teacher may want to provide the students initially with only the facts, even though a case has been adjudicated, so that students are free to form their own opinions. The court decisions can be handed out later and a discussion held as to why student decisions differ from the court's verdict, if in fact they do.

Before class, the teacher could prepare a tape recording stating the facts of the case, and play it more than once in class to illustrate what uncontroverted facts really are. Did students perhaps hear the tape differently? A variation on this approach would be to use a few students to create a videotape or role play depicting the facts. This simulates a real-life situation because students witnesses to the facts must try to report them accurately, with possible conflicting testimony.

It is essential to zero in on the issues involved in a case, so that far-ranging bull sessions, which take up precious class discussion time, can be avoided. Issues can be phrased in terms of "whether or not" statements. The teacher may have to exercise patience in stressing the need to adhere to the stated facts in the case and to the principal issue or issues.

A useful approach to a case study is to examine the question of interested parties. Law is a compromise of competing interests. Ask who the competing parties are in the outcome of a case. What is each person's or group's interest (e.g., students, parents, school board, administration, civil liberties groups, community)? How would each one like the case resolved? Why? How can a decision be reached (if, in fact, that is possible) which takes into account all of these interests? To depict the balance of conflicting issues in the case, the teacher can also draw a set of scales on the chalkboard or an overhead

transparency and then visually weigh the arguments for the plaintiff and for the defendant as the students define them.

The decision in a case is a simple “yes” or “no” response to the central issue. Decision making is an everyday happening in law. It is a challenging lesson to students that a decision must be made to resolve the problem—someone will win and someone will lose. The decision not only affects the individual(s) involved, it also sets a precedent for future similar cases. The opinion must include both the reasoning or justification for the decision and an explanation of why the opinion disagrees with or can refute other points of view. This reasoning provides the student with an appreciation of precedent and an understanding of various legal concepts. Alert students to the possibilities for varying interpretations of the law by judges. As court opinions are read and discussed, distinctions should be noted between real statements of law and judges’ expressions of “obiter dicta” (incidental or collateral opinions which are not necessary to support the decision and not binding). Also, there may be value in examining minority dissenting opinions (if the decision was not unanimous) or concurring opinions. Justices often write concurring opinions when they agree with the majority decision but for different reasons and wish to indicate that they might decide differently under other circumstances.



## THE FUKUOKA PATRICIDE CASE

**The Case.** On October 31, 1949, Yoshioko Suzuki (fictitious name) and his father got into an argument. During the course of the fight, Yoshioko severely beat his father around the head. The father died the following day, and Yoshioko Suzuki was brought to trial on the charge of inflicting on his father bodily injury resulting in death.

**Decision and Sentencing.** The court found Suzuki guilty. However, once the verdict had been reached, the case centered on the sentence to be applied. The prosecution pressed for a severe sentence, while the defense pressed for a light sentence.

The prosecution based its arguments for a harsh penalty on the Japanese criminal code, which imposes a more severe penalty on those guilty of causing the death of a lineal ascendant (father, grandfather) than on others. The prosecution cited Article 205 of the Criminal Code which states:

A person who inflicts a bodily injury on another and thereby causes his death shall be punished with imprisonment at force labor for a fixed term of not less than two years. When committed against a lineal ascendant of the offender, or his or her spouse, imprisonment at forced labor for life or for not less than three years shall be imposed.

The defense pressed for a light sentence. The defense rested its case in the sentencing on the principle of equality before the law, which had just been established in the newly-adopted Constitution of 1947. According to the defense, the Criminal Code provision enforcing a stricter punishment for family deaths violated the principle of equality before the law by creating a special class of criminals—those killing family members. The defense cited Section III, the Rights and Duties of Citizens, Article 14, of the Constitution, which states:

All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin.

**The Sentence.** The court judged in favor of the defense and imposed a relatively light, three-year deferred sentence. The court based its sentence on the constitutional provision, ruling that the section of the Criminal Code proscribing severe punishment for death of a lineal ascendant was unconstitutional and therefore null and void.

**The Appeal.** The prosecutor in the case appealed to the Supreme Court for an overturning of the original light sentence and an imposition of a harsher sentence.

**The Prosecutor's Arguments on Appeal.** In the Supreme Court hearing, the prosecution rested its case on the traditional Japanese values and principles which underlay the

Criminal Code's differentiation between wrongful death of a family member vs. wrongful death of others. The Criminal Code article was based on the fundamental Japanese values of filial piety—respect for family, especially family elders and ancestors—which had formed the cornerstone of Japanese familial and social relations for centuries. Such a fundamental value could not be brushed aside without seriously damaging the fabric of society. The Criminal Code was also based on related values of family loyalty and the essential morality that should prevail in family relations—the moral duties of a child to his parents, spouse to spouse, and so on. The Criminal Code, in making such differentiations in types of crime, was encouraging the system to treat crimes and criminals subjectively and individually, and to consider the real impact of the crime on the social structure and important social values. The importance of human relationships, which bind society together, could be lost in a totally equal application of law such as prescribed in the Constitution.

**The Defense Attorney's Arguments on Appeal.** In trying to uphold the original light sentence given its client for the death of his father, the defense rested its arguments before the Supreme Court on the letter and spirit of the new Constitution. The guarantee of equality under the law provided by Article 14 of the Constitution was a new but precious idea—a fundamental principle of democracy to which the Japanese nation had committed itself. In its prescription of different sentences for the same crime, the Criminal Code was clearly treating people unequally. Such distinctions in sentencing amounted to discrimination because of one's social status (e.g., as a child of the victim).

The defense further argued that the Constitution was to function as the highest law of the land. The Supreme Court overturning of the original sentence would be the equivalent of saying that the Constitution was not the supreme law of the land. If laws were held as more absolute guidelines than the provisions of the Constitution, the Constitution would become valueless.

### BRIEFING A LEGAL CASE

In briefing a legal case, answer the questions below:

Case name:

Who originated the suit?

Court giving ruling opinion:

Decision date:

Facts—Who did what to whom, where, when, under what circumstances?

Legal issues or principles in initial trial

What are legal arguments of each side?

Action asked by plaintiff (or state)

Verdict of lower court

Appeal on what grounds?

Majority decision of court hearing final appeal

Reasoning on main issue or legal principle

Dissenting opinion and reasoning

Major significance of case

What legal standard on the issue was established/settled/developed?

Were precedents cited/continued/changed/overturned?

What was the significance of the decision for the particular person or persons in the case?

---

Reprinted with permission from *The Role of Law in Society and the Rights and Responsibilities of Citizenship: A Curriculum Guide for Kindergarten Through Grade 12*. Jefferson City, MO: Missouri Bar Association Advisory Committee on Citizenship Education and Missouri Department of Elementary and Secondary Education, 1976.

**FORMAL JUDGMENT OF THE SUPREME COURT OF JAPAN  
RE: FUKUOKA CASE**

The original judgment shall be quashed. The case shall be returned to the Fukuoka District Court.

**REASONS:** Regarding the reasons for appeal by the prosecution: The appeal by the prosecution states that the original decision recognized that the accused inflicted on his lineal ascendant an injury resulting in death, yet failed to apply paragraph 2 of Article 205 of the Criminal Code and disposed of the case under paragraph 1 of the same article on the grounds that paragraph 2 violated the spirit of Article 14 of the Constitution. The argument for appeal contends that this decision is contrary to law and should be quashed, because it is based on a misunderstanding of the intent of the constitutional provision and because the penal provision that should have been applied was not applied.

The original judgment states in its "Reasons":

The provision of Article 205, paragraph 2, of the Criminal Code, viewed in the light of its origin, fondly preserved under the name of a so-called beautiful custom a matter which derived from the idea of severe punishment for patricide, which was regarded as the equivalent of the murder of one's lord because it was considered to be treachery against a parent who, in respect to the child, was viewed as the family head or as a protector or as a figure of authority. Thus, in the final analysis, this provision, derived as it is from quite feudalistic, antidemocratic, and antilibertarian ideas, runs counter to the grand spirit of the Constitution, which stresses the legal equality of all human beings.

In stating this, the original judgment holds that the said provision is contrary to the egalitarian democratic spirit of Article 14 of the Constitution and is thus unconstitutional.

Article 14 of the Constitution enunciates the principle of equality under the law for the people and provides that there be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin; this states the equality for all men of the value of human personality. Therefore, it is none other than an expression of the great principle that there be neither special rights nor the infliction of especially disadvantageous treatment on the grounds of differences in race, religion, sex, occupation, social status, and so forth. That slavery and special rights of peers are no longer recognized and that under the new Civil Code the incompetency of the wife and the special privileged position of the head of the house are abolished are also due to this principle. But this does not mean that the law is prevented from laying down appropriate, concrete provisions as required by morality, justice, or the specific purposes to be served by the law—taking into consideration within the scope of the principle of equality of the people such circumstances as age, natural qualities, occupation, or special relations with others. The reason for the more severe punishment of murder or injury resulting in death when committed against lineal ascendants as stipulated in the Criminal Code compared

with ordinary cases of the same crimes is that the Code attributes special importance to the moral duties of the child toward his parents: the provision is merely a concrete legal provision, based on the requirements of morality.

The original decision points out that such an attribution of importance to the child's moral duties to his parents arose from feudalistic, antidemocratic ideas and that it is allowed to exist only in a familial society based on ideas such as "the unity of loyalty and filial piety" and "ancestor worship"; but morality, controlling such relations as those between husband and wife, parent and child, or brother and sister is the great fountainhead of human ethics, a universal moral principle recognized by all humankind without regard to past or present or East and West. In other words, it must be said that this principle belongs to what in theory is called natural law. Therefore, with the exception of England and the United States, which are common law countries, we can find many examples of legislation providing more severe punishment for crimes against lineal ascendants than in ordinary cases. Whereas the original decision found that a morality that attaches special importance to the moral duties of children toward parents is feudalistic and antidemocratic, we find that this is a confusion of the natural relations between parents and children with the artificial social family system centering around the head of the house, which is negated under the new Constitution. In short, it [the original decision] indiscriminately rejects existing beautiful customs for the reason that they are feudalistic and antidemocratic and that it makes the same mistake as the present trend of the world, which falls into the evil of "throwing out the baby with the bath water."

Furthermore, by our interpretation of Article 14, paragraph 1, of the Constitution, the relations between parents and children do not fit under any of the categories, such as social status, and so forth, which are mentioned therein as reasons for discriminatory treatment. Also, the provision of the said article and paragraph that states that all of the people must in principle be treated equally in their political, economic, and social relations considers their position in regard to basic rights and duties from their place as subjects of those rights. It does not prohibit treatment of the people that varies according to their respective differences as objects in the several legal relationships applying to them. The original decision states that applying a more severe penalty when the victim is a direct lineal ascendant is tantamount to establishing, in regard to both the protection of human life and to punishment, a distinction among the people between those who are "special" and those who are "ordinary" and that, therefore, giving special protection to lineal ascendants as compared with ordinary people results in an inequality under law.

Such being the case, the provisions of Article 205, paragraph 2, of the Criminal Code have definitely remained valid from the time the new Constitution came into effect to today; therefore, the original judgment, which rejected the application of this paragraph in spite of the factual finding that the defendant killed his lineal ascendant and disposed of this case under paragraph 1, of the Constitution and failed to apply the penal provisions that should have been applied. Thus, the appeal is well founded.

Accordingly, this Court renders judgment as shown in the formal judgment in accordance with Articles 205, 410, and the principal cause of Article 413 of the Code of Criminal Procedure.



**JUDGMENT OF THE SUPREME COURT OF JAPAN  
RE: FUKUOKA CASE: A SUMMARY**

The Supreme Court of Japan voted in favor of the appeal by the case prosecutor; that is, it voted to quash, or reject, the original judgment of the Fukuoka District Court, which had stated that giving the defendant a harsh sentence because he had killed his father was unconstitutional because it violated the principle of equality under the law. The Supreme Court then sent the case back to the Fukuoka District Court.

The Supreme Court reasoning had three parts, as follows:

1. The Japanese Criminal Code (Section 205) called for a more severe penalty for patricide—killing of one's father—than other murders. The Fukuoka District Court refused to apply such a penalty, saying that to do so would be to recognize an inequality under the law—that people who kill their parents are of a different status of crime than people who kill unrelated people. Such a legal inequality was unconstitutional under Article 14 of the new Constitution. The Fukuoka District Court ruling made Section 205 of the Criminal Code unconstitutional and void.
2. The Fukuoka District Court reasoned that applying a more severe penalty for patricide than other murders reflected the unequal, hierarchial society of feudal Tokugawa Japan and was therefore inherently undemocratic.
3. The Supreme Court rejected the Fukuoka District Court ruling, saying that the district court misunderstood the meaning of Article 14 of the Constitution. According to the Supreme Court, the principle of equality under the law set forth in Article 14 means that there can be no special rights or disadvantageous treatment on the grounds of *race, religion, sex, occupation, or social status*. But the relationship between parent and child is not a social status, nor does it fall into any of the other categories—race, religion, etc. So it does not fall under the jurisdiction of Article 14.

Moreover, the Supreme Court reasoned that the principle behind the more severe penalty for patricide was not recognition of different statuses but respect for an important moral code and cultural value system which recognized the special moral duties of a child to parent. Loyalty, love, and respect among family members are time-honored and fundamental Japanese values and are, in fact, universal human values. Even in its broadest interpretation, Article 14 does not mean that the law can be prevented from laying down provisions (including sentences for crimes) appropriate to morality. Imposing a more severe penalty for patricide—killing one's father—falls into this category of law appropriate to a national standard of morality.

In summing up its decision, the Supreme Court stated that when the Fukuoka District Court rejected fundamental Japanese and human values related to the family in its effort to embrace the new Constitution, it “threw out the baby with the bath water.”

## THE CONSTITUTION OF JAPAN, 1947

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout the land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

### CHAPTER I. THE EMPEROR

- ARTICLE 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.
- ARTICLE 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.
- ARTICLE 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.
- ARTICLE 4. The Emperor shall perform only such acts in matters of state as may be provided for in this Constitution and he shall not have powers related to government.
- The Emperor may delegate the performance of his acts in matters of state as may be provided by law.
- ARTICLE 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

ARTICLE 6. The Emperor shall appoint the Prime Minister as designated by the Diet. The Emperor shall appoint the Chief Justice of the Supreme Court as designated by the Cabinet.

ARTICLE 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general election of members of the Diet.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

ARTICLE 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

## CHAPTER II: RENUNCIATION OF WAR

ARTICLE 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

## CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

ARTICLE 10. The conditions necessary for being a Japanese national shall be determined by law.

ARTICLE 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

- ARTICLE 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.
- ARTICLE 13. 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.
- ARTICLE 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status, or family origin.
- ARTICLE 15. The people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof. Universal adult suffrage is guaranteed with regard to the election of public officials. In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.
- ARTICLE 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.
- ARTICLE 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.
- ARTICLE 18. No person shall be held in bondage of any kind. Involuntary servitude, except as a punishment for crime, is prohibited.
- ARTICLE 19. Freedom of thought and conscience shall not be violated.
- ARTICLE 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the States, nor exercise any political authority. No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity.
- ARTICLE 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.
- ARTICLE 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare. Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.
- ARTICLE 23. Academic freedom is guaranteed.

- ARTICLE 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.
- ARTICLE 25. All people shall have the right to maintain the maximum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.
- ARTICLE 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.
- ARTICLE 27. All people shall have the right and the obligation to work. Standards for wages, hours, rest, and other working conditions shall be fixed by law. Children shall not be exploited.
- ARTICLE 28. The right of workers to organize and to bargain and act collectively is guaranteed.
- ARTICLE 29. The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.
- ARTICLE 30. The people shall be liable to taxation as provided by law.
- ARTICLE 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.
- ARTICLE 32. No person shall be denied the right of access to the courts.
- ARTICLE 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.
- ARTICLE 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.
- ARTICLE 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

- ARTICLE 36. The infliction of any torture by any public officer and cruel punishment are absolutely forbidden.
- ARTICLE 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. At all times, the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.
- ARTICLE 38. No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. No person shall be convicted or punished in cases where the only proof against him is his own confession.
- ARTICLE 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.
- ARTICLE 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

#### CHAPTER IV. THE DIET.

- ARTICLE 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.
- ARTICLE 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.
- ARTICLE 43. Both Houses shall consist of elected members, representative of all the people. The number of the members of each House shall be fixed by law.
- ARTICLE 44. The qualifications of members of both Houses and their elections shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.
- ARTICLE 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.
- ARTICLE 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.
- ARTICLE 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.
- ARTICLE 48. No person shall be permitted to be a member of both Houses simultaneously.



- ARTICLE 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.
- ARTICLE 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.
- ARTICLE 51. Members of both Houses shall not be held liable outside the House for speeches, debates, or votes cast inside the House.
- ARTICLE 52. An ordinary session of the Diet shall be convoked once per year.
- ARTICLE 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.
- ARTICLE 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.
- When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.
- Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.
- ARTICLE 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.
- ARTICLE 56. Business cannot be transacted in either House unless on-third or more of total membership is present.
- All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.
- ARTICLE 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.
- Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.
- Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

ARTICLE 58. Each House shall select its own president and other officials. Each House shall establish its rules pertaining to meetings, proceedings, and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members must pass a resolution thereon.

ARTICLE 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

ARTICLE 60. The budget must first be submitted to the House of Representatives. Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

ARTICLE 61. The second paragraph of the preceding article applied also to the Diet approval required for the conclusion of treaties.

ARTICLE 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

ARTICLE 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

ARTICLE 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

## CHAPTER V. THE CABINET

- ARTICLE 65. Executive power shall be vested in the Cabinet.
- ARTICLE 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.  
The Prime Minister and other Ministers of State must be civilians.  
The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.
- ARTICLE 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.  
If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, of the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.
- ARTICLE 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.  
The Prime Minister may remove the Ministers of State as he chooses.
- ARTICLE 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.
- ARTICLE 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.
- ARTICLE 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.
- ARTICLE 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.
- ARTICLE 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:  
Administer the law faithfully; conduct affairs of state. Manage foreign affairs.  
Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

Administer the civil service, in accordance with standards established by law.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet order unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

ARTICLE 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

ARTICLE 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

### CHAPTER VI. JUDICIARY

ARTICLE 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

ARTICLE 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

ARTICLE 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

ARTICLE 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges of the Supreme Court shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

ARTICLE 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, as regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

ARTICLE 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

ARTICLE 82. Trials shall be conducted and judgment declared publicly. Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in questions shall always be conducted publicly.

## CHAPTER VII. FINANCE

ARTICLE 83. The power to administer national finances shall be exercised as the Diet shall determine.

ARTICLE 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

ARTICLE 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

ARTICLE 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

ARTICLE 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

ARTICLE 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

- ARTICLE 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.
- ARTICLE 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.  
The organization and competency of the Board of Audit shall be determined by law.
- ARTICLE 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

### CHAPTER VIII. LOCAL SELF-GOVERNMENT

- ARTICLE 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.
- ARTICLE 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.  
The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.
- ARTICLE 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.
- ARTICLE 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

### CHAPTER IX. AMENDMENTS

- ARTICLE 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.  
Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.



## CHAPTER X. SUPREME LAW

- ARTICLE 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free: they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.
- ARTICLE 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript, or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.
- The treaties concluded by Japan and established laws of nations shall be faithfully observed.
- ARTICLE 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

## CHAPTER XI. SUPPLEMENTARY PROVISIONS

- ARTICLE 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.
- The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.
- ARTICLE 101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.
- ARTICLE 102. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.
- ARTICLE 103. The Ministers of State, members of the House of Representatives, and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course.



## Unit Four: Individual Rights in Contemporary Japan

### ACTIVITY THREE:

#### A HALF STEP BEHIND: THE EVOLUTION OF WOMEN'S RIGHTS IN JAPAN

**Introduction:** The status of women has changed dramatically over the course of Japanese history. During most of Japanese history, laws regarding women's rights did not conflict with actual social practice. However, with the Allied Occupation following World War II, significant changes were made in the Japanese Civil Code and Constitution to radically change the legal status of women. As in many cases of laws passed to initiate social change, actual attitudes and practices have changed much more gradually than the letter of the law. In this activity, students complete a reading and chart to understand the evolution of traditional attitudes and practices related to women's roles in Japanese culture. They then view a video to analyze contemporary changes in women's status and roles through a case study of one young Japanese woman.

**Objectives:** Students will be able to:

1. Identify social attitudes and values that defined the status and role of women in different periods in Japanese history.
2. Discuss events that created a marked conflict between social custom and practice regarding women and law in post-World War II Japan.
3. Analyze political and social ideals of the role of women mandated in the Japanese Constitution of 1947.
4. Evaluate changes in the roles and status of women since the adoption of the Japanese Constitution of 1947.

**Grade Level:** 7-12.

**Time Required:** 1-2 class periods

**Materials:** Handout #1, "The Status of Women in Japanese History," Handout #2, "Law and the Status of Japanese Woman," Handout #3, "The Constitution of Japan, 1947," Handout #4 "Equal Opportunity Employment Law, 1986," and Handout #5, "Reform Provided by 1947 Constitution and Equal Opportunity Law"; video, "The Story of Noriko." The video is available for purchase from Pacific Mountain Network, 12596 W. Bayaud, Suite 215, Lakewood, CO 80228, (303) 980-1411 or TeleJapan USA, 964 Third Avenue, New York, NY 10155, (212) 980-5333.

**Procedure:**

1. Explore student impressions of the status and roles of Japanese women by having class members complete several open-ended statements. Ask each student to finish the five sentences listed below on a separate sheet of paper. Ask volunteers to share their impressions with the class. Is there a general image of Japanese women? On what sources of information do students base their impressions? Have students keep their responses in mind as they proceed through this lesson.
  - When someone mentions Japanese women, the first picture in my mind is . . .
  - If I went to Japan, I would expect to see a Japanese woman doing . . .
  - The ways in which Japanese and American women are alike are . . .
  - The ways in which Japanese and American women are different are . . .
  - Most of my impressions of Japanese women come from . . .
  
2. Review with students the notion of the "tug of war" between custom and law illustrated in the Fukuoka patricide case study. Explain that just as the principle of equality before the law was new, superimposed by the American-modeled constitution on a conflicting Japanese tradition of hierarchial social roles and special privileges, the notion of women's rights was also foreign to Japanese experience.

Explain that since World War II and the Allied Occupation, a number of Japanese laws have been enacted with the goal of improving the social, economic, and political status of women, to make them equal with men. In Japan, legal changes regarding the status of women have come first, establishing abstract ideals regarding their equality with men. Most notably, provisions in the "Rights and Duties of the People" of the 1947 Constitution and the Equal Opportunity Employment Act of 1986 guarantee women equal social, political, and economic rights.

Molded by centuries of tradition, attitudes, and practice regarding women in Japan have lagged behind, but have been encouraged by the legal changes. And, while social change had gradually taken place, the process of invoking the constitution to legally demand specific civil rights has just recently begun.

Following a reading activity, students will view and discuss a video to consider the extent to which attitudes and practices regarding women are deviating from tradition and towards the ideals established in the 1947 Constitution.

3. Distribute Handout #1, "The Status of Women in Japanese History," and Handout #2, "Law and the Status of Japanese Women," to all students. Divide the class into four groups, assigning each group to complete the section of the reading corresponding to its number. Each group will complete the chart on value/practice and laws corresponding to its number. Groups may also be asked to draw a picture they think illustrates the social status and legal rights of women during the specific period of Japanese history they studied.
4. Have each group present its picture and explain the status of women during its historical period. Each group should be able to explain the general attitudes and practices regarding women, the relevant laws, and whether these two categories synchronized with each other; that is, did laws correspond with actual attitudes and practices? Students should also be able to explain the philosophical roots, if any, of the status of women during their historical period.
5. Distribute Handout #3, "The Japanese Constitution, 1947," Handout #4, "The Equal Opportunity Employment Law, 1986," and Handout #5, "Reform Provided by 1947 Constitution and Equal Opportunity Employment Law," to all students. For homework, students should complete Handout #5 by identifying the articles in Handout #3 and Handout #4 which sought to legally change each traditional practice regarding women.
6. Review student charts in class.

**REFORM PROVIDED BY 1947 CONSTITUTION**Traditional Practice  
Regarding Women

	Article #	Description
Women's roles confined to those of wife and mother	13, 14, 25; Equal Opportunity Employment Law#	People respected as individuals, no economic, political, or social discrimination by sex; right to minimum standards of living
Women took menial jobs in times of economic necessity	14, 27; Equal Opportunity Employment Law	No discrimination in economic relations; the right and duty to work
Women not allowed to take part in politics	13, 14, 15	People respected as individuals; no discrimination in political relations because of sex; universal adult suffrage
Women's marriage partners chosen by their families, for the good of the family	24	Marriage by mutual consent; equal rights of husband and wife
Women not allowed to inherit or own property	24	Equality of sexes in property rights and inheritance
Women denied education	26	Equal education

Explain that each category of the homework chart can be seen as a continuum of change concerning women in Japan. Illustrate this concept on the chalkboard as shown below.

Women denied public education	Equal education
-------------------------------	-----------------

Women not allowed to inherit property	Equal property and inheritance right
---------------------------------------	--------------------------------------

7. Introduce the video "The Story of Noriko" as a case study in the social and economic changes women in Japan are experiencing today. Explain that Noriko is a young woman who in many ways embraces the ideals of women's rights set forth in the law, but who is also limited by traditional values and practices she cannot reject.

As students watch the video, they should consider each one of the continua illustrated on the board. In the video, students should identify examples of Noriko or other women dealing with the "tug of war" between the traditional status and a constitutionally guaranteed ideal. Have students make note of each example they find.

8. Debrief the video by referring to each continuum on the board and asking for students' examples as seen in the video. For each example identified, ask where students would put that case on the continuum: that is, do the actions represent a closer adherence to tradition or to the spirit of the law?

Some video examples students might cite follow. If students have trouble identifying situations from the video, these examples might be presented to them. Students could then place them on the proper continuum.

- Noriko has attended college and her sister now attends college—reflecting the constitutional ideal of equal educational opportunity for men and women.
- Noriko is searching for a challenging professional job—a goal that embraces the constitutional right to work (Article 27) and the ideal of the Equal Opportunity Employment Act.
- Noriko has a hard time finding any job other than that of an office lady (or O.L.) who performs menial tasks in a corporation—a situation that

reflects the endurance of traditional attitudes and economic opportunities.

- Noriko's parents pressure her to meet a potential husband in a formal omiai (go-between) ceremony; Noriko's parents and the young man's parents are an important part of the omiai ceremony—both of which reflect traditional attitudes and customs concerning marriage as a family union.
  - Noriko consents to the omiai but rejects the young man—a decision that reflects the freedoms granted by Article 24 of the 1947 Constitution.
  - Noriko has a boyfriend that her parents have never met—reflecting the ideal of individual choice of spouse set forth in Article 24 of the Constitution.
  - Noriko's boyfriend in Tokyo thinks that women should not work after marriage—an attitude that reflects centuries-old values about the role of women as wives and mothers—but Noriko wants to work after she is married.
  - Flash is a company owned and operated by women—a fact that reflects the ideals of the Equal Opportunity Employment Act and Constitutional Article 14, equality under the law.
  - Noriko's mentor at Flash has trouble balancing her career and family—a reflection of the tension between traditional values and pressures on women as wives and mothers on one hand, and as professionals taking modern economic opportunities on the other hand.
9. To debrief the activity, ask students to comment on whether they think the status of women has genuinely changed in Japan since World War II. How do advances in Japan compare to those in the United States? How long have women in the United States been working on similar issues? How do the rights guaranteed women in the constitution and in civil law compare in the two countries? How do attitudes and practices compare? Given the time frame of change in the United States and Japan, how would students evaluate the progress that Japanese women have made?
10. To extend the activity, have students conduct library research on developments regarding women's rights in Japan in the past two years. What advances have been made in terms of their social, economic, and political statuses? If available, exchange students, business people, and other Japanese living in the community might be invited to talk on the issue of changing roles of men and women in Japan.

**Additional Reading:**

Wojtan, Linda S., "Women and the Law: The Tug of War Between Law and Custom." in *Update on Law-Related Education*, Fall 1982, pp. 14-16. This article offers valuable insight into the costs and benefits Japanese women perceive in obtaining equal social and economic status with men.



### THE STATUS OF WOMEN IN JAPANESE HISTORY

1. In the course of Japan's history, the status of women has gone through ups and downs. According to Japan's creation myth, the Imperial family is directly descended from Amaterasu, the sun goddess. This myth bestowed on women a high status. From the 2nd through 8th centuries A.D., a number of females ruled Japan. According to Japan expert Edwin Reischauer, "women had great freedom in the Heian period (794-1192 A.D.) and dominated much of the nation's literature during that time."<sup>1</sup>
2. However, a combination of philosophical influence and social and economic factors accounted for changes in the status of women in the 12th and 13th centuries. Confucian philosophy, adopted by the Japanese from China, ranked all people in hierarchial order and relegated women to a position inferior to men. Women's role and status was summed up in the Confucian dictum of "Triple Obedience": in youth, females obey their fathers; in marriage, their husbands; and in old age, their sons.

In Japan's feudal period, which began around 1200 A.D., the samurai warrior came to embody the ideal human being in Japanese society. Accordingly, women became less influential and their freedom was restricted. Women lost previously-enjoyed rights of inheritance and property ownership. The role for women evolved into one of subservience, devotion, and loyalty to their masters.

During later feudal times, the Tokugawa Period (1600-1867), a woman's role was primarily viewed as that of wife and mother. Given the importance of family in Japan and women's prescribed role in the family, marriage was viewed as the union of families rather than of individuals. Women's personal preferences, and in many cases those of men, were totally subjugated to family goals, status, and reputation in identifying suitable marriage partners. While their social and economic rights were significantly curtailed during this period, women did wield significant power within their households.

3. In the period following the Meiji Restoration (1868), Japan industrialized. Women assumed an economic role as they began to take jobs in factories. However, while industrialization made women more visible within the society and economy, they enjoyed little enhancement in status. In fact, legally, their rights were curtailed. In a series of laws enacted in 1890, women were denied membership in political parties and even entrance into the Parliament building. Given their social role as wives and mothers, public

<sup>1</sup>Edwin Reischauer. *The Japanese*. Cambridge: Belknap Press of Harvard University Press, 1981, p. 205.

education was not considered necessary for women. Individual women and groups protested discriminatory Japanese customs and laws in the late 1800s and early 1900s. However, few changes were realized.

The military dictatorship, which came to power in the 1930s, continued to support the Confucian tradition of women as wives and mothers. Women continued to enjoy few economic or political rights, even though they filled important, though menial, positions in agriculture and industry, in addition to their duties at home.

4. Following World War II, the Japanese Constitution and Civil Code were revised under the direction of American Occupation forces. With these revisions, Japanese women gained the right to vote, to obtain equal public education, to attend public universities, to inherit and hold property, and to enter into marriage only by mutual consent. Today their social and political status continues to change, although very gradually.

Most contemporary Japanese women continue to see their roles primarily as those of wives and mothers. However, women enjoy a great deal of freedom, influence, and respect for their family-related roles, generally controlling the family finances and directing the upbringing and education of their children.

Increasingly, Japanese women are seeking employment outside the home, now comprising approximately 40 percent of the Japanese work force. However, according to a 1985 study by Nobuko Hashimoto<sup>2</sup>, Japanese women generally stay in the work force only a few years. Young women enter the economic force following high school or college, but typically stop working by the time they marry or when they have children. Middle-aged women, whose children are grown or in school, also join the work force, often in part-time jobs for just a few years.<sup>3</sup>

In general, most companies expect women to leave employment after a few years. Although women tend to be well-educated, they are most commonly employed in low-level positions offering low pay and little or no chance of advancement. Thus, many women work as store clerks and "office ladies" ("OLs"), whose duties include clerical and secretarial work as well as hostessing. A long-standing system of corporate hiring, called "Dual Track Employment," has effectively closed many professional and career-track jobs to women. However, inroads are beginning to be made.

<sup>2</sup>Nobuko Hashimoto, "Japanese Women in a Male Society," *The Christian Science Monitor*, 10, January 1985, pp. 16-17.

<sup>3</sup>Ibid.

Women are beginning to enter fields that were previously closed to them and to find positions in new industries such as fashion, communication, finance, and banking.

Along with this, in 1985, the Japanese Parliament passed an Equal Opportunity Employment Law, which went into effect in April 1986. The passage of this law was highly controversial because it only urges employers to "make efforts" to treat male and female employees equally with regard to recruitment, engagement, placement, and promotion. It provides no penalties for noncompliance. Over the past five years, some evidence indicates that the law is beginning to have an effect, but it is too early to know whether it will eventually bring about equality in the workplace. Certainly the status of working women in Japan is in a state of change.

### LAW AND THE STATUS OF JAPANESE WOMEN

The chart below is designed to identify and compare laws regarding women with actual attitudes and practices in different periods of Japanese history. Refer to the reading on "The Status of Women in Japanese History" to complete the chart.

Historical Period	Economic, Social, Political Status/Roles	Laws, if any
1. Early history (2nd-12th centuries)		
2. Early and late feudal periods (12th-19th centuries)		
3. Meiji Period and military rule (late 19th-mid- 20th centuries)		
4. Post World War II		

**THE JAPANESE CONSTITUTION, 1947****CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE**

- ARTICLE 10. The conditions necessary for being a Japanese national shall be determined by law.
- ARTICLE 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.
- ARTICLE 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.
- ARTICLE 13. 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.
- ARTICLE 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status, or family origin.
- ARTICLE 15. The people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof. Universal adult suffrage is guaranteed with regard to the election of public officials. In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.
- ARTICLE 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.
- ARTICLE 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.
- ARTICLE 18. No person shall be held in bondage of any kind. Involuntary servitude, except as a punishment for crime, is prohibited.
- ARTICLE 19. Freedom of thought and conscience shall not be violated.

---

*Facts about Japan: The Constitution of Japan.* Toyko: International Society for Educational Information, Inc., n.d.

- ARTICLE 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the States, nor exercise any political authority. No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity.
- ARTICLE 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.
- ARTICLE 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare. Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.
- ARTICLE 23. Academic freedom is guaranteed.
- ARTICLE 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.
- ARTICLE 25. All people shall have the right to maintain the maximum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.
- ARTICLE 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.
- ARTICLE 27. All people shall have the right and the obligation to work. Standards for wages, hours, rest, and other working conditions shall be fixed by law. Children shall not be exploited.
- ARTICLE 28. The right of workers to organize and to bargain and act collectively is guaranteed.
- ARTICLE 29. The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.
- ARTICLE 30. The people shall be liable to taxation as provided by law.
- ARTICLE 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.
- ARTICLE 32. No person shall be denied the right of access to the courts.

- ARTICLE 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.
- ARTICLE 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.
- ARTICLE 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.
- ARTICLE 36. The infliction of any torture by any public officer and cruel punishment are absolutely forbidden.
- ARTICLE 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. At all times, the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.
- ARTICLE 38. No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. No person shall be convicted or punished in cases where the only proof against him is his own confession.
- ARTICLE 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.
- ARTICLE 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.



### EQUAL OPPORTUNITY EMPLOYMENT LAW, 1986

**Table: Main Points of the Equal Employment Opportunity Law**  
Measures to Guarantee Equal Employment Opportunity Law

Job offering/recruitment	Company's duty to make effort	To make the measures effective, the Ministry of Labor is not only to set up the guidelines but also to require that a dispute be mediated, if it occurs, by the equal employment opportunity mediation commission which will be established in the Prefectural Women's and Young Workers' Office.
Assignment/promotion		
Certain prescribed training & education	Prohibition without penal sanctions	
Certain prescribed welfare		
Mandatory retirement age, retirement and discharge		

#### Partial Revision of the Labor Standards Law

Conventional Regulations up to this time	Points of Revision	
Limited to not more than 2 hours/day, 6 hours/week, and 150 hours/year.	Certain specified managers or professionals	Abolish the present regulations.
Work on holiday prohibited.	Manufacturing or equivalent jobs Non-manufacturing or equivalent jobs	Abolish the regulation on overtime for 2 hours/day. Regulate overtime and abolish work on holidays within the limits set by the Ministry of Labor.
Prohibited (excluding nurses, telephone operators, stewardesses, announcers etc.)	Certain specified managers or professionals and short-hour workers who are required to work midnight hours due to the nature of the job.	Abolish the present regulations.
Midnight Work	Others	Remain as before.
Dangerous and Harmful Work	Expectant mothers	Prohibit certain jobs which may cause harm to pregnancy, child delivery and child-rearing.
Maternity Leave	Others	Remain as before.
	10 weeks prior to delivery of twins or more (6 weeks for the others) and 8 weeks after childbirth.	
	Prohibit overtime or midnight work at expectant mothers' request.	
Menstruation Leave	Prohibit employers from using females when they request a leave because they find it difficult to work on the day of menstruation.	
	Prohibit females from working at their request if they feel too ill to work or if their work is too harmful to their menstruation.	

Source: Japan Information Service, Japan Ministry of Foreign Affairs.

**BEST COPY AVAILABLE**



**REFORM PROVIDED BY 1947 CONSTITUTION AND  
EQUAL OPPORTUNITY LAW**

**Traditional Practice  
Regarding Women**

Changed by Article #

Description of New  
Status/Practice

Women's roles confined to those of wife and mother		
Women took menial jobs in times of economic necessity		
Women not allowed to take part in politics		
Women's marriage partners chosen by their families for the good of the family		
Women not allowed to inherit or own property		
Women denied education		

## BIBLIOGRAPHY

### Unit One: Japanese Constitutional History

Lee, T.S.Y. "Japan," in Albert P. Blaustein and Gisbert H. Flanz, eds., *Constitutions of the World*. Dobbs Ferry, NY: Oceana Publications, Inc., 1973.

Maki, John. "The Japanese Constitutional Style," in Dan Henderson, ed., *The Constitution of Japan: It's First Twenty Years, 1947-1967*. Seattle: University of Washington Press, 1968.

Bito, Masahide, and Akio Watanabe. *A Chronological Outline of Japanese History*. Tokyo: International Society for Educational Information, n.d.

### Unit Two: The Meiji Constitution

Hane, Mikiso. *Japan: A Historical Survey*. New York: Charles Scribner's Sons, 1973. See chapters 11 and 12.

Minear, Richard H. *Japanese Tradition and Western Law*. Cambridge: Harvard University Press, 1970.

Wray, Harry, and Hilary Conroy, eds. *Japan Examined: Perspectives on Modern Japanese History*. Honolulu: University of Hawaii Press, 1983. See part IV, "The Meiji Government and Its Critics: What is Best for the Nation?"

### Unit Three: The Showa (MacArthur) Constitution

Benedict, Ruth. *The Chrysanthemum and the Sword*. Boston: Houghton Mifflin Co., 1946. See chapter 13, "The Japanese Since V-J Day."

*Facts about Japan: The Constitution of Japan*. Tokyo: International Society for Education Information, Inc., n.d.

Holland, Kenneth. "We the Japanese People . . ." in *Constitution*. Spring 1989, pp. 41-46.

Inoue, Kyoko. *MacArthur's Japanese Constitution: A Linguistic and Cultural Study of Its Making*. Chicago: University of Chicago Press, 1990.

Itoh, Hiroshi, and Lawrence Ward Beer. *The Constitutional Case Law of Japan. Selected Supreme Court Decisions, 1961-70*. Seattle: University of Washington Press, 1978.

Maki, John M. *Court and Constitution in Japan. Selected Supreme Court Decisions, 1948-1960*. Seattle: University of Washington Press, 1964.

Wray, Larry, and Hilary Conroy, eds. *Japan Examined*. Honolulu: University of Hawaii Press, 1983. See part XI, "The Allied Occupation. How Significant Was It?"

#### **Unit Four: Contemporary Japan**

Bingham, Marjorie Wall, and Susan Hill Gross. *Women in Japan from Ancient Times to the Present*. St Louis Park, MN: Glenhurst, 1987. See especially, "The Dual Track Employment System," pp. 277-282.

*Facts about Japan: Government*. Tokyo: The International Society for Education Information, n.d.

*Facts about Japan: The Imperial Family*. The International Society for Education Information, n.d.

ISBN: 0-941339-17-3