早稲田大学 大学院法学研究科

2022年度 修士課程入学試験問題（国内受験）

外国語科目 英語

（1） 次の文章を読み、後の問いに日本語で答えなさい。

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis, on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns, to different departments, their respective powers. It may either stop here; or establish certain limits not to be transcended by those departments.

①The government of the United States is of the latter description. The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: ②if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society.

問1． 下線部①の内容を、本文に即して詳しく説明しなさい。

問2． 下線部②について、なぜそう言えるのか。要約して説明しなさい。

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（2） 次の文章を日本語に訳しなさい。

The Federal Arbitration Act (FAA) requires courts to enforce agreements by private parties to resolve their disputes in arbitration rather than litigation. Despite abundant evidence that Congress intended the FAA to apply only in federal court and only to commercial dealings, the Supreme Court has reinterpreted the law since the 1980s, imposing it on state courts and finding in it a command to enforce even one-sided arbitration contracts imposed on consumers and workers by corporate actors eager to keep claims individual, secret, and rare. Emboldened by these victories, corporations have begun drafting agreements with "infinite" terms that purport to bind individuals in perpetuity to arbitrate any and all claims they might bring against a vast group of counterparties. Recently, in Revitch v. DIRECTV, LLC, the Ninth Circuit declined to enforce such an agreement against a consumer plaintiff.

（3） 次の文章を日本語に訳しなさい。