

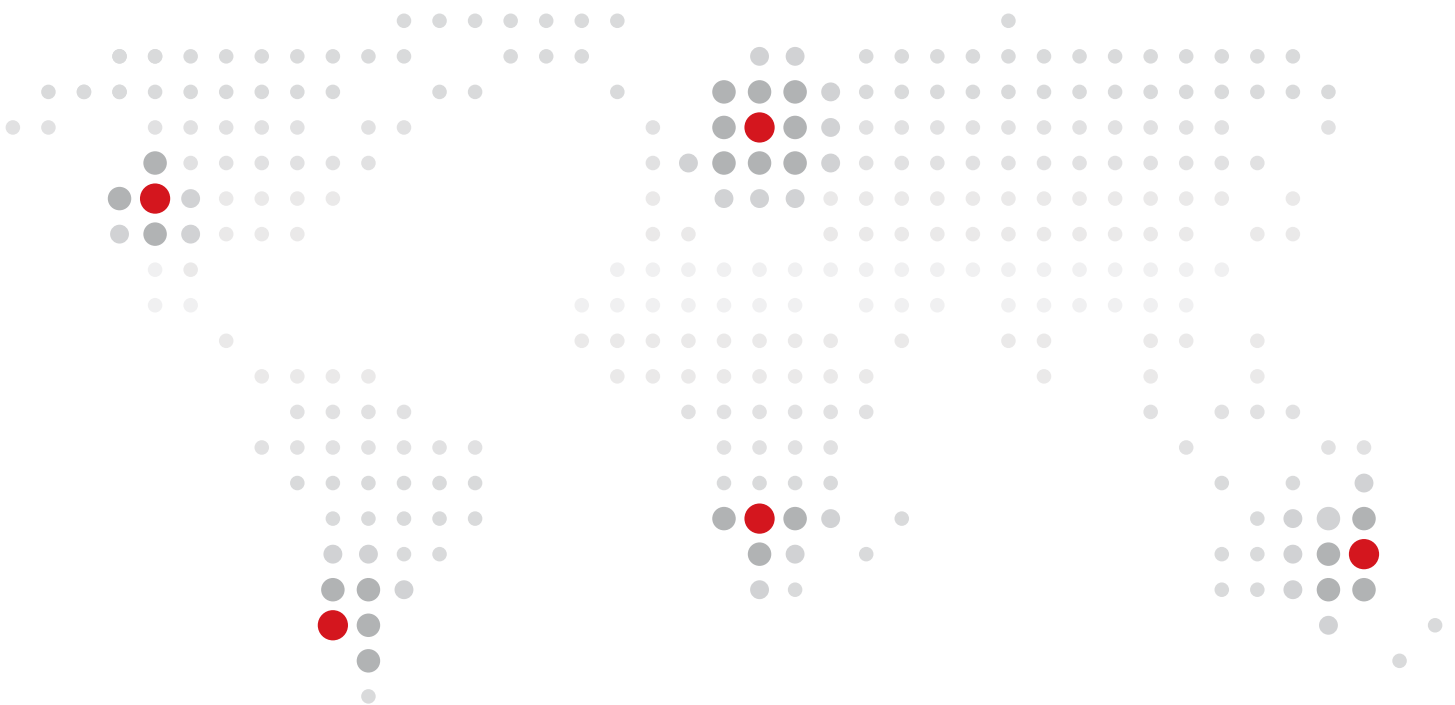
Learning from the Nazis?

How the Japanese constitution is being quietly undermined

Mishima Ken'ichi

Professor emeritus, Osaka University

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The Japanese finance minister and former Prime Minister Aso Taro is an experienced politician. He has a tendency for exaggeration and is prone to verbal gaffes, but these are mostly calculated and his provocations often serve as a trial balloon. In summer last year, Aso commented on the topic of constitutional revision, suggesting that Japan should learn from the Nazis: "Let's do [the revision of the constitution] *quietly*, the way the Nazis did it. The Weimar constitution was replaced by the Nazi constitution without anyone even noticing. Why don't we learn from the tactics of the Nazis?" The speech was recorded and covered intensively by the media.

The public reacted with sharp criticism and anger. It was astounding that the minister's statement contained a number of factual errors. Aso was obviously thinking about the so-called Enabling Act (*Ermächtigungsgesetz*) of 1933 when he made his comments. His insistence that the act was passed "quietly" and "unnoticed," however, contradicts the historical facts. It is well-documented that the members of the Communist Party were kept away from the deliberations in the Reichstag and from the voting. Moreover, the passing of the Enabling Act was feted with great gusto in the media. Most notably, though, there was no "Nazi constitution" at all. The authority of the Nazis was consolidated with the Enabling Act, but the Weimar constitution was in fact never suspended or even abolished.

These historical inaccuracies in Aso's speech were also pointed out in Japan, and I wrote about them myself in the *Asahi Shinbun*, the left-liberal Japanese daily newspaper. The opposition parties called for an extraordinary meeting of the lower house Budget Committee despite the summer recess. Criticism was played down, however, and government representatives stated curtly that Aso's speech had been a "private comment" by the minister and that he of course respected the constitution. No matter what criticism was directed at Aso, the response was always that it was "unfounded" and that reporters had "misunderstood" him. Just as the government had hoped, the media was soon focusing again on different news and the sports results.

At the end of the day, most people had little interest in historic events in Germany 80 years ago or in the debate over whether or not the minister had gotten his historical facts straight. Ultimately, this is as predictable as it is

regrettable, and it is in any case true that the situation in Germany at the time of seizure of power by the National Socialists was fundamentally different to that in Japan today.

The outrage over Aso's remarks can really only be understood against the background of the intentions of the Abe government and the right wing of Japan's governing Liberal Democratic Party (LDP). The right wing of the party has been pushing for the "revision" of the Japanese "peace constitution" for quite some time, since the founding of the party in 1955 in fact, and the revision of the constitution has in the meantime become the party's *raison d'être*. The primary objective is the revision of Article 9, which negates war as a legitimate means of the state. Even as the Article's principles have been repeatedly undermined by government statements and actions, representatives of the right wing of the LDP claim that Japan cannot be sovereign or independent without revision of this article.

A recent constitutional draft by the LDP gives further ground for concern. Unlike the present Japanese constitution (and also the German Basic Law), it does not include an eternity clause guaranteeing basic human rights. Instead, this draft attaches great importance to respect for family and tradition. The aims expressed in the draft constitution are a – contradictory – harmonization of traditional culture and nuclear energy, together with promotion of further economic growth and the establishment of a hegemony in East Asia through the introduction of regular armed forces.

Advocates of constitutional revision argue that the current constitution is an American diktat and that there were formal irregularities in drafting the constitution after 1945. As a consequence, the legitimacy of the constitution ought to be called into question.

However, the fact that the Japanese constitution enjoys broad acceptance amongst the people and in public opinion is grossly overlooked in this context. The legitimacy of a constitution depends to a much greater extent on public acceptance and its establishment in political life than on alleged formal procedural errors – something any resourceful lawyer can pull out of a hat at will. This is also a core thesis of Jürgen Habermas's constitutional theory, yet

proponents of a revision of the Japanese constitution ignore this point completely.

Prime Minister Abe Shinzo is a fervent advocate of constitutional revision and has recently attempted to begin this with a revision of Article 96. This article stipulates that amendments to the constitution may only be initiated after a concurring vote by a two-thirds majority in both the Upper and Lower Houses and a national referendum (by simple majority). The provisions of the article make it very difficult indeed to carry out a revision of the constitution the way the LDP would like, since the LDP proposals are highly controversial. The proposed solution to this problem, i.e. to simply revise the process for constitutional revision as stipulated in Article 96, was denounced even by conservative constitutional scholars as tenuous and downright deceitful.

"Learning from the Nazis?" The Aso quotation can only be understood against this background. The developments of the last months illustrate that the strategy proposed by Aso to revise the constitution "quietly" is actually being implemented. Following Aso's suggestions, Prime Minister Abe established a "Discussion group for the reconstruction of the legal basis for national security". Although this committee is a personal advisory body for the prime minister, the interpretation of the constitution has been changed on the basis of proposals made by this group. Thus the Japanese government now claims the right to collective self-defense under the terms of the current constitution. Preceding governments have always negated this claim but Japan may now deploy its self-defense forces worldwide to support the US in wars anywhere in the world. For the time being, however, the aim is especially to demonstrate that Japan can expand its military presence throughout the East Asian region, which is increasingly seen as unstable. It appears to be of great importance for Prime Minister Abe that Japan now demonstrates the will to stand with the US and guarantee the stability of East Asia. Behind this, however, is the dream of establishing in the distant future, a Japanese hegemony in the form of Japanese security guarantees for East and Southeast Asia.

Looking back, the history of Japanese security policy after the war is one of successive and partly successful attempts to undermine the constitution through continual reinterpretation of Article 9. At the beginning, the interpretation was

that the Self-Defense Forces (SDF) existed only for the purposes of self-defense and as such did not contravene the provisions of Article 9. The government agency responsible had long been referred to as the "Defense Agency," but during Abe's first term as prime minister in 2007, it was elevated to full-fledged ministry status. In more recent moves, Japan's participation in the actions of collective security systems has been declared constitutional – a step which previous Japanese governments have always resisted. Japan's reputation as a "peace state", earned over decades on the international stage, has been drastically damaged.

One further relevant point of discussion currently is the Abe government's relaxation of the long-standing ban on the export of weapons. The new version of the "Three Principles on Arms Exports" permits collaborative development of defense technology with other countries and relaxes the ban on the export of weapons, although export to conflict regions is still precluded. This amendment made Japanese arms manufacturers very happy. In postwar Japan, the export of military equipment, from combat aircraft to submarines and tanks to small arms, was banned, which set Japan apart from other countries, including the Western European states such as Germany. Nevertheless, even without a significant military industry, unemployment remained low and the economy grew. The Japanese have been proud of this achievement – until now.

"Quietly" realizing the dream of a "war-capable Japan" – that is what the current discussions in Japan are all about. It is absolutely appropriate to criticize the erroneous and intellectually primitive comparison with the Nazi Enabling Act. It is even more important, however, to recognize the "quiet" and surreptitious undermining of the constitution. Left-liberals in Japan have made numerous mistakes over the last 50 years. They have gone to great lengths to maintain the fiction of Article 9 without acknowledging the factual existence of Japanese armed forces. It was negligent to adopt a pacifist stance while at the same time tacitly accepting the existing facts of step-by-step militarization. The disparity between the text of the constitution and the reality was not insufficiently scrutinized. As a result, Article 9 has been gravely undermined and almost become meaningless.

Both Abe and Aso are the grandchildren of prominent conservative politicians of the wartime and postwar period. Abe is the grandson of Kishi Nobusuke, who was interned at Sugamo Prison after Japan's surrender but never brought to trial. Aso is the grandson of Yoshida Shigeru, who was prime minister from 1946 to 1947 and from 1948 to 1956. Within the ruling LDP there are numerous other politicians whose fathers or grandfathers were also politicians; they carry on the legacies of the elitist social structure of the prewar period, but at the same time profit from their background.

The dominance of a quasi-hereditary political class has survived in Japan partly as the result of the electoral system, and this dominance has led to a lack of legitimacy. To compensate for this lack of legitimacy, the public are dazzled with nationalistic rhetoric. This requires the highlighting of Japan's unique culture, Japan's unique cuisine, the unique friendliness of the Japanese people, the particular beauty of the Japanese language, and the threat to the security of this magnificent Japan. The universalism of this "America-imposed" constitution is a thorn in the side of all those advocates of Japanese "uniqueness". It is in part, however, to this constitution with its anti-war clause that we owe prosperity and stability in postwar Japan.

About the author:

Ken'ichi Mishima is professor emeritus at Osaka University in Japan. His field of research is social philosophy, in which he is carrying on the tradition of critical theory, and currently focuses on the theory and practice of the transnational public sphere.