

Justifying Constitutional Laws in Japanese Constitutional Theories

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Constitutional laws restrict democratic legislation that is representatives of the people's will. How can we justify the superiority of constitutional law over legislation? The most influential theory of constitutional law in Japan, by Nobuyoshi Ashibe, explains that constitutional laws are superior because they protect human rights, which reflects "freedom," and freedom is a fundamental and universal moral value. However, freedom is only a relative value, not an absolute value. Further, this explanation is nothing more than a relative justification for the superiority of constitutional laws, as we have a number of values in our lives, like "equality" and "harmony."

On the one hand, Koji Sato argues, in his theory of personal autonomy, that constitutional laws are products of people's choices to realize autonomous self-governance and that they are justified on the grounds of the value of each person's autonomy. On the other hand, Shigenori Matsui insists that the principal aim of constitutional laws is to protect democratic processes in order for citizens to participate in politics, and that constitutional laws are superior to legislations, which are the outcome of democratic debate in the Diet. Yasuo Hasebe interprets constitutional laws as rules that differentiate between the public and private areas in our social lives. According to him, legislations should be made in the public arena only and constitutional laws are superior to them; this superiority is for securing the autonomy of every person.

Each of these theories has a common structure. They are ultimately based on a foundation of specific moral values that determine what kind of life is good for us. However, this cannot be a unanimous decision because everyone makes these decisions according to their subjective judgment of values. None of these theories succeeds in objectively justifying the existence of constitutional laws.