

COMMENT

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This comment analyzes the articles by Professors Takahashi,¹ Yoshida,² and Luney.³ Rather than discussing each article point by point, I shall focus on the central issue each raises and some questions brought to mind by each, then conclude by identifying a broad problem that seems to be inherent in their discussions.

Professor Takahashi's searching analysis of Japan's parliamentary system concentrates on what many observers believe to be a defective party system—one that has allowed the control of the government for more than one-third of a century by the Liberal Democratic Party ("LDP") and the concomitant failure of any opposition party to mount an effective challenge. His analysis leads him to believe that a solution lies in the ability of the opposition to present a feasible (that is, neither philosophical nor ideological) program of practical policies that will be an acceptable alternative to the policies and programs of the LDP.

We are all familiar with the LDP's recent resounding defeat in the House of Councilors election. However, that event was clearly not a test of Professor Takahashi's solution. The election reflected not a choice of alternatives to the LDP, but a rejection of the LDP based on an unsavory brew of corruption and scandal. The real test will come in the general election for the House of Representatives in 1990.

The test will be shaped by answers to several questions. What will the issues be—the recent record of the LDP, national security (particularly, security relations with the United States), Japan's role in the world economy, or domestic taxes? How will the Japan Socialist Party ("JSP"), the principal opposition, formulate its policies? Will the JSP finally abandon its narrow and unproductive ideological positions? Are the opposition parties able and willing to stand together against the LDP? How will the LDP react to a serious challenge to its power? Obviously, the answers to such questions will not only test Professor Takahashi's ideas, but also shed considerable light on the future of Japan's parliamentary democracy.

Professor Yoshida's examination of local government under the Constitution is based on his belief that the principle of local government is

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1. Takahashi, *Contemporary Democracy in a Parliamentary System*, LAW AND CONTEMP. PROBS., Winter 1990, at 105.

2. Yoshida, *Authority of the National and Local Governments under the Constitution*, LAW AND CONTEMP. PROBS., Winter 1990, at 123.

3. Luney, *The Judiciary: Its Organization and Status in the Parliamentary System*, LAW AND CONTEMP. PROBS., Winter 1990, at 135.

intrinsic to the healthy development of Japan's democracy. But he perceives the intrusive central government presence in local government in three major forms: the tendency of the central government to delegate the implementation of its policies affecting local government to local government agencies, thus making them into mere agents of the central government; the role of the central treasury as a principal source of local government funding; and the allocation of central government personnel to local government offices. He believes that a strong awareness of local government as the bedrock of democracy, a greater resistance to the intrusion of the central government into local affairs, and the development of more and better cooperation between central and local government units will do much to slow the encroachment of the central government.

Professor Yoshida's paper raises certain questions which, it seems to me, are not germane to his central argument, but which might be germane to the larger question of the role of local government under a democratic system. To what extent, if any, does the present role of the central government inhibit the recognition of particular local needs and requirements that might be subordinated to the demands of broad national policy for local areas in general? Are there significant discrepancies or inequities in the allocation of central government resources to local areas? What is the interaction between local officials and central governmental personnel assigned to local offices? How does the mammoth government of Tokyo Metropolis fit into the picture?

Professor Luney follows an historical approach in his excellent analysis of the position of Japan's judiciary under the authoritarian Meiji Constitution and then under the democratic Shōwa Constitution. He clearly sets forth the fact that the successive judicial systems faithfully reflect the constitutional systems that created them.

While Professor Luney makes abundantly clear that Japan's judiciary stands firmly on a democratic foundation, his conclusion raises a fundamental question. He writes that the judiciary's "exercise of its power of judicial review did not start the emergence of an activist judiciary."⁴ In his context, the judiciary is the Supreme Court. His comment is well taken and reflects views held by both Japanese and American students of the Japanese judiciary.

This judgment, however, raises an important question: By not actively exercising its power of judicial review, is Japan's Supreme Court failing to discharge a responsibility, or is it acting in accord with Article 41 of the Constitution, which states that the Diet "shall be the highest organ of state power"? Professor Luney has raised a fundamentally important question relating to the separation of powers under the Constitution. It is a question that has long concerned me. I have not yet encountered a satisfactory treatment of it.

Professor Takahashi deals with the important issue of parliamentary democracy, Professor Yoshida with a grass-roots problem of democracy, and

4. *Id.* at 160-61.

Professor Luney with the judiciary under democracy. All three are dealing with fundamental aspects of democratic systems, and all operate on the assumption that their subjects are both democratic and sound. Yet, all three are concerned with obvious shortcomings.

Their papers thus raise a fundamental question: Why have a party system, local autonomy, and the judiciary, all with obvious defects from the standpoint of ideal democracy, continued to function as key elements of a viable democracy without undermining it? It seems to me that an answer to that question might well represent a significant step toward defining more exactly the nature of Japan's democracy.

The standard view is that Japan is a democracy with obvious differences from Western democracies. There have been few, if any, serious attempts to establish more precisely what those differences might be. If Japan's democracy can continue to flourish after more than a third of a century of one-party rule, if grass-roots needs and requirements can be met under a system of local government dominated by central authority, and if constitutionally guaranteed human rights can be enjoyed without the intervention of a supreme court, then we can perceive at least the beginning of a clearer comprehension of both democracy as a concept and Japanese democracy in operation.

