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## ***Sengo Kenpo 1947 vs. Meiji Kenpo 1889: Comparative Study***

***Abstract:*** *This article is a comparative study between not only two manuscripts of constitutions of Japan, but also analytic research revealing all the cultural, ideological, and political aspects that led the Japanese authorities to adopt each of them.*

*The Meiji Constitution was proclaimed in 1889 during the imperialistic phase of Japanese history where the country was named Empire of Greater Japan 大日本帝国, where Tokyo was a dominant world power. While the recent Constitution of Japan 日本国憲法 was issued in 1947 under the supervision of the Supreme Commander for the Allied Powers (SCAP), which is eventually, a foreign occupation authority.*

*Through the detailed analysis, premising, and reasoning this study will reveal the historical events that resulted those constitutions and will open the debate to discuss the future prospects of the Japanese armament attempts, which is confined and restricted by Article 9 日本国憲法第9条.*

***Keywords:*** *Japanese Studies, Constitution, History, Peace, Law.*

Japan legislative system is a unique and distinctive model in human history when the phases of its development are considered. This model also had its role in the constitutional aspect.

**-Article 9-<sup>1</sup>** which promoted renouncing the war that appeared in the Japanese Constitution was the first beam of hope in a world of misery and injustice. The human race hung onto this beam of hope that is considered as an instant of enlightenment in our global quest for world peace.

Since the reign of Emperor Meiji<sup>2</sup>, the Japanese state applied the Meiji constitution *Meiji Kenpo*<sup>3</sup> from 29 November 1890 until the 3<sup>rd</sup> of May 1947, for about fifty-six years and five months, the Postwar Constitution *Sengo Kenpo* was indubitably a time of a new era beginning in Japan<sup>4</sup>.

The American occupation authorities considered that the Meiji constitution was patterned from the School of Monarchic Constitutional Law in conservative Germany<sup>5</sup>, which declared that all the sovereignty and the three powers: legislature authority, the executive authority, and judiciary authority resided in the divine ruler as the head of state<sup>6</sup>. It was of the major feeder reason to the ultra-nationalism. All these factors led the imperialistic empire to join the Axis powers<sup>7</sup> and then acquire territories overseas through a direct clash with the U.S.A.

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<sup>1</sup> Nishikawa, Y. (2018). Article 9 and the Constitution of Japan. *Political Sociology of Japanese Pacifism*, 32-66. <https://doi.org/10.4324/9781315164045-3>

<sup>2</sup> **Emperor Meiji** (明治天皇 *Meiji-tennō*, November 3, 1852 – July 30, 1912), or Meiji the Great (明治大帝 *Meiji-taitei*), was the 122nd Emperor of Japan according to the traditional order of succession, reigning from February 3, 1867, until his death on July 30, 1912. He presided over a time of rapid change in the Empire of Japan, as the nation quickly changed from a feudal state to a capitalist and imperial world power, characterized by the Japanese industrial revolution.

Keene, D. (2005). *Emperor of Japan: Meiji and his world, 1852-1912*. Columbia University Press.

<sup>3</sup> *The Constitution of the empire of Japan | Birth of the Constitution of Japan*. (n.d.). 国立国会図書館—National Diet Library. <https://www.ndl.go.jp/constitution/e/etc/c02.html>

<sup>4</sup> *The Constitution of Japan*. (n.d.). Prime Minister of Japan and His Cabinet. [https://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

<sup>5</sup> Hewitson, M. (2010). Prussia, the nation and the Constitution. *Nationalism in Germany, 1848–1866*, 221-290. [https://doi.org/10.1007/978-0-230-31352-1\\_6](https://doi.org/10.1007/978-0-230-31352-1_6)

<sup>6</sup> Jefferies, M. (2016). *The Ashgate research companion to imperial Germany*. Routledge.

<sup>7</sup> The Axis powers (German: *Achsenmächte*, Japanese: 枢軸国 *Sūjīkukoku*, Italian: *Potenze dell'Asse*), also known as the Axis and the Rome–Berlin–Tokyo Axis, were the nations that fought in World War II against the Allied forces. The Axis powers agreed on their opposition to the Allies but did not completely coordinate their activity.

The Meiji constitution proclaimed that the highest authority resided with the divine Emperor, who was the supreme commander of the Japanese armed forces. The *Zaibatsu*<sup>1</sup>, or corporate ties, exploited this constitutional mandate to evolve to the greatest military achievements of the Meiji period and to oversee markets where it could sell goods made in Japan.

Although the majority elected parliament representatives that comprised of the people who had prerogative control over budget and governmental affairs; nevertheless, the House of Peers composed of the imperial family of the orders of nobility, and of those who had been nominated thereto by the Emperor, who was representing and supporting the conservative and extremists in Japanese society.

The major objective of the American Occupation was to conduct constitutional amendments. General Douglas MacArthur<sup>2</sup> wanted to have a complete draft prepared by the Japanese government in order to obtain the agreement of the Japanese mass/politicians to embrace the metamorphosis proposed for the admired change of the Japanese traditional concepts about the sanctifies empire power.

That is why the Japanese government considered that the insertion of the democratic amendments to the Meiji constitution is enough to satisfy the occupation's demands. Thus, the leaders made some adjustments on the civil liberties and improvements on the political participation of the Japanese women. As well as enhancing the prerogatives of the popular elected representative house in the Japanese Diet; nevertheless, those fragile reforms didn't touch the traditional power of the Meiji constitution that represent the traditions and mentality of the Japanese.

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Gerwarth, R. (2015). The Axis. *The Cambridge History of the Second World War*, 21-42. <https://doi.org/10.1017/cho9781139524377.004>

<sup>1</sup> *Zaibatsu* (財閥, "financial clique") is a Japanese term referring to industrial and financial business conglomerates in the Empire of Japan, whose influence and size allowed control over significant parts of the Japanese economy from the Meiji period until the end of World War II.

Yamamura, K. (1964). *Zaibatsu, prewar and Zaibatsu, postwar*. *The Journal of Asian Studies*, 23(4), 539-554. <https://doi.org/10.2307/2050237>

<sup>2</sup> **General Douglas MacArthur** (26 January 1880 – 5 April 1964) was an American five-star general and field marshal. He was born in Little Rock, Arkansas, on January 26, 1880. After graduating from the United States Military Academy at West Point in 1903, he fought in World War I, and in World War II was the commander of Allied forces in the Pacific. When he criticized President Harry Truman's handling of the Korean War, he was relieved of his command. MacArthur died on April 5, 1964, and was buried in Norfolk, Virginia.

Haugen, B. (2005). *Douglas MacArthur: America's general*. Capstone.

The staff of SCAP<sup>1</sup>, led by General MacArthur didn't consider those constitutional formalities and was determined to impose radical reforms on the Japanese state structure, with the prohibition of the doctrine of national superiority *Kokutai*<sup>2</sup>.

This scared the divine emperor as it was legitimized in the former constitution. Because the Meiji constitution guaranteed the traditional idea of the divine emperor, it was contradicted with the democratic concepts that the USA wanted to impose on Tokyo.

On the other hand, the Japanese continued to disobey the dictation of MacArthur, who was insisting to accomplish his mission to revive Japan as a country, that is why he set Dr. Joji Matsumoto<sup>3</sup> up to draft the new constitutional provisions suited to the American objectives and to preserve the Japanese private properties.

Several Japanese political parties and local organizations participated in drafting the new constitution. The left party with its two sides, the communists and the socialists, aimed to attempt a new modern law version to serve their own perspectives. While the conservative academics and right-wing politicians argued to preserve the ancient purely Japanese spirit.

Despite the confusion between the internal political debate and foreign intervention, the government sponsored Matsumoto. He worked hard to complete

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<sup>1</sup> The Supreme Commander for the Allied Powers (SCAP)

Staff, E. (1966). General headquarters Supreme Commander for the Allied powers: Official documents (Part 1). *Japanese Journal of Religious Studies*.  
<https://doi.org/10.18874/jjrs.crj.7.4.1966.321-360>

<sup>2</sup> The Government created a whole perfect new cultural system around the *Tennou* [Emperor], and the *Kokutai* was the expression of it. Moreover, the *Kokutai* was the basis of sovereignty. According to Tatsukichi Minobe, *Kokutai* is understood as the "shape of the Estate" in the sense of "*Tenno* as the organ of the Estate", while the authoritarians gave the *Kokutai* a mystical power. The *Tennou* was a "god" among "humans", the incarnation of the national morals. This notion of *Kokutai* was extra-judicial, more something cultural than positive.

Pittau, J., & Saburo, I. (1965). Minobe Tatsukichi no shisoshiteki kenkyu (Intellectual and historical studies in Minobe Tatsukichi). *Monumenta Nipponica*, 20(3/4), 468.  
<https://doi.org/10.2307/2383349>

<sup>3</sup> **Joji Matsumoto** (松本 烝治 Matsumoto Jōji, 14 October 1877 – 8 October 1954) was legal scholar, politician and cabinet minister in the pre-war Empire of Japan. He is also the author of the "**Matsumoto Draft**", a proposal for revision of the Constitution of the Empire of Japan in the immediate post-war period.

*Joji Matsumoto, "Draft of tentative revision of the Constitution draft" / Birth of the Constitution of Japan.* (n.d.). 国立国会図書館—National Diet Library.  
<https://www.ndl.go.jp/constitution/e/shiryō/02/058cshoshi.html>

the first Japanese attempt to establish the new constitution to win the acceptance of the different local parties, the general headquarters, and its leader that set forth series of reform policies that were ought to be included in the constitution.

The most obvious US demand was turning the Emperor to only a symbol of the state while identifying his duties and powers within the text of the Constitution and shifting the sovereignty to become in the hands of the people. In this scenario, people then have the right to choose the elected deputies and have some decisions regarding the state policy on both the internal and external levels. Americans also targeted the nobles and demanded the withdrawal of privileges in order not to go back again to build an expansive empire threatening world peace. Note that the first condition was abandoning the sovereign right to declare war, and aimed to establish a strong Japanese army, with air and naval forces that are more evolved.

Japanese authorities have focused their efforts to reach a formula to equally consider the historical background and cultural heritage while avoiding a direct clash with the general headquarters advisers. But with an opposing point of views to the intervention of the Emperor Hirohito<sup>1</sup> to overcome the obstacles by adopting "a copy of the MacArthur", because the main goal was to keep the Japanese state. The secondary goals were to seek the restoration of human, material, and moral losses in an effort to return to its international standing in a peaceful way.

To overcome the sovereign obstacles some negotiations took place to ease the linguistic differences between the two texts: the English one and the Japanese one, and to standardize the final version as much as possible. With the help of Japanese legislators and linguists, they wrote the text of the new constitution as a revision to the Meiji Constitution, whose goal was to secure "a legal concern" of the current system to serve the Japanese nation's interests.

We conclude from here that the Peace Constitution *Heiwa Kenpo*<sup>2</sup> was not holistically written by the occupation authority; rather the Japanese authorities have made efforts to write it with a national interest that has the best advantages on the return of sovereignty and the demise of the occupation.

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<sup>1</sup> Hirohito (裕仁, April 29, 1901 – January 7, 1989) was the 124th Emperor of Japan according to the traditional order of succession, reigning from December 25, 1926, until his death. He was succeeded by his eldest son, Akihito. In Japan, he is now referred to primarily by his posthumous name, Emperor Shōwa (昭和天皇 *Shōwa-tennō*). The word *Shōwa* is the name of the era that corresponded with the Emperor's reign and was made the Emperor's own name upon his death. The name Hirohito means "abundant benevolence".

Bix, H. P. (2009). *Hirohito and the making of modern Japan*. HarperCollins.

<sup>2</sup> *The Constitution of Japan*. (n.d.). Prime Minister of Japan and His Cabinet.

[https://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

The national intent was reflected through the adoption of the occupation authority in the world for the *Heiwa Kenpo* during the Meiji annual ceremonies. After a lot of correspondence with the US Occupation, they accepted to respect the desire of the Japanese by appointing the third of November as the date for the publishing of the new legislation. The Peace Constitution *Heiwa Kenpo* is known with its item of "Renunciation of War"<sup>1</sup>; the famous Japanese formulate that was a response to the requirements of the general headquarters, aimed to accelerate the demise of the occupation and the return of national sovereignty.

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<sup>1</sup> Renunciation of war. (2004). *Grassroots Pacifism in Post-War Japan*, 234-234.  
<https://doi.org/10.4324/9780203421000-22>

## Comparison between the two Japanese Constitutions

Peace Constitution <i>Sengo Kenpo</i> 1947			Meiji Constitution <i>Meiji Kenpo</i> 1889		
Preamble			Preamble		
Chapter	Title	Number of Articles	Chapter	Title	Number of Articles
<b>I</b>	THE EMPEROR	8	<b>I</b>	THE EMPEROR	17
<b>II</b>	RENUNCIATION OF WAR	1			
			<b>II</b>	RIGHTS AND DUTIES OF SUBJECTS	15
<b>III</b>	RIGHTS AND DUTIES OF THE PEOPLE	31			
			<b>III</b>	THE IMPERIAL DIET	22
<b>IV</b>	THE DIET	24			
			<b>IV</b>	THE MINISTERS OF STATE AND THE PRIVY COUNCIL	2
<b>V</b>	THE CABINET	11			
			<b>V</b>	THE JUDICATURE	5
<b>VI</b>	JUDICIARY	7			
			<b>VI</b>	FINANCE	11
<b>VII</b>	FINANCE	9			
			<b>VII</b>	SUPPLEMENTARY RULES	4
<b>VIII</b>	LOCAL SELF-GOVERNMENT	4			
<b>IX</b>	AMENDMENTS	1			
<b>X</b>	SUPREME LAW	3			
<b>XI</b>	Supplementary PROVISIONS	4			
		103			76

## Preamble

The introduction of the Meiji Constitution 1889 *Meiji Kenpo* of the Japanese Empire *Dai Nippon Teikoku*<sup>1</sup> stressed the right of sovereignty that the emperor inherited from his ancestors. This right is also inherited by his children and offspring.

The Japanese modern state was identified for the first time by a fundamental law adopted by the Japanese people to organize their lives. Under the emerging constitution, it was decided to inaugurate the parliament on the first day, where it becomes immediately effective, with emphasis on the importance of this new democratic era to the native citizens. The resulted parliament has the right to modify the amends suggested by the Emperor and his successors; thus, obliging the people to be absolutely loyal to this law.

While the Peaceful Constitution of 1947 *Sengo Kenpo* gave the political and legislative power to the people, the voice of the majority was decided through free elections. The freedom of speech prevailed throughout Japan facing any new militarization attempt by the Japanese traditional *Genro*<sup>2</sup>.

In Meiji Constitution, the government is considered a trustful gift from the Living god *Arahitogami* to his loyal subjects<sup>3</sup>. It derives its authority from the emperor himself, while the representatives practice their rule under the supervision of the Imperial Household. The elected or nominated public figures could not implement any law or legislation or decrees that are incompatible with the main principles of the new constitution.

In contrast, the 1947 constitution emphasized "Peace" and aimed that Japan might earn an honorable place among the civilized nations, whilst recognizing the right of all countries to live in harmony without fear of injustice or aggression. In return, the Japanese people promised to achieve those ideals and lofty goals with all the possibilities and capabilities they could offer.

## The Emperor

Chapter I describes the status and powers of the Emperor in *Meiji Kenpo* and is composed of seventeen articles out of seventy-six legal substance in the whole constitution, an average of 22.3%.

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<sup>1</sup> Duus, P., Myers, R. H., & Peattie, M. R. (2010). *The Japanese wartime empire, 1931-1945*. Princeton University Press.

<sup>2</sup> Colegrove, K. (1941). Militarism in Japan's foreign policy. *The ANNALS of the American Academy of Political and Social Science*, 215(1), 7-16. <https://doi.org/10.1177/000271624121500102>

<sup>3</sup> Barshay, A. E. (2021). *State and intellectual in imperial Japan: The public man in crisis*. University of California Press.



On the other hand, *Sengo Kenpo* included eight articles that specifically talk about the status of the Emperor out of a hundred and three constitutional legal materials, an average of only 7.7%.

This obvious numerical difference in the legislation of the imperial authorities shows the contradiction between a pure local Japanese legality attempt named after the Emperor himself and The Supreme Commander for the Allied Powers SCAP.

- **Article 1** - The Meiji Constitution reveals grants provided to the imperial dynasty to rule the nation of Japan eternally, as well as to inherit this divine responsibility through the offspring of male imperial decedents - **Article 2** -. It also stresses that the Emperor is sacred and protected - **Article 3** -.

The Emperor exercises his legislative powers through the imperial parliament - **Article 4** - According to his desires and orders the elected council meets, prescribes, legislates, and has even been dissolved. Moreover, the Emperor has the right to claim the preparation, implementation, and validation of laws - **Article 6** -. He also has the right to issue imperial decrees to face emergencies affecting public security - **Article 8** -.

The Emperor has the power to determine the form of the administrative system, assign staff salaries, whether civilian or military, and nominate and dismiss staff members - **Article 10** -. The Emperor under - **Article 11** - and - **Article 12** - takes control of the general command of the army and navy since he is the Supreme Commander of the armed Forces *Dai-gensui*<sup>1</sup>, where he identifies their system and has the right to declare war and sign treaties - **Article 13** - and - **Article 14** -.

The Emperor under - **Article 15** - and - **Article 16** - blesses the titles of nobility and grants of honors; in addition, he can order a general amnesty or commute legal sentences and sanctions. - **Article 17** - grants the Emperor the right to establish “A Regency shall ... in conformity with the provisions of the Imperial House Law. The Regent shall exercise the powers appertaining to the Emperor in His name.”

According to those legal materials, the Meiji Constitution involves interpreting the concept of the nature of the Emperor himself. In fact, we can count the Emperor as an absolute ruler who rises above human laws. On the other hand, his powers are limited due to the constitutional texts. Moreover, the constitution clearly contained the non-democratic institutional structure, knowing that the freedom and interests of the citizens are subject to the emperor's desires.

In the 1947 constitution, the political role of the Emperor shrunk and became merely a symbol of the state. Therefore, the Japanese Emperor issued his Humanity

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<sup>1</sup> Parish, H. (1974). The Role of the Imperial Family in Modern Japan. *Social Science*, 49(2), 74-84.

Declaration *Ningen-sengen* even before the proclamation of the new constitution under the authority of the “Devine Occupier” General Douglas MacArthur<sup>1</sup>.

According to the new Constitution, the Emperor took over the task of assigning the prime minister who was elected by the parliament, as well as assigning the chief judge of the Supreme Court - **Article 6** -.

Even though the Emperor does not have additional dominance over the government - **Article 4** -, he has important protocol tasks that do not affect the independence of the government decisions. According to - **Article 7** - the emperor has the power to issue changes in the laws, signing treaties, dissolving the vice board, announcing the election of the parliament members, nominating and also dismissing of the members of the parliament, authorizing and approving the ambassadors and ministers, sanctioning general and special pardons, granting honors and medals, and other diplomatic documents according to legal texts, receiving the foreign ambassadors and ministers, and finally performing official celebrations.

## **Rights and Duties of the Japanese Citizens**

The contentment of the materials on the right and duties of the people is a clear shift in form and content. In fact, the chapter title has changed from “RIGHTS AND DUTIES OF SUBJECTS” in the Meiji Constitution to “RIGHTS AND DUTIES OF THE PEOPLE” in the new constitution, which gives us a clear indication of the importance of the Japanese citizens in determining the political power in their country after 1947.

Although the Meiji Constitution has included in his texts many legal rights of the Japanese citizen - **Articles 19 - 20 - 21 - 22 - 23 - 24 - 25 - 26 - 27** -, such as freedom of beliefs, residence, thoughts, work and ownership, etc. These texts have repeated the same written memorized sentences, but those granted rights were under the supervision of the government. Through this administrative surveillance, the local authorities interpreted those constitutional procedures according to their whims, specifically militaristic visions, and colonial expansion intentions, clear evidence is shown in - **Article 31** - which discussed the emergency law.

In the postwar Constitution, the right and duties of the people acquired and developed drastic changes; it radically changed the morality and ambition of the Japanese individual in the new social and political system. Thus, it became completely different from what was in the era of imperialist expansion. The new constitution emerged to affirm the sovereignty of the people, and also emphasize the personal individual rights of the Japanese citizen considering democratic concepts,

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<sup>1</sup> Friedrich, C. (1948). *American Experiences in Military Government in World War II*, Rinehart & Company.

where it is intuitive, eternally humanitarian and not violated by totalitarianism - **Article 11** -, whereby the whole population becomes equal, and citizens would have the same rights and duties. In addition, there would be no discrimination based on sex and religion since all segregation customs and rules should be banned.

The new constitution gave the Japanese citizens the right to vote for their preferred political leaders without fear of prosecution. More so, the Japanese citizen has the right to sue the state for indemnity in case of a false accusation or a mistaken arrest.

## Legislature

The legislative power in Meiji Constitution was given to the imperial parliament where it occupied an important structure in the constitution purview, in chapter III, which included 22 articles. The role of the parliament was restricted in - **Article 37** - because “every law requires the consent of the Imperial Diet”.

The parliament under - **Article 33** - consists of a House of Peers and a House of Representatives. The first was formed of members with imperial blood such as imperial family, landlords, and samurai leaders selected by the Emperor and his advisers. The second consisted of members elected directly by the Japanese citizens. There should be sessions - **Article 41** - each year, which could last for three months - **Article 42** -; this period can be prolonged by direct imperial order. Besides, the Emperor has all the power to invite the parliament to reconvene when it is necessary. He also has the power to dissolve the assembly or disable it - **Article 47** -.

On the other hand, the legislative parliament in the constitution of 1947 was decided and implemented by the Diet itself, because it represents the highest authority in the state of Japan, since it is the only institution authorized to promulgate laws and legislations - **Article 41** -. The Diet consisted of the House of Representatives and the House of Councilors - **Article 42** -. The two councils are composed of members who represent all components of the people and whose count was determined by the law - **Article 43** -. The qualifications of the members for the councils were determined by law without any discrimination of race, sex, religion, social classes, education, and salary - **Article 44** -. Members of both councils should be extended from arrest during the meeting, except in cases prescribed by the law. Members who were arrested before the session must be released during the session at the request of the council - **Article 50** - because the council meetings were only valid if one-third of the representative were present - **Article 56** -. The budget must be presented first to the council of deputies - **Article 60** -. Furthermore, the members of the Supreme Court should become affiliated with the prime minister himself, who is elected by parliament.

The aristocratic board was replaced by an elected legislative council where the power of the supreme council belongs to the board of deputies, which has to consider the ministry's approval, watch the state institutions, and ratify the treaties - **Article 61** -. In order to ensure that the legislation is still categorically in the hand of the elected representatives of the people, the new constitution names the Diet as the highest authority in the state resembling the sovereign power.

Under those constitutional materials, the sovereign of decision-making in Japan changed from the Emperor to the parliament. The parliament has completed all the competitive positions of the authority that existed in the system before and during the war.

### **Executive Authority**

Studying Meiji Constitution shows us that the constitutional materials for the year 1889, which dealt with the executive branch, clarifies that the political role was marginal and reduced to two fragments: - **Article 55** - and - **Article 56** - from Chapter IV, " The respective Ministers of State shall give their advice to the Emperor, and be responsible for it," and "The Privy Councilors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of State when they have been consulted by the Emperor." The task of ministers was clearly limited to providing advice to the Emperor, with the responsibility of what they consult. Moreover, they are committed under the articles above to sign the laws, regulations and decrees that are related to the affairs of the state.

The government being subject to restrictions imposed by the Imperial Parliament was not able to keep its position. The Ministers of State were responsible in front of the Emperor himself but not in front of the parliament. Privy Council was recommended by the constitution and was created by the Emperor's advisers as well as the ministers of state - **Article 56** -.

However, in the constitution of 1947, government performance was detailed in eleven materials throughout Chapter V "THE CABINET".

The constitution stipulated that the government including the Prime Minister will be elected by the majority of the members of the Japanese Diet. Also, the parliament was granted dismissal of the prime minister and ministers of state based on its authority as required by the higher national interest - **Article 68** -.

According to - **Article 72** - they could submit drafts of laws, national reports, on the General Affairs and External Relations, to the council of deputies. In addition, they could exercise control and supervision of the various administrative joints.

- **Article 75** - shows the legal proceedings against the Minister if necessary, with the consent of the Prime Minister. As well as the need to take actions following the standards that are fair.

## **Judiciary**

The judiciary in the Meiji Constitution exercised its authority under - **Article 57** - in the name of Emperor, judges were appointed among those who have the qualifications given by the law - **Article 58** -. Under - **Article 61** -, we find the separation of the administrative court from other courts is necessary to sentence judgments against violations of administrative authorities.

Judiciary in the postwar constitution had been separated from the Ministry of Justice by being an independent official branch which is equal to the other sectors of government. The Japanese Supreme Court is counted in the final Chapter as legal obligations related to the laws and administrative court system. In order to ensure the independence of the judiciary, as it represents the third power, the authority of the Supreme Court and the lower courts were granted power according to what the law legalized - **Article 76** -. Therefore, the Supreme Court became the last resort to determine the constitutionality of any law. As stipulated under the constitution - **Article 80** -, the Council of Ministers appointed judges and all lower courts from a list prepared by the Supreme Court itself, with the provision of moral guarantees for judges to be free from any pressures or any harassments they could possibly be exposed to.

## **Finance**

The 6<sup>th</sup> Chapter of the Meiji constitution treated financial issues which had been discussed in eleven articles. Monetary and pecuniary were part of the Imperial Parliament Scope of authority. Under these laws, the government couldn't impose new taxes or even modify the tax in categories except with the consent of the Parliament - **Article 62** -. Moreover, the government should present to the parliament projects and plans in restricted forms every year, revealing both expenses and revenues, as well as providing the scale of the annual budget - **Article 65** - In the meantime, the government could not sign national contracts, loans, and other debts to calculate the national treasury without approval from the parliament itself.

Under - **Article 70** -, in case of an urgent session, the government was allowed to act in case the Parliament could not assemble. The maintenance of public security and national interest should take all necessary financial measures approved by Imperial decree for the sake of Nippon. These measures must be submitted to the Imperial Parliament at its next session, where it should earn the final legal approval.

On the other hand, restrictions were imposed on the parliament to limit the control of the financial category. The most prominent of these qualifications as stipulated in - **Articles 66 - 67 - 71** -, allowed the government to satisfy the imperial palace expenses each year without the approval of the parliament, and if necessary, to increase these expenditures. However - **Article 67** - did not allow the imperial parliament to issue final laws without the approval of the government on the expenses that have become fixed. This made the constitution based on the special authorities of the Emperor.

- **Article 71** - allowed the government to work on the budgetary list based on the following year in case the Imperial Parliament didn't vote on the budget, or if it was previously prepared.

Chapter VII dealt with financial subjects in the Constitution of 1947, where it was formed of nine articles. It is noted when analyzing the legal texts of these articles that there was a similarity in the legislature with the articles that were already approved by the Constitution in 1889.

The government is not allowed to impose new taxes or modify them, except through new legislations - **Article 84** -. The government also has to prepare and submit to the Diet an annual budget for consideration and approval - **Article 86** -, also the government has the right to cover any unexpected shortfall in the budget using the financial reserve to fill this deficit, and then get approval from the National Diet for all payments from the Reserve Fund - **Article 87** -.

However, the financial procedures immersed substantial changes represented in the articles that stated the entire imperial palace budget be referred to the state, where the parliament is allocated in the budget - **Article 88** -. Also, all state expenditures and revenues undergo security control under - **Article 90** -, which authorizes the Audit Bureau to review the final version each year.

Finally - **Article 91** - committed some intervals on the Diet to annually display the national financial resources to the people during regular intervals. It is thus clear that the financial procedures have become practiced as determined by the Diet with a competent and independent supervisory authority, as well as by people's censorship.

### **Amend Constitution**

- **Articles 73 - 75 - 74** - from Chapter IX of Constitution 1889 discussed the constitutional amendment. Those articles revealed the need to have an impact on the amending Constitution to make it imperative, to give an imperial order or to submit a draft on this matter to the imperial parliament. Moreover, the right is given to the council parliament (Deputies and nobles) to discuss the draft amendment in case the

two-third  $\frac{2}{3}$  of the members are present. It is clear that these legal rules may not provide any amendment to the imperial palace law and the parliament under discussion. Additionally, nor these legal rules can modify Constitutional laws issued by the Imperial Palace - **Article 74** -. One of the important measures prescribed by the Constitution in this regard concerning amendments, has committed - **Article 75** - not to carry out a modification in the Constitution or the Imperial Palace during the period of the law of the regency.

However, in the Constitution of 1947, - **Article 96** - dedicated Chapter IX to the amendments under which the Constitution is handled by the Diet when two-third  $\frac{2}{3}$  of the members of each council, or more, (deputies and advisers) are committed. Then the draft would be submitted to the people for ratification under the referendum to be held for its purpose. The ratification requires absolute majority approval of all votes at a special or general referendum determined by the Diet. Finally, the Emperor announces it, in the name of the Japanese people, so the amendments for ratification will be directly considered as an integral part of the Constitution.

## **Renunciation of War**

The political section of General Douglas MacArthur's headquarters realized that the Meiji constitution concentrated attention to the articles relating to the military which strengthened the military armed forces in Nippon. In the meantime, the ministry was left out of the high command of the armed authority, the Emperor gave all the sovereignty and all the governing powers under -**Article 11**- "the Emperor has the supreme command of the Army and Navy". The Emperor in *Meiji constitution* exercised that task with the assistance of some advisers who were: Chief of Staff of the Army war, the Chief of Naval, the Staff of the minister of the Army war, and the Marine Minister. Together they formed "the Command of Imperial Japanese Army", which had the powers to issue ordinances without the consent of the cabinet<sup>1</sup>.

The constitutional prerogatives granted the Japanese military institution to gradually acquire the power, and it seemed rather obvious at the beginning of the thirties (of the twentieth century). This invested in the emergence of a new era with full authoritarian politics and military intensification that created a new totalitarian system of government. This consequently led the Japanese state to an imperialistic drive, and it ended as Japan coming out from the Second World War, defeated, broken, and even exhausted country. It was also exposed for the first time in its history to foreign occupation. That is why the most important goal of the American

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<sup>1</sup> Ford, D. (2013). The Imperial Japanese Army in the World War II era. *Military History*. <https://doi.org/10.1093/obo/9780199791279-0115>

Occupation was the disarmament of Japan through the improvement of safe values as a major objective. This established planned conditions to prevent any revival of Japan's rearmament, and to dedicate all the efforts to transform the country into a peaceful loving nation. Article nine of the constitution of 1947 redefined Japan as the first country in the world to waive its right to renounce war.

- **Article 9** - of the Constitution of 1947 stated that "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 mean of settling international disputes", this was one of the most important articles in the new constitution, Japan abolished, the war, as a sovereign right of the nation. It committed not to authorize the Japanese Army, Navy, or Air forces belligerency, as it was before and during the Second World War. This is why it was called "Peace Constitution".



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