

# The Future of the Japanese Constitution: From the “MacArthur Constitution” to What?\*

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The Constitution of Japan was promulgated on November 3, 1946 and put into effect on May 3, 1947. The American government as well as the American Constitution had a considerable influence on the enactment process of the postwar constitution. It is often called the “MacArthur Constitution” because it was drafted by the staff of General MacArthur, the Supreme Commander for Allied Powers (SCAP). There was a rather limited amount of input from the Japanese government and the Japanese people. The constitution was hurriedly put together within an amazingly short time in the midst of the immediate postwar confusion. In fact, it is reported that it took only nine days for the MacArthur staff to draft it.<sup>1</sup>

The Constitution of 1947 was not the first constitution Japan had. In fact, Japan was the first country in Asia to have a written modern constitution. The first modern constitution was called the Constitution of the Empire of Japan, more commonly known as the Meiji Constitution, named after Emperor Meiji, the great grandfather of the present Emperor Akihito. It was promulgated in 1889 and went into effect in 1890. The Constitution of 1890 was patterned after the constitution of

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\* This article is based on a text of the lecture given by the author at Baldwin-Wallace College, Berea, Ohio, U.S.A., in their Constitution Day program.

1 For a detailed account of these nine days, see Suzuki, *Nihonkoku Kempo wo Unda Misshitsu no Kokonokakan*.

imperial Germany, then called Prussia. The Meiji Constitution declared that sovereignty resided in the divine emperor as the head of state and that the emperor gave the constitution as a gift to his subjects. The Constitution's recognition of imperial sovereignty gave it a firm foundation in Japanese tradition. However, it was by no means a democratic constitution. One constitutional scholar characterizes it as "pseudo-constitutionalism."<sup>2</sup>

When Japan was defeated in the Pacific War and accepted the Potsdam Declaration, Japanese Foreign Minister Mamoru Shigemitsu signed the Instrument of Surrender aboard the warship Missouri on September 2, 1945. As a result, the postwar occupation of Japan by the Allied Powers began. The allied occupation was led by General Douglas MacArthur who landed at Atsugi outside Tokyo on August 30, 1945.

The major purposes of the Allied Occupation in Japan were three-fold: (1) democratization, (2) de-militarization, and (3) de-centralization of Japan. In order to carry out these objectives, the first task General MacArthur undertook was to rewrite the Meiji Constitution. The prewar constitution was not suitable to the new Japan for a number of reasons. The Meiji Constitution had the following characteristics:

1. It embodied both centralized nationalism and constitutionalism.
2. Sovereignty and all the governing powers resided with the Emperor. (Article 1. The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.)
3. Subjects' rights were protected within the provisions of law.
4. The Imperial Diet consisted of a House of Peers and a House of

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2 Luney and Takahashi, eds., *Japanese Constitutional Law*, 30.

Representatives. The House of Peers, composed of the Imperial Family, of the orders of nobility, and of those who had been nominated thereto by the Emperor, was able to check the popularly elected House of Representatives.

5. It gave the Emperor the powers to issue ordinances (Article 9) without the consent of the Diet and to issue an imperial ordinance in case of emergency (Article 8).
6. The Emperor had the prerogative of supreme command of the Army and Navy without consulting the Imperial Diet and the government.

On October 25, 1945, the Kijuro Shidehara Cabinet instituted the Committee to Investigate Constitutional Matters with Joji Matsumoto as the chairman of the committee, and it began considering constitutional revision. The "Matsumoto Draft," which was disclosed in February 1946, revealed that it did not really alter the basic principles of the Meiji Constitution giving the Emperor all the powers to govern. It also did not change the articles relating to the military and was weak on the protection of fundamental human rights. After seeing this Matsumoto Draft, SCAP realized that the Japanese government had no intention of, nor was it capable of, drafting a new constitution based on democracy and liberalism.

After rejecting the Matsumoto Draft, MacArthur ordered his staff to draft an alternate revision. General MacArthur issued the so-called "MacArthur Notes," indicating that three basic points were "musts" in constitutional revision:

- I. The Emperor is at the head of state.  
His succession is dynastic.  
His duties and powers will be exercised in accordance with the Constitution and be responsible to the basic will of the people as

provided therein.<sup>3</sup>

- II. War as a sovereign right of the nation is abolished. Japan renounces it as an instrumentality for settling its disputes and even for preserving its own security.

It relies upon the higher ideals that are now stirring the world for its defense and protection.

No Japanese Army, Navy, or Air Force will ever be authorized, and no rights of belligerency will ever be conferred upon any Japanese force.<sup>4</sup>

- III. The feudal system of Japan will cease.

No rights of peerage except those of the Imperial family will extend beyond the lives of those now living. No patent of nobility will from this time forth embody within itself any national or civic power of government.

Pattern budget after British system.<sup>5</sup>

Based on these three principles, SCAP and his staff completed their draft of the new constitution (“the MacArthur Draft”). It took only nine days for the 25-member team to complete in secret a constitutional revision draft. The Americans were swift because they wanted to have a complete draft before the Japanese government came up with any draft proposal and to avoid unnecessary political interventions from other allied powers, especially the Soviet Union. The team included competent lawyers, journalist, political scientist, commissioned officers, and some civilians. In the meantime, a number of other drafts were prepared by Japanese political parties as well as other organizations around the same time. It is thought that the staff of SCAP

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3 General Headquarters Supreme Commander for the Allied Powers, *History of the Nonmilitary Activities of the Occupation of Japan 1945-1951*, 39.

4 Ibid.

5 *Op. cit.*, 39a.

may have taken some of these drafts into consideration. SCAP also was to have looked at the United Nations Charter, the Universal Declaration of Human Rights, U.S. the Constitution, the Weimar Republic Constitution, the Finnish Constitution, and the Soviet Unions Constitution. In any event, the government-sponsored Matsumoto Draft turned out to be by far the most conservative of all the drafts.

As soon as the MacArthur Draft was completed, SCAP presented it to the Japanese government. The Japanese government was taken by surprise, never expecting to receive the MacArthur Draft of the new constitution. They were completely dismayed by language about the Emperor being merely the symbol of the State and about popular sovereignty. However, as a defeated nation, they had no choice but to accept the MacArthur Draft. After reading it, the Japanese government negotiated with SCAP on a number of issues. One important issue was the unicameral Diet. The Americans wanted a one-House Diet. (The MacArthur Draft reads: The Diet shall consist of one House of elected representatives with a membership of not less than 300 and not more than 500.) Another important issue was property right. Article 28 of the MacArthur Draft reads: The ultimate fee to the land and to all natural resources reposes in the State as the collective representative of the people. This article was modified later, and the right to private ownership of property was included in the constitutional revision proposal. (The present constitution reads: The right to own or to hold property is inviolable.) Americans themselves modified the earlier MacArthur Notes (this was believed to have been carried out on the judgment of Colonel Cadis); and Japan's right of self-defense (and the use of force for the purpose of self-defense), negated by the MacArthur Notes, became acceptable to SCAP in the MacArthur Draft.

After painstaking negotiations and modifications on the MacArthur

Draft, the Japanese government issued guidelines which led to the final constitutional revision draft in April 1946. The constitutional revision proposal was presented to the 90th session of the Imperial Diet under the Meiji Constitution and deliberated for three months. After adding the “right to a certain (minimum) standard of living,” it was approved by 421 members with only 8 opposing votes in the House of Representatives.<sup>6</sup> Subsequently, the House of Peers approved the amended draft constitution on October 6, 1946, by a standing vote of 298 to 2.<sup>7</sup> As we can see, the postwar constitution was enacted by the Imperial Diet in the form of an amendment to the Constitution of the Empire of Japan. The Constitution of Japan was promulgated on November 3, 1946, and went into effect on May 3, 1947.

Although the 1947 Constitution was a revision of the 1890 Constitution, its provisions are strikingly antithetical. As noted, popular sovereignty replaced imperial sovereignty. The conditional rights of subjects were superseded by the people’s “eternal and inviolate rights,” a second new principle. The third is pacifism, the renunciation of war in Article 9, which was intended as a sharp break with Japan’s modern history of war and expansion. In addition, the most contentious political issue under the 1890 constitution—government responsible before Parliament—was resolved by an express provision for a British-style parliamentary government. An explicit provision for judicial review was also a new feature. The new constitution, therefore, is a constitution completely different from the Meiji Constitution. Japan again became the first country in Asia to have a constitution of almost unrestrained democracy.<sup>8</sup>

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6 General Headquarters Supreme Commander for the Allied Powers, *History of the Nonmilitary Activities of the Occupation of Japan 1945–1951*, 54.

7 *Op. cit.*, 56.

8 Luney and Takahashi, eds., *Japanese Constitutional Law*, 31.

## Political Influences

There are various influences on the new postwar constitution. For analytical purposes, they can be divided into two kinds of influences. One is a more deliberate political influence, and the other is a more subtle, indirect influence. The political influences came directly from SCAP and his staff. The legal influences stemmed from the text and underlying philosophy of the American Constitution.

One of the political influences is clearly manifested in the new status of the Emperor. It was the policy of the U.S. government as well as of General MacArthur to preserve the Emperor as the head of state in order to carry out stable and effective Occupation reforms so that Japan could become a democratic state. MacArthur had decided to exonerate Emperor Hirohito. As early as November 26, 1945, MacArthur was said to have confirmed that the Emperor's abdication would not be necessary. He exonerated Hirohito and ignored the advice of many members of the Imperial Family and of Japanese intellectuals who publicly asked for the abdication of the Emperor and the implementation of a regency. For example, Prince Mikasa (Takahito), Hirohito's youngest brother, even stood up in February 1946 and urged his brother to take responsibility for the defeat, and the well-known poet Tatsuji Miyoshi wrote an essay in the magazine *Shincho* titled "The Emperor Should Abdicate Quickly."<sup>9</sup>

MacArthur's decision to preserve the Emperor system was strongly reinforced after he met the Emperor for the first time on September 27, 1945. He was deeply impressed by the Emperor's sincere attitude. At that time the Emperor was at the top of the war criminals list prepared by the Soviet Union and Britain. MacArthur feared that if the

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9 [http://en.wikipedia.org/wiki/Douglas\\_MacArthur/](http://en.wikipedia.org/wiki/Douglas_MacArthur/)

TABLE 1 Chronology of Events Leading to the Enactment of the Constitution of Japan

Date	Event
August 14, 1945	Japan accepts the Potsdam Declaration.
October 11, 1945	General MacArthur issues the directive of five major reforms.
January 1, 1946	Emperor Hirohito denies his divinity and declares his humanity.
February 3, 1946	MacArthur orders the preparation of a draft of the new constitution indicating three fundamental principles.
February 8, 1946	The Matsumoto Draft (Summary of the Constitutional Amendment) was submitted to GHQ.
February 10, 1946	The Political Bureau of the GHQ finishes preparing a draft of the constitution.
February 13, 1946	The GHQ rejects the Matsumoto Draft and hands over the MacArthur Draft to the Japanese government.
February 22, 1946	The Japanese government decides to adopt the MacArthur Draft.
February 26, 1946	The first meeting of the Far Eastern Commission is held.
March 6, 1946	After a series of negotiations with GHQ, the Japanese government discloses a summary of the constitutional amendment.
April 10, 1946	The first general election of the House of Representatives is held with universal male and female suffrage after the new election law is enacted.
April 17, 1946	The Japanese government discloses the draft of the constitutional amendment.
April 22, 1946	The Privy Council starts deliberating on the constitutional amendment.
June 8, 1946	The Privy Council approves the amendment.
June 25, 1946	The House of Representatives starts deliberating on the constitutional amendment.
August 24, 1946	The House of Representatives approves the amendment with modifications.
August 26, 1946	The House of Peers starts deliberating on the constitutional amendment.
October 6, 1946	The House of Peers approves the constitutional amendment.



Emperor were executed, it might become necessary to have military rule with the possibility of insurgencies occurring in Japan. Therefore, he thought that the Emperor should be treated with care. He expected that the Emperor would entreat him not to be indicted as a war criminal, as many leaders of defeated nations would have done. MacArthur wrote in his memoir, *Reminiscences*:

But my fears were groundless. What he said was this: "I come to you, General MacArthur, to offer myself to the judgment of the powers you represent—to bear sole responsibility for every political and military decision made and action taken by my people in the conduct of the war." A tremendous impression swept me. This courageous assumption of a responsibility implicit with death, a responsibility clearly belied by facts of which I was fully aware, moved me to the very marrow of my bones. He was an Emperor by inherent birth, but in that instant I knew I faced the First Gentleman of Japan in his own right.<sup>10</sup>

To make a long story short, the Emperor has become the symbol of the State and of the unity of the people in the new constitution. Popular sovereignty replaced the imperial sovereignty of the Meiji Constitution, and the Emperor became a symbolic figurehead, not able to act in state affairs without the advice and approval of the Cabinet. (Chapter I)

Another example of a strong political influence that SCAP exerted was the pacifism and unarmed neutrality which was prescribed in Chapter 2 (Article 9) of the constitution. MacArthur wanted to make Japan an unarmed neutral, "the Switzerland of the Far East," so that Japan would be completely demilitarized and weakened so as never to

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10 MacArthur, *Reminiscences*, 288.

be able to rearm itself and resort to war in order to settle international disputes.

Chapter II and its single Article 9 (Renunciation of War) of the present constitution read:

Article 9: Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes. 2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

In the initial postwar period, the demilitarization of Japan was carried out with great thoroughness. However, with the intensification of the Cold War in the late 1940's, the idealistic policy of unarmed neutrality was reversed by the American government in order to make Japan an anti-communist fortress in the Far East vis-à-vis the Soviet Union and China. The United States encouraged Japan to rearm itself, creating the National Police Reserve which was later developed into the Self-Defense Forces.

## Legal Influence

It is now apparent that there exists no American *constitutional* influence upon either Chapter 1 or Chapter 2 of the Constitution. But apart from these two chapters, the influence of American constitutionalism is evident and decisive in the postwar constitution. Among many influences, it may be possible to point out three major aspects of significant American influence on the 1947 Constitution: the idea of democracy, individual rights, and judicial review.<sup>11</sup>

## (1) The Idea of Democracy

First of all, the most important contribution of the United States Constitution to that of Japan was the concept of democracy. The dominant characteristic of the Meiji Constitution was its so-called pseudo-constitutionalism: the political system of prewar Japan can be regarded as a modernized version of an absolute monarchy, and the concept of democracy was regarded as inadaptable to Japan. In sharp contrast, the postwar Constitution clearly declares that sovereignty resides in the people. Therefore, the idea of democracy can and should be applied and can penetrate without exception all the affairs of government.<sup>12</sup>

## (2) Protection of Individual Rights

The influence of the United States Constitution has been most eminent in the area of protecting individual rights. The postwar constitution has adopted various legal concepts based on the unique American concept of individualism, including the notions of freedom and equality, and it provides a detailed list of fundamental human rights. The very term "human rights" reminds us of the American idea of civil liberties with a natural law flavor. The prewar constitution, on the other hand, was influenced by the ideas of German legal positivism, deriving from the late nineteenth-century doctrine of state law. It gave no room to any concept deriving from the idea of natural law. Therefore, the respect for individual rights included in the postwar Constitution represents the most important difference between postwar and prewar Japanese society.<sup>13</sup>

## (3) The Concept of Judicial Review

Article 81 of the Constitution provides that "the Supreme Court is

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11 Luney and Takahashi, eds., *Japanese Constitutional Law*, 6.

12 *Op. cit.*, 6-8.

13 *Op. cit.*, 8-13.

the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.” In view of the general background of American influence in the drafting and subsequent deliberations attending the enactment of the Japanese Constitution, it is reasonable to assume that Article 81 was intended to introduce the American system of judicial review.<sup>14</sup>

In view of the role that the Japanese Supreme Court has played in Japanese society, it does not seem to have the same prestige and impact as the United States counterpart. The Court has never played the unique role in the country’s political and social life that the U.S. Supreme Court has played. The Court does not simply have enough authority or clout to hand down decisions which give hard blows to other branches of government. It looks like the Japanese judicial system is so far content with the present situation.<sup>15</sup>

### Constitutional Revisionism

The 1947 Constitution has never been amended, not even once, despite a continuous pro-revision sentiment that has occasionally surfaced in the Japanese political arena. Constitutional revisionism emerged cyclically in the postwar era, first time during the administration of Ichiro Hatoyama (1954–56). After a relatively long period of lull in the sixties and seventies, it re-emerged during the premiership of Yasuhiro Nakasone (1982–87), a nationalist revisionist of long standing. It surfaced again in connection with the 50th anniversary of the Constitution in the 1990’s. For more than a half-century, the amendment controversy has centered on Article 9, which renounces war and the maintenance of armed forces. The underlying issue, however,

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14 *Op. cit.*, 16.

15 *Op. cit.*, 20–25.

TABLE 2 A Comparison between the Constitution of the Empire of Japan and the Constitution of Japan

Constitution	The Constitution of the Empire of Japan	The Constitution of Japan
Promulgation	1898	1946
Enactment	Enacted by the Emperor	Enacted by the people
Sovereignty	Imperial Sovereignty	Popular Sovereignty
The Emperor	Sacred and inviolable, the head of the Empire, with the right of sovereignty	The symbol of the State and of national unity, cabinet advice and approval required for all acts
The military	The prerogative of supreme command by the Emperor, conscription for male subjects	Pacifism, the renunciation of war, no armed forces maintained
Fundamental human rights	Subjects' rights protected within the limits of the law	Fundamental human rights guaranteed
The separation of powers	No separation	The establishment of the separation of powers

has been attitudes toward modern constitutionalism itself.<sup>16</sup>

The revisionists traditionally deny the legitimacy of the Constitution, insisting it had been “imposed” by the Allied Occupation, and called for the Emperor to be designated “sovereign,” as well as for changes in Article 9. Although they did not demand a return to imperial sovereignty, by raising the emperor’s status from “symbol” to “sovereign,” they hoped to downgrade the significance of popular sovereignty.<sup>17</sup>

16 Higuchi, ed., *Five Decades of Constitutionalism in Japanese Society*, 351.

17 Ibid.

Reviewing constitutional revisionism in the postwar era, one may be able to point to three paradoxes. The first is the difference between rhetoric and realism. The Liberal Democratic Party, formed in 1955, held power continuously until 1993. Throughout that 38-year span, the LDP called for an independent revision of the Constitution; nevertheless, it never initiated such procedures.<sup>18</sup>

The second paradox lies in the nature of both the opponents and the supporters of the Constitution. The “independent revision” in LDP platforms implies that the Constitution was “imposed” by the Allied Occupation. The LDP has consistently challenged the legitimacy of the Constitution that symbolized Japan’s unreserved acceptance of freedom and democracy. On the other hand, the Japan Socialist Party was the self-proclaimed defender of the Constitution. The JSP, strongly influenced by Marxism, was the staunch supporter of what the Left termed a “bourgeois democratic Constitution.” The Japan Communist Party also insisted that it would prevent a “bad revision” (*kaiaku*) and frequently joined with the JSP to vehemently oppose the conservatives’ attempts to amend the Constitution.<sup>19</sup>

The third paradox is the frequently repeated justification for amendment that “Japan must become a normal nation (*futsu no kuni*).” The revisionists attack Article 9 because the Japanese government has been forced to interpret it as allowing only a “defensive capability (*senshu boei*)” and not “war potential (*senryoku*),” thus depriving Japan of the military and diplomatic power of other “normal” nations. Yet the revisionists never took initiatives to normalize relations with Japan’s Asian neighbors, but in fact often blocked such efforts.<sup>20</sup>

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18 *Op. cit.*, 352.

19 *Op. cit.*, 353.

20 *Ibid.*

## New Moves toward the Constitution

More than sixty years have passed since the Constitution of Japan went into effect in May 1947. In spite of such a drastic change, the Japanese people have adapted very well to the new constitution. Liberal democracy, though it is not perfect, functions quite well. Japanese people have enjoyed postwar prosperity and freedom. With new democratic institutions, Japan was able to achieve a stable democracy and great power status in the international community. There have been a lot of debates and discussions as to what to do with the present constitution. Although there is a plethora of opinions regarding the present constitution, they can be roughly divided into three groups.

The first group consists of those who propose a complete overhaul or rewriting of the present constitution. The second group consists of those who propose some sort of partial revision to the constitution by modifying some of the articles and/or adding some new articles. The third group consists of those who want to preserve the present constitution intact.

### 1. Complete revision or overhaul of the present constitution (kaikenron)

These opinions come from nationalists who assert that the present constitution is a foreign-imposed constitution, and thus, it should be completely rewritten by the Japanese people. They say the present constitution is a mere translation of the MacArthur Draft and thus, it even sounds unnatural as a Japanese text. They also claim that it does not conform to the traditional cultural values of Japan. So, it needs to be rewritten from scratch. This group is sometimes called “reactionary revisionists (fukkoteki kaikenronja).”

Those who want to revise the constitution also say that Japan should become a “normal state” (*futsu no kuni*) by amending Article 9. They assert that Japan’s defense expenditure should be raised to 3 to

4 percent of GNP, the national average for NATO countries, which would enable Japan to be equipped with aircraft carriers and long-range missiles. They also believe that Japan should make much greater international contributions by participating in the United Nations Forces or multi-lateral forces.

## 2. Partial Revision of the Constitution (kakenron, shukenron)

The second group of people consists of those who favor partial revision of the present constitution. They believe that the present constitution is basically good, but somewhat outdated sixty years after its promulgation. They believe that the new constitution should meet the needs of changing times. First, they believe that Article 9 should be modified so that the status and role of the Self-Defense Forces will be clearly defined. In addition, they assert that some new articles should be added to meet the needs of contemporary society. This position is called "*kakenron*," which means adding new articles to the present constitution. For example, they believe that recently-developed concepts of human rights, e.g., the right to privacy, the right to a healthy environment, the right to know and to access information, and also lowering the legal age for adulthood from 20 to 18 should be added to the list of fundamental human rights.

## 3. Preservation of the Present Constitution (gokenron)

The proponents of this position are the most conservative regarding the present constitution. Ironically, this position is often held by people on the left such as socialists and communists. They believe that the basic ideals and principles included in the present constitution are excellent, and therefore they should not be modified in a wrong direction. They are very cautious about those who propose to amend the constitution, especially regarding Article 9. They may not believe that the present constitution is untouchable (*fuma no taiten*), but are extremely wary of the intentions and directions of constitutional revision



proposals.

Those who oppose the amendment of Article 9 assert that Japan should make efforts to narrow the gap between ideals and reality, possibly bringing reality closer to the ideals. They insist that Japan could make adequate international contributions in the form of non-military, humanitarian aid such as assistance to refugees, economic aid, elimination of epidemics and poverty, and improvement in the areas of human rights and the environment.

### Revision Issues

There have been lively debates on various issues concerning constitutional revision. Among these issues, the first and most important has been focused on Article 9. Should Article 9 be amended at all? Some say that it should not be touched. Others say yes, but in what way and to what extent? Should the existing Self-Defense Forces (SDF) be turned into normal armed forces like those of other nations or should the existing SDF with limited roles be expressly written into the Constitution? Should the activities of the SDF be limited to strictly national defense (*senshu boei*), or should they be allowed to exercise collective security defense if necessary, especially with the United States? Should the SDF extend their activities overseas and conduct military actions with UN sanction or even without it? Should SDF activities be limited to non-military, humanitarian activities or extended to military actions? What kind of international contributions should Japan make? Limited to humanitarian activities or full-fledged activities including military ones?<sup>21</sup>

The second most important issue may be the bicameral legislature. Japan has a bicameral Diet: the House of Representatives (lower

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21 Oishi and Ishikawa, eds., *Kempo no Soten*, 52–63.

house) and the House of Councilors (upper house). The argument here is: is it necessary to have a bicameral legislature? If so, what should be the appropriate power balance (relationship) between the two houses? This issue has been of particular interest recently because various stalemates were caused by the so-called “distorted Diet” (nejire kokkai) after the July 2007 House of Councilors election. At present, the House of Representatives is dominated by the two-third majority of the governing parties while the majority of the House of Councilors is controlled by the opposition parties. This of course has created various delays and stagnation in legislation, budget approval, and government actions.<sup>22</sup>

The third important issue may be the new rights and, possibly, duties of Japanese nationals to be added to the present constitution. Most political parties and the general public agree that the present constitution is “outdated” and that some new rights should be added to the list of fundamental human rights in the Constitution. These include rights such as the right to a healthy environment (kankyoken), the right to privacy (puraibashii-ken), the right to know and free access to information (shirukenri), intellectual property rights (chiteki zaisanken), etc. Recently, there is also a debate on the meaning of the right to a certain standard (minimum standard) of living (seizonken), which already exists in the present constitution. This debate has been enhanced in the face of the diminishing middle class and the widening gap between the rich and the poor (kakusa shakai) in the globalized economy.<sup>23</sup>

The fourth important issue may be decentralization (chiho bunken). Today Japan is still a very centralized state. There is, however, an in-

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22 *Op. cit.*, 190-191.

23 *Op. cit.*, 64-189.

creasing demand for more decentralization to create more efficient and vibrant local government. This of course means giving more authority to local governments from the central government over areas such as taxation and budget. The existing system of local governments itself is an issue also. Some argue that the present 47 prefecture system (todofuken) should be changed and integrated into a broader state and county (doshu) system so that local governments can operate more efficiently within larger boundaries.<sup>24</sup>

There are other issues: public welfare and public order, popular election of the Prime Minister (shusho kosensei), establishment of a military tribunal and a constitutional court, and subsidies to private schools by public finance.<sup>25</sup>

## Public Opinion

Major Japanese newspapers and public opinion poll organizations periodically conduct public opinion surveys on various aspects of the Constitution. Over the years, they do demonstrate some changes in Japanese people's attitudes toward the Constitution. Looking at the various public opinion surveys, I may be able to draw some tentative conclusions on Japanese people's attitudes toward the present constitution.

1. A majority of people now seem to favor some form of constitutional revision, and fewer people seem to be opposed to constitutional revision now than before.
2. Those who want to rewrite the constitution completely seem to be a small minority.
3. Those who favor partial revision of the Constitution want to

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24 *Op. cit.*, 324.

25 For another comprehensive review of revision issues, see Watanabe ed., *Kempo Kaisei no Soten*.

TABLE 3 Major Issues for Constitutional Revision

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The status of the Emperor
Article 9 and the Self-Defense Forces
Collective security
Public interest and public order
Fundamental human rights—inclusion of new rights
Limitation of human rights and listing of obligations
Lowering the legal age for adulthood from 20 to 18
Popular election of Prime Minister (shusho kosensei)
Bicameral legislature—the relationship between the two Houses
Creation of a military tribunal and/or a constitutional court
Public subsidies to private schools
Local government
Right to a certain standard of living (seizonken)
Constitutional amendment

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Source: Oishi, Makoto and Kenji Ishikawa, eds. *Kempo no Soten*. Watanabe, Osamu, ed. *Kempo Kaisei no Soten*.

- make the status and role of the Self-Defense Forces clearly defined in Article 9. However, there is also a strong resistance to changing Article 9 in any direction. According to the recent *Asahi Shimbun* opinion survey, 66% of people feel that it should not be changed at all, about three times as much as those who want it changed. Even among those who want to change it, only 38% feel that the Self-Defense Forces should be elevated to normal military forces, and 56% feel that the present status of the Self-Defense Forces should be written into the Constitution.
4. Some feel that the new concepts of human rights such as the right to privacy, the right to a healthy environment, the right to know and to access information should be added to the Constitution.

TABLE 4 Public Opinion Survey by the *Asahi Shimbun*


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Looking at the Constitution as a whole, do you think that the present constitution needs to be revised or does not need to be revised?	
Needs to be revised	55%
Does not need to be revised	32%
Others/no answers	13%

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To those who answered "needs to be revised," what is your reason? (One answer)	
Because new rights and institutions should be included	38%
Because it is better to include more citizens' duties.	17%
Because there is a problem with Article 9.	9%
Because there has been no amendment since the enactment.	13%
Because we want to create a constitution of our own, not one imposed by the U.S.A.	21%
Others/no answers	2%

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Source: The *Asahi Shimbun*, May 3, 2005

TABLE 5 Public Opinion Survey by the *Yomiuri Shimbun*

Do you think that it is better to revise the present Constitution or better not to revise it?	
Better to revise it	55.5%
Better not to revise it	32.3%
No answer	12.3%
To those who answered "Better to revise it," what is the reason you think it is better to revise it? Enumerate as many answers you like:	
It was a constitution imposed by the U.S.A.	33.6%
It should clearly state the national right of self-defense and clarify the existence of the Self-Defense Forces.	32.5%
Too many rights are asserted, and duties are neglected.	25.3%
There will be confusion if we act on the basis of interpretations and applications.	32.9%
There are new issues regarding international contributions which cannot be handled effectively under the present constitution.	47.7%
Others	1.5%
No answer	1.9%
To those who answered "Better not to revise it," what are the reasons why you think it is better not to revise it? (Multiple answers)	
It is already well established among the citizens.	36.3%
It is a pacifist constitution that we can be proud of internationally.	51.5%
Fundamental human rights and democracy are guaranteed.	26.7%
We will be able to make a range of adjustments to changing times through interpretation and application.	20.5%
If it is amended, it may open the road to Japan's acquiring great military power.	34.2%
Others	1.0%
No answer	0.7%

Source: The *Yomiuri Shimbun*, April 4, 2006

TABLE 6 Public Opinion Survey by the *Mainichi Shimbun*

Do you favor revising the present constitution or do you not favor it?	
Favor	65%
Do not favor	27%
To those who favored, what is the reason you favor revision?	
Because the present constitution does not suit the times.	53%
Because the present constitution was imposed by the U.S.A.	10%
Because the present constitution has never been amended since it was enacted.	18%
Because there is a gap between the activities of the Self-Defense Forces and Article 9.	13%
Because the present constitution overvalues individual rights.	3%
To those who did not favor revision, what is the reason you oppose it?	
Because the present constitution suits the times.	4%
Because there is no positive reason for revision.	11%
Because it may lead to the amendment of Article 9.	54%
Because it may limit individual rights and prescribe excessive duties.	3%
Because there have not been adequate discussions on the issue among citizens and political parties.	26%

Source: The *Mainichi Shimbun*, March 5, 2006

TABLE 7 Public Opinion Survey on the Constitution Conducted by the *Asahi Shimbun*, April 19–20, 2008

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• Do you think constitutional amendment has become a realistic matter or is it still premature?	
Realistic matter	52%
Premature matter	35%
To those who said “realistic,” what is your reason?	
(One answer)	
Because there is now institutional preparedness such as the National Referendum Law.	20%
Because there are concrete proposals like the LDP draft of a new constitution.	15%
Because there is more understanding among citizens.	57%
To those who said “premature,” what is your reason?	
Because there is a deep cleavage between governing parties and opposition parties.	19%
Because Prime Minister Abe, who was keen on constitution revision, has stepped down.	5%
Because the time is not ripe for it among the people.	71%

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• Looking at the constitution as a whole, is it necessary to revise the present constitution or not necessary to revise it?	
It is necessary to revise it.	58%
It is not necessary to revise it.	31%
To those who said that it is necessary to revise it, what is the reason?	
(One answer)	
Because we want to write a new constitution on our own.	9%
Because there are problems concerning Article 9.	13%
Because new rights and institutions should be included.	74%
To those who said that it is not necessary to revise the constitution, what is the reason?	
(One answer)	
Because it is well established among citizens, and there is no urgent need for revision.	29%
Because Article 9 may be amended.	51%
Because it is useful for guaranteeing freedom and rights.	17%

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- The Constitution prescribes in Article 9 that the Japanese people forever renounce war and that military forces will not be maintained. Do you think it is better to change Article 9 or better not to change it?
 

Better to change it	23%
Better not to change it	66%
  
  - To those who answered “better to change it,” how should Article 9 be changed?
 

Just by writing in the Self-Defense Forces as they now exist.	56%
By prescribing the Self-Defense Forces as military forces like those of other countries.	38%

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  - Now, we would like to ask you about the overseas activities of the Self-Defense Forces. Which of the following statements comes closest to your opinion?  
(One answer)
 

No overseas activities are acceptable.	15%
Overseas activities are acceptable as long as they do not use military force.	64%
If necessary, the use of military force is acceptable.	17%

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  - In the present Diet, the governing parties have a majority in the House of Representatives whereas the opposition parties have a majority in the House of Councilors. While bills and personnel are not easily approved, the views of opposition parties are better reflected. Do you think the present state of the National Diet is desirable?
 

Desirable	26%
Not desirable	58%

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  - Under the present constitution, the House of Representatives has a certain amount of precedence in decisions regarding the budget and bills. Some people say that the Constitution should be amended so that the powers of the House of Representatives will be further strengthened. Do you agree with this opinion or disagree?
 

Agree	23%
Disagree	58%
-

## Conclusions

The Constitution of Japan is now more than sixty years old. It has never been amended, not even once. The American Constitution is more than two hundred years, and has been amended twenty-seven times. Evaluations and opinions of the Japanese Constitution at the age of sixty-one are extremely varied. Some people would say that it has become merely a nominal document. Some deplore its erosion while others say that the Constitution is out of touch with reality and should be amended. However, it would be wrong to suggest that the Japanese Constitution is unimportant because by doing so one may be misinterpreting postwar history. It is true that the Constitution has withstood harsh criticism at home and abroad for more than sixty years to become a cornerstone of constitutionalism in Japanese society. Without constitutionalism, Japan could not have achieved the democracy that Japanese people enjoy so much today. In many countries ruling elites try to justify authoritarianism in the name of economic development. Japan's experience suggests that the rule of law specified in the Constitution is vital to both democracy and economic development.<sup>26</sup>

It is also important to point out that Japan has presented itself as a synthesis of local tradition and imported legal concepts. As the experience of many non-Western countries shows, to implant Western-style of constitutionalism in a society and adjust it to traditional identities is indeed difficult. Japan's trial-and-error approach in the postwar era should be a valuable example for peoples facing similar challenges.<sup>27</sup>

Lastly, I believe that the future of the Japanese constitution de-

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26 Higuchi, ed. *Five Decades of Constitutionalism in Japanese Society*, 3.

27 Chantebout, *Droit constitutionnel et science politique*, 372-374.

depends on what kind of state Japanese people really want for future generations: a normal state (*futsu no kokka*) or a pacifist state (*heiwa shugi kokka*) or something else? Even if we want to remain a pacifist nation, do we want to retreat to self-centered, isolationist pacifism (*ik-koku heiwashugi*) or do we want to promote pacifism more actively among peoples in the world? These are some of the serious questions that Japanese people must answer before they can undertake to revise or perhaps rewrite the present constitution.

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