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Politics of Constitutional Amendment in Japan during the time  
of the Abe Administration

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WAR POWER, BUREAUCRACY AND SHADOW WARRIORS:  
CONSTITUTIONAL BATTLES IN JAPAN

In the past six years, Japan has been entangled in fierce constitutional battles over war power. Since Shinzo Abe assumed the position of Prime Minister in 2012, the amendment of Article 9 of the 1947 Constitution has become an urgent issue for the Liberal Democratic Party (“LDP”).<sup>1</sup> As one of the most significant constitutional provisions in the post-war Japanese Constitution, Article 9, paragraph 1 requires that Japan “renounce war as a sovereign right of the nation and the threat or use of forces as means of settling international disputes.” The Renouncement Clause has been a fixture of Japan’s pacifist constitutionalism for seventy years. However, since the Treaty of Mutual Cooperation and Security between the United States and Japan of 1960, the interpretation of Article 9 has been surrounded by controversy.<sup>2</sup> The existence of Self-Defense

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<sup>1</sup> KIMURA SŌTA (木村草太), JIEI TAI KENPŌ—KORE KARA NO KAIKEN RONGI NO TAME NI (自衛隊と憲法-これからの改憲論議のために) 54 (2018).

<sup>2</sup> Nishimura Yūichi (西村裕一), *Kenpō Kaikaku, Kenpō Hensen, Kaishaku Kaiken—Nippon Kenpō Gakusetsushi no Kanten kara* (憲法改革・憲法変遷・解釈改憲—日本憲法学説史の観点か

Force and the U.S. military bases in Japan are remnants of the Cold War era.<sup>3</sup> Therefore, the question remains of how to reconcile the Renunciation Clause with the practical need for national defense, as well as collaboration with the United States. Using a tactic similar to “court-packing,” the Abe administration took the chance to reshuffle the personnel of Legislation Bureau. The Bureau is the entity responsible for interpreting Article 9 for the government, which is then binding on the government’s policy. Therefore, once the Bureau’s interpretation is realigned with Abe’s policy, the government may advance its own agenda of constitutional revision. The progress on constitutional revision has made Prime Minister Abe the most powerful leader after WWII and helped his party to win elections since 2012. The following sections first examine how he made progress on the issue of Article 9 and later discuss his way to control bureaucracy in Japan.

A. *Constitutional Maneuver Through Interpretation: The Tale of Legislation Bureau*

Since the 1950s, the Legislation Bureau of the Cabinet has issued a series of interpretations setting up a time-honored distinction between “force” and “self-defense.”<sup>4</sup> To the legal experts in the Legislation Bureau, the existence of Japan’s Self-Defense Force is not in violation of the Constitution because Article 13 of the 1947 Constitution also requires the government to maintain the Self-Defense Force to secure happiness, or welfare, of the Japanese people.<sup>5</sup> Therefore, to the extent the welfare and happiness of the Japanese are at stake, the Self-Defense Force is necessary for carrying out this constitutional mandate. However, Article 9, paragraph 2 provides, “[i]n order to accomplish the aim of the preceding paragraph,

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ら), in ‘KENPŌ KAISEI’ NO HIKAKU SEIJIGAKU (「憲法改正」の比較政治学) 441, 456 (Komamura Keigo (駒村圭吾) & Machidori Satoshi (待鳥聡史) eds., 2016).

<sup>3</sup> The U.S.-Japan military cooperation was formed to deter the expansion of communism during the cold war. Therefore, even though Article 9 of the Japanese Constitution requires Japan to relinquish war power, the self-defense force was set up to protect Japan as well as to collaborate with the U.S. troops. See YOSHIMOTO SADA AKI (吉本真昭), SHIRAREZARU NIPPON-KOKU KENPŌ NO SHŌTAIKENPŌ NO SHŌTAI (知られざる日本国憲法の正体) 343-369 (2014).

<sup>4</sup> NAKAMURA AKIRA (中村明), SENGŌ SEIJI NI YURETA KENPŌ KYŪ JŌ—NAIKAKU HŌSEI KYOKU NO JISHIN TO TSUYOSA (戦後政治にゆれた憲法九条—内閣法制局の自信と強さ) 9 (2nd ed. 2001).

<sup>5</sup> NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 13 (Japan): “All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.”

land, sea, and air forces, as well as other war potential, will never be maintained.”<sup>6</sup> According to the Legislation Bureau’s interpretations, paragraph 2 refers to “military force,” which does not include the Self-Defense Force. Therefore, the Self-Defense Force is within the scope of constitutionally permissible “force”.

Based on this interpretation, Japanese constitutional scholars have identified two categories of self-defense: the first is “individual self-defense right” (permissible); while the latter is “collective self-defense right” (impermissible).<sup>7</sup> Individual self-defense is permissible because it is claimed by the Japanese people as a right to pursue happiness, as well as a right to protect Japan from foreign attacks. However, if Japan participated in the alliance force to attack other countries, then it would go beyond constitutional delegation of self-protection and be involved with war power, which is prohibited by Article 9.<sup>8</sup> Although the line between “individual” and “collective” is sometimes hard to draw, the Legislation Bureau has concluded three principles of “individual self-defense” since 1972: (1) there is an emergent and illegitimate attack on Japan; (2) there are no other suitable means to expel the attack and the forces used shall follow the least and necessary principle; and (3) it is not permissible to join any alliance to prevent the attacks from other countries.<sup>9</sup>

Against this backdrop, in July 2014, Prime Minister Abe abruptly changed the definition of “individual self-defense force” by passing a new resolution in the Cabinet.<sup>10</sup> It was a rare case of cabinet politics in Japan, since the Prime Minister usually defers to the interpretation of the Legislative Bureau. However, there is no statutory prohibition on the Prime

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<sup>6</sup> NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 9, para. 2 (Japan). Please refer to the text of the Japanese Constitution on the Japanese government’s official website: [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) (last visit: 01/05/2019)

<sup>7</sup> HASEBE YASUO (長谷部恭男), *Anpo Kanren Hōsei o Aratamete Ronzuru* (安保関連法制を改めて論ずる), in ANPO HŌSEI KARA KANGAERU KENPŌ TO RIKKEN SHUGI. MINSHU SHUGI (安保法制から考える憲法と立憲主義・民主主義) 91, 93 (Hasebe Yasuo ed., 2016).

<sup>8</sup> KIMURA SŌTA (木村草太), *SHŪDAN-TEKI JIEI-KEN WA NAZE IKEN NA NO KA* (集団的自衛権はなぜ違憲なのか) 17–18 (2018).

<sup>9</sup> HASEBE YASUO (長谷部恭男), *Anpo Hōsei kara Kangaeru SaikōSai to Naikaku Hōsei Kyoku no Yakuwari* (「安保法制」から考える最高裁と内閣法制局の役割), in ANPO HŌSEI KARA KANGAERU KENPŌ TO RIKKEN SHUGI. MINSHU SHUGI (安保法制から考える憲法と立憲主義・民主主義) 53, 59-61 (Hasebe Yasuo ed., 2016).

<sup>10</sup> Martin Fackler & David E. Sanger, *Japan Announces a Military Shift to Thwart China*, N.Y. TIMES (Jul. 1, 2014), <https://www.nytimes.com/2014/07/02/world/asia/japan-moves-to-permit-greater-use-of-its-military.html>.

Minister's power to reinterpret constitutional provisions. The three new principles include: (1) the attacks are targeted on Japan or on countries geographically adjacent to Japan, the attacks threaten the existence of Japan, or the attacks create immediate danger to destroy the foundation for citizens' pursuit of life, liberty and happiness; (2) there are no other suitable means to expel the attacks, to secure Japan as an independent nation, and to protect the citizens; and (3) the force used shall follow the least and necessary principle.<sup>11</sup> In this new formula, principle one expressly deviated from the longstanding interpretation held by the Legislation Bureau, which prohibits "collective self-defense." The new interpretation allows Japan to use force when neighboring countries are under attack by foreign enemy that is regarded as a threat to Japan.<sup>12</sup>

After the change of interpretation, the cabinet proposed a new legislation, the Peace and Security Act of 2015 ("PSA"), to allow the Self-Defense Force to participate in military cooperation with allied forces or U.N. troops, though their participation is limited to providing logistic support only.<sup>13</sup> Several constitutional scholars had criticized the bill as unconstitutional, since it would make collective self-defense an available option for the government.<sup>14</sup> Nevertheless, the legislation was passed by the National Diet in September 2015. The legislative process of PSA also engendered the largest public protest against the government since the 1960s.

The most controversial move by the Abe administration is the change in the interpretation of "self-defense." In fact, when Mr. Abe first became Prime Minister in 2006, he demanded the Legislation Bureau to change its interpretation but it was rejected by then Director-General of the Legislation Bureau, Reiichi Miyazaki.<sup>15</sup> When Mr. Abe won the election

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<sup>11</sup> SADURSKI, *supra* note, at 61.

<sup>12</sup> KIMURA, *supra* note 1, at 106.

<sup>13</sup> The Peace and Security Act of 2015 mainly authorizes the government to use forces in the following cases: (1) to protect the life and safety of overseas Japanese; (2) to defend alliance forces stationed in Japan so as to avoid national emergency and to take legitimate defense; (3) to protect life and safety in the operation of peacekeeping with the United Nations; (4) when the surrounding area of Japan is under attack. See KIMURA, *supra* note 1, at 108–14.

<sup>14</sup> Takahashi Kazuyuki (高橋和之), *Rikken Shugi ha Seifu ni Yoru Kenpō Kaishaku Henkō o Kinshi suru* (立憲主義は政府による憲法解釈変更を禁止する), in SHŪDAN-TEKI JIEI-KEN NO NAN GA MONDAI KA— KAISHAKU KAIKEN HIHAN (集団的自衛権の何が問題か— 解釈改憲批判) 183, 195–196 (Okudaira Yasuhiro (奥平康弘) & Yamaguchi Jirō (山口二郎) eds., 2014); HASEBE, *supra* note 7, at 98; KIMURA, *supra* note 8, at 18.

<sup>15</sup> Matsutani Sōichirō (松谷創一郎), *Wasureppoi Nipponnin no Tame no "Anpo Hōsei ni Itaru Michi"* — Abe Shinzō Shushō no Mittsu no Senryaku (忘れっぽい日本人のための“安保法

in 2012, he strategically promoted the Director-General of the Legislation Bureau, Tsuneyuki Yamamoto, who opposed the change, to the bench of the Supreme Court.<sup>16</sup> In doing so, Yamamoto cannot prevent Prime Minister Abe from reinterpreting Article 9. Later on, Prime Minister Abe appointed the Ambassador to France, Ichiro Komatsu, as the new Director-General. Under the new leadership of Mr. Komatsu, the Bureau has drafted new interpretations about the Self-Defense Force, and the Cabinet later approved it.<sup>17</sup> Former Director-Generals, including Masahiro Sakata and Judge Yamamoto, have spoken out on the media opposing the Abe administration's change of the long-term interpretation.<sup>18</sup> The successor of Ambassador Komatsu, Mr. Yuusuke Yokobatake, continues to uphold the constitutionality of collective self-defense right.<sup>19</sup>

Prime Minister Abe's control of the Legislation Bureau is quite a showdown between bureaucrats and politicians. It has been a proud tradition of Japan that their bureaucrats come from elite colleges and mostly serve for life, climbing up the ladder all the way to the top.<sup>20</sup> Therefore, bureaucracy plays as a check on the power of the cabinet. The politicians come and go but the bureaucrats stay for life. The most famous example is the former Ministry of International Trade and Industry (MITI, now Ministry of Economic, Trade and Industry), which has been praised as the architect for Japan's economic miracle and developmental state.<sup>21</sup>

However, Prime Minister Abe's constitutional reinterpretation of Article 9 has proven that the bureaucrats, even prestigious ones like the Legislation Bureau who enjoys a reputation of expertise, are no longer free

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制に至る道”——安倍晋三首相の3つの戦略), YAHOO! JAPAN NEWS (Sep. 15, 2015), <https://news.yahoo.co.jp/byline/soichiromatsutani/20150915-00049546/>.

<sup>16</sup> Jeremy A. Yellen, *Shinzo Abe's Constitutional Ambitions*, THE DIPOMAT (Jun. 12, 2014), <https://thediplomat.com/2014/06/shinzo-abes-constitutional-ambitions/>.

<sup>17</sup> See KIMURA, *supra* note 8, at 73–71; *Shushō, Kenpō Kaishaku Henkō 'Kihon wa Kakugi Kettei' Shūdanteki Jieiken Meguri* (首相、憲法解釈変更「基本は閣議決定」集团的自衛権巡り), NIPPON KEIZAI SHINBUN (日本経済新聞) (Feb. 20, 2014), [https://www.nikkei.com/article/DGXNASFS2000F\\_Q4A220C1EB1000/](https://www.nikkei.com/article/DGXNASFS2000F_Q4A220C1EB1000/).

<sup>18</sup> See *Two Former Heads of Legislation Bureau Blast Security Bills*, THE JAPAN TIMES/ THE JAPAN TIMES (Jun. 22, 2015), <https://www.japantimes.co.jp/news/2015/06/22/national/politics-diplomacy/two-former-heads-legislation-bureau-blast-security-bills/#.XDMfXVUzaUk>.

<sup>19</sup> See *Cabinet Legislation Bureau Chief Defends Self over Process of Reinterpreting Article 9*, THE MAINICHI <https://mainichi.jp/english/articles/20160317/p2a/00m/0na/014000c>.

<sup>20</sup> CHALMERS JOHNSON, *MITI AND THE JAPANESE MIRACLE*, 21–22, 198–241 (Stanford University Press 1982).

<sup>21</sup> B.C. KOH, *JAPAN'S ADMINISTRATIVE ELITE* 252–258 (1989). TSUJI KIYOAKI (辻清明), *SHINPAN NIHON KANRYOSEI NO KENKYU* (新版 日本官僚制の研究) (1969). MURAMATSU MICHIO (村松岐夫), *SENGO NIHON NO KANRYOSEI* (戦後日本の官僚制) (1981).

from political control. In the past, the General-Director was chosen from the line of Vice General-Directors.<sup>22</sup> However, Prime Minister Abe intentionally appointed an ambassador to the position to meddle in the bureaucratic culture. Through this display of muscle, Prime Minister Abe is attempting to show bureaucrats who the boss is now.<sup>23</sup>

### B. *Empire-building Through Personnel Power*

In 2014, the Abe administration created a new office in the cabinet secretariat, the Cabinet Bureau of Personnel Affairs (内閣人事局, *Naikakujinjikyoku*).<sup>24</sup> The Bureau is designed to provide a list of appointees for mid-level officials in the government, ranging from the Assistant Secretary (審議官, *shingikan*) or Administrative Vice-Minister (事務次官, *jimujikan*) to the Director (部長, *bucho*). The establishment of the Bureau has represented an attempt of the Prime Minister to place the bureaucrats under his or her control. For instance, the involvement of the politically appointed State Minister (副大臣, *fukudaijin*) in the policymaking process on each level establishes a second channel to monitor and to oversee the process of administration.<sup>25</sup>

Personnel power is key to Prime Minister Abe's constitutional battle plan, as well as economic reform.<sup>26</sup> On the one hand, by replacing the

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<sup>22</sup> SAKATA MASAHIRO (阪田雅裕), 'HŌ NO BANNIN' NAIKAKU HŌSEI KYOKU NO KYŌJI (「法の番人」内閣法制局の矜持) (2014).

<sup>23</sup> 'Hō no bannin' ni mo Abe iro hōsei kyoku chōkan ni Komatsu-shi (「法の番人」にも安倍色 法制局長官に小松氏), THE NIHON KEIZAI SHINBUN (日本経済新聞) (Aug. 3, 2013), [https://www.nikkei.com/article/DGXNASFS02047\\_S3A800C1EA2000/](https://www.nikkei.com/article/DGXNASFS02047_S3A800C1EA2000/).

Shimizu Masato (清水真人), *Tōchi kikō no henkaku ka hakai ka, Hōsei kyoku jinji no shinsō* (統治機構の変革か破壊か、法制局人事の深層), THE NIHON KEIZAI SHINBUN (日本経済新聞) (Sep. 3, 2013), [https://www.nikkei.com/article/DGXNASFK0201Z\\_S3A900C1000000/](https://www.nikkei.com/article/DGXNASFK0201Z_S3A900C1000000/).

<sup>24</sup> Reiji Yoshida, *Abe moves to boost control of bureaucrats*, THE JAPAN TIMES (May. 27, 2014), <https://www.japantimes.co.jp/news/2014/05/27/national/politics-diplomacy/abe-inaugurate-new-office-exert-control-bureaucrats/>.

<sup>25</sup> Mayu Terada's article, in this issue.

<sup>26</sup> KARUBE KANSUKE (軽部謙介), *KANRYŌ-TACHI NO ABENOMIC: IGYŌ NO KEIZAI SEISAKU WA IKANI TSUKURARETA KA* (官僚たちのアベノミクス——異形の経済政策はいかに作られたか) (2018).

high-to-mid level officials, the Prime Minister has realigned the bureaucratic order with his own political will. After reshuffling the bureaucracy, governmental officials are less likely to function as safeguards against the personal interests of political actors. The potential for promotion, as one of the critical motives for career bureaucrats, would make the mid-level officials more vulnerable to Prime Minister Abe's expressed or implicit directives. In fact, this is the culmination of political reform after the breakdown of the bubble economy in the 1990s.<sup>27</sup> During the economic downturn in the mid-1990s, political scandals about bureaucrats were rampant and bureaucrats lost support and respect from the general public.<sup>28</sup> In the wake of economic failure, the Hashimoto administration (1996-1998) proposed administrative reform to reshape the government. When the popular Prime Minister Junichiro Koizumi (2001-2006), who had turned the LDP inside-out, took office, he expedited the advancement of governmental reform. In his most ambitious political battle, he successfully privatized the postal service in Japan and shook complacent bureaucrats.<sup>29</sup>

The governmental reform initiated by Hashimoto had two prongs: first, in order to enhance the cabinet's ability to initiate policy, the Prime Minister was given more power to coordinate and direct the policy process; second, as a means of improving the quality of policy-making, the Cabinet Secretariat created more advisory groups under the Prime Minister.<sup>30</sup> The latter significantly expanded the role of special advisors to the Prime Minister; these offices are now considered key players within the cabinet. For example, during Prime Minister Abe's second and third terms, one of his five special advisors, Hirodo Izumi, was described as his "shadow

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<sup>27</sup> HARUKATA TAKENAKA (竹中治堅), *SHUSHŌ SHIHAI—NIPPON SEIJI NO HENBŌ* (首相支配——日本政治の変貌) (2006).

<sup>28</sup> See Mary Jordan & Kevin Sullivan, *Japanese Minister Resigns over Bribery*, WASHINGTON POST (Jan. 28, 1998), [https://www.washingtonpost.com/archive/politics/1998/01/28/japanese-minister-resigns-over-bribery-scandal/420f3a7c-17b3-4d5d-a1d6-3d7c9f7cef2e/?utm\\_term=.c1ed7c4c2a3c](https://www.washingtonpost.com/archive/politics/1998/01/28/japanese-minister-resigns-over-bribery-scandal/420f3a7c-17b3-4d5d-a1d6-3d7c9f7cef2e/?utm_term=.c1ed7c4c2a3c). See also Mary Jordan, *Japan Cracks Down on Bribery as Financial Scandal Broadens*, WASHINGTON POST (Jan. 30, 1998), [https://www.washingtonpost.com/archive/politics/1998/01/30/japan-cracks-down-on-bribery-as-financial-scandal-broadens/a9a137e1-eb3c-4c3f-baf6-481186a4aacb/?utm\\_term=.f5ecf2b66362](https://www.washingtonpost.com/archive/politics/1998/01/30/japan-cracks-down-on-bribery-as-financial-scandal-broadens/a9a137e1-eb3c-4c3f-baf6-481186a4aacb/?utm_term=.f5ecf2b66362).

<sup>29</sup> *The man who remade Japan*, THE ECONOMIST (Sep. 14, 2006), <https://www.economist.com/asia/2006/09/14/the-man-who-remade-japan>. Or, Anthony Faiola, *Japan Approves Postal Privatization*, WASHINGTON POST (Oct. 15, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/14/AR2005101402163.html>.

<sup>30</sup> TAKENAKA, *supra* note 37, 58–59.



warrior.”<sup>31</sup> Indeed, a recent scandal involving the opening of a veterinary school in a special location has generated rumors that Mr. Izumi might have received bribery on behalf of the Prime Minister or his family member.<sup>32</sup>

Controlling personnel power, penetrating the policy process, and assigning special advisors as shadow warriors: all of these “reforms” are unrelated to the macro function of constitutional structure, but are necessary for facilitating “governmental reforms” in Japan. These changes do not require any constitutional revision or amendment but still reshapes Japan’s bureaucracy-political relationship. They have made the Prime Minister more powerful than ever through these unenumerated and facilitative powers, which discipline the bureaucracy and cast tacit influence upon the policymaking process.

The prime minister now occupies the center of politics. On the one hand, he personifies his electoral support and designates himself as the singular representative of the whole nation. On the other hand, he turns the electoral mandate to marshal bureaucracy. It might not be an exaggeration to say that Prime Minister Abe has fulfilled the dream of generations of Japanese politicians.

In the case of constitutional revision, Prime Minister Abe managed to control the personnel of the Legislation Bureau, which allowed him to gain the power to redefine Article 9 through the mouth of the chief officer in the Legislation Bureau. With this new interpretation in place, further constitutional amendment is foreseeable. Though the amendment itself is not such an urgent issue among citizens, Prime Minister Abe and the LDP have harnessed patriotism and nationalism through this ongoing constitutional battle. They have gained popular support by repeating the

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<sup>31</sup> In the news report, Mr. Izumi claimed that his job is to express the will of the Prime Minister, when the Prime Minister cannot express himself publicly. ‘*Sōri wa Ienai kara Watakushi ga to Shushōhosakan ga... Zenjikan Shōgen* (「総理は言えないから私が」と首相補佐官が...前次官証言) ASAHI SHINBUN (朝日新聞) (May 30, 2017), <https://www.asahi.com/articles/ASK5Y6FFKK5YUTIL04R.html> .

<sup>32</sup> Reiji Yoshida, *Breaking down the Kake Gakuen scandal: Who’s lying, Abe or his political opponents?*, THE JAPAN TIMES (Jun 1, 2018), <https://www.japantimes.co.jp/news/2018/06/01/national/politics-diplomacy/breaking-kake-gakuen-scandal-whos-lying-abe-political-opponents/>.

necessity of constitutional reform in recent parliamentary elections.<sup>33</sup>

To be clear, the personnel power, policy initiative power, and monitoring power are all subordinate and supportive to the Prime Minister's executive power, which is constitutionally ordained. However, these unenumerated executive powers are now the vital wheels for the Prime Minister to build his empire in Japan's politics.

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<sup>33</sup> LDP, under the leadership of Mr. Abe, has won general elections for the House of Representatives in 2012, 2014, and 2017; it also won the elections of the House of Councillors (Senate) in 2013 and 2016.