

COMMENT: REVISIONISM DURING THE FORTY YEARS OF THE CONSTITUTION OF JAPAN

ISAO SATO*

I

INTRODUCTION

According to the guide pamphlet for this symposium, one of its goals is to review the development of constitutional law in Japan during the past four decades, focusing on the area of reappraisals and revisionism. The pamphlet states: “[T]he Japanese people have successfully made the transition to popular sovereignty and a democratic government. However, conservative advocates for revising the Constitution of Japan still exist and renewed their lobbying for revising the Constitution during the events surrounding the funeral of the Japanese Emperor.” I, too, believe that we cannot discuss the development of the Constitution during the past forty years without reviewing the development and direction of revisionism.

For over forty years, the Liberal Democratic Party (“LDP”) or its pre-1956 predecessors have been the governing party in Japan. The LDP has openly and consistently declared in its fundamental platform its intention to revise the Constitution. While some changes in the substance and tone of this policy have been made, as I will explain later, the fundamental platform policy favoring revisionism remains in place. I think the fact that the governing party consistently keeps such a platform policy is a very rare and strange phenomenon.

As we shall see, revisionism has experienced setbacks and the Constitution has been protected against revisionism. Nevertheless, the operation and interpretation of the Constitution have been affected by this revisionism.

This comment reviews the development of revisionism, and outlines the debates during this period about the emperor system, Article 9 of the Constitution, and fundamental human rights. For purposes of this comment, the word “revisionism” refers to the explicit, textual revision of the Constitution. The problem of implicit, concealed, or de facto revisionism is the subject of a separate discussion within this journal.¹ We can divide the explicit development of revisionism into four periods.

Copyright © 1990 by Law and Contemporary Problems

* Dean, Faculty of Law, Tokai University.

1. Higuchi, *The Constitution and the Emperor System: Is Revisionism Alive?*, LAW AND CONTEMP. PROBS., Winter 1990, at 51.

II

FOUR PERIODS OF THE DEVELOPMENT OF REVISIONISM

A. The 1950s

The Korean War broke out in June 1950. As that war escalated, peace negotiations between the Allied Powers and Japan progressed. In October 1951, both the peace treaty and the Japan-U.S. security treaty were concluded. At the same time, Japan was establishing its defense power under Article 9 of the Constitution, which prohibited the maintenance of war powers. In July 1952, the Allied Occupation came to an end. Just prior to the end of the Occupation, the movement to revise the so-called "imposed Constitution under Occupation" began.

The revisionists advocated the amendment of Article 9, which provides for the renunciation of war and nonmaintenance of war powers, and also sought constitutional provisions establishing a symbolic emperor system and the unrestricted protection of fundamental rights and freedoms of the people. In October and November 1955, the two factions within the Socialist Party were reintegrated and the two conservative parties organized a new LDP. The point of confrontation between these two new parties was the issue of constitutional revisionism.

The Hatoyama Cabinet had declared in 1954 that one of its fundamental policies was the realization of the overall constitutional amendment. However, the revisionist policy of the Hatoyama Cabinet did not succeed. In both the general election for the House of Representatives in February 1955 and the ordinary election for the House of Councillors in July 1956, the governing party failed to obtain the two-thirds voting majority necessary for a constitutional amendment. The debates in these years marked the highest peak in the development of revisionism. After that time, the debate on this issue gradually subsided and disappeared—at least from the surface of politics in Japan.

B. The 1960s

This period saw the height of activity of the Commission on the Constitution. This Commission was established by law in 1957 as a governmental body whose purpose was to investigate constitutional problems. The Socialist Party was against its creation and refused to participate in the Commission. The original intent of the Commission's promoters was to prepare a draft amendment of the Constitution. However, the final report submitted in 1964² did not state a majority opinion for revising the Constitution but stated various opinions expressed in the Commission, together with their respective arguments for and against revision. The Commission report was offered as a basis for a judgment by the

2. COMM'N ON THE CONSTITUTION, REPORT ON THE COMMISSION ON THE CONSTITUTION 1958-1964 (J. Maki trans. 1980).

Cabinet, the Diet, and the people. After this report, constitutional debates on revisionism diminished.

The proceedings of the Commission reflected the political and constitutional activities in this period. After the Hatoyama Cabinet ended, the new Kishi Cabinet expressed an intention to revise the Japan-U.S. security treaty and provoked the so-called "security treaty struggle," a huge, turbulent opposition movement. The Socialist Party and other opposition parties asserted the unconstitutionality of the security treaty. Amid this turbulence, the Kishi Cabinet resigned and the new Ikeda Cabinet took steps to avoid another violent clash with the opposition parties on this issue. Prime Minister Ikeda said, "We do not push the constitutional revision, even if we can obtain the two-thirds majority in both Houses." For the Ikeda Cabinet, constitutional revision became an issue of decreasing significance.

In addition to cabinet reforms, the December 1959 Supreme Court decision in the Sunakawa case³ hastened the decline of the constitutional debates on revisionism. The Supreme Court avoided deciding the constitutionality of the security treaty by using the political question doctrine. Even so, this decision had the effect of approving both the security treaty system and the view that it was not necessary to amend Article 9 for the maintenance of the security and defense system. In this context, this decision contributed to the decline of the constitutional revision debates.

C. The 1970s

The constitutional revision issue remained quiet during the 1970s. During this period, the percentage of seats held by the LDP and opposition parties in both Houses became close. There was minimal activity by the Constitution Investigation Committee of the LDP. Furthermore, in this period, litigation relating to the constitutionality of the Self-Defense Forces was settled. Courts avoided deciding the issue of constitutionality by using the political question doctrine or by using statutory interpretation techniques to avoid addressing questions involving provisions of the Constitution. The decisions also had the effect of legitimizing the Self-Defense Force Law and contributed to a downturn in revisionist activity.

D. The 1980s

In this period, the perceived "threat of the Soviet Union" and the policy of strengthening Japan's joint defense responsibility pushed the Article 9 debate back into the spotlight. However, the Nakasone Cabinet declared in November 1982 that the Cabinet did not intend to establish a timetable for constitutional revision, even though Prime Minister Nakasone was well-known as a militant revisionist.

The Constitution Investigation Committee of the LDP submitted an interim report in 1982. However, there are striking differences in basic tone

3. *Sakata v. Japan (The Sunakawa Case)*, 13 Keishū 3225 (Sup. Ct., G.B., Dec. 16, 1959).

and content between this report and similar reports prepared by the same committee in earlier periods. Particularly, as I mention later, on the areas of the emperor system, Article 9, and fundamental human rights, the tone and attitude of this new report is very passive and moderate. Moreover, in 1989, after the heavy defeat of the LDP in the ordinary election for the House of Councillors, the coming general election for the House of Representatives presents the possibility of a win by the opposition parties and of a coalition cabinet led by the Socialist Party. If this possibility could be realized, the political situation surrounding the issue of constitutional revision would be fundamentally changed for the first time in the history of this Constitution. Now, in such a process as mentioned above, how has revisionism in the areas of the emperor system, Article 9, and fundamental human rights been developed? I would like next to review this point.

III

CHANGES IN REVISIONISM

The political process and events previously described evidence a decline of revisionism. Today, it looks almost impossible, in the near future, to revive the old prewar constitutional regime. Even though the LDP keeps its platform policy proclaiming as a goal the overall revision of the present Constitution established under Allied Occupation, the underlying policy and attitude of the party on this issue is strikingly changed. The basic tone of the LDP's position on revision of the Constitution has been weakened and the existence of strong opinions against revision is recognized therein. In a word, the revisionism movement has stagnated.

A. The Emperor System

To the report of Professor Higuchi, "The Constitution and the Emperor System: Is Revisionism Still Alive?,"⁴ I would like to add only three points. First, in the early periods, the revisionists strongly advocated that Article 1, which provides that "The Emperor shall be the symbol of the State and of the unity of the people," should be amended in accordance with the history and tradition of the emperor system to read "The Emperor is the Head of State." More recently, however, the 1982 interim report stated that it was not necessary to amend Article 1, but included a minority opinion favoring the replacement of the word "symbol" with the phrase "Head of State." As a background for this debate, surveys of the constitutional consciousness of the Japanese people in these periods continuously illustrated strong support of the symbolic emperor system.

Second, before and after the passing of Emperor Hirohito, there was much discussion about the new rise of revisionism. I also was often requested by the foreign press to give my opinion about the increased possibility of constitutional revision. Speaking in all candor, such a question gave me a

4. Higuchi, *supra* note 1.

strange impression. I used to answer: "You think too much about it. The question indicates to me that you are overly concerned with the possibility of revision." There is no reason to believe that the situation I previously described will be changed by the accession of the new Emperor Akihito. There is no possibility that the government of the LDP will propose a constitutional revision aimed at reviving the prewar emperor system. Such a possibility is equally unlikely under a coalition government with the Socialist Party as leader.

In my opinion, the so-called "fever phenomenon," which was characterized by long processions of millions of people praying and mourning for the emperor, was only the expression of human affection for Emperor Hirohito. Moreover, the so-called "self-restraint" displayed at various social events, such as the autumn festivals in villages, musical concerts, athletic meets, year-end parties, and New Year's greetings, illustrated the conformism of the Japanese people, but should not be interpreted as an expression of sentiment or opinion supporting the revival of the prewar emperor regime.

Third, the following point should be mentioned. At the audience with the representatives of the people after the accession (Choken no gi), the new Emperor Akihito stated in his speech, "I have succeeded to the Imperial Throne in accordance with the Constitution of Japan and the Imperial House Law I swear to uphold the Constitution of Japan together with you and to accomplish my duty." In contrast, when the late Emperor Hirohito originally succeeded to the throne in 1927, he stated in his speech, "I have succeeded to the Imperial Throne in accordance with the divine will of my Imperial ancestors, and as the descendant of sole Imperial dynasty unbroken for ages eternal." This contrast illustrates clearly that the position of the emperor and the foundation for the emperor system are fundamentally changed. With the accession of the new emperor, the symbolic emperor system entered into its second period. But, I think, at the beginning of this second period, the symbolic emperor system under the present Constitution is perfectly realized for the first time, and the above-quoted statement of Emperor Akihito is broadly and strongly supported by Japanese people.

B. Article 9

In the early periods, the revisionists strongly advocated that the inherent right of self-defense should be clearly stated and that the Self-Defense Force should be authorized for self-defense and for participation in a collective security system. In contrast, the 1982 interim report of the LDP offered only one tentative draft amendment to Article 9. This draft provision is as follows:

Paragraph 1 should be kept as it is.

Paragraph 2 should be deleted and in its place three new paragraphs should be inserted. The first paragraph provides that the Self-Defense Force should be established to maintain peace, independence and safety of the State. The second and third paragraphs provide for the principle of Civilian Control. These three paragraphs are pulled from the provisions of the present "Self-Defense Force Law."

It is worth mentioning that the following comments were added:

Against this tentative draft there is an opinion stating: (1) The present Constitution played a great role for the peace and prosperity of our country and it has obtained stability in the consciousness of Japanese people. (2) If Article 9 were amended, many . . . foreign countries, especially the Asian countries, would be more cautious regarding the renewed development of [a militarized] Japan.

Then, this interim report states conclusively: "Thinking over the existence of such an opinion, we recognize that the revision of Article 9 needs careful and composite consideration." The attitude of this report relating to the revision of Article 9 looks, as a whole, rather cautious; at least, it does not actively propose a revision.

C. Fundamental Human Rights

In the early periods, the revisionists strongly advocated that the provisions of the Constitution relating to the unrestricted protection of fundamental human rights placed too much emphasis on the rights and freedoms of individuals and neglected the importance of the duties of the people. On this point, the revisionists believed that the present Constitution was out of date with the realities of the mid-20th century, the era of the Social Service State, which demand cooperation between the state and governed individuals. They advocated that the duties of the people should be enlarged and that the foundation for restricting individual rights and freedoms by law should be stated clearly. Again, in contrast, the 1982 interim report of the LDP moderated this position in a section entitled "General Understanding," which reads as follows:

The present Constitution was drafted in [a very short time during] the period of confusion immediately after the war . . . Accordingly, there are many points to be improved in wording and terminology. All of the members agreed that the more simple and adequate expression should be demanded. However, the provisions of the present Constitution upon the fundamental rights of the people are, comparatively speaking, excellent and have been [applied] carefully in response to the needs of [the] time by the wisdom of [the] Japanese people and many of the points debated before [have been settled or] will be settled in [the] future [by] the process of legislation and by the consideration [of] practical [application]. [On] this point all of the members agreed.

In my opinion, this statement comes rather close to opposing directly constitutional revision of provisions protecting fundamental human rights. This statement also implies evaluation and approval of court decisions involving these provisions.

IV

CONCLUSION

The reason for the decline of revisionism mentioned above is fundamentally that the original revisionism of the early periods could not gain broad public support, particularly because (1) the revisionists, in overemphasizing the Constitution's origins in the Occupation, did not consider the constitutional consciousness of the people, and (2) the contents

of the revisionists' draft amendments evoked the fear of significantly altering the fundamental values and principles of the Constitution. Furthermore, I would like to point out that this Constitution redefines the status of modern citizenship in Japan. This Constitution aims not only at the reconstruction of the governmental structure of Japan, but also at the total reorientation of the traditional social order of Japan.

Now, I call to mind the first suggestion of General MacArthur to Prime Minister Shidehara in October 1945 as the first step in the process of establishing a new constitution. He said: "In fulfillment of [the] Potsdam Declaration, the traditional social order under which the Japanese people have been for centuries subordinated should be reformed and this will unquestionably involve the revision of the Constitution." He stressed four issues of concern for which reform was urgently needed: (1) the emancipation of women, (2) the liberalization of education, (3) the democratization of the economy, and (4) the promotion of organization of labor unions. All four points concern social reform, not governmental reform. Thus, the scope of the constitutional change envisioned was broad indeed. Great changes were sought in law, society, labor organization, education, family life, and other areas of national life. Such a reorientation of the traditional social order meant sweeping away feudalistic institutions and the traditional social structure, emancipating individuals, and creating the status of modern citizenship.

I believe these objectives have been successfully accomplished in the process of modernizing Japanese society and the Japanese way of thinking during these last forty years. The revisionism which intends to revive the traditional social order cannot appeal to the people today. The dignified emperor system, the predominance of militarism, and the predominance of state interest constituted the traditional social order in prewar Japan. The revisionism that aims at the revival of such a social order will not be supported by the people. If revisionism is to survive, it is necessary to construct a new philosophy based on the new social order in Japan, and this task is very difficult. This is, I believe, the achievement and lesson from these last forty years.

