



# Revision of Administrative Law as Shortcut to Constitutional Revision

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## Revision of Administrative Law as Shortcut to Constitutional Revision

Helen Hardacre

Let us begin by acknowledging that the main impetus for constitutional revision has always come from the conservative end of the political spectrum, and that conservatives hope that a revised constitution would embody conservative social values. There is no groundswell of public opinion driving a move to revise the constitution. Most progressives oppose revision, both because they tend to oppose changing article 9, and also because they know that conservatives have a social agenda that is anti-progressive.

It may be, however, that *most* changes desired by revisionists could be accomplished by changing administrative law alone, without changing the constitution. If those changes could be enacted before a referendum on revising the constitution, then the choice facing voters would not appear to voters like a decision for radical change. Hence it would be easier to vote “yes.” And even if the constitution is not revised, changes brought in by administrative law would still produce many of conservatives’ desired results, though without the symbolic victory that would come from revising the constitution. This scenario could only unfold, however, if the process is perceived to be reasonable and fair, and if the electorate likes the results.

Today I would like to test my idea by examining the 2006 revision of the Fundamental Law on Education.<sup>i</sup> Falling academic achievement, bullying, and youth crimes are the problems that the revised Fundamental Law on Education was supposed to address.<sup>ii</sup> According to OECD statistics, Japan is considerably above the average for the

developed countries in science and math, most recently ranking third in science, behind Finland and Canada, and sixth in math, behind Finland and South Korea. If falling academic standards are truly a problem in Japan, Japan nevertheless remains in an enviable situation in these important areas. If there is a problem, it lies in the area of reading. In 2000 Japan ranked eighth, still far above average, but by 2006 it had fallen to the OECD average, behind Korea, Poland, and other countries, the slump having occurred during the Koizumi years. By comparison with other OECD countries, Japan was described as having a more troublesome disciplinary climate, more trouble with teacher morale and commitment, and a lower quality of schools' physical infrastructure. Since at least 1995, Japan's total expenditure on educational institutions as a percentage of GDP has been below the OECD average.<sup>iii</sup>

As in this country, school bullying (ijime) has long been recognized as a major problem of the Japanese schools, leaving some victims psychologically scarred for life and sometimes leading to suicide. Two examples must suffice in this brief presentation. In 1986, a middle school boy who had been bullied for years finally hanged himself after his classmates and four teachers publicly humiliated him by staging a mock funeral for him. In 2006 (2006.10.11) a thirteen year-old male pupil in Fukuoka hanged himself, leaving a note explaining that he had consulted his teacher by writing a letter asking him how to deal with bullying. Far from helping the boy, however, the teacher ridiculed him by reading his letter in front of the whole class. This further encouraged the bullies, who stripped him in front of the girls in the class. The worst of the bullies was bold enough to attend the dead boy's funeral and try to photograph him in his coffin with a cell phone camera, saying of him, "good riddance" (seisei shita). The teacher involved was allowed

to continue working at the school even after his role in the suicide was made public.<sup>iv</sup>

These cases illustrate the way in which teachers can sometimes exacerbate bullying, with tragic results.

Japanese civil society has been so deeply and continuously concerned about youth problems that it is difficult to summarize the discussion, but as anyone who has casually perused a Japanese newspaper at almost any point in the last thirty years can attest, there are many different interpretations and proposed solutions. Working mothers, absent fathers, liberal teachers, and permissive educational policies are the easy targets, followed by macro-level discussions of the shrinking size of the family, the aging of the population, and a lack of character among the young. These are the “usual suspects.”<sup>v</sup>

How are youth problems connected to the revision of the Fundamental Law on Education?

#### The Revised Fundamental Law on Education<sup>vi</sup>

Authored by the Occupation, the original Fundamental Law on Education (Kyôiku kihon hô) was enacted by proclamation in 1947 and was not revised until 2006. Fundamental laws are treated as a bridge to the constitution, giving a more specific expression of its ideals. They tend to be somewhat abstract statements of principle or the direction of policy, a charter for the subject, and they are accorded precedence over more specific laws. There was no foregoing broad swell of sentiment calling for revision, except for groups on the right such as the Association of Shinto Shrines, which backed the move strongly.

In 2002 an advisory board reporting to the Minister of Education, Culture, Sports,

Science and Technology (MEXT), presented an interim report calling for educational reform, based on severe problems of bullying and the like.<sup>vii</sup> The report called for the schools to inculcate patriotism (aikokushin) as part of the solution. Reform proposals, reflecting the idea that bullying and youth crime can be solved through strengthening moral education and patriotic attitudes, were submitted to the Diet.

As revision of the Fundamental Law on Education was going forward, the LDP issued its draft for a new constitution in August, 2005 (2005.8.1). A new article 12, “The Duties of the People” was drafted to emphasize duties, as opposed to the foregoing prose that emphasized rights. In short, the proposals for revising the *constitution* in this area amount mainly to a shift in emphasis from rights to duties.

Returning to the revisions that the government proposed for the Fundamental Law on Education, a new article (10) on Education in the Family has been added, specifying that the family has the “primary responsibility” for children’s education.<sup>viii</sup> One implication of this new article is to place responsibility for youth problems on parents and thereby to dilute government responsibility for problems arising in the schools. We see an enhancement of central authority in article 16 and 17, which undermine the mandate of local school boards in favor of strengthened prerogatives for the national government.<sup>ix</sup>

#### *Public Comment*

The government solicited public comment on its proposed revisions through 2006, receiving some 13,100 communications from the public (letters, FAXs, emails, etc.), with presentation of experts’ opinions (7 individuals and some 31 organizations represented), and five “Town Meetings,” at which 46 persons spoke from a total audience of 1,245 persons. It was revealed in late 2006, however, that the government had paid

agents to speak in support of the revision proposal at these Town Meetings. In other words, the government had stacked the meetings with paid stooges, in order to claim that the people actually wanted it to revise the education law.

#### *Presentation to the Diet*

In Diet discussion, Lower House representatives of the opposition parties chastised the government for rigging its own Town Meetings and then presenting the canned remarks of stooges as evidence of popular support for revision. Karata Keiji (榎田恵二) of the Communist Party called the revision a naked attempt to infringe upon freedom of conscience and push patriotism upon the people.<sup>x</sup> He declared that the government was trying to ram through the revision even though the public saw no need for it. Kan Naoto (菅直人) of the Democratic Party criticized the government's revision for lacking any measure to address bullying and falling academic achievement, adding icily that since the Prime Minister had attended private school, it was hardly to be wondered that he showed so little grasp of the problems of public school classrooms. Hosaka Nobuto (保坂展人) of the Socialist Party said that *all* the legislation being pushed so aggressively by the government, including revision of the Fundamental Law on Education, raising the SDF to a Ministry, and a bill on a referendum for constitutional revision, sought mainly to enlarge government authority, threatening popular sovereignty and infringing on freedom of conscience. To summarize, there was a complete lack of opposition party support, but revision went forward over those objections.

#### Implementing the Revised Fundamental Law on Education

Once the Fundamental Law on Education had been revised, implementation began. The Central Council on Education issued a report calling for reform of the

ministry's official Curriculum Guidelines (Gakushû shidô yôryô) in January 2008. In the area of morality education (dôtoku kyôiku), the report made extensive comments on the need to nurture a respect for humanity, to develop powers of judgment, a spirit of public participation, and a sense of integrity. Throughout these remarks, the report repeatedly cited a need to develop appropriate curricular materials and lamented the tendency for morality instruction to become less appealing to students as they grow older.<sup>xi</sup>

A mere two months later, in March 2008 (3.28.2008) MEXT issued revised Curriculum Guidelines, with class time increased by ten percent, incorporating the goals for morality education set out in the report just examined, and mandating that an emphasis on tradition and culture be established in all possible subject areas.<sup>xii</sup> Concrete details are still lacking for morality education, but the intention to strengthen this area, and perhaps elevate it to a graded subject, is clear.<sup>xiii</sup>

Nevertheless, specific measures linked to ethics and patriotism education had actually begun to be implemented at the local level in 2007. Standardized morality tests began to be carried out in primary and middle schools around the country. The Curriculum Guidelines had specified that patriotism would *not* be graded, but in fact parents found that primary and middle school children were being assessed. According to the Asahi newspaper, in 2007 at least 1200 primary and 1100 middle schools administered the tests of one commercial company to some 380,000 pupils, at a cost of 430 yen per student. One sample question was, "How do you feel when you see graffiti written on a temple?" presumably on the assumption that all pupils of whatever religious affiliation could be expected to be outraged, and also that it is permissible to grade children on questions designed to evoke religious sentiments.<sup>xiv</sup>

In May, MEXT Minister Tokai Kisaburô stated that the Occupation prohibition on school visits to the Yasukuni Shrine is null and void (5.23.2008).<sup>xv</sup> Strangely, this change was not widely reported by the Japanese media, but it was picked up by a Korean paper, which wondered what the Japanese government expected school pupils to learn from such visits.<sup>xvi</sup> The change has come about so recently that it is hard to know what impact, if any, it will have, but the lack of media attention is striking, even alarming. It seems unlikely that this could have happened if the Fundamental Law on Education had not been revised.

In these ways, the revision of the Fundamental Law on Education has made possible the intensification of ethics education, the re-institution of patriotic education (even if the curriculum and evaluation techniques are still to be worked out), and school trips to Yasukuni. Whether these measures go any distance towards raising academic achievement or to reducing bullying and violent crime among youth is another question, but it seems clear that there is a clear link to the drive to revise the constitution.

### Discussion

To recapitulate briefly, through revision of the Fundamental Law on Education and implementing it through a changed curriculum, the government has been able to enact significant policy changes based on LDP goals of returning to stricter standards of morality and patriotism, and enhancing central authority. This process is closely aligned with--and probably would not have happened without--the LDP's parallel process of drafting a new constitution. I believe we can see these developments in the field of education as a significant step that smoothes the path for constitutional revision by setting



in place the concrete policies that a revised constitution would express in more abstract terms.

<sup>i</sup> Education is a particularly telling example, because it figured prominently in debate on the creation of the Meiji constitution in the 1890s, thus giving us the possibility of long-term historical perspective. Also, there is a history of widespread complaints about the educational system that has engaged the public and the media, providing the possibility of considering the issue in the context of civil society. Thirdly, the process leading to revision of the 1947 Fundamental Law on Education has been extensively documented.

<sup>ii</sup> Besides the issues discussed here, “compensated dating” is an issue of widespread public concern, but because of its sexual nature, it is not generally discussed in Diet considerations of education. Because I believe that the public associates it with problems of school children, I would like to provide a brief account in this note: A 1996 book by Kuronuma Katsushi, titled *The Dangerous Afterschool Lives of Middle- and High School Girls* documented a form of prostitution in which school girls would meet men and have sex with them for money; he coined the term “compensated dating” (*enjo kôsai*) to describe the practice. The public was shocked to learn that the girls were not coerced by pimps or boyfriends, nor did they prostitute themselves because of economic hardship, but rather to be able to purchase luxury items. Media presentations linked compensated dating to the rapid, widespread diffusion of cell phones, pagers, beepers, and personal computers, which all helped both the girls and their clients remain anonymous and helped the girls keep their conduct secret from parents and teachers. See Kuronuma Katsushi, *Enjo kôsai: Joshi chû-kôsei no kiken no hôkago* (Bungei shunjû, 1998).

<sup>iii</sup> “International Student Assessment,” OECD Factbook.

<http://lysander.sourceoecd.org/pdf/factbook2008/302008011e-09-01-01.pdf>; see also <http://www.oecd.org/dataoecd/31/19/34107978.pdf>, pp. 4-5, accessed 10.10.2008.

<sup>iv</sup> We might also discuss social withdrawal (*hikikomori* 引きこもり), in which young people become unable to interact with others, to the point of withdrawing to a single room and scarcely coming out at all. It is believed that many school pupils who withdraw from society do so as a response to bullying at school.

<sup>v</sup> Besides this kind of commentary, far-right conservatives see revision of the Fundamental Law on Education as a chance to make headway in restoring patriarchal authority. The Association of Shinto Shrines and its associated body of parliamentarians, Federation of Shinto Politicians (Shinto Seiji Renmei) brings together a host of conservative groups, and their discussions are regularly reported in the Association’s newspaper, *Jinja shinpô*. Far-right conservatives in Japan have frequently elided criticism of the educational system with the Fundamental Law on Gender Equality and attributed a host of youth problems to gender equal (*jendaa furii*) education. *Jinja shinpô* has frequently reported the opinions of Takahashi Shirô against gender equal education, as in this summary of a lecture he gave in 2002, titled “Gender-free Education Gone Wild.” Local governments have issued numerous ordinances on sex equality, he reported, and these will likely be reflected in educational policy. This is already happening in the Chiba

Prefecture<sup>v</sup> educational policy, and Chiba is just the tip of the iceberg, as similar policies are being adopted all over the country, he claimed, citing examples from 16 prefectures and city governments. In Okinawa and Shizuoka they have rewritten Japanese folktales and switched the sexes of the characters to show women in roles of strength and men as housekeepers. In a later article, “Now is the Time to Revise the Fundamental Law on Education,” the paper asserted that no clause about gender equality should be included in a revised code (#2701 [7.7.03] 「今こそ教育基本法改正に」). Far-right conservatives would have liked to excise the constitution’s expression in article 24 of “the essential equality of the sexes.” See for example, “Bôso suru jendaa furii” Jinja shinpô No 2683 (2.17.2003) in which Takahashi’s views are aired.

<sup>vi</sup> Unofficial translations of the 1947 law and the 2006 revision may be viewed side-by-side for comparison are available at

[http://www.mext.go.jp/b\\_menu/kihon/data/index.html](http://www.mext.go.jp/b_menu/kihon/data/index.html) (accessed 9.6.2008). The full text of the 2006 law in Japanese is available at

[http://www.mext.go.jp/b\\_menu/kihon/about/index.html](http://www.mext.go.jp/b_menu/kihon/about/index.html) (accessed 9.6.2008).

<sup>vii</sup> “Chûô Kyôiku Shingikai no Chûkan Hôkoku” (2002.11.14)

[http://mext.go.jp/b\\_menu/kihon/data/index.htm](http://mext.go.jp/b_menu/kihon/data/index.htm) (accessed 9.6.2008).

<sup>viii</sup> This is followed in article 11 with specification on early childhood education. A new article 13 tries to harmonize the roles apportioned to schools, families, and others:

“(Partnership and Cooperation among Schools, Families, and Local Residents) Article 13 Schools, families, local residents, and other relevant persons shall be aware of their respective roles and responsibilities regarding education, and endeavor to develop partnership and cooperation.”

<sup>ix</sup> “Kyôiku kanren san hôan” no kakugi kettei oyobi kokkai teishutsu ni taisuru nikkyôso shokchô danwa” (4.2.2007) [http://www.jtu\\_net.or.jp](http://www.jtu_net.or.jp) (accessed 10.10.2008)

<sup>x</sup> The frequent reference in opposition politicians’ remarks to infringement of freedom of conscience in education probably relates not only to the obligation placed on children to develop a patriotic spirit, but also to the requirement announced by MEXT in October 2003 that teachers stand, face the flag, and sing the national anthem in school ceremonies.

<sup>xi</sup> Central Committee on Education (Chûô Kyôiku Shingikai), “Yochien, shôgakkô, chûgakkô, kôtôgakkô oyobi tokubetsu shien gakkô no gakushiu shidô yôryô-tô no kaizen nitsuite” [http://www.mext.go.jp/a\\_menu/shoutou/new-cs/news/20080117.pdf](http://www.mext.go.jp/a_menu/shoutou/new-cs/news/20080117.pdf), pp.12-14; 58-60 (accessed 9.7.2008).

<sup>xii</sup> Other revisions included the creation of a post of vice-principal and a requirement that teachers’ licenses be renewed every ten years.

<sup>xiii</sup> [http://www.mext.go.jp/a\\_menu/hotou/new-cs/qa/index.htm](http://www.mext.go.jp/a_menu/hotou/new-cs/qa/index.htm) (accessed 9.7.2008).

<sup>xiv</sup> Each test had 30 to 50 questions; a sample test for middle school included the question, “How do you feel when you see graffiti written on the wall of a temple?” “The standardization of children’s sense of morality: tests in primary and middle schools around the country,” (Kodomo no dôtokushin o hensachika: kakuchi no shô, chû gakkô de tesuto). Asahi.com (4.10.2008) accessed 9.7.2008. Since April, blogs on this issue have also sprung up, such as <http://anond.hatelabo.jp/20080430071221#tb> (accessed 9.8.2008).

<sup>xv</sup> “Yasukuni hômon kinshi no tsûtatsu wa shikkô: gakkô gyôji de seifu tôben”

<http://www.47.news.jp/CN/200805/CN2008052301000334.html> (accessed 9.11.2008).

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<sup>xvi</sup> “Yasukuni: Nihon seifu, kôritsu gakkô no hōmon mitomeru—Sankei shinbun”  
<http://www.chosunonline.com/article/article/20080524000013> (accessed 9.11.2008).