

## Suffrage and National Borders

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### 1. *Meanings and legal characteristics of suffrage*

#### (1) Meanings of suffrage

The first paragraph of the preamble of the Constitution of Japan stipulates: “Government is a sacred trust of the people, the authority for which is derived from the people, the power of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people” and clarifies “sovereign power resides with the people”. Article 15 also stipulates that “[t]he people have the inalienable right to chose their public officials and to dismiss them; ②[a]ll public officials are servants of the whole community and not of any group thereof; ③ [u]niversal adult suffrage is guaranteed with regard to the election of public officials; and ④[i]n 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.”

The suffrage is a right to participate in politics of the state. The suffrage is constituted by both the right to vote and the right to run for public office. When we talk about the suffrage, we often focus on the right to vote alone. The right to vote can also be examined on two separate levels: national and local.

As long as a modern nation has adopted the representative democratic system, elections are exertion of sovereign power by the people. What are characteristics of the voting right? How is an election carried out to accurately reflect the will of the people? These would be greatest concerns of the people.

#### (2) Legal characteristics of suffrage

Legally, the right to vote is a qualification or a position for the people to collectively select public officials. There are two major theories regarding its characteristics. The first is the theory of “right”. According to this theory, from the perspective of the natural law in the 18th century, all the people possess a right to participate in exertion of all sovereign rights. Thus, the theory considers the voting right as an intrinsic natural right to the people. The second is the theory of “duplicity”. This theory argues that even if the voting right is obviously recognized as a right in legal awareness of the people, the nature as a public duty that voters work together to elect their representatives still remains. Therefore, the theory goes, the right to vote is a right as well as a social obligation of individuals. The latter theory sounds more reasonable, if you consider an occasion when you elect the chairperson of a meeting. Casting a ballot is similar to that process in its public nature. But, to carry out an election campaign is doubtlessly a human right on its own light.

### 2. *The system of members of the Diet*

The Diet of Japan consists of both the House of Representatives and the House of

## Councillors.

### ① The term of office of Diet members

The term of office of members of the House of Representatives is four year. However, the term is terminated before the full term is up in case the House of Representatives is dissolved (Article 45). In contrast, the term of office of members of the House of Councillors is six year, and the House of Councillors can not be dissolved. However, election for half the members takes place every three years (Article 46). It was to stabilize the position of member of the House of Councillors to secure continuity as much as possible.

### ② The number of Diet members

The Constitution of Japan stipulates that “[t]he number of the members of each House shall be fixed by law” (Article 43-2). In accordance with the Constitution, the Public Offices Election Law sets the number of the members of the House of Representatives at 480 and that of the House of Councillors at 242, of which 180 and 96, respectively, shall be decided by proportional representation, and 300 and 146, respectively, shall be decided by small constituency voting (Article 4).

### ③ Qualifications for Diet members

The Constitution stipulates that “[t]he qualifications of members of both Houses .....shall be fixed by law” (Article 44). The Public Offices Election Law accordingly says that a member of the House of Representatives shall be 25 years old or older, and that a member of the House of Councillors shall be 30 years old or older (Article 10). The reason for the higher age requirement to run for the House of Councillors is to encourage election of those with academic expertise.

### ④ Constituency

The Constitution stipulates that “[e]lectoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law” (Article 47). Member of the House of Representatives are elected by the small constituency system and the proportional representation system. The former is a single-seat constituency system, while the latter is a bloc constituency system (Article 13-2, Appendix Second, The Public Offices Election Law). For those members of the House of Councillors who elected by the constituency system, a prefecture constitutes a constituency, and for those who elected by the proportional representation system, the whole nation constitutes a constituency (Article 12-2).

Extrapolating from the structural differences between the two Houses as mentioned above, the House of Councillors is characteristically organized to maintain stability and continuity, and to keep decisions from being made hastily at the House of Representatives.

Japan’s proportional representation system is based on lists of candidates submitted by political parties. First of all, voters cast a ballot for “political parties and other political organizations” that have submitted a list of candidates. To be eligible to submit a list of candidates, a political party or its equivalent must meet one of the following requirements: a) to have five or more Diet members, b) in the latest national election, to have acquired two percent or more of effective votes for a House of Representatives election, while four percent or more of effective votes for a House of Councillors election, and c) to have 20 percent or more of the candidates of set

members for a House of Representatives election, while 10 candidates or more for a House of Councillors election. Furthermore, each political party or its equivalent must deposit the filing fee of six million yen per candidate for a House of Representatives election, and of four million yen per candidate for a House of Councillors election, before submitting the list of candidates.

### 3. *Human rights of foreigners*

As to foreign residents in Japan, minor theory says that they are not entities to enjoy basic human rights stipulated in the Constitution. The theory argues that it is because Chapter 3 of the Constitution stipulates “rights and duties of the people”, and because the Constitution itself is in essence to set a standard of exerting state power to the people. However, commonly accepted theories and judicial precedents in principle are for foreign residents’ basic human rights. It is because human rights are believed to be derived from natural rights, the Constitution (Preamble and Article 98-2) has adopted internationalism, and human rights are now globally accepted.

As to actual implementation, according to a theory of wording (minority), if a provision says “every person/all persons (*nambito-mo*)”, it is also applicable to a foreign resident, but if a provision says “the people (*kokumin-ha*)”, it is not necessarily the case. This theory, however, has some flaws. For example, Article 22-2 stipulates that “[f]reedom of all persons .....to divest themselves of their nationality shall be inviolate.” According to this theory, a foreign national could divest him/herself of his/her nationality, which is irrational. Commonly accepted theories and judicial precedents have taken a theory of nature that says a provision concerning human rights are applicable to foreign residents as far as the nature of the provision allows. The Supreme Court, in the ruling of a case that a foreign lecturer’s request to extend the residence permission was denied, said that “guarantee of basic human rights, except for ones that are understood as only for Japanese nationals by their nature, shall equally be applicable to foreign nationals who reside in Japan” (October 4, 1978). Then, which human rights are not be guaranteed for foreign residents by their nature? In reality, in many cases, it seems that the idea of national sovereignty and the idea of sovereignty residing with the people draw a line.

For the purpose of discussing human rights of foreign residents, one has to distinguish short-term residents, including foreign students, from permanent foreign resident whose are based in Japan (“permanent residents (*ejūsha*)” in the Immigration Law and “special permanent residents (*tokubetu ejūsha*)” by the 1991 Special Immigration Law fall in the category, with the latter designating Korean and Taiwanese residents in Japan). Particularly, the special permanent residents, as part of corrective measures of the colonization policy under the Meiji Constitution, should be guaranteed human rights even more generously than other foreign residents. It is because most special permanent residents ①came to Japan against their own will and ②lost Japanese nationality according to the Japanese government policy right after World War II. It would be acceptable as a rational judgment, if those special permanent residents are treated more generously, even under the principle of “equal[ity] under the law” in Article 14 of the Constitution. In U.K. also nationals of former colonies (for example, Indian nationals) and nationals of Common Wealth countries (for example,

Canadian nationals) are granted the right to vote (in national and local elections) under certain conditions.

#### 4. *The right to vote and national borders*

The Public Offices Election Law does not grant foreign residents the right to vote(9,10). There are three different theories concerning the interpretation of these articles: ①A prohibition theory, which says granting the right to vote to foreign residents is unconstitutional; ②a permission theory, which says it does not matter whether granted or no; and ③a demand theory, which says not granting the right to vote is unconstitutional.

At the national level, a prevailing theory is that, under the principle of both national sovereignty and sovereignty residing with the people that politics of a sovereign nation should be decided by the people, granting the right to vote to foreign residents is unconstitutional. For example, among other countries, only New Zealand grants the right to vote in a national election to foreign residents in general under certain conditions. It is a common practice of major Western nations (members of G7) to guarantee expatriates with the right to vote in a national election of their nationality. Japanese expatriates, too, are granted the right to vote in a proportional representation constituency. The Supreme Court (February 26, 1993) ruled that the nationality provision in Article 9-1 of the Public Offices Election Law is constitutional, adopting the prohibition theory.

At the local level, prevailing theories consider that granting the right to vote to foreigners is permitted under the Constitution. To deal with issues closely related to daily lives of residents is the primary responsibility of local governments. In line with the principle of autonomy of residents, which constitutes the backbone of local autonomy, foreign residents should be allowed to participate in the political process of the local government. The local government structure of Japan has two layers: prefectures and municipalities. At the prefectural government level, granting the right to vote to foreign residents should be carefully considered because the prefectural government has a function of the police. At the municipal government level, the right to vote and the right to run for public office should be granted to all foreign residents. The Supreme Court (February 28, 1995) ruled as follows: “The residents (*jūmin*) in Article 93 of the Constitution designates the Japanese nationals, but in order to reflect opinions of permanent residents and other foreign residents upon the local government, a legislative measure to grant the right to vote for the head of a local government or members of a local parliament is not banned under the Constitution. Not taking such a legislative measure, however, is not unconstitutional, either.” Thus, the Supreme Court upheld the permission theory.

Even in other countries, a small number of nations grant the right to vote to foreign residents under certain conditions at the local government level. These countries include the four Scandinavian countries, Netherlands, and New Zealand. But major Western countries (G7 countries) do not grant the right to vote to foreign residents at the either national or local level. National borders are disappearing in terms of trade, but they are going to stay for a while in terms of politics and government. It is because ideas such as a world federation and global citizenship are

still in the sphere of philosophical or legal policy theory (future-oriented theory). In legal and realistic terms, the world still consists of sovereign nations. Admittedly, member countries of the European Union allow free movement of people within EU and grant the right to vote in a local election to citizens of other EU nations. This is probably based on logic of regional fusion in the midst of the process of exploring a possibility of a united states of Europe.