

Right to Petition: Development and Nature under Japanese Constitutions

A. David Ulvog

Abstract

Japan's current constitutionally-guaranteed right to petition as well as laws and regulations detailing the procedures for exercising this right have emerged as part of a centuries old process through which people have sought to have their voice heard in state affairs. This paper looks at the development of the right to petition in Japan's modern constitutions, relevant laws and regulations, legal theories and judicial decisions, and shows how the right to petition has evolved into a quasi-political right, supplementing and enhancing representative democratic systems and administrative organs.

Keywords: Right to petition, Constitution of Japan, Constitution of the Empire of Japan, judicial decisions, legal theory

The petition system historically originated in solicitations made by a subject to his monarch with the earnest hope of receiving some favor or benefit such as the monarch providing some sort of remedy or taking action in cases where the subject suffered a disadvantage or desired that the monarch intervene or take some other action. When King John signed the Magna Carta in 1215, he established the foundation for the right to petition for redress of grievances.

¹ Later, in 1689, the English Bill of Rights, which prescribed certain basic civil rights and is one of the basic documents of the uncodified British constitution, was the first document to legally guarantee the right to petition. Not only did it prescribe that right, but it also went even further and prohibited any action that might hinder the exercise of the right to petition. It stated: "That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal."² We should remember that these were times when the general public was unable to participate in politics and freedom of political speech had not yet been established, so the petition was about the only means through which subjects might request redress for violated rights and for statesmen to be informed of the conditions of the common

people, and was thus significant.

As more avenues opened for people to participate in politics with the establishment of modern legislative bodies, ordinary elections and expansion of freedom of speech, there has been a relative decrease in the importance of the right to petition as a political tool. Nevertheless, petitions are still recognized as a means for directly conveying to a legislature or government the popular will of the people, from whom legitimacy originates in countries where popular sovereignty is a founding principle. In addition to elections, petitions serve as a reflection of popular will in state affairs. In the constitutions of modern democratic states, petitions occupy a special position with respect to the rights of people who engage in an active relationship with the state. This significance has been enshrined in several influential founding documents such as the US Constitution,³ French Constitutions of 1791⁴ and 1793,⁵ and more recently recognized in the United Nations Charter⁶ and by the UN General Assembly.⁷ It should be readily evident that these documents testify to the nature of the right to petition no longer being just a solicitation for some favor or benefit.

In the 19th century, after the Meiji Restoration

when Japan underwent sweeping political and social reforms and westernized its institutions, the Liberty and Civil Right Movement⁸ was one social force that prompted the drafting of a constitution. The Constitution of the Empire of Japan, which was proclaimed on February 11, 1889 and came into effect from November 29, 1890 until May 2, 1947, contained wording pertaining to petitions, expounded in two articles. Under Chapter II Rights and Duties of Subjects, Article 30 stipulated: “Japanese subjects may present petitions, by observing the proper forms of respect, and by complying with the rules specially provided for the same.” And, under Chapter III, which pertained to the Imperial Diet, Article 50 stated: “Both Houses may receive petitions presented by subjects.” Subsequently, the Petition Edict⁹ was issued which prescribed the particulars with respect to Article 30 and the Imperial Diet Act prescribed the specifics with respect to Article 50. Neither the Imperial edict nor the Imperial Diet Act permitted petitions for amending the Constitution, petitions concerning the judicature or administrative courts, or petitions that used disrespectful language toward the Emperor or contemptuous language about the government or legislature.¹⁰ In his *Commentaries on the Constitution of the Empire of Japan*, Hirobumi Ito writes: “The right of petition is granted to the people out of the Emperor’s most gracious and benevolent consideration.”¹¹ While acknowledging a right of subjects to petition, the Meiji Constitution imposed significant limits on the scope and nature of this right.

With the enactment of the Constitution of Japan, a significant qualitative shift was made in the locus of sovereignty from Imperial sovereignty to popular sovereignty. The people were no longer referred to as subjects.¹² The Emperor became the titular head of the state,¹³ and popular sovereignty was established along with fundamental human rights. These prescriptions specifically state that the people enjoy several beneficial interests, including Article

32¹⁴ which stipulates the right of access to courts, Article 40¹⁵ which guarantees the right to sue the State for redress based on acquittal after an arrest or detainment as provided by law, Article 17¹⁶ which prescribes the right to sue for redress as provided in a case where a person has suffered damage due to an illegal act of a public official, and the right to petition specified in Article 16 which reads: “Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.”

It is clear from the wording used in this article that the phrase “for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters” is merely an enumeration of objects for which petitions may be presented, and not a limitation on the scope of the right to petition. In point of fact, this precise wording was discussed in deliberations during the 90th Imperial session of the Diet, which enacted the new Constitution, where legislators posed questions about matters related to petitioning under the current Meiji Constitution and the newly proposed Constitution. Under the Meiji Constitution, as previously mentioned, petitions were restricted in terms of their content, but it was clarified during Imperial Diet deliberations was that under the new Constitution there would be no such restrictions and that petitions could even be made for revision of the Constitution or the Imperial Family Household Act.¹⁷

Theories on the Nature of the Right to Petition

Compared to other provisions of the Constitution of Japan, the right of petition has received comparatively little legal discussion or study. Nevertheless, three distinct theories have been

advanced with respect to the legal nature of the right to petition. These are the liberty theory, beneficial interest theory, and political right theory. Each will be elaborated in turn.

Liberty Theory

In his book *Right to Petition* Seiichi Taguchi articulated the view of the right to petition as a liberty. He states: “It is a beneficial interest only in that it requests that a petition merely be accepted, and the receiving institution only has the obligation to faithfully handle the petition. As to the question of what sort of disposition is to be made and what sort of measures might be taken with respect to the petition, these matters are left to the discretion of the receiving public institution. Rather than actively guaranteeing an interest, there is a sense that the freedom of petition may not be hindered nor may the petitioner be subject to discriminatory treatment on the grounds of having submitted a petition such that the right to petition has the strong nature of a liberty... However, with the development of the legislative system, a judicial system and systems providing for administrative remedies, civic political participation and remedies for redressing violated rights have been established more broadly in a manner that provides greater assurance. The nature of the right to petition has attenuated as a beneficial interest and its characteristics as a right have diminished. In fact, petitions have also been employed in a manner that extends beyond their scope as a beneficial interest to be utilized as a political means in direct democracy as a political act engaged in by the general public.... However, legally, the right to petition is only the conveyance of one’s wishes to a public institution and the demand that the petition be accepted, and it is different in nature from a political right to participate as the sovereign in the ultimate decision-making of state and public entities.”¹⁸

Basically, Taguchi is saying that the nature of the

right to petition as a beneficial interest has weakened due to the enhancement of guarantees of citizens’ political participation that have been secured along with development of the legislative system and other such institutions, and that its nature as a liberty has strengthened. He also states that petitions have exceeded their scope as a beneficial interest and come to be used as a political tool within an indirect democratic structure. Despite such utilization, Taguchi does not view the right to petition as a political right in legal terms. He does not go so far as to integrate the right to petition as an aspect of liberty, but simply centers his argument around that locus, nor does he negate its aspect as a beneficial interest. In the end, his doctrinal classification of the right to petition is largely relative.

Beneficial Interest Theory

Yasuo Sugihara, a proponent of the beneficial interest theory, writes: “If we consider that a petition is a statement of the petitioner’s wishes about public affairs, the right to petition appears to be a liberty that prohibits public power from hindering the presentation of such a petition. However, the right to petition obligates a public institution to perform the act of accepting the petition, and therefore is not merely a liberty, but it has the nature as a beneficial interest.... Recently, petitions have often been put forth by the general public as a political act and have served a direct democratic function as a means of supplementing for defects in popular representation. The function of the right to petition as a political right in this manner must be noted. However, it is inappropriate to classify the right to petition as a political right on the grounds that its exercise has served such a function.”¹⁹

In other words, Sugihara touches on the aspect of the right of petition as a liberty, but from there pivots to note the duty imposed on the political agency, to which a petition is addressed, to accept the petition,

thus framing the right to petition by emphasizing its aspects as a beneficial interest. From that standpoint, he affirmatively recognizes that it has functioned as a supplemental means in a political context through its use by the general public to remedy perceived defects in representative democracy. However, despite that, he refuses to recognize the right to petition as a political right.

The Beneficial Interest Theory holds that the right to petition is not a political right, yet, at the same time, actively affirms that petitioning has a direct democratic function. Moreover, while this theory understands the right to petition as entailing the right to demand that a petition be accepted and consequently a duty on the part of the receiving party to accept the petition, it must be noted that there is no further duty to examine, make a decision, or take other such action with respect to the content of the petition.

As a beneficial interest, the right to petition as a means of presenting claims or demands pertaining to state affairs is, in a broad sense, a right that allows the people to demand certain actions that are in their interest. In the same way that the basic right to a certain standard of living²⁰ is a right that allows the people to demand the state take proactive measures or adopt policies in order to ensure the people's livelihood. In this sense, it may also be said that the right to petition is included among the beneficial rights that the Constitution of Japan prescribes.²¹

Political Right Theory

Taking the beneficial interest theory one step further, Kenichi Nagai has proposed a political right theory for the right to petition in his paper, "Modern Significance of the Right to Petition: Essay Assessing the Right to Petition as a Supplementary Political Right." Kenichi Nagai states: "Under today's representative democratic system, actual defects in

the system have occasionally come to light where representatives have ignored the popular will. We must note that an important issue to be addressed with respect to representative democracies today is how to proscribe the risk that the representatives of the people might ignore the wishes of the people. Nevertheless, if we consider the right to petition based upon the awareness of such risk, then we need to admit the necessity of reconsidering the right from a completely different angle than has been previously presented and note the expectation placed upon a petition as a means for correcting such defects in representative democracy. Such being the case, the right to petition must be appreciated as having a new significance, or more appropriately, a modern significance. In effect, the right to petition is an active right of the people that necessarily derives from a basic principle of democracy which is grounded in the identities of the statesmen and those who are governed. In other words, the right to petition as a right of the people to actively participate in formation of the will of the state should be how we primarily regard the right to petition today. In such a sense, we must actively recognize the nature of the right of petition as a political right."²²

Nagai emphasizes the right of petition as a supplementary political right of the people who are the sovereigns of the state. He does not negate the theories of liberty or beneficial interest, but rather notes that the right is an important means of redress employed by the people. The people are free to present a petition and demand that it be accepted. As such, the modern nature of the right to petition is principally a political right. His theory should be greatly appreciated as being the most appropriate of the three addressed here in terms of the principle of popular sovereignty.

As has been already stated, the right of petition today, rather than being an expectation in its solicitation for some sort of favorable relief from a

statesman is utilized more in the sense of directly communicating the public will to the legislature and the government. In other words, the right of petition functions as a right to participate in the political process because it is a means of reflecting the people's will in state affairs in forums other than elections. In that sense, this view of the right of petition as a type of political right is important. However, it must be noted that the right of petition still does not extend to entail a right to participate in making decisions on the will of the state. In that sense, it may not be said to be a quintessential political right but a supplementary political right.²³

Today, people are able to reflect their will in state affairs by exercising voting rights or by voicing their opinions to political parties. In addition, other avenues for relief for rights and interests have opened, such as use of the courts and investigations of administrative complaints as well as criticism of state affairs, which is protected through the freedom of expression. In this context, the relative significance of the right to petition has declined from its original stature. However, even in today's representative legislative system, the popular will is not always sufficiently reflected, and obstructions do occur, so a renewed significance has emerged in the right to petition as a means for communicating to legislatures and administrative organs directly the intentions and wishes of the people. In addition, the right to petition is also guaranteed to Japanese citizens as well as to non-Japanese,²⁴ so it is an important means that non-Japanese, who do not have the right to vote in any public elections, may employ.

Procedures for Exercising the Right to Petition

Article 16 of the Constitution of Japan and the Petition Act (Act No. 13 of March 13, 1947) set forth the basic principles and specific procedures, respectively, for the right to petition. As mentioned above, the commonly accepted interpretation of

Article 16 is that it allows petitions to be presented not only by Japanese citizens, adults and minors, but also by non-Japanese.²⁵ Companies or other groups may also present petitions.²⁶ Although the Meiji Constitution prescribed that petitions may be presented by "observing the proper forms of respect," the current Article 16 only requires that petitions be "peaceful." Naturally, petitions that entail violence or threats are not permissible. The wording "and for other matters" reverses the limitations that the Meiji Constitution placed on petition subject matter and extends these such that petitions may address a petitioner's own interests as well as unrelated interests, constitutional revision, and matters concerning the Emperor. With respect to petitions addressed to a court trying a case or for amendment of a judicial decision, one argument holds that such petitions may violate the independence of the judiciary and are thus impermissible.²⁷ Whereas another legal argument may be made that petitions are nothing more than a statement of wishes and do not impose a duty on a court to consider amending a judicial decision or alter the proceedings of an ongoing case, so there are no grounds for excluding petitions related to the courts.²⁸ Importantly, the wording "nor shall any person be in any way discriminated against" proscribes any sort of discriminatory treatment because a person has put forth a petition. This stands to reason because the right to petition has the nature of being a right to participate in public affairs, a principle grounded in popular sovereignty. In this sense, it is similar to the guarantees attached to the right to vote in that "A voter shall not be answerable, publicly or privately, for the choice he has made."²⁹ This protection on the right to petition has been interpreted as prohibiting discriminatory treatment both publicly and privately.³⁰

The specific procedures for exercising the right to petition, a statement detailing a petitioner's wishes that may cover a range of matters pertaining to

the authority vested in various national and local government institutions, are detailed in the Petition Act. Although this Act came into effect along with the Constitution of Japan on May 3, 1947, no official translation is available on the Japan Law Translation Website.³¹ The following is the author's translation.

Petition Act³²

(Act No. 13 of March 13, 1947)

Article 1. Petitions shall be governed by the provisions of this Act except in cases separately provided by law.

Article 2. A petition shall state the name (in the case of a juridical person, the name of the juridical person) and address (if the petitioner does not have a domicile, the petitioner's residence) of the petitioner and be presented in written form.

Article 3.1. Written petitions shall be submitted to the public agency having jurisdiction over the petition matter. Written petitions to the Emperor shall be submitted to the Cabinet.

3.2. When it is not clear which public agency has jurisdiction over the petition matter, the petition shall be submitted to the Cabinet.

Article 4. If a written petition is mistakenly submitted to a public agency other than the public agency specified in the preceding article, the public agency shall either instruct the petitioner as to the proper public agency or forward the written petition to the proper public agency.

Article 5. Public agencies shall accept and handle in good faith petitions in compliance with this Act.

Article 6. No person shall be in any way discriminated against for sponsoring a petition.

Supplementary Provision

This Act shall come into force as of the date of effectuation of the Constitution of Japan.

Petitions to the National Diet

The majority of petitions are presented to the

National Diet or either one of its houses. The procedures for acceptance and methods for handling petitions are prescribed by the National Diet Act Articles 79 through 82,³³ Regulations of the House of Representatives Chapter 11 Articles 171 through 180,³⁴ and Regulations of the House of Councillors Chapter 11 Articles 162 through 172.³⁵ A person wishing to present a petition to either house is required to submit the petition upon an introduction by a member of the National Diet. The written petition shall state the petitioner's name and address. In either house, petitions are reviewed by the appropriate committee, and a distinction drawn between those that will be forwarded to the plenary session and those that will not. Petitions adopted by either house are forwarded to the Cabinet for appropriate action.³⁶ The Cabinet must provide a report each year to the National Diet on any developments that have taken place in its handling of these petitions. Also, each house of the National Diet accepts petitions separately and does not interfere with the other's affairs. Statistics and other information about petitions presented to the houses of the National Diet are available online.³⁷

Petitions to Local Assemblies

With respect to the legislatures of local governments, the provisions for such procedures and methods are found in the Local Autonomy Act Articles 124 and 125.³⁸ Similar to the National Diet Act and regulations of both houses, petitioners submit written petitions upon the introduction of an assembly member. In cases where the assembly deems it appropriate for a committee to take action on a petition, the assembly may forward the petition to the appropriate committee and request reports on the status of the petition and any results from such proceedings.³⁹

Judicial Decisions Concerning the Right to Petition

With respect to the significance, role, and effect of petitions, although not addressed directly, a 1978 High Court decision acknowledged, albeit not in the court's holding, the right to petition and the imposition of a corresponding duty to a certain extent. In its 1978 decision on an appeal of a lower court decision claiming that abolition of the at-home voting system was unconstitutional,⁴⁰ the Sapporo High Court stated that, in cases where there is a constitutional obligation that legislation be drafted based on a petition requesting that either the House of Representatives or the House of Councillors enact certain legislation and where the committees of the respective houses have made a decision to withhold said petition from a plenary session of the house, such nonperformance in intentionally setting aside legislative action that the National Diet has a constitutional duty to perform may be unconstitutional.⁴¹

The Sapporo High Court stated: "In cases where a petition is presented requesting both the House of Representatives and House of Councillors to enact certain legislation (Constitution of Japan Article 16 and National Diet Act Article 79) and the Constitution places a duty on the House of Representatives and the House of Councillors to enact legislation related to said petition, if the appropriate committee in each house examines said petition (National Diet Act Article 80 Paragraph 1) and makes a decision to withhold forwarding said petition to the plenary session, then this becomes a decision by the respective house not to enact legislation related to said petition at least for the time being, and not only does the respective House of Representatives and House of Councillors come to have made such a decision, but ultimately it must be said that the National Diet has made such a decision, so when the National Diet does not enact the

legislation in question thereafter within an adequate period of time acknowledged as reasonable, it may be said that the National Diet has intentionally neglected to pass legislation that it is constitutionally mandated to enact."

The Court acknowledges the role that the legislative petition requesting reinstatement of the at-home voting system has in not only manifesting a corresponding legislative duty by the National Diet, but it also concludes that intentional neglect to such an extent was material nonfeasance. Furthermore, with respect to the wording "thereafter during an adequate period of time acknowledged as reasonable," this judicial decision acknowledges that the de facto initiative for such legislation was the petition. Thus, it may be interpreted that this appeals court decision concedes that the nature of the right to petition is a right to participate in the political process.

A more recent decision in 2011 handed down by the Tokyo High Court upon an appeal from the Chiba District Court provides further clarification of the right to petition as an active right supplementing the right to participate in the political process.⁴² Appellant called upon the court for judicial relief alleging that Appellee, the Chiba Prefectural Board of Education, violated the Constitution of Japan and the Petition Act by not properly handling a petition filed with the Board of Education. More specifically, Appellant argued that Appellee had a duty to distribute his petition to members of the Board of Education, put it on the agenda of the board's meeting, and pass a resolution to either adopt or not adopt the petition. In agreeing with the district court's decision, the Tokyo High Court ruled: "Petitioner does not have the right to demand that a public agency examine a petition that he put forth or to demand notification or other such action regarding the results the public agency's handling of the petition, nor does the presentation of a petition create any sort of special legal relationship in terms

of public law between said public agency and the petitioner, so it should be said that neither the petitioner's right nor legally protected interest has been harmed or his legal standing been destabilized due to inaction with respect to the procedures for handling such petition. Therefore, it should be said that Appellant, who is the petitioner, has no interest in claiming confirmation of an obligation to act with respect to procedures for such handling."⁴³

Both the Chiba District Court and the Tokyo High Court unequivocally ruled that, consistent with Article 16 and the Petition Act, the presentation of a petition imposes a duty on a public agency to accept a petition and handle it in good faith, but does not impose any further legal duty on the receiving entity, and that a person has no standing to pursue legal action against a public agency on the grounds that the public agency did nothing more than accept and handle the petition as required by law. The right to petition does not have the legal effect of demanding that a public agency even discuss or make a decision with respect to the petition. This is also apparent from the fact that Article 5 of the Petition Act does nothing more than establish a nonbinding procedural rule that "Public agencies shall accept and handle in good faith petitions in compliance with this Act."

Summary

In Article 16 of the Constitution of Japan, the right to petition is guaranteed as a fundamental human right suited to the sovereign or the people who possess it, and Japan's current constitution makes no mention of previous severe restrictions placed on petitions under the Meiji Constitution, but, conversely, has extended the scope of matters that petitions may address.

When a person's right or liberty is violated, what would happen if the affected person were unable to demand remedy from the state? If no remedy were

available, then the person would likely have to find one on his or her own. For the powerful in society, that might be a possibility perhaps at the cost of infringing on the rights of others. However, society's weaker members would be left to suffer in silence. In such a society, the rights and liberties, which each and every member of society enjoys, would be illusory. Therefore, the presentation of a petition to the state is an action inextricably related to the people's, in other words the sovereign's, rights and liberties and thereby substantively guarantees them.

It is also appropriate that discriminatory treatment in private relationships due to a person exercising his or her political right also be prohibited in a political system that is based on popular sovereignty. Indeed, today the right to petition has the nature of enfranchisement, or the right of citizens to participate in the political process. While state institutions do not have a legal obligation to deliberate or take other such action on a petition presented in accordance with the appropriate procedures and in the appropriate form, it may be said that they have a political and moral obligation arising from their duty to receive such petitions and handle them in good faith. In this sense, the right to petition in Japan's modern constitutional and political system seems to signify the right to participate in the political process, and further supplements and enhances the process.

- 1) Magna Carta Section 61: "...laying the transgression before us, petition to have that transgression redressed without delay."
- 2) English Bill of Rights 1689, An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown.
- 3) US Constitution 1st Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

- 4) The [French] Constitution of 1791 Title I. Fundamental Provisions Guaranteed by the Constitution: “The Constitution guarantees likewise as natural and civil rights:...Liberty to address individually signed petitions to the constituted authorities.”
- 5) The [French] Constitution of 1793 Section 122. “The constitution guarantees to all Frenchmen equality, liberty, security, property, the public debt, free exercise of religion, general instruction, public assistance, absolute liberty of the press, the right of petition, the right to hold popular assemblies, and the enjoyment of all the rights of man.”
- 6) United Nations Charter Article 87. The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may... accept petitions and examine them in consultation with the administering authority.”
- 7) United Nations General Assembly A/RES/3/217 B
“Resolution Adopted by the General Assembly: 217 B (III).
Right to Petition: “Considering that the right of petition is an essential human right, as is recognized in the Constitutions of a great number of countries.”
- 8) 自由民権運動
- 9) In Japanese, the 請願令 was Imperial Edict No. 37, 6th Year of Taisho (1917), and promulgated on April 4, 1917
- 10) 宮沢俊儀 (1981) 『憲法II (新版)』有斐閣, p. 446. 11) Ito, Hirobumi. *Commentaries on the Constitution of the Empire of Japan* (Tokyo: Igrisu-Horitsu Gakko, 1889),
- 12) See Jean-Jacques Rousseau *The Social Contract* Book I where Rousseau refers to people in a passive relationship with the state as “sujet,” and, by contrast, those in an active relationship with the state as “citoyen.” From which we derive the English words “subject” and “citizen,” respectively.
- 13) The Constitution of Japan Article 1. “The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power.”
- 14) Article 15. “No person shall be denied the right of access to the courts.”
- 15) Article 40. “Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.”
- 16) Article 17. “Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.”
- 17) 渡辺久丸 (1995) 『請願権』新日本出版社, p. 93.
- 18) 田口精一 (1965) 「請願権」田上穰治編『憲法の論点』法学書院, p. 94.
- 19) 杉原康雄 (1968) 「請願権」田上穰治編『体系憲法学辞典』青林書院新社 cited in 渡辺久丸 (1995) 『請願権』新日本出版社, p. 110-111.
- 20) The Constitution of Japan Article 25. “All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.”
- 21) 佐藤功 (1992) 『日本国憲法概説<全訂第4版>』学陽書房, p. 124.
- 22) 永井憲一「請願権の現代的意義—これを補充的参政権として評価する試論」『経済学季報第10巻2号 (1961年3月), p. 31 as cited in 渡辺久丸 (1995) 『請願権』新日本出版社, p. 114-115.
- 23) 永井憲一「請願権の現代的意義—これを補充的参政権として評価する試論」『経済学季報第10巻2号 (1961年3月) as cited in 樋口陽一、佐藤幸治、中村睦男、浦部法穂 著 (1994) 『憲法〈1〉前文・第1条～第20条 (注解法律学全集)』青林書院、p. 354.
- 24) Ibid, p. 352.
- 25) 時岡弘編 (1989) 『図解 憲法』立花書房, p. 93.
- 26) See Article 2 of the Petition Act.
- 27) 樋口陽一、佐藤幸治、中村睦男、浦部法穂 著 (1994) 『憲法〈1〉前文・第1条～第20条 (注解法律学全集)』青林書院、p. 352.
- 28) Ibid, p. 352.
- 29) The Constitution of Japan Article 15. “...In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.”

- 30) 宮沢俊儀 著 (1978) 【芦部信喜補訂】『全訂 日本国憲法』日本評論社、p. 229 as cited in 樋口陽一、佐藤幸治、中村睦男、浦部法穂 著 (1994) 『憲法〈1〉前文・第1条～第20条 (注解法律学全集)』青林書院、p. 353.
- 31) See <http://www.japaneselawtranslation.go.jp/?re=02>
- 32) 請願法 retrieved from <http://law.e-gov.go.jp/htmldata/S22/S22HO013.html>
- 33) Retrieved from <http://law.e-gov.go.jp/htmldata/S22/S22HO079.html>
- 34) Retrieved from http://www.shugiin.go.jp/internet/itdb_annai.nsf/html/statics/shiryo/dl-rules.htm 35) Retrieved from <http://www.sangiin.go.jp/japanese/aramashi/houki/kisoku.html>
- 36) For a detailed description of the petition procedures for the House of Representatives and House of Councillors, respectively, see: http://www.shugiin.go.jp/internet/itdb_annai.nsf/html/statics/tetuzuki/seigan.htm and <http://www.sangiin.go.jp/japanese/annai/seigan.html>
- 37) For information about petitions submitted to the 193rd Session of the House of Representatives, see http://www.shugiin.go.jp/internet/itdb_seigan.nsf/html/seigan/menu.htm. And, for information about petitions submitted to the 193rd Session of the House of Councillors, see <http://www.sangiin.go.jp/japanese/joho1/kousei/seigan/190/seigan.htm>
- 38) Retrieved from <http://law.e-gov.go.jp/htmldata/S22/S22HO067.html>
- 39) See for example an explanation of the petition process utilized by the Okinawa Prefectural Assembly at <http://www.pref.okinawa.jp/site/gikai/3803.html>
- 40) 在宅投票制度廃止違憲訴訟 retrieved from <http://www.cc.kyoto-su.ac.jp/~suga/hanrei/78-2.html> 41) Ibid.
- 42) 請願書不受理処分取消等請求控訴事件 (原審・千葉地方裁判所平成22年(行ウ)第15号) retrieved from http://www.courts.go.jp/app/hanrei_jp/detail5?id=81871
- 43) Ibid, p. 13. Translation provided by the author.

References

Japanese language

- 株式会社東京リーガルマインド編著者 (2007) 『PROVIDENCE シリーズ C-Book 憲法I<総論・人権>第2版 (C Book Constitution I: General Principles and Human Rights, 2nd Edition)』株式会社東京リーガルマインド。
- 佐藤功 (1992) 『日本国憲法概説<全訂第4版> (Compendium on the Constitution of Japan, Completely Revised 4th Edition)』学陽書房。
- 杉原康雄 (1968) 「請願権 (The Right to Petition)」田上穰治編 『体系憲法学辞典 (Systematic Dictionary of Constitutional Studies)』青林書院新社。
- 田口精一 (1965) 「請願権」田上穰治編 『憲法の論点 (Constitutional Questions)』法学書院。
- 時岡弘編 (1989) 『図解 憲法 (Illustrated Constitution)』立花書房。
- 永井憲一 「請願権の現代的意義—これを補充的参政権として評価する試論 (Modern Significance of the Right to Petition: Essay Appreciating The Right as a Supplemental Political Right)」 『経済学季報第10巻2号 (1961年3月) as cited in 樋口陽一、佐藤幸治、中村睦男、浦部法穂 著 「憲法〈1〉前文・第1条～第20条 (注解法律学全集)」 青林書院。
- 樋口陽一、佐藤幸治、中村睦男、浦部法穂 著 『憲法〈1〉前文・第1条～第20条 (Constitution I: Preamble and Articles 1-20) (注解法律学全集)』青林書院。
- 宮沢俊儀 著 【芦部信喜補訂】 (1978)、 『全訂 日本国憲法 (Constitution of Japan, Completely Revised Edition)』日本評論社。
- 宮沢俊儀 (1981) 『憲法II (新版) (Constitution II, New Edition)』有斐閣。
- 渡辺久丸 (1995) 『請願権 (The Right to Petition)』新日本出版社。

English language

- Ito, Hirobumi. *Commentaries on the Constitution of the Empire of Japan*. Tokyo: Igrisu-Horitsu Gakko, 1889.
- Luney, Percy R. Jr., and Takahashi, Kazuyuki, editors (1993) *Japanese Constitutional Law*, Tokyo, University of Tokyo Press.
- Rousseau, Jean-Jacques (1762). *The Social Contract: Book I*, retrieved from http://www.constitution.org/jjr/socon_01.

htm

Tanaka, Hideo, editor, and Smith, Malcolm D.H., assistant
(1976) *The Japanese Legal System: Introductory Cases and Materials*, Tokyo, University of Tokyo Press.

Legal Documents

Japanese language

在宅投票制度廃止違憲訴訟 retrieved

from <http://www.cc.kyoto-su.ac.jp/~suga/hanrei/78-2.html>

自由民権運動 retrieved from

<https://kotobank.jp/word/%E8%87%AA%E7%94%B1%E6%B0%91%E6%A8%A9%E9%81%8B%E5%8B%95-77425>

請願法 retrieved from

<http://law.e-gov.go.jp/htmldata/S22/S22HO013.html>

請願書不受理処分取消等請求控訴事件（原審・千葉地方裁判

所平成22年（行ウ）第15号） retrieved

from http://www.courts.go.jp/app/hanrei_jp/detail5?id=81871

参議院規則 retrieved

from <http://www.sangiin.go.jp/japanese/aramashi/houki/kisoku.html>

衆議院規則 retrieved from

http://www.shugiin.go.jp/internet/itdb_annai.nsf/html/statics/shiryo/dl-rules.htm

English language

Constitution of the Empire of Japan

In English retrieved from <http://www.ndl.go.jp/constitution/e/etc/c02.html#s2>

In Japanese retrieved from <http://www.ndl.go.jp/constitution/etc/j02.html>

Constitution of Japan

In English retrieved from http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html

In Japanese retrieved from <http://law.e-gov.go.jp/htmldata/S21/S21KE000.html>

The Constitution of the United States retrieved

from <http://constitutionus.com/>

English Bill of Rights 1689, An Act Declaring the Rights and

Liberties of the Subject and Settling the Succession of the Crown,
retrieved from http://avalon.law.yale.edu/17th_century/england.asp

The [French] Constitution of 1791 retrieved from
<http://www.historywiz.com/primarysources/const1791text.html>

The [French] Constitution of 1793 retrieved
from <http://oll.libertyfund.org/pages/1793-french-republic-constitution-of-1793?q=Constitution+of+1793#>

Magna Carta 1215 retrieved from <http://avalon.law.yale.edu/medieval/magframe.asp>

United Nations Charter retrieved from <http://www.un.org/en/charter-united-nations/>

United Nations General Assembly A/RES/3/217 B
“Resolution Adopted by the General Assembly: 217 B
(III) . Right to Petition, 10 December 1948, retrieved
from <http://www.un-documents.net/a3r217b.htm>

請 願 権

—日本憲法下での発展と性質—

アルフレッド デイビッド ユルヴァーグ

要 旨

日本憲法で保障された現在の請願権、そしてこの権利を行使するまでの手順を具体化した法規制は、国民が自らの意思を政治に反映させようと努力してきた長年の過程の中で生まれた。本稿では、日本の近代憲法下での請願権の発展と、関連法規制、法理論や判例に焦点を当て、請願権が如何にして民主的代議制や行政機関を補完、強化する準政治的権利に変化したのかを明らかにする。

キーワード：請願権、日本憲法、大日本帝国憲法、判例、法理論

