

# ISSA Proceedings 2002 - The Constitution, Critical Rhetoric, And Public Argument: The Case Of Democratic Japan



## *Introduction*

During the “occupation” period that followed Japan’s surrender to the Allied Power in the summer of 1945, the Constitution of Japan came into effect on May 3, 1947. Some fifty years have past since then; the Japanese have developed and nurtured a political culture distinct from its prewar predecessor. In the first place, it provides “a new intellectual framework, a fresh set of ideas and values” by which they could form a new identity (Tanaka: 125-6). In place of their earlier loyalty to the emperor and “his” Constitution, the postwar generation Japanese share a loyalty to the new Constitution not merely as a formal document, but as “a summation of preferred values and guidelines for public action” (Beer 1982: 46-7). At the same time, the new Constitution offers a ground for moral critique in postwar Japan. “Since we have not yet developed a self-oriented behavior pattern in the confusion of the postwar period, we Japanese have tried to organize a new society with the Constitution of Japan as its guiding star” (Ukai 1979: 127).

This paper seeks to offer a brief, critical reading of Japan’s postwar political culture, focusing on the Constitution of Japan as a significant instance of public argument. As an object of study and investigation, significance of a constitutional discourse to student of rhetoric and argumentation is evident. In *A grammar of motives*, for instance, Kenneth Burke discusses a rhetoric (and a dialectic) of a constitution as an “idealistic anecdote” (1945; also see Anderson 1995). In relation to critical cultural studies, Spivak (1990) has written on a constitutive power of a constitutional narrative that normalizes and regularizes “something called the People... as a collective subject (We)” (134).

## *2. Becoming a sovereign nation: A logic of Japanese constitutionalism*

The Constitution of Japan offers a new identity for the postwar generation

Japanese. It has helped the Japanese break with the country's "oppressive past" and create its new future. Denouncing the prewar culture which led the country and their neighbors into catastrophic wars, the postwar generation Japanese ground their political practice in the new Constitution, looking to its text as their moral and cultural imperative. Part of the Preamble of the Constitution stipulates that "We" the Japanese desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. 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. We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

Burke (1945) writes that, as a form of discourse, a constitution both addresses *and* is addressed to the "Framer's future selves" (361). Adherence to the "universal" laws of morality stipulated in the Constitution of Japan makes us holders of the Japanese identity, a nationality in the sense of the juridical, not of the ethnic, religious, nor racial. Habermas terms such new national identity "constitutional patriotism," a postnational, sober form of collective selfhood based upon abstract yet universalist ideas of freedom, democracy, and human rights expressed in a state's constitution:

*With [the] decoupling of shared cultural identity from the formation of society and the form of the state, a nationality that has certainly become more diffuse becomes detached from nationality in the sense of citizenship in a nation and leaves room for political identification with what the population considers worthy of preserving the postwar development of its own state at any given time. In the Federal Republic, Dolf Sternberger has observed a certain constitutional patriotism, that is, a readiness to identify with the political order and the principles of the Basic Law.*

*This more sober political identity has detached itself from the background of a past centered on national history. The universalist content of a form of patriotism crystallized around the democratic constitutional state is no longer pledged to continuities filled with victories; this form of patriotism is incompatible with the*

*secondary quasi-natural character of a consciousness that has no insight into the deep ambivalence [sic] of every tradition, into the concatenation of things for which amends cannot be made, into the barbaric dark side of all cultural achievements to the present day.* (1989: 256-7; also see Delbruck 1993)

Several historians of Japan have contended that “constitutionalism,” a political philosophy or “ideology” in which constitutional principles assume supreme and moral ideals, had existed prior to 1947. Akita (1967), for example, argues that the legitimacy of Japan’s first modern government established in the late nineteenth century comes from the Meiji (that is, prewar) Constitution of 1868. Beckman (1957) also traces the development of constitutionalism since 1868, indicating that, in its making, the prewar Constitution contains some populist and democratic ideals. Gluck (1992) views that the new Constitution is at least in part an extension of the Meiji Constitution, hence the postwar constitutionalism too an extension of the old one.

Yoichi Higuchi (1989; 1990; 1992), a respected constitutional scholar, however, disputes such of the historians’ understanding. He argues that the prewar Constitution is in fact an “oxymoron,” given the fact that it has nothing to do with the modern principle of “governance by law.” The prewar Constitution is not a “constitution” in a legal sense, for in it the “will of the nation” is simply absent. It is rather, argues he, an expression of the premodern idea of the Japanese nation as the single divine family in which the emperor is the supreme. Namely, constitutionalism is a manifestation of the nation’s voluntary consent toward constitutional principles, making democracy prerequisite for the existence of genuine constitutionalism.

The position advanced by Higuchi, that is, no constitutionalism is possible absent the genuinely modern democracy (and democratic constitutions), is widely supported by constitutional scholars outside Japan. Sharma (1962) discusses the development of constitutionalism in the “third” world and claims that democracy, constitutionalism, and modern states are so closely related that we cannot separately discuss one without the others; hence the concept “undemocratic” constitution is impossible. Parker (1994) also comments that a genuine constitution is basically populist: “The People Rule” should be the kernel principle of any modern constitutional state. And it is Preuss’s (1995) conclusion that constitutionalism is a “revolutionary” and “progressive” idea: it authorizes the nation’s effort toward a societal “progress.”

It is in this principle of popular sovereignty that the nation’s “new self-identity”

lies. Higuchi argues that every movement that calls for “revision” of the Constitution is grounded in a belief that the sovereignty should be “returned” to the emperor. Denouncing that the new Constitution that places the “nation” as the sovereign is “unJapanese” and “culturally” and “historically incorrect,” revisionism is an attempt to restore the pre-war Constitution that stipulates the emperor as the “living deity,” the symbol as well as the sovereign of Great Imperial Japan. Sato (1990) also discusses problematic of popular sovereignty in the history of revisionism. Having backtracked several revisionist movements for the past forty years, however, he argues that revisionism is now almost dead in postwar Japan, and that the democratic ideal of popular sovereignty has already become a fact of life of the Japanese.

### *3. Pacifism: The ideal and the real*

Auer (1990) contends that pacifism is indeed what makes the Constitution of Japan unique and distinct in the world. Maki (1990) also writes that this constitutional principle is the most peculiar, for it has nothing to do with the structure of government, the powers of its constituent elements, or the relationship between the government and the people, all of which are primary constitutional concerns. Article 9 of the Constitution of Japan reads as follows:

*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 means of settling international disputes.*

Indeed, the term pacifism or *Heiwa shugi* has played a significant role in the formation of national policies (and psyche) for the past fifty years. Dower (1989) notes that, in postwar foreign relations, the principle of pacifism is always manifested and works as a “guideline.” Hein (1994) further argues that “peace” and “democracy,” as a set of “ideographs” (although she does not use this rhetorical term), have often “competed,” creating a dilemma in its choice over economic and foreign trade objectives.

Pacifism embedded in the postwar Constitution is not only politico-practical, however. It is also a moral imperative. Buruma (1992) argues that this article in the Constitution expresses and reminds the Japanese of “wages of guilt” with which they have lived in the postwar era. “The Constitution does little more than provide a venue for people to come together and assess the political and social situation in which they must resolve conflicts. If politics is ‘the art of the possible,’ the Constitution is a venue in which we decide what ‘the possible’ is” (Anderson

1995: 266).

Moreover, pacifism that the Japanese desire is real hence “possible.” Douglas Lummis, a “western” scholar who currently teaches at a Japanese college, claims that it should become part of the “universal common sense.” Pacifism is not a fiction; it is something both real and ideal:

*If Japan's peace common sense is markedly different from the common sense of other countries, it would be a great mistake to make this distinction into some kind of fixed cultural category. It is a political and historical matter, not a cultural one. And I rather think the Japanese common sense is close to what universal common sense would be in a healthy world – that is, common sense itself. It is a slander to say that Japan's pacifism is naive and not grounded in the realities of modern politics. It was born among a people who came face-to-face with the realities of modern politics in an encounter of devastating intensity, people standing up from the rubble of cities that had been carpet-bombed, fire-bombed, and atom bombed, and choosing a different life. They knew more about modern political reality than any bomber pilot looking down from the sky. (1993: 188)*

1994 Nobel Prize in literature was given to a Japanese writer named Kenzaburo Oe. He has long been a mouthpiece for the postwar generation Japanese; in his Nobel Prize lecture, Oe speaks about the intersection between war, pacifism, history, and “ambiguous” postwar Japanese identity. Allow me to cite his words in length:

*In the recent years there have been criticisms leveled against Japan suggesting that she should offer more military forces to the United Nations forces and thereby play a more active role in the keeping and restoration of peace in various parts of the world. Our heart sinks whenever we hear these criticisms. After the end of the Second World War it was a categorical imperative for us to declare that we renounced war forever in a central article of the new Constitution. The Japanese chose the principle of eternal peace as the basis of morality for our rebirth after the War.*

*I trust that the principle can best be understood in the West with its long tradition of tolerance for conscientious rejection of military service. In Japan itself there have all along been attempts by some to obliterate the article about renunciation of war from the Constitution and for this purpose they have taken every opportunity to make use of pressures from abroad. But to obliterate from the Constitution the principle of eternal peace will be nothing but an act of betrayal against the peoples of Asia and the victims of the Atom Bombs in Hiroshima and*

*Nagasaki. It is not difficult for me as a writer to imagine what would be the outcome of that betrayal.*

*The pre-war Japanese Constitution that posited an absolute power transcending the principle of democracy had sustained some support from the populace. Even though we now have the half-century-old new Constitution, there is a popular sentiment of support for the old one that lives on in reality in some quarters. If Japan were to institutionalise a principle other than the one to which we have adhered for the last fifty years, the determination we made in the post-war ruins of our collapsed effort at modernisation – that determination of ours to establish the concept of universal humanity would come to nothing. This is the spectre that rises before me, speaking as an ordinary individual. (1994)*

#### *4. Making (of) a constitutional culture (work)*

Finally, it is important to note that the Constitution of Japan is not solely “Japanese” in its composition. From a “transcultural” perspective, Beer (1979; 1990), an American constitutional scholar, has found several important developments of Japan’s constitutional culture in the postwar period. The Constitution of Japan has multiplicity of voices: It represents several distinct traditions of liberalism that had been developed and nurtured by political thinkers in the east and west for the last hundred years; the most influential of all being the tradition of “American constitutionalism” that General McArthur and GHQ implanted for the first time in the soil outside the North American continent (Also see Ward 1987; Spann 1963; Inoue 1991).

Okudaira (1990) agrees with Beer and documents that there exist Japanese, American, and European traditions of liberalism traceable in the new Constitution, which, he adds, are clearly reflected in the supreme court decisions in Japan for the past forty years. Ukai (1979) further contends that American constitutional principles are well-received and have become part of the Japanese political life in the postwar era.

Takami (1987) holds that part of the reason that the Constitution of Japan has been kept “alive” in postwar Japan is due to the effort made by *Kenpo mondai kenkyu kai* (the Study Group of Constitutional Problems), a grass-roots organization established in 1958 by a group of liberal intellectuals. The membership included leading figures in a variety of professions: literary critic Yoshimi Takeuchi, social psychologist Sakae Agatsuma, sociologist Ikutaro Shimizu, and Nobel Prize winning physicist Hideki Yukawa. For the purpose of promoting democratic ideals embedded in the new Constitution, they held public

lectures and conferences throughout the country and published books, magazine articles, and political commentaries so that their grass-roots discourses about the Constitution could reach the widest possible readership and audience.

One member of the Study Group was philosopher Osamu Kuno. A disciple of Kiyoshi Miki, a Marxist-sympathetic scholar who was tortured to death by the authorities during the Second World War, Kuno was known nation-widely as a philosopher of civil movement. And he proposed that, in order to truly embrace the postwar Constitution and its cultural imperatives, we all should participate in the *discourse* of the Constitution, that is, to engage in a dialectic between its text and our life experiences:

*Today, let me suggest the following: Each of us should read the Constitution and understand its meaning from our own life-experiential point of view. . . . Forget about commentaries and “instructional manuals” [about the Constitution]; approach the text of the Constitution itself with our own interest or need in life and determine what the actually means, what is the most important therein, etc. (1969: 11)*

Engaging in such dialectics is the only way to keep the Constitution alive. Kuno continues:

*Unfortunately in Japan, we tend to think that a public document (koubun[i]) always comes from the top, that is, it is always possessed and issued by the authorities, and that we understand its meaning in a way the authorities tells us to understand. . . . It is high time that, as individual citizens, each of us should practice to understand a language of public document in our own way, reading a public document in our own terms, based on our own life experience. Otherwise, nominalization of the Constitution is unavoidable. And this nominalization not only makes the Constitution nominal; it also means that the official interpretation [of the Constitution] becomes the one and only meaning of the Constitution. (15)*

“You can fulfill the responsibility as a Japanese citizen only if you carefully read the Constitution of Japan... , think and participate in discourse with your own opinion in mind” (Maegaki 2000: 2). With the currently ongoing debate over the controversial “emergency security” legislation in the national Diet (parliament) that extends Japan’s military presence in the Asia-Pacific region, the Japanese are once again getting more attentive to the Constitution of Japan as ideal and real.

## 5. Conclusion

It is unfortunate that students of public argument have been ignorant of the

significance of constitutionalism in postwar Japan. To date, most research in Japanese rhetoric has ended up emphasizing the “unique cultural traits” that influence Japanese rhetorical practice (Ellingsworth 1969; Morrison 1972; Trommsdorf 1983; Becker 1985; Okabe 1990; Jensen 1994), ignoring, however, that there exists a tradition of transcultural discourse such as the Constitution. Despite its alleged “foreign-ness,” the postwar Constitution has become a symbol of postwar Japanese political identity.

*“More than half the electorate today have graduated from primary school since the new constitution was adopted. It is irrefutable that its concepts have become part of our Zeitgeist to such an extent that people often think in terms of this value system without being consciously aware of it”* (Tanaka 1987: 126).

It is high time that scholars of Japanese rhetoric should go beyond the depressing state of “curiosity” scholarship and analyze a new “cultural ideals” embedded in postwar discourses. Such undertaking, I believe, would enable us to explore the possibility of rhetoric that addresses the universal concern. For instance, a rhetoric of pacifism embedded in the Constitution of Japan may constitute a good example of what Thomas Goodnight (1987) calls a “generational discourse,” which “emerges to reorder much of what has gone before such as in. . . the demolishing of religious hegemony, the recognition of class, the collapse of the prospects of international order, ... or even the advent of the nuclear age itself” (134-5).

People in separate cultures oftentimes are concerned about “common problems”; and so are their rhetorics. It is simply counter-intuitive to think of their rhetoric as addressing their own local concerns only. Our common sense tells us that there are problems that are of universal concern; and their public discourses do address these concerns.

## NOTES

**[i]** The word *koubun* literally means “official” as well as “public” or “popular” document, which complicates the translation.

## REFERENCES

- Akita, G. (1967). *Foundations of constitutional government in modern Japan 1868-1900*. Cambridge: Harvard University Press.
- Anderson, V. (1995). Antithetical ethics: Kenneth Burke and the constitution. *Journal of Advanced Composition* 15, 261-79.



- Auer, J. E. (1990). Article nine of Japan's Constitution: From renunciation of armed forces 'forever' to the third largest defense budget in the world. *Law and Contemporary Problems* 53, 171-188.
- Becker, C. B. (1986). Reasons for the lack of argumentation and debate in the far east. *International Journal of Intercultural Relations* 10, 75-92.
- Beckman, G. M. (1957). *The making of the Meiji Constitution: The oligarchs and the constitutional development of Japan, 1868-1891*. Lawrence: University of Kansas Press.
- Beer, L.W. (Ed.), (1979). *Constitutionalism in Asia: Asian views of the American influence*. Berkeley: University of California Press.
- Beer, L.W. (1982). Constitutional revolutions in Japanese law, society and politics. *Modern Asian Studies* 16, 33-67.
- Beer, L.W. (1984). *Freedom of expression in Japan: A study in comparative law, politics, and society*. New York: Kodansha International.
- Beer, L.W. (1989). Law and liberty. In: T. Ishida and E. S. Krauss (Eds.), *Democracy in Japan* (pp.67-87), Pittsburgh: University of Pittsburgh Press.
- Beer, L.W. (1990) Freedom of expression: The continuing revolution. *Law and Contemporary Problems* 53, 39-70.
- Beer, L.W. (1990). The influence of American constitutionalism in Asia. In: G. A. Billias (Ed.), *American Constitutionalism Abroad: Selected Essays in Comparative Constitutional History* (pp.113-142), New York: Greenwood Press.
- Billias, G. A. (Ed.), (1990). *American constitutionalism abroad: Selected essays in comparative constitutional history*. New York: Greenwood Press.
- Burke, K. (1945). *A grammar of motives*. Berkeley: University of California Press.
- Buruma, I. (1994). *Wages of guilt: Memories of war in Japan and Germany*. New York: Farrar, Straus, and Giroux.
- Delbruck, J.(1993). Global migration-immigration-multiethnicity: Challenge to the concept of the nation-state. *Indiana Journal of Global Legal Studies* 2, 45-64.
- Dower, J. W. (1993). Peace and democracy in two systems: External policy and internal conflict. In: A. Gordon (Ed.), *Postwar Japan as History* (pp.3-33), Berkeley: University of California Press.
- Eidlin, F.(Ed.), (1983). *Constitutional democracy: Essays in comparative politics*. Boulder: Westview Press.
- Ellingsworth, H. (1969). National rhetorics and inter-cultural communication. *Today's Speech* 17, 34-39.
- Gluck, C. (1985). *Japan's modern myths: Ideology in the late Meiji period*. Princeton: Princeton University Press.

- Goodnight, B. T. (1987). Generational argument. In F. H. van Eemeren, R. Grootendorst, J. A. Blair, and C. A. Willard (Eds.), *Argumentation: Across the Line of Discipline* (pp.129-144), Dordrecht: Foris.
- Gordon, A. (Ed.), (1993). *Postwar Japan as history*. Berkeley: University of California Press.
- Habermas, J. (1989) Historical consciousness and post-traditional identity. In *The New Conservatism: Cultural Criticism and the Historians' Debate* (pp.249-267), (Trans. Shierry Weber NicholSEN). Cambridge: MIT Press.
- Henderson, D. F. (Ed.), (1968). *The Constitution of Japan: Its first twenty years, 1947-67*. Seattle: University of Washington Press.
- Higuchi, Y. (1989). *Jiyu to kokka: Ima "kenpo" no motsu imi (Freedom and the State: What the Constitution Means Today)*. Tokyo: Iwanami.
- Higuchi, Y. (1990). The Constitution and the emperor system: Is revisionism alive? *Law and Contemporary Problems* 53, 51-61.
- Higuchi, Y. (1992). *Mo ichido kenpo wo yomu (Re-reading the Constitution)*. Tokyo: Iwanami.
- Ishida, T. and E. S. Krauss (Eds.), (1989). *Democracy in Japan*. Pittsburgh: University of Pittsburgh Press.
- Inoue, K. (1991). *MacArthur's Japanese Constitution: A linguistic and cultural Study of its making*. Chicago: University of Chicago Press.
- Jensen, J. V. (1992). Values and practices in Asian argumentation. *Argumentation and Advocacy* 28, 153-166.
- Kuno, O. (1969). *Kenpo no ronri (A logic of the constitution)*. Tokyo: Misuzu.
- Lummis, C. D.(1993). Japan's radical constitution. In: S. Tsuneoka, C. D. Lummis, and S. Tsurumi (Eds.), *Nihonkoku kenpo wo yomu (Reading the Constitution of Japan)* (pp.155-93), Tokyo, Kodansha.
- Maegaki (The preamble). (2000). In: *Nihonkoku kenpo (The Constitution of Japan)*, (pp.1-2). Tokyo: Dowasha.
- Maki, J. M. (1990). The Constitution of Japan: Pacifism, popular sovereignty, and fundamental human rights. *Law and Contemporary Problems* 53, 73-88.
- Morrison, J. L. (1972). The Absence of a rhetorical tradition in Japanese culture. *Western Speech* 36, 89-102.
- Oe, K. (1994) *Japan, the ambiguous, and myself*. Available at: <http://www.nobel.se/literature/laureates/1994/oe-lecture.html>.
- Okabe, R. (1990). The impact of western rhetoric on the east: The case of Japan. *Rhetorica* 8, 371-388.
- Okudaira, Y. (1990). Forty years of the Constitution and its various influences:

- Japanese, American, and European. *Law and Contemporary Problems* 53, 17-50.
- Parker, R. D. (1994). *Here, the people rule: A constitutional populist manifesto*. Cambridge: Harvard University Press.
- Preuss, U. K.(1995). *Constitutional revolution: The link Between constitutionalism and progress* (Trans. Deborah Lucas Schneider), New Jersey: Humanities Press International.
- Sato, I. (1990). Comment: Revisionism during the forty years of the Constitution of Japan. *Law and Contemporary Problems* 53, 97-103.
- Sharma, I. D. (1962). *Modern constitution at work*. New York: Asia Publishing.
- Spann, R. N. (Ed.), (1963). *Constitutionalism in Asia*. London: Asia Publishing.
- Spivak, G. C. (1990). Constitutions and cultural studies. *Yale Journal of Law and the Humanities* 2, 133-147.
- Takami, K. (1987 May). *Goken-ron no pathos to logos: Kenpo mondai kenkyu-kai ga toikaketamono (The pathos and logos of pro-constitutional discourse: The questions posed by the study group on constitutional problems)*. Sekai 755, 48-67.
- Tanaka, H. (1987). The conflict between two legal traditions in making the Constitution of Japan. In: R. E. Ward and Sakamoto Yoshikazu (Eds.), *Democratizing Japan: The Allied Occupation* (pp. 107-132). Honolulu: University of Hawaii Press.
- Trommsdorff, G. (1983). Value changes in Japan. *International Journal of Intercultural Relations* 7, 337-360.
- Ukai, N. (1979). The significance of the reception of American constitutional institutions and ideas in Japan. In: Beer, L.W. (Ed.), *Constitutionalism in Asia: Asian views of the American influence*, (pp.113-27). Berkeley: University of California Press.
- Ward, R. E. (1987). Presurrender planning: Treatment of the emperor and constitutional changes. In: R. E. Ward and Y. Sakamoto (Eds.), *Democratizing Japan: The Allied Occupation* (pp. 1-41). Honolulu: University of Hawaii Press.
- Ward, R. E., and Y. Sakamoto (Eds.), (1987). *Democratizing Japan: The Allied Occupation*. Honolulu: University of Hawaii Press.