

Japan - Abe wants to gut public protections: amendments would limit individuals, not state power — expert

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If the Liberal Democratic Party succeeds in rewriting the Constitution, it would severely scale back fundamental human rights and strip the public of various civil liberties, a prominent constitutional scholar warns.

Prime Minister Shinzo Abe, while focusing for now on his economic policies, looks set on pushing his pet project of constitutional reform once next month's Upper House election race is over, in line with a comprehensive amendment proposal announced by the LDP in April 2012.

Reform proponents say the changes are necessary because the 67-year-old Constitution, drafted by the U.S.-led Occupation following the surrender in World War II, does "not reflect the free will of the Japanese people," as described in a Q&A document prepared by the LDP along with the draft.

The amendment proposals are far-reaching, and include elevating the status of the Emperor from "the symbol of the State" to "the Head of State," asserting rights to self-defense by rewriting the war-renouncing Article 9, and making it a duty for the people to respect the Hinomaru flag and "*Kimigayo*," the national anthem.

But Yoichi Higuchi, a professor emeritus at the University of Tokyo and a leading authority on constitutional law, says the LDP proposals are fundamentally at odds with the idea of constitutionalism, which dictates that constitutions exist to limit the power of authority, not the power of the people.

"The premise behind constitutionalism is that government authorities would be naturally inclined to abuse their power if they are left unchecked," Higuchi said in an interview last week. "So constitutions are there for the people to limit the power of authority."

In contrast, the LDP draft would impose a series of new duties on the people, including having to respect the Constitution. And while Article 99 of the current Constitution says that "the Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution," the LDP version would free the Emperor and the Regent of this obligation.

In addition, the draft would create new restrictions on freedom of speech, press and expression, which are currently guaranteed under Article 21, by adding a new section that says "engaging in activities with the purpose of damaging the public interest or public order, or associating with others for such purposes, shall not be recognized."

Last month, Higuchi formed a group of academics, *Kyuju-rokujo no Kai* (Group of Article 96), to stand against Abe's plan to first go after Article 96.

This article stipulates that any amendment to the Constitution must first clear each chamber of the Diet with two-thirds of all votes before it can be put to a national referendum, where the final decision would be made.

Abe wants to change the Diet requirement to a simple majority in each chamber, making subsequent constitutional changes – including a rewrite of Article 9 – easier to accomplish. His LDP-New Komeito ruling bloc holds a strong majority in the Lower House and, if it prevails in the July 21 Upper House election, as many predict, the coalition will dominate both chambers.

“You are about to engage in the game of constitutional amendments, and you say you want to change the rules of the game first. It goes completely against the spirit of constitutionalism,” Higuchi said.

His group is comprised of 37 constitutional scholars and political scientists with various views on the nation’s top law. For instance, one member is Setsu Kobayashi, a professor of law at Keio University who has for years advocated revising the Constitution, but is categorically opposed to amending Article 96.

While debate involving the Constitution has long centered on Article 9, which renounces war and forbids Japan from maintaining a military, Higuchi points to numerous other, less-known changes envisioned by the LDP that could have far-reaching impacts on people’s lives.

The Preamble to the Constitution, for example, declares that human rights are universal in nature and that power and sovereignty reside with the people. The LDP draft rewrites the entire Preamble and contains no reference to this “universal principle.”

Instead, the LDP-proposed Preamble emphasizes Japan’s uniqueness, saying it “is a nation with a long history and unique culture, with an Emperor who is a symbol of the unity of the people.”

“The Q&A prepared by the LDP states quite frankly that the idea that human rights are natural rights of the people is not acceptable,” Higuchi says. “It basically suggests that (the phrase) ‘the fundamental human rights’ reflects the thinking of Westerners and that Japan should have its own approach to people’s rights. This runs counter to the longtime LDP policy of sharing the basic (values on human rights and democracy) with the West.”

As for Article 13, which states that “all of the people shall be respected as individuals,” the LDP ever so slightly tweaks the wording from “*kojin*” (individuals) to “*hito*” (*persons*). While the change might seem subtle, this represents a crucial shift in the way the people are positioned against institutions, such as family, society and state, Higuchi argues.

“The word ‘individuals’ has an ideology attached to it,” he said, explaining that it is tied to the history of the American Declaration of Independence and liberation of individuals from slavery in the West. In Japan, it was only in the postwar Constitution that individuals were broken off from the patriarchal family system, which often put restraints on individual freedom, he said.

“While democracy was well and alive in prewar Japan (before the rise of militarism in the mid-1930s), Japan lacked the concept of ‘individuals,’” Higuchi said. “But the Constitution placed individuals at the center of the nation. The LDP’s intention to delete the word ‘individuals’ from Article 13 is very much in line with other changes (which are all aimed at restricting individual rights).”

Higuchi added that Abe’s reform proposals reflect a denial of postwar LDP policy, which has more or less stood by the pacifism outlined in the Constitution.

"There have been many attempts by LDP politicians to change the Constitution before this," Higuchi said. "But this time it's fundamentally different from previous attempts, because it is based on the idea that the postwar regime (created by the Constitution) has been entirely wrong."

Higuchi concedes that the public has not enthusiastically supported or defended the merits of the Constitution to this day. But it is the Constitution that has bound the hands of political leaders and kept them from overstepping their bounds, he said, noting that recently retired LDP veterans, including former Secretary-General Makoto Koga, have criticized Abe's proposals.

Koga, in an unlikely interview with the Japanese Communist Party newspaper *Akahata* (Red Flag) on June 2, said he was "absolutely" opposed to revising Article 96.

"I cannot possibly approve of moves to revise Article 96, to lower the hurdles for amendment procedures," Koga told the paper. "It is absolutely wrong. The Constitution is the supreme law of our nation. It's only natural that the standards for revising it should be stricter compared with ones for revising other laws."

In the same interview, Koga, 72, who says he was 5 when his father died in the war, also denounced moves to revise Article 9, saying it is "at the core of the pacifist Constitution" and "like a (UNESCO) World Heritage (site)."

Tomoko Otake, *Japan Times* Staff Writer, June 29, 2013

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<http://www.japantimes.co.jp/news/2013/06/29/national/abe-wants-to-gut-public-protections-expert/#.UdDFfNhjbRY>