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What's Unique about the Japanese Constitution? A Comparative and Historical Analysis

Abstract: Japan has the oldest unamended constitution in the world. We examine the determinants of its longevity and recent proposals seeking its amendment. While traditional revision attempts have focused on ideological provisions such as Article 9 and the imperial system, changes to political institutions, particularly bicameralism and local governance, have become a focal point since 2005. Our comparative analysis demonstrates that the constitution's enumeration of institutions is uncommonly vague, leaving room for significant reforms. However, we also show that the most recent (2012) amendment proposal by the Liberal Democratic Party (LDP) would not "fix" this lacuna, leaving the constitution an international outlier.

On May 3, 2012, the Constitution of Japan (COJ) turned 65. While the average employee retires at that age, the constitution is still active, *kanji* for *kanji* the same document that was ratified in 1946. Most other long-lived constitutions from that period have undergone periodic facelifts; those of India (established in 1950) and Germany (1949), for example, have been amended more than 50 times each. In fact, the COJ is the oldest written constitution to *never* have been amended, although it has certainly survived many attempts at revision.¹ The biggest proponents of reform have been conservative elites,

We are indebted to comments and suggestions from numerous colleagues and workshops. We are particularly grateful to John Campbell, Shin Fujihira, Jack Haley, Helen Hardacre, Rieko Kage, and Mariah Zeisberg for early feedback on the project, as well as insightful dialogue at the 2011 Conference on Japanese Constitutionalism and the Political Theory Workshop, both at the University of Michigan, and at the 40th Anniversary Conference of Harvard's Reischauer Institute. Invaluable financial and administrative support was provided by the Center for Japanese Studies, University of Michigan.

1. The next oldest unamended constitutions in existence, circa 2014, are of Denmark (1953), Nauru (1968), St. Vincent (1979), and Antigua (1983).

who have lamented how the supreme law was foisted on Japan by the Allied occupation and have criticized the widening gap between constitutional theory and practice.

Recent events, most prominently the tsunami and nuclear disasters of March 11, 2011, and debilitating legislative stalemate in the Diet, have re-sparked the debate over constitutional reform. The year 2012 marked the sixty-fifth anniversary of the COJ going into effect as well as the sixtieth anniversary of the end of the occupation. This latter milestone had been particularly important to conservatives: the Liberal Democratic Party (LDP), the Sunrise Party (SP; Tachiagare Nippon), and Your Party (YP; Minna no Tō) announced new constitutional proposals on or around April 28, the anniversary of Japan regaining its sovereignty. Would-be reformers have argued that it is well past time for the Japanese to rewrite their constitution, but recent debates have not been exclusively about amending traditional, ideological aspects of the constitution. Instead, calls for *institutional* change have become stronger. They owe their significance to recent political crises and also to the involvement of new political actors whose agenda differs from the typical conservative critique of the COJ.

Our essay explores two questions relating to the nature of the Japanese constitution and the proposed content and likelihood of its amendment. First, how has the COJ survived for so long without revision? Using comparative constitutional data, we argue that this is linked to its uncommon “vagueness.” Topics that are strictly specified in other constitutions are unmentioned or left to law in the COJ. This is particularly pronounced for political institutions, such as the electoral system and the authority of local governments. Problems with government efficiency or authority that require formal amendment to fix in other countries can be remedied by a simple parliamentary majority in Japan, lessening the political impetus for constitutional reform.

Second, how would the proposed constitutional amendments alter the structure of the COJ? We demonstrate that these changes, even if adopted wholesale, will not address the distinctiveness of the Japanese constitution with respect to “vague” institutions. This is not to say they will have no effect: most proposals call for a significant weakening—if not abolition—of the upper house of the Diet (House of Councillors) and the greater decentralization of political authority. However, we argue that many of these goals can be achieved without a formal amendment through normal legislation in the Diet. For instance, the prefectural system of local governance can be replaced with larger, more autonomous regional “states” without a constitutional amendment.²

This leads us to postulate that recent attempts to replace the COJ are

2. Tsujimura Miyoko, *Kenpō*, 3rd ed. (Tokyo: Nippon Hyōronsha, 2008), pp. 510–11.

more symbolic than practical. Public opinion data suggest that it is highly unlikely for the Japanese public, much less two-thirds of Diet members, to approve any of the published constitutional proposals in their entirety. Indeed, there is widespread disagreement on which issues need to be addressed, as well as how they should be fixed. We see two intentions behind these elite-driven initiatives to replace the COJ, reflecting the contrasting goals of reformers. First, the proposals that are more concerned with ideological issues, namely the imperial system and Article 9, reflect a conservative agenda set on altering the U.S.-imposed postwar regime. It is no accident that these drafts, including that by the ruling LDP, were published on the anniversary of the end of the occupation in 2012. However, while this agenda has the backing of conservative elites, it is not widely embraced by the public. Second, the proposals focusing on institutional changes, particularly that by the Japan Restoration Party, seem designed to nudge public opinion in favor of sweeping administrative reforms. Issues such as decentralizing government functions and weakening the upper house have gained salience among voters in recent years, although they have received lukewarm support from politicians. Given that constitutional reform requires assent from both legislators and voters, it is not clear if *any* of the published proposals have much chance of implementation.

The rest of this essay proceeds as follows. First, we briefly review the postwar history of constitutional amendments. We then put the COJ in comparative perspective, using cross-national data and new empirical techniques to examine which elements of the constitution are (a)typical. The reformist argument that the COJ is outdated is only partially true: its protection of civil liberties holds up well with other existing constitutions, but its lack of institutional specifications makes it out of line with international standards. We next examine current proposals from four conservative political parties, focusing on their ideological and institutional aims, and compare their content to other modern constitutions. We end with a discussion of the near-term prospects for constitutional reform, looking closely at public opinion trends on how Japanese citizens think the COJ should be amended.

A Brief History of the Quest for Constitutional Reform

Critics of the COJ have long claimed that the constitution was written in a few weeks by staff at the General Headquarters (GHQ) of the Allied occupation and then forced upon a defeated nation.³ Of course, reality is more complicated. When Japanese leaders showed little intention of making more than cosmetic changes to the authoritarian, prewar “Meiji” constitution, General Douglas MacArthur, the Supreme Commander for the Allied

3. Nishibe Susumu, *Waga kenpō kaiseian* (Tokyo: Bijinesu-sha, 2004), pp. 60–61.

Powers, grew impatient and drew up an outline himself. This formed the foundation on which the occupation authorities wrote an initial draft for Japan's new constitution.⁴ While the final COJ is based on the GHQ version, the constitution underwent numerous, significant adjustments to incorporate requests from the Japanese government. For instance, MacArthur had initially favored a unicameral system, but the Japanese side successfully insisted on bicameralism.⁵ This has not deterred critics from claiming that the "imperialist" origin of the constitution was a glaring deficiency in urgent need of correction.⁶

There is certainly no dearth of literature on the COJ and the attempts to revise it. That being said, much of the existing corpus centers on the iconic Article 9, which limits Japan's military capacity,⁷ even as problems with political institutions, particularly bicameralism and local self-governance, have gained greater salience in the last two decades. This is partly due to the academic backgrounds of the contributing analysts. For example, scholars of constitutional law have focused on interpretations of the COJ in Japanese case law or in a comparative setting,⁸ but they have generally paid little attention to the amendment debate itself.⁹ Meanwhile, political scientists and historians have devoted most of their attention to ideological issues unique to Japan, primarily Article 9 and to a lesser degree the imperial system, within the context of postwar political history. Christian Winkler's *The Quest for Japan's New Constitution* is the most recent example of this type of literature. Winkler discusses the first three chapters of the COJ, on the imperial system, Article 9, and civil rights and duties. His focus is clearly on the classic ideological issues that have dominated the constitutional debate since the 1950s. A different view is offered by Watanabe Osamu, who distinguishes amendment proposals by their neoliberal versus neonationalist aims. The former category includes reforms that seek to realize a neoliberal society with smaller governments and greater individual responsibility. Pro-

4. Christian G. Winkler, *The Quest for Japan's New Constitution: An Analysis of Visions and Constitutional Reform Proposals, 1980–2009* (London: Routledge, 2011), pp. 6–7.

5. Dale M. Hellegers, *We the People: World War II and the Origins of the Japanese Constitution*, Vol. 2 (Stanford: Stanford University Press, 2001), pp. 615–17.

6. See, for instance, Tamura Shigenobu, *Shinkenpō wa kō naru* (Tokyo: Kōdansha, 2006), pp. 111–12.

7. See, for instance, Christopher W. Hughes, "Why Japan Could Revise Its Constitution and What It Would Mean for Japanese Security Policy," *Orbis*, Fall 2006, pp. 725–44, and Patrick J. Boyd and Richard J. Samuels, *Nine Lives? The Politics of Constitutional Reform in Japan* (Washington: East-West Center, 2005).

8. See, for instance, Percy R. Luney and Takahashi Kazuyuki, *Japanese Constitutional Law* (Tokyo: University of Tokyo Press, 1993), and Nishi Osamu, *Gendai sekai no kenpō dōkō* (Tokyo: Seibundō, 2011).

9. There are a few exceptions, such as Reinhard Neumann, *Änderung und Wandlung der japanischen Verfassung* (Köln: Carl Heymanns Verlag, 1982), but these deal exclusively with the period of initial reform attempts in the 1950s and 1960s.

ponents of the latter view the COJ as a symbol for postwar Japan that should emphasize Japanese traditions and civic responsibilities.¹⁰

Debates about formal amendments have accompanied the COJ throughout its history. After the end of the occupation in 1952, conservative politicians, most notably Hatoyama Ichirō and Kishi Nobusuke, immediately raised the issue. Upon becoming prime minister in 1954, Hatoyama tried to alter the electoral system to make it easier for his party to gain the two-thirds Diet majority necessary to revise the constitution. While this political maneuvering ultimately failed and Hatoyama had to resign in 1956, constitutional reform has remained one of the central pillars of the ruling LDP.¹¹ Kishi, who became prime minister in 1957, also pursued the conservatives' pet project, but his resignation following the 1960 revision of the U.S.-Japan Security Treaty caused the amendment debate to temporarily vanish with him. While the period from 1953 through 1964 saw the publication of 11 amendment proposals, there was not a single draft published in the following 15 years. The debate briefly resurfaced in the early 1980s, but the floodgates did not truly reopen until the 1990s. During the two decades from 1990 until 2010, a total of 27 constitutional proposals saw the light of day.¹²

Authors of amendment proposals have often been labeled as "reactionaries" who desire a revival of the authoritarian, prewar regime. Most reform proposals come from conservative thinkers who are critical of both the content and history of the COJ. Left-liberal politicians and intellectuals, by contrast, tend to be staunch defenders of the status quo, because the constitution in its current form is already quite progressive in its enumeration of fundamental human rights, as we explain below.¹³ However, the contents of even the conservative drafts have changed considerably since the 1950s. While reactionary tendencies were present in the 1950s and 1960s, they have all but disappeared in the drafts published since the 1980s. In fact, Winkler has argued that would-be reformers had literally become "conservative," as opposed to reactionary: they proposed incremental revisions that built upon the foundations of the COJ, namely, liberal democracy, the symbolic emperor system, and the inalienability of civil rights.¹⁴

What are the concrete issues that proponents of constitutional revision

10. Winkler, *Quest for Japan's New Constitution*; Watanabe Osamu, *Kenpō "kaisei" no sōten: shiryō de yomu kaikenron no rekishi* (Tokyo: Junpōsha, 2002), pp. 49–50.

11. Winkler, *Quest for Japan's New Constitution*; Kenneth Mori McElwain, "Manipulating Electoral Rules to Manufacture Single Party Dominance," *American Journal of Political Science*, Vol. 52, No. 1 (2008), pp. 32–47.

12. Winkler, *Quest for Japan's New Constitution*.

13. The Japan Socialist Party and the Japanese Communist Party had initially aimed for the creation of a people's republic in the immediate aftermath of the war but quickly abandoned their constitutional reform plans (Winkler, *Quest for Japan's New Constitution*, p. 195).

14. *Ibid.*, p. 192.

wish to clarify or rewrite? While the traditional focus has been on ideological and nationalistic issues specific to Japan, such as Article 9 and the imperial system, there has been growing attention paid to core political institutions, particularly bicameralism and the decentralization of government functions. We do not claim that ideological issues have become irrelevant, because even a brief glimpse at opinion polls shows that they still do matter. The *Yomiuri shinbun* has conducted annual surveys on public attitudes toward the COJ, generally in advance of Constitution Memorial Day on May 3.¹⁵ In the March 2014 survey, 47 per cent of respondents mentioned Article 9 as a topic of interest, while 15 per cent mentioned the imperial system.¹⁶ That being said, both issues have, at least to some degree, already been addressed outside the COJ's framework through special legislation and changes in constitutional interpretation. The institutional topics, by contrast, have gained salience as a result of political problems in the last two decades: legislative gridlock and interregional socioeconomic inequality. Before turning to why reformers see constitutional amendment as the appropriate solution to these issues, let us briefly review recent topics that have animated the debate on COJ revision.

Ideological Issues: Article 9 and the Imperial System. Article 9 is perhaps the best-known provision in the Japanese constitution. Dubbed the "peace clause," it has the Japanese people "aspiring sincerely to an international peace based on justice and order" and renounces "war as a sovereign right of the nation and the threat or use of force as means of settling international disputes." Its second paragraph reads, "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." The renouncement of war was an early priority of General MacArthur who sought to transform Japan into the "Switzerland of Asia"—an economically prosperous, nonmilitaristic partner of the United States.¹⁷

What qualifies as war potential and whether it encompasses the right to self-defense has been at the center of discussions since the 1950s. Conservative governments have successfully exploited this ambiguity, using in-

15. For example, see "Kenpō yoron chōsa: 96-jō kaisei kappatsu giron nozomu 8-wari," *Yomiuri shinbun*, April 20, 2013.

16. Article 9 has consistently been the most important issue in the amendment debate, and its salience has been increasing in recent years. In the preceding 2013 *Yomiuri* public opinion poll, 46 per cent of respondents mentioned it as a topic of interest, compared to 39 per cent in 2012 and 32 per cent in the previous two years. For reference, the second-most mentioned item, the (natural) environment, was selected by just 31 per cent of respondents in 2014 (30 per cent in 2013).

17. John W. Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York: W. W. Norton and Co., 1999).

terpretive changes to the COJ by the Cabinet Legislation Bureau, the legal counsel to the prime minister and his cabinet, to increase Japan's military capacity. The history of Article 9's reinterpretation extends back to Prime Minister Yoshida Shigeru's famous statement that the predecessor of the Self-Defense Forces (SDF), the National Safety Forces, was a force without war potential.¹⁸ Since then, interpretive changes have expanded the size and functions of the SDF, such as the 1968 affirmation of the right to "defensive defense" (*senshu bōei*)—the ability to defend oneself on home turf but not to engage in armed attack.¹⁹ Other statutory elements of the "Article 9 regime"—policies based on the spirit of the peace clause—include the three nonnuclear principles, a weapons export ban, and a one per cent (of GDP) ceiling for defense spending.²⁰

Since the end of the cold war, however, Japan has faced mounting pressure to participate in international peacekeeping operations (PKO), often at the urging of its most important ally, the United States. In 1992, a new PKO Law permitted the SDF's participation in UN humanitarian missions; in 1998, the law was amended to allow SDF participation in UN peacekeeping *forces*. The SDF's first overseas deployment was during the 1991 Gulf War, when Maritime SDF minesweepers were sent to the Persian Gulf. Successive PKO and refugee aid missions in Cambodia (1992) and Rwanda (1994) followed, but SDF troops were not dispatched to an ongoing conflict until 2003–9 to Iraq. At each step, successive LDP governments have followed Yoshida's example of choosing the easier route of constitutional reinterpretation over the rocky road of a formal revision.

The only constitutional chapter preceding Article 9 addresses the roles and functions of the emperor. The COJ formally relegates the emperor to a constitutional monarch, and at least since the 1980s, even conservatives have backed the present "symbolic emperor system."²¹ The focus, instead, has been on Articles 1 and 2. Article 1 defines the emperor as "the symbol of the State and of the unity of the People," but conservative reformists have

18. Watanabe, *Kenpō "kaisei" no sōten*, pp. 464–65.

19. Richard Samuels, *Securing Japan: Tokyo's Grand Strategy and the Future of East Asia* (Ithaca: Cornell University Press, 2007), p. 47.

20. In 1967, Prime Minister Satō Eisaku announced that Japan would not export weapons to communist countries, countries engaged in international conflicts, or countries under a UN weapons embargo. Satō also established the "three nonnuclear principles" in 1968, which pledged that Japan would not possess, make, or import nuclear weapons. In 1976, Prime Minister Miki Takeo added stronger provisions to the weapons export ban.

21. The COJ states that 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." As stipulated in Article 4, "he shall not have powers related to government." In our analysis of the Japanese constitution, we use the English translation from the Prime Minister's Office. http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html (accessed January 16, 2015).

pushed to redefine the emperor formally as the “head of state.” While exact definitions differ, the “head of state” is the nation’s highest formal representative. However, that position does not inherently confer executive authority as the “head of government” and may be largely ceremonial. In Germany, for example, the president is the head of state but the chancellor is the (more powerful) head of government. Indeed, the Japanese emperor is already the de facto head of state under the present constitutional framework, charged with greeting foreign dignitaries and rubberstamping decisions made by the Diet. Given that few reformers seek to revert sovereign authority from the people back to the emperor, as was the case under the Meiji constitution, proposed revisions to Article 1 are primarily symbolic in nature.

An arguably more controversial issue is imperial succession. Article 2 of the COJ only prescribes that “The Imperial Throne shall be dynastic,” with further details left to the Imperial Household Law, which specifies an exclusively male lineage. This stipulation was initially introduced during the Meiji period. Japanese records speak of eight women having ascended to the chrysanthemum throne prior to the nineteenth century, but whether these women were merely placeholders or truly empowered empresses has been a hotly contested issue.²² Some proponents of constitutional revision have demanded the stipulation of male lineage in the COJ itself. The current crown prince, Naruhito, has one daughter but no male heir, and some reformists have suggested that the Imperial Household Law be changed to permit a female successor to the throne. While conservatives have looked askance at the suspension of male lineage, the issue became less pressing with the birth of a son to the crown prince’s brother in 2006.

Institutional Issues: Bicameralism and Decentralization. In recent years, constitutional issues related to government procedures and institutions have moved into the spotlight. First and foremost is revision of the bicameral parliamentary system. According to Article 59 of the COJ, a legislative bill has to be approved by simple majorities in both houses of the National Diet. If the upper house rejects a bill passed by the lower house (House of Representatives), the latter can only overrule the former with a two-thirds supermajority. However, a simple majority vote in the lower house is decisive in the cases of electing the prime minister, passing the budget, and ratifying international treaties. While few governing coalitions in postwar Japan enjoyed a lower house supermajority, this legislative process was not overly onerous, as the ruling LDP held unilateral majorities in both chambers between 1955 and 1989.

This does not mean that bicameralism has only recently become part of the amendment debate. Albeit far less prominent than Article 9, bicameralism has always been on the agenda of those pushing to revise the COJ.

22. Winkler, *Quest for Japan’s New Constitution*, pp. 28–29, 143.

Critics have charged that the upper house was merely a “carbon copy” of the lower house and hence did not fulfill its function as the chamber of deliberation and common sense, or *ryōshiki no fu*. During the writing of the constitution, the cabinet of Shidehara Kijūrō had sought to temper partisanship in the lower house by allowing occupational groups, professional associations, and scholars to handpick highly accomplished individuals as upper house members. This proposal was vetoed by the GHQ, which compared it to Mussolini-style fascism that undermined universal suffrage.²³ However, many reformists during the 1950s and 1960s persisted in trying to rid the upper house of the “unhealthy” influence of quarreling political parties by introducing some method of preselecting or vetting its members.²⁴

By the time constitutional reform was back on the political agenda in the 1990s, those reactionary tendencies had all but disappeared. However, a new problem with bicameralism reared its head: divided governments. In 1994, the lower house electoral system was altered to the current “mixed-member majoritarian” system, wherein most representatives are elected in first-past-the-post districts. The stated goal was to foster a Westminster-like two-party system by encouraging smaller parties—which could not hope to win a plurality of votes in most districts—to merge.²⁵ The expectations of realignment have largely been met in the lower house: the Democratic Party of Japan (DPJ) has become the center-left counterpart to the LDP, even winning an outright majority in 2009. However, the upper house has retained its more proportional system, wherein half of the members are elected in prefectural multimember districts and half in a nationwide proportional representation system. The greater proportionality of districts has prevented any party from gaining an upper house majority since 1989.

The unwelcome side effect is the so-called *nejire kokkai* phenomenon, referring to different majorities in each house of the Diet. The 1999–2009 LDP–Kōmeitō governing coalition, which lost its upper house majority in 2007, was stymied by attempts by the DPJ-led opposition to block or delay most cabinet initiatives. When the following DPJ government (2009–12) lost its upper house majority in 2010, the LDP-led opposition returned the favor. The ensuing stalemate has heightened voter frustration with indecisive politics (*kimerarenai seiji*) and the obstructionism of the LDP and DPJ. Whereas only 49 per cent of respondents to the March 2008 *Yomiuri* constitutionalism survey were in favor of switching to a unicameral system or reforming the existing bicameralism, that number had climbed to 70 per cent

23. Hellegers, *We the People*, pp. 615–16.

24. Kenpō Chōsakai, *Kenpō Chōsakai shiryō sō 39: Nihonkoku kenpō kaisei shoan* (Tokyo: Kenpō Chōsakai Jimugyoku, 1959), pp. 243–45.

25. For a more detailed discussion of the politics of electoral reform, see Gerald Curtis, *The Logic of Japanese Politics* (New York: Columbia University Press, 1999).

by April 2013. Correspondingly, interest in electoral reform has been on the rise as well. In 2008, only 11 per cent of respondents deemed elections an important constitutional issue, but by 2013, that figure had risen to 22 per cent. These figures pay testament to the mounting criticism directed at the current architecture of the bicameral Diet.

The second major institutional topic is the decentralization of fiscal and regulatory powers, which has been debated since the 1950s. With the appearance of progressive governors and mayors in the 1960s and 1970s, the relationship between local municipalities and the LDP government in Tokyo became more contentious. Not surprisingly, conservative reform advocates of the COJ have been unenthusiastic about further empowering (left-wing) local governments. Instead, many amendment proposals have sought to abolish direct elections of heads of local governments. Their authors have worried that extravagant election promises by populist governors would lead to ruinous local debt that would eventually require a bailout by the central government. Therefore, reformists have proposed that governors, like the prime minister, should be chosen by (local) assemblies or be appointed by the central government.²⁶

Calls to empower local municipalities have become louder since the turn of the century. The pressure has been strongest from Nagoya and Osaka, where popular local politicians have been mounting their challenge against the central government. The most influential of those regional actors by far has been Hashimoto Tōru, the mayor of Osaka, who has sought to consolidate and amplify local political authority. He has fought for the merger of Osaka City and Osaka Prefecture into a new, integrated “Osaka-to,” and his One Osaka Party (Osaka Ishin no Kai) has published several amendment ideas that are quite different from the ideologically oriented critiques by center-right parties in Tokyo. One is the introduction of larger “states” that are equipped with more autonomy in setting budgets, tax rates, business regulations, and educational standards than the current 47 prefectures.²⁷ Under the status quo, most tax revenue is pooled nationally, and even local spending is determined largely by the Diet. This has been a boon to poorer, rural regions, which depend on fiscal transfers via the Local Allocation Tax to fund social welfare programs and infrastructural projects. Not surprisingly, these rural areas have consistently supported the LDP, which has been a strong advocate of interregional transfer programs, while urban districts

26. Kenpō Chōsakai, *Kenpō Chōsakai shiryō sō* 39, p. 323.

27. “Shushōkōsen de ishin no kai ni sekkin?” *Asahi shinbun*, January 25, 2012. The call for greater decentralization is not unique to Japan. As Jenna Bednar discusses, many institutional scholars espouse the principle of “subsidiarity”: absent cost savings from centralization, policymaking should be left to local governments, who have greater knowledge of their citizens’ preferences. See Jenna Bednar, “The Political Science of Federalism,” *Annual Review of Law and Social Science*, Vol. 7 (2011), pp. 269–88.

have swung to progressive parties.²⁸ Of course, there has already been some delegation of government functions from the prefectural to municipal levels through the “designated cities” system (*seirei shitei toshi*). Metropolitan areas with populations over 500,000 are granted greater administrative autonomy over urban planning, public education, and social welfare policies.²⁹ However, the ability to implement new taxes is still tightly regulated by the central government, although designated cities do have the authority to issue municipal bonds. It is on this point that many critics—including Hashimoto—desire COJ reform, although we should note that there is nothing that legally prohibits the National Diet from reforming the Local Autonomy Law or the Local Tax Law (*Chihōzei Hō*) to further decentralize fiscal and regulatory powers.

Is the Japanese Constitution Atypical?

Underlying the key ideological and institutional issues that have driven the COJ amendment debate are questions we believe are inadequately explored: Why do the purported problems or irregularities require a constitutional solution in the first place? Why can they not continue to be solved through interpretive changes, as has been the case with the Article 9 “peace clause,” or by altering the institutional structure through legislation, such as devolving greater fiscal autonomy to local governments?

One key argument in favor of reform is the claim that the COJ has become ossified and is out of line with the current domestic and global environment. As Tamura Shigenobu wrote in the commentary to the LDP’s 2005 constitutional draft:

Since the promulgation of the COJ in 1946, the domestic and international situation has changed greatly. A wave of issues such as advances in science and technology, declining birthrates and an aging population, and globalization has surged forward. As a result, the number of parts of the current constitution that are not in line with reality has grown larger.³⁰

The LDP’s 2013 election platform further posits that reform is a normal political event, noting that other countries frequently amend their supreme laws so that the gap between constitutional theory and reality does not grow too wide.³¹ The party claims that its proposal simply answers the call of

28. For a discussion of fiscal decentralization and its effects on the LDP’s electoral success, see Ethan Scheiner, *Democracy without Competition in Japan: Opposition Failure in a One-Party Dominant State* (Cambridge: Cambridge University Press, 2006).

29. For more information on the scope of the designated cities system, consult Article 252.19 of the Local Autonomy Law (*Chihō Jichi Hō*).

30. Tamura, *Shinkenpō wa kō naru*, p. 104. Translated from Japanese by authors.

31. Dai 23 kai Sangiin Giin Senkyo (Heisei 25-nendo). http://jimin.ncss.nifty.com/pdf/sen_san23/2013sanin2013-07-04.pdf (accessed on January 22, 2015).

changing times by providing, for example, new stipulations on the government's responsibility to protect the natural environment, which has become *de rigueur* in other countries' supreme laws.³²

In this section, we take advantage of cross-national constitutional data to identify elements of the COJ that deviate from common practice and to demonstrate two points. First, the Japanese constitution is fairly typical in enumerating civil rights; if anything, it is advanced for its time. By restraining the maximal power of the state, individual rights have been relatively safe from egregious political predation, and disputes can be resolved through the courts. We believe this contributes to the rarity of progressive grassroots movements in favor of constitutional revision. Second, the COJ is uncommonly short and vague in its elucidation of political institutions. Many features—such as the level of decentralization and the electoral system—are left to be determined by law. Given the parliamentary dominance of the LDP, this has allowed conservative elites to design political institutions and public policy to their advantage.

As we discuss in greater detail below, the LDP's 2012 draft does not propose major changes to this framework but instead focuses on ideological issues. Meanwhile, new center-right parties have put forth proposals that challenge the institutional status quo. This contrast highlights the political divide in recent reform debates, centering on the conflict between ideological versus institutional change.

Methodology of Comparative Constitutional Analysis. Our analysis relies on the Comparative Constitutions Project (CCP), a cross-national data set that codifies the content of 185 modern or current constitutions and provides summary statistics of 860 historical constitutions since 1789.³³ The modern constitutions are coded on approximately 760 variables, each of which asks whether the document explicitly mentions a given topic in its text. We utilize the CCP's full sample in elucidating some general aspects of the constitution but restrict it to current constitutions for more refined cross-national comparisons.

Beginning with some broader observations, the Japanese constitution stands out on two fronts: it is very short, and it covers a narrow range of subjects. Counting from the preamble, the COJ is 4,986 words long, well below the median of 13,630 words in the CCP's data on current constitutions. In fact, the only shorter constitutions are of Iceland (4,089 words),

32. See, for instance, Nishi, *Gendai sekai no kenpō dōkō*, pp. 150–51, and Winkler, *Quest for Japan's New Constitution*, p. 159.

33. The Comparative Constitutions Project houses the data set used by Zachary Elkins, Tom Ginsburg, and James Melton in *The Endurance of National Constitutions* (New York: Cambridge University Press, 2009). The data set is available at: <http://www.comparativeconstitutionsproject.org/> (accessed January 3, 2013).

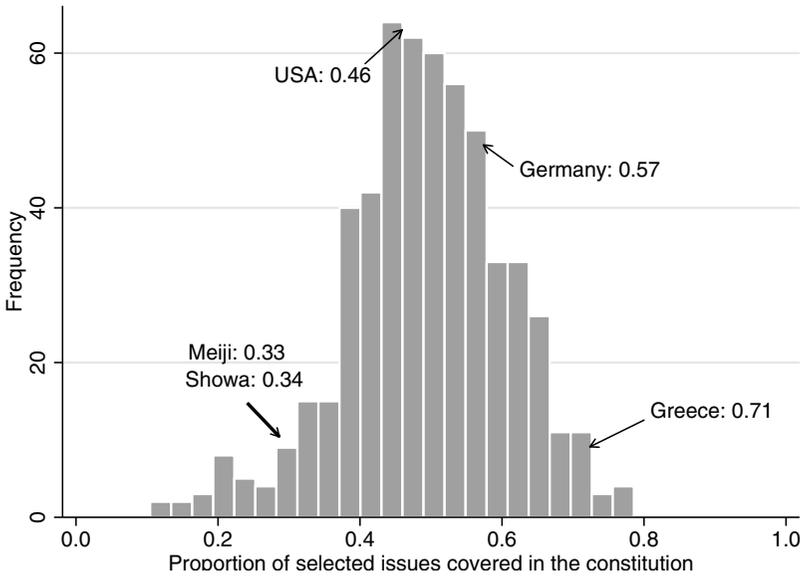


Figure 1. Constitution of Japan Covers Relatively Few Topics
N = 558 constitutions. Data from Comparative Constitutions Project.

Latvia (4,977), Laos (4,820), Bhutan (3,525), and Thailand (4,603); of these, Latvia's is the only one that was promulgated by a democratic government. Compare this to India's 1950 constitution, the lengthiest in the world, which at 146,385 words is almost 30 times longer than the COJ. While textual brevity is one indicator of how topically sparse a constitution is, we can also look at more refined measures. Zachary Elkins, Tom Ginsburg, and James Melton estimate every constitution's "scope," or the ratio of 92 common issues that a given text specifies.³⁴ Figure 1 depicts the frequency distribution of constitutional scope on a 0 to 1 horizontal scale, where higher values indicate that a constitution addresses a greater proportion of topics. The analysis covers 558 historical and current constitutions, including the post-war COJ (labeled the Showa constitution) and the 1890 Meiji constitution. We can see from the figure that both Japanese constitutions are well to the left of the distribution, with the Showa (34 per cent) and Meiji (33 per cent) documents covering relatively few topics. By comparison, the modern constitutions of East and Southeast Asia have an average scope of 66 per cent (India's is 65 per cent), while those of Western Europe are at 64 per cent. For more salient historical comparisons, the United States—under whose occupation the COJ was written—covers 46 per cent of topics, while the German Basic Law—written under Allied occupation influence around the

34. Elkins, Ginsburg, and Melton, *Endurance of National Constitutions*.

same time as the COJ—is also more specific at 57 per cent. In effect, many issues enumerated in other constitutions are either unaddressed or left explicitly to law in Japan, giving more room to the Diet and the courts to fill in the gaps via statutes and case law.

In general, unamended constitutions have shorter lifespans than their amended brethren. The theoretical underpinning is straightforward. Every country undergoes changes in social demographics, political balances of power, and economic priorities over time. To the extent that constitutions are designed to distribute political authority and remedy socioeconomic problems of the *founding* generation, it should not be surprising that changes in domestic or international conditions generate pressures to amend the document. For example, the Republic of Korea's constitution has been almost fully rewritten six times since 1948, each occasion entailing significant changes in the government's authority, civil rights, and democratic norms. In fact, when constitutions fail to adapt or the political environment shifts too rapidly, the likely outcome is a complete constitutional replacement. According to data from the CCP, the median lifespan—the number of years between promulgation and replacement—of unamended constitutions is just three years. Thailand alone has had 17 constitutions and charters since 1932, many of them following military coups. Figure 2 displays the lifespan of the top 20 unamended constitutions in history. The only documents that

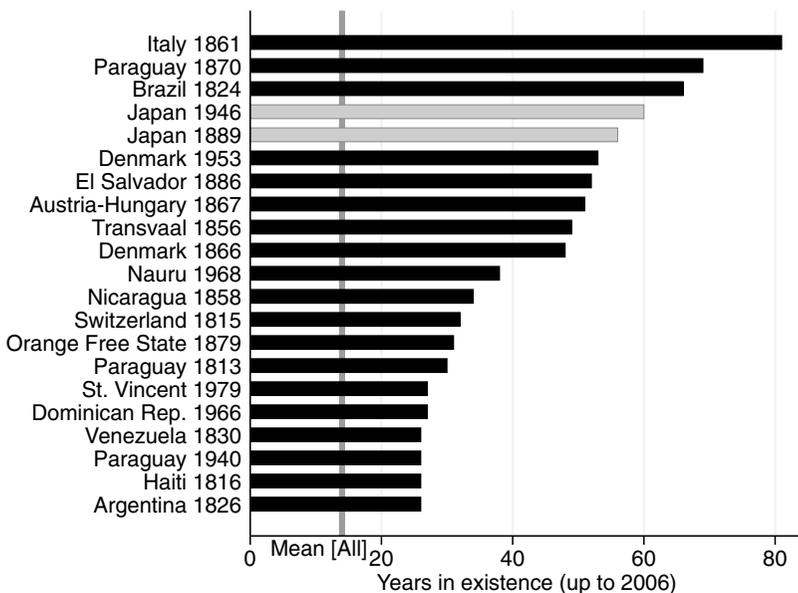


Figure 2. Lifespan of Unamended Constitutions (Historical)
Data from Comparative Constitutions Project.

outlived Japan's Showa and Meiji constitutions are from Italy (1861), Paraguay (1870), and Brazil (1824), none of which is in operation today. The median lifespan of amended constitutions is a much more robust 16 years, with amendments happening every five to six years on average. Globally, the average lifespan of all 860 historical constitutions is 14 years, depicted by the vertical line in Figure 2.

The COJ in Historical Context. This begs two related questions. First, why has the COJ never been amended? The simple answer is that it is short and vague, as exemplified by the low word count and "scope" score. Many issues that are constitutionally defined in other constitutions are left to statute in the COJ. As such, pressures to change political institutions or the powers of government can be alleviated in the Diet without formal constitutional amendment. The lengthy Indian constitution, for example, was amended 97 times between 1950 and 2012.

We should note here that the COJ is not uncommonly difficult to amend. Excessively high amendment hurdles can, of course, prevent constitutions from adapting to the social and political needs of a majority of their citizens. This was the fatal flaw of the 1781 "Articles of Confederation," the first U.S. constitution that lasted only six years, in which amendment required unanimous consent from all 13 states. The COJ, by contrast, requires two-thirds of the lower and upper houses to initiate the amendment process, followed by a majority in a national referendum of voters for final ratification. In the CCP data on current constitutions, 97 out of 185 cases (52 per cent) require two-thirds or greater approval in parliament, making the COJ effectively "average." This set includes the German Basic Law, which has experienced more than 50 amendments but also requires an absolute two-thirds majority of the Bundestag (lower house) and a simple two-thirds in the Bundesrat (upper house). Of those constitutions requiring two-thirds, the median rate of amendment, that is, total amendments divided by constitutional lifespan, is 0.08, or roughly once every 12 years. Data on referenda are not in the CCP data set, but in our original examination of 55 democracies, we find that nine constitutions (16 per cent) require a referendum to approve amendments.

The second, more important question is: How has the current Japanese constitution survived for so long without any formal amendments? While the (in)frequency of amendments can be explained by the constitution's (lack of) specificity, only 6 per cent of the 506 unamended constitutions in history lasted longer than 20 years. We speculate that the COJ's resilience is related to the specific way in which its contents are vague. On the one hand, the COJ leaves most issues related to political institutions, such as levels of decentralization and the electoral system, to be determined by law. This has effectively freed ruling parties to alter "the rules of the game" to maximize their policy goals or electoral survival, thereby diminishing top-down, elite-led demands to amend the constitution. Even where a preferred

policy or institution seems contrary to the letter of the constitution, the LDP could rely on the Cabinet Legislation Bureau to interpret the COJ favorably, as has been the case with Article 9.

On the other hand, the COJ is a very progressive constitution with respect to civil rights and liberties. It enumerates a number of rights that were not in the prewar Meiji version, such as the freedom of opinion (Article 19), prohibition of censorship (Article 21) and torture (Article 36), and the right of workers to unionize (Article 28). In fact, the COJ was very much a forerunner of historical trends. Elkins, Ginsburg, and Melton demonstrate that there is a global tendency toward more specific constitutions over time.³⁵ Some of this is due to the emergence of new issues that lacked salience in earlier periods, such as oversight of digital information, environmental pollution, and gay rights. The trend is stronger in constitutions that were ratified democratically, as public input in constitution writing tends to strengthen institutional checks and balances and designate a broader spectrum of rights.

In Figure 3, we demonstrate the extent of—and disparities in—the specification of institutions and rights using CCP data. Under “institutions,” we tabulate whether a constitution explicitly mentions national government operations, local government organization and powers, and the structure of the judiciary. Under “civil rights,” we calculate whether a constitution guarantees a wide range of civil rights, educational opportunities, and religious freedoms. A country can score a maximum of 53 points for institutional specificity and 22 points for civil rights. A full list of the included variables is available in the appendix to this article.

Figure 3 plots the institutional and civil rights scores of 185 current constitutions by their years of ratification. The COJ is located where the vertical line (1946, the year the COJ was ratified) and the horizontal line (COJ’s institutional and civil rights specificity) cross. Japan’s institutional specificity (left panel) is 39.6 per cent (ranked 166th), well below the average proportion of 51.6 per cent. By contrast, the COJ’s civil rights score (right panel) is 77.3 per cent (41st), greater than the average of 64.2 per cent. Most modern constitutions were implemented after the adoption of COJ, hence the sparseness of cases before 1946. However, we can see in the left panel that most constitutions—even before 1946—were more specific with respect to institutions than the COJ. By contrast, the COJ score of 0.773 on civil rights is higher than that of any preceding constitution still in force today.

The magnitude of this discrepancy between institutional and civil rights specification is extremely rare. The difference between these two scores

35. *Ibid.*

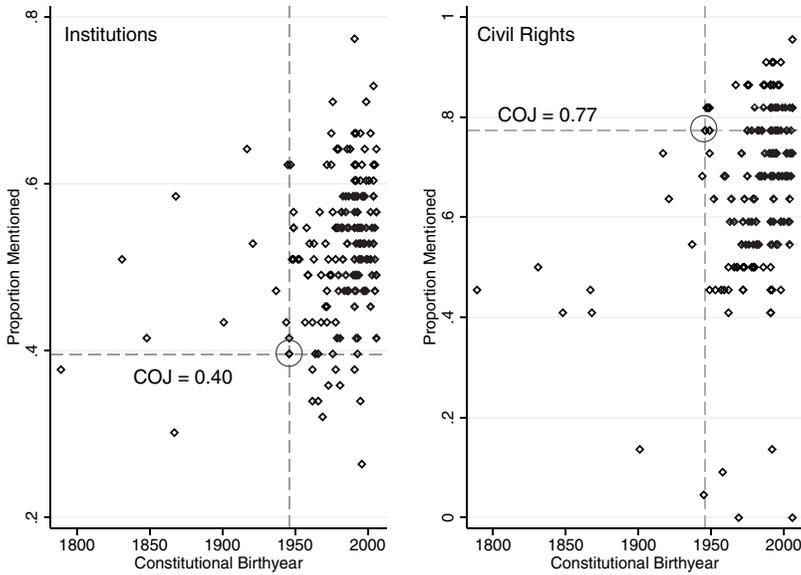


Figure 3. Constitution of Japan's Specificity in Temporal Context
 N = 185 current constitutions. Data from Comparative Constitutions Project.

in Japan, -37.7 per cent, is only exceeded by the Paraguayan constitution of 1992, which scores -38.1 per cent (90.9 per cent on rights, but only 52.8 per cent on institutions). The existence of such wide disparities is neither theoretically expected nor empirically typical. Keith Banting and Richard Simeon write that the most important factor influencing a constitution's specificity is whether it was written before or after the adoption of universal suffrage.³⁶ The expansion of the franchise to poor citizens increased demands on the government to provide more public goods such as social welfare and education programs. In response, political groups began to clamor not only for explicit elaborations of the state's powers but also for clearer delineations of the government's composition, including qualifications to vote or run for office, separation of powers across political branches, and procedures for passing legislation. As such, the expected time trend is greater constitutional specificity across the board.

Figure 4 depicts the distribution of constitutions by how much more they specify institutions than civil rights (i.e., their institutional score minus

36. Keith G. Banting and Richard Simeon, "Introduction: The Politics of Constitutional Change," in Banting and Simeon, eds., *The Politics of Constitutional Change in Industrial Nations: Redesigning the State* (London: MacMillan, 1985), pp. 1–29.

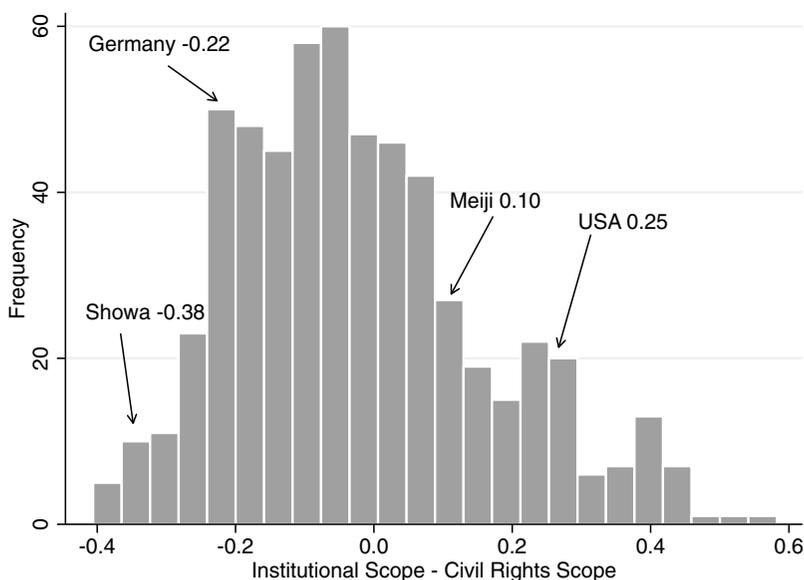


Figure 4. Constitution of Japan Has Uncommon Mismatch in Scope
Includes data from 584 historical and current constitutions, provided by the Comparative Constitutions data set.

their civil rights score). For this, we have replicated our analysis for 584 current and historical constitutions provided by the CCP data set. The median constitution has a deviation of -5 per cent and the bulk of the distribution is close to “zero,” meaning that most constitutions are equally specific with respect to institutions and rights. The COJ, in other words, is a clear outlier.

The COJ’s vagueness on institutions and specificity on rights was a conscious choice of the occupation’s constitution makers.³⁷ The numerous defenses of the freedom of speech, assembly, religion, and the like were central to the GHQ’s desire to transform Japan into a modern democratic state. By contrast, there was much less attention to the details of political institutions, other than the requirement to abolish the peerage system, transfer legislative power to a democratically elected Diet, and establish direct elections for local government. As Dale Hellegers writes,³⁸ initial GHQ drafts specified more institutional details, such as a first-past-the-post

37. For a longer discussion, see Ray A. Moore and Donald L. Robinson, *Partners for Democracy: Crafting the New Japanese State under MacArthur* (New York: Oxford University Press, 2002).

38. Hellegers, *We the People*, p. 619, note 7.

electoral system. These issues were eventually left to statute, based on the belief that future Japanese generations should be allowed to pick their own political processes.

Comparing Contemporary Amendment Proposals

In the last decade, a number of conservative political parties have formally offered proposals for constitutional amendment. Two proposals, from the LDP and the Sunrise Party, are complete documents that enumerate changes in the entire constitution. Two other proposals from One Osaka and Your Party are briefer recommendations for altering specific ideological and institutional elements of the COJ. In this section, we discuss the content of these four amendment proposals, in relation to each other and in a comparative perspective. We also address whether these reforms will make the COJ more “typical” by reducing the disparity in its specification of political institutional (vague) and civil rights (specific).

As mentioned above, our analysis focuses on conservative parties because progressive parties such as the Japan Communist Party (JCP) and the Japan Socialist Party (JSP) and its successor, the Social Democratic Party of Japan (SDPJ), have been staunch defenders of the status quo COJ and specifically Article 9. While the left has been strongly in support of the “peace clause,” the progressive nature of the COJ with regard to civil rights has muted calls for constitutional reform from the political left. In the 2014 *Yomiuri* survey on the COJ, 41 per cent of respondents opposed constitutional reform. When asked for their reasons, 46 per cent of that group noted that the COJ is a “peace constitution” they could be proud of, while 32 per cent agreed that the COJ already guarantees fundamental human rights and democracy. Therefore, there are no recent progressive proposals to serve as a counterpoint to conservative views.³⁹ The current main opposition, the DPJ, has also shown little interest in constitutional revision, as the party is home to both supporters and critics of an amendment.

Introducing the Actors. The Liberal Democratic Party has governed Japan for most of the country’s postwar history and first pursued a constitutional amendment immediately after its founding in 1955.⁴⁰ However, following Prime Minister Kishi’s resignation in 1960, party leadership changed course, and subsequent prime ministers either embraced the COJ or ignored the amendment issue altogether. After the end of the cold war and the first Gulf War, which saw the LDP government suffer international criticism for

39. Winkler, *Quest for Japan’s New Constitution*, pp. xvi–xvii.

40. Since 1955, 22 out of 28 prime ministers have been LDP members. The party has been the ruling party, either by itself or in coalition with other parties, for 56 of its 60 years.

sending money but no troops, pressure to reopen the amendment debate heightened. This initiative gained steam when the spiritual heirs of Kishi, such as Mori Yoshirō and Koizumi Jun'ichirō, took control over the party in 2000. In 2005, the LDP celebrated its fiftieth anniversary with the publication of its first amendment proposal. This version was further updated in a 2012 draft. Since its temporary fall from power in 2009, the LDP's leadership has made constitutional amendment one of its political pillars.

The Sunrise Party (2010–12) and Your Party (2009–14) were both founded by ex-LDP legislators who represented two different wings of the party. The SP, which merged with the Japan Restoration Party in November 2012, espoused a right-wing ideological agenda.⁴¹ Its founder and chairman, Hiranuma Takeo, has been an outspoken proponent of constitutional reform, patriotic education, and a self-confident—critics might say revisionist—position on Japanese history.⁴² YP founder and then party president Watanabe Yoshimi shares some positions with Hiranuma, as evident by similarities in their reform drafts such as the explicit specification of the national anthem and flag. However, the YP has primarily run on a neoliberal, economic reform agenda not unlike that of former Prime Minister Koizumi.

A relative newcomer to the amendment debate is Hashimoto Tōru, the mayor of Osaka. A lawyer and celebrity, Hashimoto became governor of Osaka Prefecture in 2008, running on the LDP-Kōmeitō ticket. During his term, he distanced himself from established conservative parties and founded the regional party One Osaka on an aggressive reform agenda of regional realignment and decentralization. Since 2011, Hashimoto has been mayor of Osaka City, but he is unique among local politicians in that he enjoys broad national popularity. In September 2012, he took his message to the national stage by forming the Japan Restoration Party (Ishin no Kai) to compete in Diet elections. Hashimoto's popularity and message attracted dissidents from the LDP and Your Party, and the Sunrise Party—led by Hiranuma and the controversial former Tokyo mayor Ishihara Shintarō—formally merged with the Japan Restoration Party (JRP) in November 2012.⁴³ While Hashimoto himself did not run for national office, the JRP

41. The first paragraph of the party's charter reads as follows: "Our party aims for the creation of an independent constitution in order to protect proud Japanese culture and traditions, homeland and environment born from abundant nature, as well as the people's life and property, and to fulfill Japan's responsibilities as a member of the international community" (Sunrise Party, "Kōryō," 2012, <http://www.tachiagare.jp/outline.php> [accessed June 18, 2012]).

42. Winkler, *Quest for Japan's New Constitution*, p. 197, and Hiranuma Takeo, *Shinkokukaron* (Tokyo: Chūō Kōron Shinsha, 2005), pp. 128–33, 193–95.

43. In July 2014, the JRP split again. Ishihara and former Sunrise Party members created the Jisedai no Tō (Party for Future Generations), while Hashimoto merged his group with the Yui no Tō to form the Ishin no Tō (Japan Innovation Party).

Table 1
A Comparison of Constitutional Proposals
(propositions that change the status quo *in italics*)

Proposal	LDP	Sunrise Party	Your Party	One Osaka*
Diet				
Bicameralism	Bicameral	Bicameral	<i>Unicameral</i>	<i>Bicameral now, unicameral later</i>
Lower House –Upper House Relations	2/3 lower house overrides up- per house	<i>Upper house can delay but not veto</i>	N/A	<i>Lower house majority overrides upper house</i>
Upper House Election	Direct election	<i>200 seats in re- gional blocs</i>	N/A	<i>Indirect: local government representa- tives</i>
Election of Prime Minister	Indirect	Indirect	<i>Direct</i>	<i>Direct</i>
Local Government				
Prefectures or States	Prefectures	Prefectures	<i>States</i>	<i>States</i>
Emperor				
Head of State	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>	No
Exclusively Male	No	<i>Yes</i>	<i>No</i>	No
Ideology				
National Flag and Anthem	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>	No
Article 9 Revision	<i>Yes</i>	<i>Yes</i>	<i>Yes, but by referendum</i>	<i>By referendum</i>

Note: One Osaka has proposed a two-step reform of the upper house.

won 11 per cent of the seats in the December 2012 election, making it the third largest party in the lower house.

Current Amendment Proposals: Between Ideology and Institutions. Table 1 displays the main principles of constitutional proposals drafted in 2012 by the LDP, the SP, YP, and One Osaka. As discussed earlier, the academic literature on COJ revision has largely focused on contentious ideological issues that are unique to Japan, most notably Article 9. Despite the rising significance of institutional problems, particularly bicameralism and decentralization, a brief glimpse at the most recent reform proposals shows that ideological issues are still relevant. The three center-right parties—LDP, SP, and YP—all propose explicit references to the national flag and

anthem in the new constitution. The emperor is formally referred to as head of state, even though this does not constitute a change to the symbolic emperor system as such.⁴⁴ As a case in point, the LDP draft retains all current restrictions placed on the emperor's legislative and executive powers. The SP goes slightly further by proposing to change Article 2 to ban female members of the imperial family from succeeding to the chrysanthemum throne.

As expected, revisions to Article 9 are a focal point of the proposals. While maintaining paragraph 1's rejection of wars of aggression, the LDP and the SP rename the Self-Defense Forces as "Self-Defense Army" and "National Defense Army," respectively. The purpose of the armed forces, alluded to in their second subparagraph, is redefined as protecting the country and its people and contributing to international peace and stability. The Your Party draft is less specific but also proposes an explicit right to self-defense to protect Japan and contribute to global peace.

The ideological focus is not surprising. The Sunrise Party has advocated a right-wing agenda that "protects proud Japanese culture and traditions." Meanwhile, the reason behind the LDP's renewed focus on ideology becomes obvious when looking at the composition of the party's internal drafting committee. While the LDP's 2005 drafting committee was ideologically diverse, 41 per cent of the 2012 proposal's committee was made up of members of *Sōsei Nippon*, a study group of conservative parliamentarians headed by now-Prime Minister Abe Shinzō and former SP leader Hiranuma.⁴⁵ This composition, in addition to the LDP's general determination to set itself apart from the progressive DPJ, has resulted in a more "traditionally" conservative proposal, compared to the rather moderate 2005 draft.⁴⁶ As we demonstrate below, one important side effect of this ideological focus is that the LDP's 2012 draft does not alter the COJ's general vagueness with respect to political institutions.

The distinctiveness of One Osaka's ideas is striking in comparison. Despite Hashimoto's repeated emphasis on patriotic education and the honoring of the national flag in public comments, he has excluded ideological issues from his amendment proposal and has focused entirely on institutional matters. This decision was apparently based on his conviction that

44. The CCP data set includes some information on these ideological issues. Among 185 current constitutions, 121 explicitly mention the national flag and 104 specify the national anthem. 79 constitutions identify one specific executive as the head of state.

45. For details, see Christian G. Winkler, "Right Rising? Ideology and the 2012 House of Representatives Election," in Steven R. Reed, Robert Pekkanen, and Ethan Scheiner, eds., *Japan Decides* (Houndmills, Basingstoke: Palgrave Macmillan, 2013), pp. 197–215.

46. "Jimin 'hoshu kaiki' de meisō: Kōmei to no kyori kakudai mo," *Yomiuri shinbun*, February 29, 2012. The 2005 draft did not include any references to the national flag and anthem nor did it stipulate that the emperor should be head of state.

“the constitution is no book about thought, but basically value neutral and a document to restrict the power of the ruler.”⁴⁷ Unlike the other recent proposals, or indeed all conservative drafts published during the postwar period, his suggestions for amending the COJ do not include changes to Article 9. Instead, he has only proposed a public referendum on revising the peace clause.⁴⁸

Hashimoto is not alone in pursuing institutional reform, even though his ideas may be the boldest. With the exception of the LDP, all drafts propose to significantly alter the current bicameral system. Hashimoto ultimately seeks to abolish the present upper house and create a unicameral system. In the short term, however, he prefers to strengthen the lower house’s superiority by making the upper house a forum for negotiation between the central government and the regions. Members of the upper house would be heads of local municipalities, a concept reminiscent of the Bundesrat, the second chamber of the German parliament. The Your Party proposal also seeks to merge the lower and upper houses into a single chamber, but the LDP and Sunrise Party retain bicameralism in their respective plans. The SP has proposed to strengthen the lower house’s superiority *vis-à-vis* the upper house by taking away the latter’s ability to veto a law passed by the former. Instead, the upper house would only be given the power to delay the passage of a bill. In effect, the SP draft would turn the upper house into a body of (re)deliberation, similar to the British House of Lords. It would still be equipped with the right to prior consideration of the budget, as well as approval of international treaties and other matters of national defense and foreign affairs. The SP has also advocated a new electoral system “appropriate” to the role of a deliberative organ, although its draft does not elaborate any specific alternatives. The LDP’s proposal, by contrast, has retained the bicameral system in its present state. It is the only draft that does not alter the balance of power between the two houses of parliament, leaving Article 59 untouched. It also does not propose any changes to the upper house’s election system, which under Article 47 is left to be determined by law.⁴⁹

47. “Hashimoto ōsaka shichō, jimin no kaikenan ni kugen ‘kokoro tsukamenai,’” *Sankei shinbun*, May 2, 2012, <http://sankei.jp.msn.com/politics/news/120502/plc12050222070017-n1.htm> (accessed June 20, 2012).

48. “Gekidō: Hashimoto ishin! kore ga ishin hassaku da! kosshi zenbun,” *Sankei shinbun*, February 21, 2012, <http://sankei.jp.msn.com/politics/news/120221/lc112022116060004-n1.htm> (accessed June 20, 2012).

49. There is also a visible difference on revising Article 67 of the COJ, which governs how the prime minister is chosen. Your Party and Hashimoto’s One Osaka want the prime minister to be directly elected by voters. The LDP, meanwhile, has made only grammatical changes to Article 67, otherwise maintaining the prime minister’s election by members of parliament and the superiority of the lower house’s vote when the two legislative chambers disagree. The Sunrise Party prefers to explicitly name the prime minister the “head of govern-

There is a general consensus that reform of local government is required. The COJ's Article 94 states, "Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law." Importantly, the right to taxation is not explicitly mentioned. Local municipalities have some autonomy to raise taxes and issue deficit bonds, but only to the extent permitted by the Diet. Indeed, local governments depend heavily on fiscal transfers from the central government. Local public finances account for two-thirds of the joint net expenditure of the national and local governments, but only two-fifths of tax revenue go directly to local political entities. The expenditure level is particularly striking: Japanese local governments spend significantly more than their OECD counterparts, which include several federal states such as the United States and Germany.⁵⁰ To cover the revenue-expenditure gap, local governments rely on transfers from the central government, which account for about a third of local revenue.

To remedy this fiscal imbalance, all four drafts propose to equip local municipalities with independent means of funding by explicitly allowing them to raise their own taxes. While the LDP and SP do not suggest significant changes to Japan's federal structure itself, One Osaka and YP seek to strengthen the political position of local municipalities *vis-à-vis* the central government. This is already evident in Hashimoto's aforementioned short-term proposal to turn the upper house into a Bundesrat-like second chamber whose members represent the regions. More extensive decentralization is to be realized through the abolition of prefectures and the introduction of larger, more independent "states," referred to in Japan as *dōshūsei*.⁵¹ These more radical proposals clearly speak to the new salience of the institutional dimension of constitutional amendment.

COJ Amendment Proposals in Comparative Perspective. These proposed revisions of the Japanese constitution have twin aims: to transform the identity of the nation and to improve the operations of government. How different will the COJ be if these drafts are adopted wholesale? As already

ment" and strengthen his powers, but its draft does not address the method of his selection, suggesting the retention of the status quo.

50. Andrew DeWit and Sven Steinmo, "The Political Economy of Taxes and Redistribution in Japan," *Social Science Japan Journal*, Vol. 5, No. 2 (2002), pp. 159–78.

51. The LDP had also drawn up plans to replace the prefectures with ten states in 2008, but this proposal has been left out of the party's constitutional reform drafts (Tamura, *Shinkenpō wa kō naru*, p. 158; LDP, "Dōshūsei ni kan suru dai 3 ji chūkan hōkoku," July 20, 2008, http://www.pref.toyama.jp/cms_sec/1104/00006052/00264660.pdf [accessed June 25, 2012]). The YP speaks only of a "decentralized state" in its draft, but its manifesto for the 2010 upper house election advocated tax reform and greater policy autonomy for local governments (Your Party, *Senkyo Kōyaku*, <http://www.your-party.jp/policy/manifest.html> [accessed June 20, 2012]).

discussed, the most striking element of the COJ is that it is uncommonly vague on institutions while being relatively specific on civil rights. Here, we utilize data from the Comparative Constitutions Project to examine whether the proposed drafts make the Japanese constitution more “typical” by evening this mismatch.

We focus exclusively on the 2012 proposal of the LDP, which offers a complete redrafting of the COJ.⁵² Given the LDP’s historical electoral dominance as well as the party’s strong interest in revising the COJ, the LDP’s draft is most pertinent to contemporary debates. Our analysis is based on a two-step process. First, we code the content of the LDP draft using the CCP’s methodology, operationalizing it on more than 700 variables. Second, we calculate the number of variables on which the LDP proposal registers the same values as that of 185 current constitutions around the world. A “match” is recorded for each variable when (1) the LDP draft and another country’s constitution *both* mention the same issue explicitly or (2) *neither* constitution mentions that issue. We then add up all of the valid matches and divide it by the maximum possible value to calculate the “matching rate.” The higher the rate, the more a given constitution resembles the LDP proposal.

Figure 5 displays a kernel density plot of the matching rate for the current COJ and the LDP’s 2012 draft constitution. Each line is a smoothed distribution of the number of constitutions (y-axis) with a particular matching rate (x-axis). The figure demonstrates that the new LDP draft is more “typical” than the COJ, in the sense that more constitutions specify (or do not specify) rights and institutions in the same pattern. For the COJ, the median constitution is only 45.2 per cent similar, while for the LDP version, the median rate is 54.8 per cent.

This is not to say that the actual content of the LDP proposal is vastly different from the current COJ. The matching rate between the two is 80.5 per cent, suggesting that the LDP draft is less of a clean break from the COJ than it is an updating of provisions. It retains the one overriding “atypical” feature of the COJ—details about political institutions continue to be sparser than those of civil rights, even though both improve marginally. Figure 6 shows how the COJ and the LDP 2012 draft rate in the distribution of current constitutions. The COJ specifies 77.3 per cent of civil rights found in most existing constitutions (ranked 41st out of 185) but only 39.6 per cent of institutional provisions (ranked 166th). By contrast, the LDP proposal has a civil rights score of 81.8 per cent (which would rank it 19th) but a similarly

52. We have replicated this analysis for the Sunrise Party’s 2012 proposal, which also was a complete redrafting of the COJ. We have excluded it for this article, as the Sunrise Party merged with the Japan Restoration Party later that year. Details of our analysis are available upon request.

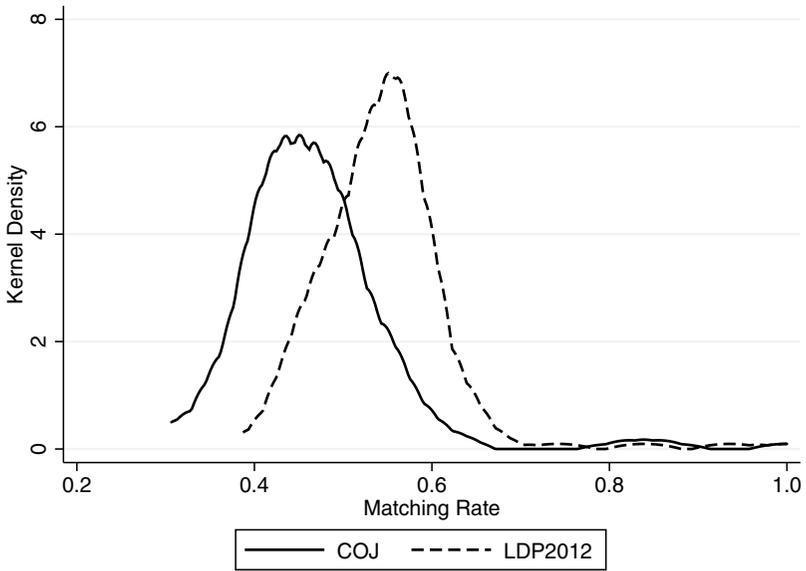


Figure 5. LDP 2012 Draft Is More “Typical” than the Constitution of Japan
 Based on comparisons with 185 current constitutions. Data from Comparative Constitutions Project.

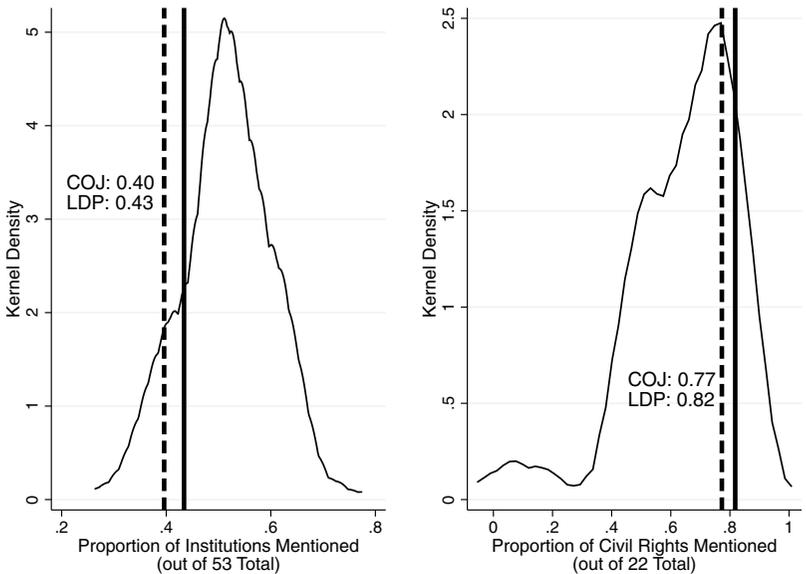


Figure 6. LDP 2012 Draft Improves Specificity Slightly
 N = 185 current constitutions. Data from Comparative Constitutions Project.

low institutional score of 43.4 per cent (150th). If there is a “Japanese exceptionalism” in constitutional design, it is undoubtedly this continuing discrepancy in the enumeration of civil rights and political institutions.

The Future of the Japanese Constitution

Post-2012 debates on amending the COJ are divided between proposals with ideological versus institutional aims. None of the suggested revisions is individually new, but the focus on political institutions makes One Osaka’s initiative distinctive. After all, the debate about constitutional reform has historically been dominated by ideological issues such as Article 9, the imperial system, and civic rights and duties. Institutional reform has always been part of the discussion, but it has typically taken a back seat to ideological revision. Accordingly, Hashimoto’s decision to ignore ideological issues and focus on bold structural reforms, including a unicameral Diet and greater federalism, is a significant, new development in the amendment debate. It also fills a lacuna in the current Japanese constitution, which already has more to say about rights than it has about political institutions.

Meanwhile, the reforms published by the LDP and the SP are more in line with traditional proposals in their emphasis on ideological issues. The LDP’s 2012 draft in particular has refrained from suggesting any major institutional reforms, most likely to heighten and distinguish its conservative bona fides *vis-à-vis* the progressive DPJ. The SP has incorporated some institutional changes, but it views the constitution more ambitiously as a basic law that formulates a vision for the national polity and the way of life of the people. Suffice it to say, those values should be based on “the important values of the Japanese people which have been fostered through Japanese history and culture.”⁵³ In this sense, the SP draft is the polar opposite of the proposal from Hashimoto, who has repeated that he has no intention of turning the COJ into a “book of thought.”

With prominent political parties proposing constitutional reform, what are the near-term prospects for an amendment to the COJ? With the Act on Procedures for Amendment of the Constitution of Japan having gone into effect, the legal framework for an amendment is in place and drafts can be introduced in the Diet.⁵⁴ A successful amendment requires assent from two-thirds of legislators in each house, as well as approval from a major-

53. Sunrise Party, “Nihon chikara baizō: Heisei 24-nen seisaku sengen,” July 4, 2012, http://www.tachiagare.jp/data/pdf/newsrelease_120704.pdf, p. 1 (accessed July 5, 2012).

54. The COJ’s Article 96 only stipulates that two-third majorities in both houses, as well as a simple majority in a public referendum, are required for an amendment. Until the Procedures Act became law on May 18, 2010 (the law has been revised several times since), there had been no legal framework in place, meaning key questions, such as eligibility to vote in the referendum, had been up in the air.

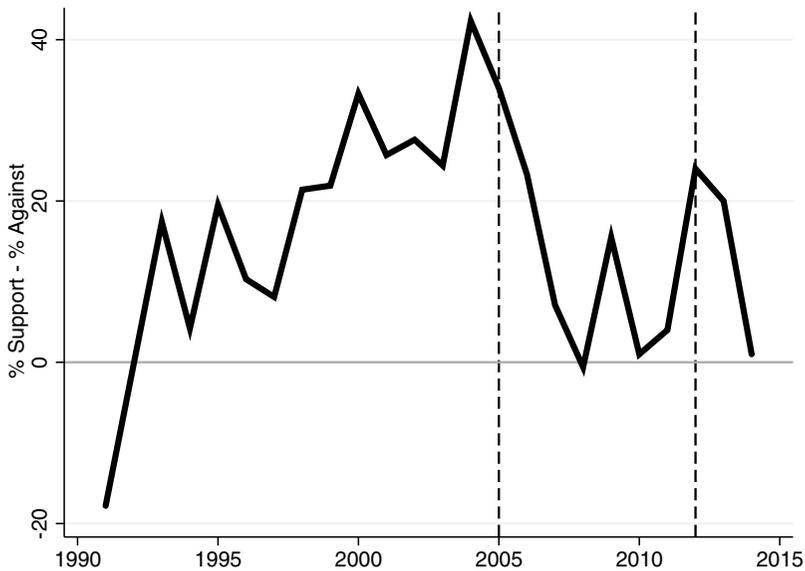


Figure 7. Public Opinion on Constitutional Reform
Dashed lines indicate years that LDP constitutional drafts were published.
Data from annual *Yomiuri shinbun* surveys.

ity of voters in a national referendum. However, polling data of legislators and voters suggest there is a substantial gap between the two on both the favorability and salience of constitutional reform.

Let us begin with voters. The March 2014 *Yomiuri shinbun* survey found that 42 per cent of respondents affirmed that the constitution should be reformed, while 41 per cent preferred to maintain the status quo. This marks a remarkable 9 per cent drop in support (and a 10 per cent gain in opposition) since 2013, even as the Abe administration has repeatedly touted the importance of revision. Figure 7 shows net support for constitutional amendment (percentage for reform minus percentage against), using the *Yomiuri's* survey data. We can see that respondents tend to be in favor of reform, although there is substantial volatility over time and margins in some years are razor thin. Interestingly, while the LDP's submission of constitutional proposals—first in 2005 and again in 2012—raised popular support for reform, this effect was temporary. This suggests that while most voters like the idea of constitutional reform in the abstract, their enthusiasm wanes when shown concrete amendment proposals.

In fact, there is no stable consensus on what—much less how—specific articles should be revised, as the salience of any given issue fluctuates with its relevance at the time of the survey. For instance, support for “strengthening the powers of the prime minister during a national emergency,” which had received roughly 12 per cent from 2005 through 2010, jumped to 22 per

cent in 2012, no doubt as a result of the March 11 Tohoku earthquake and tsunami. In 2014, the figure fell back down to 13 per cent. Table 2 lists responses to the *Yomiuri*'s question, "On which issues do you think the constitution needs to alter existing provisions or add new articles?" Respondents were given 14 options and could select as many as they agreed with. The table shows the main ideological issues—the position or role of the emperor and maintaining defense capacity—at the top, and the main institutional issues—the functions of the lower versus upper houses and of the central government versus local municipalities—at the bottom. We have italicized the issues on which support for reform has fallen since 2005, when these questions began to be asked.

While stipulations pertaining to Article 9 have remained the most important issue, averaging around 30 per cent, it is noteworthy that support for another oft-touted ideological issue—the position and role of the emperor—has declined from 25 per cent in 2005 to 11 per cent in 2014. Meanwhile, there has been growing support for institutional changes, particularly adjustments to bicameralism and central-local government relations. However, the salience of those two issues is also tied to recent events. The increase in mentions of bicameralism coincides with the *nejire kokkai*, or divided government period (2007 through 2013). Furthermore, the "how" is also contested. Though not shown in Table 2, proponents of Diet reform are divided among those wanting to merely adjust the current bicameral system (40 per cent in 2013) and those who want to move to a unicameral system (30 per cent). In other words, there is a strong interest in institutional issues when people perceive that political decision making is not working as smoothly as it should, but there is no consensus on how to fix the problem itself.

This is compounded by the fact that an amendment is just one—and arguably the most complicated—way of solving institutional problems. The relative vagueness of the COJ's institutional provisions enables the party in power to fix these issues by altering the legal framework underneath the supreme law. For example, while legislative gridlock is a pressing political problem, divided governments can be made rarer by altering the electoral system of the upper house or holding elections to both chambers concurrently.⁵⁵ Article 47 of the COJ reads, "Electoral districts, method of voting, and other matters pertaining to the method of election of members of both Houses shall be fixed by law." This gives the Diet significant leeway to delimit constituencies and allocate seats. Similarly, local self-governance can be strengthened by devolving regulatory and fiscal authority to municipalities and prefectures or even abolishing the latter in favor of larger "states." Since public pressure to address institutional issues is not sufficiently stable, however, the long-dominant LDP has preferred to retain the present system

55. Gary W. Cox, *Making Votes Count: Strategic Coordination in the World's Electoral Systems* (Cambridge: Cambridge University Press, 1997).

Table 2
 “What Issues Do You Want Addressed?”
 Percentage of Respondents Selecting Each Issue
 (issues with declining support since 2005 in *italics*)

Category	Provision	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Ideological:											
Chapter 1: Emperor	<i>Position, role of the emperor</i>	25	24	15	14	13	16	12	23	14	11
Article 9:	<i>Maintain self-defense capacity</i>	29	27	23	27	30	28	29	34	32	27
National Security	<i>Proactive international cooperation</i>	23	22	23	20	23	22	20	23	19	21
Institutional:											
Chapter 5: Cabinet	Strengthen prime minister’s powers in state of emergency	13	12	13	13	11	11	20	22	19	13
Chapter 4: Diet	Functions of the two houses of the Diet	10	14	12	15	22	17	17	20	18	19
Chapter 8: Local Government	Functions of central government and municipalities	18	25	22	22	30	30	25	27	27	21
	“Nothing in particular needs to be changed”	19	16	24	24	20	24	21	17	19	23

Source: Data from *Yomiuri shinbun*’s annual surveys on the constitution.

characterized by a strong central government. The One Osaka draft and, to a lesser degree, the YP draft were designed to pose a challenge to this status quo.

In fact, the LDP and Sunrise Party drafts highlight an ideological agenda that is not necessarily in line with public preferences. According to a 2012 poll of electoral candidates conducted by *Asahi shinbun* and Tani-guchi Masaki of the University of Tokyo, over 80 per cent of LDP and JRP candidates supported constitutional revision, as did a bare majority of DPJ candidates.⁵⁶ However, the *Asahi's* exit polls showed that only 12 per cent of voters listed “constitution reform and foreign/security policy” as their top priority, trailing growth and employment (35 per cent), taxes and social welfare (30 per cent), and energy policy (17 per cent). This considerable gap between the LDP’s ideological agenda and the public’s preferences begs the question, “Why publish a draft that has very little chance of being accepted in the Diet, much less by a public interested in other policy issues?” The LDP’s 2012 reform draft can be seen either as a manifestation of a rising right-wing agenda within the LDP⁵⁷ or as an abstract escape from more pressing, concrete, yet difficult-to-tackle social challenges such as demographic change.⁵⁸ The fact that the LDP’s 2012 proposal, even if enacted, would not bring the COJ closer to the international average, as far as the concreteness of institutional provisions is concerned, gives further weight to the latter argument.

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Appendix

Variables Used in Cross-National Analysis
[Variable name from Comparative Constitutions Project data set in brackets]

Institutional Variables	
<i>Judiciary</i>	<i>Political Institutions</i>
Supreme court or any specific court [levjud:]	Dismissal of Head of State (HoS) or Head of Government (HoG) [hosdiss, hogdiss]
Judicial independence [judind]	HoS or HoG immunity from prosecution [hosimm, hogimm]
Follow precedence from higher court [judprec]	

56. The results of the candidate poll can be found here: <http://www.asahi.com/senkyo/sousenkyo46/asahitodai/>. The results of the exit poll are here: <http://www.asahi.com/senkyo/sousenkyo46/news/TKY201212180634.html> (accessed November 10, 2014).

57. For details, see Winkler, “Right Rising?”

58. Oguma Eiji, “Kaiken to iu na no jibun sagashi,” *Ronza*, No. 121 (2006), pp. 25–35.

Highest court's decisions are final [judfin]	HoS or HoG decree power [hosdec, hogdec]
Courts can challenge legislation [challeng]	HoG term limits [hogterm]
Specific courts: administrative, constitutional, amparo, military, public office, tax, labor, religious, or special [judcrts]	Mention executive cabinet/ministers [cabinet]
Judicial interpretation by: ordinary, constitutional, or supreme court; first and/or second chamber of legislature [interp]	Authority to dismiss cabinet/ministers [cabdiss]
	Replacing individual legislators [legrep]
	Immunity for legislators [immunity]
	Dismissal of legislature [legdiss]
	Selection of member of first or second chamber [lhselect, uhselect]
	Electoral system for first or second chamber [lhelsys, uhelsys]
	Quota for first or second chamber [lhquota, uhquota]
	Who initiates general legislation [leg_in]
	Who can reject legislation after it passes legislature [legapp]
	Type of veto power [legapppt]
	Provision to call state of emergency [em]
	Legislative committees [commit]
	Special legislative processes [specleg]
	Convene extraordinary legislative session [exsess]

Civil Rights/Liberties Variables

Human Rights

Right to life [life]
 Right to privacy [privacy]
 Freedom of movement [freemove]
 Freedom of opinion or thought [opinion]
 Freedom of expression/speech [express]
 Freedom of press [press]
 Freedom of assembly [assem]
 Freedom of association [assoc]
 Any inalienable/inviolable rights [inalrht]
 Self-determination or development of personality [devlpers]
 Prohibit censorship [censor]
 Prohibit torture [torture]
 Prohibit cruel, inhuman, or degrading treatment [cruelty]
 Prohibit slavery or forced labor [slave]

Education

Any provision concerning education [educate]
 Provide free education [edfree]
 Academic freedom [acfree]
 Equal access to higher education [achighed]

Religion

Official religion or church [offrel]
 Freedom of religion [freerel]
 Separation of church and state [seprel]
 Tax exemption to religious organizations [reltax]