

# The Constitution Must Be Defended: Thoughts on the Constitution's Role in Japan's Postwar Democracy

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憲法は護らなければならない

—戦後民主主義における憲法の役割に関する考察—

## Summary

Revision of the Japanese Constitution is a heated topic, associated with nationalistic sentiment. Conservatives insist the constitution was imposed by the US occupation and call for an “autonomous constitution” created without foreign interference. This article critiques this discourse within the historical context of modern democracy. I emphasize the need to distinguish two questions: whether a constitution was established democratically and whether it has contributed to enhancing democracy. I highlight the importance of the second question. The Constitution of Japan may not have democratic origins, but it has enhanced democracy. The article provides a historically rooted and theoretically solid framework for constructive discussions of constitutional revision as the Abe administration prepares to submit its proposal for revision.

## Japanese Summary

憲法改正は、その制定から現在にいたるまで、ナショナリスティックな感情と密接に関連した問題として活発に議論されてきた。自民党を中心とする保守派は、現行憲法を、日本の主権が制限されているときにアメリカ占領軍によって作られた「押しつけ憲法」として批判し、国民の同意に基づいた自主憲法の制定を主張している。本稿では、民主主義の理念と一見合致する、

この自主憲法制定という言説を歴史的なコンテキストの中で批判的に検証する。本稿で特に強調したいのは、憲法の制定及び維持に関する以下のふたつの問いを明確に区別することである。ひとつは、憲法が民主主義的に制定されたのかどうか、という問いであり、もうひとつは、その憲法が民主主義に貢献してきたのか、という問いである。現行憲法を議論する際、我々はひとつめの問いに注意を払いがちであるが、本稿では、ふたつ目の問いの重要性を主張する。日本国憲法は民主主義的には制定されなかったが、戦後の歴史を通じて民主主義へ貢献してきたことは疑いのない事実であり、この点において日本国憲法は擁護されるべきである。このような主張を通して、憲法改正議論に関する、歴史的に責任のある、かつ理論的に強固な枠組みを構築する。

## Keywords

Constitution, Abe Shinzō, Nippon Kaigi, lawmaking violence, democracy, Article 13, Maruyama Masao, neoliberalism

The Constitution of Japan has a long, contested history. Since its promulgation during US occupation in 1946, it has provoked active discussions about peace, democracy, and sovereignty, providing the theoretical basis for various social movements, legal struggles at court, and creative and intellectual activities. The Constitution was also a source of conflict between conservatives and progressives under the so-called 1955 system, as the Liberal Democratic Party occasionally generated movements for constitutional revision while the Socialist Party, as the largest oppositional party, pursued the defense of the Constitution as one of its main policies.

Calls for the revision of the Constitution have intensified since the early 2000s. The rise of China as a great economic and military power, uncertain political conditions on the Korean Peninsula, and wide-spread fear of terrorism in the United States and Europe prompted conservatives to insist that the current Constitution needed to be revised in accordance with the rapidly changing international situation surrounding Japan. They target particularly Article 9, which renounces war as a sovereign right of the nation and bans the nation from possessing any type of war potential. Conservatives generally agree that a revised constitution should grant the current Self-Defense Forces the status of a legitimate national military. The last election for the House of Representatives, held in October 2017, further secured the rule of the LDP-Kōmei coalition. Prime Minister Abe Shinzō of the LDP took this victory as a critical step toward constitutional revision. In September 2018, he was re-elected as the president of the LDP, thereby extending his tenure for three more years. Abe has made clear his intention to secure the first change to Japan's Constitution by 2020.

Those who insist on the need for constitutional revision are critical of not only the content of the Constitution but also the process of its creation. Pointing out that it was established under the strong auspices of the US occupation forces, they claim that Americans imposed the Constitution upon the Japanese when the nation could not fully exercise its sovereignty. Abe and his LDP strongly endorse this argument. Nippon Kaigi (Japan Conference) – an ultra-conservative, right-wing association that has gained remarkable popular support in recent years – sides with Abe and the LDP, upholding the establishment of a new constitution as one of its immediate goals.<sup>1</sup> This is an appealing argument for many Japanese in that it allows them to perceive Japan as a victim of America's neocolonial project and therefore to frame constitutional revision in

terms of the realization of self-determination.

In this essay, however, I discuss why we should not buy into this argument. I argue that the undemocratic process of establishing a constitution alone should not be the reason for discarding that constitution. We must not conflate two separate questions: whether a constitution was established democratically and whether the same constitution has contributed to enhancing democracy. I defend the postwar Constitution precisely because it has contributed to enhancing democracy (that is, it has enormously helped the people to exercise various rights and freedoms). I do not necessarily oppose the idea of revising the Constitution, but I believe that the question regarding what the Constitution has historically done for postwar democracy has yet to be sufficiently explored.

### The “Imposed Constitution”

The conservative discourse that the US occupation forces imposed the Constitution on the Japanese is not new. It has been supported by a small number of scholars since the early postwar years. One of the most famous is Ōishi Yoshio, professor of law at Kyoto University. He was concerned that the American occupiers established the Constitution without taking into consideration Japan's history and tradition, depriving the Emperor of any political and legal authority. This resulted, Ōishi argued, in the disintegration of the national community. As long as the imposed Constitution ruled Japan, he believed, it would be impossible for the Japanese to regain a sense of unity and to nurture respect for the state. He stated:

What constitutes the basis of legal authority is the spirit of obedience to that law shared by the people living under that law. The people's spirit of obedience arises when that law complies with the objective conditions of the society and the time. ...the objective social

conditions refer to the historical national sentiment of the time and of the country. Therefore, the law that differs from the national sentiment... would not earn the people's spirit of obedience.<sup>2</sup>

Since the LDP's birth in 1955, some members have always regarded constitutional revision as a necessity to protect Japan's national pride and identity. The arguments developed by these politicians more or less parallel Ōishi's critique of the Constitution. Kishi Nobusuke, the prime minister who accomplished the 1960 revision of the US-Japan Security Treaty, is one of the early examples. He hoped to reorganize the San Francisco system and to build a more equal, mutually supportive relationship with the United States through an "autonomous constitution" (*jishu kenpō*) that would recognize Japan's legitimate right to self-defense and grant the Self-Defense Forces the status of a national military. But his forcible way of revising the Security Treaty generated a massive popular protest nationwide, and as a result, he had to resign as prime minister while the Constitution remained intact. Nakasone Yasuhiro, another hawkish LDP leader, who served as prime minister between 1982 and 1987, has also been an enthusiastic advocate of constitutional revision since the 1950s and is even now the director of a group formed by Diet members (including non-LDP members) who share the goal of establishing a new constitution. The current prime minister, Abe Shinzō, formed his first cabinet in 2006, insisting on an "exit from the postwar regime" (*sengo rejimu kara no dakkyaku*). Just like his grandfather Kishi, he sees constitutional revision – particularly the revision of Article 9 – as a critical step toward the reorganization of the postwar state created by the American occupiers and the fostering of patriotism among the Japanese people.<sup>3</sup>

In the past decade or so, Nippon Kaigi, probably the most active nationalistic and jingoistic lobbyist organization in contemporary

Japan, has ardently endorsed Abe's call for constitutional revision and consolidated grass-root support. This organization was founded in 1997 when two existing conservative organizations merged: the Nihon-o-Mamoru Kai (Association to Defend Japan), founded in 1974 by rightist religious organizations such as the Association of Shinto Shrines and the Seichō-no-Ie; and the Nihon-o-Mamoru Kokumin Kaigi (National Association to Defend Japan), established in 1981 by rightist politicians, business leaders, and intellectuals. Nippon Kaigi has been hosting a campaign called the "Ten-Million-Person Network to Realize Constitutional Revision" (*Kenpō kaisei o jitsugen suru 1000-man nin nettowāku*), which aims to collect signatures from ten million people to promote prompt constitutional revision. On their website, the organization explains why the Constitution needs to be revised, and the first reason they give is that the "occupation constitution" or *senryō kenpō* imposed by the Americans has never been revised despite many situations and incidents that the original designers did not anticipate, such as large-scale natural disasters, dramatic changes in national security, and the collapse of traditional values.<sup>4</sup> It is well-known that Nippon Kaigi has close relations with the LDP. Abe Shinzō and the other LDP members who occupy important positions within Abe's cabinet, including Minister of Finance Asō Tarō and Chief Cabinet Secretary Suga Yoshihide, belong to the group of the Diet members who support this organization.

The argument that a new constitution must be established without foreign interference has powerful ideological attraction. First, by accepting this argument, the proponents can present postwar Japan as a powerless victim of America's military might and neocolonial project. Second, once this victimhood is asserted, establishing a new constitution through a democratic procedure can seem like an attempt at achieving national self-determination and recognizing the will of the

people, which, according to the proponents, the US occupation forces failed to consider in the making of the current Constitution. Third, within the context of contemporary international politics solidified in the interwar years and completed in the post-WWII era, which privileges the concepts of self-determination and sovereignty as primary organizing principles, Japan's aspiration to a new constitution has no peculiar or extraordinary implications but is something the people of any country would understand and even sympathize with. Thus, the theory of the imposed constitution, by appealing to a supposedly natural emotion for self-determination and national liberation, seeks to enlist support from people in Japan broadly, regardless of differences in political beliefs.

On the other hand, those who defend the Constitution have emphasized the Japanese people's active and voluntary involvement in the making of the Constitution, thereby demonstrating that it was not simply an imposition by Americans but also the materialization of a popular desire for peace and democracy. Legal scholar Koseki Shōichi has made invaluable contributions to proving this point in several publications. His *Shinkenpō no tanjō* (The Birth of a New Constitution), first published in 1989, presents a narrative of the Constitution much more nuanced than that of the proponents of constitutional revision. Koseki's main points are as follows. First, we cannot reduce the process of the making of the Constitution simply to the "confrontation between one state and another" (*kokka tai kokka no tairitsu*), since neither the American nor Japanese side ever presented a unified view on the Constitution. Second, prior to the establishment of the Constitution in 1946, many private organizations in Japan came up with drafts of the Constitution, some of which showed striking similarities with the draft prepared by the occupation forces, in terms of human rights and disarmament. Third, the American draft was not accepted as it was

by the Japanese side but went through complex "Japanization" at the Diet, and it was during this process that such rights as social rights were first articulated and written into the final draft.<sup>5</sup> In sum, Koseki sees the making of the Constitution as a collaborative endeavor between the occupation forces and those Japanese who aspired to freedom and democracy. His argument is empirically solid and theoretically sophisticated. This can be read as a powerful critique of the proponents of constitutional revision, who often insist upon the imposed nature of the Constitution emotionally without providing sufficient empirical data.<sup>6</sup>

At the same time, however, a methodology that places emphasis on the collaboration of the people of the two countries may divert our attention from the undeniable fact that the Constitution was indeed established when Japan's sovereignty was severely limited, and therefore there was not much choice for the Japanese side but to accept the draft that the occupation forces had prepared. It is true that the Japanese Diet approved the Constitution based on the formal procedure for constitutional revision stipulated in Article 73 of the Meiji Constitution, but we should not forget that the Diet was one of those governing institutions that the US occupation forces used for the effective rule of Japan, and as such, it did not enjoy freedom to make decisions contrary to the will of the occupiers. Furthermore, at the theoretical level, the methodology that emphasizes bilateral collaboration runs the risk of glorifying the United States, particularly the Supreme Commander MacArthur, as a benevolent liberator that correctly comprehended the general will of the Japanese people, thereby implicitly reinforcing the ideology of the United States' mission of introducing freedom and democracy to non-Western countries - an ideology that has supported the expansion of American empire in the twentieth and twenty-first centuries.

## The Constitution, Lawmaking Violence, and the People

By pointing this out, I am by no means siding with the proponents of the revision of the Constitution. Quite to the contrary, I am concerned about how we can defend the spirit of the Constitution without underestimating the neocolonial and violent aspect of the US occupation and without reinforcing the discourse of the United States as a benevolent liberator. We must ask two different, but related, questions about any constitution: was it established democratically?; and has it enhanced democracy? When discussing the Japanese Constitution, we – including both proponents and opponents of revision – tend to emphasize the former question, but the latter question is equally, if not more, important. The Constitution must be defended precisely because it has protected and enhanced democracy for more than seventy years.

Let us first examine the question of the democratic process of establishing a constitution. The constitutions of many democracies have undemocratic origins; the Constitution of Japan is by no means unique in this regard. Consider the case of modern France. While the conventional narrative of French history emphasizes the Enlightenment ideal of freedom and equality as the ideological basis of the Republic and takes for granted the stable and unified category of “the people” as its founder, the Republic and its constitution came into existence not through a popular election but through a violent revolution. The same thing can be said of the United States, which was also founded by revolution. These examples point to the inseparable relation between constitutions and violence, and the fact that any constitution, at its ultimate origin, must be created by what Walter Benjamin has called “lawmaking violence,” which transforms the existing authority and asserts the

legitimacy of the entity attempting to establish a new constitutional order.<sup>7</sup>

A constitution in modern democracy, however, is produced in the name of the people. While it is clear to anyone that a small group of elite members established the constitution by exercising violence, a narrative must be constructed that it was the general will of the people that desired, struggled for, and gave birth to it. Such a narrative makes it possible to interpret the violence that eliminated the old authority as an expression of popular aspiration. But we must remember that the people as a political category and as the sovereign under the constitution do not exist prior to the establishment of the constitution. It must be retroactively posited through the constitution as if it had long existed, waiting only to liberate themselves from oppression. Discussing the formation of the nation constituted by “the people,” Étienne Balibar states:

The fundamental problem is therefore to produce the people. More exactly, it is to make the people produce itself continually as national community. Or again, it is to produce the effect of unity by virtue of which the people will appear, in everyone’s eyes, “as a people,” that is, as the basis and origin of political power.<sup>8</sup>

The legal scholar Minobe Tatsukichi, most famous for his prewar articulation of the “emperor organ theory” (*tennō kikan-setsu*), was aware of the artificial nature of the category of the people in postwar Japan. As a member of the privy council that reviewed the draft of the Constitution, he correctly pointed out the contradiction that the American occupiers and the Japanese government prepared the draft in the name of the people or *kokumin* while the people and the Diet, which represented the will of the people, exercised limited power to influence the making of that draft.<sup>9</sup>

Here, my aim is not to discredit the existing democracies or the category of the people but to think about the postwar Japanese state within the framework of the foundation of modern states, thereby pointing out that the absence of democratic procedures in the establishment of a constitution is not exceptional to postwar Japan. Although the fact that the American occupiers, not the Japanese, exercised lawmaking violence to create the Constitution and established popular sovereignty makes the case of postwar Japan look unusual and extreme, at the most fundamental level this does not differ greatly from the common process of making a modern constitution – that is, a small minority of the ruling elite imposing a constitution as if all the people within the territorial boundaries of the state had desired it.

For this reason, focusing exclusively on the process of establishing a constitution is not a productive way of assessing its value or determining the need for its revision. If we were to deny the legitimacy of a constitution just because it was not democratically established, many existing constitutions in the world would lose their legitimacy, including the French and the American. It would be more productive to look at the same constitution's contributions to democratic development over time, asking what ideas and ideals that constitution has inspired among the people, what forms of political engagement it theoretically endorsed, and how that constitution has put into practice what it promised. In other words, instead of being obsessed with the brief instance in which a legal text was written, we need to ask, borrowing Balibar's expression again, how the people – originally an artificial category – has produced and continued producing itself as the sovereign in modern democracy.

I am basing this suggestion on legal scholar Sugita Atsushi's insistence on distinguishing between the constitution as text and the

constitution as practice. Here, he is referring to two meanings of the English term "constitution": first in a narrow sense, that is, a written law that specifies the terms according to which society is governed (*kenpō* in Japanese); and then in a broader sense, that is, the basic structure of the governance of society (*seiji taisei* or *seiji chitsujo*). By the term "constitution," we mainly refer to the first meaning, but it is crucial to include the second meaning in the discussion of the Constitution and to examine the historical process by which the people have practiced the Constitution to shape Japanese society today.<sup>10</sup> If we look at the postwar Constitution as practice in this way, we realize that this undemocratically established Constitution has definitely served to promote democracy, defined not only as majority rule but also as, in Ian Shapiro's words, a "means of managing power relations so as to reduce domination."<sup>11</sup>

### Development of New Constitutional Rights

One way of looking at this process of the employment of the Constitution as practice is to examine how the meanings and possibilities of its articles have been contested and transformed in concrete historical contexts. The articles in the Constitution are written in an idealistic language that explains the basic nature of the social contract, without mentioning how those ideals can be pursued on specific occasions. Therefore, the Constitution, especially the articles related to the people's fundamental human rights, allow multiple, sometimes competing interpretations, and this has enabled people to resort to the Constitution when attempting to defend their rights against perceived injustices. Article 13 of the Constitution provides us with intriguing examples. This article defends the right to pursue happiness in the following manner:

All of the people shall be respected as individuals. Their right to life, liberty, and the

pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Like many constitutional provisions, Article 13 is brief and simply points to a basic principle. But it evidently attests to the direct influence of Enlightenment thought embodied in the American Declaration of Independence, which presented the right to life, liberty, and the pursuit of happiness as unalienable and natural. This link between Article 13 and Enlightenment thought is unsurprising, since the American personnel in the Government Section who created the original draft held a strong faith in the Enlightenment ideals of freedom and equality.

While this article may have been an imposition by the occupation forces at its origin, it definitely drove many people's imaginations, stimulated their consciousness of rights, and provided them with numerous opportunities to contemplate the relations between the state and individuals. The interpretation of the right to pursue happiness has been actively contested in a number of court cases and has contributed to the establishment of new rights that the original drafters of the Constitutions did not envision. For example, the notion of such rights as the right of publicity (*shōzōken*), the privacy right, and the environmental right all developed with Article 13's principle of the pursuit of happiness as their theoretical ground. When the Constitution was promulgated in 1946, the awareness of these rights had not been widely shared in Japanese society. As industrialization, urbanization, and technological innovation rapidly advanced through the postwar years, however, people in Japan found it critical to protect themselves from emerging problems that threatened their lives and livelihood, including corporations' and the government's ever-increasing control over personal information and environmental destruction caused by factories, airports, and

bases.

Furthermore, Article 13 also promoted recognition of the rights of those who had previously been denied equal treatment. This can be observed, for example, in the redress movement for the leprosy survivors who endured forced quarantine for many decades under the 1931 Leprosy Protection Law. The 2001 Kumamoto District Court's holding deemed that the forced quarantine was a violation of Article 13, thereby recognizing the state's responsibility for proper compensation. The state chose not to appeal. Prime Minister Koizumi Jun'ichirō and Minister of Health, Labor, and Welfare Sakaguchi Chikara each made an official apology to the survivors. The same year, both houses passed a resolution to make an official apology as well, and the state began to pay compensation.<sup>12</sup>

In addition, there is an especially interesting example of the open and flexible possibilities of the interpretation of Article 13, namely, the consolidation of the right to live in peace (*heiwa-teki seizon-ken*). The preamble of the Constitution does mention this right, but in an abstract manner:

We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

In the 1960s, as the peace movement intensified nationwide in the aftermath of the *Anpo* protest and in the midst of the Vietnam War, two court cases emerged in Hokkaido that questioned the constitutional legitimacy of the Self-Defense Forces (SDF), and it was through these court cases that the right to live in peace began to acquire concrete meanings. The first is the Eniwa case (1962 - 67), in which two brothers from a farming family were charged with violating the SDF Law. Their farm was

located next to Camp Shimamatsu in the town of Eniwa and they protested the extreme noise made by the SDF's maneuvers. In December 1962, realizing that the SDF had no intention of scaling back its maneuvers, the brothers cut communication lines within the camp to prevent the SDF's further activities and were arrested. The other is the Naganuma case (1969 - 82), in which 173 residents of the town of Naganuma sued the state, asking the court to issue an injunction against the building of a missile base in their community. The plaintiffs feared that the new missile base would result in serious environmental destruction.

In both cases, the constitutionality of the SDF was actively contested. In the Eniwa case, the two brothers who were charged sought to prove their innocence by claiming that the SDF was unconstitutional. In the Naganuma case, the plaintiffs made the same claim to counter the state's argument that the building of a missile base assumed a "public interest" (*kōekisei*). Supporters for the two brothers and Naganuma residents, including legal scholars, articulated the notion of the right to live in peace, thereby highlighting the incompatibility between this right and the military organization. To give concrete meanings to this elusive-sounding, yet-to-be recognized right in the Preamble, they proposed to incorporate Articles 13 and 9 (concerning the renunciation of war) into the understanding of this right. Their main argument was that the right to live in peace referred to the right of people to enjoy the pursuit of happiness without fear of having their freedoms abrogated or their lives threatened in the interests of the military or in the name of public welfare.<sup>13</sup>

These two cases did not end the way the supporters of the right to live in peace hoped. In the Eniwa case, the Sapporo District Court did find the two brothers not guilty, but refrained from rendering any decision about the constitutionality of the SDF. In the Naganuma case, the Sapporo District Court did

recognize that the plaintiffs' right to live in peace would be violated by the missile base and ruled the SDF unconstitutional (the only such judicial ruling to this day), but the state immediately appealed, and the Sapporo High Court overturned the District Court's decision. The plaintiffs appealed, but the Supreme Court supported the High Court's judgment, and the case was closed in 1982. It is important, however, to note that these two court cases significantly contributed to deepening the discussion of the right to live in peace, defining "peace" as a question not only of diplomatic policy but also of fundamental human rights. Since then, the right to live in peace has been further theorized and promoted by legal scholars and civic organizations. Most recently, in 2008, the Nagoya High Court recognized the right to live in peace as a legitimate constitutional right in a case in which more than 3,000 citizens sought suspension of the dispatch of the SDF to Iraq.<sup>14</sup>

### **The Constitution as a Tool for Disciplining the People**

While Japan's proponents of constitutional revision constantly criticize the absence of democratic procedures in the establishment of the Constitution, they seldom mention the usefulness of that same Constitution to advocacy of various democratic rights and popular sovereignty. This silence is not by chance but intentional. That is, the true agenda shared by the proponents of constitutional revision is not necessarily the promotion of democracy but something else, and the absence of democratic procedures in the establishment of the Constitution serves as a convenient rationale for the achievement of this agenda.

One important aspect of this agenda is to condemn the pursuit of fundamental rights, upon which the current Constitution places the utmost value, as selfish and greedy individualism. In a *manga* brochure that aims



to enlighten the public about the need for constitutional revision, the LDP's Constitutional Reform Promotion Headquarters criticizes the language used in the Constitution as "strange" (*hen*) because it was a direct translation from English, thus suggesting the difficulty, if not impossibility, of translating the spirit of liberal democracy from one national and cultural context to another (or from a Western country to an Asian country). The brochure goes on to discuss concrete articles in the Constitution and laments that the Japanese have misunderstood and abused their constitutional rights. The characters in this *manga* brochure, who all belong to a four-generation family, have the following conversation:<sup>15</sup>

Father: That is, just because we have fundamental human rights, that doesn't mean we can do *anything*!! (*Tsumari wa, kihon-teki jinken ga aru kara to itte, nani o shitemo ii wake janaitte koto da!!*)

Young man: I see, if everybody insists on egoism, society will break. (*sō deshō ne, minna ga wagamama o shuchō shitara shakai wa koware chau.*)

Grandfather: We can say Japan's current Constitution is individualistic. (*Ima no Nihon no kenpō wa kojinchugi-teki to ieru nō.*)

.....

Young man's wife: In today's Japan, is egoism OK even if you go against the security of the country!? (*Ima no Nihon ja kuni no anzen ni hanshitemo wagamama OK-tte koto!?*)

Young man: Hmm, that seems like a problem. (*Ūn, sore ja komaru yō na ki ga*)<sup>16</sup>

The LDP created a 64-page comic to explain the need for constitutional revision, featuring the four-generation family that appears on the cover.





The implication here is that the Constitution, with its American origins, failed to grasp Japan’s specific cultural context, and as a result, Japanese people have ended up sacrificing public interests and social responsibilities for the sake of individual freedoms and rights. It is important to remember that while the procedure for constitutional revisions stipulated in the current Constitution may be democratic (i.e., approval by both houses and then a national referendum), what the LDP is seeking to accomplish in the revised Constitution is unequivocally undemocratic in that it expects the people to give up their rights and freedoms in exchange for greater government control.

Furthermore, to admonish the people against individualism and the pursuit of democratic rights, the LDP relies on the abstract notion of national culture as a point of reference for the disciplining of the people. This is clear when

we look at the draft Constitution revision proposals the LDP issued in 2012. While the current Constitution’s Preamble focuses on universal concepts like popular sovereignty and pacifism, the Preamble in the LDP draft focuses on qualities said to be unique to Japan. It starts with a statement about Japan’s “long history” (*nagai rekishi*) and “particular culture” (*koyū no bunka*), and the emperor as the symbol of national unity (who, in the first article, is also defined as “head of state” or *genshu*). The second paragraph declares the country’s continued commitment to world peace. The third paragraph discusses fundamental human rights, but the same paragraph also highlights the Japanese people’s pride in the country and their hometown, respect for “harmony” (*wa*), and practice of mutual help within family and society. The fourth paragraph speaks about the importance of both freedom and discipline. The fifth paragraph concludes the Preamble with a statement about the country’s “good tradition” (*yoki dentō*).

Following its Preamble, the LDP draft moves on to numerous significant revisions. I am unable to discuss each revision in detail here, but, concerning the LDP’s attempt to use the Constitution to discipline the people, I want to point out that their draft underscores the following points: 1) rights must be accompanied by obligations and responsibilities; 2) “public interest” (*kōeki*) and “public order” (*ōyake no chitsujo*) must be respected; and 3) the family, not the individual, must be the basic unit of society.<sup>17</sup>

Nippon Kaigi has not presented their own draft, but has been explicit on their website about how the Constitution should be revised. Judging by this, we can tell that this organization fully agrees with the LDP upon the need to inculcate in the people a sense of the importance of national culture. They maintain that the revised Constitution needs to include a statement about the “beautiful culture and tradition” (*utsukushii bunka to dentō*) of “our

country, which has had 2,000 years of history since its establishment" (*kenkoku irai nisennen no rekishi o motsu waga kuni*). They believe that the country should be headed by the Emperor, whom the current Constitution defines as a mere symbol of national unity without political authority. Just like the LDP, they suggest that the revised Constitution should define the family as the basic unit of society because, in their opinion, family is closely linked to the "development of society" (*shakai no hatten*) and the "education of children" (*shitei no kyōiku*).<sup>18</sup> Although both the LDP and Nippon Kaigi often highlight the novelty of their proposal, insisting that it is necessary for Japan to revise the Constitution in response to changes and challenges in domestic and international environments, their proposals are fundamentally authoritarian – similar to the Meiji Constitution – that tries to increase state control over individuals and to discipline the people's conduct through the Emperor's authority and essentialized, exclusive notions about national history and culture while castigating the exercise of rights as un-Japanese.

The question is how to critique this attempt to employ the Constitution to discipline the people. Here, we should remind ourselves of the central role of the modern state – what it should and should not do. Maruyama Masao's essay "The Theory and Psychology of Ultra-Nationalism" provides important insights although it was published in 1946, within a historical context greatly different from today's Japan. In this seminal essay, Maruyama examined how nationalism in Imperial Japan ended up as "ultra-nationalism," arguing that the modern Japanese state that came into existence through the Meiji Restoration failed to recognize internal values – such as thought, belief, and morality – as belonging to the realm of the private and to define its own role purely in formal and legal terms. The Japanese state, with the Emperor as the sovereign, therefore, claimed not only political power but also

spiritual authority, judging, policing, and disciplining the people's conscience. According to Maruyama, this failure to recognize the division between the public and private was the basis of Japan's ultra-nationalism. Where the people could not enjoy internal freedom, there was no room for the growth of modern individualism, and this generated the condition under which the people blindly supported the state's nationalist and imperialist projects without a sense of responsibility for their own conduct.<sup>19</sup>

There are serious theoretical problems with Maruyama's argument. As a modernist who was informed by the *kōza* faction of Japanese Marxists, he conceptualized modern Japan as a country that had yet to sweep away its feudal remnants and needed a true democratic revolution to foster the growth of a civil society, where the people were guaranteed internal freedom and could act as responsible citizens. To argue this, he idealized the European model of revolution and civil society (just as the *kōza* Marxists had done in prewar Japan) and lamented the gap between this model and contemporary Japan. In his (and some other modernists') discussions, Japan often appeared as a backward country derailed from the normative development of democracy.

Despite these problems, Maruyama's argument can be revitalized as a useful tool for questioning conservatives' promotion of a constitution that employs the abstract notion of Japanese culture and the mystical authority of the emperor to dictate how individuals should think and act as "Japanese." It is crucial to appreciate in earnest the centrality of the division Maruyama underlined, between the private and the public, as well as the role of the modern state: not as policing internal values but as arranging a purely formal and legal structure for its people in the public sphere. Those notions that the conservatives insist on, such as culture, tradition, and history, all of which serve to glorify the nation with the

emperor as its head, are so abstract and elusive that the state could interpret them arbitrarily for its convenience and use them as a ground on which to impose new duties and obligations. The interpretation of those notions cannot be dissociated from one's beliefs and conscience. They are subjective and vague and therefore incompatible with a legal text, particularly the Constitution. They need to be recognized as belonging to the private sphere and should be interpreted not by the state but by individuals.

This is not to suggest that the conservative idealization and imposition of national culture is uniquely Japanese, nor that it is a sign of Japan's inability to overcome its feudal remnants (as Maruyama might have argued). Rather, we should consider it within the context of the neoliberal tendency that has become prominent worldwide in the past few decades. In Japan's case, neoliberalism has become an influential ideology of rule since the early 2000's, when the country found itself in a deflationary spiral. Production stagnated, wages dropped, and consumption decreased, leading to continued and exacerbated deflation. Workplace security, such as lifetime employment and the seniority system – two of the main features of Japanese corporate life during the high-speed economic growth era – began quickly to disappear. Companies came to rely increasingly on part-time and contract workers, which the Koizumi cabinet (2001 – 06) facilitated through legal changes. In the name of “structural reform” (*kōzō kaikaku*), Koizumi also pushed forward privatization and slashed social security spending. Neoliberal reform has been taken to another stage by the current Prime Minister, Abe Shinzō, who continues to champion such policies. Despite Abe's claim that the entire society is benefitting from his economic policy or “Abenomics,” the reality is a concentration of wealth in the small minority of the upper class. The socio-economic lives of many workers in Japan are now characterized by increasing precarity.<sup>20</sup>

It is no surprise that LDP demands for nationalistic change to the Constitution come at a time of this social disintegration. When market fundamentalism encourages free competition and justifies class inequality as if they derived from humans' innate proclivity, a society inevitably loses unity, and its members become atomized as powerless individuals. It appears that the proponents of constitutional revision, whether the ruling LDP or Nippon Kaigi, are trying to shift the locus of solidarity from the economic/social to the cultural sphere and to codify this cultural solidarity in the Constitution as a code of conduct for proper and respectable “Japanese.” As the Scottish sociologist Neil Davidson points out, although globalization and nationalism may seem contradictory at a glance, neoliberal policy in today's globalized and transnational economy in fact leads to the reinforcement of nationalism, as it provides people tired of the competitive economy with a sense of belonging while keeping them from directing their attention to class inequality (and from developing a class-based identity).<sup>21</sup>

It is within this contemporary neoliberal context that we must understand the conservative project of rewriting the Constitution and remind ourselves of Maruyama's argument that the modern state must not interfere with individuals' internal values but should maintain neutrality and focus strictly on organizing a legal and formal structure for civic life. The Constitution of Japan has contributed to this since its birth by defending a variety of democratic rights, some of which were not even intended by the American designers. The call for a new, “autonomous” constitution might sound reasonable and even attractive, but it is important to be aware that the LDP and Nippon Kaigi are encouraging the people to revoke the democracy consolidated over the past seven decades and then to accept a highly abstract notion of Japanese culture, which could be easily manipulated to condemn dissenting

people and groups as “un-Japanese.” This would be a fundamental challenge to the historically accumulated practices of postwar Japanese society in which the Constitution serves to limit government power. I am not entirely opposed to the idea of constitutional revision. But the changes proposed by the LDP would cause severe damage to Japan’s development as a democratic society.

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## Notes

<sup>1</sup> Regarding the sudden popularity of books on Nippon Kaigi, see Saito Masami, Nogawa Motokazu, and Hayakawa Tadanori, [“Dissecting the Wave of Books on Nippon Kaigi, the Rightwing Mass Movement that Threatens Japan’s Future,”](#) *The Asia-Pacific Journal*, Volume 16, Issue 19, Number 1 (2018).

- <sup>2</sup> Oishi Yoshio, *Kenpō kaisei no hitsuyōsei* (Tokyo: Yūshindō, 1962), 42.
- <sup>3</sup> On Abe's general ideas about the nation, the state, and patriotism, see Abe Shinzō, *Utukushii kuni e* (Tokyo: Bungei Shunjūsha, 2006).
- <sup>4</sup> See the organization's [website](#). On Nippon Kaigi's history and activities, see Aoki Osamu, *Nippon Kaigi no shōtai* (Tokyo: Heibonsha, 2016); and Kanno Tamotsu, *Nippon Kaigi no kenkyū* (Tokyo: Fusōsha, 2016). The APJ has also published insightful articles on the organization: David McNeill, "[Nippon Kaigi and the Radical Conservative Project to Take Back Japan](#)," Volume 13, Issue 48, Number 4 (2015); Sasagase Yuji, Hayashi Keita, and Sato Kei, "[Japan's Largest Rightwing Organization: An Introduction to Nippon Kaigi](#)," Volume 13, Issue 50, Number 5 (2015); and Sachie Mizohata, "[Nippon Kaigi: Empire, Contradiction, and Japan's Future](#)," Volume 14, Issue 21, Number 4 (2016).
- <sup>5</sup> Koseki Shōichi, *Shin-kenpō no tanjō* (Tokyo: Chūō Kōronsha, 1989). See also Koseki, *Heiwa kokka Nihon no saikentō* (Tokyo: Iwanami Shoten, 2013); "[The Case for Japanese Constitutional Revision Assessed](#)," translation by Richard Minear, *The Asia-Pacific Journal*, Vol 4, Issue 12 (2006).
- <sup>6</sup> In English sources, the following works highlight Japanese people's – especially ordinary people's – active and spontaneous involvement in the democratization reform and the making of the Constitution. John Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York: W.W. Norton & Co., 2000); Ray Moore and Donald Robinson, *Partners for Democracy: Crafting the New Japanese State under McArthur* (Oxford: Oxford University Press, 2002). □The account by Charles Kades, chief of the Government Section, provides an interesting insight into the negotiations between the two sides. See Kades, "The American Role in Revising Japan's Imperial Constitution," *Political Science Quarterly*, Volume 104, Number 2 (1989).
- <sup>7</sup> Walter Benjamin, "Critique of Violence," in *Selected Writings Volume 1, 1913-1926*, eds. Marcus Bullock and Michael W. Jennings (Cambridge, MA: The Belknap Press of Harvard University Press, 1996).
- <sup>8</sup> Étienne Balibar, "The Nation Form: History and Ideology," in *Race, Nation, Class: Ambiguous Identities*, eds. Étienne Balibar and Immanuel Wallerstein (London: Verso, 1991), 93-94.
- <sup>9</sup> Literary critic and novelist Kurokawa Sō explains this contradiction in detail. See *Riaritī kābu: "senmu" to "senjo" no aida ni hashiru* (Tokyo: Iwanami Shoten, 1994), Chapter Eight.
- <sup>10</sup> Sugita Atsushi, "Tekisuto/jissen to shite no konsutitūshon," in *Heiwa kenpō to kōkyō tetsugaku*, eds. Chiba Shin and Kobayashi Masaya (Kyoto: Kōyō Shobō, 2007). My argument here resonates with some legal and constitutional scholars' discussions of consent as a crucial legitimator for a government. It is possible to explain the Constitution as practice as the process by which the people have built consent to be ruled by the Constitution, thereby consolidating a democratic political structure. See Walter Murphy, "Consent and Constitutional Change," in *Human Rights and Constitutional Law: Essays in Honour of Brian Walsh*, ed. James O'Reilly (Dublin: The Round Hall Press, 1992). I thank Lawrence Repeta for suggesting this link.
- <sup>11</sup> Ian Shapiro, *The State of Democratic Theory* (Princeton: Princeton University Press, 2006), 3.
- <sup>12</sup> See the Ministry of Health, Labor, and Welfare's [website](#).

<sup>13</sup> I have discussed the issues of the right to live in peace in detail elsewhere. See Tomoyuki Sasaki, *Japan's Postwar Military and Civil Society: Contesting a Better Life* (London: Bloomsbury, 2015), Chapter Three; and “Whose Peace: Anti-Military Litigation and the Right to Live in Peace in Postwar Japan,” *The Asia Pacific Journal: Japan Focus*, Volume 10, Issue 29, Number 1 (2012).

<sup>14</sup> For a translation of Nagoya High Court’s decision, see “Mōri v. Japan: The Nagoya High Court Recognizes the Right to Live in Peace,” trans. Hudson Hamilton, *Pacific Rim Law and Policy Journal* Vol. 19, Issue 3 (210).

<sup>15</sup> We should note that presenting this type of extended family as typical of the Japanese family is in itself an ideological statement. In reality, nuclear families had exceeded 50 percent of total households already in the 1920s. According to the latest survey conducted by the Ministry of Labor, Health, and Welfare, as of 2017, the three-generation household accounts only for 5.8 percent. The largest category of households in contemporary Japan is the nuclear family household (29.5 percent), followed by the single-person household (27 percent) and the household of a married couple with no children (24 percent). See the Ministry’s *Kokumin seikatsu kiso chōsa no gaiyō*. The data is available [online](#).

<sup>16</sup> See the Liberal Democratic Constitutional Reform Promotion Headquarters’ [website](#), 28-29.

<sup>17</sup> See the Liberal Democratic Constitutional Reform Promotion Headquarters’ [website](#). Lawrence Repeta offers a detailed overview of the LDP draft for the revised Constitution and points out its challenge to liberal democracy. The article includes a translation of the LDP Preamble. See Lawrence Repeta, “Japan’s Democracy at Risk – The LDP’s Ten Most Dangerous Proposals for Constitutional Change,” Volume 11, Issue 28, Number 3 (2013).

<sup>18</sup> See the [website](#) by “Ten Million People Network to Realize Constitutional Revision.”

<sup>19</sup> Maruyama Masao, “The Theory and Psychology of Ultra-Nationalism,” in *Thought and Behavior in Modern Japanese Politics*, ed. Ivan Morris (London: Oxford University Press, 1963).

<sup>20</sup> On precarity in today’s Japan, see Anne Allison, *Precarious Japan* (Durham: Duke University Press, 2013); “Precarity and Hope: Social Connectedness in Postcapitalist Japan,” in *Japan: The Precarious Future*, eds. Frank Baldwin and Anne Allison (New York: NYU Press, 2015).

<sup>21</sup> Neil Davidson, “Putting the Nation Back into the ‘International,’” *Cambridge Review of International Affairs*, 22:1 (2009).