

Referendums in Britain and Japan⁽¹⁾

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In Britain, the Parliament has been an engine of democracy. However, a system of referendums has also worked in the United Kingdom as another engine for the nation's development throughout the 20th century. These two systems, working together to create new balances, serve to support the contemporary British political institution.

Currently, Britain appears to be in a period of change with an increased probability that Scotland will become independent. It is very important that the United Kingdom, facing this turning point of the state, depends on referendums as well as the sovereignty of the Parliament. A referendum has two qualities consisting of, firstly, a peaceful solution, and secondly, a voting by the people.

(1) When some groups in a state have an intention to separate from that state, antagonistic groups very often resort to civil wars. However, there is no likelihood that the British people will engage in a civil war. When they employ referendums to overcome difficult problems concerning the forms of the state, they choose peaceful solutions. There might be many different arguments about referendums in Britain, but it seems clear that the system of referendums has acquired a stable position in British democracy.

A referendum as a peaceful means for achieving a political solution is a rather new experience in Britain. Before and after the treaty which united Scotland and England in 1707, the people had armed conflicts. However, now

(1) This paper was presented at The 3rd Seminar: Japan-UK Constitution: Comparative Perspective on Constitutional Law. The seminar was held with British participants at the University of Nagoya on 2 September 2015. The main speakers were Professor Chris Himsworth and Professor John McEldowney.

some 300 years following the creation of the UK, the people come to choose peaceful solutions for separating it. Bernard Crick mentioned that a political solution is a way of achieving peaceful solutions to conflicts. As he said, the people of Britain are moving along the right way of politics.

On September 18, 2014, the Scottish people voted in a referendum on the question: Should Scotland be an independent country? Forty-five percent of the voters were in favor, and fifty-five percent were against. As a result, Scotland could not gain independence. The fact that the people wanted to decide it through voting is more interesting for me than the reality that Scotland remained in the UK. When we want to find the reasons for such peaceful solution, we should look to the civil history of Britain.

Since the time when the two nations united, Scotland has partially maintained its original laws, church and culture. The national identity of the British was rather weaker compared with that of such peoples as those of Japan. The Japanese people have built their identity through a history longer than that of Britain and that stretches back to ancient times.

Still now in the 21st century, England and Scotland have not yet completed their work to make a joint state. The two nations have maintained their respect for each other, as well as their common characteristics. The Scottish, like the English, would have double identities consisting of the Scottish and British. The Scottish devolution or independence points to a gradual strengthening of the identities of the Scottish. This devolution might be one of the biggest constitutional changes in recent years. The fact that they have been changing the constitution gradually and slowly is one of the reasons they have been able to achieve a peaceful solution.

(2) The referendums in Britain have a second notable characteristic in that, in order to change their constitution, they have given power not to authoritarian politicians but to the people themselves. This trend is rooted in their long history of democracy, in which the people have been getting more and more political power. Even though the Crown still has sovereignty, the Parliament has been gradually moving closer to being the organ of representation for the people. Because the Parliament represents the people, members of the House of Commons want to return to the people who sent them to the House, when politicians are not able to reach consensus.

On the other hand, the people in Scotland recently have changed the meaning of being Scottish, from an ethnic and cultural identity to one that has a residential quality. The Scottish with their traditional cultural characteristics would be a very small minority. If the Scottish National Party had insisted on maintaining an ethnically based identity, it would not have been able to get a majority in Scotland. Instead it adopted a new strategy to draw in as many voters in Scotland as possible, in order to get ruling power. The SNP had to say that they were the representatives of those who reside in Scotland.

The definition of being Scottish changed to that of one who resides in Scotland. Those who were born in Scotland and live currently outside Scotland are not able to be members of the Scottish. The qualification of a resident gives clear equality to everybody in Scotland, who should have the same right of political say. This is one of the reasons why everybody should discuss the future of the Scotland. A referendum by the people became a more suitable way of finding a solution than negotiations between the political leaders of both countries.

(3) However, when you come to Asian countries, you would find authoritarian administrators such as Communist leaders in China and North Korea, militaristic presidents in Myanmar and Thailand, and the Prime Minister in Japan. These Asian countries are also going through a period of change just as Britain is, but the political ways used for overcoming their respective crises are different. Authoritarian administrators tend to think that the power of executives should be stronger in order to make an effective system for improving their countries.

Japan's constitution includes a referendum system that allows the constitution to be amended. The Prime Minister Abe could have held a referendum to change the Article 9 of the Constitution, but he avoided doing this. He thought that it was enough to construct a new interpretation in a Cabinet meeting that would allow him to send troops to the places of his choice. Thus Prime Minister Abe is strengthening the political power of the executive, while avoiding a referendum that would amend the constitution. However, British experiences suggest that political participation by the people through referendums is very important for overcoming confusion in the political arena.

(4) There are two kinds of referendums in Japan (outside of the referendum to

amend the constitution). The first type is the voting, which has a subordinate and secondary position in its political system. This is a referendum of type A. However, some referendums have the political power that allows citizens to suggest the creation of new rules to their local governments. These are the referendums of type B. Experiences in Britain suggest that it might be better to enlarge these type B referendums in Japan in order to achieve a better balance between the powers of the representatives and the citizens.

First, I would like to discuss the referendum of type A. Japan's constitution is not always flexible, compared to the British one in terms of referendums. Article 41 of the Constitution says that the Parliament shall be the highest organ of state power, and shall be the sole law-making organ of the State.

According to the Article 59, a bill becomes a law on passage by both Houses, except as otherwise provided by the constitution. It is very clear in these articles, that the Parliament has the supreme power to make laws.

However, in Article 95 of the Constitution, there is an exception. A special law, applicable only to one local public entity, cannot be enacted by the Parliament without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law. Based on this article, 15 referendums have been already enacted since 1949. These referendums have a secondary position to authorize laws legislated by the Parliament.

Second, I would like to discuss the referendum of type B. This referendum applies to local governments where citizens have political say regarding their authorities. Residents in a local district have the right to vote in order to dissolve their regional assembly or to dismiss the head of the community. (Local autonomy law, articles 81, 82).

When local communities want to join each other and make a new bigger regional district, it is possible for the residents in these places to have a referendum. (There is special law for the consolidation of smaller municipalities to form larger ones).

Local governments are able to hold referendums to allow citizens to vote on difficult political issues, on which the governments cannot reach clear decisions based on regional rules made by the district assemblies. Even if this type B referendum has no legal binding power over local governments, it can sometimes, in fact, have decisive political power in the community. For example, the 1996 referendum in Maki town, Niigata Prefecture, prevented the local

government from making a nuclear power station.

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