

Pázmány Péter Catholic University  
Doctoral Degree Program of Law and Political Sciences

**Doctoral thesis summary**

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**THE BIRTH OF THE JAPANESE DEMOCRACY**  
**The historical analysis of the Meiji and the Shōwa Constitutions**

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## 1. Research objectives

The start of my researches on Japanese law goes back to my first year university studies when - on the ground of the lectures on Universal Legal History and the book assigned for the students<sup>1</sup> - I became aware that the Japanese legal system, particularly its origins, its development was paid insufficient attention.

Following the successful completion of my university studies, I had the impression that the “shortcomings” of the first year were not completely solved. I found when any issues concerning Japanese law came up, typically those of the Japanese civil code, (民法 *minpō*), then it was labelled as a copy or translation of the German civil code (*Bürgerliches Gesetzbuch, BGB*). Such allegations may apply to its pandectist structure, but the content of the Japanese civil code was largely influenced by the first draft of the BGB as well as the French civil code, (*Code civil*). As a matter of fact, the French Professor, *Gustave Emile Boissonade*<sup>2</sup> was invited to Tokyo in 1873 to draft the Japanese civil code. Although his proposal<sup>3</sup> relying heavily upon the French model was not adopted, it was taken into consideration by the final version of *minpō*<sup>4</sup>. It should also be added that the fourth and fifth books of the *minpō* concerning family and inheritance were entered into force by a separate law in 1898<sup>5</sup>, two years after the first three books

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<sup>1</sup> HORVÁTH-GÖNCZI-STIPTA-ZLINSZKY (ed.) *Egyetemes Jogtörténet, Universal legal history*, Nemzeti Tankönyvkiadó, Budapest, 1997

<sup>2</sup> BOISSONADE, Gustave Emile (1825-1910) was a Professor of Criminal Law in Paris, and worked as an advisor of the Japanese government from 1873 and drafted first the Japanese Criminal Code, then the so-called old Civil Code.

<sup>3</sup> BOISSONADE, Gustave Emile *Projet de Code Civil pour l'Empire du Japon*, Tokió, 1889

<sup>4</sup> HYEONG-KYU, Lee *Die Rezeption des Zivilrechts in Ostasien*, *Zeitschrift für Vergleichende Rechtswissenschaft*, 1987. p. 158-163.

<sup>5</sup> Books 1-3 of the so-called new Civil Code were promulgated as Law No. 89 of 1896, while books 4-5 were promulgated as Law No. 9 of 1898 and the complete Civil Code was enforced from 16 July 1898. The code of civil procedure (*minji soshō hō*), which was heavily influenced by the German Zivilprozessordnung of 1877 entered already into force on 1 January 1891. NAKAMURA, Hideo *Die Rezeption des deutschen Rechts in Japan - insbesondere auf dem Gebiete des Zivilprozeßrechts*, *Zeitschrift für Zivilprozeß*, 1971, Vol 84. p. 74-90.

and basically codified the Japanese traditions including the status of the head of the family or the succession of male descendants.<sup>6</sup>

Concerning the *teaching* of Japanese law in Hungary I have to admit that the abovementioned shortcomings were balanced by some positive exceptions<sup>7</sup>, like the seminar on legal families led by Professor *Zoltán Péteri* or two papers translated to Hungarian and published in the then compulsory book within the framework of legal philosophy.<sup>8</sup> In this context, the significance of the former seminar on Japanese law led by Professor *István Kállay* at Széchenyi István University should also be mentioned.<sup>9</sup>

Following the above mentioned, my gradual thesis was entitled “The historical conjunctions in modern Japanese law (1868-1956)” and my old-new supervisor, *István Szabó*, head of department, university professor did not want to prevent me from the selected topic and his experiences regarding the Prussian constitution, the German and the Austrian legal system<sup>10</sup> were particularly valuable with regard to the most important acts adopted during the Meiji period (1868-1912).

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<sup>6</sup> FUETO, Toshio *The discrepancy between marriage law and mores in Japan*, *The American Journal of Comparative Law*, vol. 5. 1956, p. 256-266.

<sup>7</sup> See the subchapter on Japanese legal and constitutional developments of the following university textbook: KAJTÁR, István *Egyetemes állam- és jogtörténet*, *Universal state- and legal history* (Pécs, 2005), p. 298-300.

<sup>8</sup> VARGA, Csaba (ed.) *Összehasonlító jogi kultúrák*, *Comparative legal cultures*, Osiris, Budapest, 2000. Professor Csaba Varga was the author of the first review in Hungary on the book of NODA, Yosiyuki *Introduction au droit japonais*, (Paris, Librairie Dalloz, 1966), which was published in the journal of *Állam- és Jogtudomány* (4/1968, p. 619-625.) Other publications and reviews on Japanese law are published in his book *Jogi elméletek, jogi kultúrák*, *Legal Theories, Legal Cultures* (Budapest, 1994, particularly p. 450-466.)

<sup>9</sup> The first Hungarian translation of the Japanese Civil Code was completed in the framework of the seminar on the Introduction to the Japanese law led by István Kállay in Győr. See: [www.sze.hu/~kallay/letolt/2006/japan.doc](http://www.sze.hu/~kallay/letolt/2006/japan.doc)

<sup>10</sup> SZABÓ, István *Német alkotmányfejlődés 1806-1945*, *German Constitutional Development 1806-1945*, Szent István Társulat, 2002.

The primary object to present the fundamental characteristics and development of Japanese legal system has not changed yet, since this has been the purpose of my special course held since 2004 in the framework of the Department of Legal History.<sup>11</sup>

However, already during the composition of my gradual thesis I became aware of the following future-oriented recognition: on the one hand, it would be necessary to draw up a general book on Japanese law for the Hungarian readers. (I consider this thesis as part of this process.) On the other hand, and I find this more important, during my first research I discovered numerous legal and constitutional historical characteristics, which bear not only historical significance. In the past one thousand and five hundred years Japan has been shaped by three main foreign legal influences:

The first period of the Chinese influence occurred during the 7<sup>th</sup> century<sup>12</sup>, which resulted in the centralised state-system in the framework of the Taika-reform, (大化の改新 *Taika no Kaishin*).

In the second period during the Meiji era, primarily with the assistance of Franco-German legal advisers, codes based on civil law traditions were adopted, out of which the Constitution<sup>13</sup>, released by the Emperor was considered as the most important.

In the third period, during the era of the post-war occupation, the state was reorganised, the codes of the Meiji period were amended and the Constitution was adopted in the spirit of democratisation, demilitarisation and decentralisation.<sup>14</sup>

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<sup>11</sup> Title of the seminar: The Conjunction of Far-Eastern customs and Western norms in the Japanese legal history

<sup>12</sup> It must be noted that the impact of the written characters with Chinese origin called (*kanji*) took place in the 5<sup>th</sup> century, and Buddhism spread out in Japan from the 6<sup>th</sup> century. Confucian ethics were forced in the Tokugawa-period (1603-1867), while Shinto became a state-religion in the Meiji period 1868-1912). However, today, Shinto and Buddhist traditions exist parallel and the large majority of the society observes both numerous Buddhist and Shinto rites.

<sup>13</sup> Concerning the Meiji Constitution, the role of *Hermann Roesler* (1834-1894) should be stressed, who was an advisor to the Japanese government between 1878 and 1893.

On the basis of the above-mentioned, it might be concluded, that the ancient customs and the traditional legal concept - most closely relating to the Chinese concept as a result of Confucian and Buddhist teachings, - entered into direct contact with the very different civil law and Anglo-American legal systems.<sup>15</sup> It follows that the codes of the great civil revolutions “fell” on the ground of a society governed by customs radically different from Western civilisation.

The result of these “three” influences was only touched upon during my gradual thesis, primarily through the cases of given codes. The question therefore stayed open and provided enough reason for me to apply to the Doctoral Degree Program of Law and Political Sciences of the Pázmány Péter Catholic University.

During the Doctoral Programme - although our „everyday bread” derived from EU-law related jobs of domestic public sector, earned after shorter and longer foreign scholarships - I undertook further analysis of the three foreign influences of Japan. In this framework I conducted research not only concerning constitutional law, but also related to procedural law. However, at a certain point I had to admit that the response to the fundamental questions required the thorough examination of the Meiji Constitution (1889)<sup>16</sup> and the Shōwa Constitution (1946)<sup>17</sup>. Accordingly, in the past five years I focused my research on the modern as well as the democratic Japan. The lessons of the discussions I had with Professor *Yoshida Masayuki*, who spent two months upon my invitation at the Pázmány Péter Catholic University in the spring of 2007, and the openness of my supervisor contributed to this decision.

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<sup>14</sup> TAKAYANAGI, Kenzō *A Century of Innovation: The Development of Japanese Law*, in: VON MEHREN, Arthur Taylor (ed.) *Law in Japan, The Legal Order in a Changing Society*, Cambridge, Massachusetts, Harvard University Press, 1963, p. 5-40, RÖHL, Wilhelm *Rechtsgeschichte*, in: EUBEL, Paul (ed.) *Das japanische Rechtssystem*, Alfred Metzner Verlag GmbH, Frankfurt am Main, 1979, p. 2-16.

<sup>15</sup> ODA, Hiroshi *Japanese Law*, Butterworths, London, Dublin, Edinburgh, 1992, p. 3-8.

<sup>16</sup> TAKII, Kazuhiro *The Meiji Constitution The Japanese Experience of the West and the Shaping of the Modern State*, (Translated by NOBLE, David), International House of Japan, 2007, p. 149-161.

<sup>17</sup> [http://www.shugiin.go.jp/index.nsf/html/index\\_e\\_laws.htm](http://www.shugiin.go.jp/index.nsf/html/index_e_laws.htm)

Since then my research focused primarily upon the constitutions, particularly the Emperor, the Diet, the Government, the separation of powers and checks and balances between the state branches. I found it especially important to take a comprehensive, historical approach since the diverse foreign influences of the two constitutions were interpreted differently by the international literature.<sup>18</sup> More precisely, I had the impression that the two constitutions, their enactments and applications should be examined *parallel* in order to be aware of the Prussian influence in the case of the previous, and of the American in the case of the latter constitution.<sup>19</sup> The birth of *modern* Japan was symbolised by the Meiji Constitution, while the basis for *democracy* was laid down by the Shōwa Constitution. It should be pointed out that neither the Prussian, nor the American influence can be considered as exclusive with regard to the enactment or the application of the constitutions. Since both constitutions carried the effects of social environment, norms prevailing at the time of their birth. All these were combined with the Chinese-origin traditions, since the period of centralised state system and *de facto* power of the Emperor goes back to the 7<sup>th</sup> century.

The aim of the project was to provide response for the following simple-sounding question: how has people's sovereignty been realised in Japan?

I attempted to reply on the basis of comparative research of pre- and post-war Japanese state systems: through the status of the Emperor, the competence of the Diet, the responsibility of the Government, the independence of the judiciary and the enactment and amendment of constitutions. My goal was to deliver evidence that none of the

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<sup>18</sup> The Pre-war constitutional order is also partly discussed in the following outstanding books: LUNNEY, Percy R. – TAKAHASHI, Kazuyuki (ed.) *Japanese Constitutional Law*, University of Tokyo Press, Tokyo, 1993. HIGUCHI, Yōichi. (ed.) *Five decades of Constitutionalism in Japanese Society*, University of Tokyo Press, 2001.

<sup>19</sup> Regarding the historic approach the following books should be stressed: BEER, Lawrence W. – MAKI, John M. *From Imperial Myth to Democracy*, University of Colorado Press, Colorado, 2002, and TANAKA, Hideo (ed.) *The Japanese Legal System*, University of Tokyo Press, 1976.

Japanese constitutions can be declared as a “copy”; although the impact of the Prussian Constitution of 1850 in the Meiji period and the direct influence of the February 1946 draft produced by the Applied Powers are indubitable.

Moreover, I wanted to make it clear that the two constitutions are not to be separated *sharply* from each other in a sense that regarding the application of the current Constitution the knowledge of the Meiji Constitution is indispensable. Despite the dramatic changes of the post-war period like the people’s sovereignty, pacifism, catalogue of fundamental rights and the prohibition of discrimination against women, in numerous other areas, particularly concerning the status of the Emperor, the traditions and world of past social norms are still perceptible, which are particularly difficult to discover for a foreign researcher.

According to *Paul Koschaker*, an Austrian professor of Roman Law: “For though the law can be changed from one day to the next, the men to whom it is applied (...) cannot be changed this way”.<sup>20</sup> The research objective was – very briefly – a certain reinforcement of the above statement, through the example of the Japanese constitutional history.

As a result of the above-mentioned, the cultural and social customs formed a kind of safety net during the intense legislative works of the 1880’s and the years of 1946-48. My research wanted to underline that these ancient customs bear relevance not only in the case of private law, but also in the case of constitutional law. I tried to put emphasis on the evaluation of these cultural factors particularly regarding the Emperor as a symbol system (象徴天皇制 *Shōchō Tennōsei*), and the assessment of a scientific discourse which evolved between the American and Japanese legal scholars concerning the Japanese court system.

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<sup>20</sup> Quoted by NODA, Yosiyuki: *Introduction to Japanese Law*, (Translated by ANGELO, Antony H.) University of Tokyo Press, 1992, p. 58.

It was not the goal of the research to deny either the existence of the three foreign influences, or the relation of the Japanese legal system to the *civil law* systems, based on Roman-German traditions, or the role of numerous Anglo-American doctrines in the Shōwa Constitution, or the respect for many Chinese origin customs, but wanted to present the *actual relevance* of all of these factors upon the Japanese constitutional history.

Finally, it must be underlined that the research was basically not a comparative one<sup>21</sup>, since I am convinced that the first level, in the case of an environment being totally different from European and Hungarian legal culture should be the historical one. A comprehensive comparative analysis or the eventual Hungarian-Japanese<sup>22</sup> *legal* relations would constitute the following level. This is, in my opinion, the indispensable duty, but at the same time “by-product” of all researches: newer and newer viewpoints, newer questions waiting for answers have been raised, which overlap the present framework.

## **2. Research methodology, use of source**

To conduct research and to answer the question stated above is only possible in the possession of adequate scientific knowledge and experience. The collection of the necessary sources did not prove to be a simple and brief process.

As self-evidence, I had to search for the authentic sources outside Hungary, since not only in the domestic legal education but also in the domestic library network limited numbers of publications on Japanese law were available<sup>23</sup>. Until recently, the Budapest

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<sup>21</sup> More precisely, the comparison covers the Meiji and the Shōwa Constitutions, but does not include the comparative analysis of the Prussian or the American constitutional order.

<sup>22</sup> Regarding the Hungarian-Japanese relations, the research of *Ildikó Farkas*, (associate professor, Karoli Gaspar University of the Reformed Church, Faculty of the Humanities, Japanese studies).

<sup>23</sup> Contemporary sources of Hungarian authors on Japanese law are focusing on general issues and not exactly constitutional matters:



Office of the Japan Foundation, the Library of the Hungarian National Assembly and the Library of the Central European University has counted to the most important sources in Hungary. However, the Library of the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University has become member of this small group as a result of the books awarded to it in 2007 and 2008 through the *Library Support Program of the Japan Foundation*. For the time being, in Hungary it offers one of the largest range of books and edited volumes on Japanese law.

In the first part of the research, I was an active participant of the domestic forums available for PhD-students, both regarding the intra- and inter-faculty scientific conferences. Thanks to the exchange of views with fellow legal PhD-students, in many cases valuable new aspects came up, which revealed the significance of given sub-questions. Regarding my research topic, I had the opportunity to be a lecturer at more than half a dozen conferences, either in Hungarian or in English, which enabled real progress, and the examination of the newer and newer questions led me to the specification of the main question.

I have reported regularly on the results achieved to my supervisor, whose hints turned out to be particularly useful at those stages, when I have become somewhat uncertain regarding the following steps. I believe, that without this close cooperation, I would not have been able to compose these lines.

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HAJDÚ, József *A japán munkaiügyi kapcsolatok sajátosságai a kezdetektől 1995-ig, The characteristics of the Japanese labour relations from the beginnings until 1995.* (Pólay Elemér Alapítvány, Szeged, 2006)

MAROS, Kitti *A japán, a kínai, a muzulmán, a hindu jogi kultúra és ezek modernizációs lehetőségei, The Japanese, Chinese, Muslim and the Hindu legal cultures and their modernization opportunities* (Pécs, 2008)

[http://doktori-iskola.law.pte.hu/files/tiny\\_mce/File/Archiv2/Maros\\_Kitti\\_Dolgozat.pdf](http://doktori-iskola.law.pte.hu/files/tiny_mce/File/Archiv2/Maros_Kitti_Dolgozat.pdf)

BÓKA, János *A japán jog, The Japanese law*, in: BADÓ, Attila – LOSS, Sándor (ed.) *Betekintés a jogrendszerek világába*, 2003, p. 319-327.

Regarding my research, the year of 2007 can be regarded as a real turning point. Professor *Yoshida Masayuki*<sup>24</sup> spent two months as a visiting-lecturer of the Pázmány Péter Catholic University, held lectures and was ready to answer my questions. Later on, based on this direct contact, he provided me with numerous outstanding publications.

Later on, through my supervisor I had the opportunity to get into contact with another Japanese professor. I was able to meet Professor *Takii Kazuhiro*, legal historian for a weekend in June 2010 in Budapest, who was happy to hear the report on my researches.

In the summer of 2011, ten years after the three-week language course of Kyoto University of Foreign Studies acquired as an Erasmus-student of an Austrian University, I was able to conduct intense research on the birth of the Japanese parliamentary monarchy, as a visiting researcher of the International Research Center for Japanese Studies (*国際日本文化研究センター Kokusai Nihon Bunka Kenkyū Sentā*)<sup>25</sup> in the framework of five-week scholarship of the Japan Foundation Short-Term Fellowship Program.

As an instructor at the Kyoto-center, Takii Kazuhiro regularly provided consultation opportunities for me and was always ready to answer my never ending questions. He has particularly reinforced that the historic approach of my research should not be denied, i.e. both the Meiji and Shōwa Constitutions should be examined.

In the Kyoto-center, an extremely rich literature was available in one place, and I had the opportunity to conduct scientific conversations on the historical and social background of my research not just with my instructor but with numerous other

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<sup>24</sup> YOSHIDA, Masayuki *The Reluctant Japanese Litigant. A 'New' Assessment* 2003, <http://www.japanesestudies.org.uk/discussionpapers/Yoshida.html>

<sup>25</sup> [http://www.nichibun.ac.jp/welcome\\_e.htm](http://www.nichibun.ac.jp/welcome_e.htm)

motivated colleagues. Moreover, during my stay in Japan I was able to visit numerous cities, squares, buildings, which played constitutional historical significance in the past thousand three hundred years. I believe that this research scholarship took place at the best moment, since the five-week period was made up along concrete questions and goals in order to be more effective and authentic.

Regarding the reference processing I have to point out some basic factors. The scarcity of sources available in Hungary meant not only limited number of references, but that the majority of legal publications were written in non-Hungarian languages. This in itself would not have been a major difficulty, but for the interpretation of the original Japanese language sources I needed, for the time being, the assistance of a lector, which was only possible in two cases. It follows that in order to make progress I had to rely especially on English and German and partly on French sources.

However, the linguistic diversity is not unimportant regarding the examination of the subject-matter. The reason for this is the following: a large part of English language sources – related to their *constitutional historical significance* – were written by American authors, focusing to greater extent on the Shōwa Constitution. The large part of the German language sources gave, however, priority to the Meiji period, while the French publications enshrined also in relation to the civil law codifications of the Meiji period. It follows, that the linguistic differences often represented different concepts as well. At this stage, the opus of the Japanese authors should be mentioned, out of which more and more are originally written in English or eventually in German, which help us face the Japanese, American and German approaches regarding the interpretation of Japanese constitutional history. That is why, during my research I studied as many references as possible, and referred to more sources, which meant longer and more

difficult method regarding the time and effort, but that was the prerequisite for scientifically grounded conclusions.<sup>26</sup>

It follows, that neither the availability of sources, nor the selected issue made my life easy. It has been a certain kind of “white spot” in the area of universal constitutional history and I do not feel that I have produced another thesis on a particularly popular issue. It has not been my goal. It required some time, as nearly ten years passed since the acquisition of my degree in law, but I have the impression that the numerous small steps – conferences, seminars on Japanese law for Hungarian and Erasmus students, certain mails and conferences led me to the most authentic place.

The historical analysis does not correspond to the mere representation of the chronological succession of past events and processes. In the light of the question posed above and in relation to the necessary scientific research and the knowledge of the Hungarian lawyers - the most important stages were highlighted following the analysis of the different American, German and Japanese positions, which are, in my opinion, crucial to the understanding of the establishment and functioning of the Japanese democracy.<sup>27</sup>

### 3. Research experiences and scientific results

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<sup>26</sup> The lack of sources concern particularly assessments on the Meiji Constitution. Apart from the abovementioned book of Professor Takii, basically, only Pre-war references are available. See: ITŌ, Hirobumi, *Commentaries on the Constitution of the Empire of Japan*, (Translated by ITŌ Miyoji), Chū-ō-Daigaku, Tokyo, 1906., FUJII, Schinichi *The Essentials of Japanese Constitution. A General Survey of the Japanese Constitution*, Tokyo, 1940. Regarding the Meiji period in general, the following valuable works should be stressed:

BEASLY, W.G. *The Meiji Restoration*, Stanford University Press, Stanford, California, 1972. KEENE, Donald *Emperor of Japan Meiji and his world, 1852-1912*, Columbia University Press, 2002. KIM Kyu Hyun *The Age of Visions and Arguments. Parliamentarism and the National Public Sphere in Early Meiji Japan*, Harvard University Press, 2007.

<sup>27</sup> Hereby I express my gratitude to senior-lecturer *Attila Gergely* (Karoli Gaspar University of the Reformed Church, Faculty of the Humanities, Japanese studies) for his ongoing hints and help for more than a decade now, during my gradual and doctoral studies regarding my presentations and papers on Japanese constitution and particularly regarding my doctoral thesis.

The constitution-making pertains to the independent and exclusive competence of all sovereign states, which can be clearly shown through the Constitution of February 11, 1889 released by Emperor Meiji (Constitution of the Great Japanese Empire, 大日本帝國憲法, *Dai-Nippon teikoku kempō*), which declared independence and statehood of Japan to its neighbouring countries and to the world.

The examination of Japanese constitutional history cannot be interpreted without the period of pre-war Japan, i.e. the underestimation of the significance or the unduly omission of one of the Meiji or Showa Constitutions would lead to a one-sided results.

The aim of the thesis was not the discovery of the eventual “Hungarian influence” therefore the Japanese constitutional history process has not brought any Hungarian “Lorenz von Stein”<sup>28</sup> or “Douglas MacArthur”<sup>29</sup> to the Reader.<sup>30</sup>

The Meiji renewal (1867-1868) can be regarded both as restoration and revolution at the same time. Restoration in a sense, that regarding the Emperor’s power it brought into life a system of which the golden age was during the Nara period (710-784), since later on from the 12<sup>th</sup> century for about seven hundred years the Emperor enjoyed mainly religious and symbolic powers, whereas the real power was in the hands of the shogun and the samurai (*bushi*) subordinated to him. It follows that Emperor Meiji turned back to the period of real emperor power, as the last shogun, Keiki Tokugawa returned power to the Emperor in 1867. In this sense, the Meiji period constitutes a kind of

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<sup>28</sup> The members of the official Japanese delegation to Europe during the Meiji-period, especially the later Japanese Prime minister, *Itō Hirobumi* were impressed by the lectures of the Professor of the Vienna University.

<sup>29</sup> General, Supreme Commander of Allied Powers during the occupation of Japan

<sup>30</sup> I should however point out those Japanese professors who have conducted research also on the Hungarian legal system. See: UEDA, Rieko *The Codification of Hungarian Commercial Law in the 19th Century* (一九世紀ハンガリーにおける商法典編纂) <http://hermes-ir.lib.hit-u.ac.jp/rs/bitstream/10086/12117/1/ronso1150102940.pdf> A necrologue on the activities of Professor *Hayakawa, Hiromichi* was written by Professor Varga (Iustum, Aequum, Salutare, 1/2011, p. 147-149.)

restoration to the old system of Emperor's power. It must, however, be seen, that the seizure of power by the Emperor was the result of demands formulated by a small group of samurais against Tokugawa shogun concerning the opening of the country. That is to say, the restoration of Emperor's power was prepared by a small group of the society instead of the people's will. This was made – not unfoundedly – in the anticipation that the future imperial reforms required for the country's independence would be carried out with their assistance. This was the revolution of the future political elite.

The centre of the constitutional monarchy established by the Meiji Constitution was the Emperor (天皇 *Tennō*), who was considered as god and possessed all state authorities “unbroken for ages eternal”.<sup>31</sup> The separation of state powers was implemented partially since the legislative power of the Parliament or the executive power of the Government were declared as aspects of the Emperor's sovereignty.<sup>32</sup> Moreover the Emperor was considered not only the sovereign, but being above all limitations, including acts. The Emperor was sacred and inviolable<sup>33</sup> and the Ministers of State were accountable to the Emperor.<sup>34</sup> There were no real checks and balances in the Meiji Constitution included, which, on the one hand, made possible the nearly 14-year long Cabinet-government in the Taishō period<sup>35</sup>, but which, on the other hand, was not able to thwart the military turbulences. The Meiji Constitution brought about a “*Schein-Konstitutionalism*” or pseudo-constitutionalism which can be regarded as a “modernized version of an absolute monarchy”.<sup>36</sup>

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<sup>31</sup> Article 1 of the Meiji Constitution

<sup>32</sup> ITŌ 1906, p. 120-121.

<sup>33</sup> Article 3 of the Meiji Constitution

<sup>34</sup> Article 55 of the Meiji Constitution

<sup>35</sup> DUUS, Peter *Party Rivalry and Political Change in Taishō Japan*, Harvard University Press, Cambridge, Massachusetts, 1968.

<sup>36</sup> OKUDAIRA Yasuhiro *Forty years of the Constitution and Its Various Influences: Japanese, American, and European*, in: LUNEY-TAKAHASHI 1993, p. 6.

Pacifism and peace would constitute the central message of the Shōwa Constitution, which ensured people's sovereignty and provided executive power for the Government being accountable to the Diet, whereby the democratic control of the Government is ensured. The Diet represents the highest organ of the state power, and the sole law-making organ of the State.<sup>37</sup> The Emperor is declared as the symbol of the unity of the Japanese people<sup>38</sup> instead of a divine person.<sup>39</sup> By virtue of the Constitution, the Government refrained from abuse of Emperor's name. Moreover, a large catalogue of fundamental rights is enshrined in the Constitution, which is observed by the organically and personally independent courts.

Regarding the Shōwa Constitution, the term of symbol does not only refer to the status of the Emperor, but the examination of the structure of the Constitution made it clear that the competences of the Emperor – in accordance with the Meiji Constitution – are included in Chapter 1 of the Constitution. It follows that the Constitution still begins with the provisions on the Emperor. Moreover, the declaration of people's sovereignty is incorporated in the same chapter and even in the same article with the declaration of the Emperor as symbol system.

In the examination of the Shōwa period not only the provisions of the Constitution or the most important codifications of the occupation were highlighted. Through the interpretation of the status of the Emperor and the peace-clause (Article 9)<sup>40</sup>, along with

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<sup>37</sup> Article 41 of the Constitution

<sup>38</sup> Article 1 of the Constitution

<sup>39</sup> The more than two thousand year old myths concerning the divine origin of the Emperor was considered as a false conception by the Emperor in his New Year's statement of 1 January 1946 in the so called Humanity Declaration (*ningen sengen*). This statement paved the way for the comprehensive constitutional process.

<sup>40</sup> (1) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

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

(This Article was translated by the author since no official Hungarian version of the Japanese Constitution has been published yet. It must be noted that the annex of the dissertation of *Sándor Zsarnay*

the historical and international legal implications, it was also explored how the Constitution became respected and rooted in the Japanese society, although at the time of its adoption it was labelled as “*MacArthur’s Constitution*”.<sup>41</sup>

One must bear in mind that the implementation has corresponded to the motto of Meiji period of Japanese spirits, Western techniques (和魂洋才 *Wakon-yōsai*)<sup>42</sup>, i.e. the Emperor as a symbol system revived numerous pre-war customs, like the enthronement ceremony of Emperor Akihito in 1990.<sup>43</sup> The terminology of “symbol” that replaced the Emperor-sovereignty was not able<sup>44</sup> to grant only as many competences for the Emperor as was stipulated explicitly by the Constitution.<sup>45</sup>

Thus, it does not follow from the comprehensive amendment of the Constitution that the constitutional reality<sup>46</sup> (*Verfassungswirklichkeit*) would correspond in all aspects to the original objectives of the Allied Powers.

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on the characteristics of contemporary Japanese legal development (Budapest, 1983) contains a Hungarian translation of the Japanese Constitution but the numerous parts of the text should be revised.  
revised

For the original Japanese version of Article 9:

第九条日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動たる戦争と、武力による威嚇又は武力の行使は、国際紛争を解決する手段としては、永久にこれを放棄する。

②前項の目的を達するため、陸海空軍その他の戦力は、これを保持しない。国の交戦権は、これを認めない。 [http://www.shugiin.go.jp/index.nsf/html/index\\_houki.htm](http://www.shugiin.go.jp/index.nsf/html/index_houki.htm),

<sup>41</sup> WARD, Robert E. *The origins of the present Japanese Constitution*, in: TANAKA 1976, p. 642-653., MCNELLY, Theodore *American Influence and Japan’s No-war Constitution*, *Political Science Quarterly*, 1952, p. 589-598.

<sup>42</sup> The assessment on the modernization of the Meiji Period was made by Fukuzawa Yukuchi (1835-1901), writer, influential philosopher and founder of the University of Keio.

<sup>43</sup> YANABU, A: *The Tennō system as the symbol of the culture of translation*, *Japan Review*, 1996/7, 147-157. o. <http://202.231.40.34/jpub/pdf/jr/IJ0708.pdf>

<sup>44</sup> Not only the person of Emperor Hirohito was considered as a continuity of the Shōwa Constitution, since in 1975 during his visit to the United States of America, Emperor Hirohito answered that his duties had not basically changed in the Post-War period. SCHEER, Matthias *Verfassungsrecht*, in: EUBEL 1979, p. 79.

<sup>45</sup> HIGUCHI, Yoichi *The Constitution and the Emperor System: Is revisionism still a live?* in: LUNEY-TAKAHASI 1993, 57-68.o., TAKEDA, Tsuneyashu *Did the Emperor of Japan really fall from being a ruler to a symbol?* 2009, [http://www.apa.co.jp/book\\_report2/02.html](http://www.apa.co.jp/book_report2/02.html)

<sup>46</sup> TAKAMI Katsutoshi *From Divine Legitimacy to the Myth of Consensus: The Emperor System and popular Sovereignty*, in: HIGUCHI 2001, p. 24.



The question posed at the start of our research was answered through the comparison of the Meiji and Shōwa Constitutions including the real social and political circumstances: occupation was the prerequisite for the people's sovereignty. The foundations of the functioning and stable democracy in Japan were established by the occupation. The first equal and general elections granting all Japanese citizens above the age of 20 the right to vote took place in April 1946.<sup>47</sup>

Modern Japan experienced its rise through industrialization and militarism: Enrich the country and strengthen the military (富国強兵) *Fukoku kyōhei*.<sup>48</sup> In the Meiji period, in 1895, the old enemy, China was beaten; in 1905 a European power, Russia was defeated, later the colonization policy against Korea started.

Under the auspices of „Leaving Asia and becoming European” (脱亜入欧 *Datsu a nyū ō*)<sup>49</sup> Japan was positioned among the Western Powers at the time of the establishment of the League of Nations. Following the temporary peaceful periods of the Taishō period and territorial expansions following World War I; in order to implement the Imperial dreams, Japan started war against China in 1937, then against the United States of America through the attack at Pearl Harbor in December 1941.

The occupation led by the Allied Powers could be briefly characterised as “becoming American”. The Japanese democracy is based on the drafts inspired by the American democratic traditions, but its realisation required also the economic turnover, for which the ongoing contribution was demanded by *Emperor Hirohito* (1926-1989) during its

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<sup>47</sup> The general elections for adults, including women was introduced by the amendment of the Law on Election in December 1945, <http://www.ndl.go.jp/modern/e/cha5/description05.html> (Based on the database of the National Diet Library)

<sup>48</sup> This motto of the Meiji-period also stems from Fukuzawa Yukuchi

<sup>49</sup> SZERDAHELYI, G. István *Japán és a környező világ az újkorban – Gondolatok Japán geopolitikai helyzetéről, Japan and the Surrounding World in the Early Modern Times, Some Thoughts on Geo-political Position of Japan*, in: JAMADZSI, Maszanori (ed.) *Irodalom, kultúra és társadalom a középkor- és kora újkori Japánban, Literature, Culture and Society in Medieval and Early Modern Japan*, ELTE Japán-tanulmányok, Budapest, 1997, p. 72.

numerous visits throughout the country. This established real unity, which constituted the prerequisite for the performance accomplished later.

In addition, pacifism constitutes a fundamental character of the Japanese democracy. It follows that the birth of democracy brought about peace, unconditional peace. Although the expressively pacifist definition of Article 9 declares that Japan forever renounces war and no army is maintained, following the outbreak of the Korean war not only the National Self-Defense Force (自衛隊 *Jieitai*)<sup>50</sup> was set up, but Japan became a member of the United Nations in December 1956. Moreover, in June 1992 the Act on Cooperation for United Nations Peacekeeping Operations and Other Operations<sup>51</sup> was finally adopted by the Diet, which paved the way for more active participation in UN-missions, although Article 9 *has never yet been amended*.

Regarding the amendment of the Constitution, at this stage, both the Meiji and Shōwa Constitutions bear similar characteristics. Article 73 of the Meiji Constitution was applied in one case, between June and October of 1946, when the parliamentary discussions and adoption of the Shōwa Constitution took place. Since the entry into force of the Shōwa Constitution, 3 May 1947 – called the national holiday of Constitution Memorial Day (*Kenpō Kinenbi*) – the Constitution has not been amended.<sup>52</sup>

A separate Chapter of the Shōwa Constitution deals with amendments, whereby not only a concurring vote of two-thirds of all the members of each House is required but also the ratification of people at a special referendum or at an election determined by

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<sup>50</sup> For the sources of kanji, see: HADAMITZKY, Wolfgang – KAZÁR, Lajos *Kanji és Kana A japán írásrendszer kézikönyve és szótára, Kanji and kana, The dictionary and manual of Japanese characters*, Scholastica kiadó, 1995, *Informative Japanese Dictionary*, Schinchaosha, 1995, *Denshi jisho*, <http://jisho.org/kanji/> and some pages of Wikipedia, <http://en.wikipedia.org/>

<sup>51</sup> Law No 79 of 1992. See: [http://www.pko.go.jp/PKO\\_I/data/law/pdf/law\\_e.pdf](http://www.pko.go.jp/PKO_I/data/law/pdf/law_e.pdf)

<sup>52</sup> The Constitution of November 1946 was considered to be amended following the completion of the Occupation period by many experts of the Allied Powers. See: BAERWALD, Hans H. *Japan's Parliament: An Introduction*. Cambridge University Press, 1974, p. 14.

the Diet. This later condition extends the entry into force of an eventual constitutional amendment, which ensures that the constitution-making would not be driven by short-term political interests. As Article 96 of the Constitution provided no information about the right to initiate amendments to the Constitution, until recently there was no answer to such questions.<sup>53</sup>

It is one of the final conclusions of the thesis that it is not only a scientific work on the birth of the Japanese democracy. It should also be recognised, that the pacifist Japan is in a position to be an authentic supporter of a new *global constitutional system* based on democracy and peace. The Japanese experience has shown its exact constitutional historical conditions. I believe that constitutional history is on the right track if it puts its findings in the service of incoming constitutional systems: it provides a mirror that at the same time might show the way for the future.

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<sup>53</sup> The (日本国憲法の改正手続に関する法律, *Nihonkoku kempō no kaisei tetsuzuki ni kansuru hōritsu*) Act adopted in May 2007 – and entered into force in May 2010 – stipulates that the Members of the Diet are entitled to initiate amendments to the Constitution.

#### 4. Publications:

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<http://www.jak.ppke.hu/hir/ias/20051sz/o1.pdf>

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##### Proceedings:

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