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# Legalization, Moralization, and Disciplination in Modern Japanese Education System

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## *General Introduction*

After the defeat of the World War II, Japanese people tried to rebuild their society by relying on humanistic and democratic values. It was the renewal of education system that constituted one of the key aspects of the reform. Teachers and scholars gathered together to find a way to construct an autonomous realm of education with the aim to get rid of militaristic and ultra-nationalistic ideology which was precisely the fundamental principle of education during the imperial period of Japan. However, their effort ended up succumbing to political power, seeking to control education for a more efficient governance of people. The main purpose of this article is to consider the following questions: Why has Japanese school become once again a place of indoctrination of values and norms conforming to the government at the time? How did teachers at school lose their freedom to determine what to teach? From interdisciplinary perspective, this paper tries to answer these questions through analyzing the following three important processes realized in modern Japanese education: *Legalization, Moralization, and Disciplination*.<sup>1)</sup>

1) This paper is based on oral presentation at the Asian Law & Society Association 4<sup>th</sup> Annual Meeting (Osaka, Japan, 2019).

## **PART 1: Sociological Perspective**

### *The Rise and Fall of Education Rights Movement in Post-War Japan*

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#### **1. Introduction**

In postwar Japan, the People's Right to Education Movement flourished. The People's Right to Education Movement rejected state control over education (State's Right to Education) and aimed to directly govern public education. Nevertheless, it has been pointed out that politics based on the "State's Right to Education" versus "People's Right to Education" structure had already ended (Hirota 2003), because the periodical condition in which the People's Right to Education Movement flourished was lost.

However, the issue of state control over education persists. In particular, since the revision of the Fundamental Law of Education in 2006, state control over education has been strengthened. Whether we abandon concept of the People's Right to Education or revive it, we need to clarify the results and limitations of the People's Right to Education Movement.

I will outline the social background of the rise and fall of the People's Right to Education Movement,

especially to focus on how the appeal of People's Right to Education Movement has changed with changing circumstances.

## 2. Special circumstances of postwar Japanese society

It is necessary to understand the special structure of postwar Japan society in order to understand the emergence of the People's Right to Education Movement. Following its defeat in World War II, Japan was reborn from a state system based on the sovereignty of the Emperor to one based on the Constitution and the Fundamental Law of Education, which upheld the ideals of sovereignty of the people, respect for fundamental human rights, and pacifism.

However, except for a short period in the early postwar period, conservative parties that were skeptical or critical of the Constitution and the Fundamental Law of Education held power. In contrast to the "Conservatives (hosyu)", which emphasized state control, the "Innovation (kakushin)" party rejected state control and supported, and tried to root the Constitution and the Fundamental Law of Education in. Many teachers supported the ideas of Innovation, and public education was an area in which such a framework of postwar politics emerged (Ota 1978).

From the 1950s when the occupation government ended, the conservative government promoted the following reforms in order to strengthen the control of education administration over public education:

- \*Granting the Minister of Education the authority to approve textbooks (1953)
- \*The limitation of teachers' political participation (1954)
- \*From a system of electing board members by popular vote to an appointment system (1956)
- \*Performance evaluation for teachers (1957)

This backlash led to widespread opposition. Theoretically, the theory of People's Right to Education supported these opposition movements.

## 3. Rise of the People's Right to Education Movement

### Theoretical structure of the "People's Right to Education"

Based on the discussion by Teruhisa HORIO, who was the theoretical leader of the movement, the following three points can be summarized as the characteristics of the People's Right to Education Movement.

First, public education was defined as "the organization of private affairs." While the right to educate a child rests primarily with the parents, schools are a collaboration of the parental right. In addition, the responsibility for education is entrusted to professional teachers. Thus, in rights theory, school is an extension of the family.

Second, there is a logic specific to education (= Principles of education [Kyoiku-no-jori]) to guarantee children's right to learn. In light of lessons learned from the war period, the postwar Constitution and the Fundamental Law of Education expressed skepticism about the establishment of educational objectives by law, and emphasized the importance of "Those that should be conducted with direct responsibility to all citizens, without being subject to unreasonable control" (Article 10 of the Fundamental Law of Education) and in order to ensure the autonomy of school education from state or educational administration (Horio 270: 2019). It also said that teachers should be guaranteed freedom of education in order to operate according to the principles of education.

Third, he distinguished between "internal matters(naiteki-jiko)" related to the method and content of education, such as classes and lifestyle guidance, and "external matters(gaiteki-jiko)" such as the installation of

school facilities and equipment, and asserted that the responsibility of educational administration should be limited to the latter (Horio 334: 1971). He argued that the education administration should not intervene in the content of education.

#### **Prosperity of People's Right to Education Movement**

First, it was the private educational research movement (*minkan-kyoiku-undo*) that supported the People's Right to Education Movement. The private educational research movement is a movement in which teachers independently study educational practices to resist the educational administration-led curriculum reform. The Japan Teachers Union held annual educational research meetings where teachers from all over the country gathered and discussed educational practices. Many teachers' movement groups to improve educational practice were established. Each movement group published a magazine and disseminated its practices through its nationwide network. In the 1970s, the Japan Teachers Union led the creation of *Kyoikuseidokakukaizen'iinukai* (the Education System Review Committee), which brought together all the private educational movement groups to create an ideal curriculum for the people (Education System Review Committee 1978). In contrast to the national curriculum guideline, the private educational research movement tried to establish its own curriculums.

The People's Right to Education Movement also fought in court to resist state control. Trials on issues such as Performance evaluation for teachers, national achievement tests, and textbook authorization sought to clarify the location and structure of the right to education (Horio 310: 2019). The trial by Saburo IENAGA, a prominent historian, who appealed against the illegality of the textbook authorization by the government, is one of the most famous trials concerning education after the war. In the second suit, the Tokyo District Court ruled that the responsibility of educational administration should be limited to external matters that promote the improvement of educational conditions, and The People's Right to Education Movement was almost fully recognized (July 17, 1970, Tokyo District Court).

#### **4. Criticism of the People's Right to Education Movement**

However, the People's Right to Education Movement has stagnated since the 1970s. This is not only because of legal theory problems regarding the People's Right to Education (Okudaira 1981), but also because the social context surrounding public education has changed.

First, there were doubts about the "right of teachers to educate." Morikatsu IMAHASHI (1983) argued that although the People's Right to Education Movement asserted that children and parents had the right to education, it did not fully assume that there was a conflict between the right of children to learn and the right of parents to educate, and the right of teachers to educate.

Second, there is criticism of the "the organization of private affairs." Since the late 1970s, schools have been heavily affected by the competition for entrance examinations (Kudomi 1993). Competition for entrance examinations is a problem that arises from private interests of children and their families and cannot be refused by the "the organization of private affairs" theory. In the 1980s, a neo-liberalism reform plan aimed at deregulating the public education system emerged, with the goal of liberalizing and diversifying public education. This could destroy the equality that public education should guarantee. However, it cannot be resisted under the existing framework of the People's Right to Education, which emphasizes the significance of the development of individual children (Goto 1988).

Thirdly, there is criticism of the existence of the principle of education. For example, the idea of "principle of education" that is suited to children's development tends to be negative toward vocational education.

This has been repeatedly pointed out by vocational educators, but it has tended to be ignored in the People's Right to Education Movement (Hara 1987).

However, while the People's Right to Education Movement declined, its basic framework was maintained. This is because until around the 1990s, the Japanese economy was in good shape, and the centrality of the people to public education was strong, especially as the transition from school to work was stable.

### 5. Future of the People's Right to Education Movement

Since the latter half of the 1990s, in the face of change in the educational system accompanying deadlock in Japan's postwar economic system, the national government has been promoting educational reforms, one of which target is to dismantle the autonomy of school teachers. These efforts include strengthening the authority of principals, introducing a teacher evaluation system, a school choice, and a national achievement test.

In 2006, the conservative government radically revised the Fundamental Law of Education, which was the basis of the People's Right to Education, making it possible to strengthen state control over public education. It is important to note that the state-led education reform since the 1990s has used the logic of restoring schools to the people from "Teachers' freedom of education." Using criticism of various schools, such as on bullying, corporal punishment, and truancy, they are gaining support for reforms to restrict teachers' freedom of education.

There has been no widespread resistance to such measures. This is because the membership of the Japan Teachers' Union has declined, the social memory of World War II has weakened, and fewer teachers share the philosophy of the People's Right to Education. Young teachers today do not have a strong sense of criticism against the government's control over schools (Matsuda 2018).

On the other hand, those who were critical of the existing schools, mainly the leaders of the free school movement for truants, demanded that Schools which occurred outside legally recognized school (Ichijo ko) be recognized as a new public education, and the "Act to Guarantee Access to Supplementary Learning (Kyoiku kikai kakuhoho)" was actually established. Although it is unclear how the reform of public education will proceed, there are strong concerns that it may lead to the devaluation of public education and that the right of children to study may not be fully guaranteed.

Against this backdrop, no logic has been found to resist the strengthening of state control. However, it is important that a provision concerning "Cooperation among schools, families, and local residents" was added to the Fundamental Law of Education revised in 2006. Even the 2006 revision of the Fundamental Law of Education, which was based on nationalism, shows that people, such as families and residents, should be stakeholders of schools.

The People's Right to Education has protected freedom of education using the principles of education as a lever. However, there is a possibility that the application of civil society rules will lead to the realization of children's right to freely learn and teachers' freedom of education.

### References

- Goto, Michio. (1989) "Rinkyoshinhihan to Kokumin no Kyoikuken" [Criticism of the National Council for Education and the People's Right to Education], Ikeya, Toshio., Goto Michio., Yoshida, Akio., Nakanishi, Shintaro. *Kyoso no Kyoiku kara Kyodo no Kyoiku he* [From Competitive Education of Competitive to Education of Joint ] AOKI Shoten, pp. 198-231 .
- Hara, Masatoshi (1987) *Gendai no Gijutu-Syokugyo kyoiku* [Modern technical and vocational education], Otsuki

Shoten.

Hirota, Teruyuki (2007) "Kyoikugaku no Konmei" [Confusion of pedagogy] *Shiso* March 2007, pp. 1-3.

Horio, Teruhisa (1970) *Gendaikyoiku no Shiso to Kozo* [Philosophy and structure of modern education], Iwanami Shoten.

Horio, Teruhisa (1978) *Jinken toshiteno Kyoiku* [Education as a human right], Iwanami Shoten, 2019

Imahashi, Morikatsu (1983) *Kyoikuho to Hosyakaigaku* [Education law and Legal sociology] Sanseido

Kudomi, Yoshiyuki (1993) *Kyoso no Kyoiku* [Education of competition], Junpo-sha.

Kyoikuseidokentoiinkai and Umene, Satoru.ed (1978) *Nihon no Kyoikukaikaku wo Motomete* [Seeking Educational Reform in Japan] Keiso Shobo.

Matsuda, Yosuke "Tosonaki Jidaini okeru Kyoshi no Seijiishiki [Teachers' Political Consciousness in an Age Without Struggle]", Yoshiyuki KUTOMI, Hiroshi HASEGAWA and Hirotohi FUKUSHIMA(eds). *Kyoshi no Sekinin to Kyoshokurinri: Keinentyosanimieeru Kyoimbunka no Henyo* [Teachers' Responsibilities and Teachers' Ethics: Survey Shows Changes in Teacher Culture], Keiso Shobo, pp. 292-313.

Okudaira, Yasuhiro (1981) "Kyoiku wo ukeru Kenri" [Right to receive an education], Nobuyoshi Ashibe, Nobuyoshi (ed) *Kenpo III Jinken* [Constitution III Human Rights (2)], Yuhikaku Publishing Co., Ltd., pp. 361-425.

## PART 2: Juristic Perspective

### *Education Control by Legalization in Contemporary Japan*

TSUCHIYA Akihiro (Kanazawa University)

#### 1. Purpose and Perspective

##### (1) Purpose

After World War II, schools in Japan, especially public schools started with the aim of forming autonomous spaces from the state because of the reflection that schools were a part of the pre-war totalitarian state and had functioned as a thought control agency over children. The Basic Act on Education (original version) enacted in 1947 defined the aim of education as follows:

##### "Article 1 (the aim of education)

Education shall aim at the full development of personality, striving to nurture the citizens, sound in mind and body, who shall love truth and justice, esteem individual value, respect labour and have a deep sense of responsibility, and be imbued with the independent spirit, as builders of the peaceful state and society.

The Basic Act on Education states that the purpose of education is to fully develop a person, and for that purpose, the act prohibits any institutions from improperly controlling education. This act regards the state as one institution that could exercise improper control, and has tried to prevent state control over education. However, in reality, many aspects of schools are now controlled by national laws.

The purpose of this paper is, first, to analyze two aspects in which school autonomy is eroded by state laws from the viewpoint of "the theory of legalization," and secondly, to try to suggest clues to restore or recreate

school autonomy.<sup>1)</sup>

## (2) Perspective

“Legalization,” also referred to as “Juridification,” is defined by Sato Iwao (1998) as “the process whereby social relations tend to be organized legally.” (p.34) Regarding “legalization,” various arguments have been developed.<sup>2)</sup> “The theory of legalization” in Japanese Sociology of Law has pointed out two aspects, negative and positive, by referring to the discussions in the United States and Germany.<sup>3)</sup> A positive aspect is the promotion of social justice by the law. A negative aspect is excessive reliance on legal systems for social order and dispute settlement due to the increased use of courts and policy-oriented laws. At the end of the arguments, the “reflexive law (reflexives Recht)” model (Teubner) is suggested as the ideal legal model. The reflexive law model means that the law should not undermine the autonomy of each social domain, but should be limited to “design self-regulating social systems through norms of organization and procedure” (Teubner, 1983, pp.254-255).

Japan’s educational jurisprudence has also adopted this reflexive law model, and it has been argued that the law should not directly control schools, but should be limited to invigorating their internal autonomy and to setting routes of remedy for violation of rights. The reason for emphasizing the autonomy of schools is thought to be in the dual understanding of education and education administration.<sup>4)</sup> For example, Tanaka Jiro, who was involved in the establishment of the local education administration system, stated:

“One can say that the purpose of education is to extract and develop human qualities or possibilities based on human dignity, and that the purpose of education administration is to arrange basic conditions for enabling such education to be conducted according to its original purpose.” (Tanaka, 1975, p.41)

Based on the dualistic theory of education and education administration, we would suggest that legal norms concerning school education can be divided into two levels. The first level is “Legal norms concerning school educational activities that directly influence children in schools.” The second level is “Legal norms concerning education administration as logistics (conditioning action) of the national or local government (Ishizaki, 2015, p.71).” The former is a law to control internal autonomy concerning direct approaches to children, and the latter is a law to perform functions and roles to activate the former.<sup>5)</sup> Therefore, it can be said that Japan’s educational jurisprudence has adopted the reflexive law model as it relates to schools.

In the following part, we will focus on two aspects of the “legalization” phenomenon: “school management” and “the Act for the Measures to Prevent Bullying (*Ijime*)”. Both are related to direct educational activities for children in the first level mentioned earlier. This is because direct educational activities in postwar education have been regarded as a “blank areas of the laws” (Ohno, 2004, p.36) for a long time. For this reason, it is relatively easy to see the phenomenon of “legalization”.

## 2. Aspects of Legalization

### (1) School management

School management has long been considered to be within the sphere of internal school practice. Teachers’ meetings, where teachers discuss school policies, curriculums and life guidance, etc., have customarily functioned as decision-making bodies. In addition, at the beginning of the postwar period, the educational legislation (School Education Act 1947) left school management to the discretion of the school, and schools

adopted an organizational principle called “the pot lid type” in which divisions of the school officials’ roles were ambiguous. In particular, the school manager (principal) and teachers were not distinguished clearly in the realm of their decision-making authorities. Under this organizational principle, school managers (principals) were regarded as a member of the teachers’ group, despite holding a senior position vis-a-vis the other teachers under the legal system. There was also a tacit understanding that the teachers’ group as a whole should discuss and decide on school policies, etc.

However, school management, which had been left to the autonomy of schools, was transformed into a hierarchical organization by the gradual enhancement of the position system and the legislation of the teachers’ meetings. In the position system, the school manager (principal) and teachers are clearly distinguished. The leadership and the practical layer in the school are separated by position, and only the school manager can make decisions. This is called “the tree type” or “the pyramid type” organizational system.<sup>6)</sup>

As I mentioned earlier, the teachers’ meetings had traditionally been the decision-making bodies of the schools. But those meetings have now been transformed by law into an organization to “contribute to the smooth execution of the principal’s duties”, with the principal presiding over them. That means the principal has the authority to supervise all matters including the holding and proceedings of the teachers’ meetings (Ministerial Ordinance for School Education Act Article 48). It thus follows from what has been said that the intention of the legislation was to diminish the role of teachers’ meetings from a decision-making body to a formality.

## (2) The Act for the Measures to Prevent Bullying

In Japanese society, bullying (*Ijime*) in schools continues to be so serious that it causes a number of pupils’ suicides every year. In 2013, with mounting criticism against boards of education for not fully being able to investigate the causes of bullying, the Act for the Measures to Prevent Bullying was enacted. This act is a far-reaching one that requires the national and local governments (the boards of education), as well as every school to take measures to tackle bullying. In the same year, the national government published the “Basic Policy for Prevention of Bullying.” This act and the basic policy show teachers how to tackle the bullying problem, such as, how to prevent bullying, how to discover and resolve it at an early stage, and how to investigate bullying that causes serious consequences, specifically, suicides and similar injuries.

However, the instructions given to schools by the Act and the basic policy are extremely concrete and detailed. They define bullying by giving concrete examples and suggests measures to prevent bullying to be taken by schools. For instance, member designations of the organizations which respond to bullying (multiple teachers, psychologists, welfare specialists, etc.), proper responses when bullying is reported, and measures to be taken against bullies are specified in detail. In addition, samples of investigation items and a report structure are extensively shown as schools are mandated to conduct investigation when serious consequences are observed. Furthermore, the Act states that the national government formulates the basic policy in accordance with the Act, and local governments must “consider” this basic policy when they formulate their own basic policies. The Act also states that each school must also “consider” the basic policies of the national and local governments when they formulate the school’s own basic policies.

As already mentioned, the Act and the basic policy provide teachers with detailed measures against bullying. This approach could be considered effective in some respects, but effective ways of dealing with bullying must be diverse, because the types of bullying, the situations in which it occurs, the characteristics of the children involved, and the causes of bullying vary. Nevertheless, the Act and basic policy mandate uniform



approach which one can assume results in narrowing the scope of teachers' originality and ingenuity in their response to bullying.

### 3. Discussion and Conclusion

#### (1) "Legalization" of the "blank areas of the laws"

In recent years, various areas that were once the "blank areas of the laws" regarding schools have been legalized one after another.<sup>7)</sup> It can be said that the two aspects considered in this paper, school organization, and measures against bullying, attempt to force the practices of school members, especially teachers, into a specific framework. This paper does not cite empirical studies in this matter, but it is certain that such "legalization" will change schools and teachers.

Imposing uniform practices on teachers may have a positive effect, but I also think there will be many problems. This is because effective education methods cannot be determined uniformly. The characteristics of children and teachers are very diverse; in other words, every school is different. Therefore, I think that the forms of educational practices such as appropriate teaching methods, appropriate school management, appropriate teacher-child relationships, and appropriate problem-solving methods should be determined depending on each school's conditions.

#### (2) The role of law

The fear is that "legalization" will make school management and teachers too dependent on the laws, which may make it difficult for teachers to practice education autonomously. Another concern is that it undermines teachers' own abilities to teach and solve problems by themselves.

School education may be restricted to some extent by the legal system as it is operated at the national level. But in the light of the reflexive law model, the laws should allow a certain degree of freedom. As one researcher says, "Law is a powerful tool for society, but it is not a panacea. Prioritized choice should inherently be on the part of the citizen in comparison with other possible methods" (Eguchi, 1994, p.185). Even if a law defines methods of educational practice and school management, it should allow some freedom in its application by school members (teachers, children, parents and local residents, etc.). I am convinced that the law must be limited to defining functions and roles that may offer alternatives and may increase options for the autonomy of school domains.

### Notes

1) "Curriculum" and "Community School System" were also discussed at the Asian Law & Society Association 4<sup>th</sup> Annual Meeting (Osaka University, 2019), but are omitted in this paper.

2) According to Rokumoto's definition, "The 'legalization' of social order refers to a tendency where the order system inherent in the social structure loses its power, and the functions of the conflict group consisting of people directly surrounding the parties decline, so the resolution of disputes becomes difficult without the norms, procedures, and sanction of the state's legal system" (Rokumoto, 1989, p.250).

3) Examples include 'colonization of the life-world' (Habermas, 1981= trans. 1987) and "regulatory trilemma" (Teubner, 1984= trans. 1990).

4) In Japan's educational jurisprudence, this division was proposed as "the dualistic theory of internal and external matters of education." According to this argument, the internal matters of education mean the educational activities entrusted to teachers as agents of truth, and the external matters mean the role of improving

the conditions and the responsibility of education administration. See, Sato Shuji, 2006.

5) On the other hand, some point out that the school space developed by the modern nation has been “the world different from civil society” since its establishment, so it has already and always been “legalized” (Baba, 1996, p57).

6) Under the current School Education Act and its enforcement regulations, *principal, head teacher, teacher, school nurse, clerical staff, chief teacher*, and *grade chief* positions are obligatory. Furthermore, the act stipulates *vice principal, chief teacher* and *leading teacher* as optional positions. On the other hand, the original School Education Act stipulated only *principal, teacher, school nurse*, and *clerical staff* as an obligatory.

7) According to Muramoto (2011), most of the educational reforms were carried out not by “revision of law” but by “revision of ministerial ordinance.” They include the school selection system, the five-day system, the chief system, etc. In view of the fact that postwar education reform adopted the “legalism” in which the basic principles and ideals of education were defined by the National Enactment Act, the reform by ministerial ordinances is described as “a retreat from legalism” rather than “legalism.” Furthermore, the educational reforms carried out by the “Basic Plan for the Promoting Education,” the national curriculum guidelines and the notices of the Ministry of Education have been criticized for not satisfying even forms of law (p.59).

#### References

- Baba, K. 1996. “Gakko-Kyoiku-Funso to sono Hoka,” in Tanase, T. (ed.), *Funso-Syori to Goi*, Minervashobo 43-60 (in Japanese).
- Eguchi, A. 1994. “Hokasyakai niokeru Goi no Syakaitekikino,” in Sato, Y. et al.(eds.) *System to Kyodose*, Showado 168-187 (in Japanese).
- Habermas, J. 1981. *Theorie des Kommunikativen Handelns*, Frankfurt/Main Suhrkamp Verlag. Trans.1987. Maruyama, T. et al. *Communication teki Koi no Riron(Ge)*, Miraisha.
- Ishizaki, S. 2015. “Kyoiku no Tihoziti to Kyoikuiinkaiseido no Kaihen,” 44 *Nihonkyoikuhogakkainenpo* (Education Law Review) 70-80(in Japanese).
- Muramoto, H. 2011. “Gakkokyoikuho no Hensen to Gakkoseido,” 40 *Nihonkyoikuhogakkainenpo* (Education Law Review) 58-66(in Japanese).
- Ohno, Y. 2004. “Kochou to Hou,” in Shinohara, K. and Harada, N.(eds), *Gakko notameno Hogaku*, Minervashobo 29-47(in Japanese).
- Rokumoto, K. 1986. *Hosyakaigaku*, Yuhikaku.
- Sato, I.1998. “Hokaro no Tenkai to Kadai,” in Nihon Hosyakaigakkai(The Japanese Association of Sociology of Law) (ed.) *Hosyakaigaku no Shintihei*, Yuhikaku, 34-44(in Japanese).
- Sato, S.2006. “Kokumin no Kyoikukenron to Naigaiziko Kubunron,” 61 *Akitadaigaku Kyoikubunkagakubukiyo Kyoikukagakubumon*(Memoirs of the Faculty of Education, Akita University. Educational science) 60-69 (in Japanese).
- Tanaka, J.1975. “Tihojiti to Kyoikuiinkaiseido,” 4 *Nihonkyoikuhogakkainenpo* (Education Law Review) 13-44(in Japanese).
- Teubner, G. 1984. “Verrechtlichung : Begriffe, Merkmale, Grenzen, Auswege,” in Kubler, F. (Hrsg.), *Verrechtlichung von Wirtschaft, Arbeit und sozialer Solidaritat*. Suhrkamp. Trans. 1990. Kashizawa, H. “Hoka - Gainen, Tokutyō, Genkai, Kaihisaku, Kyudai Hogaku,” 59 *Kyudaihogaku* 235-292.
- 1983. “Substantive and Reflexive Elements in Modern Law,” 17(2) *Law and Society Review* 239-285.

**PART 3: Philosophical Perspective***The Revival of Moral Education in Post-War Japan*

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This article reflects on the current undertaking of moralization in the Japanese public education system. Within this context, the concept of “moralization” refers to the historical process through which increasing importance has been placed on moral education in the Japanese public education curriculum.

Regarding the history of moral education in post-war Japan, historians agree on three turning points that influenced this development. At first, moral education was excluded from the curriculum by abolishing *Shushin* (修身), which can be literally translated as “putting one’s life into order,” “self-control,” or “self-discipline.” During the imperial period of Japan, *Shushin* was prioritized in the curriculum to function as an ideological tool of the State with the aim to unify the Japanese people under the authority of the emperor. The Imperial Rescript on Education (教育勅語) formed the core of *Shushin*. In this document, the emperor called on the Japanese children to respect their parents, love their siblings, devote themselves to their communities, and work hard. These virtues were, however, encouraged to promote the prosperity of the empire instead of nurturing virtuous children<sup>1</sup>).

*Shushin* was designed to teach ultra-nationalist and totalitarian values to cultivate loyal followers of the emperor. For this reason, *Shushin* was officially removed from the new public education curriculum after World War II. Under the American Occupation, the Japanese aimed to rebuild their society on the basis of democratic, liberal, and humanistic values. Establishing a new education system was one of the government’s most important and urgent tasks, and dedicated moral education was removed from the new curriculum. Instead, teachers were given the freedom to teach independently from the ideological control of the State.

In 1958, however, moral education was reintroduced to the public school system as an exceptional subject called *Dotoku no Jikan* (道徳の時間), which translates as “class for moral education.” The subject was considered exceptional because there were no official textbooks, and students were not graded. The grounds for reintroducing moral education were complicated<sup>2</sup>), but it was evident that despite extensive damage to their physical and spiritual interests, the conservative ideologists did not lose their power or hold on the Japanese society. The conservative ideologists had been relentlessly advocating for moral education in schools since *Shushin* had been removed from the curriculum; they were convinced that Japanese childrens’ daily lives would otherwise fall into disorder.

In 2015, the Japanese government decided to upgrade *Dotoku no Jikan* to a quasi-subject, which meant that teachers were required to use textbooks that were officially censored by the Ministry of Education. In addition, they now had to grade students for their work. With regard to the censoring of textbooks on moral education, there is a well-known account of a publisher that created a story for first-grade students to teach respect for Japanese tradition and culture. The Ministry of Education decided that the story was inappropriate because it referenced a bakery shop, which was associated with Western culture. The textbook was approved when the publisher replaced the bakery with a traditional Japanese confectionery (*Wagashiya*, 和菓子屋).

The decision to reintroduce moral education came into effect in elementary schools in 2018 and middle schools in 2019. According to the government’s official announcement on the matter, the purpose of moral education is to manage bullying among youngsters, which has been recognized as a crucial social issue since

the 1990s. In addition, those who advocated for moral education argued that teachers did not grasp its significance because it was not regarded as an official subject. These advocates reasoned that teachers would approach the subject matter more seriously if it had the same status as mathematics or English.

In light of this historical background, one could argue that moralization in this context was a process through which a liberal-democratic ideal of education was gradually excluded from public schools. The liberal-democratic ideal in education implies that teachers must respect students' differences as far as possible, even if they have good reason to restrict students' freedom because they are still seen as immature. In a sense, moral education stands in opposition to this ideal because of the asymmetrical relationship between students and teachers in terms of power. Students are, in other words, obliged to obey teachers and school rules. For this reason, moral education is dangerous because it could turn easily into indoctrination<sup>3)</sup>.

It would seem that the Japanese people, including teachers, readily accepted this drastic change because they were convinced that teaching morals was virtuous in itself. Japanese society believed that the reform of moral education in schools would not signify the return to its somber past.

One can understand their viewpoint, especially because even teachers struggle to fully comprehend what they are doing in the name of moral education. In this regard, the well-known Hegelian concept "Cunning of Reason" (*List der Vernunft*) applies to this phenomenon in Japan. According to the German philosopher, reason accomplishes its intentions through history indirectly by manipulating events through irrational human behavior. This is equally true, *mutatis mutandis*, of moral education in Japan. We can, in fact, refer to the phenomenon as the Cunning of Moral Education. On the one hand, the national curriculum guideline claims that moral education aims to cultivate good citizens for a future democratic society<sup>4)</sup>. Despite this, the textbooks on moral education do not educate students on citizenship and democracy; instead, it teaches them how to be good and enduring laborers who will contribute to society, never protest, and not make demands on government<sup>5)</sup>. The gap between what moral education professes to achieve and what it actually advocates is so cleverly disguised that even teachers remain unaware that moral education functions as a convenient tool for the government to control its people. Instead of molding independent and autonomous citizens, teachers unknowingly reinforce the government's authority over its people. The Cunning of Moral Education succeeds by alienating teachers from the task at hand.

A short story titled "A Magician," from a textbook for moral education for sixth-year-grade children at elementary school (who are 11–12 years old), illustrates this concept. Traditionally, moral education in Japan is not taught through discussion but by reading stories in which moral values and virtues are expressed through the descriptions of characters and their actions. This particular story was written about 50 years ago by the former elementary school teacher Teruo Ebashi (江橋照雄, 1932–1999). In short, the story tells of a poor young man who dreamt of becoming a professional magician. Although he was skilled, he never got the opportunity to make a success of his profession. One day, he came across a lonely boy in the street. The magician performed some of his tricks to cheer up the boy, and he then promised to meet the boy the next day. That evening, a friend offered the magician an opportunity to make his debut on the stage of a famous theater the following day. The magician hesitated but declined the offer; he had already made an important appointment with someone else, he said.

This story appears in all eight moral education textbooks approved by the Ministry of Education. By reading this story, teachers illustrate the virtue of sincerity: it was more important to the magician to keep his

promise to a young boy than to show off his skills in front of a theater filled with spectators. Typical questions that arise from this story include what is good about the magician's choice? why did the magician choose to keep his promise instead of taking advantage of the rare opportunity? By asking these questions, teachers assume that the magician made the morally right decision and that no other choice is justifiable.

Indeed, some might say that what the magician did is respectful and heartwarming. This is not problematic, as long as they read the story as a fairy tale. However, reading fairy tales for entertainment is one thing; using them to teach moral lessons is troublesome. Instead of teaching sincerity, "A Magician" illustrates an extreme form of altruism. Instead of declining the offer to perform, the magician could have sent a message to the boy—or even invited him to the performance. There are many other ways in which the magician could have managed the dilemma he was confronted with. However, according to the author's auto-interpretation<sup>6)</sup>, a practical solution to the problem would not be sincere because any of these would be tainted by the magician's ego. In other words, the only sincere action would be to decline the offer. The story teaches students that sincerity requires one to surrender one's egoistic intentions; any other action would be selfish. This story plays cleverly into the agenda of the government, and the example illustrates how the Cunning of Moral Education functions practically in the classroom.

As a brief conclusion, I argue that teachers and students must approach what is taught in the name of moral education in a critical manner. Students and teachers should understand the virtue of sincerity within the context of their everyday lives. True moral education starts when we become skeptical about what is presented to us as morality. In this sense, it is important to keep in mind the following quotation from Emmanuel Levinas: "It is of the highest importance to know whether *we are not duped by morality.*"<sup>7)</sup>

## Notes

1) See Yoichi Takahashi, *Kuwashisugiru Kyoikuchokugo* (くわしすぎる教育勅語), Tokyo: Tarojirosha Editas, 2019 (in Japanese) for commentary on this issue.

2) See the study Naoki Omori, *Dotokuyoiku to Aikokushin: "Dotoku" no Kyokaka ni do mukiauka* (道徳教育と愛国心——「道徳」の教科化にどう向き合うか), Tokyo: Iwanami Shoten, 2018, pp.131-233 (in Japanese) for more on this complex decision.

3) Cf. Ryohei Matsushita, "Dotokuyokaka to Kokuminkokka wo meguru Seijigaku: Izure no Scenario wo erabunoka" (道徳教科化と国民国家をめぐる政治学——いずれのシナリオを選ぶのか), in *Genndaishiso*, vol. 43-8, 2015, pp. 169-183 (in Japanese).

4) Cf. the *Curriculum Guideline in Elementary School* (小学校学習指導要領) published by the Ministry of Education in July 2017 (in Japanese).

5) Cf. Tetsuya Kono, *Dotoku wo toinaosu: Liberalism to Kyoiku no Yukue* (道徳を問いなおす——リベラリズムと教育のゆくえ), Tokyo: Chikuma Shobo, 2011, pp. 15-24 (in Japanese).

6) See Teruo Ebashi, "Tejinashi ni atsuki Omoi wo yosete," (「手品師」に熱き思いを寄せて) in *Dotokuyoiku*, no. 656, 2013, p. 7 (in Japanese).

7) See Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, translated by Alphonso Lingis, Dordrecht / Boston / London, Kluwer Academic Publishers, 1991, p. 21. Italics are the author's own.

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**PART 4: Historical Perspective***Expanding Discipline in Modern Japanese Education*

TORII Kazuyo (Kanazawa University)

**Introduction**

The purpose of this paper is to discuss expanding discipline in Modern Japanese school in the late 1920s and 30s. Specifically, this paper focuses on the fact that as a result of the establishment of an organized system of supervision mainly outside secondary schools in modern Japan, schools had expanded their scope of activities, including even student discipline, outside of school.

The contents of this paper are as follows. Firstly, I'll give an overview of secondary schools in the old school system in Japan. Secondly, I'll argue the spread of the association of outside school supervision. Thirdly, I'm going to describe the background of the establishment of the association. And finally, I'll focus on the impact of the outside school supervision system on school education.

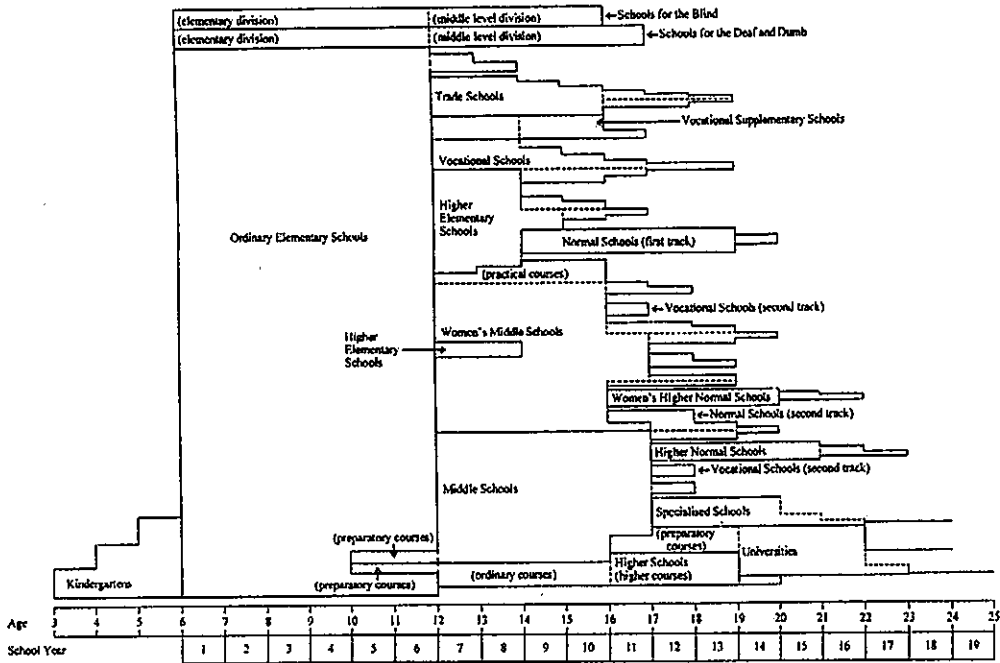
**1 Overview of secondary schools in the old school system in Japan**

Figure 1 shows the Japanese educational system in 1931. As we will see later, it was among secondary schools that the association of outside school supervision was mainly organized in the late 1920s and 30s. It should be noted that the old educational system was segregated by gender in secondary education and higher. Secondary schools consisted of 3 kinds: Middle schools for men (Kyūsei-chūgakkō), women's middle schools (Kōtō-jōgakkō), and vocational schools for men and women (Jitsugyō-gakkō). Secondary school students were generally for students between the ages of 12 and 17. The advancement rate to secondary schools was about 20% in the 1930s. The association of outside school supervision mostly targeted this limited number of students.

**2 Spread of the Association of Outside School Supervision**

Table 1 shows the number of the associations by region from 1924 to 1937. Notice that the associations had spread nationwide, mainly in the Kinki and Chubu regions. One of the reasons behind that was that the associations of Osaka Prefecture and Kobe City promoted the establishment movement. Since 1933, the associations had also been set up in colonies and leased territories of the Empire of Japan. As shown in Table 2, the types of member schools were secondary schools only (42%), and elementary and secondary schools (36%), as of October 1937. It's noteworthy that nearly 80% of secondary schools belonged to an association of outside school supervision.

Figure 1. Educational System in 1931



Source: Masashi Tsujimoto and Yoko Yamasaki (Eds.) (2017). *The history of education in Japan (1600-2000)*. New York: Routledge, p.88.

Table 1. Number of the associations of outside school supervision by region

Year	Hokkaido	Tohoku	Kanto	Chubu	Kinki	Chugoku	Shikoku	Kyushu	Korea	Taiwan	Kwantung	Total
1924	1											1
1925			1			1						2
1926												
1927												
1928					1							1
1929				1	1			1				3
1930				0	3	1						4
1931			2	1	2	2						7
1932		1	3	2	1	1	1	1				10
1933	2	3	1	5	9		6	5	6			37
1934	1	3	2	6	3	2		2	7	1	1	28
1935	1	2	1	2		2	2		1	1		12
1936				2		2	2	2	1	2		11
1937			1	2		1			1	11		16
	5	9	11	21	20	12	11	11	16	15	1	132

Table 2. Types of member schools

Secondary Schools	42%
Elementary Schools	36%
Secondary Schools	
Others	21%
Unknown	1%

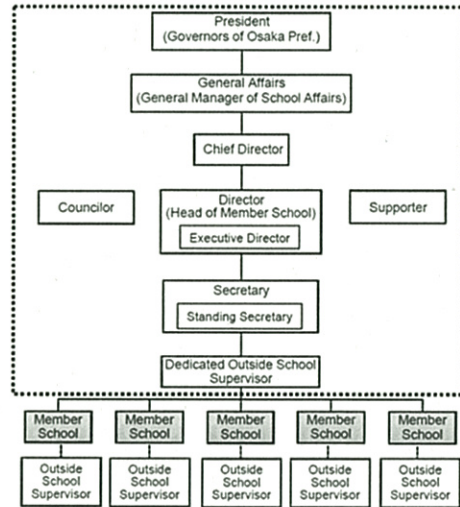
(As of October 1937)

Source: Zenkoku Hodōkyōgodantai Rengōkai (1937). *Zenkoku Hodōkyōgodantai Rengōkai Ichiran (National Federation of the Outside School Supervision List)*. etc.

**3 Background of the establishment of the Association of Outside School Supervision**

I'm going to explain the background of the establishment of the association of outside school supervision based on the case of Osaka Prefecture. The association of outside school supervision among secondary schools in Osaka Pref. was organized in 1929 for the purpose of preventing students' delinquency and for discipline control. Figure 2 is an organization chart of the association in Osaka Pref. The association in Osaka Pref. consisted of more than 100 member schools. The Association officers inspected and supervised all students' behavior outside school in member schools. Inspected and supervised students' behaviors included going to the movies, entering restaurants and smoking or drinking in some cases, reading choices, and contacts and interactions between male and female students.

Figure 2. Organization chart of the association in Osaka Pref.



Then, why was the association established specifically in Osaka Pref.? One reason was the impact of “the Incident of March 15th, 1928” in which many communists were arrested. And the other was the transformation of the sociocultural environment in urban areas. The rapid growth of new popular facilities, such as bars, coffee shops, movie theaters and dance halls is one example. I want to emphasize that there were dual demands: national and political demands for thought control and social manners and customs control behind the foundation of the association. Secondary school stakeholders responded to these demands proactively by themselves.

**4 Impact of the Association of Outside School Supervision on school education**

Then, how did the establishment of the association of outside school supervision affect school education? School teachers had to deal with more students' deviant behaviors outside school than before, of which the association officers informed the school authorities. Table 3 shows the numbers and reasons for student punishments at Osaka Prefectural Sakai Middle School under the old educational system (present Mikunigaoka High School). “Discipline outside school” consists of the following items: “Entering places of amusement,” “Entering restaurants,” and “Problems between the opposite sex.” In addition, it also includes out-of-school behaviors such as “Smoking and drinking alcohol,” “Violence and injury,” “Theft,” and “Others.” You will

Table 3. Numbers and Reasons for Student Punishments at Sakai Middle School (present Mikunigaoka High School)

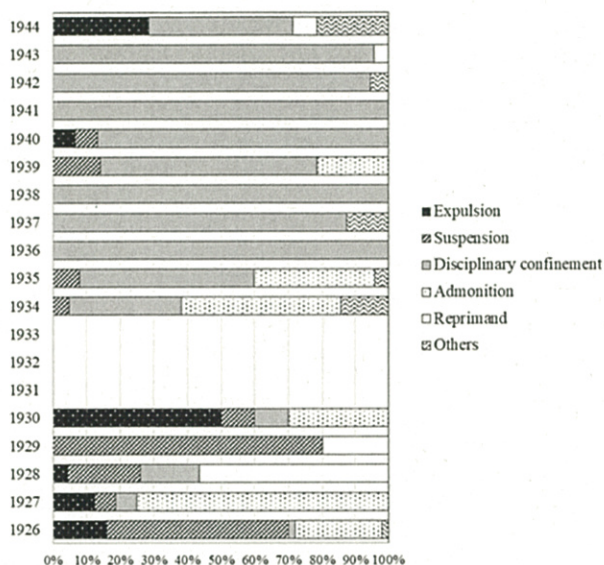
	1926	1927	1928	1929	1930	1931-33	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944
Cheating in the examination	18	3	4	0	2	-	3	5	3	2	0	2	11	7	2	6	3
Failure to study and leave early	10	0	1	0	1	-	0	1	0	0	3	2	0	2	1	7	1
Entering places of amusement	4	0	1	0	5	-	1	1	1	3	2	1	1	0	1	2	0
Entering restaurants	5	0	2	9	4	-	8	9	11	2	7	3	1	0	7	1	2
Problems between the opposite sex	5	1	0	0	3	-	4	5	5	0	10	0	1	1	10	1	1
Smoking and drinking alcohol	17	0	0	7	4	-	1	4	7	0	0	2	2	2	10	4	0
Violence and injury	1	1	2	0	0	-	5	1	0	0	1	2	0	0	2	4	0
Theft	0	0	0	0	0	-	0	0	0	0	0	0	1	0	0	21	8
Others	6	11	14	1	3	-	2	1	2	1	1	5	0	4	1	6	1
Total	66	16	24	17	22	-	24	27	29	8	24	17	17	16	34	52	16
Discipline outside school (%)	28 (42.4)	1 (6.3)	3 (12.5)	16 (94.1)	16 (72.7)	-	14 (58.3)	19 (70.4)	23 (79.3)	5 (62.5)	19 (79.2)	6 (35.3)	4 (23.5)	4 (25.0)	27 (79.4)	6 (11.5)	3 (18.8)

Source: Osaka Prefectural Sakai Middle School, *San'iroku (Student Punishment Record)*, owned by Mikunigaoka High School.

Note: The records from 1931 to 1933 are unknown because of lost or damaged materials.



Figure 3. Types of Student Punishment in Sakai Middle School



notice that on average approximately 70% of all disciplinary actions per year were related to discipline outside school from 1929 to 1938.

Another important point is that schools gradually had begun to make student punishment gentle. Figure 3 shows the changes in the types of the student punishment in Sakai Middle School. What is interesting here is that the number of expulsions and suspensions decreased, while disciplinary confinement increased. Incidentally, 91% of disciplinary confinement was at home and 9% was at school. This means that schools had come to place more emphasis on discipline than on sanctions against students.

## Conclusion

The main findings in this paper are as follows. Firstly, we can see that school education in modern Japan had an affinity to national and political demands to control Marxism and new social manners and customs, and responded proactively to them. Secondly, we found that the modern Japanese school system had expanded their scope of activities to outside the school and had begun to punish more students for their deviant behaviors outside school. Finally, we also found that with these changes in the role of schools, the type of student punishment also changed. That is, as seen in the increase in disciplinary confinement at home, school education had become more oriented toward making parents of students responsible for supervision rather than imposing sanctions on the students. These results show that students were urged to be disciplined not only in school but also in their out-of-school activities in modern Japan. Here we can see the historically expanding role of schools in discipline in Japanese education and society.

## PART 5: International Law Perspective

### *Legalisation, Moralisation, and Disciplinary confinement in Modern Japanese Education System from the International Law Perspective*

YAMASHITA Azusa (Hiroshima University)

The purpose of this part is to make comments pertaining to the papers presented by Matsuda, Tsuchiya, Hiraishi, and Torii. Four papers have revealed why and how Japanese schools have become a place of indoctrination of values and norms conforming to those of the government at the time and how school teachers have lost its autonomy in determining what to teach in post Second World War Japan's education system from processes of legalisation, moralisation, and disciplination. This section makes two concluding comments from the perspective of international human rights law whose historical background overlaps with the timeframe of

the arguments by Matsuda, Tsuchiya, Hiraishi, and Torii: how education is captured in the international human rights framework and how Japanese education system can be evaluated based on the international human rights standards; the position of school teachers in the implementation of educational rights.

Educational right is recognised in the international human rights law. This right can be seen in the United Nations documents such as the 1948 Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (1966), and the Convention on the Rights of the Child (1989), the Convention against All Forms of Racial Discrimination (1969), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

Article 26 of the Universal Declaration of Human Rights says 'everyone has the right to education', and in the second paragraph, it continues to say 'education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.' Children's right to education may be generally guaranteed by Japanese laws except in cases of minority-children's such right. The programs of contents and practice of education, however, as illustrated by Hiraishi and, do not necessarily seem to be in compatible with this second paragraph. While education has worked to provide students with lessons in accepting authority, respecting consensus, and prioritising social norms over their desires in some countries including Japan, it is vital to recognise the empowering aspect of education. In my observation, Japanese education system emphasises social control aspect of education disproportionately and lacks to incorporate this empowering aspect in its programs and implementation.

Another aspect having been missing from Japanese education system and practice is a that of the rights of children and their best interest. Then UN Special Rapporteur on Education, Katrina Tomas evski (2003) argues 4-As in determining the scope of the right to education. These 4-As are availability, accessibility, acceptability, and adaptability<sup>1)</sup>.

According to Tomas evski, availability is meant that functioning educational institutions and programmes must be available in sufficient quantity. Accessibility refers to the idea that educational institutions and programs must be accessible to everyone. Superficially, these two seem to have been met in Japanese education system. Acceptability and adaptability, on the other hand, come into question. Acceptability is regarding the acceptability to students, and, in appropriate cases, parents, of what is taught and the way educational institutions are organised. It is stressed by the UN Committee on Economic, Social and Cultural Rights that the need for teaching methods and school curricula be relevant, culturally appropriate and of good quality. The committee further recognises that the acceptability of education may be affected by various matters, among them are school discipline, dress codes, and textbook contents. Lastly, adaptability directs attention to the need for educational system to remain open to review and reconsideration. It requires that education systems themselves adapt to the diverse and changing populations they serve. It further demands that the efforts to organise educational institutions and frame educational curricula should be in a way that combats stereotyping and other forms of prejudice. From the examples of moral education class, it is clear that implementatoin of these requirements is in doubt in Japanese public schools.

How are school teachers referenced in international human rights law? While public school teachers are

in a position to implement children's right to education as part of public education authority, they are differentiated from states. For example, in the Recommendation concerning the Status of Teachers<sup>2)</sup>, adopted in 1966 by the Special Intergovernmental Conference on the Status of Teachers by United Nations Educational, Scientific and Cultural Organisation in cooperation with the International Labour Organisation, which Japanese government approved, paragraph 9 says 'teachers' organisations should be recognised as a force which can contribute greatly to educational advance and which therefore should be associated with the determination of educational policy.' That is one way of how teachers are recognised. Paragraph 35 says 'school authorities should make every endeavour to ensure that schools can apply relevant research findings both in the subjects of study and in teaching methods.' Paragraph 61 of the Recommendation says 'the teaching profession should enjoy academic freedom in the discharge of professional duties. Since teachers are particularly qualified to judge the teaching aids and methods most suitable for their pupils, they should be given the essential role in the choice and the adaptation of teaching material, the selection of textbooks and the application of teaching methods, within the framework of approved programs, and with the assistance of the educational authorities.' While the difference of timelines that Matsuda, Tsuchiya, Hiraishi, and Torii each covered must be taken into consideration, their papers have illustrated that these recommendations have barely been materialised in Japanese public schools.

1) Tomaševski, K. (2001). Human rights obligations: making education available, accessible, acceptable and adaptable. Right to Education Primer, 3.

2) United Nations Educational, Scientific and Cultural Organisation., International Labour Organisation. (1966). Recommendation concerning the Status of Teachers.

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---)

sector/documents/normativeinstrument/wcms\_162034.pdf (retrieved 19 Oct. 2020).