

# TRANSCENDING LAW

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## *The Unintended Life of Article 9 of the Japanese Constitution*

Kenneth L. Port

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Durham, North Carolina

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*For Paula, Emily and Ellie*

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# Glossary Terms

- GOJ: Government of Japan
- GHQ: General Headquarters, the term given to MacArthur's command in Japan during the Occupation
- LDP: Liberal Democratic Party of Japan, the party that has ruled Japan for essentially all of the last 55 years
- SDF: Self-Defense Force, the term given to the Japanese military forces post World War II
- MSDF: Maritime Self-Defense Force, the term given to the Japanese navy
- ASDF: Air Self-Defense Force, the term given to the Japanese air force
- GSDF: Ground Self-Defense Force, the term given to the Japanese army
- COCOM: Coordinating Committee for Multilateral Export Controls, the term given to a committee that would embargo Western exports to the Eastern Bloc countries during the Cold War
- SCAP: Supreme Command of the Allied Powers, the organization that formally set policy and governed Japan during the Occupation
- DJP: Democratic Party of Japan

# Foreword

The interpretation of Article 9 of the Japanese Constitution is an extremely complex and challenging topic. Many Japanese people hold very passionate views regarding Article 9. Many Japanese do not share the viewpoint of their neighbor when it comes to Article 9. There are well-meaning Japanese who feel that Article 9 is only aspirational and does not literally restrict Japan from possessing a military for defensive purposes. There are well-meaning Japanese who think that Article 9 stands for the notion that Japan is an absolutely pacifist nation without the right to raise an army for any purpose. There are many viewpoints in between these two extremes.

As a non-Japanese, I am not here to say who is right and who is wrong in this quintessential Japanese dilemma. There have been many books and articles written in Japanese, English and other languages about Article 9 of the Japanese Constitution and whether Japan has the constitutional capacity to raise an army or not. It seems to me that the strength of the work created here by Professor Ken Port is that he does not exclusively adopt any one of these competing viewpoints. He does not take sides and show how the other side has it wrong. In this work, he remains neutral as to the specific outcome that the Japanese might choose for themselves.

Rather, what Professor Port has done here is lay out for us, in one work, the undisputed facts of the Self-Defense Forces and Article 9. Although he advocates for the Supreme Court to address Article 9 directly so that this battle might be concluded, the strength of this work is its nonpartisan flavor. Port paints for us a picture of conflict. On the surface, Japan appears to have come to grips with its military. However, below that surface, Professor Port discovers much conflict that depends on one's point of view. Professor Port discovered that there are thousands of groups that have formed simply to express an opinion about Article 9. Although the recent efforts to revise the Japanese Constitution have motivated more of these groups to form and to become more vocal, they have existed since the promulgation of the current Constitution in 1947. These groups are an amazing statement of the health of the Japanese democ-

racy. As Professor Port shows, most Japanese politicians would prefer to revise the Constitution. On the other hand, most citizens would prefer to either not revise it at all or to take much time and do it very deliberately. It appears that because the citizens do not want the Constitution revised now, the politicians have slowed this process down—directly responsive to the populace. That is quite a statement of the health of the Japanese democracy.

Of course, Professor Port, as well, is not a Japanese citizen. Therefore, I think it wise that he does not attempt to dictate a solution to the Japanese. Professor Port, instead, argues that the Japanese Supreme Court should take on this fight so that the society as a whole can have closure on this issue.

I found the survey questions and answers in the end of the book to be most interesting. Professor Port has translated many surveys and analyzed the responses. It is very important in this debate to know what the Japanese people believe of their government and their Constitution. All of the groups in the struggle over what Article 9 means selectively use one or a portion of one survey to claim that the Japanese people agree with them, not the other side. Professor Port translates more than 25 such surveys for us to read and reach our own conclusion as to what the Japanese people believe without the partisan filter.

The facts and stories relied on by Port are mostly readily available in the news media, scholarly works and reliable Internet sources. Port has done an exhaustive job of researching the “backstories” of some of the most important Supreme Court cases (which conclude that Article 9 is a nonjusticiable political question). The story behind the American use of the Tachikawa Air Base and the related photographs are amazing. On the cover of this book is a photograph Port found that captures the protest over the Sunagawa Case where protesters are confronting police in the tiny village of Sunagawa while a C-124 takes off overhead. In one picture, Professor Port has captured the nature of that entire dispute.

For me, that picture operated as a metaphor for this entire book. Port has attempted to capture in one work a dispute that has raged for more than 60 years over the meaning of one phrase of one clause of one paragraph of one Article of the Japanese Constitution. There are many, many views on this subject. Professor Port is equally suspicious of them all.

There are perhaps a limited number of Americans who could successfully undertake this project. One would have to have a good knowledge of the Japanese language. One would have to have a good knowledge of the Japanese legal system. One would have to be well-trained in law in the United States. Not surprisingly, Port has all three of these skill sets. Port has been studying Japan

for more than 30 years. He speaks, reads and writes Japanese. He is currently on the faculty at William Mitchell College of Law in St. Paul, Minnesota.

With all due respect to the readers' personal views of Article 9, I encourage you to read Professor Port's provocative book and make up your own mind: should the Japanese Supreme Court enter this debate or are you satisfied with the status quo? In the end, this seems to me to be an intensely personal question that an American has asked but only the Japanese people can decide.

Walter F. Mondale  
Minneapolis, Minnesota

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