

Japanese Constitution of 1947

Constitutions are known as social contracts between the state and the individual laying out the roles of the two as well as political principles, rules and institutions. By this token, a constitution is a unique product of both the rulers and the people, notwithstanding probable asymmetries in its content with regard to power structure, rights and responsibilities. What makes it peculiar is that it is presumably prepared -more or less- with common will and an outcome of historical, cultural and political context of a nation. Given its uniqueness, one might expect that a constitution follows a process of “give-and-take”s where interactions between the ruler and the ruled determine the qualitative outcome. That may not always be a standard posture for each country, however, as in the case of Japan.

Japan was occupied by the Allied Powers at the end of the Second World War, left with a huge devastation of human and infrastructural loss. Self-confidence, national pride and hope for future, all hitting the bottom, had deteriorating impacts on post-war economic and political transition. Yet, it was not the locals but the *foreigners* who deemed necessary to enforce such a shift and suffice it to say that they started by making the main law, namely constitution, themselves in an attempt to completely alter the political and cultural landscape of the country, from a totalitarian, strictly hierarchical society to a one which would have western-type democratic institutions and its own sovereignty. The Diet (Legislative House) ratified the new constitution of Japan which was presented as an amendment to the old Prussian-style Meiji Constitution. Different from the former in several ways, such as addressing civil liberties, guaranteeing basic freedoms and removing the god-like Emperor from politics, the progressive document was an exception in that it was mainly written by a foreign assembly of non-legal staff.

This paper aims to find answers to three questions: The first one will try to address how an alien document survived, the second shall seek to answer why democratic state building in Japan was successful, and the final one will briefly take a look at current events to try to understand the underlying reasons for a possible amendment of the constitution.

1. Why, for more than 60 years, have the Japanese not amended a constitution which they did not make?

In order to answer this question, one hastens to seek what made the Japanese people espouse the new document; hence, there is a need to clarify what was missing in the previous one, the Meiji Constitution of 1889, and how the 1947 Constitution differed from it. The Meiji Constitution gives virtually all power to the Emperor or his designated staff. It asserts that “[T]he Emperor is sacred and inviolable” and he “is the head of the Empire, combining in himself the rights of sovereignty, and exercises them.” This provision alone constitutes the major difference between the two constitutions, leaving sovereignty of the state at full discretion of the Emperor. On the other hand, the current constitution proclaims that sovereign power resides with the *people* and “[G]overnment is a sacred trust of the people, the authority for which is derived from the people.” Furthermore, it reads that the Emperor “shall not have powers related to government.”

The Meiji Constitution talks about “Subjects” when unveiling the rights and duties whereas the current one attributes to “People”. The former mentions *limits* in various instances, such as the right of property, freedom of religious belief and liberty of speech. The recent, on the other hand, *guarantees* fundamental human rights and their inviolateness. It includes people’s right to life, liberty, and the pursuit of happiness and recognize the supremacy of these rights in legislation and in other governmental affairs. It announces that all people are

equal under the law, denies any discrimination on the basis of race, creed, sex, social status or family origin, renounces peers and peerage, and guarantees universal adult suffrage. All in all, the 'Rights and Duties' part consists of 15 articles -with limitations- in the former constitution and 31 detailed articles -with guarantees- in the current one. As a result, constitutional transition provided a democratic relief in peoples' lives, who were accustomed to tightly hierarchical state mechanisms, and explains why the Japanese so far have adopted an externally-made constitution.

The second reason why the Japanese have not amended their constitution involves the support from the grassroots of the society. Whereas the postwar leaders of Japan were reluctant with regard to the changes in the Meiji Constitution, the highly supportive role of Japanese people was facilitative in realizing the major political transition. The populist will can be illustrated in the response of Japanese people to the call of Supreme Commander of the Allied Powers (SCAP) for constitutional revision in the aftermath of Second World War. Parisi (2002) notes that whereas the Japanese government officials were not eager to modify then-current constitution and delayed the attempts, SCAP received 12 revision drafts from outside the Japanese government. The ones who prepared proposals included liberal and conservative circles, changing from Communist, Liberal, Progressive, and Socialist parties, the grassroots Constitutional Research Association, and individuals. According to the author, the proposals consisted the abolition of the emperor, limiting his authority, gender equity -which was much liberal taking the cultural perceptions of the era into consideration-, and educational rights, which all served as facilitators during the constitution-making process.

The third part of the answer originates from the war memories and despair of the Japanese people in the aftermath of Second World War. Japan lost more than two million servicemen and civilians during the WWII. Article 9 of the 1947 Constitution reads that

“[A]spir[ing] 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 means of settling international disputes. 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.” The constitution, therefore, was the start of an era which would witness Japan constrain its military presence and methods in resolving disputes.

Despite the fact that it was externally enforced, Japanese people embraced the no-war provision. Article 9 provided an impetus to get rid of the memories of devastation and defeat by turning on a new page and regain their hopes for future. Demilitarization has become the characteristic of Japanese politics; in drawing attention to their recent national past, Parisi (2002) argues that “Japanese could be proud to lead the world in outlawing war.” This peaceful era and ‘pacifist’ State in modern Japanese politics were embraced by the Japanese citizens who, according to Port (2007), presume that their constitution prohibit a ‘collective self-defense’ while renouncing militarism. The pacifist stance of the Japanese populace and their peaceful perceptions also oriented their policy-makers who dismiss the idea that would argue for Japan to become an independent strategic actor.

Building on the previous answer, the fourth part is associated with the security issue. Being under the safety net of the United States has helped Japan stay away from expensive nuclear capabilities and other military needs, which allowed her a luxury to spend these dollars for the economy and social programs. This is still true despite the fact that Japan is the second most military spender following the United States by an average military spending of about \$44 billion annually on its military (Asia Times). Since the constitution does only allow to maintain military forces on a ‘defensive capacity’, Japan has also an additional advantage of not usually

sending her defense forces abroad. Whereas some Japanese contingents were sent to participate in international peacekeeping operations in the past, they at least do not have to perform problematic duties and are restricted mainly in humanitarian missions. A good example is the Japanese forces in Iraq which operated in relatively less-tensioned parts of the country.

The final explanation comes from the fact that not many legal restrictions were imposed as a bulwark in front of future amendments. Whereas amendment process requires a fair amount of work such that a change can be made with two-thirds or more of all the members of each House along with the ratification of people, the constitution is still amendable upon the common will of the majority. As Dower mentions (Dower et al, 2003), Colonel Charles Kades -a close aide to MacArthur- “insisted that no restrictions be placed on amendment of the constitution” since he had a profound faith in the Japanese acceptance of democracy. Indeed, MacArthur deliberately invited the Japanese for a review and revision of the constitution between 1948 and 1949 in order to insure that it would reflect the free will of the Japanese people (ibid).

2. Why was democratic state building in Japan successful?

State building is a fashionable term of political science and international affairs. There are attempts from big powers, either with or without the consent of the local people, to establish western-like democracy, institutions, political parties and governmental agencies. Yet, while many are unsuccessful because of the neglect of historical, cultural and social context of the country involved, Japanese case was an achievement. Analytically, the first and foremost reason is the earlier, though maybe limited, tendency of Japan toward democracy. Japanese people were not completely unaware of democracy and its institutions. According to John Dower (Dower et al, 2003), “what pre-1945 Japan experienced was not the absence of democracy, but

its failure.” For example, before militarism was gaining power in the 1930s when Imperial Army launched a successful takeover of Manchuria and later the war against China began in 1937, Japan had already universal male suffrage, workers’ rights and political parties.

Even earlier, there were serious signs of democratization when feudal regime in 1868 was overthrown before the “liberty and people’s rights” movement of the 1870s and 1880s, a constitutional government was established in the 1890s, labor protest and a women’s movement emerged at the turn of the century, and bourgeois party politics along with socialist and communist protests became a part of Japanese politics during “Taisho democracy”. (ibid) Franziska Seraphim contributes to the discussion by arguing that in order to have greater participation in the political process, labor and other social movements pushed for the introduction of parliamentary politics and social legislation; hence, she points out that the Japanese were not “cold” when they went into democracy (ibid).

The second factor is the human capital of Japan and traditional habits. It should be mentioned that the democratic fabric of Japanese society was formed thanks to a number of factors led by literacy, a skillful elite and high levels of education. Robinson (ibid) attributes the state-building achievement also to the Japanese habit of respect for authority. He argues that Japanese people benignly accepted American guidance and embraced defeat. In addition, this readiness and cooperation can be explained with the coalition-building experience of the 1920s.

The final reason is the dismissal of the wartime leaders and domestic support. Robinson finds it critical to purge both the civilian and military wartime leaders because this decision eliminated the extreme group of political figures and changed the democratic climate by “shifting the political center of gravity toward the center.” However, thanks to their human capital, there were still enough skilled and legitimate political leaders despite the evacuation of

those wartime figures from political decision-making process. Anyhow, the more important point helping the democratic betterment -and a remarkable lesson for today's leaders of big countries- is the indispensability of domestic collaboration. Externally-enforced democratization is temporary regardless of hard power and provisional upon a coherent indigenous cooperation.

3. Current event: Why is Japan discussing the amendment?

In elaborating Japan's motives to consider to amend their constitution, first, it is fair to empathize with dignified Japanese society that democratic postwar institutions and their acceptance have come under foreign occupation. Dower asserts that it was a painful process for the Right from the stand point of national dignity whereas the Left's objection arose from the fact that foreign occupation disabled the chance for the Japanese people to architect a democratic revolution themselves. Today, nevertheless, the generational change has helped trigger a process of questioning reflexive pacifism and risk avoidance of Japan over the last 60 years. As Deming (2004) argues, the new -avowedly nationalistic- generation is rather unattached of history and is eager to see their country playing a more profound role in international relations. The collapse of Soviet Union contributed in paving way for a national unity as it had an implication of ending the ideological split and weakening the Japan Socialist Party.

Yet, the main reason comes from a rational standing, rather than pure national motives. Very recently, on April 13, Prime Minister Shinzo Abe and the Japanese government made a big leap toward revising the pacifist constitution by winning parliamentary endorsement of procedures for a national referendum and the leading factor was to recognize their right to military forces, a very controversial and still debated issue arising from Article 9. The proposal by the ruling Liberal Democratic Party (LDP) aims to modify the clause by formally recognizing

the need for a defensive military force which will still keep the renunciation of war. This will do basically nothing more than formalizing the current situation (since Japan already established a self-defense force); yet, it will mean the end of an era characterized by the Second World War since the distinction between defensive and offensive means is understandably blurred.

The amendment moves have also been influenced by regional and international developments; namely China's growing power, North Korea conflict, the Gulf War, and finally September 11 and Iraqi standstill. First off, while there are no major political tensions between China and Japan, leaders of the latter watch their neighbors' economic and military power and political influence in East Asia with prudence. Second, North Korea's nuclear program and testing of long-range missiles over Japan in 1998 are apparently perceived as intimidating in Japanese political circles. Third, as Deming (2004) argues, Japan's financial assistance in problematic parts of the world, as in the case of Gulf war, was found insufficient by the United States and the international community that invited her to make a "human contribution" to the coalition forces. Last but not least, concerned with previous criticisms during the Gulf War, then Prime Minister Junichiro Koizumi swiftly acted in offering support for U.S.-led coalitional forces in Iraq's invasion. All of these created question marks in Japanese leaders' minds in reconsidering Japan's position and left them preoccupied with a new role of their country.

However, there are cautious groups as well, including some members of LDP, who oppose the amendment. Deming attributes these circles' concern to the fear of ending Japan's 'exceptionalism' and remaking her a major military power. In addition, liberal groups are frightened by the possibility that further provisions might follow which would harm civil liberties. In fact, Japan Today indicates that the level of public support for amending Japan's constitution fell to 57% from 61% two years ago, with those opposed increasing to 34.5% from

29.8%, according to a Kyodo News survey. The number of those who opposed to a revision of the constitution's war-renouncing clause was nearly double that of those in favor.

In conclusion, there is a mixed public opinion with regard to constitutional amendment. On the one hand, there is the "culturally entrenched" pacifism of the Japanese people (Teslik, 2006); on the other hand, the fears of remilitarization and adventurism which cost tragic losses in the past. Yet, decisiveness of Prime Minister Abe and international calls led by the United States, such as the Armitage-Nye report of October 2000 which called for enhancing bilateral defense cooperation in East Asia (Deming, 2004), send clear messages that the postwar constitution will not wait too long to be amended even if there will be nontrivial resistance to rapid change.

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