In August 1989, at his first press conference, Emperor Akihito defended the democratic right of individuals to comment on and criticize the imperial institution or a particular emperor, even his father, Hirohito. In so doing, the Emperor reaffirmed the constitutional revolution on behalf of freedom of expression and other human rights that began in the autumn of 1945, and encouraged uninhibited public discourse on politically sensitive subjects. By soft-spoken implication, he attacked the rightists making death threats against Mayor Motoshima Hitoshi of Nagasaki, a critic of Emperor Hirohito’s role in World War II. One might look in vain through the sixty-two years of the Shōwa period for a similar instance of unequivocal imperial advocacy of free speech and an open society. Rather, without reference to the personal views of Emperor Hirohito, conservative revisionists and extreme rightists may have depended on the expressive silence of the imperial household as implicit approval of their efforts since the 1950s to restore the Emperor to greater constitutional prominence and to discourage open discourse on the imperial institution and in general. Both silence and expression reveal the status of freedom of expression in a country, and that freedom is a critical test of constitutional democracy. The other side of an orthodoxy is its attendant taboos—topics on which silence is enforced or powerfully encouraged—such as the emperor system in Japan and socialism in the United States.

For over four decades, the prewar orthodoxy of emperor-centered, repressive nationalism seems to have contended among political elites with the orthodoxy of the 1947 Constitution, which is characterized by popular sovereignty, quasi-pacifist internationalism, freedom of expression, and other human rights. Much of Japan’s Liberal Democratic Party leadership during this period seems to have found it hard to reconcile the earlier nationalistic orthodoxy in which they were educated with the revolutionary orthodoxy of freedom, which insists on tolerating diverse, even contradictory, views on basic public values and other issues.

The passing of Emperor Hirohito on January 7, 1989, seems part of a major transition from the postwar generation of leaders to a new generation educated in
the past half century. This generational succession is part of a broad pattern of leadership changes in Asia during the 1980s. The emerging leaders of Japan are more apt to be matter-of-fact than passionate about the Emperor and Shinto, more comfortable than some of their predecessors with the 1947 Constitution, and increasingly confident about Japan’s prominence among nations, if not about its precise implications. At this juncture of generational leadership succession, the revolution of freedom may be as firmly institutionalized in Japan as in virtually any other constitutional democracy.

Why freedom of expression is relatively strong in Japan or any country cannot be ascertained simply by looking at laws, constitutional provisions, and judicial decisions. The reasons and reality are most effectively unearthed by empirically well-founded, ecological analysis of factors such as social culture, institutions of government and law, economic conditions, political value commitments, and historical serendipity. Free speech is nowhere permanently established and uniformly or fully enjoyed. Opinion research suggests that while a majority in the United States, for example, supports freedom of expression in the abstract, a majority also opposes much free speech for those espousing views quite different from their own. Other survey research indicates that in Japan college-educated adults now express more confidence in the 1947 Constitution than in any other national institution. Freedom of expression on a particular topic at a given time exists in a constitutional culture in part because of widespread trust in the system and a national consensus that the inherent equal dignity of each person requires protection of each individual’s freedom in law and politics. Freedom of expression also exists because the balance of competitive sociopolitical forces favors expression rather than repressed silence on the subject, at least for the moment. The test of freedom is whether, in general, citizens actually have the option of expressing themselves peacefully or remaining silent about a subject without negative social, legal, or economic consequences. These perspectives are useful for examining Japan’s record. After setting forth relevant constitutional provisions and touching lightly on the institutional and social context of freedom of expression in Japan, this essay surveys judicial holdings on freedom of assembly and association, the expression rights of workers, and the freedom of the mass media.

CONSTITUTIONAL PROVISIONS ON FREEDOM

Social culture affects law, and widely accepted legal norms and institutions affect the status of freedom of expression in society. The 1947 Constitution sets forth the broad array of rights guaranteed to Japanese citizens. In general terms, Article 11 guarantees “the fundamental human rights” as “eternal and inviolable rights,” while Article 97 refers to these rights as “conferred upon this and future generations in trust, to be held for all time inviolate.”

Article 21 is the primary provision affecting freedom of expression: “Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.”

Article 15 establishes the people’s “inalienable right to choose their public officials and to dismiss them,” implying rights of election campaigning. Article 16 guarantees the right of peaceful petition and forbids discrimination against a petitioner.