NUM Law Review; Volume 26, No. 76. (Special Issue), Dec 2025, 209-232
Article https://doi.org/10.22353/nlr.2025.06.12
Received on 2025.06.15; Accepted on 2025.10.25; Published online on 2025.12.25.

Significance Articles of Education in Constitutional Framework - Through a comparison of the Constitution of Japan and the Constitution of the Empire of Japan -

Үндсэн хуулийн тогтолцоо дахь боловсролын тухай заалтуудын ач холбогдол - Японы Үндсэн хууль болон Японы эзэнт гүрний Үндсэн хуулийн харьцуулсан судалгаа -

Matsui Hiroshi

Juris Doctor (J.D.).
Designated Lecturer, Nagoya University Graduate School of Law Research and Education Center for Japanese Law in Mongolia in School of Law, National University of Mongolia
Nagoya, Japan
matsumon@law.nagoya-u.ac.jp

[Abstract]

This thesis examines the articles related to education in two types of constitutions in Japan. The history of modern constitution in Japan dates back to 1889, 135 years ago. The Constitution of the Empire of Japan established in 1889 for building the constitutional regime and respond to pressures from the Western powers, known as "The Meiji Constitution" after the name of the era at that time, was the Constitution granted by the Emperor. The Meiji Constitution inherited the Prussian Constitution (1848/1850) that contained many articles on education, but The Meiji Constitution itself did not contain any articles on education. Conversely, the current Constitution of Japan established in 1946 which is formally revised of The Meiji Constitution has multiple provisions regarding education, but the Constitution of the United States, on which it is based, has no provisions on education due to its federal structure. Of course, these differences arise from the social or political backgrounds, particularly legal inheritances to each constitution. Therefore, in this thesis, to explore the following points: (1) despite having inherited the Prussian Constitution, the reasons why there were no articles on education in The Meiji Constitution and how educational activities were carried out under those circumstances, (2) the features of the provisions about education in the current Constitution and the educational system based on them, and (3) the significance of positioning education in the Constitution through a comparison of the two, additionally, clarifying the differences of the meaning between articles of education under the Imperial Constitution and those under the Democratic Constitution, and examine the pros and cons of constitutional control over education.

[Keywords]

Constitution and education, articles of education in the constitution, the constitution of the Empire of Japan, controlling education by the constitution or law, Roesler and Mosse's view about education and Emperor's prerogative, comparison of the Constitution of Japan and the Constitution of Empire of Japan.

I. Introduction

In a modern constitutional state, the constitution directly reflects the ideological orientation of that state. While the source of this direction may not necessarily lie with the people, it undeniably represents the vision of the ruling authorities at the time, strongly reflecting the social conditions and political system of the era.

In this context, whether or not to include provisions on education in the constitution, and if so, what form those provisions should take—whether as rights or duties, and how they should be implemented—can serve as a key indicator of the state's orientation.

Japan established its modern constitution in 1889 (Meiji 21). The Constitution of the Empire of Japan, enacted that year (hereafter referred to as "The Meiji Constitution"), aimed at constructing a centralized, emperor-centric state and was heavily influenced by the Prussian Constitution. The objective behind this was, amid the colonization of Asia by Western powers, to renegotiate the so-called "unequal treaties" Japan had signed with Western nations during the late Edo period. It was essential for Japan to revise these treaties, prevent colonization, and urgently establish a constitutional state to stand on par with Western powers.

On the other hand, the post-World War II, The Constitution of Japan (promulgated in 1946 and enacted in 1947) was drafted under the influence of the American occupation forces, with a focus on popular sovereignty, pacifism, and the respect for fundamental human rights. As a result, it differs significantly in character from The Meiji Constitution.

One notable difference is the presence or absence of provisions concerning education. The Meiji Constitution did not include any provisions or regulations regarding education, while the Constitution of Japan explicitly addresses education both directly and indirectly in several articles. These differences are rooted in the historical contexts and "orientations" of each constitution. However, the absence of educational provisions in The Meiji Constitution does not suggest that education was disregarded. Furthermore, although the Constitution of Japan includes multiple provisions concerning education, it cannot be said that this necessarily resulted in a perfect educational system.

Therefore, based on these points, this paper seeks to address the following questions:

1. Why did The Meiji Constitution not include provisions on education, and how was education implemented under The Meiji Constitution?

2. What is the significance of the provisions on education in the

current Constitution, and how are they implemented?

3. Lastly, through a comparison of the two, this paper will explore the extent to which education can be controlled by the constitution and assess such control.

II. The Establishment of The Meiji Constitution and Education

2.1 The Process of Establishing The Meiji Constitution

Amid the wave of imperialism and colonization by Western powers, Japan ended the rule of the Tokugawa Shogunate (1603–1867) and, through a series of processes known as the *Meiji Restoration*, entered the Meiji era (1868–1913).

In 1868, the Meiji government presented so-called *Five Charter Oaths* (*Gokajo no Goseimon*), which included the first article: "Promote wide-ranging deliberations and decide all matters by public discussion." Even when reading the other four articles, it can be said that the underlying philosophy was one of democratic governance. Of course, this *Charter Oaths* was issued with the Emperor's sanction, which marked a significant deviation from the process followed by typical democratic states. However, at the time, although the concept of a centralized government centered around the Emperor existed, it was not aimed at using political power of the Emperor, but rather at utilizing the historical authority of it. In fact, the Emperor had held political power only during limited periods of Japanese history; in many cases, his historical authority was merely used by others. In the Edo period, for instance, the Emperor had no political power, with only ceremonial duties like the conferring of official titles and presiding over religious events.

Under these situations, it can be noted that the creation of The Meiji Constitution was influenced by both "external pressure" and "internal pressure." External pressure means the urgent need to revise the so-called *unequal treaties* signed during the late Tokugawa period. Among the issues at stake were the restoration of extraterritoriality and tariff autonomy, which were vital for Japan to establish diplomatic equality with Western powers. These issues were attributable to the stance of Western powers, which insisted that "a country without a constitution cannot be recognized as a modern state". As a result, the establishment of the constitution became an immediate task for the Meiji government. The primary aim was to avoid colonization by Western powers, but beyond that, the Meiji government's efforts to strengthen the nation through policies like *Fukoku Kyōhei* (rich country, strong military) reflected its desire to develop a state and people that could stand on equal footing with Western powers.

While the external pressures are often highlighted as the main reason for establishment of the constitution, internal pressures also had a significant influence. Internal pressure stemmed from the struggle for political control within the Meiji government. A clash occurred between those advocating for a British-style constitutional monarchy (led by Okuma Shigenobu[1]) and those pushing for a Prussian-style centralized state (led by Ito Hirobumi[2]). In the end, Okuma was defeated in this power struggle and was expelled from the government (*The Meiji 14th Year Political Crisis,* 1881). Therefore, the need for the establishment of a constitution and a constitutional government was driven by external pressure, while the choice of a Prussian-style constitution was largely a result of internal political dynamics.

After these developments, in 1881, the Meiji government issued an Imperial Rescript recognizing for the establish of the National Diet, and under the leadership of figures like Ito, preparations for drafting the constitution began. Eight years later, in 1889, The Meiji Constitution was promulgated, and the National Diet convened in 1890. During this time, Ito traveled to Europe (1882–1883) and studied in Germany, Austria, Britain, and Belgium[3], receiving lectures from prominent figures such as Rudolf von Gneist[4], Albert Mosse[5], and Lorenz von Stein[6]. As a result, Ito decided to be inherited the Prussian Constitution (Preußische Verfassung of 1848/1850) as the model of Japan. At the time, Prussia, an emerging state, had adopted a monarchical system and focused on policies of national strength, making it an ideal model in Ito's eyes.

It is important to note that The Meiji Constitution was drafted and promulgated by a select group within the Meiji government, and initially, its meaning and contents were not widely understood by the general public. Nevertheless, the promulgation of the constitution generated widespread enthusiasm, with celebrations taking place throughout Tokyo. Erwin von Bälz, a German physician employed at the Tokyo Medical School (now

1 Okuma Shigenobu（1838 – 1922) was a Japan politician and educator. Founder of Waseda University.

2 Ito Hirobumi (1841– 1909) was a Japan politician of the Meiji era。

3 The imperial decree by the Emperor ("Imperial Edict on the Special Dispatch of Commissioners to Investigate Constitutional Systems in Europe", March 3, 1882. National Diet Library Collection).

4 Heinrich Rudolf Hermann Friedrich von Gneist (1816 - 1895) was a German jurist (national law) and politician during the Prussian era.

5 Albert Mosse (1846 - 1925) was a German jurist invited to Japan as a legal advisor to the Meiji government, and of the so-called "hired foreign experts." He was considered a close disciple of Gneist.

6 Lorenz von Stein (1815 - 1890) was a German jurist and philosopher. For more on his relationship with Ito and his ideas, see Ogasawara Masashi, "The Emperor's Sovereign Powers and the Imperial Edict System of Education in the Process of Formulating The Meiji Constitution" (Toa University, 2000), pp. 133–135.

the University of Tokyo), noted in his diary just two days before the promulgation:

"The whole city of Tokyo is in an indescribable uproar in preparation for the announcement of the constitution on the 11th. Everywhere, plans for celebratory gates, illuminations, and processions. But, ironically, no one knows the content of the constitution."[7]

For the general public, The Meiji Constitution was accepted unconditionally, without understanding or examining its contents. Although, the ideals and objectives behind The Meiji Constitution were shared only among those directly involved in its creation and certain government officials, the mere fact that the establishment of constitution created the illusion that Japan had joined the ranks of the great powers. Even for those in opposition to the government, the constitution was seen as a public acknowledgment of political participation, and it was welcomed by many[8].

2.2. Provisions on Education in the Prussian Constitution[9]

The provisions regarding education in the Prussian Constitution span Articles 20 to 26. Article 23(Art.23) outlines the rights and duties of public-school teachers as civil servants, while Article 25(Art.25) guarantees free primary education. Consequently, these provisions particularly progressive and relevant to modern times.

Art.23 Alle öffentlichen und Privat-Unterrichts- und Erziehungsanstalten stehen unter der Aufsicht vom Staate ernannter Behörden. Die öffentlichen Lehrer haben die Rechte und Pflichten der Staatsdiener.

(Article 23, Translation by the author) All public and private educational and instructional institutions are under the supervision of authorities appointed by the state. Public school teachers have the rights and duties of civil servants.)

Art. 25 Die Mittel zur Errichtung, Unterhaltung und Erweiterung der öffentlichen Volksschule werden von den Gemeinden, und im Falle des nachgewiesenen Unvermögens, ergänzungsweise vom Staate aufgebracht. Die auf besonderen Rechtstiteln beruhenden Verpflichtungen Dritter bleiben bestehen.

Der Staat gewährleistet demnach den Volksschullehrern ein festes,

[7] Erwin Toku Bälz, ed. The Diary of Bälz, trans. Suganuma Ryutaro (Iwanami Bunko, 1979), p. 134.

[8] Osatake Takeki, Outline of Japanese Constitutional History (Vol. 2), Nihon-Hyoronsha 1939, pp. 796–797, et al.

[9] For the text of the Prussian Constitution, see the following website: https://www.jura.uniwuerzburg.de/lehrstuehle/muenkler/verfassungsdokumente-von-der-magna-carta-bis-ins-20-jahrhundert/revidierte-preussische-verfassung-1850/

den Lokalverhältnissen angemessenes Einkommen.

In der öffentlichen Volksschule wird der Unterricht unentgeltlich ertheilt.

(Article 25, Translation by author) The funds required for the establishment, maintenance, and expansion of public primary schools are provided by local municipalities, and, in cases of demonstrated inability, supplemented by the state. Obligations of third parties based on special legal titles remain in effect.

The state guarantees primary school teachers a stable income appropriate to local conditions.

Instruction in public primary schools is provided free of charge.

2.3 Considering the introduction of education provisions into the Meiji Constitution

It is assumed that Ito Hirobumi was well aware of the aforementioned provisions in the Prussian Constitution. However, no such provisions were included in The Meiji Constitution. Many of those who supported the Meiji Restoration were lower-ranking samurai, and Ito himself studied under Yoshida Shoin[10]at the Shokasonjuku. Therefore, it can be believed that he was deeply aware of the importance of education.

In addition to it, at that time, the Meiji government, which was promoting the "rich country, strong military" policy, also recognized the necessity of a solid educational system as the foundation of this policy. Despite this, no specific references to education were not included in The Meiji Constitution. In place of that, the educational system was established through *imperial ordinances* issued under the " Imperial prerogative ".

In general, the " Imperial prerogative " refers broadly to the entire range of the Emperor's powers in governing the state. In a narrower sense, it refers to certain powers that can be exercised by the Emperor alone, with participation only from the cabinet or other advisory bodies, and without the involvement of the Imperial Diet[11]. *Imperial ordinances* were one of these powers, and under The Meiji Constitution, legal measures were divided into laws, imperial ordinances, and emergency imperial ordinances. Laws required the approval of the Imperial Diet and the Emperor's sanction, and they were used to define citizens' rights and obligations. *Imperial ordinances*, on the other hand, were orders issued by the Emperor under the responsibility of the cabinet. Emergency imperial ordinances were issued in situations of urgency when it was impossible to convene the Imperial Diet, and could substitute for laws.

[10] Yoshida Shoin (1830–1859) was a prominent thinker during the late Edo period. The private school he founded was called the Shokasonjyuku.

[11] Ito Makoto, et al., eds. Dictionary of Legal Studies (5th edition, Yuhikaku, 2016).

The *imperial ordinances* were considered independent orders that were separate from laws. Emergency imperial ordinances required not only the cabinet's decision but also deliberation by the Privy Council (which included cabinet ministers). As a result, the *imperial ordinances* allowed the cabinet (executive branch) to issue orders independently of the legislature.

Thus, after The Meiji Constitution was enacted, the establishment and implementation of the educational system and educational administration were carried out primarily through *imperial ordinances*—with the exception of matters related to finance and budgeting, which required legislation through the Imperial Diet.

The legal basis for issuing *imperial ordinances* was Article 9 of The Meiji Constitution:

Article 9. The Emperor issues or causes to be issued, the ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no ordinance shall in any way alter any of the existing laws.

Based on this article, *imperial ordinances* were issued, and necessary regulations for educational administration were determined through separate provisions (as stipulated in Article 10 of The Meiji Constitution). For fiscal matters, separate laws were required, which were of course passed through the Imperial Diet.

2.3.1 Education Policy Before The Meiji Constitution

Looking at the education policy before the establishment of The Meiji Constitution (1868–1889), the so-called "School System" (*Gakusei*)[12] was implemented in 1872, marking the beginning of various educational reforms. In its preamble, the system emphasized that all citizens, regardless of social class or gender, should receive an education. At the same time, the issued *Dajokan*[13] *Fukoku*[14] (Government Ordinance) clarified the meaning of learning in education and criticized traditional views of knowledge

[12] The fundamental regulations establishing Japan's first modern school system. The country was divided into eight university districts, each with a university, junior high, and elementary school. The school system was announced as a *Dajyokan* (Imperial Officer) edict.
https://www.archives.go.jp/ayumi/kobetsu/m05_1872_02.html.

[13] The highest administrative body established in 1868 as part of the Meiji Restoration. It had powers that integrated the three branches of government (legislative, executive, and judicial). The title was used in the ancient *Ritsuryo* system. It was abolished following the establishment of the Cabinet in 1885.
https://www.ndl.go.jp/modern/cha1/description04.html.

[14] Public document "Request for the Enactment of the Education System" from the Ministry of Education, Meiji 5, Volume 48.https://www.digital.archives.go.jp/das/image-j/M0000000000000082443.

and schools. This could be seen as a declaration about the philosophy of education. It stressed that the general populace must attend the new schools and acquire the useful knowledge of the new era, and also stipulated that the responsibility for ensuring children attend school lay with their parents, and they must fulfill this obligation.

This was based on a highly liberal educational philosophy during the imperial era and can be said to align with some of the principles found in Japan's current Constitution. Similarly, it did not limit education to serving only the needs of the "state" or the "rich nation and strong military" goals. The main influence behind the drafting of this educational system was the French education model, as many of the key figures in its formulation had studied in France and based their system on French practices[15].

Additionally, one of the factors behind the "rights-based" approach to education was financial. The Meiji government's establishment of compulsory primary schools and education was implemented without financial backing. As a result, the costs for building the schools and the salaries for teachers were initially borne entirely by local communities and parents. In fact, records show that at the time, there was significant conflict between the Ministry of Education and the Ministry of Finance[16]. Therefore, although the government made education compulsory, the aspect of "obligation" could not be strongly emphasized because of the lack of financial support.

Considering these points, the educational system the Empire of Japan initially aimed to create, emphasized at least in theory, individual rights and the potential for personal success in society. The background to this was influenced by the views of those involved in the drafting of the *Gakusei* and the financial problem. In addition to it, it could also be said that the system failed to establish a model that would justify the compulsory of education through the free provision of educational costs. Overall, the "Imperial Decrees" from this period can be seen as convenient

[15] Twelve individuals, including Mitsukuri Rinsho and Kawazu Sukeyuki, who had studied in France, began drafting the school system. Western educational models were consulted, and the final system was modeled after the French system. https://www.archives.go.jp/exhibition/digital/meiji/contents1_01/.

[16] The school system had detailed regulations concerning educational expenses, but due to disagreements between the Ministry of Education and the Ministry of Finance, it was impossible to determine a precise amount for national government expenditures. Meanwhile, the Meiji government anticipated an excessive burden on the people and easily allowed for reductions in tuition. As a result, more than half of elementary schools did not charge tuition, and tuition revenues were minimal in comparison to the educational expenses in each district. https://www.mext.go.jp/b_menu/hakusho/html/others/detail/1317608.htm.

and expedient political decisions, they played a role in the creation and establishment of the educational system.

2.3.2 Direction of education

On the other hand, after absorbing Western cultural and political influences, opposing forces began to emerge in response to the Meiji government's reforms. Moreover, the rise of the so-called *Jiyu-Minken Undo* (Freedom and People's Rights Movement) was concerned. The inclusion of education in the Constitution would mean delegating this responsibility to laws, and with laws subject to change through the decisions of the ruling party in the Imperial Diet, it could lead to fluctuations in educational policies.

Based on the idea of state control over education, the Meiji government wanted to eliminate the possibility of changes by law.

As mentioned, Ito Hirobumi, who played a leading role in drafting The Meiji Constitution, was not dismissive of education but rather saw it as of paramount importance. A speech dated February 27, 1889, titled *"To All Princes and Nobles"*, Ito addressed the royal family and the aristocracy, stating the following points:

"The strengthening of the nation's international competitiveness requires the civilized maturation of its people, and as a result, constitutional politics is inevitable. This logic does not merely preach noblesse oblige to the political elites but also stresses the political improvement of the governed people, which is seen as the ideal political model. The subjects of the nation, politically aware, would naturally take an interest in governance and the way the state is administered. This is viewed as a positive development. The ideal framework to organize this political energy from the people is a constitutional system."[17]

This speech reveals that Ito deeply understood the importance of constitutional politics and the development of the nation through the education of its people. In this context, he also anticipated that criticism of governance would emerge alongside the spread and development of education, even allowing for the growth of politically critical movements. Despite this, the inclusion of specific provisions on education in The Meiji Constitution was ultimately excluded, as the result of the discussions with Roesler[18] and Mosse[19], which will be addressed in the next.

[17] Takii Kazuhiro, "The Meiji Constitution in Global Context" (International Research Center for Japanese Studies, New Domains and Next-Generation Japanese Studies, pp. 155-165, 2016).

[18] Karl Friedrich Hermann Roesler (1834 - 1894) was a German jurist and economist. He served as a legal advisor to the Meiji government.

[19] Mosse, who arrived in Japan after Roesler, is often regarded as having had a greater influence on the drafting of The Meiji Constitution and is referred to as the "Father of

2.3.3 Roesler and Mosse's Proposals[20] – The Debate Over Enumerating the Emperor's Powers (Imperial prerogative)

It is widely known that Roesler, a legal advisor to the Meiji government, and Mosse, who later joined, provided significant counsel in the drafting of The Meiji Constitution. In their correspondence, both proposed different approaches regarding the enumeration of the Emperor's powers in the Constitution.

Roesler advocated for the inclusion of all matters related to the Emperor's supreme powers in the constitutional text. Roesler also argued that enumerating them would help clarify their scope and prevent disputes over political administration[21]. While this was based on the principles of constitutionalism, Roesler also fully understood that it should be grounded in the supremacy of the Emperor's authority. Although enumerating the Emperor's powers might seem like it would limit them, Roesler argued that it would actually prevent administrative encroachment by the cabinet, thereby strengthening the Emperor's rule. Under this view, the executive branch would have no authority to interfere in matters explicitly reserved for the Emperor.

In contrast, Mosse rejected this idea of enumerating the Emperor's supreme powers in the Constitution. He argued that such a move would be unnecessary and potentially dangerous. For Mosse, the Emperor's powers were already established and widely recognized through existing laws and customs. He feared that explicitly enumerating them could create the misconception that the Emperor's authority only extended to those areas specified in the Constitution and that any unlisted powers would be considered invalid.

Mosse argued that the Emperor's authority should be seen as comprehensive and that a restrictive listing of his powers could undermine the very concept of monarchical rule. He also expressed concerns about creating new rights and obligations through the Constitution, preferring instead to maintain existing laws that were already functioning effectively, only introducing new ones when necessary.

Looking at the final version of The Meiji Constitution, it is clear that Mosse's ideas were incorporated. The Constitution's concise expressions and the lack of enumeration of the Emperor's supreme powers reflect Mosse's influence. On the other hand, Roesler's proposal was reflected

The Meiji Constitution." (Subcommittee on Research into Constitutional Matters of the House of Representatives, Basic Data on The Meiji Constitution and the Constitution of Japan. May 2003).

[20] Ito Hirobumi, ed. Collected Constitutional Materials Vol. 1 (Secretarial Compilation Association, 1935), pp. 128-131 for Roesler, and pp. 132-139 for Mosse.

[21] See note 6 for details. Ogasawara p. 10, et al.

in the wording of Article 1 of The Meiji Constitution, which affirmed the Emperor's sovereignty, and in the concept of "independent ordinances" found in Article 9.

2.3.4 Mosse's View on Education

Given the discussions outlined above, Mosse's views on education provide important insight into why The Meiji Constitution did not contain specific provisions on education. During his stay in Germany, Ito Hirobumi attended lectures by Mosse[22], and these influenced his thinking regarding the Constitution.

As noted earlier, the Prussian Constitution included many provisions on education, but Mosse expressed strong opposition to including such provisions in The Meiji Constitution. He argued that the freedom of learning and the freedom of education should be viewed as "limited freedoms" under state control, meaning that they were granted only insofar as they served the state's needs. While England and France included education rights in their Bill of Rights and Declaration of the Rights of Man[23], Mosse considered the French model to be idealistic and impractical, and he warned that Japan should not follow this path.

Mosse's views were heavily influenced by his academic master, Gneist, who rejected the natural law idea of inalienable human rights and instead believed that the state, under the monarch's authority, could bestow these rights as a gift to the people. This view influenced Mosse's recommendations for The Meiji Constitution, including his stance on education. He argued that education should not be dealt with through constitutional guarantees but rather through *imperial ordinances* issued by the monarch. This was in line with the view that education should be shaped by the will of the monarch rather than by the laws passed by a democratic parliament[24].

2.3.5 Legal Basis for the Educational System Under The Meiji Constitution

As shown above, The Meiji Constitution did not include specific provisions regarding education. One reason for this was Mosse's insistence that education should not be constitutionally enshrined. As a result, the educational system was implemented under *imperial ordinances*, which were grounded in Article 9 of The Meiji Constitution.Because the

[22] The Modern Legislative Process Research Group, Faculty of Law, University of Tokyo, "Documents Relating to the Works of Omori Kanichi (2) — Mosse's Lectures" Journal of the National Science Association, Vol. 84, Nos. 7–12, 1971.

[23] (Estimated by the author) A possible error in the French Constitution of 1791.

[24] Described as "Denial of educational legislative legalism and opening the way for the establishment of educational legislative imperial edict." See note 6 for details. Ogasawara, p. 126, et al.

Constitution did not contain educational provisions, it became necessary to establish the principles and direction of the educational system through other means. The implementation of education through *imperial ordinances* became the legal foundation for education under The Meiji Constitution. Thus, the legal authority for education was derived from the Emperor's supreme powers and the ordinances he issued.

2.3.6 The Issuance of the Imperial Rescript on Education

In October 1890, the Imperial Rescript on Education was issued, the year following the promulgation of The Meiji Constitution. This was an imperial ordinance that imposed loyalty to the Emperor, the state and traditional moral values on the citizens, and can be seen as a form of ideological control and regulation of education. The background to this issuance lies in the fact that, as the constitution was established and the development of industries was progressing, the shape of the nation was becoming more defined. There was a growing need to clarify that education should be conducted under the control of the state. Above all, the issuance of the Rescript was necessary to establish principles and directions for education.

Although there are pros and cons about the content of the Imperial Rescript on Education, the problem is that over time it has deviated from its original purpose and meaning, and has become a tool to be used at the convenience of politicians and those in power. In any case, the Imperial Rescript on Education served to clarify the direction of education and to supplement the educational philosophy.[25]

2.4. Evaluation for the Educational System in the Meiji Period

Thus, the educational system in the Meiji period was formed by various imperial ordinances, with the Imperial Rescript on Education at the forefront, along with ordinances like the Elementary School Ordinance and the University Ordinance. The practical implementation of these systems was carried out by the Ministry of Education through various administrative orders.

The Elementary School Ordinance stipulated for the first time the purpose of elementary education in its first article. Notably, this provision on the purpose of education remained unchanged until 1941 (the year Japan entered World War II), and it continued to serve as a regulation for

[25] Motoda Nagazane (Eifu), who participated in drafting the Imperial Edict, later described the state of education and the significance of the edict in a letter to Prime Minister Yamagata after the edict was promulgated. He wrote, "Since the Meiji Restoration, the direction of education had been unclear, and the people's intentions were in disarray. However, with the promulgation of the Education Edict, the direction was clearly outlined, and from now on, we need only follow it." https://www.mext.go.jp/b_menu/hakusho/html/others/detail/1317610.htm

primary education for nearly fifty years[26]. This endurance is significant, as it demonstrates the stability and long-term impact of the imperial ordinances. Thus, in terms of "not changing" or "preventing the change," the educational system built through imperial ordinances can be considered highly effective.

Moreover, since imperial ordinances were not subject to the authority of laws, this educational system was flexible. Depending on how it was managed, it could adapt to the bureaucratic rigidity and the often inflexible educational system. While the education philosophy based on national education rights was a given and could not be undermined, the rise of private schools and other factors made it difficult to say that state control over education was consistently strict. On the contrary, considering that most citizens readily accepted this educational system, it can be argued that state control over education remained relatively lax until the period when Japan entered wartime conditions.

However, it cannot be denied that, for citizens who were beginning to aspire to a more liberal form of education and see education as a right, the state's educational rights were clearly defined through the issuance of the Imperial Rescript, serving to curb such movements. At the same time, the schools were effectively being run as institutions that "form citizens who love the Emperor, fulfill their duties of military service and tax payment[27]," in line with Mosse's ideas. This movement, while contributing to the realization of national strength and wealth, also led to excessive state control over education. It is a historically significant that this fact was eventually reflected in the Constitution of Japan.

III. The Formation of the Constitution of Japan and Education

3.1. The Process of Establishing the Constitution of Japan – The Limits of the Right to Amend the Constitution

On August 14, 1945, Japan accepted the Potsdam Declaration and the following day, the government broadcasted this fact to the nation. The Constitution of Japan, promulgated in 1946, symbolized the country's new departure as a democratic state based on the three fundamental principles of popular sovereignty, respect for fundamental human rights, and pacifism.

Under the occupation of the General Headquarters (GHQ), the creation of this new constitution was strongly influenced by the Constitution of the United States. This resulted in various challenges and issues, one of which was the debate surrounding the so-called "limits of the right to amend the

[26] See note 25.

[27] Ito Hirobumi, ed. Constitutional Materials (Mid-Volume, Sobunkaku, 1936), p. 334. "Constitutional Lectures."

constitution." The question arose: was it legally permissible to completely revise The Meiji Constitution, which established imperial sovereignty, and transform it into the Constitution of Japan, which espoused popular sovereignty? Was there a limit to the scope of constitutional amendments? This controversy centered around the conflict between the "unlimited amendment theory" and the "limited amendment theory."

Although the Constitution of Japan was formally established as a revision of The Meiji Constitution[28], the key issue was whether it was legally possible to amend the fundamental principle of imperial sovereignty in The Meiji Constitution and replace it with the contradictory principle of popular sovereignty. To address this, the "August Revolution Theory"[29] was proposed and is still widely accepted today. Though the details are omitted here, the general argument can be summarized as follows:

1. If the "unlimited amendment theory" were adopted, any revision would be possible. However, as mentioned earlier, this raises the question of whether such amendments were "legally possible."

2. If the "limited amendment theory" were followed, amending The Meiji Constitution, based on imperial sovereignty, to a new Constitution based on popular sovereignty would exceed the limits of constitutional amendment. However, since the Potsdam Declaration required the adoption of popular sovereignty, and Japan accepted this condition, the emperor's transfer of sovereignty to the people was implicitly approved. Thus, popular sovereignty was established at the moment of accepting the Potsdam Declaration, which can be seen as a form of "revolution" in legal terms. Therefore, the Constitution of Japan was created by the people, who became the new sovereigns, and the amendment process of the old constitution was only a formal process, adopted for convenience.

While there are criticisms of this viewpoint, it is highly regarded as a theoretical attempt to explain the dramatic shift from a constitution granted by the emperor to a democratic constitution.

3.2. Provisions Regarding Education

As mentioned in Chapter 2, The Meiji Constitution did not contain provisions related to education, and policies regarding education were implemented through decrees based on the Imperial Rescript on Education. In contrast, the current Constitution of Japan contains multiple provisions related to education, as a democratic state, it was necessary to explicitly delegate education to the law. On the other hand, the US Constitution,

[28] The Emperor formally approved and promulgated constitutional amendments based on Article 73 of The Meiji Constitution (Constitutional Amendment Procedure).

[29] Miyazawa Toshiyoshi, "The August Revolution and Popular Sovereignty" (Sekai Bunka, Vol. 1, Issue 4, 1946, May). For further explanation, see Ashibe Nobuyoshi (revised by Takahashi Kazuyuki), Constitution 7th edition (Iwanami Shoten, 2019), pp. 29-32.

which strongly influenced the Japanese Constitution, has no provisions on education[30]. This is due to differences in the political systems and social backgrounds of the two countries. The US is a federal state, while Japan is not.

Furthermore, the Constitution of Japan is a "rigid constitution" (Article 96, Paragraph 1)[31], and its amendment process is extremely difficult. This characteristic reflects on returning to the pre-war system, and it was also influenced by the intentions of the occupying GHQ.

As previously mentioned, since education is regulated by provisions in the constitution[32], its content and implementation must be delegated to laws. This delegation ensures that democratic control through the Diet (Japan's parliament) is possible, but it also means that the content and direction of education can be altered depending on the political party or government in power.

The following is an overview of how the Japanese Constitution addresses education.

3.2.1 Article 26

1.All people shall have the right to receive an equal education corresponding to their ability, as provided by law.

2. 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 26 of the Constitution of Japan is the central provision concerning education. It is the foundation for all educational laws, regulations, and executive orders.

In Paragraph 1, the concept of "equal educational opportunity" is emphasized with the phrase "according to their ability." This makes it clear that education is viewed as a "right" for all citizens. Furthermore,

[30] A discussion of why the U.S. Constitution does not contain provisions related to education can be found in Uehara Sadao, "Education Provisions in Early American State Constitutions" (Ibaraki University Bulletin of the Faculty of Education No. 21, 1972, pp. 39-48).

[31] Article 96 of the Japanese Constitution:
1. Amendments to this Constitution must be proposed by a two-thirds majority of the members of each House and must be approved by the people through a national referendum or a vote conducted in accordance with the election procedures established by the Diet.

[32] For a comparative study of education provisions in the constitutions of various countries, see:
- Okihara Toyoo, "A Comparative Study of Education Clauses in National Constitutions" https://www.jstage.jst.go.jp/article/kyoiku1932/25/6/25_6_2/_pdf
- Sagara Keiichi, "A Comparative Study of Education Clauses in National Constitutions" (Kyoto University Faculty of Education Bulletin No. 2, 1956).

the phrase "as provided by law" suggests that democratic policy-making is assumed, and it is the intent of the provision to delegate the specifics to the Diet.

Paragraph 2 establishes the "obligation" to ensure that children receive ordinary education. However, it is important to note that the "obligation" applies to "guardians or parents" who are responsible for ensuring that their children receive education. This means that the obligation lies with the guardians, not with the children themselves. The requirement for "free compulsory education" aims to prevent parents from avoiding school enrollment due to economic factors. Thus, the focus is on protecting the "right" to education for children.

This provision contrasts with the pre-war Meiji Constitution, which explicitly outlined "military service" and "taxation" as the duties of citizens. In the post-war Constitution of Japan, with its adoption of pacifism, "military service" was naturally abolished, and in its place, "labor" and the "duty to ensure education" were specified as new obligations. This makes "education" one of the three major duties of citizens, alongside "labor" and "taxation." As mentioned earlier, the focus of this obligation is not to impose a duty on the child but to ensure that the state guarantees the child's right to education and prevents parents from avoiding this responsibility.

Although the Constitution does not explicitly mention the "right to education," it is widely accepted in constitutional theory that the right to education is an integral part of the "right to life" (as defined in Article 25)[33]. It is considered the state's obligation to ensure equal access to education and create the necessary economic conditions[34].

3.2.2 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.

This article is intended to separate religious education from public education. It reflects a rejection of the previous system, under which Shinto and the divinity of the emperor were financially supported, and addresses

[33] Judicial Association, *Commentary on the Japanese Constitution (Vol. 1)* (Yuhikaku, 1953), pp. 495-496, 500; Ibid., Miyazawa Toshiyoshi, Constitution II [New Edition] (Yuhikaku, 1974), pp. 435-436. Kobayashi Naoki, "On the Constitution" (University of Tokyo Press, 1967), p. 420. Tagami Joji, "The Original Theory of the Constitution of Japan in the New Edition" (Seirinshoin, 1985), p. 188, et al.

[34] Sato Tatsuo, Document 77~79 Legislative Affairs Bureau, "Hypothetical Questions and Answers on the Draft Constitutional Amendment and Explanation of the Constitutional Amendment," April~June 1946. In particular, "Hypothetical Questions and Answers on the Draft Constitutional Amendment (1st ~ 7th, Supplementary 1st ~ 2nd Edition)," pp. 42~43 (National Diet Library collection).

concerns about using public educational resources for specific religious purposes.

3.2.3 Article 20

1.Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

2.No person shall be compelled to take part in any religious act, celebration, rite, or practice.

3.The State and its organs shall refrain from religious education or any other religious activity.

Article 20 guarantees freedom of religion and includes provisions specifically separating religious activities from public education. This section was influenced by a desire to move away from the prewar system, in which the divine status of the emperor was emphasized and Shinto was institutionalized in the education system.

3.2.4 Article 23

Academic freedom is guaranteed.

This provision guarantees academic freedom and was introduced to prevent the censorship and purging of academic research that occurred during the pre-war period when various scholarly views were suppressed under the guise of preserving national identity.

3.3. The Educational System Under the Current Constitution

As outlined above, the Constitution of Japan includes several provisions on education, delegating specific details to be handled by law. Article 26 is the most important of these provisions. However, there remains a tension between pre-war education and post-war education. In this context, expressions such as “nurturing patriotism” or “service to the state” have been avoided in post-war Japan.

For example, the Basic Act on Education, enacted in 1947 shortly after the promulgation of the Constitution, reflected a strong rejection of pre-war education. However, a 2006 revision to this law added language about “love of the country and regions”, which sparked significant debate. While this is a common expression in many countries, some felt there was resistance to including it in Japanese law due to fears of returning to pre-war. Similarly, the law changed requirements for teachers, adding the need for “measures must be taken to improve their education and training”, which some saw as the beginning of state control over teachers.

Thus, while there are still concerns over the remnants of pre-war educational systems, the current education system is seen as relatively

stable and responsive to modern social and international contexts.

3.4. Summary of the Chapter

The Constitution of Japan reflects significant changes from its pre-war, particularly in terms of education. Education, once used as a tool for nationalism and militarism, is now seen as a fundamental right that should be guaranteed by the state. The framework for education under the current Constitution was designed to ensure a democratic society, free from religious and imperial control, and to guarantee that citizens' educational rights would not be compromised.

IV. The Meiji Constitution and the Constitution of Japan – Differences and Similarities Regarding Education

As mentioned in Chapter 2, while The Meiji Constitution did not include any provisions concerning education, this should not be seen as a sign of neglecting its importance. In fact, the lack of explicit provisions on education was supplemented by the "Imperial Rescript on Education," which helped establish the foundation of "loyalty to the emperor and love for the country" in early Japanese education.

On the other hand, the Constitution of Japan, arising from the historical fact of Japan's defeat in World War II, sought to distance itself from The Meiji Constitution and the policies and concepts that had been based on it. Therefore, while several provisions concerning education were included in the new constitution, the language of "patriotism" or "contribution to the nation," commonly found in the constitutions of other countries, was notably absent. This lacking has drawn mixed evaluations, but The Constitution of Japan sought to prevent excessive state intervention in education, marking a clear break with the past.

4.1. Who Creates Education?

Under The Meiji Constitution, education was controlled in the name of the emperor through imperial decrees ("*chokurei*"). Imperial decrees were usually approved formally by the emperor, and education was no exception.

At first glance, one might think that education activities under a constitutional monarchy would be highly constrained, but in fact, education under The Meiji Constitution was relatively flexible due to the lack of specific constitutional provisions. However, the fact that educational issues belong to the emperor's prerogative often led to excessive nationalism. It has often been used by some politicians, even teachers or scholars as a means of suppressing speech. One of the reasons for this can be attributed to the fact that there were no provisions regarding education in the

constitution, which led to a lack of protection for education.

Moreover, the absence of constitutional provisions on education meant that there were periods of "confusion" about the direction and objectives of education. Initially, liberal educational views prevailed, but as the Imperial Rescript on Education spread the ideology of "loyalty to the emperor and love for the country," educational objectives became increasingly defined. Over time, this shifted from a focus on "loyalty" to a more militaristic "devotion to the country". Given that there were no constitutional provisions defining the purpose or goals of education, the Imperial Rescript on Education became the main source of authority, and its decrees had to be followed without question.

After World War II, Japan rejected the pre-war Meiji Constitution and its laws, aiming to construct a democratic nation-state. The inclusion of education provisions in the post-war Constitution of Japan was based on a belief in the democratic system, with the assumption that the government would be held accountable through elections. However, since the success of this system depends on the majority in the Diet, cannot necessarily be said that this method of control is much better than imperial decrees of The Meiji Constitution. The system of imperial decrees could be evaluated as a kind of attempt to avoid from administrative or political intervention and provide more stability in education.

4.2. The Effectiveness of Explicit Educational Orientation

Unlike The Meiji Constitution, the Constitution of Japan clearly states the direction and orientation of education. As a result, education laws and regulations were developed based on these guiding principles, and educational administration follows these directives.

However, delegating such matters to laws raises concerns about the potential for arbitrary political changes, depending on the party in power. In contrast, The Meiji Constitution sought to avoid such shifts by taking the control of education out of the hands of the legislature and placing it under the emperor's authority, which was less subject to the whims of the political moment. Through the "Imperial Rescript on Education," The Meiji Constitution established lofty ideals for education, but these were susceptible to changes that suited the needs of the ruling authorities at the time. The Rescript, although not part of the constitution, served as a powerful tool to direct educational policy and was sometimes more influential than the constitution itself.

Thus, while education's direction can be outlined through either a formal constitutional provision or a decree, The Meiji Constitution's use of the "Imperial Rescript" as a special exercise of power means that it cannot be considered an ideal method for modern constitutional governance.

Furthermore, the lack of constitutional provisions in the Meiji system led to a situation where the rights and protections of education were too weak and easily altered.

4.3. The Position of Education

As discussed, education under The Meiji Constitution was viewed more as a duty than a right. However, prior to The Meiji Constitution, there was a growing liberal view of education, which was not denied this by figures like Ito Hirobumi, who played a significant role in the drafting of The Meiji Constitution. The issue, however, was that the liberal ideals of education and the fostering of "public virtue" that were envisioned when the Imperial Rescript on Education was enacted were gradually overshadowed by political considerations and were eventually warped into excessive nationalistic ideologies.

In the case of the Imperial Rescript on Education, it became a highly venerated symbol, treated as an almost divine object, rather than as a guide to educational philosophy. This excessive glorification contributed to an over-interpretation of its contents. The ambiguity of The Meiji Constitution's stance on education made it unclear whether there was a right to attend school or a duty to receive education. For the general public, since education was controlled through imperial decrees, it was seen as something "imposed from above" and a "duty" rather than a "right".

4.4. The Significance of Constitutional Provisions

In contrast, the Constitution of Japan clearly positions education as a right, and this has led to an increased awareness that education is something citizens are entitled to. This has become a fundamental aspect of the Japanese understanding of the constitution. On the other hand, as noted by scholars such as Mosse, the existence of provisions in the Constitution does not necessarily guarantee their effectiveness, as they could be easily ignored or become mere symbols.

While the constitution serves to express lofty ideals, it is sometimes disconnected from the reality of how those ideals are implemented. This is a common issue not only in the realm of education but in various other areas as well. Mosse's critique of constitutional monarchies and the approach to governance in the Meiji era remains relevant today, as it highlights the potential for a disconnect between a constitution's ideals and its actual application.

V. Conclusion

The reason The Meiji Constitution did not include provisions related to education was not because it underestimated its importance, but rather

because of a desire to avoid political interference in education that could arise from the inclusion of such provisions. The direction of not placing a provision for education in the Meiji Constitution gave rise to the use of imperial decrees by the Emperor's prerogative, but on the other hand, it cannot be denied that its excessive apotheosis created. The fact that the content about education was decided by an organization called the "Genrou," which could be said to be an advisory body to the Emperor, was also problematic from the perspective of constitutionalism.

In contrast, the inclusion of provisions regarding education in the Japanese Constitution is believed to have been intended to impose on the state the obligation to carry out education, while also emphasizing its aspect as a right and prohibiting excessive state control. The current constitution recognizes education as a right in Article 26, while also imposing an obligation on parents to provide education. Additionally, Article 89 advocates for the financial separation of religion and education as an ideal. This can be seen as a significant improvement, reflecting the lessons learned from the prewar period, when education was not subject to legal control and, at times, became a "tool" convenient for the state. On the other hand, delegating the implementation of education to laws meant that it was placed under democratic control. However, this also brought concerns about the rise of the strengthening of state control over education. In any case, since education is greatly influenced by the political and social conditions of the state, determining the most appropriate method for its implementation will remain a major challenge in the future.

While the current system places education under democratic control, there are still concerns about the potential just becoming "for the state". On the contrary, Education remains deeply affected by the political climate and societal context, and it is likely that the way education is implemented will continue to be a significant issue moving forward. Whether through constitutional or legal provisions, the challenge remains to ensure that education remains a true right and that its essential role in society is upheld.

Since the constitution is meant to formally and substantively express the ideals of the state, whether or not education is included in the constitution is a crucial element in determining the grand design of the desired nation. However, even if such provisions exist, it cannot be denied that they may be nothing more than "pie in the sky." While the constitution serves to express noble ideals, the danger always exists that these ideals may remain merely a declaration, disconnected from reality. This concern is one that should be held at all times, in any country, and in any era. It is my firm belief that such concerns and reflections are what lead to a true understanding of the "significance of the constitution."

[Bibliography]

Ashibe, Nobuyoshi. *Constitution*. 7th ed. Revised by Takahashi Kazuyuki. Iwanami Shoten, 2019.

—. *Constitution*. 8th ed. Revised by Takahashi Kazuyuki. Iwanami Shoten, 2023.

Bälz, Erwin Toku, ed. The Diary of Bälz. Translated by Suganuma Ryutaro. Iwanami Bunko, 1979.

Ito, Makoto, et al., eds. Dictionary of Legal Studies, 5th ed. Yuhikaku, 2016.

Kobayashi, Naoki. On the Constitution. University of Tokyo Press, 1967.

Miyazawa, Toshiyoshi. Constitution II [New Edition]. Yuhikaku, 1974.

Osatake, Takeki. Outline of Japanese Constitutional History, vol. 2. Nihon-Hyoronsha, 1939.

Sagara, Keiichi. "A Comparative Study of Education Clauses in National Constitutions." Kyoto University Faculty of Education Bulletin No. 2, 1956.

Smith, John A. Understanding Human Behavior. Academic Press, 2020.

Tagami, Joji. The Original Theory of the Constitution of Japan in the New Edition. Seirinshoin, 1985.

Uehara, Sadao. "Education Provisions in Early American State Constitutions." Ibaraki University Bulletin of the Faculty of Education No. 21, 1972.

Accessed November 1, 2024.

https://www.jura.uni-wuerzburg.de/lehrstuehle/muenkler/verfassungsdokumente-von-der-magna-carta-bis-ins-20-jahrhundert/revidierte-preussische-verfassung-1850.

National Archives, Ministry of Education, Culture, Sports, Science and Technology. "About Japanese Education and History of Education."

Accessed November 1, 2024. https://www.archives.go.jp/ayumi/kobetsu/m05_1872_02.

National Diet Library. "About Dajyokan"

Accessed November 1, 2024. https://www.ndl.go.jp/modern/cha1/description04.html.

Public Document "Request for the Enactment of the Education System," Ministry of Education, Volume 48, 1873. Accessed November 11, 2024.

https://www.digital.archives.go.jp/das/image-j/M0000000000000082443.

Okihara, Toyoo. "A Comparative Study of Education Clauses in National Constitutions."

J-STAGE. Accessed November 1, 2024.

https://www.jstage.jst.go.jp/article/kyoiku1932/25/6/25_6_2/_pdf.

Ogasawara, Masashi. "The Emperor's Sovereign Powers and the Imperial Edict

System of Education in the Process of Formulating The Meiji Constitution." Toa University, 2000.

Miyazawa, Toshiyoshi. "The August Revolution and Popular Sovereignty." Sekai Bunka 1, no. 4 (1946).

Subcommittee on Research into Constitutional Matters of the House of Representatives. "Basic Data on the Meiji Constitution and the Constitution of Japan." 2003.

The Modern Legislative Process Research Group, Faculty of Law, University of Tokyo. "Documents Relating to the Works of Omori Kanichi (2)—Mosse's Lectures." Journal of the National Science Association 84, nos. 7–12 (1971).

Takii, Kazuhiro. "The Meiji Constitution in Global Context." New Domains and Next-Generation Japanese Studies. International Research Center for Japanese Studies, 2016.

Imperial Edict on the Special Dispatch of Commissioners to Investigate Constitutional Systems in Europe. National Diet Library Collection, 1882.

The Constitution of Japan: With the Laws Appertaining Thereto, and the Imperial Oath and Speech. Yokohama: Japan Gazette Office, 1889.

Sato, Tatsuo. "Document 77–79, Legislative Affairs Bureau, 'Hypothetical Questions and Answers on the Draft Constitutional Amendment and Explanation of the Constitutional Amendment.'" April–June 1946. National Diet Library Collection.

Online Sources:

Laura Münkler. Revidierte Preußische Verfassung (1850). Verfassungsurkunde für den Preußischen Staat, 31 January 1850 (Preußische Gesetz-Sammlung 1850, S. 17 ff.).