

Postwar Policy by the Allied Forces in Japan

On 15th August in 1945, the Emperor declared the acceptance of the “Potsdam Declaration” **under only condition to uphold the “Kokutai”**. The Allied Forces agreed to this condition. Eventually, the Imperial Army and Navy surrendered. The Allied Forces, mainly the American Forces, occupied the whole Japan soon and began with its occupation policy.

Above all, **“Abolishment of Tenno system” was never required by the Allied Forces**. Indeed, the most part of the Japanese people had been greatly concerned about the *safety of the Emperor*. They were ready to accept any directive of the occupation army in order to retain the *Tenno* system and to avoid any accusation of the war responsibility against the Emperor. This seems to be a real reason why **the Japanese did not try any resistance against the occupation policy**. In other words, they did not understand what the occupation army intended to achieve through its policy (total reorganization of the Japanese society). They were very surprised when the GHQ declared its major reform plans.

Compared with the German case, *the question of the war responsibility of the Japanese Emperor* has more complicated characters. Hitler was a real despot. Not only Jews, but also many German people suffered from the barbarism of the Nazis. After all, Nazis was merely a political party. But in Japan, the entire Imperial Army and Navy promoted the expansion policy and performed the war against USA and England. In a certain sense, they were never selfish. Moreover, the Emperor was always “clean and sacred” for the Japanese people. They did not recognize how seriously their Human Rights had been violated and what crimes had been committed in Asian countries in Emperor's name. They felt rather responsible for the difficulties to the Emperor. In this consciousness of the responsibility to the Emperor, the Japanese people identified themselves with those who were really responsible for the war (war criminals). Therefore, the Japanese people were (or “are still”) incompetent to proceed with the prosecution of the war criminals.

Supreme Goals of the Occupation Policy

1. **To remove military threats** to the safety of the USA and the international peace
2. To remove political, legal, social and economic factors which had blocked democratization in Japan, and **to establish a democratic and peaceful regime before the socialism and communism would gain popularity among the Japanese people**

Main Reform Measures for the Total Reorganization of the Japanese Society

1. **Prosecution of the war criminals** and banishment from public positions of those persons who were responsible for the war (**→ This measure was not sufficiently enforced mainly due to the “Cold War”.**)
2. **Demilitarization**
 - a) Dissolution of armed forces (**→ Imperial Army and Navy disappeared.**)
 - b) Closing all military sectors in industry (ex. ship and airplane building)
3. **Democratization** of political and social structures (“Five Major Reforms”)
 - a) Abolishment of all systems to oppress Human Rights, especially freedom of speech, publishing, meeting and religion (**→ “State Shintoism” was forbidden.**)
 - b) Emancipation of women and equalization of both genders (**→ especially Law of Family and Law of Succession were totally rewritten, and the “IE”-System was abolished. Finally, women acquired the voting right.**)
 - c) Encouragement of labor unions
 - d) Dissolution of authoritarian structures in public organizations and rural communities (**→ The Emperor was completely deprived of his political power.)**
 - e) Establishment of a democracy-oriented education system (**→ The Confusian Ethics were completely deleted from curricula of the schools.)**
4. **Liberalization of economic structures**
 - a) Dissolution of 15 conglomerates and division of monopoly firms
 - b) Land reform to create independent farmers (**→ The landlords, the barrier which separated the majority of the population - “Tenant farmers”- from the constitutional democracy, suddenly disappeared.**)

Rapid Proceeding of Democratization towards a New Constitution

Aug. 1945	Begin of the dissolution of the Imperial Army and Navy
Sept.	Directive to arrest all suspected war criminals
Oct.	Declaration of “ Five Major Reforms ” Abolishment of the “ <i>Law on the Maintenance of Public Security</i> ” Directive of “ Dissolution of 15 conglomerates ”
Dec.	Directive for the “ Agrarian Reform ” Enactment of the “ Labor Union Law ” Directive to suspend all lessons on moral, history and geography in schools
Jan. 1946	Declaration of “Human Emperor” Begin of the banishment of all responsible persons from public positions
Feb.	The first Agrarian Reform (planed) ; <i>Land owners should be forced to sell their land to its tenant farmers. Trading conditions should be agreed through the negotiation between owners and tenant farmers. This reform plan could not be enforced because GHQ found it not radical enough.</i> Prime Minister Kijuro Shidehara (幣原喜重郎) brought his draft amendment to the Constitution to General MacArthur in GHQ. Shidehara had thought that some partial changes in the constitutional articles would be enough, for example, limitation of the supreme power of the Emperor. However, GHQ rejected this draft and announced its own draft. Negotiation between both sides for a new Constitution began; MacArthur told in his memoirs that Article 9 (Renunciation of War) was not his idea, but Prime Minister Shidehara proposed it.
Apr.	The first general election under the genuine universal suffrage
May	Opening of the 90. session of the Parliament under the Meiji Constitution; Discussion about “ <i>Amendment to the Constitution</i> ”, in reality drafting work of <u>a new Constitution</u> , began.
Sept.	Enactment of “ Labor Relations Adjustment Law ”
Oct.	The second enforcement of the Agrarian Reform (Compulsory Purchase); <i>the state bought tenanted land from its owners for fixed price and sold it to tenant farmers for a low price.</i>
Nov.	Promulgation of the “ Constitution of Japan ”
Mar. 1947	Enactment of “ Fundamental Law of Education ”
Apr.	Enactment of “ Labor Standards Law ”, “ Anti-Monopoly Law ” and “ Economic Decentralization Act ” (Antitrust Act) Enforcement of a new school system in American style (6-3 school system)
May	Enforcement of the “ Constitution of Japan ”
Sept. 1951	Treaty of Peace with Japan in San Francisco (the end of the occupation) Treaty of Mutual Cooperation and Security between the United States and Japan

Current Constitution of Japan (1946)

Main Principles of the new Constitution of 1946

- A) Sovereignty of people **Preamble, Art. 1** → Emperor as a “Symbol”
- B) Protection of Human Rights Preamble, Art. 10 - 40
- C) Pacifism **Preamble, Art. 9**
- D) Rule of law

« Reference 1 »

What does the principle “Rule of Law” really mean in its modern sense?

1. Protection of Human Rights
2. Division of State's Power (Legislative, Executive, Judiciary)

In the Western European countries, the modern democracy (“sovereignty of people”) was achieved through hard struggles against the executive power of absolute kings. Hence, the legislative power (“Parliament”) has a prior position to the other two powers. According to this tradition, the exercise of Executive power should be strictly controlled through regulations by the legislative power, and Judiciary should apply laws mechanically.

In the USA, however, its independence was achieved through the struggle under the strong leadership of the Executive (“President”) against the Legislative of colonial masters (England).

3. Independence of Judiciary and Judicial Constitutional Review

This is rather an American tradition. Independence of the Judiciary in the European countries was quite weak. **“Judicial Constitutional Review”, namely the control power of the Judiciary over the Legislative and the Executive was established as “judge-made law” in the USA (1803).**

« Reference 2 »

Two Models of Judicial and Constitutional Review

1. **Abstract Normative Control (European style)**

An extraordinary court will be founded for this task. This court has a right to examine all legislatures and exercise of the executive power in regard of their constitutionality. This control may be exercised independently from actual and concrete case.

2. **Actual and Specific Control (American style) → Art. 76, 81, 97- 99.**

Any ordinary court has a right to examine constitutionality of legislations by the Legislative and activities of the Executive, but only when this control is necessary in a specific case.

Pacifism in the new Constitution of 1946 (Art. 9) and Judicial Constitutional Review

- A) Renunciation of “war as a sovereign right of the nation and as means of settling international conflicts”;
- B) Prohibition to maintain any “land, sea, and air forces as well as other war potential”;
- C) Abandonment of “state's right of aggression” (right to declare war to other countries).



However ...

1. **“Treaty of Mutual Cooperation and Security between the United States and Japan”, 1951**
2. **Foundation of “Self-Defense Forces”, 1954**

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Just typical subjects for the Judicial Constitutional Review

Crucial Issue 1 What is “land, sea, and air forces as well as other war potential”?
Should be foreign troops in the Japanese territory included in it?

Crucial Issue 2 Should Japan abandon also *the right to defend itself against aggressions* opened by other countries *(Individual Self-defense)*?

The Japanese government has insisted that Art. 9 provides to abandon the right to aggress other countries as means of settling international disputes, but not the right of self-defense. According to this opinion (this is also the ruling opinion in Japan), *the word “war” in Art. 9 means only “aggressive war”, “preemptive attack”, and “invasion”*; military activities for self-defense due to foreign aggressions are not implied in “war” in this sense. Therefore, *any military potential which would be required and necessary for the effective self-defense in case of expected (or possible) aggressions should be excluded from “armed force” in Art. 9.*

The government is of the opinion that “the Self-Defense Forces” (founded in 1954) should be perfectly constitutional in so far as *its scale, formation, and its equipments are kept within the scope which is really necessary and reasonable in the actual international security situation.*

This interpretation of Art. 9 could be very realistic, but can not weep away all unclarity and suspicion of violation of Art. 9.

Indeed, under the current Constitutional Review (Art. 81), there is not any effective control and supervision system as “judicial review” in regard of necessity and reasonableness of the scale, formation, and equipments of the Self-Defense Forces. Such issues are discussed and regulated in the Parliament, but *it is not any true “Judicial and Constitutional Review”. It is merely a “self-control” of the Legislative.* The judicial authority for this purpose must be independent from the Parliament according to the principle of Rule of Law.

Crucial Issue 3 Another problem: International military alliance and *“Collective Self-Defense”* (→ Art. 51, “Charter of the United Nations”)

International military alliance such as *“Treaty of Mutual Cooperation and Security between the United States and Japan”* in 1951, 60 and 70 are subjects which must be taken under the control of Art. 9. Also in this point, the Japanese government insists on the constitutionality of these treaties and argues that these treaties were concluded only for the security of Japan and not for any aggression war.

Normally, international military alliance obligates its partners to the bilateral duty of defense. But such bilateral duty of defense would be for Japan a violation of Art. 9. For example, suppose that a certain country attacked the USA, and the Japanese Self-Defense Forces participated in the battle against this country to defend the USA. This military activity would mean, however, one case of “preemptive attack” or “aggression”, because this country has not attacked Japan yet.

For this reason, the Japanese government is of the opinion that *Art. 9 does allow the right of Self-Defense, but prohibit any “Exercise of the right of Self-Defense for collective security”*. Therefore, the security treaty between the USA and Japan obligates the Japanese government to offer grounds and ports for the US. Army and to cooperate with it for the internal security and international peace in the East-Asian region, but *the Japanese government does not have any duty to defend the territory of the USA.*

Such a method of “Unilateral Duty”-Solution could work in the actual relationship between the USA and Japan, but not in general. In the future, there will be probably certain cases in which Japan will have to conclude further military security treaties with other Asian countries. In such cases, other alliance partners would not accept this “Unilateral Duty”-Solution.