Rejection of War: Japan’s Constitutional Discourse and Performance

Of all the great-power signatories of the Paris Peace Pact of 1928, Japan since 1945 has pursued most impressively its peaceful spirit in law and policy. For over fifty years commitments to international peace, human rights, and popular sovereignty, not so much the Emperor system, have been central to Japan’s constitutionalism. Article 9’s rejection of war and of force to settle international disputes continues in effect. The individual Japanese enjoys a wide spectrum of rights and freedoms under Chapter 3, Articles 11–40 and Article 97 of the Constitution of Japan. “All of the people shall be respected as individuals” and generally these rights and freedoms are to be “The supreme consideration in legislation and in other governmental affairs” (Article 11). Over time, social and political rights have enjoyed increased protection and promotion under law. In some areas of performance, such as democratic stability, pre-collegiate education, and health care delivery, Japan has become a world leader.

All but a few of the 191 nation-states in the United Nations in 2003 have a single document national constitution; over 135 have been ratified since 1970. The exceptions are the United Kingdom, New Zealand, Israel, and three states which use the Quran as their basic document, Saudi Arabia, Libya and Oman. The 1947 Constitution of Japan is one of the world’s oldest and most effectively implemented basic laws, but as in all constitutional democracies, political culture generates imperfect compliance with constitutional demands.

Since 1946 Japan has enjoyed an unbroken succession of national and local elections under democratic law. All men and women over twenty have had the right to vote, and exercise that right more than Americans do. Since the 1990s, an on-going legal reform process has attacked stubborn problems of malapportionment and excesses in political fund-raising which have reduced occasional corruption, but campaign finance is less of a problem for democracy than in the United States. Much creative improvement has been achieved in Japan; problems remain.

In recent years, far-reaching administrative reforms have been proposed to strengthen the Prime Minister, the Cabinet and the Diet in their relations with the
formally subordinate but powerful bureaucracy, and to enhance the position of local governments vis-à-vis the central government. The goal is a more democratic leadership structure. Noteworthy reforms in the judiciary and in legal education are also afoot early in the 21st century to better integrate reform policies with the daily lives of the self-governing people.

Under Article 96, amendment of the Constitution of Japan requires approval by a two-thirds majority of all members of each House of the Diet, followed by approval by a majority of those voting in a special or regular election. For half a century the possibility of amendment has been much discussed, but no amendment has been passed. From 1958 until 1964, a Commission on the Constitution (Kempo Chosakai) conducted an exhaustive study and unearthed no flaws, omission or needed corrections regarding basic principles of the document. In 1999 the Diet approved the establishment of two “Committees to Investigate the Constitution” (Kempo Chosakai). The House of Representatives committee has fifty members and the House of Councillors committee forty-five. (The House of Representatives is the larger and more powerful of the parliamentary assemblies.) Their mission is to conduct a “broad and comprehensive” study and to submit separate reports with recommendations to the Speaker of each House. Each Speaker will then submit the report to the full House for debate and possible action. What the results of this multi-year study will be is not yet clear, but the issue of amendment itself is no longer as incendiary as in the decades following World War II. Among possible changes are clarification of the right of self-defense under Article 9, easing the rigor of the amendment process, and the establishment in the basic document of constitutional rights to privacy and a clean environment.

Since World War II, more has been written in Japan about Article 9 pacifism than about any other topic of Japanese legal discourse. The remainder of this talk will focus on that provision of the Constitution. Article 9 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 a means of settling international disputes.

2. In order to accomplish the aim of the preceding paragraph, land, sea and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.”

Article 9 is in the spirit of the Preamble:

“We, the Japanese people, . . . determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government . . .

“We, the Japanese people, 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 . . . We recognize that all the peoples of the world have the right to live in peace, free from fear and want.”

Theoretically consistent philosophical or religious pacifism rules out violent response to individual or collective violence. Genuine pacifism requires, in all