

# **The 1947 Constitution of Japan: the Process of Democracy in Japanese Society**

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## Introduction

On July 26, 1945, America, China, and England issued the Potsdam Declaration, which declared the end of the war in Japan and the postwar policy of the allies, toward the Japanese government and its people. On August 14, 1945, Japan, which was facing defeat, accepted the declaration, influenced by the release of the atomic bomb on Hiroshima and Nagasaki. After the acceptance of this declaration, Japanese government was put under the authority of the Supreme Commander for the Allied Powers (SCAP). The policy of GHQ (General Headquarters) was to change Japanese society from its pre-war imperial system to democracy and popular sovereignty. The reform of the Japanese Constitution was an initial step in Japanese reconstruction, because the GHQ regarded the revision of the Constitution as a shortcut to change Japanese ideology away from its imperial roots. In fact, Kyoko Inoue, an associate professor of linguistics, states that “a constitution is the product of a particular political tradition and historical circumstances.”<sup>1</sup>

The 1889 Meiji Constitution characterized Japanese imperialism as the primary formulation of Japanese society. By the end of the war, however, the Meiji Constitution was already too out of date to be the democratic document that the GHQ wanted. The Japanese Constitution was jointly written by the government of occupied Japan and the American government, in a process taking nine months. On May 3, 1947, this Constitution was executed by “following amendment procedures in the Meiji Constitution.”<sup>2</sup> Through the revision of the Emperor System, of delimiting human rights,

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<sup>1</sup> Kyoko Inoue, *MacArthur's Japanese Constitution*. (Chicago: the University of Chicago Press, 1991), 68.

<sup>2</sup> Lawrence W. Beer, and John M. Maki, *From Imperial Myth to Democracy*. (Boulder, CO: University Press of Colorado, 2002), 77.

and of the political system, the new Constitution brought more liberalism, democracy, and popular sovereignty to Japanese society.

First of all, the definition of the Emperor changed before and after World War II in the Constitution. GHQ, the Supreme Commander of Allies Power, required the change of the Emperor sovereignty under the old Constitution, because they wanted social reform in Japan. How did GHQ and the Japanese government compromise the definition of the Emperor in the new Constitution? As a result, how did the Emperor System in the 1947 Constitution influence postwar Japanese society?

Second, the parliamentary system was largely reformed by the influence of GHQ in the new Constitution because of the emphasis on creating a more liberal and democratic society. After the war, the Diet was established as only law-making organ of a nation. The spirit of this organ was based on U.S. political principles, such as the division of the three powers of government (Legislative, Executive, and Judicial). At the same time, the Japanese government adopted the British Parliamentary system in the Cabinet. How did the Japanese political organs change under the new Constitution? What roles did the legislature and executive in Japan have as a government system? What was the authority of a Prime Minister in Japan is bicameral system? How did the change of those parliamentary systems affect the democratic and liberal reform efforts of the Japanese government and GHQ?

Thirdly, the rights and duties of the people, Chapter 3 in the new Constitution, clarified the authority of popular sovereignty by the laws. How were the fundamental human rights defined under the new Constitution? The suffrage rights for women and sexual equality was influenced in postwar Japanese society by the authority of the

Constitution. How was sexual equality under the new Constitution different from the pre-Constitution era? How were the human rights guaranteed by the laws?

Finally, the revision of the Meiji Constitution had social and economic implications for the postwar Japanese. How did the influence of the new Constitution connect with the rapid growth of the economy and the emphasis on a liberal society?

The focus of the 1947 Constitution of Japan will help to explain the change from pre-war to postwar Japanese society. Moreover, it helps explain how the Constitutional reform expanded democracy during the U.S. occupation of Japan.

### **The Emperor System**

Chapter 1 of the 1947 Constitution focused on the status of the Japanese Emperor. The existence of an Emperor caused the most important discussion in the revision of the new Constitution, because the Meiji Constitution emphasized the Emperor as “the center of political power not by divine right but by divine descent.”<sup>3</sup> The existence of the Emperor was one of the obstacles to postwar Japanese democracy and liberalism. For the Japanese reconstruction, GHQ needed to reform the Constitution to reduce the power of the Emperor to interfere with politics.

In documents selected from the published *Record of Negotiations Related to the Acceptance of the Potsdam Declaration*, the Japanese government proposed to accept the Potsdam Declaration but without prejudicing the privilege of the Emperor as a sovereign ruler, by inserting a reference to “a line of Emperors unbroken for ages eternal.”<sup>4</sup> This phrase explained that Japanese governors, who served under the imperial government,

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<sup>3</sup> George M. Beckmann, *The Making of the Meiji Constitution: The Oligarchs and the Constitutional Development of Japan, 1868-1891*. (Westport, CONN: Greenwood Press, 1975), 84.

<sup>4</sup> National Diet Library. “Topic 1 Popular Sovereignty and the Emperor System.” *Birth of the Constitution of Japan*. (May 3, 2004) <http://www.ndl.go.jp/constitution/e/ronten/01ronten.html>.

did not want to abolish the Emperor system under the U.S. occupation. For example, when Joji Matumoto, a chairman of the Constitutional Problem Investigation Committee (Matumoto Committee) to revise the Meiji Constitution, was entrusted to head the Constitution by the post-war Japanese government, he did not want to change the base of the Meiji Constitution. Kyoko Inoue states in *MacArthur's Japanese Constitution*: “the Matumoto Committee tried to retain as much of the spirit and substance of the Meiji Constitution as possible.”<sup>5</sup> This fact proved the postwar Japanese leaders tried to keep the Emperor system, because the sovereignty of the Meiji Constitution was an Emperor, not the people of Japan.

On the other hand, SCAP answered to the response of the Japanese government's suggestion that “the authority of the Emperor ...to rule the state shall be subject to the Supreme Commander of the Allied Powers (SCAP)” and “the ultimate form of Government of Japan shall ...be established by the freely expressed will of the Japanese people.”<sup>6</sup> After this response, which affirmed the Constitution of the Emperor system, the Japanese government accepted the Potsdam Declaration.

On August 30, 1945, General Douglas MacArthur arrived at Atsugi Airdrome, Kanagawa Prefecture, as the head of GHQ. MacArthur blocked the abolishment of the Japanese Emperor System, because he wanted it to continue. Kyoko Inoue explained that “soon after he arrived, MacArthur was persuaded that it would be unwise to remove the Emperor.”<sup>7</sup> In fact, some of the allies opposed MacArthur's view, and some American authorities wanted to arrest the Japanese Emperor as one of the war criminals. For example, Richard B. Russell, a Democratic Senator from Georgia, said “the United States

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<sup>5</sup> Kyoko Inoue, 188.

<sup>6</sup> National Diet Library. <http://www.ndl.go.jp/constitution/e/ronten/01ronten.html>.

<sup>7</sup> Kyoko Inoue, 160.

should try the Emperor of Japan as a war criminal.”<sup>8</sup> However, in MacArthur’s *Brief to Army Chief of Staff Eisenhower*, he proposed retaining the Emperor System because it would be useful to make politics work smoothly under the U.S. occupation.<sup>9</sup>

Additionally, Kyoko Inoue states, “the survival of the emperorship would be a potential asset of great utility as an instrument not only for promoting domestic stability, but also for bringing about changes desired by the United Nations in Japanese policy.”<sup>10</sup> As a result, the Allies admitted the worth of the Japanese Emperor for Japanese society and gave up the abolition of the Emperor System for political reasons. The SCAP, therefore, did not want to abolish the Emperor but merely to exclude his political influence under the new Constitution.

In the Meiji Constitution, the role of the Emperor in Japan had been described as follows:

**Article 3.** The Emperor is sacred and inviolable.

**Article 4.** The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.<sup>11</sup>

Historian Katsutoshi Takami explained that “under the Meiji Constitution, the emperor system rested on an ‘oracle’ or ‘divine will.’ The popular will never entered into it.”<sup>12</sup>

This meant that the Emperor had more power than other laws and had the same status as Western constitutional monarchs, but he was not a political dictator. In Shinto myth, the Japanese Emperor was a descendant of *Kami* (a God), especially the Sun God of Japan,

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<sup>8</sup> Kyoko Inoue, 161.

<sup>9</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/ronten/01ronten.html>.

<sup>10</sup> Kyoko Inoue, 160.

<sup>11</sup> National Diet Library, “The Constitution of the Empire of Japan.” *Birth of the Constitution of Japan* (May 3, 2004). <http://www.ndl.go.jp/constitution/e/etc/c02.html>.

<sup>12</sup> Katsutoshi Takami, “From Divine Legitimacy to the Myth of Consensus: The Emperor System and Popular Sovereignty,” in *Five Decades of Constitutionalism in Japanese Society*, ed. Yoichi Higuchi (Japan: University of Tokyo Press, 2001), 11.

not an ordinary human being. Article 3 obviously meant that the Emperor had a “divine nature,” which was the symbol of God.<sup>13</sup> Article 4 meant that the Emperor had the right of sovereignty and was the center of political power, but those just emphasized his existence as a “divine will.” Like Article 3, Article 4 could be regarded as defining his position as the sovereignty of a God’s descendent, not merely as a political monarch.

However, George M. Beckmann mentioned in *the Making of the Meiji Constitution* that the oligarchs established a body of political authority under the Meiji Constitution, and “the Emperor was also given important general administrative powers by Article 10.”<sup>14</sup> Article 10 has the following content.

**Article 10.** The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same.<sup>15</sup>

Article 10 showed the Emperor had a power toward each branch. In addition, the Emperor was given legislative superiority by Article 6 in the Meiji Constitution.

**Article 6.** The Emperor gives sanction to laws, and orders them to be promulgated and executed.<sup>16</sup>

Article 6 meant that the Emperor’s authority was higher than legislative law. Articles 10 and 6 could show that the Emperor was a special ruler as one of the oligarchs established under the Constitution. The Meiji Constitution defined two roles for the Emperor. First was his role as a divine descendant. Another was the sacred monarchy, which had complete powers over law, government, and military affairs. Interestingly, the Emperor was the absolute ruler under the Meiji Constitution, and some articles gave the rights of sovereignty to the Emperor. However, it was also true that the Emperor did not assume

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<sup>13</sup> Katsutoshi Takami, 11.

<sup>14</sup> George M. Beckmann, 85-86.

<sup>15</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/etc/c02.html>.

<sup>16</sup> Ibid.

control of politics and the military. In fact, historian George M. Beckmann states, “the Meiji Constitution was the culmination of that emphasis in Japanese society on loyalty that had begun in the feudal period and had been successfully transformed into a patriotism based upon loyalty to the Emperor.”<sup>17</sup> This fact showed that Japan was controlled by oligarchs, not the people.

The Meiji Constitution was the Emperor’s “bible” as a holy ruler in Japan, and it did not include democracy or popular sovereignty.

The GHQ wanted to change the role of the Emperor in the Constitution in a way that retained the Emperor System, but with a more democratic structure. The Emperor was required to take the role, not of a sacred ruler, but as a symbol of state under the new Constitution. In *the MacArthur Constitution*, General Douglass MacArthur of GHQ explained, in Article 1, that the Emperor would be “deriving his position from the sovereign will of the People, and from no other source.”<sup>18</sup> This article showed the Emperor should not have independent political power under the laws. In addition, this article stressed that the Constitution did not guarantee the sovereignty of the Emperor but rather, supported popular sovereignty by “the sovereign will of the People.”

The “Committee on the Emperor, Treaties and Enabling Provisions” as described in the Government Section of Article 1, defined the limits of the Emperor System, explaining that sovereignty over Japan shall reside with the Japanese People. The sentence, “the Imperial Throne shall be the symbol of the State...” was Article 2 in the GHQ Draft. However, the Steering Committee decided to delete Article 1 in the GHQ Draft, because the phrase, “the sovereignty with the Japanese people” was included in the

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<sup>17</sup> George M. Beckmann, 85.

<sup>18</sup> Kyoko Inoue, 164.

preamble.<sup>19</sup> As a result, the 1947 Constitution of Japan described, in Chapter 1, the following role of the Emperor:

**Article 1.** The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.<sup>20</sup>

The sentence, “the Emperor shall be the symbol of the State” was used as the first Article.

The new Constitution emphasized by Article 1 that the Emperor was the symbol of the Japanese State, not the state ruler. This point is a major difference from the Meiji Constitution and established Japan as a government drawing its legitimacy from popular sovereignty.

Unlike Article 10 of the Meiji Constitution, the 1947 Constitution expressed in Article 4 that the Emperor “shall not have power related to government.”<sup>21</sup> This article clarified that the Emperor has no direct influence on the government. However, Kyoko Inoue argues that “it is not the case that the Emperor has no connection with the government.”<sup>22</sup> What does this mean for her? She noted that the Emperor formally participated in politics, such as government and diplomacy, but all his actions were subjected to the approval of the Cabinet. Therefore, he did not have direct responsibility for politics. This fact meant that the Emperor in the 1947 Constitution was a constitutional monarch, as he had also been under the Meiji Constitution.<sup>23</sup> Eventually, including the Emperor in the new Constitution meant it would be a monarchy, but most laws in the new Constitution were established on the basis of popular sovereignty. This point is the difference between the Meiji Constitution and the new one.

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<sup>19</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/ron/en/01ron/en.html>.

<sup>20</sup> Kyoko Inoue, 273.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, 179.

<sup>23</sup> Ibid.

The change of the Emperor's status and the establishment of *Kokutai*, or national polity, brought the discussion over the Constitution to the states of the Japanese government. The House of Representatives judged that the change of "*Kokutai*" was not "national polity" in the sense of the unification of the people in adoration centered on the Emperor, but "government form," in the sense of a political system with the Emperor at its center.<sup>24</sup> The sovereignty of the nation moved to the people from the Emperor.

Chapter 1 was the most important part of the new Constitution for Japanese people, because the Emperor had been the national polity for a long time. Under the occupation, the GHQ, like the Japanese, could not completely understand the definition of the Emperor. MacArthur, however, retained the Emperor System in the new Constitution. His idea was that this institution would help the GHQ control Japanese society, and would be useful in moving from a system of imperial sovereignty to popular sovereignty.

### **The Reform of the Parliament System**

By the revision of the Constitution, the government system in Japan largely changed to a more democratic political ideology from imperialism. Under the GHQ of SCAP, the Japanese government established the laws of the new government system, such as the foundation of a legislative branch, the Diet, and the reinforcement of the Cabinet without the Meiji Constitution. GHQ recommended that the Japanese government should adopt the American government system, which included a division into the three countervailing powers, as the foundation of Japanese legislature. According to Nobushige Ukai, Professor of Public Law at Senshu University, the

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<sup>24</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/ronten/01ronten.html>.

Japanese government adopted “a combination of the British parliamentary government and the American theories of separation of powers between executive and legislature.”<sup>25</sup>

The American government had adopted the presidency system, but the Japanese government had adopted the parliamentary system under the Meiji Constitution. In fact, the Meiji Constitution included a bicameral system (Article 33): the House of Peers and the House of Representatives. The parliamentary system in Japan took a long time in a Japanese polity. However, GHQ Government Section stated in *the GHQ Draft* as follows: “It described the makeup of a single House of elected representatives consisting of at least 300 but less than 500 members.”<sup>26</sup>

However, Joji Matsumoto, Chairman of the Constitutional Problem Investigation Committee, opposed the GHQ suggestion for the following reasons: the first was that many democratic nations had been adopting the bicameral system. The second was that the bicameral system was useful for establishing checks and balances on government policy. In *GHQ Records of the Meeting when GHQ Draft was Presented to Japanese Government February 13, 1946*, Courtney Whitney, Chief of Government Section at GHQ, clarified that if the Japanese government did not interfere with the fundamental principles of the GHQ Draft, Japan could adopt the system of “Second House” under the new Constitution.<sup>27</sup>

Lawrence W. Beer and John M. Make wrote in *From Imperial Myth to Democracy* as follows:

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<sup>25</sup> Nobushige Ukai, “The significance of the Reception of American Constitutional Institutions and Ideas in Japan.” ed. Lawrence Ward Beer, *Constitutionalism in Asia: Asian Views of the American Influence*. (Berkeley, CA: University of California Press, 1979), 116.

<sup>26</sup> National Diet Library, “Topic 4 A New Bicameral System.” *Birth of the Constitution of Japan*. (May 3, 2004) <http://www.ndl.go.jp/constitution/e/ronten/04ronten.html>.

<sup>27</sup> Ibid.

A leading Japanese historian of the drafting events and a key participant, Sato Tatsuo, maintained that the Americas showed respect for Japanese preferences, refrained from applying pressure during the Diet deliberations, and approved almost all changes recommended by the Japanese.<sup>28</sup>

As a result, the 1947 Constitution was a hybrid of American and British constitutions. Nobushige Ukai explained that “its scope is quite unlike the basic emphasis of the Meiji Constitution, since it embodies the principle of popular sovereignty.”<sup>29</sup> The adoption of this hybrid system corresponded to the characteristics of Japanese politics and was useful to establish popular sovereignty, pacifism and human rights in Japanese society.

Japanese parliament, known as the Diet or *Kokkai*, is defined as follows in the 1947 Constitution:

**Article 41.** The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.<sup>30</sup>

This fact means that the Diet had a supreme power in the nation, even more than the Emperor. Mutsuo Nakamura and Teruki Tsunemoto, Professors at the School of Law in Hokkaido University, wrote that “members of the Diet should monopolize the authority to propose legislation in order to make it clear that the Diet is ‘the sole law-making organ.’”<sup>31</sup>

In addition, the Diet was managed by the composition of the House of Councillors and the House of Representatives. The members of both Houses are selected by the vote of the people (Article 43). This fact demonstrated that the Diet was managed by popular sovereignty, because the Meiji Constitution required only the election of the House of

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<sup>28</sup> Lawrence W. Beer, and John M. Make, 85.

<sup>29</sup> Nobushige Ukai, 115.

<sup>30</sup> Kyoko Inoue, 283.

<sup>31</sup> Mutsuo Nakamura, and Teruki Tsunemoto, “The Legislative Process: Outline and Actors,” ed. Yoichi Higuchi 196

Representatives. Although Article 41 of the 1947 Constitution showed that nobody questioned the authority of the Diet as a law-making organization, that authority was also housed, under Article 81 of the new Constitution, in the Supreme Court, which is “the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.”<sup>32</sup> Article 81 defined the authority of the Supreme Court as separate from the legislative and executive branches under the Constitution. This status gave the Supreme Court authority to stop the overuse of legislative power by balancing the power. The basis of this system comes from the theory of separation of powers in the American political system. For example, Mutsuo Nakamura, and Teruki Tsunemoto clarified that the Diet Law of the 1947 Constitution combined “its position by adopting the American system of specialized standing committees and the one-time deliberation system.”<sup>33</sup>

Now, the Japanese government is a bicameral system: the House of Councillors and the House of Representatives. Under the 1947 Constitution, the terms of office for legislators in Houses was as follows.

**Article 45.** The Term of office of members of the House of Representative shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

**Article 46.** The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.<sup>34</sup>

The terms of both Houses were useful to avoid the centralization of power. Like the American Cabinet, the Japanese Cabinet operated on the theory that both Houses could not have the direct right to initiate bills in the Diet, but only one House. This

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<sup>32</sup> Lawrence W. Beer, and John M. Make, 101.

<sup>33</sup> Mutsuo Nakamura, and Teruki Tsunemoto, 198.

<sup>34</sup> Kyoko Inoue, 283.

theory was quite different from the Meiji Constitution, where the approval of “the government bills” under the Meiji Constitution was decided by the hand of the Emperor with the consent of the Imperial Diet (Article 5). The Meiji Emperor had a stronger authority to approve bills than the Diet.<sup>35</sup> Article 6 of the Meiji Constitution certified this authority, and nobility: “the Emperor gives sanction to laws, and orders them to be promulgated and executed.”<sup>36</sup>

The 1947 Constitution, however, authorized the Diet to initiate a government bill without approval from the emperor.

**Article 59.** A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

**2.** A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives by a majority of two-thirds or more of the members present.<sup>37</sup>

Section 2 in Article 59 clarified that the House of Representatives could control the two-house Japanese Parliament with a two thirds majority vote.

The two-chamber system existed in the Meiji Constitution, but the terms of both Houses were not described in that Constitution. This fact allowed the privileged class to have power, and politics stagnated as a result. For example, the House of Peers in the Imperial Diet was described as follows in the Meiji Constitution:

**Article 34.** The House of Peers shall, in accordance with the Ordinance concerning the House of Peers, be composed of the members of the Imperial Family, of the orders of nobility, and of those persons, who have been nominated thereto by the Emperor.<sup>38</sup>

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<sup>35</sup> Nobushige Ukai, 116.

<sup>36</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/etc/c02.html>.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

Article 34 established the status of the privileged class under the law, because the Emperor could nominate members of the House of Peers.

The members of the House of Representatives under the Imperial Diet were chosen by direct election of the people (Article 35). Although their power was less than the Emperors, under the law, National Diet Library wrote in the argument of the 1947 Constitution that “the authority of both House was equal.”<sup>39</sup> The imbalance of power in the Meiji parliamentary system caused a tilt toward oligarchy and imperialism. As a result, the GHQ required changes to the Parliamentary System in Japan after the occupation, because “the Imperial Diet under the Meiji Constitution could only give ‘consent’ to the Emperor”, not democracy.<sup>40</sup>

Like the British Parliamentary System, Japan has a Prime Minister as a head of the executive branch of government. Under the Meiji Constitution, a Prime Minister was appointed by the Emperor, not the direct vote of the people. However, the postwar Prime Minister was defined as follows in the 1947 Constitution:

**Article 67.** The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.<sup>41</sup>

This article established the premise that the Prime Minister is a representative of the Japanese people as reflected in their elected representatives in the Diet. This position did not exist in the Meiji Constitution. Under the Meiji Constitution, the chief of the Cabinet was the Emperor, and the Ministers of State were required to give advice to the Emperor

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<sup>39</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/ron/en/04ron/en.html>.

<sup>40</sup> Ibid.

<sup>41</sup> Kyoko Inoue, 289.

(Article 55).<sup>42</sup> The designation of the position of the Prime Minister is evidence of the principle of popular sovereignty in the new Constitution.

Additionally, Article 72 of the new Constitution defined the power of the Prime Minister.

**Article 72.** The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.<sup>43</sup>

The Cabinet was controlled by the Prime Minister and other Minister of States. Under the 1947 Constitution, all laws must be “signed by the competent Minister of State and countersigned by the Prime Minister (Article 74).”<sup>44</sup> In those powers of the Prime Minister, Lawrence W. Beer and John M. Maki, authors of *From Imperial Myth to Democracy*, wrote that “Japan’s Prime Ministers have been among the least powerful of the world’s premiers”<sup>45</sup> The Japan government is a colorful, multiparty democracy. Each party has a leader in their parties. A small party group could get power by combining with other parties, but it caused the split of authority when their opinion was different. A majority group in the Cabinet could appoint a Prime Minister to control the government. This special system of Japanese government clarified that the leadership of Japanese Prime Minister was subject to the party movement and never steady under the new Constitution.<sup>46</sup>

The Japanese legislative and executive systems were especially influenced by the American Congressional and British Parliamentary systems during the revision of the Meiji Constitution. The Japanese political system emphasized popular sovereignty and

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<sup>42</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/etc/c02.html>.

<sup>43</sup> Kyoko Inoue, 289.

<sup>44</sup> Lawrence W. Beer, and John M. Make, 103.

<sup>45</sup> Ibid, 102.

<sup>46</sup> Ibid.

freedom for the people with the establishment of the principles of separation of power and the office of a Prime Minister. Moreover, the authority of the Japanese Cabinet was stronger after 1947 than in the pre-war society. This reform of the imperial parliamentary system helped spread the idea of democracy in post-war Japanese society.

### **Fundamental Human Rights**

Chapter 3 of the 1947 Constitution focuses on the rights and duties of the people. The new Constitution guaranteed fundamental human rights. In the Meiji Constitution, the guarantee of fundamental human rights was limited by “within the limits of law.” Moreover, Article 18 stated, “a Japanese subject shall be determined by law.”<sup>47</sup> In pre-war society, Japanese people did not have status as “equal under the law.” Pre-war society in Japan was dominated by the privileged class, such as the Emperor, peers, and peerage. The Meiji Constitution did not sufficiently describe democratic human rights. In *Reform of the Japanese Government System* (SWNCC 228), the American government insisted that the Meiji Constitution’s limited guarantee of fundamental human rights should be changed by the new Constitution.<sup>48</sup>

Under the 1947 Constitution of Japan, human rights were guaranteed as follows:

**Article 11.** The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.<sup>49</sup>

This article demonstrates the intent to establish a government based on popular sovereignty and individual rights guaranteed by the Constitution. The idea of fundamental human rights contributed to the development of a democratic regime,

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<sup>47</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/etc/c02.html>.

<sup>48</sup> National Diet Library, “Topic 3 Guarantees for Fundamental Human Rights.” *Birth of the Constitution of Japan*. (May 3, 2004) <http://www.ndl.go.jp/constitution/e/ronten/03ronten.html>

<sup>49</sup> Kyoko Inoue, 277.

including the Diet, the Cabinet, local governments, and the courts. The phrase that “all the people shall be respected as individuals” (Article 13)<sup>50</sup> prohibited the government from interfering with those individual rights by authority or violence. Under the Meiji Constitution, the rights of the Japanese people were inferior to the authority of the government and the Emperor. Respect for an individual’s liberty and life was not important in the imperial society. However, the new Constitution emphasized the importance of human rights and popular sovereignty as follows:

**Article 14.** All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.<sup>51</sup>

Article 14 clarified that nobody could discriminate against another person. This fact was connected to the guarantee of women’s rights. After World War II, Japanese women were emancipated from subordination in the patriarchal house system by the spread of sexual equality. Especially, the equality of election right (Article 15) represented a major difference from the Meiji Constitution, because the 1889 Constitution did not include the right of female suffrage.

The improvement of Japanese women’s rights began with a request from the Supreme Commander for the Allied Powers (SCAP) on October 11, 1945, to bring about the “emancipation of women through women’s suffrage.”<sup>52</sup> Under the Meiji Constitution, human rights as “equal under the law” did not exist for anyone, and certainly not for women. The improvement of women’s position in the new Constitution is apparent in Article 26 which specified that “all people shall be obligated to have all

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<sup>50</sup> Lawrence W. Beer, and John M. Maki, 124.

<sup>51</sup> Kyoko Inoue, 277.

<sup>52</sup> Miyoko Tsujimura, “Women’s Rights in Law and Praxis: The Significance of Three Statistics from Politics, the Household, and Labor” ed. Yoichi Higuchi, 156.

boys and girls under their protection receive ordinary education...”<sup>53</sup> The including of the term “girls” in the new Constitution strengthened the general statement that “all of the people are equal under the law (Article 14).” Women’s rights were further guaranteed by Article 44, which specified that “no discrimination because of race, creed, sex, social status, family origin, education, property or income”<sup>54</sup> would be allowed in the Diet.

This description could not have been considered in the pre-war society of Japan. Sexual equality and democratic society were new to postwar Japan and gradually spread into the social arena. In the 1950s, for example, the philosophy of “man is the breadwinner and woman the homemaker” was agreed by 90 percent of Japanese people who were polled, but the proportion of those who agreed with this statement in 2001 declined to approximately 60 percent. Women also gained the rights to vote (Article 15. 3.), and to run for elective office (Article 44) under the new Constitution.<sup>55</sup>

The law of marriage (Article 24) reinforced the rights of sexual equality and the improved social standing of women, who had previously married men chosen by their parents, according to their family position. The new Constitution reviewed this as follows:

**Article 24.** Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

**2.** With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.<sup>56</sup>

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<sup>53</sup> Kyoko Inoue, 279.

<sup>54</sup> Ibid, 283.

<sup>55</sup> Lawrence W. Beer, and John M. Maki, 159.

<sup>56</sup> Kyoko Inoue, 279.

This Article guaranteed freedom of marriage and individual dignity. Under the new Constitution, Japanese women held rights as individuals and could choose their spouse freely. This fact collapsed the traditional system of Japanese household authority. Japanese society traditionally preferred boy to girl babies, because women did not have the right to hold family property, before 1947. Today, India and China still have this custom of male preference, but Japan no longer does.<sup>57</sup>

The new Constitution certainly clarified the freedom of marriage (Article 24) as among the fundamental rights of individuals in the postwar society, but Miyoko Tsujimura, a Professor at the School of Law in the University of Tohoku, stated the equal right of marriage as follows:

The woman's right to maintain her own surname has been abandoned by almost all married couples, either purposefully or unconsciously, in spite of the system under the Civil Code in which the surname to be changed can be that of either husband or wife.<sup>58</sup>

The sexual equality of marriage was still not sufficient in postwar Japan. However, the law of equal marriage, Article 24, was a true improvement in equal rights of individuals and spouses, as defined in Articles 14 and 24, and it helped improve the situation and consciousness of women in Japan after the war.

Under the revision of the Constitution, the most important change of fundamental human rights was the addition of social rights such as those enforced by Article 25.

**Article 25.** All people shall have the right to maintain the minimum standards of wholesome and cultured living.

**2.** In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.<sup>59</sup>

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<sup>57</sup> Lawrence W. Beer, and John M. Maki, 159.

<sup>58</sup> Miyoko Tsujimura, "Women's Rights in Law and Praxis: The Significance of Three Statistics from Politics, the household, and Labor" ed. Yoichi Higuchi, 164.

The definition of social rights did not exist in the Meiji Constitution, because the sovereignty of the 1898 Constitution resided with the Emperor, not the people. However, according to the article in National Diet Library, post-war Japanese government was influenced by the provision of social rights in the Weimar Constitution, which was enacted in 1919 during the revision of the Constitution.<sup>60</sup> Wikipedia, the free encyclopedia, explains the Weimar Constitution as follows: “it was to be a Democratic, Federal Republic, with a President and Parliament to govern it. Supreme Power was to be delegated by The People.”<sup>61</sup>

The addition of social rights, Article 25, helped the development of the rights of workers to health care. Lawrence W. Beer and John M. Maki explained health care in Japan as follows: “In 2000, in a survey of 191 nations, the World Health Organization (WHO) ranked Japan first in overall health system achievement based on five indicators.”<sup>62</sup>

In addition, freedom of speech and press was developing a fundamental right of modern democracy. These rights were guaranteed by Article 21 in the 1947 Constitution of Japan:

**Article 21.** Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.<sup>63</sup>

Yasuo Hasebe, a Professor of the Faculty of Law in the University of Tokyo, wrote that freedom of speech was useful to protect the right of autonomy.<sup>64</sup> In other

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<sup>59</sup> Kyoko Inoue, 279.

<sup>60</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/ronnten/03ronnten.html>

<sup>61</sup> Wikipedia, the free encyclopedia. “Weimar constitution” (May 23, 2005) [http://en.wikipedia.org/wiki/Weimar\\_constitution](http://en.wikipedia.org/wiki/Weimar_constitution)

<sup>62</sup> Lawrence W. Beer, and John M. Maki, 147.

<sup>63</sup> Kyoko Inoue, 279.

<sup>64</sup> Yasuo Hasebe, “Rights of Corporations, Rights of Individuals: Judicial Precedents” ed. Yoichi Higuchi, 74.

words, autonomy meant an “individual right” for human beings. This article 21 secured freedom of speech under the law. Freedom of speech was a right guaranteed the people, but this right could often interfere with the privacy of other people. The need to balance these rights brought problems in the new society.

Under the Meiji Constitution, freedom of speech and press was prohibited by the laws, because the government feared articles that might influence the people and erode national identity.

**Article 26** (the Meiji Constitution). Except in the cases provided for in the law, the secrecy of the letters of every Japanese subject shall remain inviolate.<sup>65</sup>

This prohibition was removed by the expansion of democracy in postwar Japan, because freedom of speech and of ideas was the basis of fundamental human rights.

The 1947 Constitution of Japan was established with the cooperation of GHQ. The content of the Constitution was founded on American political ideology, as in the case of the separation of powers, but it was also based on the British parliamentary system. Under this Constitution, Japanese society changed more in the direction of greater freedom and democracy. Article 97 of the Supreme Law also emphasized fundamental human rights:

**Article 97.** The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.<sup>66</sup>

This Article established the new Constitution on the Foundation of eternal rights for all Japanese people.

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<sup>65</sup> National Diet Library, <http://www.ndl.go.jp/constitution/e/etc/c02.html>

<sup>66</sup> Kyoko Inoue, 297.

### **Social and Economic Influences in postwar Japan**

After World War II, the GHQ occupation in Japan continued until April, 1952, when the U.S. occupation ended with the signature of the San Francisco Peace Treaty.<sup>67</sup> This signature of the Treaty meant Japan was formally recognized among world of nations as an independent nation. The Japanese government began to control a nation by their power under the 1947 Constitution.

In the past half century after World War II, Japan has become a major economic and peaceful nation which supported the social, political, and legal reforms in the world. The background of the rapid growth of the Japanese economy was connected with the constitutional change of Japanese ideology in the postwar society. When the Supreme Commander for the Allied Powers (SCAP) occupied Japan, they embarked politically on a campaign to change Japanese society by strengthening democratic tendencies and expanding the economic territory of the Japanese trade. Lawrence W. Beer and John M. Maki described the will of the Allies as follows: “Japan shall be permitted to maintain such industries as will sustain her economy. ... To this end, access to, as distinguished from control of, raw materials shall be permitted.”<sup>68</sup> As a result, the purpose of the Allies succeeded in postwar Japanese society by expanding the relationship of foreign countries.

Moreover, the establishment of the 1947 Constitution brought the popularization of popular sovereignty, the rapid economic growth, and the rise of living standards in postwar Japan. Yoichi Higuchi, a professor at the Faculty of Law, Waseda University, observes;

Such provisions as the right to own or hold property “in conformity with the public welfare” (Article 29), the right to work and of workers

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<sup>67</sup> Lawrence W. Beer, and John M. Maki, 92.

<sup>68</sup> Ibid, 57.

to organize (Article 27 and 28), and the principles of individual dignity and sexual equality in married life (Article 24) have become an integral part of Japanese society. The liberation of three suppressed groups – farmers, labors, and women – ... expanded the domestic market for consumer goods, and stimulated economic growth.<sup>69</sup>

The new Constitution opened a door to the suppressed Japanese people who suffered from the discriminations of social class and custom. Moreover, those laws were useful to create the base of liberal society and sexual equality in postwar Japan.

In *From Imperial Myth to Democracy*, historians Lawrence W. Beer and John M. Mike explained that “by 1990 Japan was the world’s second-ranking economic power, with standards of living as high as those of virtually any other country...”<sup>70</sup> This fact proved that Japan succeeded in remaking its economic and social system under the influence of the new Constitution.

When World War II ended, Japanese society and buildings were in disorder and devastation. Japan had a lot of war orphans and repatriated farmers from colonies and war zones. Most of them became homeless, and their population was more than 15 million at that time. Many homeless people were lying on the sidewalks and could be seen as a common situation into the 1950s.<sup>71</sup> Japanese society needed welfare assistance under the authority of the new Constitution, because the Meiji Constitution did not explain the welfare system by the law. Indeed, the new Constitution included the rights of health care as a fundamental human right. The right of guaranteed life by Article 25, the new Constitution, was common sense which was given to all people by a nation after

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<sup>69</sup> Yoichi Higuchi, “The 1946 Constitution: Its Meaning in the Worldwide Development of Constitutionalism” ed. Yoichi Higuchi, 5-6.

<sup>70</sup> Lawrence W. Beer, and John M. Maki, 142.

<sup>71</sup> Ibid, 144.

the war. Moreover, the use of public money of Article 89 was useful to develop the Social Service Law in the Japanese government:

**Article 89.** No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.<sup>72</sup>

The presence of Articles 25 and 89 encouraged activity in Japanese civil society, because Japanese society seemed not to have the spirit of volunteerism under the Meiji Constitution. Lawrence W. Beer, and John M. Maki state, “With Articles 25 and 89, the government was required to take on direct constitutional responsibility for establishing a welfare state hardly imagined in Meiji times.”<sup>73</sup> In fact, under the authority of both Articles, the Japanese government arranged the social welfare system. “Local governments have formed social welfare councils to assist local volunteers, sometimes with government financial aid since 1975.”<sup>74</sup>

The educational idea in Japan completely changed after the war. Before the war, in the Meiji era, public education in elementary and middle schools, and in the military, indoctrinated the people in the belief that the Emperor had absolute authority over, and autonomy from the masses. Historian Kuno Osamu explained the influence of the Emperor authority in Japanese society as follows: “due to the powerful influence of such institutions, belief in the emperor’s authority was second nature to the average Japanese. ... Elementary and secondary schools, and the military, thoroughly instilled belief in the absolute authority of the emperor.”<sup>75</sup> This masses education was ruled by the upper class,

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<sup>72</sup> Kyoko Inoue, 295.

<sup>73</sup> Lawrence W. Beer, and John M. Maki, 145.

<sup>74</sup> Ibid.

<sup>75</sup> Kuno Osamu, “The Meiji State, Minponshugi, and Ultrnationalism” ed. J. Victor Koschmann, *Authority and the Individual in Japan* (Japan: University of Tokyo Press, 1978), 63-64.

through the bureaucracy and through people who graduated from the imperial university. The hierarchic difference in pre-war Japanese society had largely influenced how the masses behaved? This fact connected to the mass control of oligarchs in the Meiji era. The deeper schism between the masses' education and higher education also proved a difference for common education system in Western countries.

However, the postwar Constitution guaranteed the right of equal education by Article 26. All Japanese people could get a compulsory education for nine years by law. The development of the equal education brought the progress of achievement among the people. The growth of higher education is connected to the development of technology and the economy. Lawrence W. Beer and John M. Maki state, for example, "in the Organization for Economic Cooperation and Development international tests for fifteen-year-olds in thirty-two countries administered in July 2000, Japanese students ranked first in mathematics, second in science, and eighth in reading skill."<sup>76</sup> Especially, the studying of English in a junior high school began after the war was useful for the development of globalization.

### **Conclusion**

The United States occupation brought about constitutional, cultural, and economic changes in Japanese society by the establishment of the new Constitution. The traditional ideology in pre-war Japan was removed by the introduction of Western culture and ideology. As a result, Japan experienced a rapid growth of economy and became a majority nation in international society during the postwar twentieth century. The stability of fundamental human rights, sexual equality, and the addition of social rights was useful for the improvement of a modern democratic nation. The revision of the Meiji

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<sup>76</sup> Lawrence W. Beer, and John M. Maki, 150.

Constitution emphasized the foundation of popular sovereignty and pacifism to the Japanese people. Today, the influence of the new Constitution expands all the fields of Japanese society under slogans of liberalism and democracy.

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