

**A Response to Joseph Nye:
Article 9, the Rise of China and the US-Japan Security Alliance**

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It has been observed that, in the field of US foreign policy, all roads lead through Joseph Nye. It was therefore no surprise that Professor Nye's much-anticipated presentation at the University of Tōkyō on the future of the US-Japan security alliance was delivered to a lecture hall crammed to overflowing with an eager audience of students, faculty and interested visitors who had succeeded in the competitive lottery for tickets. The value of Professor Nye's insights more than compensated for the minimal personal space. Nye demonstrated the measured, sensitive and evidence-led foreign policy analysis that has come to characterise his work as theorist, scholar and statesman.¹

Nye made a sustained and powerful case for the continuation of the US-Japan security alliance. His address forms an important part of the discourse on this issue at a time when popular hostility to America's continued military presence in Japan is on the ascendant, particularly visible in the form of daily direct protest action in Okinawa, which is being met with a response from the authorities which might charitably be called "robust". The strategic value of a chance to convince some of Japan's future movers-and-shakers² of the continued merits of this controversial relationship cannot have escaped this long-standing and enthusiastic supporter of the US-Japan security alliance.

The crux of Nye's argument was that the USA remains an indispensable ally for Japan, particularly in light of the rising regional and indeed global power of China. The way in which he made this claim reflects the difficult and delicate balance he was required to strike in the way he presented the re-emergence of China as a major world power. His predicament, and that of others who advocate the American alliance as a necessary insurance policy against Chinese ambitions, is acute. Failing adequately to emphasise the dangerousness of an ascendant China might lead us to doubt the *necessity* of American protection (which some commentators have anyway come to regard as a kind of glorified protection racket). But to *over-emphasise* China's unstoppable might might raise doubts as to America's continued *ability* either to deter Chinese aggression, or to protect Japan from it if push actually came to shove. If that were true, some might advo-

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1 Not having yet read Nye's novel, *The Power Game*, I am unable to say whether these virtues also characterise his literary endeavours.

2 Tōkyō University's domination of Japan's political classes (and particularly its near-omnipotent bureaucracy) has loosened in recent years, but the corridors of power in Japan remain disproportionately populated by its graduates.

cate directly courting China as an alternative primary ally, thinking this a more reliable guarantee of Japan's safety than to persist in antagonising China with a trans-Pacific alliance that might not be of much use at crunch time anyway.

Recounting many of the ideas stated most fully in his influential book, *Is the American Century Over?*, Nye maintained that the US is likely to remain at the top of the international pecking order for many decades to come. Specifically, he argues that China is unlikely to overtake the USA in any of the three varieties of global power he identifies: military, economic, and the so-called "soft power" with which Nye's name is most associated in scholarly and political circles.

Although he accepts that the size of China's economy by GDP may exceed America's by the mid-21st Century, Nye emphasises that the two economies will remain distinct in terms of sophistication and structure. On this point Nye is surely right; a country's economic power is not dictated by size alone. In economies, as in brains, sophistication can count for more than size. The brain of the blue whale dwarfs that of Professor Nye, but few cetaceans are likely imminently to be joining him on the faculty at Harvard. China's GDP *per capita* (the more reliable indicator of economic sophistication) is unlikely to match that of the USA for several decades at least, given its large swathes of undeveloped territory and consequently impoverished populations. China remains a net importer of intellectual property and an emulator, not innovator, in terms of technological production. Additionally, decades of the One Child Policy have led to a contracting workforce that will find itself encumbered by the need to support large numbers of the economically unproductive elderly.

Indeed, following the removal of the One Child Policy, the situation is likely to get worse before it gets better. If the birth rate were suddenly to increase, the current economically active population would find itself required to support not just their unproductive old but their unproductive young as well. The population graph turns from inverted pyramid to hourglass. Interestingly, of course, the same demographic concerns apply to Japan too. Attempts to arrest population shrinkage in Japan invariably focus on increasing birth rates.³ This is hardly likely to alleviate the pressing social and fiscal problems caused by too large a proportion of economically unproductive individuals, but rather (at least in the immediate term) to worsen them. As all reasonable observers appreciate but few Japanese policymakers have the courage to admit, the only realistic solution is large-scale immigration of working-age foreigners, to fill out the hollow in the demographic hourglass. It is hoped that some in the audience will have been influenced by Nye's entirely correct point that the relatively high rates of immigration into the USA is a major reason for their continued economic dominance both now and in the future; a healthier balance between economic producers and consumers leads to an economy less

3 Many suggestions for raising the birth rate in Japan evince a troublingly 19th-Century view of the role and status of women, and/or a troublingly 1930s view of the obligations allegedly owed by individuals to the State.

burdened with inefficiencies and therefore likely to outstrip China with its serious demographic concerns.

Nye further emphasised the large reserves of “soft power” the US holds, in stark contrast with China. A term of Nye’s own coinage, “soft power” relates to the complex web of non-coercive influences that bring others to want what you want, removing the need to achieve one’s ends using the burdensome tools of either carrot (economic power) or stick (military power). China’s authoritarian regime, Nye claims, along with its acts of internal repression and external brinkmanship, sap any reserves of soft power.

The result of all this, according to Nye, is that the US remains the best of all possible allies, more than able to defend Japan’s interests well into the 21st-Century.

But Nye had another reason for insisting that the US will remain decisively more powerful than China for the foreseeable future. Some have suggested that the US-Japan alliance (in light of the Abe administration’s unlawful reforms to permit “collective self-defence”) risks dragging Japan into a war for dominance in Asia between the United States and China. Nye rejected this possibility, claiming that the USA’s continued and continuing superiority to China renders such an occurrence impossible. In support of this, he cited Thucydides’ famous attribution of the Peloponnesian War to, on the one hand, the rising power of Athens, and on the other, the fear that this engendered in the existing dominant power of Sparta (an analysis Nye also applies to explain the outbreak of war in Europe in 1914). Nye discounts such a conflict; the USA has no grounds to fear the rising power of China, so the USA has no need to instigate any battle for dominance, so there is no risk of Japan being dragged into such a conflict on America’s coat-tails by virtue of its alliance.

However, even if Nye is correct that the USA has no need (objectively speaking) to fear the rise of China, that does not mean Washington is not *in fact* twitchy about the prospect. There is a profound distinction between lack of fear and lack of reasonable grounds for fear. I for one would have been rather more reassured if Nye had furnished extensive evidence that there *was in fact no fear* of a rising China in Washington, not merely that there were no logical grounds to be afraid of that development.

Nye noted that security and stability in the East Asian region compares favourably to many parts of the world, particularly the Middle East, where Nye is surely right to predict decades of violent turmoil. It was interesting to hear him attribute this in a large part to the US-Japan alliance. Although Nye did not say anything of the kind expressly, some might have read into these statements an implied warning that violent conflict of the kind that plagues the Middle East might emerge in this region too if the US-Japan alliance were to falter.

In reality, the enduring conflict in the Middle East involves a complex and pernicious mix of religious, historical and ethnic factors that are simply not applicable to the East Asian region. In light of manifold other and more significant causal factors, any suggestion that the differing situations in the Middle East and East Asia can be attributed to the US-Japan alliance (at least to any meaningful degree) would be cause for concern. To

such a suggestion, the cynic might retort that strong alliances with the USA have hardly proven to be a silver bullet against the threat of regional violent conflict; the USA's long-standing alliance with the state of Israel seems not to have been a wholly successful means of securing peace in the Middle East itself. The US-Japan alliance is undoubtedly a contributing factor to the balance of power in the East Asian region today, but it cannot plausibly be regarded as a *sine qua non* of the region's future stability.

On one important point, the present author strongly disagrees with Professor Nye's analysis. This point was raised in answer to a question about the Abe administration's recent "reinterpretation" of Article 9 of the Constitution (and the resulting legislation permitting the deployment of Japanese troops overseas to assist in collective self-defence).

Nye declared his support for the Abe administration's radical reforms. The substance of the new rules is, Nye thought, desirable and the sign of Japan taking responsibility for peace and stability in the region. This is no doubt a legitimate stance on the substantive policy question of whether and to what extent Japan should participate in extra-territorial military activities, although that is of course a policy question on which reasonable observers will differ. More worrying is Nye's view that it was better to achieve this result by "reinterpretation" than by overt amendment of the Constitution so as to accommodate such action within the statutory language. Direct amendment of Article 9, Nye thought, would have unsettled Japan's neighbours and led to a decrease in regional stability.

That Japan should be able to act like other nations and defend its interests overseas (and those of its allies) may be reasonable as a matter of policy. But the procedure by which such a radical change is achieved is of vital importance. We should be slow to approve Abe's government doing by "reinterpretation" what the political settlement would not let them do by express amendment.

It might be objected that this is a distracting indulgence in the minutiae of "mere" procedure at the expense of the "important" question of the substantive policy outcome. Perhaps it is the prerogative of lawyers (and Common Lawyers most of all?) to agonise over procedural issues to a degree others (particularly politicians) may find tiresome or even obstructive. But the importance of adhering to due process lies not only in allowing constitutional lawyers to sleep easy. The procedure by which certain legal and political changes are brought about holds its own intrinsic importance, not just in the consciences of legal and political scholars, but in the real world too. Specifically, the procedure of legal/constitutional reform (and more specifically Abe's utter disregard for it) has major implications for Japan's own "soft power."

For decades, the Liberal Democratic Party has desired to change the post-War constitutional document. Indeed, since the project of constitutional renewal was the banner around which Japan's various centre-right parties conglomerated to form the LDP (that, and the perceived need to unite against the rise of the political left-wing), it might be said that the LDP exists at least partially in order to change the Constitution, and Article 9 in particular. The LDP has nonetheless failed to achieve the necessary two-thirds legislative support for

constitutional amendment. Stated simply, failure to achieve the necessary support to change the Constitution by an act of the sovereign public (represented in the Diet) in no way justifies achieving precisely the same outcome by executive fiat, or “reinterpretation.” Such covert *de facto* amendment is a profoundly authoritarian act that demonstrates a deep contempt for the Japanese electorate, the Constitution and the rule of law.

That matters, quite irrespective of the substantive merits of whatever policy is thereby adopted. Nye appears to give inadequate weight to the effects of the precise method by which a substantive result is realised. This is puzzling since Nye is well aware that the moral high ground matters for creating and retaining soft power. He has in the past cautioned against any moves to revise the 1993 “Kono Statement” in which the Japanese government admitted the practice of sexual slavery perpetrated against (mostly) Korean women during the Second World War. He has also made the excellent suggestion of founding a secular national memorial to the fallen of that conflict, to oust the unofficial role of Yasukuni Shrine, the controversial institution where the spirits of the war dead (including several Class A war criminals) are commemorated and worshipped. Particularly since he identifies China’s inadequate protection of the rule of law as a key reason for its low levels of global soft power, Nye’s appraisal of the Article 9 question would do well to accommodate the soft power implications of achieving ends (however reasonable they may be) using means which flout the legal limits on the authority of the government.

It might be retorted that it is arbitrary and obstructive to dwell on constitutional niceties when the pre-“reinterpretation” position is itself constitutionally suspect, but nonetheless enjoys widespread support.

There is some force in this contention. The traditional status quo in Japan is itself unconstitutional. Article 9 famously forbids the maintenance of “war potential” (戦力, *senryoku*). It is impossible to square the language of this absolute embargo with Japan’s extremely potent Self Defence Forces (SDF). The attempt is nonetheless often made, frequently by reference to international legal norms, particularly the “inherent right” of self-defence recognised in Article 51 of the Charter of the United Nations. But to suggest that international legal norms can inform the meaning of the domestic constitution is its own jurisprudential quagmire. Although the constitution makes the aspirational statement that international law shall be “faithfully observed” in Japan, legal orthodoxy holds that, as a matter of domestic enforceability, the constitution itself will trump any provisions of international law with which it is in variance.

The primacy of domestic over international law is a stance strongly associated with the political right wing of the legal academy in Japan. Progressives, conversely, often assert the ability of international law to displace purely domestic law in the Japanese courts. Thus are rightists placed in something of a jurisprudential dilemma. In order to present even a purely defensive military force as constitutional, they must invoke norms of international law to massage the literal meaning of the constitutional language. But to do this undermines the domestic supremacy of Japanese law over international legal norms, a point they would otherwise be unwilling to concede.

But if indeed even the traditional role of the SDF (in theory confined to homeland defence) is strictly unconstitutional, might it not be arbitrary to object to the expansion of that role under the new constitutional “reinterpretation” on grounds of its unconstitutionality? Particularly so if one is not in the habit of levelling the same criticisms against the SDF’s traditional role.

Yes and no. There is an obvious and principled distinction between homeland defence and the deployment of troops overseas. The only thing necessary to regard the former as constitutional is to embrace a specific interpretive proposition, namely that responsive homeland defence is not “war” within the meaning of Article 9. A fiction, perhaps, but a comparatively innocuous one, since all it can logically accommodate is homeland defence itself, a concept which is inherently circumscribed. Put crudely, pure homeland defence is plausibly constitutional *enough* to justify our shutting up about the fact that it technically is not. The same is harder to say about the deployment of troops overseas to provide collective self-defence on a pre-emptive basis. The distinction between “war” and collective self-defence abroad is ineluctably muddier than the tolerably clear distinction between (a) territorial homeland defence and (b) *anything else*. Distinguishing between “war” and collective self-defence abroad is likely to be rather a question of perspective.

Having in one sense underestimated the significance of procedure, Nye might be thought also to have underestimated the importance of substance. His suggestion that covert action will unsettle Japan’s neighbours less than overt action to the same effect is unconvincing. Other East Asian powers are unlikely to be so easily distracted from the radical substance of the changes Abe has made to Japan’s security policy. An express constitutional revision to the effect that Japan may openly maintain a standing army but that its role is legally limited to homeland defence cannot plausibly spook Japan’s neighbours more than a policy change to allow the deployment of troops overseas just because the latter does not take the form of an express constitutional amendment.

One feels some sympathy for those in Japan who wish to behave as other nations do, and make constitutionally explicit their moral right to an armed forces. Any dilution of a constitutional declaration of total disarmament, even though total disarmament has not been honoured in practice and even if that dilution were only to make the eminently reasonable status quo constitutionally explicit, is liable to attract more criticism than it objectively warrants. But if Japan decides that it desires the ability to protect its allies and its interests with force overseas, then it owes it to its citizens and its constitution to shoulder that inevitable criticism and make that change lawfully.

Although there are parts of his analysis with which I cannot agree, Nye is almost certainly right that the USA will remain the pivot in the global balance of power well into the 21st Century, and that a close alliance with that power is not something that should be abandoned hastily or for the wrong reasons. Nye’s genuine belief that the alliance remains in Japan’s best interests was very obvious throughout his discussion. In light of this he could safely have admitted the major strategic advantages the United States de-

rives from its large and conveniently located military presence in Japan. No one, after all, believes that the USA has provided its support and protection for half a century as an act of selflessness.

Nye's ideas were unfailingly stimulating and he very clearly possesses a deep concern for peace, stability and human flourishing. Although my opinions about the US-Japan security alliance and the recent revolution in Japan's defence policy were left unchanged by his presentation, it was a pleasure to be reminded that there is conspicuous honour on all sides of these acutely contentious disputes.

SUMMARY

This short comment piece summarises and responds to a lecture delivered at the University of Tōkyō by Professor Joseph Nye in autumn 2015. Professor Nye, building on the arguments in his published works, strongly endorses the increasingly controversial security alliance between Japan and the United States, urging its continuation and intensification. He also offers a defence of the Abe Cabinet's recent "reinterpretation" of the pacifism clause of the Japanese Constitution and the associated legislative acts. Nye reflects on many aspects of the political future of East Asia, including the significance of the rising power of China, the dominance of the United State and the probability of continued regional peace and stability. This comment appraises the arguments advanced by Professor Nye, offering alternative viewpoints where these are thought instructive, and highlighting instances where Nye's analysis may be wanting or incomplete, particularly the complex issue of constitutional reinterpretation.

ZUSAMMENFASSUNG

Der kurze Kommentar enthält eine zusammenfassende Analyse und Erwiderung auf einen viel beachteten Vortrag, den Professor Joseph Nye im Herbst 2015 an der Tōkyō Universität gehalten hat. Professor Nye plädierte mit Nachdruck für einen weiteren und verstärkten Ausbau der zunehmend umstrittenen Sicherheits-Allianz zwischen den USA und Japan. Dabei bezog er sich auf seinen einschlägigen Publikationen zu dem Thema. Er verteidigte die Entscheidung der japanischen Regierung unter Ministerpräsident Abe, zu diesem Zweck die Friedensbestimmung in der Verfassung Japans und die dazu ergangenen Gesetze zu „re-interpretieren“. Er sprach die Bedeutung der wachsenden Macht Chinas ebenso an wie bisherige Dominanz der USA und die Wahrscheinlichkeit, dass Frieden und Stabilität in der Region erhalten blieben. Die Kommentierung evaluiert die Argumentation von Professor Nye, ergänzt alternative Gesichtspunkte und zeigt mögliche Defizite in dessen Analyse auf, insbesondere bezüglich der komplexen verfassungsrechtlichen Fragen, die mit der „Neuinterpretation“ der Friedensklausel verbunden sind.

(Die Redaktion)

