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# MAJOR LEGISLATION

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Jan. – Dec., 1987

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## 1. Constitutional and Administrative Law

### a. Constitutional Law

#### **AIDS Bill.**

Submitted to the Diet by the Prime Minister on March 31, 1987.

#### *[Preliminary Question]*

Legislation in constitutional law? What does it mean? No doubt constitutional amendments would be considered to be within this category. Although there have been persistent attempts by the ruling Liberal Democratic Party to amend the Constitution, specifically, to return to the authoritarian, less democratic, prewar Constitution, all these attempts have failed. There has been no constitutional amendment so far under the present constitutional regime.

“Legislation in constitutional law,” however, means more than just constitutional amendments. A constitution is not self-enforcing. It expects legislative enforcement (necessary and proper statutes which materialize the Constitution) and judicial enforcement (court decisions which interpret the Constitution). Some scholars would say that

court decisions interpreting the Constitution are virtually “legislation in constitutional law.” For the purpose of this article this position is set aside.

Legislation enforcing the Constitution is a double-edged sword. Legislation can both materialize and undermine the Constitution. Legislatures naturally claim that their legislation materializes the Constitution. Some people would disagree. (If the constitutionality of a statute is disputed in a case, a court would give its decision as to whether the statute materializes or undermines the Constitution.) The original Constitution may deteriorate through legislation which the legislature claims materializes but actually undermines the Constitution. The AIDS Bill in question here is just one example of this type of legislation. “Legislation in constitutional law” means these things.

### *[Outline of the Bill]*

The major features of the AIDS Bill submitted to the Diet (the Japanese parliament) by former Prime Minister Nakasone are listed below.

The Bill requires doctors treating AIDS-virus carriers to instruct the patients and their patients’ parents in ways of preventing the spread of the virus. They must also report the age, sex, and the source of infection of each patient to the head of the prefectural government concerned within seven days. If a doctor judges that a certain patient may ignore his or her instructions and transmit the virus to other people, the doctor should immediately report the name and address of the patient to the prefectural government. Such standards are said to be aimed at guarding the privacy of the AIDS-virus carriers and preventing the further spread of the virus. The Bill requires people infected with the virus to follow the orders of their doctors. It also bans them from engaging in sexual activity or donating blood.

Under the Bill, prefectural governors are authorized to take necessary steps to curb the spread of the virus, by either recommending or ordering medical checkups of people infected, or suspected of being infected.

The Bill calls for the revision of the laws controlling immigra-

tion and the entry of refugees, so that carriers of the AIDS-virus may be refused admission to Japan. The application of this provision, however, will be limited to cases in which there is an urgent need to refuse entry to prevent the spread of the virus because it would be difficult to oblige all foreigners coming to Japan to submit certificates proving that they are clear of the virus.

The Bill calls for a maximum prison term of one year, or a fine of 300,000 yen or less, for doctors and civil servants who fail to keep the secrets of their patients, and a maximum fine of 100,000 yen for people who either refuse a governor's orders to undergo medical inspections or who give false answers when questioned by medical examiners.

### ***[Response to the Bill]***

The National Association of Hemophiliacs issued a statement denouncing the Bill as "inhumane legislation" which infringes on the constitutional rights of hemophiliacs who have been infected with the AIDS-virus through the use of blood products. The statement said that the Bill would further torment such hemophiliacs and would even infringe on the rights of children with hemophilia who cannot possibly be the source for the spread of AIDS. It also said that the Bill would only have the effect of spreading fear about AIDS.

### ***[Comment]***

Legislatures all over the world either have passed or are going to pass bills to deal with the AIDS crisis. The AIDS Bill mentioned above is the Japanese government's response to the epidemic.

Certain measures to prevent the spread of the disease are, of course, within the scope of the permissible exercise of the state's police power. They, however, must not infringe people's constitutional rights. A number of constitutional scholars and civil rights lawyers have insisted that the Bill infringes the constitutional right of privacy of AIDS victims. Of specific concern is the constitutionality of both mandatory testing by governors and the mandatory reporting from doctors to prefectural governments which are highly problematic issues. Legislation, such as this AIDS Bill, which is directed at "dis-

crete and insular minorities,” is awarded only a weak presumption of constitutionality. No matter how compelling the purpose of the legislation is, the means to reach the end must be those means which are the least intrusive on the rights of individuals.

The United States Congress did not adopt testing and reporting requirements in its AIDS Bill after a series of health experts testified and argued against these measures as unnecessary and counter-productive.

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## **b. Administrative Law**

### *[Review of Principal Legislations]*

Reflecting a strong tendency towards administrative and financial reform in recent years, throughout the year 1987 there were numerous pieces of legislations, amendments, and the abolition of laws regarding the privatization of national enterprises, taxation and public finance. Furthermore, laws concerning trade, which has been becoming an increasingly serious issue on a worldwide scale, have been adjusted. On the other hand, though urban problems have become more serious, especially regarding the issue of land as represented by skyrocketing land prices, any preparation for legislation has been delayed, and a fundamental solution is still being awaited.

#### **1. Laws Concerning the Privatization of National Enterprises.**

In 1987, an example of laws which deserve to be described particularly in this field was “An Act for the Abolition etc. of the Japan Air Lines Co., Ltd. Act.” (Ch. 92 of 1987. Promulgated on September 11, 1987. Effective as of November 18, 1987.)

By this Act, the legal systems in the field of air transport business were unified, as in the fields of railway transport and electric communication business, etc. In other words, what is called “the dy-