

Local Autonomy and Japanese Constitution - David and Goliath

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- I . Introduction
- II . Local Autonomy of Local Government in Japan
 - A. Local Government under the previous Constitution
- III. Several Examples that may Change the Relationship between Central and Local Governments
 - A. Partnership ordinance
 - B. Outing ordinance
 - C. Hate speech ordinance
 - D. Local elections and foreigners
 - E. Climate change and the Tokyo metropolitan area
- IV. The Current Constitution and the autonomy of local government
 - A. Authority of Central Government and Financial Power
 - B. Revision of current provisions
 - C. Local autonomy without constitutional amendments
- V . Conclusion

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This is paper for panel on the Future of Federalism & Decentralization in the Era of Glocalization in the 10th World Congress of Constitutional Law-Violent Conflicts, Peace-Building and Constitutional Law-, 2018 SEOUL 18-22 June 2018.

This paper is modified after the conference. I hugely appreciate helpful comments from President Rhee Ik-Hyeon, Director Lee Sangyoon, Prof. Chung Nam-Chul, and Senior Officer Choi You.

Abstract

This paper argues for local government autonomy under the Japanese Constitution. Currently, the Japanese Diet (parliament) is discussing the possibility of amending the Constitution. Unlike the Constitution of South Korea, the Japanese Constitution has not been amended since its establishment in 1947.¹ In Japan, political scandal has prevented active discussion in the Diet on constitutional amendments. It is not clear that parliament will propose bills to the people for ratification of constitutional amendments in 2018. In the meantime, some Japanese local governments are more active in responding to their citizens, while central government decision making is slow. Several examples exist of local governments encouraging central government decision making while parliamentary decision making was paralyzed. Local governments are sometimes able to pass local ordinances that are more advanced than the national legislation from the Diet.

In Japan, the phrase “principle of local autonomy”² in the current Constitution is already subject to interpretation by inferior statutes, such as the Local Autonomy Act.³ Japanese constitutional scholars have not focused on the terms of the Constitution outside of the context of the Local Autonomy Act.

This paper concludes that the autonomy of local governments is weak because they are largely dependent on the financial resources of the central government. The struggle between the two resembles the battle between David and Goliath. In order for David to stand up to Goliath, financial autonomy should be included in a bill amending the Constitution.

Lastly, this paper does not support the current administration’s bills to amend the Constitution but brings the constitutional discussion to the attention of the people. Ordinary people focus on their daily lives, not on the mid and long-term goals of the country, which amendments to the Japanese Constitution aim to achieve.

Keywords: local government, financial problem , autonomy, Japan, constitution, institutional protection, local ordinance, amendment of constitution.

Manuscript received: 08. 14, 2018; review completed: 09.15, 2018; accepted: 11.15, 2018

1) Yuichiro Tsuji, *Constitutional Law Court in Japan*, 66 TSUKUBA J.L. & POL. 65 (2017).

2) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 92 (Japan).

3) Chiho jichi hō [Local Autonomy Act], Law No. 67 of 1947 (Japan).

I. Introduction

Chapter II outlines the principles of local government provided in the current Constitution and compares it with the previous constitution, the Constitution of the Empire of Japan. The current Japanese Constitution made progress on the previous one by providing a new section on local government. Japanese constitutional scholars have established theories to explain what the autonomy of local government involves. There is an established theory of local government in Japanese constitutional studies today.

Chapter III examines why it is that local government initiatives have to challenge national government in this David-against-Goliath struggle even though the Constitution has provided a principle of autonomy. It is unclear that David will win in Japan. Nonetheless, local governments have the power to pass ordinances, and these ordinances are more advanced than the legislation provided by the national legislature.

Chapter IV considers whether public discussion on amending the Constitutional provisions for local government is less active than discussion on the amendment of other provisions, such as Article 9.⁴ Matters relating to local autonomy should receive more attention in discussions of the Constitution.

II. Local Autonomy of Local Government in Japan

The Constitution of the Republic of Korea states⁵ that the Republic of Korea is a democratic republic, that the sovereignty of the Republic resides in the people, and that all state authority emanates from the people. Article 117⁶ permits local governments to deal with administrative matters pertaining to the welfare of local residents, manage properties, and potentially enact provisions relating to local autonomy, within the limits of Acts and subordinate statutes. Article 118⁷ deals with the organization and powers of local councils and the election of members; election procedures for heads of local government; and

4) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 9 (Japan); Yuichiro Tsuji, *Amendment of the Japanese Constitution: A Comparative Law Approach*, 37 *NANZAN REV. AM. STUD.* 51, 60 (2015).

5) DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 1(2) (S. Kor.).

6) *Id.* art.117.

7) *Id.* art.118.

other matters pertaining to the organization and operation of local government that are to be determined by Acts. Under the Constitution of the Republic of Korea, central government has strong power over local government. The contents and powers of local government are subject to the national legislature.⁸

These provisions are very similar to Chapter 8 in the Japanese Constitution.⁹ Academic theories around Chapter 8 of the Japanese Constitution may be helpful in understanding how Japanese scholars have established the maintenance of autonomy of local government. Under the previous Constitution, the Meiji Constitution,¹⁰ central government had strong power over local government that possibly resembled that in the Constitution of Republic of Korea.

A. Local Government under the previous Constitution

When analyzing the autonomy of local governments under the current Japanese Constitution, it is helpful to review the relevant provisions in the previous Constitution. The previous Constitution, the Meiji Constitution,¹¹ was the Constitution of the Empire of Japan. Under the Meiji Constitution, sovereignty resided with the Emperor, not with the people.¹² Human rights were not natural rights, but given by the Emperor, and the parliament was able to restrict them with statutes.¹³ Unlike Chapter 8¹⁴ of the current Constitution, there was no chapter or provision for the autonomy of local governments in the Meiji Constitution. The structures of local government were instead regulated by statutes. After the Edo era, during the Samurai period, the Meiji government abolished *daimyo*, the feudal lords, and their feudal domains and established prefectures. The Meiji government at first appointed the prior feudal lords to serve as the governors of the prefectures. Then, new governors were sent from the central government in Tokyo.

Under the current Constitution, Chapter 8, Articles 92 to 95¹⁵ regulate the autonomy of local governments. The inclusion of these provisions may have been a big advance on the previous Constitution, but in practice it has not changed much.

8) *Id.* Chapter III.

9) NĪHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], Chapter VIII (Japan).

10) DAI NĪHON TEIKOKU KENPŌ [MEIJI KENPŌ] [CONSTITUTION], art. 1 (Japan).

11) *Id.*

12) *Id.* art. 4.

13) *Id.* arts. 27, 28.

14) NĪHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], arts. 92-95 (Japan).

15) *Id.*

The constitutional history of Japan has shown that the structure of local government was mainly regulated not by constitutional provisions but by statutes. The Local Government Act was established, along with the current Constitution, in 1947.¹⁶ Article 92¹⁷ of the current Constitution provides only the “principle of local autonomy,” and regulations concerning the organization and operations of local public entities are fixed by law. The meaning of the “principle of local autonomy” is subject to interpretation, and there are three conventional theories that provide such accounts.

The first theory explains that local government has inherited inviolable fundamental powers, like central government. It asserts that local government may have sovereignty like central government does.¹⁸

The second claims that local government exists as long as the central government consents. According to this theory, parliament may abolish the autonomy of local government by statute. This theory has not been supported by scholars.¹⁹

The third theory, called institutional protection, states that the Constitution guarantees the institution of local government, and the core autonomy of local government is not violable by statute.²⁰ Japanese scholars have supported this last theory for a long time. However, recently, German constitutional scholar Kenji Ishikawa²¹ of Tokyo University has criticized it, arguing that it is impractical to define the core of an “institution” in detail, which implies that parliament was given the unlimited discretion to control and restrict the scope of the periphery.

These three interpretations illustrate the difficulty in reviewing statutes to ensure that they are compatible with the constitutional principle of the autonomy of local government. The constitutional law textbook *Kenpo*, written by Nobuyoshi Ashibe,²² explains that Chapter 8 of the Constitution cites two principles: local residence self-governance and local government autonomy. Local residence self-governance means that the local government will be managed by local residents and requires their participation. Local government

16) Chiho jichi hō [Local Autonomy Act], Law No. 67 of 1947 (Japan).

17) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 92 (Japan).

18) TOSHIHIKO NONAKA ET AL., KENPŌ II [CONSTITUTION II] 363-65 (2012).

19) *Id.* at 364.

20) *Id.* at 365.

21) ISHIKAWA KENJI, JIYU TO TOKKEN NO KYORI [THE DISTANCE BETWEEN LIBERTY AND PRIVILEGE] 229-39 (2007).

22) NOBUYOSHI ASHIBE, KENPŌ [CONSTITUTION] 367 (6th ed. 2015).

autonomy means that the local government may conduct its business independently, without central government interference.

This textbook's general explanation cannot explain why it is difficult to overturn central government decisions in the name of the principle of autonomy of local government even though they violate local residence self-governance and local government autonomy. Nowadays, the first theory is used to explain that the inherent power of local governments includes the power to pass local ordinances and have independent financial resources.²³

III. Several Examples that may Change the Relationship between Central and Local Governments

Chapter 3 of the Japanese Constitution provides a list of fundamental rights and regulations for families and speech to be regulated by the national legislature.²⁴ This section presents several examples that illustrate how local governments may propose more advanced ordinances and policies than the central government. It is not a deep legal analysis, and a thorough analysis may be needed to take a serious look at one specific issue, but it still may be helpful in understanding the real relationship between national and local governments in Japanese society. Local government may hit central government by local ordinances, as David did Goliath with a stone.

In general, the Constitution has invested the legislature with law-making power. This law-making power may not function well in some cases to protect human rights. If central government decision making is not effective in protecting human rights, local governments may be able to respond better to the needs of their residents. This may change the relationship between local and central governments and the consciousness of residents, one aspect of democracy. In Japan, the Liberal Democratic Party (LDP) has been the ruling party since 2012, and its position is very conservative on issues such as same-sex marriage, hate-speech regulation, and voting rights for foreigners.²⁵

23) NONAKA, *supra* note 18, at 365 (*arguing* that difference between the first and the third is not clear).

24) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 12, 13, 22, 29, Chapter III (Japan); *see also* TOSHIHIKO NONAKA ET AL., KENPŌ I [CONSTITUTION I] 256-61 (2012).

25) *Gaikokujin Sanseiken Fuyo Houan Danko Hantai Shimasu [LDP Is Strongly Against Voting Rights for Foreigners]*, LIB DEMS (Feb. 5, 2012), <https://www.jimin.jp/news/policy/recapture/130379.html>.

Section 1 below shows that that LDP is unwilling to allow same-sex marriage, but some local governments are positive toward it. Sections 2, 3, and 4 show shocking cases in which small cities may encourage local inhabitants to have a sense of their human rights, such as privacy, freedom of expression, and voting rights. For example, a hate-speech case in the Supreme Court cited the International Convention on the Elimination of All Forms of Racial Discrimination when the Supreme Court was unable to find a good resource in statutes. One politician contributed an article to argue that Lesbian, Gay, Bisexual, and Transgendered (LGBT) people are unproductive.²⁶ Some of these cases may be related to Korean law.²⁷

Another case showed that the national government has the power to negotiate international relationships, but that local government may advance policy further.

A. Partnership ordinance

The majority of the LDP is in favor of conventional ideas of the family even though the social and economic context underlying the Partnership Ordinance has been changing dramatically.²⁸

In 1995, the Japanese Supreme Court²⁹ sustained the constitutionality of Article 750 of the Civil Code, which requires that a husband and wife adopt the surname of the husband or wife in accordance with what is decided at the time of marriage. The Court rejected the argument that social pressure and discrimination to change the family name to that of the husband's family name infringed upon women's equal protection rights under Article 14³⁰ of the Constitution.

26) Bani Sapra, *Japanese Politician under Fire for Calling LGBT Community 'Unproductive'*, CNN, <https://edition.cnn.com/2018/07/25/asia/japanese-politician-criticism-intl/index.html> (last updated July 26, 2018).

27) Gongjikkeongeobeop [Public Official Election Act], Act No.10303, Mar. 17, 2010, art.15(2) (iii) (S. Kor.).

28) Yuki Nikaido, *Same-sex Partners Invited for First Time to Ministry Event*, THE ASAHI SHIMBUN (Dec. 28, 2017, 3:40 PM), <http://www.asahi.com/ajw/articles/AJ201712280041.html>.

29) Saikō Saibansho [Sup. Ct.] Dec. 16, 1995, Hei 3 (ku) no. 143, 49(7) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 1789, <http://www.courts.go.jp> (Japan).

30) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 14 (Japan).

The Court noted that the right not to be forced to change one's family name is a personal right and a symbol of one's personality, and it was inappropriate to argue constitutionally that being forced to change one's family name upon marriage infringed upon the personal rights set forth in the Constitution.³¹

Members keeping the same surname would belong to the same family, reflecting a fundamental component of society. The Court accepted that there are some societal disadvantages to women who are forced to change their family names, but the Court noted that, generally, married women use their previous family name as their commonly used name. The Court concluded that Article 750 did not infringe on Article 24 of the Constitution.

The Court elaborated that its decision did not deny the reasonableness of a right for married couples to use separate surnames. The 2015 decision served as a signal from the judiciary to the Diet to amend Article 750 of the Civil Code, but some conservative members resisted the Court's note for a long time after this 2015 decision.³²

Some members of the LDP have criticized the 2015 decision for being too generous and maintain their adherence to their conventional ideas of family.³³ There is no provision for marriage between members of the same sex in the Civil Code,³⁴ and members of the LDP believe that same-sex marriage infringes on Article 24³⁵ of the Constitution, which provides that marriage shall be based only on "the mutual consent of both sexes" and shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.³⁶ As there is little hope of a constitutional amendment to allow same-sex marriage anytime soon, it may be possible to interpret the term "mutual consent of both sexes" as consent between same-sex partners.

If parliament does not amend the Partnership Ordinance, local governments may propose ordinances to change the meaning of the law. Several local governments have established more progressive ordinances than the national statutes. For example, Shibuya Ward in the Tokyo metropolitan area, a place

31) Yuichiro Tsuji, *Decisions That Declared Laws Unconstitutional and Their Impact on Japanese Families*, 24 ILSAJ. INT'L & COMP. L. 139, 164 (2018).

32) *Id.* at 166.

33) Editorial, *LDP's Questionable LGBT Policy*, THE JAPAN TIMES (May 21, 2016), <https://www.japantimes.co.jp/opinion/2016/05/21/editorials/ldps-questionable-lgbt-policy/#.WuLAKIh1zic>.

34) MINPŌ [CIV. C.] art. 731-54 (Japan).

35) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 24 (Japan).

36) Editorial, *supra* note 33.

where creative people gather close to the Diet, has passed an ordinance that aims to promote gender equality and diversity, and to respect sexual minorities. In 2015, Shibuya Ward provided partnership certificates to same-sex couples that are substantially the same as those for marriage between different-sex couples. It is difficult for same-sex couples to rent rooms in 23 wards of Tokyo. Since ordinances may not conflict with provisions for guardianship³⁷ under the Act on Voluntary Guardianship Contract, Shibuya Ward's partnership certificate still requires both parties to designate mutual voluntary guardianship; nonetheless, it is expected to attract people to Shibuya Ward.

This experimental ordinance inspired other local governments. Setagaya Ward, Naha City, in Okinawa Prefecture, Iga City in Mie Prefecture, Takaraduka City in Hyogo Prefecture, and Sapporo City in Hokkaido also established similar ordinances.³⁸ Nonetheless, the big problem is that local government lacks the legal resources of the Diet to draft ordinances, unlike the national legislature.

B. Outing ordinance

One case illustrates the strong social resistance to LGBT people in Japan. In 2015, in Kunitachi City, Tokyo, a top law school student committed suicide by jumping from the campus tower. The student was gay and had recently confessed his love to a student in his class. The other student did not return his feelings and said that he would like to be good friends. Later, the same student posted a message on a social network service called LINE, writing, "I cannot hide that you are gay any longer, sorry."³⁹

The gay student replied that it was a kind of joke and that the post might be an infringement of privacy, as they learned in law school. After reading the message, the gay student began to have panic attacks and anxiety. The university noticed this incident but did not take any action. In 2016, the victim's family brought an action to seek damages from the university.

37) *Nini koken keiyaku ni kansuru houritsu* [Act on Voluntary Guardianship Contract], Law No. 150 of 1999, art. 2(3) (Japan).

38) *Sapporo Si Dosei Pa-tona-wo Sensei Sho De Kounin* [Sapporo City Certificate to Same Sex Couple], THE NIKKEI SHINBUM (June 1, 2017), https://www.nikkei.com/article/DGXLA SDG01H1H_R00C17A6CR0000/.

39) The Asahi Shinbum, *Seiteki Sikou No Auteingu To Kinshi* [Prohibition of Sexual Preference "Outing"], HUFFPOST (April 2, 2018), https://www.huffingtonpost.jp/2018/04/02/outing-regulation_a_23400707/.

In 2017, Kunitachi City (where Hitotsubashi University is located), passed an ordinance to promote gender equality and equal participation by diverse sexualities. Its ordinance prohibits outing by a third party and sexual discrimination, declaring that publicly confessing one's sexual preference is a protected individual right.⁴⁰ Since families in Japan may object to a person who wants to confess his preferences in public, the ordinance states that families may not prevent a person from stating his or her sexual preferences publicly, although the ordinance provides no legal sanction. However, the city established a local office to receive claims. This office will gain experience hearing discrimination claims and establish better remedies to prevent tragedies from happening.

C. Hate speech ordinance

In late 2014, the Japanese Supreme Court⁴¹ held a group civilly liable for hate speech. The hate speech group in this case was called Zaitokukai, meaning the Citizens Group That Will Not Forgive Special Privileges for Korea. According to the inferior court,⁴² eight members of this group gathered in front of Kyoto Korean School and screamed repeatedly via a loudspeaker that Korean people are cockroaches and scum and should go back to Korea. This speech was recorded and uploaded onto the Internet. The Court upheld the inferior court's decision banning the group's propaganda activities within 200 meters of the school and imposing tort damages. In 2013, the Kyoto District Court held that the group's propaganda constituted racial discrimination prohibited under the International Convention on the Elimination of All Forms of Racial Discrimination, of which Japan is a signatory. The Kyoto District Court⁴³ noted that this group committed serious illegal actions regulated by Article 4 of this treaty.

The Osaka High Court also sustained the decision and explained that the group's statement aimed at inciting racial consciousness and did not serve the public interest, which is one of three requirements for immunity from defamation: public purpose, public interest, and truth of statement. In 2009, these group members were also arrested and found guilty of a criminal offense.⁴⁴

40) *Id.*

41) Saikō Saibansho [Sup. Ct.] Dec. 9, 2014, Hei 26 (o) no. 1539 (Japan).

42) Osaka Kotō Saibansho [Osaka High Ct.] July 8, 2014, Hei 25 (ne) no. 3235, 2232 HANREI JIHŌ 34 (Japan).

43) Kyoto Chihō Saibansho [Kyoto Dist. Ct.] Oct. 7, 2013, Hei 22 (wa) no. 2655, SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB], <http://www.courts.go.jp> (Japan).

44) *Osaka Court Upholds Ruling Banning Anti-Korean Hate Speech Outside School*, JAPAN TODAY (July 9, 2014), <https://japantoday.com/category/national/osaka-high-court-upholds-ruling-banning-anti-korean-hate-speech-outside-school>.

This case was a major challenge to free speech scholars of Japanese constitutional law because the group argued that they are an excluded minority in society and enjoy the right to free speech. In constitutional law classes, we teach that minorities should be provided the utmost protection for free speech.⁴⁵ The constitutional text explains that in the dissenting opinion of Justice Holmes in *Abrams v. United States*,⁴⁶ increased speech in a market of free ideas makes it more difficult to provide legal sanction through defamation suits against statements against a group rather than a person. Japanese discrimination law regulates speech targeting an individual, and under the dissenting opinion, we will determine the truth through increased speech.⁴⁷

In 2016, the Diet passed a statute regulating hate speech.⁴⁸ This statute encourages central and local governments to educate citizens about racial discrimination but provides no legal sanction or financial resources to achieve its goal. Thus, it is not very effective but does encourage local governments to prevent racial discrimination.

Osaka City passed a more advanced ordinance to regulate hate speech.⁴⁹ Under Osaka City's 2016 ordinance, a special review board identifies hate speech from complaints received from victims and releases hate speech groups' names on a website.

Article 21⁵⁰ of the Japanese Constitution protects free speech, aiming to reduce hate speech because the imposition of criminal sanctions on hate speech may be held unconstitutional in the courts as censorship. Thus, Osaka City invented an indirect regulation for hate speech. However, board members find it very difficult to determine the identity of anonymous speakers on the Internet. Internet service providers rejected requests from Osaka City to reveal users' identities because telecommunications service providers have a duty to maintain confidentiality under the Telecommunications Business Act.⁵¹ The Internet Service Provider Act was established to lift this responsibility in cases in which

45) TORU MORI, *HYOGEN NO JIYU [FREEDOM OF EXPRESSION]* (2008).

46) *Abrams v. United States*, 250 U.S. 616 (1919) (Holmes, J., dissenting).

47) NONAKA, *supra* note 24, at 352-56.

48) *Honpō gai shushinsha ni taisuru futouna sabetu teki gendo no kaishou ni muketa torikumino suisin ni kansuru hō [Hate Speech Act]*, Law No. 68 of 2016 (Japan).

49) *Osaka Si Heito Spi-chi Heno Taisho Ni Kansuru Jourei No Unyou Nitsuite [The Management of the Hate Speech Ordinance]*, OSAKA CITY, <http://www.city.osaka.lg.jp/shimin/page/0000339043.html> (last visited April 20, 2018).

50) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 21 (Japan).

51) *Denki tsushin jigyo hō [Telecommunications Business Act]*, Law No. 86 of 1984, art. 4 (Japan).

a sender has clearly engaged in illegal activity, such as defamation and privacy infringement. Osaka City faces challenges in getting its ordinance to apply under the Internet Service Provider Act's exception, illustrating the limitations of local ordinances.

Kawasaki City in Kanagawa Prefecture established a board to review the city's granting of permission to use the city center. The city government has the power to grant applications to use the city hall and center. The city may reject applications to use these premises on the basis that the use would conflict with the interests of another group.⁵²

In 1995, the Japanese Supreme Court⁵³ upheld refusal of permission to use the city hall under the city ordinance by the Anti-Kansai international airport organization. In this case, an international airport was being built, and opponents protested against the airport so strongly that the city feared that conflict between supporters and opponents might lead to serious damages. The Court explained that the city could reject an application if it was necessary to avoid danger to the public welfare, to prevent serious harm to people, and to avert damage to body and property so long as such imminent danger was established on the basis of objective facts.

This decision was helpful, but local government still needs to advise on how cities apply this decision in practice. Thus, Kawasaki City⁵⁴ established an advisory board to review city decisions to grant permission and to draft an advisory opinion for the city. The city receives and reaches conclusion on permission.

D. Local elections and foreigners

In 1990, one permanent resident from Korea complained to the election administration commission that it should register him as a voter in local government elections.⁵⁵ Article 15 of the Constitution states, "The people have

52) Tokutei denki tsushin ekimu teikyousha no songaibaishosekinin no seigen oyobi hassinsha jouhou no kaiji nikansuru hō [Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of Senders], Law No. 137 of 2001(Japan).

53) Saikō Saibansho [Sup. Ct.] Mar. 7, 1995, Hei 1 (o) no. 762, 49(3) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 687, <http://www.courts.go.jp> (Japan).

54) *Heito Kisei Handan No Kousei Sei Tanpo [Keeping Fairness to Regulate Hate]*, KANAGAWA SHIMBUN (April 2, 2018), <http://www.kanaloco.jp/article/321526>.

55) Saikō Saibansho [Sup. Ct.] Mar. 7, 1995, Hei 1 (o) no. 762, 49(3) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 687, <http://www.courts.go.jp> (Japan).

the inalienable right to choose their public officials and to dismiss them.” Article 93(2) states that “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.”

It is unclear if the term “people” in Article 15 includes permanent foreign residents or whether the term “direct popular vote” includes foreign people.

The Japanese Supreme Court⁵⁶ declared that sovereignty resides with Japanese citizens exclusively and that the human rights proscribed in Chapter 3 guarantees apply to all people, including those who are not citizens. The Japanese Constitution did not follow the U.S. federal system, and the Court agreed that “[t]he 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,” as stated in Article 93(2) in Chapter 8, explaining that local government is indispensable in the Constitution. The Court noted that the term “popular,” as referred to in Article 93(2), includes Japanese citizens only.

The Court further noted that the provisions in Chapter 8 are interpreted to mean that public local service should be managed by local inhabitants, given the importance of local government in democracy. The Constitution does not prohibit the legislature from restricting the participation of permanently residing foreign people. As discussed above, the Court encouraged the legislature to amend the Constitution to add detail to the structure of local government autonomy here. Thus, it is a legislative policy decision to amend the Public Official Act to register permanent foreign residents as voters.

E. Climate change and the Tokyo metropolitan area

The Tokyo metropolitan area was established during World War II to conduct the business of the city and prefecture of Tokyo. The Tokyo metropolitan government has more power than other prefectures. Foreign states take note of its advanced adaptation plan.

In 2011, the Great East Japan Earthquake occurred, and the Noda administration announced that the national energy power plan would be reviewed. In 2014, the

56) *Id.*

LDP announced the reactivation of nuclear power plants after gaining power in December 2012.⁵⁷

The power to draft fundamental energy power legislation belongs to the national government, but local governments may propose their own adaptation plans for changes caused by climate change. Since 2008, the Tokyo metropolitan government has proposed a basic environmental plan.⁵⁸ It proposed a cap-and-trade system in 2010 to force large businesses to reduce greenhouse gas emissions. The metropolitan government said it was the first cap-and-trade system to oblige not only factories and industrial facilities to reduce greenhouse gases but also white collar businesses.

The metropolitan government released guidelines for buildings to promote greening.⁵⁹ It detailed several types of greening walls for buildings. These measures may serve as best practice and could lead negotiations to conclude agreements with other national governments or provinces.⁶⁰

IV. The Current Constitution and the autonomy of local government

The Constitution of the Republic of Korea has two provisions for local government. The Park Chung Hee military coup of 1961 suspended local autonomy. In 1987, the Local Autonomy Act was amended to establish the autonomy of local government. The contents of local government were left to the Local Government Act in Korea. In the 1980s and early 1990s, middle-class Koreans demanded under the local autonomy system a direct presidential election by popular vote. The Korean legislature has expanded the scope of autonomy of local government and is considering whether revision of the

57) *Basic Energy Plan*, AGENCY FOR NAT. RESOURCES AND ENERGY (April 2014), http://www.enecho.meti.go.jp/category/others/basic_plan/pdf/140411.pdf.

58) Bureau of Env't, Tokyo Metro. Gov't, *Tokyo Environmental Master Plan (March 2016)*, BUREAU ENVIRONMENT, http://www.kankyo.metro.tokyo.jp/en/about_us/videos_documents/master_plan.html (last updated Feb. 9, 2018).

59) Bureau of Env't Tokyo Metro. Gov't, *Guideline for Greening*, http://www.kankyo.metro.tokyo.jp/nature/green/plan_system/guide.html (last updated Apr. 12, 2018).

60) Bureau of Env't Tokyo Metro. Gov't, *Tokyo Cap-and-Trade Program: Japan's First Mandatory Emissions Trading Scheme*, BUREAU ENVIRONMENT (March 2010), http://www.kankyo.metro.tokyo.jp/en/climate/cap_and_trade/index.files/Tokyo-cap_and_trade_program-march_2010_T.pdf.

Constitution of the Republic of Korea is needed.⁶¹ Residents have the right to elect members of local councils and the heads of local government.⁶²

In Japan, since 2012, the Abe administration has actively pursued an amendment to the Constitution.⁶³ The Commission on the Constitution of the House of Representatives reviews proposed amendments to the Constitution. One of the main goals of the LDP is to revise Article 9 of the Japanese Constitution. The motivation to revise the Constitution is different from that in the Republic of Korea, and it is also impossible to predict the political atmosphere, even in the near future. However, it is still possible to identify problems under the current Constitution before the amendment bill is seriously debated.

A. Authority of Central Government and Financial Power

There are a few provisions regarding the autonomy of local government in the Constitution, and the national legislature has great power to determine the details of the powers of local government via statutes; it may hollow out the local government autonomy clearly provided in the Constitution.

A constitutional amendment should consider whether the central government should continue to wield strong power over local government, and how central government can discipline local governments. In addition, the new Constitution should provide more details on local government autonomy. No matter what is concluded, an amendment would encourage people's deliberation,⁶⁴ which may change the relationship between the central and local governments. The relationship between central and local governments is disciplined not only by parliament but also the judiciary, which also takes on the roles of the constitutional order through its decisions.

One of the most serious problems is the financial resources of local governments. For example, the Japanese Supreme Court⁶⁵ held that it was constitutional for city and municipality police systems to merge into a prefectural police force.

61) JINWOOK CHOI ET AL., LOCAL GOVERNMENT AND PUBLIC ADMINISTRATION IN KOREA, 23-24 (2012).

62) Jibangjacheop [Local Autonomy Act], Act No. 10827, July 14, 2011, art. 13 (S. Kor.).

63) Tsuji, *supra* note 4, at 51, 55-56.

64) *Chito Jichi Jujitsu, Kaiken Ni Sanpi [For and Against Constitutional Amendment]*, MIYANICHI SHIMBUN (April 20, 2017), <https://mainichi.jp/articles/20170421/k00/00m/010/162000c>.

65) Saikō Saibansho [Sup. Ct.] Mar. 7, 1962, Showa 31 (o) no. 61, 16(3) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 445, <http://www.courts.go.jp> (Japan).

The Court did not explain the implications for the autonomy of local government in detail. However, the judiciary did admit that it was uncertain what Article 92⁶⁶ and 94⁶⁷ meant regarding the power of local governments to tax. Similarly, an inferior court explained that the autonomy of local governments was institutional and that it was uncertain about defining what was appropriate in terms of the autonomy of local governments.

In 2017, the national annual revenue was 680 billion yen, consisting of 60 percent national tax and 40 percent local government tax.⁶⁸ A Japanese high school textbook explains that local governments have only 30 percent of autonomy because they depend on financial support from the central government. In return, the central government assigns some of the work of the national government to local government by shifting national jurisdiction to local jurisdiction, such as the issuance of passports, the granting of licenses to open restaurants, the management of national roads, family registration services, waste disposal, and public assistance. This is called agency-assigned work.

In 2000, the decentralization reforms abolished agency-assigned work. This was work that national government changed from national jurisdiction to the jurisdiction of local government by statute or ministerial order. Family registration, residential registration, statistical surveys, and management of rivers are included. In the previous system, local government was under the command and control of national government.

In 2000, the Local Government Act⁶⁹ was revised to add a statutorily entrusted function (*Hotei jutaku jimū*) that an originally national government function was changed into a local government one. Under the new system, national and local governments were independent and equal, and required to function together. Other than the statutorily entrusted work of all functions of local government, the remaining function (*Jichi Jimū*)⁷⁰ was clarified as original work for local governments and are called the general affairs of autonomous local governments. Under the new system, half of the assigned work was shifted onto local government.

66) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 92 (Japan).

67) *Id.* art. 94.

68) MINISTRY OF INTERNAL AFFAIRS & COMMC'N, CHIHO ZAISEI HAKUSHO [REPORT OF LOCAL FINANCE] (29th ed. 2018); *See also*, MINISTRY OF FIN., SHOUHI ZEICHU NO KUNI CHIHO NO HAIBUN TO SHITO [USE AND ALLOCATION OF CONSUMPTION TAX] (2018).

69) Chiho jichi hō [Local Autonomy Act], Law No. 67 of 1947, art. 2 (Japan).

70) *Id.*

The 2000 reform has not achieved its aim of drastically changing the relationship between national and local governments. Central government still has strong financial power, like a Goliath. Although Section 2 discussed the challenge of local government to central government, the (financial) power balance resembles that of David and Goliath.⁷¹

The core of the autonomy of local governments lies in their financial power. It is possible to make an amendment to the Constitution to provide details on the financial resources of local governments. Then, local governments might have the power to tax, and the roles of local and national governments can be delineated.

Japanese administrative power is provided in Article 65,⁷² but it is not clearly defined. A book on constitutional law explains that administrative power is not legislative and not judicial.⁷³ Discussion of the financial resources of local government may lead to a clearer definition of administrative power, such as its roles in national defense, the economy, and social welfare. Deliberation on a constitutional amendment to promote local government could help to enable them to provide public goods to their jurisdictions. As discussed above, it is practical to allow the Tokyo metropolitan government to sign its own treaty with other states or provinces in foreign nations.

Even the assumption that national defense powers remain with the national governmental administrative power would raise a question about what local government's function is. For example, the ninth circuit of the U.S. federal court upheld an injunction to prevent the construction of the U.S. base in Okinawa. The court explained that its construction would endanger the life of the dugong, a sea pig, in this region.⁷⁴ This case was brought by local inhabitants who were disappointed with the Japanese national government's foreign policy.

B. Revision of current provisions

It is unclear whether today's constitutional amendment would lead to the autonomy of local government, but it is helpful to review the existing obstacles

71) The relationship between central and local government is similar to Korea. See Chong-Min Park, *Developing Local Democracy in South Korea: Challenges and Prospects*, INT'L POL. SCI. ASS'N 17, http://paperroom.ipso.org/papers/paper_5230.pdf (last visited Oct. 26, 2018).

72) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 65 (Japan).

73) ASHIBE, *supra* note 22, at 322-23.

74) National Historic Preservation Act, 16 U.S.C. §§ 470a-4025 (1992).

in Articles 93 to 95 of Chapter 8. This review will also illustrate several social problems in Japan.

1. Article 93

Article 93⁷⁵ requires local government to establish assemblies as their deliberative organs and the election of chief executive officers of all local public entities, members of assemblies, and other such local officials by direct popular vote within their several communities. The governor and members of parliament are chosen independently, according to the presidential system. The Local Government Act⁷⁶ provides for town and village general assemblies in which all voters can attend. One village headman, Kazuhito Wada, decided to establish a village general assembly.⁷⁷ The Local Government Act⁷⁸ requires attendance of more than half of the villagers to hold a village national assembly. The workshop of the Ministry of Internal Affairs and Communications⁷⁹ concluded that it was difficult for his village to establish a village assembly under this requirement. The village headman argued that the national government ignored the actual context of local governments who face depopulation and asserted that only a few people want to run for election because of the conflict of interests they have from their primary occupations.

2. Article 94

Article 94⁸⁰ provides that local public entities shall have the right to manage their property, affairs, and administration and to enact their own regulations within the law. The local parliament may pass local ordinances with sanctions because they are passed by members chosen by vote, but the Japanese Supreme Court⁸¹ explained that lawmaking power should be designated in concrete and

75) NIHOKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 93 (Japan).

76) Chiho jichi hō [Local Autonomy Act], Law No. 67 of 1947, art. 94-95 (Japan).

77) Editorial, *Chiho Gikai Kaikaku [Reform of Local Parliament]*, TOKUSHIMA SHIMBUN (April 8, 2018), <http://www.topics.or.jp/articles/-/32116>.

78) Chiho jichi hō [Local Autonomy Act], Law No. 67 of 1947, art. 94-95 (Japan).

79) Ministry of Internal Affairs & Commc'ns, *Choson Gikai No Arikata Ni Kansuru Kadai Tou Nitsuite [Problems on the Village National Assembly]*, MINISTRY INTERNAL AFF. & COMM., http://www.soumu.go.jp/main_content/000499787.pdf (last visited Apr. 20, 2018).

80) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 94 (Japan).

81) Saikō Saibansho [Sup. Ct.] Mar. 30, 1962, Showa 31(o) no. 4289, 16(5) SAIBANSHO, SAIBANREI JŌHŌ [SAIBANSHO WEB] 577, <http://www.courts.go.jp> (Japan).

substantial form, not with *carte blanche*. The local parliament may regulate by penalties and restrictions that are more severe and with a broader scope than statutes only if they do not conflict with national statutes.⁸² The Japanese Supreme Court explained that the Court reviews not only terms and provisions but also their meanings, purposes, and effects to identify if there is a conflict between a local ordinance and a statute. A local parliament may pass an ordinance with a different purpose. The Court will review whether a statute allows an ordinance with the same purpose to have a more severe or broader scope. Even if there is no regulation in the statute, the Court would hold the local ordinance unconstitutional if the Diet has intentionally left an issue unregulated. If a statute does regulate, an ordinance with a different purpose is allowed as long as it does not conflict with the statute's purpose and effect. The Court would review whether the statute is a national minimum or not.

82) There is a controversy in judicial review in preemption. Article 98 of the Japanese Constitution declares that the Constitution is the supreme law of the land. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 98 (Japan). Thus, any local ordinance that conflicts or interferes with statute is unconstitutional and therefore unenforceable. A statute preempts or supersedes a local ordinance. The Japanese Supreme Court explained several such situations. Saikō Saibansho [Sup. Ct.] Sep. 10, 1975, Showa 48(a) no. 910, 29(8) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 489, <http://www.courts.go.jp> (Japan). Express preemption occurs when the statute actually contains a provision that the statute preempts any local ordinance on the same subject. Field preemption refers to situations in which parliament intended to preempt the field (subject area) because the statute is so extensive or pervasive that no room is left for local ordinance. Conflict preemption refers to situations in which the statute and local ordinances are in conflict so that compliance with both local ordinance and statute is impossible.

The Japanese Supreme Court explained that lawmaking power should be given from the Diet to local government in concrete and substantial designation. NONAKA, *supra* note 18, at 77-78. The local parliament may regulate with more severe penalties and restrictions and provide broader scope than statutes only if they do not conflict with national statutes. The Japanese Supreme Court noted that the court reviews not only terms and provisions but also their meanings, purposes, and effects to identify if there is a conflict between a local ordinance and a statute. Saikō Saibansho [Sup. Ct.] Sep. 10, 1975, Showa 48(a) no. 910, 29(8) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 489, <http://www.courts.go.jp> (Japan). Thus, a local parliament may pass an ordinance with a different purpose. *Id.* The court reviews if a statute allows an ordinance with the same purpose to have more severe or broader scope. Even if there is no regulation in the statute, the court would hold the local ordinance unconstitutional if the Diet has intentionally left an issue unregulated. If a statute does regulate, an ordinance with a different purpose is allowed as long as it does not conflict with the statute's purpose and effect. The court would review whether the statute is a national minimum or not. Even under the Supreme Court's explanation, it isn't clear which factor, among terms and provisions but also their meanings, purposes, and effects, judicial focus on interpretation statute on issue. ASHIBE, *supra* note 22, at 282.

3. Article 95

According to Article 95,⁸³ the consent of the majority of local voters is required if the Diet passes a special law applicable only to one local public entity. This is a constitutional protection of local government autonomy. Unfortunately, some statutes aim to cover certain prefectures but avoid local referenda, as the Okinawa base case⁸⁴ shows. Similarly, after the Great East Japan Earthquake in 2011, the legislature passed several statutes to recover and restore nuclear power plants.

C. Local autonomy without constitutional amendments

It is uncertain whether the constitutional amendment will occur, so it is helpful to review the development of local government autonomy without constitutional amendments. As the Constitution provides no details about the division of power between national and local governments, it is possible to reorganize the relationship between national and local governments by establishing metropolitan areas in other large cities, such as Osaka, Nagoya, and Kanagawa, by amendment of the Local Government Act. Tokyo was established as a metropolitan region because, in 1938, during the war with China, the government reorganized the management of the prefecture and city to control and develop the area politically and economically. In Osaka, Nagoya, and Kanagawa prefectures, some administrative jurisdictions overlap between city and prefecture. A metropolitan government would conserve resources and make their business more efficient.

Another option to promote local government autonomy is through the House of Councilors. The Constitution is silent on whether members of the House of Councilors are representatives of prefectures.⁸⁵ Their term is six years, and half

83) NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 95 (Japan).

84) *Dai Nana Kai Chiko Jichi Tokubetsu Ho No Imi [The Meaning of the Local Governemtn Autonomy Special Act]*, QUONNET, http://www.quon.asia/yomimono/business/column/mi_zushima/273.php (last visited Oct. 30, 2018).

85) When we talk about character of the House of Councilors, we need to consider political party in Japanese parliament. The political party is strong enough to enforce some agenda such as electoral reform because members can make their public commitment along with their party agenda in the Japanese parliament. Emphasis on the political party may enforce party commitment among members while sacrificing the unique character of the House of Councilors, the purpose of which is not clearly written in the text of the Japanese

of the 242 members are chosen every three years. Forty-eight members are chosen by proportional representation elections, and the other 73 members are chosen from one electoral zone. This one electoral zone was once divided into 47 zones in accordance with each prefecture. Due to depopulation, however, it became difficult to maintain the equality of the values of votes per zone. Thus, the legislature amended the Public Official Act⁸⁶ to merge several prefectures into 45 divisions. However, the Japanese Supreme Court held that repeatedly allocating members through the Public Official Act was an “unconstitutional state.”⁸⁷ By using the unusual term “unconstitutional state,” the Japanese Supreme Court warned the legislature to correct the seat allocation system.

The LDP is now proposing that one representative from each prefecture be written into the new Constitution. It is possible to amend the inferior statute, the Public Official Act, to choose one representative from each prefecture. In addition, it allows members of the House of Councilors to be governors of prefectures. The Japanese Supreme Court would declare this unconstitutional on the basis of the inequality of the value of votes. This analysis would lead to the term “representative of all the people” and the exclusive law-making power provided in Chapter 4: The Diet.

Constitution. Today the political party is the dominant voice in the two Houses of the Diet, and may disguise its agenda through distractions such as tax cuts in its campaign. Originally, the House of Councillors had no political party involvement because its aim used to be regional and vocational representation in the beginning of current constitution. It has been controversial whether the House of Councillors is regionally representative. Unlike the U.S. Constitution, the drafting history of the Japanese Constitution does not show clear evidence of efforts to have Japanese regional differences reflected in the House of Councillors. One professor Koji Sato is concerned that in the Japanese parliamentary system, the conflict between lower and upper house. The prime minister is selected from the House of Representatives after dissolution. When the majority of the members of the House of Councillors are from opposite parties, he emphasizes effective management of the Conference Committee of both Houses. Some people may argue that it may require constitutional amendment if we endorse the house of the councilors as regional representative under current strong influence of political power. KOJI SATO, KENPŌ [CONSTITUTION] 439-44 (2011).

86) Koshoku senkyo hou [Japanese Public Officer Election Act], Law No. 60 of 2015 (Japan).

87) Saikō Saibansho [Sup. Ct.] Mar. 23, 2011, Heisei 22 (gyo tsu) no. 207, 65(2) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 755, <http://www.courts.go.jp> (Japan).

V. Conclusion

Local governance is an experiment in democracy and promotes the passage of national legislation. Unfortunately, however, discussion of local government autonomy is not popular among Japanese people when compared to the debate about Article 9. This is probably because the current Constitution provides a principle of autonomy but so vaguely that inferior statutes control and regulate the relationship between the national and local governments.

Local government initiatives are like pitting David against Goliath. Some initiatives, like the Tokyo metropolitan adaptation and Shibuya Ward's certificates for same-sex relationships, may attract attention outside Japan, which could encourage the national government to move forward with changes. It is unclear whether today's hope of a constitutional amendment will come to fruition, but it is important to illustrate obstacles in the current provisions of Chapter 8.

The general public may feel that constitutional discussions are not the business of ordinary voters, but their participation is necessary to determine the mid- and long-term destiny of Japan. This paper aims to turn the eye of the general public toward important constitutional debates.

Bibliography

Books

- ISHIKAWA KENJI, *JYU TO TOKKEN NO KYORI* [THE DISTANCE BETWEEN LIBERTY AND PRIVILEGE] (2007).
- JINWOOK CHOI ET AL., *LOCAL GOVERNMENT AND PUBLIC ADMINISTRATION IN KOREA*, (2012).
- MINISTRY OF FIN., *SHOUHI ZEICHU NO KUNI CHIHO NO HAIBUN TO SHITO* [USE AND ALLOCATION OF CONSUMPTION TAX] (2018).
- MINISTRY OF INTERNAL AFFAIRS & COMMC'N, *CHIHO ZAISEI HAKUSHO* [REPORT OF LOCAL FINANCE] (29th ed. 2018).
- NOBUYOSHI ASHIBE, *KENPŌ* [CONSTITUTION] (6th ed. 2015).
- TORU MORI, *HYOGEN NO JYU* [FREEDOM OF EXPRESSION] (2008).
- TOSHIHIKO NONAKA ET AL., *KENPŌ II* [CONSTITUTION II] (2012).

Journals and Periodic Materials

- Yuichiro Tsuji, *Amendment of the Japanese Constitution: A Comparative Law Approach*, 37 *NANZAN REV. AM. STUD.* 51 (2015).
- Yuichiro Tsuji, *Constitutional Law Court in Japan*, 66 *TSUKUBA J.L. & POL.* 65 (2017).
- Yuichiro Tsuji, *Decisions That Declared Laws Unconstitutional and Their Impact on Japanese Families*, 24 *ILSA J. INT'L & COMP. L.* 139 (2018).

Cases

- Abrams v. United States*, 250 U.S. 616 (1919).
- Kyoto Chihō Saibansho [Kyoto Dist. Ct.] Oct. 7, 2013, Hei 22 (wa) no. 2655, SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB], <http://www.courts.go.jp> (Japan).
- Osaka Kotō Saibansho [Osaka High Ct.] July 8, 2014, Hei 25 (ne) no. 3235, 2232 HANREI JIHŌ 34 (Japan).
- Saikō Saibansho [Sup. Ct.] Mar. 30, 1962, Showa 31 (o) no. 4289, 16(5) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 577, <http://www.courts.go.jp> (Japan).

- Saikō Saibansho [Sup. Ct.] Sept. 10, 1975, Showa 48 (a) no. 910, 29(8) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 489, <http://www.courts.go.jp> (Japan).
- Saikō Saibansho [Sup. Ct.] Mar. 7, 1995, Hei 1 (o) no. 762, 49(3) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 687, <http://www.courts.go.jp> (Japan).
- Saikō Saibansho [Sup. Ct.] Mar. 23, 2011, Heisei 22 (gyo tsu) no. 207, 65(2) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 755, <http://www.courts.go.jp> (Japan).
- Saikō Saibansho [Sup. Ct.] Dec. 9, 2014, Hei 26 (o) no. 1539 (Japan).

Internet Sources

- Bani Sapra, *Japanese Politician under Fire for Calling LGBT Community 'Unproductive'*, CNN, <https://edition.cnn.com/2018/07/25/asia/japanese-politician-criticism-intl/index.html> (last updated July 26, 2018).
- Basic Energy Plan, AGENCY FOR NAT. RESOURCES AND ENERGY (Apr. 2014), http://www.enecho.meti.go.jp/category/others/basic_plan/pdf/140411.pdf.
- Bureau of Env't Tokyo Metro. Gov't, *Guideline for Greening*, BUREAU ENV'T, http://www.kankyo.metro.tokyo.jp/nature/green/plan_system/guide.html (last updated Apr. 12, 2018).
- Bureau of Env't Tokyo Metro. Gov't, *Tokyo Cap-and-Trade Program: Japan's First Mandatory Emissions Trading Scheme*, BUREAU ENV'T (Mar. 2010), http://www.kankyo.metro.tokyo.jp/en/climate/cap_and_trade/index.files/Tokyo-cap_and_trade_program-march_2010_T.pdf.
- Bureau of Env't, Tokyo Metro. Gov't, *Tokyo Environmental Master Plan (March 2016)*, BUREAU ENV'T, http://www.kankyo.metro.tokyo.jp/en/about_us/videos_documents/master_plan.html (last updated Feb. 9, 2018).
- Chong-Min Park, *Developing Local Democracy in South Korea: Challenges and Prospects*, INT'L POL. SCI. ASS'N, http://paperroom.ipsa.org/papers/paper_5230.pdf (last visited Oct. 26, 2018).
- Chito Jichi Jujitsu, Kaiken Ni Sanpi [For and Against Constitutional Amendment]*, MIANICHI SHIMBUN (Apr. 20, 2017), <https://mainichi.jp/articles/20170421/k00/00m/010/162000c>.

- Dai Nana Kai Chiko Jichi Tokubetsu Ho No Imi [The Meaning of the Local Governemtn Autonomy Special Act]*, QUONNET, <http://www.quon.asia/yomimono/business/column/mizushima/273.php> (last visited Oct. 30, 2018).
- Editorial, *Chiho Gikai Kaikaku [Reform of Local Parliament]*, TOKUSHIMA SHIMBUN (Apr. 8, 2018), <http://www.topics.or.jp/articles/-/32116>.
- Editorial, *LDP's Questionable LGBT Policy*, THE JAPAN TIMES (May 21, 2016), <https://www.japantimes.co.jp/opinion/2016/05/21/editorials/ldps-questionable-lgbt-policy/#.WuLAKlh1zic>.
- Gaikokujin Sanseiken Fuyo Houan Danko Hantai Shimasu [LDP Is Strongly Against Voting Rights for Foreigners]*, LIB DEMS (Feb. 5, 2012), <https://www.jimin.jp/news/policy/recapture/130379.html>.
- Heito Kisei Handan No Kousei Sei Tanpo [Keeping Fairness to Regulate Hate]*, KANAGAWA SHIMBUN (Apr. 2, 2018), <http://www.kanaloco.jp/article/321526>.
- Ministry of Internal Affairs & Commc'ns, *Choson Gikai No Arikata Ni Kansuru Kadai Tou Nitsuite [Problems on the Village National Assembly]*, MINISTRY INTERNAL AFF. & COMM., http://www.soumu.go.jp/main_content/000499787.pdf (last visited Apr. 20, 2018).
- Osaka Si Heito Spi-chi Heno Taisho Ni Kansuru Jourei No Unyou Nitsuite [The Management of the Hate Speech Ordinance]*, OSAKA CITY, <http://www.city.osaka.lg.jp/shimin/page/0000339043.html> (last visited Apr. 20, 2018).
- Sapporo Si Dosei Pa-tona-wo Sensei Sho De Kounin [Sapporo City Certificate to Same Sex Couple]*, THE NIKKEI SHINBUM (June 1, 2017), https://www.nikkei.com/article/DGXLASDG01H1H_R00C17A6CR0000/.
- The Asahi Shinbum, *Seiteki Sikou No Auteingu To Kinshi [Prohibition of Sexual Preference "Outing"]*, HUFFPOST (Apr. 2, 2018), https://www.huffingtonpost.jp/2018/04/02/outingregulation_a_23400707/.
- Yuki Nikaido, *Same-sex Partners Invited for First Time to Ministry Event*, THE ASAHI SHIMBUN (Dec. 28, 2017, 3:40 PM), <http://www.asahi.com/ajw/articles/AJ201712280041.html>.

Legislatures, Regulations and Other Legislative Materials

- Chiho jichi hō [Local Autonomy Act], Law No. 67 of 1947 (Japan).
 DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] (S. Kor.).

- DAI NIHON TEIKOKU KENPŌ [MEIJI KENPŌ] [CONSTITUTION] (Japan).
Denki tsushin jigyo hō [Telecommunications Business Act], Law No. 86 of 1984, (Japan).
- Gongjiksongeobeop [Public Official Election Act], Act No.10303, Mar. 17, 2010 (S. Kor.).
- Honpō gai shushinsha ni taisuru futouna sabetu teki gendo no kaishou ni muketa torikumino suisin ni kansuru hō [Hate Speech Act], Law No. 68 of 2016 (Japan).
- MINPŌ [CIV. C.] (Japan).
- Koshoku senkyo hou [Japanese Public Officer Election Act], Law No. 60 of 2015 (Japan).
- National Historic Preservation Act, 16 U.S.C. (1992).
- NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION] (Japan).
- Nini koken keiyaku ni kansuru hourtisu [Act on Voluntary Guardianship Contract], Law No. 150 of 1999, (Japan).
- Tokutei denki tsushin ekimu teikyousha no songaibaishosekinin no seigen oyobi hassinsha jouhouno kaiji nikansuru hō [Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of Senders], Law No. 137 of 2001(Japan).