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Modernity for Japanese Constitutional Theory¹⁾

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For Japan, although it has already developed industrially and economically, the issue of modernity is still and unfailingly problematic since the late nineteenth century. What do modernity and modernization have to follow? What does modernity mean to the Japanese? This is the central and recurring question to face not only for Japanese constitutional theory but also for the Japanese social sciences in general. Historically, the meaning of the concept of modernity and modernization for the Japanese people has evolved considerably.

First of all, after the end of national isolation from the outside world which had continued for more than 200 years, modernization had meant the construction of a modern nation-state, more precisely a Western-style modern monarchy. At that time, the economic, technological and military developments rivaling those of Western countries symbolized modernity in Japan. The result of this modernization under the Constitution of the Empire of Japan – the so-called Constitution of Meiji – through an extremely rapid reception of Western law was tragic. The weak guarantee of constitutional rights and parliamentary democracy in the Fundamental Law allowed the Japanese government, without any constitutional amendment, to turn into a military authoritarian regime. Under the

Constitution of Meiji, Japanese subjects had rights such as freedom of expression and freedom of belief. But because of the lack of constitutional review, the Diet could freely limit them from the constitutional point of view. Indeed, it had adopted many draconian laws to support the war.

Secondly, after the military defeat of 1945, the conservative government was forced to pose the protection of human rights as an official objective of Japanese politics. Japan was thoroughly democratized under the direction of the U.S. army. Its consequence was the establishment of a new liberal and democratic constitution in 1946. Accordingly, the meanings of modernity and modernization have changed dramatically. Now the sense of modernity refers to notions of individualism, liberalism and Western democracy. Because of democratic reforms led by the U.S. military, the traditional patriarchal society was gradually transformed into modern society. Under this constitution, Japan experienced an unprecedented high economic growth in the years 60-70. This prosperity was achieved due to the existence of pre-modern hierarchical relationships within Japanese companies. This is the concept of “company as family community” closed against the outside society. Here, the problem of modernization of social relations in the sense of “the emancipation of the individual” remained one of the main themes of the post-war constitutional law.

Thirdly, this modernization of a purely individual model familiar to Japanese Constitutional Law of 1946 is facing the demands of multiculturalism and ethnic identities as in Western countries. In addition, many feminist approaches take a critical look at the framework itself of modern law, that is to say on the dichotomy between the public and private spheres.

In these situations, what modernity and what modernization are necessary for Japanese society? At present, what is the meaning of modernity for Japanese constitutional theory? We try to answer these problem from a historical and theoretical perspective.

I Modernity and Nation-State *à la française* as a model

It goes without saying that the concept of modernity is polysemous. Its meaning with respect to scientific fields varies dramatically in comparison with its meaning in the fields of architecture, fine arts, or literature. For example, Max Weber, a German sociologist, presented the concept of modernity as “disenchantment of the world.” However, we propose to use the word referring to the model of the nation-state as well as the French parliamentary statute-centerism, for this mode of use seems very useful and meaningful to the constitutional theoretical reflection.

First of all, modernity means the belief in the virtues of Reason and Science instead of submission to the laws of Nature. Then, it also presupposes the civic individualism that puts the individual at the center of society. According to the explanation of Jacques Chevallier²⁾, French legal scholar, “if the” civil society “built from the free association of individuals, the state is itself the translation of their common interests and the expression of the general will.”

Thus, this model presents the modernist image of society as follows: autonomous citizens decide collectively and democratically the proposed changes in the future of the society in which they live. We must remember that this idea has nothing to do with the tyranny of the majority, as the community of citizens examine freely and fairly any social projects through the universal and critical reason inherent to the social body. Through such reason, citizens could reconcile perfectly and without any contradiction to their freedom and sovereignty of their community. Thus, the parliamentary statute is sacred and infallible. This is the French “*légicentrisme*,” that is the principle of “supremacy or centrality of legislative codes in the legal design.” The legal system is characterized by systematicity, generality and stability³⁾. During the revolutionary time Emmanuel Sieyès remarked in the monumental book called “What is the Third Estate?” that, “What is a nation? A community of associates living under a common law and represented by the same legislature.”⁴⁾ In this

context, the establishment of abstract and universal subject and personal autonomy are essential to modern society.

We try to clarify the characteristics of Japan's modernization since the nineteenth century.

II A modernization without modernity in the French way: the case of Japan

In traditional Japanese society before the Imperial Restoration (1868) of Meiji, the characteristics of the legal system and legal culture were to limit the role of law to maintaining public order. The only aim of law was to govern people. As for conflicts among individuals, it was desirable to avoid the judicialization of private conflicts and to resolve disputes in the informal way in a reciprocal concession. Various customary laws had emerged to regulate everyday life. Its characteristics were reinforced during the national isolation of the Edo era through the domination of the shogunate toward the strongly unified state.

Having abandoned its isolation policy towards foreign countries just before the Restoration (1858), Japan began to modernize in order to obtain recognition as a modern nation. For leaders and intellectuals of that time, what was important was not to think about theoretical modernity nor the critique of modernity, no matter what it would be, but to realize modernization of their country. Indeed, they were aware of Western superiority, especially in the areas of military and technical advances, or even always a possible future colonization of Japan by Western countries, such as mainland Asia. It is for this reason that Japan quickly imported European legal and political systems on its own initiative for the creation of a modern nation comparable to European counterparts. Extremely rapid introduction of a recruitment system, school system, family registration system and local administration of European origin are examples. This is a modernization without *modernity à la française*. "The Meiji Restoration which initiated the modernization of Japan is in no way a disconnect between the political and the religious." ⁵⁾ Here, there was no

free association of individuals nor the general will.

Therefore, more accurately, it was a Europeanization in industry and military power rather than modernity itself that was at stake. After military victories and industrialization, the aim of the Japanese government had changed from defense against Western colonial powers to the consolidation of the military and the economy so as to become colonizers itself in Asia. The famous motto “*Datsua nyûô*” meaning “depart from Asia to catch up with Europe” perfectly symbolizes the social atmosphere of the time in Japan.

We must say that it was not only in Japan that such modernization had continued. Many Latin American and Southeast Asian countries had modernized, destroying their traditional societies to get industrialized without democratization. Thus, the Japanese case is a model of modernization against the Western powers like the case of Turkey.

The bestowal of the Meiji Imperial Charter in 1889 – the model for which was the Prussian monarchy of nineteenth century, the most authoritative in Europe – allowed this country to establish a powerful and authoritarian system of government at the expense of civil liberties. The Emperor was defined there as a hereditary ruler by the divine law and his status declared sacred and inviolable, which was justified in the religico-historical way. That is nothing to do with the principle of democratic political legitimacy. We must recognize its liberal and democratic elements such as the principles of constitutionalism and the separation of powers, an enumeration of the rights of Japanese subjects, and the creation of the first Diet in Asia. However, it should also be noted that parliamentary control under the Basic Law of the activities of government was extremely weak. This is a clear choice of political leaders of Meiji era for the program “to build a rich country with a strong army (*Fukoku kyôhê*).” Thus, modernity in the French way as the model of the nation-state was clearly rejected by this country.

For the political leaders of this period, whether in power or not, they were aware unanimously that the introduction of constitutionalism of one sort or another was absolutely necessary for the country to survive in a

world in which it was to rival the great Western powers. Here the concept of constitutionalism is only one means among others to unify the country in overcoming the political and social divisions within it. And it was the necessary condition to be recognized as a civilized nation by Western countries. This explains the remarkable speed that the Japanese had learned and practiced the political and constitutional ideas and institutions of importation and a political exploitation of constitutionalism. In fact, at that time, “modernization without *modernity à la française*” led Japanese intellectuals to a philosophical assertion of “overcoming European modernity.” According to Alain-Marc Rieu, “the critique of modernity gave intellectuals from the 1920s the thematic allowing them to associate and to redefine their relations to the power that drifted towards totalitarianism power.⁶⁾”

The political and diplomatic expression of the philosophical slogan was “the Co-Prosperity Sphere of the Greater East Asia.” This is the project of liberalization of East Asia against colonization by the West realized by Asia under the direction of Japanese leaders. According to this project, all countries and all peoples of the region would join together to form an economic and cultural sphere to rival Western countries. In this New Asian order, the Emperor of Japan would be at the center of this sphere as the hierarchical Master in control. Thus, superior to other nations, the Japanese would occupy a dominant place. This is the “overcoming” of European modernity in both the intellectual and military senses. It is interesting to find a use of the orientalist ideology in this idea, which was invented in the West and imposed onto Asian countries and peoples. At that time, in legal theory, the mysterious, authoritarian and ethnocentric idea of *Kokutai* (National character)⁷⁾, paved the way to oppress the freedoms and rights of Japanese subjects. The domination of this idea strongly encouraged a totalitarization of Japan until 1945.

Now, we propose to address the problem of modernity for Japanese constitutional theory at the time of the post-war period.

III Modernity for the post-war Japanese society

This is the second opening of the country after the Meiji Restoration. In response to its total failure in the Second World War, the idea that Japan must achieve a true modernization following the Western modernity model dominated not only constitutional theory but also the Japanese social sciences in general, including Marxist currents, which was very influential at that time. They had the tendency to think that all economic and political problems in Japan came from a delay or a distance of the still semi-feudal Japanese society under the authoritarian imperial system from the Western model. For example, according to Masao Maruyama, the representative Democratic thinker of the post-war period, realization of modern democratic revolution was still unfinished and should lead to the establishment of the modern individual in a similar way to the Western society. In fact, he pointed out in 1945 just after World War II that, “Far from having exceeded modern thought, we in Japan are not yet able to complete it fully.⁸⁾” So he tried to build a “modernist” social science free from Marxist thought in order to create a true liberal democracy and a civil society in Japan.

Human rights occupy a central place among the values supported by such a democratic revolution. In fact, it was not until the middle of the twentieth century, with the establishment of the Constitution of Japan in 1946, whose project was prepared in a short period by the American occupation force, that the Japanese people began to enjoy human rights. Japanese constitutional theory found an incarnation of Western modernity in the idea of human rights. The protection of human rights meant that the Japanese could build a liberal, democratic and prosperous society comparable to Western countries from the ashes it was reduced to by American bombing.

Therefore, it means the individualism of the “modernist Western thought” was introduced officially for the first time in post-war Japan. In fact, at the beginning of the period of American occupation, the Japanese

government had thought that a slight modification of the Imperial Charter of the Empire of Japan of 1889, which established a constitutional monarchy, would satisfy the requirement of Japan's postwar reform based on the Declaration of Potsdam. But the General Headquarter of Allied Force composed by the American occupation army ordered the government to draft a new version of the Japanese constitution based on a project made by members of the GHQ government section. This project was drafted secretly in a very short period on the basis of a list of requirements known as "MacArthur's Note." The conservative government was forced to accept it and to announce a new project of the Japanese constitution to people under its name. In order to preserve the imperial system, they admitted instead nominalization of the Emperor's political powers and the complete demilitarization of Japan. Article 1 of the constitution stipulates the status of the Emperor as "Symbol" in place of "Sovereign" and "the head of the State." The title of Chapter II of the new constitution is "Renunciation of war." The guarantee of human rights was settled as one of the main objectives of the constitution. Its guarantee produced the liberalization of the old social order and structure.

Thus, since Japan's recovery of its independence in 1952 realized by the ratification of the Treaty of San Francisco, the conservative camp has long-cherished a wish to establish a new constitution which would reinforce the status of the Emperor, modify the pacifist clause to admit rearmament, and give large power of the State to limit citizens' exercise of liberties and rights. Despite the conservative party - Liberal Democratic Party (LDP) - remaining in power almost continuously from 1947 until now, the Japanese constitution has not yet been modified. This is due to efforts by progressives to prevent constitutional revision and the realization of the wish of the very conservative.

However, in the last general election held in December 2012, the LDP won by a landslide. Its leader, Shinzo Abe, returned to his position as prime minister after five years out of power. He is very well known as one of the powerful promoters of constitutional revision. He hopes to achieve a total revision of the constitution. According to the latest project of revision

by the LDP, through the introduction of a clause that would admit officially the National Defense Forces, large restriction of the exercise of human rights is intended. It emphasizes the existence of public interest and public order to legitimize this restriction.

It should be noted that the actual constitution is philosophically based on the idea of western modern natural law theory. In fact, Article 11 stipulates that “The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.” And, Article 97 stipulates that “The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.” It is very easy to find a similarity of idea, for example, with the Declaration of Independence of the United States. In this way, the Constitution recognizes the very existence of “a universal principle of mankind upon which this Constitution is founded” (Preamble).

The Japanese conservative political thought dislikes such a foreign philosophical inspiration so much that it is attempting to remove it from the Constitution through its revision. They think it is contrary to the “Japanese beautiful spiritual tradition” such that it destroys the good order of Japanese society. The co-leader of the Japan Restoration Party (*Nihon Ishin no Kai*), Shintaro Ishihara, ex-governor of Tokyo, argues the legal invalidity of the Japanese Constitution because of the situation in which it was established: Japan was occupied by the U.S. army. The party obtained 54 seats in the House of Representatives in the last election. He feels that the fact that Japanese people haven’t changed their constitution until now is a national shame. Last July, the LDP gained a sweeping victory also in the election of the House of Councillors, making it easier for Japan to have a reactionary constitution through a major revision. Nevertheless, at the moment, Abe is not in any hurry to amend the pacifist Constitution. He expects to have political stability with his high approval rating through

the success of the so-called “Abenomics” to achieve a constitutional amendment without fail. In addition, his coalition partner, Komeito, is not inclined to change the current constitution in the authoritarian way. In any event, we should admit that in actual constitutional debate, the confrontation between Western modern thought and Japanese traditional thought remain the main object of political and constitutional ideological struggle in Japanese contemporary politics.

I find it considerably dubious that the so-called “Japanese traditional thought” asserted by the conservatives is really the traditional one. Rather, it can be qualified as a kind of *modern* authoritarian and reactionary idea. But it is true that the western modern thought and its ideal universalism still constitute a powerful oppositional intellectual force in actual Japanese society.

In any case, Japan was for a long time a unique country that has managed to develop economically without oppressing either freedoms or democracy in Asia. It should be clear that the removal of various privileges and entrenchment of the idea of equality in Japanese society was a precondition for the high-speed development of the years 60-70s. Younger generations who have learned the values of freedom and democracy embodied in the 1946 Constitution in primary and secondary education in the post-war period began quickly to escape from communitarian or patriarchal constraints of traditional society. In this sense, prosperity of Japan’s post-war period was achieved because of the protection of human rights by the Constitution of 1946.

Yet it is nevertheless true that there are remarkable socioeconomic phenomena that allow us to say that this prosperity has held at least partially to the lack of protection of human rights. This is the concept of “company as family community” closed against the outside world. The almost total sacrifice of employees for their company in return for the guarantee of lifetime employment and seniority-based pay, provided a basis for the surprising development of the post-war period. The former French finance minister, Christian Sautter, rightly points out that, “The big Japanese company is an enclosed space, which tends to push the

outside influences. This is not an innate trait of the Japanese company, but a carefully crafted thing.”⁹⁾

IV Current critical look of modernity and of the idea of human rights

Formerly, as everyone knows, the most fundamental criticism of the concept of human rights was made by Marxism. “The Jewish Question” written by Marx clearly denounces the abstract nature of the idea of human rights. After the collapse of the Berlin Wall, while Marxist thought has lost its influence, the fact remains that human rights, if not totally, has not ceased to be challenged by other intellectual currents. A denunciation of “ethnocentrism of human rights” is a typical critical discourse of this kind.

In these situations, Japanese constitutional theory, fundamentally modernist, has faced further criticism derived from contemporary ideological currents, that is to say, multiculturalism and feminism on human rights strongly influenced by the postmodern thoughts. Indeed, at present, for instance as shown in the case of the Islamic headscarf in France, modern democracy based on classical ideas of human rights and constitutionalism face the multiculturalists’ requirements or ones derived from ethnic identity. In addition, feminist thought takes a critical look at the basic frame itself of modern law, that is to say, the dichotomy between the public and private sphere. It goes without saying that this dichotomy is the precondition of classical ideas of law and democracy.

Thus, we see here a change of subject on human rights. This is the instrument for the modernization of traditional patriarchal society to defend at least a part of legal modernism itself. Even if we can’t say that the individual that Japanese constitutional theory presupposed was the “purely abstract” individual, at least it was a “not adequately situated individual.” This means that if Japanese constitutional theory treats social rights as the indispensable means for the Japanese citizen to exercise traditional rights, inferiority or discrimination other than economic reasons

was not considered as a fair claim relating to the guarantee of human rights. We examine these problems concretely as follows.

Firstly, faced with the claims of multiculturalists, not only the traditional ideology – that is to say “Japan is an ethnically pure nation” – but also the concept of classical individualism familiar with the Fundamental Law of 1946, became partly problematic. Japanese constitutional theory may be today criticized for its assimilationist universalist tendency, which is not in favor of the protection of the various heterogeneous components of Japan (e.g. Ainu indigenous people of Hokkaido and Korean-Japanese residents forcibly recruited and sent to Japan, and their descendants). Indeed, until recently, the dichotomy between national and foreigner was dominant in Japanese constitutional thought, despite the doctrinal attitudes to safeguard the rights of foreigners. Here, the universality of human rights is necessarily reduced.

Second, theory and practice are criticized at times by feminist discourses on various aspects on behalf of women’s rights. Its advocates complain that women, children, and the elderly or physically and psychologically abused suffer in closed space protected in the name of privacy. For example, domestic violence or sexual assault in the family would be hidden for the sake of respect for private life. Moreover, although the modern constitution carefully protects a male sexual aggressor as detained or accused by human rights, “the rights of female victims” would be perfectly neglected. In this regard, not only constitutional theory but also the legal theory in general are criticized.

V Against refeudalization of law

The current main criticism of Japanese constitutional thought on human rights is that it is completely abstract and too faithful to its classic modernist design model: defensive liberty against state power to maintain a free sphere of autonomy in which the state power can not interfere. At first glance this represents a very old-fashioned commitment, however we understand it very well. Indeed, this feeling is based on the fact that

historically contemporary Japanese people lived an overly communitarian life compared to its Western counterparts. This is because Japan did not experience the modern revolution like what happened in 1789 in France. And, as mentioned above, in fact many Japanese right-wing politicians wish to realize a state based on traditional morals mainly derived from Confucianism. A proposal to insert an article that accentuates respect for family unity into the Constitution illustrates their preference. So it is not only the sovereign but also to what kind of community that freedom should affirm. Otherwise, the protection of rights comparable to Western countries would become a simple outward appearance. Japanese reality always remains as an individual stifled by the community to which he belongs.

This vigilance seems all the more convincing than the postmodern legal thinking which has a tendency to emphasize the multiplication of source of law as “a further extension of the legal field¹⁰⁾.” It is extremely interesting to note that the Japanese Supreme Court presented a jurisdictional theory called “*Bubun shakai ron* (legal theory of partial society)”¹¹⁾ invented by a catholic judge of Japanese Supreme Court, Kotaro Tanaka. It says that the judiciary is subject to judge legal disputes that may occur in a “partial society” with reference to independent legal norms against the outside, and remain a purely domestic problem in this society. According to the Supreme Court, various categories of organization and association belong to “partial society.” Local Assemblies, universities, religious organizations, political parties, unions are its examples. Now, this theory is no longer used to resolve legal disputes concerning various categories of organization. However, the tendency to avoid interference with such internal affairs prevails.

The concept of “partial society” is obviously too broad and ambiguous, and may cause a refeudalization of contemporary society by allowing legal human rights violations outside of the state legal control. This can be used to justify the actions of the ruler in an enclosed space. The judge must carefully consider the characteristic, purpose, nature, operation and the degree of each autonomous association’s legal point of view beyond the

simplistic sociological observation. This is not to deny that protection of associations and independent organizations are quite essential for the development of open and pluralistic democracy.

Conclusion: Idea of human rights and vulnerability of human being

In conclusion, it seems very important for Japanese constitutional theory to revisit the idea of human rights in relation to current critical perspectives on modernity. Any legal system should be built on the value of respect for individuals. The state must protect the autonomy of citizens if it is to be a society worthy of membership in liberal and democratic society. However, that is not to emphasize one-sidedly the importance of the economic autonomy of the individual and self-responsibility to justify the introduction of the law of the market to Japanese society.

Therefore, beyond the emancipation of the individual from any kind of community, including state, what is important is the true realization of what the guarantee of human rights requires in all aspects of society. I think that the concept of “vulnerability” of individuals is a very rich notion to reconstruct the idea of human rights. The idea of human rights should fulfill the role of empowering each vulnerable individual to become the autonomous person. At this point, an American feminist legal thinker, Martha Albertson Fineman, remarks that “The nature of human vulnerability forms the basis for a claim that state must be more responsive to that vulnerability and do better at ensuring the ‘All-American’ promise of equality of opportunity.¹²⁾” I share the point of view about human rights that British legal philosopher Costas Douzinas formulates, as follows: Human rights are the utopian element behind legal rights. Rights are the building block of a liberal legal system. Human rights are its claim to justice and as such impossible and future looking. Human rights are parasites on the body of rights, judging its host.¹³⁾” Therefore, the state would have to develop in a positive way the various policies that could serve individuals who are suffering because of vulnerability in the name of human rights. This is the concept of human

rights as the driving idea for the construction of public policy rather than that of freedom of defense from the state power. Here legal modernity must give way to critical thought against legal modernism.

In addition, as we have seen, we must confirm that the legal logic of modernity in the classical sense or in modern legal thought may function to oppress the people who live in contemporary society. In this sense, Japanese constitutional theory now must try to overcome the concept of modernity in the West to fulfill its mission better and become more responsive to the changing reality. This doesn't mean that the legal theory on human rights will inevitably submit to postmodernist's philosophical discourse. From the idea of respect for individuals and remaining essentially modernist in this context, it is necessary to develop the content and scope of human rights. I wonder if we may call this the "middle-exceeding the legal modernity of human rights".

- 1) This report was presented on June 4th at the panel "Japanese legal thought and globalization" at The Conference, organized by Institute for Global Law and Policy at Harvard Law School. To write this text, I put into use the article I have published in French as follows : La modernité et ses problématiques dans le droit constitutionnel japonais, in *Civitas Europa : Revue juridique sur l'Évolution de la Nation et de l'État en Europe*, n^{os} 9-10, 2002 , pp. 129-140. I am very grateful to Ms. Sarah Bratanek for her kind assistance with my expression in English.
- 2) Jacques Chevallier, Vers un droit post-moderne ? Les transformations de la régulation juridique, in *Revue du droit public*, 1998, p. 661.
- 3) J. Chevallier, *supra* note (2), p. 665.
- 4) Emmanuel Sieyès, *Qu'est-ce que le Tiers-État ?*, Presses Universitaires de France, 2^e édition, 1989, p. 31.
- 5) Alain-Marc Rieu, « Modernisation : démocratisation et individualisation. Le cas japonais », in *Les Cahiers de la Villa Gillet*, cahier spécial, 1998, Individu et démocratie : Etat-Unis, Japon, France, p. 62.
- 6) Alain-Marc Rieu, *Savoir et pouvoir dans la modernisation du Japon*, Presses Universitaires de France, 2001, p. 231.

- 7) The literal translation of this word *Kokutai* is “body” or “essence” (tai) “country” (koku). The credo of Kokutai is composed by three main elements as follows. First, it is “the thought of the divine country,” that is to say the political principle in relation to the outside, that the gods created the Japanese archipelago and it is still ruled by the descendants of gods and is superior to other countries. Secondly, it is “the worship of the Emperor,” which is a principle of domestic political legitimacy, that the Empire of Japan is governed by the direct descendants of the Emperors and the original emperors are living gods. Thirdly, there is the “Japanese Spirit.” According to this idea, the Japanese subjects have high duty to sacrifice their lives for the benefit of the Emperor without hesitation. cf. Ryuichi Nagao, “Kokkashisoshi Nihon Kenkyu (Studies on the history of ideas of the state in Japan),” Sobunsha, 1983.
- 8) Masao Maruyama, *Senchû to sengo no aida (Between interwar and postwar)*, Misuzushoten, 1976.
- 9) Christian Sautter, *L’État et le travailleur japonais*, in Higuchi Yoichi et Christian Sautter (sous la dir.), *L’État et l’individu au Japon*, Éditions de l’École des Hautes Études en Sciences Sociale, 1990, p. 100. This is my translation.
- 10) J. Chevallier, *supra* note (2), p. 688. This is my translation.
- 11) Supreme Court, 3rd petty bench, 15 March 1977, 31 *Minshu* 234.
- 12) Marthat Albertson Fineman, The vulnerable subject and the responsive state, <http://ssrn.com/abstract=1694740> at 1.
- 13) Costas Douzinas, *The end of human rights*, Hart publishing, 2000, at 245.