

The Canadian Constitution

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5. The Canadian Constitution

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In Canada, "the Constitution of 1982" which had included the procedure of the revisions and the rights and freedoms of the people in Canada had been enacted and also she had transferred the British North American Act which had been the fundamental act since the establishment of Canada as a member of the United Kingdom into it and we call it now "the Canadian Constitution."

Beforehand I have to say that because I could make only one lecture to explain about the Canadian Constitution, I only could describe the fundamental characteristics of the Canadian Constitution.

The first characteristic is that Canada has adopted the federal system which consists of ten provinces and two territories. This federal system of Canada derives from the federal system of the U.S., and it's also very complicated. It seems that this Canadian federal system has the centralized power under its provisions of the Constitution, but in fact the rights of each province are extremely strong. For example, concerning with the fields of social services, welfares, economic developments, though they have been admitted to proceed under the cooperation of the provinces and the central government, the central government has nothing to do with the consents of the provinces, for example, in cases of getting natural resources, receiving immigrants and so on.

The second characteristic is that Canada has adopted the Cabinet System based the Parliament as her political system. The Canadian Constitution has no special provisions concerning with the premier and the Cabinet, but Canada has adopted the political system which has the very close concept of the executive, the premier and the Cabinet, consists of the members of the legislature who are representatives by the people's vote. The most important principle in that system is the executive responsibilities against the legislature, which means that without confidence of the legislature, the executive, the Cabinet, cannot be maintained. This principle resembles the Japanese political system, but there are great differences in customs and conventions. The Canadian Parliament consists of the sovereign, the House of Lords, and the House of Representations. Today the sovereign of Canada is Queen Elizabeth II of England, and the governor general has been acting for her rights there. The members of the House of Lords in Canada are not elected by popular vote but appointed by the sovereign like the House of Peers in the pre-war political system in Japan. Although there have been

arguments whether the House of Lords should be abolished or maintained, the House of Representatives is the central agency of the parliamentary system. Today the House of Representative has 282 seats and its term is five years, but in about every four years, the election has taken place because of exercising the right of dissolution by the Premier. The House of Representatives is the agency of the legislature and at the same time is also the agency of the inspection and the investigation for the government.

The third characteristic is that in one hand Canada has adopted the federal system of the U.S. but in the other hand the court system is unitary which is difference between the federal court and the provincial court in Canada. The Supreme Court which is situated at the top of the Canadian unitary court system must deliberate on the appeals relating to the Quebec Civil Code, therefore the three out of nine members of the Supreme Court must come from the Province of Quebec.

The fourth characteristic is that Canada has adopted "the Canadian Charter of Rights and Freedoms" and has given the right of the interpretation of securities and infringements to the courts. Historically the legislature has been predominant over the courts, but by giving this kind of judicial right to the courts, on the contrary, the courts, especially, the Supreme Court has become to have the predominant power over the legislature. And therefore there are critical opinions for the predominance of the judiciary over the legislature.

I herewith note that though there are lots of other important items which should be described like political parties, the elections, the relation of the central government and the provinces, I have to have omitted for the time given.