

Reform in Late Occupation Japan

The 1950 Law for the Protection of Cultural Properties

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I. INTRODUCTION

For almost seven years (1945–1952) after the end of World War II, Japan was nominally under control of the Allied Occupation Forces, while it was the U.S. which led the Occupation *de facto*. Beginning with the first U.S. troops landing in Japan in late August 1945 and more officially with the Japanese capitulation of 2 September 1945, the Occupation of the country lasted until the signature of the San Francisco Peace Treaty on 28 April 1952. In October 1945, the General Headquarters/Supreme Commander for the Allied Powers (GHQ/SCAP, hereinafter SCAP),¹ a new civil organiza-

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1 The appellation SCAP is commonly used in Western scholarship to refer to the Allied Occupation's authority, while in Japanese publications, GHQ is more typi-

tion almost entirely staffed by American officials, took charge of the Occupation administration in Japan.² Demilitarization and democratization were the main objectives of SCAP in the early postwar years. These initial policy priorities resulted in a series of major reforms, notably a new Constitution promulgated in 1946 which profoundly transformed Japan.

By the years 1948–1950, however, U.S. policy for Japan shifted in reaction to the radical political changes in East Asia and the rapid rise of Communism. Engaging in what is commonly called a “reverse course” (*gyaku kōsu*) but in what may be more exactly described as a “shifting of gears”, the Occupation authorities decided to halt or at least slow down the implementation of some of the reform programs planned for Japan. Efforts were redirected to the new priority of economically and politically strengthening the country in order to curb the Communist progress in the region. Meanwhile, the goal of a peaceful and democratic Japan gradually faded away in the minds of the top U.S. decision-makers.³

Among the many policy domains strongly impacted by decisions and measures taken during the Occupation period, the protection of cultural heritage⁴ appears as a particularly rich case to study. A victim of the war and suffering from the difficult socio-economic conditions of the Occupation years, Japanese cultural heritage was simultaneously the target of the demilitarization and democratization policy and the object of active protection efforts. Yet, despite the extent of the challenges and difficulties, the legal reform of Japan’s cultural heritage protection system was achieved in the final years of the Occupation, with the Law for the Protection of Cultural Properties (hereinafter: LPCP)⁵ being adopted in mid-1950, four-and-a-half years after the establishment of SCAP. Moreover, the reform was

cal. See, e.g., R. A. MOORE/D. L. ROBINSON, *Partners for Democracy. Crafting the New Japanese State under MacArthur* (New York et al. 2002) or L. HEIN, *Revisiting America’s Occupation of Japan*, in: *Cold War History* 11 (4) (2011) 581.

2 E. TAKEMAE, *Inside GHQ: The Allied Occupation of Japan and Its Legacy* (London et al. 2002) 64.

3 T. MATSUDA, *Soft Power and Its Peril. U.S. Cultural Policy in Early Postwar Japan and Permanent Dependency* (Washington, DC 2007) 43.

4 In this article, cultural heritage is used to include a wider range of cultural items and practices than the narrower term of “cultural property”. For the debate between the two terms, see, e.g. L. V. PROTTP/P. J. O’KEEFE, ‘Cultural Heritage’ or ‘Cultural Property’?, in: *International Journal of Cultural Property* 1 (2) (1992) 307–320, J. BLAKE, *On Defining the Cultural Heritage*, in: *The International and Comparative Law Quarterly* 49 (1) (2000) 61–85 and M. FRIGO, *Cultural Property v. Cultural Heritage: A ‘Battle of Concepts’ in International Law?*, in: *International Review of the Red Cross* 86 (854) (2004), 367–378.

5 *Bunka-zai hogo-hō*, Law No. 214/1950.

ultimately initiated and proposed by the Japanese Diet and not by the Occupation authorities.

This article investigates how the protection of cultural heritage was reformed in Japan during the Occupation period. Focusing on this particular time of direct foreign domination, this research sheds light on the various interactions between the Japanese government and the authorities of the Allied forces and examines how these interactions contributed to shape the 1950 reform of Japan's cultural heritage legislation. Japanese political scientist Makoto Iokibe distinguishes three types of reforms during the Occupation period.⁶ The first type, he explains, is the series of reforms initiated and proposed by the Japanese side prior to any directive from SCAP. Examples of this type are the Labor Union Law⁷ and the reform of the electoral law⁸. Another type is the SCAP-led type of reform, which includes the police legislation and the antimonopoly legislation. Falling in-between is the mixed type of reforms, the most frequent type, where both sides collaborated and contributed on the issues, examples here include the land reform and the Local Autonomy Law⁹.

From a cultural policy perspective, the early postwar years were marked by the grand, but often empty, claim made by the Japanese government to establish a “cultural state” (*bunka kokka*).¹⁰ Meanwhile, many Occupation reforms constituted what Takeshi Matsuda calls the “American cultural offensive” to transform Japan into a democratic and U.S. friendly nation.¹¹ On the specific topic of cultural heritage, Western scholarship has tended to neglect the formation process of the LPCP. Emphasizing continuity between the prewar and postwar period, these studies give less attention to the specificities of the immediate postwar period.¹² In recent years, Geoffrey R.

6 M. IOKIBE, *Senryō kaikaku no san-ruikei* [Three Types of Occupation Reforms], in: *Leviathan* 6 (1990) 97–120.

7 *Rōdō kumiai-hō*, Law No. 174/1949.

8 Public Offices Election Law, *Kōshoku senkyo-hō*, Law No. 100/1950.

9 *Chihō jichi-hō*, Law No. 67/1947.

10 Yūzō Yamamoto, chairman of the House of Councillors' Education Committee, in April 1950, quoted in T. TAKEUCHI/M. KISHIDA, *Bunka-zai hogo-hō shōsetsu* [A Detailed Explanation of the Law for the Protection of Cultural Property] (Tōkyō 1950) 27.

11 MATSUDA, *supra* note 3, 19

12 See, e.g., M. BOURDIER, *Le mythe et l'industrie ou la protection du patrimoine culturel au Japon* [The Myth and Industry of the Protection of Cultural Property in Japan], in: *Genèses*, 11 (1) (1993) 82–110; S. ISHIDA, The Extent of Cultural Properties Preservation and The Problem of Local Administration in Japan, in: *International Journal of Social and Cultural Studies* 1 (2008) 15–33; E. KAKIUCHI, Cultural Heritage Protection System in Japan: Current Issues and Prospects for the Future, in: GRIPS Discussion Paper, 14-10 (2014); N. NISHIYAMA, Heritage Management

Scott and Nassrine Azimi have produced innovative works on the role of Occupation authorities for the preservation of Japanese cultural heritage, based on English-language materials.¹³ In particular, the rediscovery by Scott of English translations of Japanese early drafts and bills of the LPCP, previously thought to be lost, fostered new interests among Japanese researchers to examine the Occupation period. Scholars such as Asuka Sakaino, Kaori Satō and Norimasa Aoyogi have contributed to expand the understanding of these crucial years.¹⁴

The history of the U.S. Occupation of Japan has also been revised in the past two decades. A growing number of scholars have been qualifying the Occupation as a form of “colonization” of Japan,¹⁵ albeit a short one, with several of them drawing from the theoretical toolbox provided by critics of imperialism and colonial domination in order to re-examine this period.¹⁶ Other Japanese specialists have been more doubting and indicate the pitfalls of such an approach. Laura Hein, in her survey of recent Western scholarship on the American Occupation of Japan, perceived more complex

in Present-day Japan, in: Babb (ed.), *The SAGE Handbook of Modern Japanese Studies* (Thousand Oaks 2015) 80–98.

- 13 G. R. SCOTT, *The Cultural Property Laws of Japan: Social, Political, and Legal Influences*, in: *Pacific Rim Law & Policy Journal* 12 (2) (2003) 316–402; N. AZIMI, *United States Cultural Property Policy and Occupied Japan: the Role of American Experts from the Roberts Commission to the Arts and Monuments Division*, in: *Hiroshima Journal of International Studies* 22 (2016) 73–88.
- 14 See, e.g., A. SAKAINO, *Bunka-zai hogo-hō no seiritsu katei ni kansuru kenkyū – GHQ/SCAP bunsho ni miru kisō no haikai to sōan hōan no hensen* – [Research on the Formation Process of the Law for the Protection of Cultural Properties – The Drafting Background and the Changes of the Drafts and Bills, Based on the GHQ/SCAP Records], Ph.D. Thesis Tsukuba University (2010); K. SATŌ, *GHQ/SCAP no bunka seisaku to bijutsu. CIE bijutsu kinenbutsu-ka no jinji to bunka-zai hogo* [The GHQ/SCAP Cultural Policy and the Arts: The Personnel of the CIE Arts and Museum Divisions and the Protection of Cultural Properties] in: *Intelligence* 13 (March 2013) 79–91; N. AOYAGI/N. IWATSUKI/H. FUJIOKA, *Bunka-zai hogo-hō seitei-go no kokuhō kenzō-butsu shitei hōshin to sengo no “kokuhō” gainen no keisei* [Process of Reforming the Concept of “National Treasure” Buildings under the Law for the Protection of Cultural Properties], in: *Journal of Architecture and Planning* (Architectural Institute of Japan) 77 (678) (2012) 1997–2005.
- 15 B. GALLI, *In the Service of National Culture: Japanese Preservation and Its Political Context, 1871–1994*, in: *Future Anterior: Journal of Historic Preservation, History, Theory, and Criticism* 10 (1) (2013) 28. Takeshi Matsuda also makes a similar comparison: “SCAP suffered the organizational and administrative problems common to any colonial administration.” (MATSUDA, *supra* note 3, 37).
- 16 Frantz Fanon, for example, is one author often cited. See, e.g., M. MOLASKY, *The American Occupation of Japan and Okinawa. Literature and Memory* (London et al. 1999) 29, and HEIN, *supra* note 1, 591.

relations than simply those of occupier and the occupied, stressing how the dividing lines could not be drawn only on the basis of the actors' nationality. She describes how "[o]ften, some groups of American and Japanese banded together to counter other groups of American and Japanese."¹⁷ Similarly, she refuses to reduce Japanese agency to a binary choice between servility and resistance.¹⁸

I argue that the 1950 legal reform of the protection of cultural heritage has been the complex result of the multiple Japanese-American interactions which occurred during the years following the end of the war. While SCAP did not envision a complete revision of Japan's prewar cultural heritage preservation system nor that the legal process would be initiated by the Japanese side, the reform of the cultural heritage legislation has to be described as a mixed type of reform, not only *in spite of* the late timing but largely *because of* it. The late timing of the reform, in fact, helped the spread of U.S. influence in the final version of the LPCP.

The article is divided into three main parts. First, the critical situation of Japanese cultural heritage in the immediate years after the war is explained. The following part explores the various manners of interplay between the Japanese side and SCAP, oscillating between cooperation and tension. Finally, the last part examines the legal process leading to the reform of 1950, notably the compromises with the earliest plans as well as the specificities of the LPCP which established Japan's new protection system for cultural heritage.

II. THE SITUATION OF JAPANESE CULTURAL HERITAGE IN THE AFTERMATH OF WORLD WAR II

1. *The Prewar Legislation Regarding the Protection of Japanese Cultural Heritage*

The history of Japanese cultural heritage policy goes back decades before 1950. At the beginning of the Meiji era (1868–1912), political and cultural changes were rapidly putting Japanese cultural heritage at risk. Westernization and modernization were notably threatening traditional buildings all over the country. Even monuments now considered as national symbols, such as the Kōfuku-ji pagoda and Himeji castle, narrowly avoided being entirely taken down for their building materials due only to the excessive cost of dismantlement.¹⁹ The establishment of State Shintō and the anti-

17 HEIN, *supra* note 1, 590

18 *Ibid.* 591.

19 BOURDIER, *supra* note 12, 92.

Buddhist policy of the Japanese government also led to the destruction of numerous Buddhist artefacts and constructions.²⁰ Meanwhile, the increased interest for Japanese art abroad was gradually draining the nation of many of its precious art and cultural objects.²¹

The Japanese authorities reacted to these various threats in 1871 with the Ordinance on the Preservation of Antiquities and Old Relics²². The first measure taken by the new government to safeguard cultural items, the Ordinance was proposed by a high-level governmental official, Hisanari Machida, who had the opportunity to witness various cultural heritage preservation systems during his trip to Europe a few years before.²³ The Ordinance requested notably an inventory of art and historical items owned by religious establishments. From 1880 to 1894, the Old Temples and Shrines Preservation Grant (*Ko-shaji hozon-kin*) funded this long and ambitious project.

In 1897, more than twenty-five years after the Ordinance, the Japanese government enacted the Law for the Preservation of Old Temples and Shrines,²⁴ Japan's first national cultural heritage law.²⁵ An American scholar and professor at the Imperial University of Tōkyō, Ernest Francisco Fenollosa, and one of his former students, Kakuzō Okakura, were decisive in the adoption of this law.²⁶ The 1897 Law introduced the term "national treasure" (*kokuhō*) to designate items of exceptional artistic and historical importance, but its scope was restricted to items belonging to religious establishments.²⁷ Two years later, in 1899, the Law on Lost Objects²⁸ made

20 D. FAILLA, The Protection of Cultural Properties in Japan (1), in: ZJapanR/J.Japan.L. 18 (2004) 77–78.

21 NISHIYAMA, *supra* note 12, 80–81.

22 *Koki kyū-butsu hozon kata*, Ordinance of the Great Council of State (*Dajō-kan fukoku*) No. 251/1871.

23 T. INADA, *L'évolution de la protection du patrimoine au Japon depuis 1950 : sa place dans la construction des identités régionales* [The Evolution of the Protection of Heritage in Japan After 1950: Its Place and the Construction of Regional Identities], in: *Ebisu* 52 (2015) 22.

24 *Ko-shaji hozon-hō*, Law No. 49/1897.

25 The text of the Law is reproduced in: MINISTRY OF EDUCATION, *Gaku-sei hyakunen-shi. Shiryō-hen* [Hundred Years of Educational System. Document Volume] (Tōkyō 1981). Available on the Ministry's official website: http://www.mext.go.jp/b_menu/hakusho/html/others/detail/1318164.htm.

26 SCOTT, *supra* note 13, 343. Kakuzō Okakura, also known as Okakura Tenshin, is the author of *The Book of Tea*, written in English and published in 1906.

27 BOURDIER, *supra* note 12, 93.

28 *Ishitsu-butsu-hō*, Law No. 87/1899.

it mandatory to declare to the authorities any discovery of unexcavated objects that may have an artistic, historical or scientific value.²⁹

In 1919, the Law for the Preservation of Historic Sites, Scenic Beauty and Natural Monuments³⁰ aimed at recognizing the importance of historical and natural sites and preventing their rapid destruction by the land development projects which were transforming the country at that time. Inspired by the German *Heimatschutz* movement, the 1919 legislation notably established the categories of “Natural Monument” (*tennen kinen-butsumo*) and *meishō* or “Area of Scenic Beauty”.³¹ In 1929, the Law for the Preservation of National Treasures (hereinafter: National Treasures Law)³² replaced the 1897 Law. The new legislation expanded preservation measures to all items of historical importance regardless whether they were owned by the national government, local government or Japanese citizens.³³ Under the 1929 Law, the state could designate as national treasure any item of national significance and forbid its exportation contrary to the owner’s desire.³⁴ A few years later, in 1933, concerns about growing sales of Japanese historical and cultural objects to foreign buyers led the government to adopt a new law, the Law for the Preservation of Important Art Objects³⁵ to bring a wider range of items under its control. These three laws formed the backbone of the Japanese cultural heritage protection system throughout the 1930s and 1940s, until the enactment of the new legislation in 1950.

2. World War II and Japan’s Cultural Heritage

On 15 August 1945, when Japan finally surrendered to the Allied powers, much of the nation was in complete devastation. During the last two years of the war, American air-raids heavily bombed most Japanese cities, turning them into rubble and ashes.³⁶ Nagoya, the third largest city, suffered a total of 38 bombing raids, which destroyed 89 percent of the residences and left the castle in ruin.³⁷ Tōkyō, already a victim of a massive earthquake in

29 INADA, *supra* note 23, 22.

30 *Shiseki meishō tennen kinenbutsumo hozon-hō*, Law No. 44/1919.

31 N. AKAGAWA, *Heritage Conservation and Japan’s Cultural Diplomacy: Heritage, National Identity and National Interest* (London et al. 2014) 50.

32 *Kokuhō hozon-hō*, Law No. 17/1929.

33 SCOTT, *supra* note 13, 348–349.

34 BOURDIER, *supra* note 12, 95.

35 *Jūyō bijutsuhin-tō no hozon ni kansuru hōritsu*, Law No. 43/1933.

36 A. GORDON, *A Modern History of Japan: From Tokugawa Times to the Present* (Oxford et al. 2013) 223.

37 M. KITA/A. KITA, *The Reconstruction and Planning of Nagoya City After the Second World War*, in: Larkham/Yasuda (eds.), *Reconstruction, Replanning and*

1923, was severely hit by a campaign of fire-bombing lasting from February to August 1945. Several of the city's famous temples, such as the Sensō-ji and the Zōjō-ji, were burned down, particularly during the air raids of March and May 1945.³⁸ In August 1945, atomic bombs razed Hiroshima and Nagasaki to the ground. Overall, sixty-six major cities were destroyed, along with a large part of Japan's modern urban heritage, especially outside Tōkyō. At least 292 national treasures and 44 historic sites, places of scenic beauty and natural monuments were damaged during the war.³⁹

Despite the extensive urban destruction caused by U.S. bombs, most of Japan's cultural heritage survived the war. Smaller cities with rich historical heritage, such as Nara, Kamakura or Kanazawa, were mostly spared from the bombing, notably because of their low strategic value. Kyōto escaped nuclear destruction in part due to the opposition of U.S. Secretary of War Henry L. Stimson.⁴⁰ Langdon Warner and Edwin O. Reischauer, both American scholars of Japan, also played an important role in preserving Japan's cultural heritage by compiling a list of Japan's most important art and cultural items to be protected during the war. After the war, Warner, a disciple of Kakuzō Okakura, would be considered as "the savior of Japanese Art" and be praised by many in Japan as the man who protected Kyōto and Nara from the bombs.⁴¹ Moreover, destruction for Japanese cultural heritage did not come only from US warplanes during that period. The Metal Recovery Ordinance⁴² of 1941, for example, led many historical objects (in particular *bonshō*, Buddhist bells) to be melted down for weapon production.⁴³ By 1943, cultural heritage preservation policies were also mostly suspended in Japan, thus leaving many historical buildings unmaintained, with the exception of a few major sites related to the Emperor such as the Ise Shrine.⁴⁴

the Future of Cities in Japan and the UK (Birmingham 2005) 16; J. DOWER, *Embracing Defeat: Japan in the Wake of World War II* (New York 2000) 46.

38 See AGENCY FOR CULTURAL AFFAIRS, *Sensai-tō ni yoru shōshitsu bunkazai. 20-seiki no bunkazai kako-chō* [Cultural Properties Destroyed by Fire due to War Damage and Other Means: A Register of Lost Cultural Properties in the 20th Century] (Tōkyō 2003).

39 NISHIYAMA, *supra* note 12, 82.

40 H. FEIS, *The Atomic Bomb and the End of World War II* (Princeton 1966) 85.

41 Yet, Warner himself always denied such claims (AZIMI, *supra* note 13, 82).

42 *Kinzoku rui kaishū-rei* No. 835/1941, later amended by Ordinance No. 667/1943.

43 Initially excluded from the recovery campaign (along with national treasures, important art objects and religious objects from Shintō shrines), Buddhist bells and altar articles were forcibly collected by the authorities after May 1942. See N. SHIINA, *Kindai Nihon to bijutsu-kan. Sensō to bunka-zai hogo* [Modern Japan and Museums. The War and the Protection of Cultural Properties] (Tōkyō 2010) 57.

44 NISHIYAMA, *supra* note 12, 82.

3. *The Occupation Period: Political, Economic and Social Threats to Japanese Cultural Heritage*

The surrender put an end to the bombings, but the subsequent Allied Occupation and the consequences of the war brought other threats to Japanese cultural heritage. Particularly in the first years after the war, SCAP's general policy to demilitarize and democratize Japan directly affected the management of a large part of the nation's cultural heritage. Aiming at the disestablishment of State Shintō and the separation of state and religion, a SCAP memorandum dated 15 December 1945 notably ordered that all forms of governmental support to Shintō and Shintō shrines be prohibited,⁴⁵ thus depriving state-sponsored national symbols such as Ise Shrine or Yasukuni Shrine of public funds and official status.⁴⁶ The Occupation authorities targeted also the institutions and symbols accused of having fostered the cult of the Emperor. Shortly after the war, for example, SCAP denied historical value for 377 "Sacred Sites Related to Emperor Meiji" (*Meiji tennō seiseki*),⁴⁷ which had been designated historical sites under the 1919 Law in the 1930s, and removed them all from the list.⁴⁸

Among the many historical and cultural items impacted by SCAP's early decisions, traditional Japanese swords were particularly endangered by the "sword hunt" (*katana-gari*) launched in the immediate postwar period.⁴⁹ SCAP proceeded on the disarmament of Japan and ordered the collection of "all arms" owned by Japanese nationals, including civilians, as early as September 1945. The vague wordings of the directive, however, created confusion between SCAP and the Japanese government in regard to the

45 Titled "Abolition of Governmental Sponsorship, Support, Perpetuation, Control, and Dissemination of State Shinto", this SCAP memorandum (SCAPIN-448) to the Japanese government is commonly known as the Shintō Directive. The original text is reproduced in S. D. B. PICKEN, *Sourcebook in Shinto: Selected Documents* (Westport 2004) 113–117.

46 H. HARDACRE, *Shinto and the State, 1868–1988* (Princeton 1991) 141.

47 Located in the various places where Emperor Meiji stayed, these monuments were erected to commemorate an imperial visit in even the most remote corner of the country, such as Shira'oi Village in Hokkaidō. Y. IMAIZUMI, *Sacred Space in the Modern City: The Fractured Pasts of Meiji Shrine, 1912–1958* (Leiden 2013) 118.

48 ISHIDA, *supra* note 12, 16.

49 T. ARA, *Senryō-ki ni okeru hi-gunji-ka to busō kaishō: Toku ni "senryō-gun no katana-gari" o chūshin toshite* [Demilitarization and Disarmament Under the Occupation Period: With A Focus on "The Occupation Forces' Sword Hunt"], in: *Rikkyō daigaku shi'en* 51 (2) (1991) 15. Regarding traditional cultural practices, Kabuki was also notably targeted by the early Occupation policies as the performing art was accused of having glorified militarism and warmongering. See J. BRANDON, *Kabuki's Forgotten War, 1931–1945* (Honolulu 2008) 345–356.

situation of Japanese swords and their artistic and cultural value. Although SCAP eventually issued a new order stipulating that the collection and the qualification of swords as art objects should be left to the Japanese government and that swords retained by the U.S. should be transferred to the Japanese authorities,⁵⁰ problems continued to arise until the end of 1947. Ultimately, forty-three swords designated as national treasures and important art objects as well as numerous other swords with artistic or historical value disappeared from Japan during that period.⁵¹

The safeguarding of Japan's cultural heritage was also deeply hampered by economic and social factors emerging from the new conditions of the Occupation period. Apart from Japanese swords, other cases of looting and vandalism by the Allied forces happened, despite clear SCAP policy condemning such practices.⁵² Theft of national treasures and other cultural objects by Japanese nationals were also regularly reported in the press.⁵³ Harsh economic conditions, food scarcity and the inflated price of basic commodities forced Japanese families to sell their art objects or trade them for food on the black market.⁵⁴ Some national treasures eventually ended up being exported abroad.⁵⁵ Fear of taxation also pushed owners of important art objects or national treasures to hide them.⁵⁶ Even more problematic was the state of many historical buildings. Often damaged by the war, these

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- 50 The urgent examination of thousands of swords, forced by SCAP policy, was conducted by a committee of twenty judges chaired by Moritsugu Hosokawa. In 1948, several committee members decided to establish the Society for the Preservation of Japanese Arts Swords (*Nihon bijutsu tōken hozon kyōkai*), an association which still plays a central role in the protection of this particular Japanese cultural heritage. See L. KAPP/H. KAPP/Y. YOSHIHARA, *Modern Japanese Swords and Swordsmiths* (New York 2013) 74–75.
- 51 T. KONO, *Japanese Swords Taken During the Occupation After the Second World War*, in: Prott (ed.), *Witnesses to History. A Compendium of Documents and Writings on the Return of Cultural Objects* (Paris 2009), 174–180.
- 52 M. W. SHORES, *Laughter after Wars: Rakugo during the Occupation*, in: Leiter (ed.), *Rising from the Flames: The Rebirth of Theater in Occupied Japan, 1945–1952* (Lanham 2009) 235; SCOTT, *supra* note 13, 370–371.
- 53 See, e.g., *Mishima jinja no kokuhō toru* [National Treasures of Mishima Shrine Stolen], in: *Yomiuri shinbun* (4 April 1948).
- 54 *Kieru kokuhō, juhō bijutsu mo yami de baibai* [Disappearing National Treasures. Important Art (Objects) are also Sold Illegally], in: *Yomiuri shinbun* (8 September 1947).
- 55 *Kiriuri-sareru kokuhō* [National Treasures being Sold Off], in: *Asahi shinbun* (21 November 1948).
- 56 *Zaisan-zei ga kowakute nigemawaru kokuhō* [National Treasures Escape the Frightening Wealth Tax], in: *Yomiuri shinbun* (9 December 1947). Also SCOTT, *supra* note 13, 367.

buildings were in critical conditions, with their maintenance being underfunded and the repairs difficult. Sometimes used as shelter by those rendered homeless by the war, they were quickly deteriorating.⁵⁷ A cultural disaster was looming as the nation's central decision-makers and the majority of the population seemed apathetic to the situation of Japan's historical buildings.⁵⁸ On 26 January 1949 at a little after seven o'clock in the morning, a fire broke out in the Golden Hall (*Kon-dō*) of the Hōryū-ji, the oldest wooden construction in the world and a Japanese national symbol.⁵⁹ In just one hour, several mural paintings (including national treasures) were lost to the flames and the building was severely damaged. The news of the disaster, which happened in the middle of repair work, triggered a wave of consternation and incited Japanese lawmakers to draft new legislation for the protection of Japan's cultural heritage.⁶⁰

III. RECONSIDERING THE PROTECTION OF CULTURAL HERITAGE IN JAPAN

1. *Collaboration and Emergencies: The Joint Efforts of the Early Occupation Period*

Japan's Ministry of Education was not inactive during the first years after the war. Despite the material difficulties, the various departments of the ministry in charge of national treasures and important art objects resumed their preservation activities and prepared the reparation of the historical buildings and objects damaged by the war. They were helped in these tasks by the Occupation authorities and particularly SCAP's Arts and Museum

57 AGENCY FOR CULTURAL AFFAIRS, *Bunka-zai hogo-hō go-jū-nen-shi* [Fifty Years of the Law for the Protection of Cultural Property] (Tōkyō 2001) 19

58 In late 1949, a Diet member was still reportedly saying "well, protection of cultural goods! Indeed, this a cultural nation. Shall we protect electric refrigerators also?" (Protection of Cultural Property, in: Tōkyō Shinbun (30 November 1949), cited by SCOTT, *supra* note 13, 377). Among the Japanese population, irresponsible smokers were a dangerous threat to designated historical buildings, even in the 1950s. See SCOTT, *supra* note 13, 373 and *Mu-kanshin-na kokuhō hogo* [Indifference to the Protection of National Treasures], in: Yomiuri shinbun (18 October 1954).

59 The Hōryū-ji treasures were notably selected to be sent for display in the 1871 Vienna Exposition by the new Meiji Government. See H. T. MCDERMOTT, The Hōryūji Treasures and Early Meiji Cultural Policy, in: *Monumenta Nipponica*, 61 (3) (2006) 339–374.

60 N. OGAWA, *Jiken – shinboru – seido: Hōryū-ji kondō heki-ga shōson to "bunka-zai" no bunka-shakai-gaku* [Event, Symbol, and Institution: the Loss of Ancient Wall Paintings in Horyuji-Temple and the Invention of "Cultural Property"], in: *Nara Women's University Sociological Studies*, 12 (2005) 115.

Division.⁶¹ Part of the Civil Information and Education Section, the Arts and Museum Division was established in the early weeks of the Occupation and was mainly composed of East Asian art specialists, several of them having been trained by Langdon Warner in Harvard.⁶² As later summarized by Warner himself when he was visiting Kyōto as technical consultant for the Arts and Museum Division in May 1946, many of those who joined the Division saw art as possibly the “best transpacific bridge”.⁶³ The Division was following in Japan the general principle of recovering and protecting cultural heritage as laid down by the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas (generally known as The Roberts Commission) during the war.⁶⁴

Sharing the similar objective, the Supreme Commander for the Allied Powers Directive no 269 of 12 November 1945 defined the Occupation authorities’ policy regarding Japanese cultural heritage. The directive stipulated the duties of the Allied military officers to protect Japan’s “recognized” cultural heritage, while confirming the Japanese government’s authority in managing “works and sites which normally are under its jurisdiction”.⁶⁵ It also ordered that a survey be conducted to assess war damages and the various risks facing Japan’s cultural objects and historical sites. While members of the Arts and Museum Division participated in field investigations, notably in Tōkyō, Kyōto and Nara,⁶⁶ most of the survey work was done by Japanese

61 In late 1947, the Division was merged with the Religious Division to form the Religious and Cultural Resources Division. See SATŌ, *supra* note 14, 80. In this article, the original designation, Arts and Museum Division, will be used for the period after 1947 as well.

62 Such as Howard C. Hollis or James Marshall Plumer. See K. SATŌ, *GHQ no bijutsu gyōsei. CIE bijutsu kinen-butsu-ka ni yoru 'bijutsu no minshuka' to Yashiro Yukio* [The GHQ Art Administration. The “Democratization of Art” by the CIE Arts and Museum Division and Yukio Yashiro], in: *Kindai gasetu*, 12 (2003) 94 and SCOTT, *supra* note 13, 355–357.

63 Quoted by K. SATŌ, *GHQ/SCAP to kōgei gijutsu. “Mukeyi-bunka-zai” to iu gainen no tanjō o meguru kōsatsu* [The GHQ/SCAP and Industrial Arts and Techniques. A Study of the Birth of the “Intangible Cultural Property” Concept], in: *Cross Section* 6 (2013) 18.

64 AZIMI, *supra* note 13, 75–76.

65 See SCAPIN-269 “Policies and Procedures Relating to the Protection of Arts, Monuments, and Cultural and Religious Sites and Installations”, which states notably that “[c]ommanders of occupying forces have been directed to take any steps necessary to protect and preserve works and sites which have recognized cultural, historic or religious importance” (1. a).

66 See, e.g., bibliographical notices of Richard Siebe Davis, Charles F. Gallagher, Sherman Emery Lee and Walter Desmond Popham on the Monuments Men Foun-

specialists.⁶⁷ Facing numerous difficulties in collecting information, particularly for cultural items that were privately owned, reports from the various Japanese prefectures were only completed around October 1946.⁶⁸ At that time, the American staff was also finishing a more than 240-page-long English document titled the “Resume of Artisans and Handicraft in Japan”, based notably on previous Japanese attempts to preserve the nation’s industrial arts and techniques. According to Kaori Satō, this list and the further SCAP attitude toward Japanese traditional craftsmen were instrumental in the emergence of the concept of “intangible cultural property” (*mukei bunka-zai*).⁶⁹ Among the other activities carried out by the Arts and Museum Division during this period, the public display of Japanese art was also encouraged, with several exhibitions in Tōkyō for example.⁷⁰

The most urgent task, however, was to repair and preserve historical buildings. In June 1946, Minoru Ōoka, chief of the Cultural Properties Preservation Section (a subdivision of the Ministry of Education’s Social Education Bureau), drafted a first plan to conduct 122 repair projects over a five-year period (1946–1950). The initiative was supported by the Arts and Museum Division but was quickly confronted with serious difficulties, notably the diminished public finances, the rapid inflation and a shortage of qualified labor. Ōoka and the Ministry of Education attempted several times to convince the Ministry of Finances to adequately finance the restoration plan. Nevertheless, they were unsuccessful in securing enough funding for the 1946 and 1947 budget years, despite restricting restoration to the bare minimum and receiving help from a number of SCAP’s divisions. It was not until March 1948 when, after several months of a lobbying campaign by the Ministry of Education assisted by the Arts and Museum Division, the Ministry of Finance finally agreed to a more substantial budget increase, thus making possible the concrete implementation of the Five-Year Temporary Restoration Plan for National Treasure Buildings (*Ōkyū*

dition for the Preservation of Art’s website: <https://www.monumentsmenfoundation.org/the-heroes/the-monuments-men>

67 AZIMI, *supra* note 13, 80.

68 COMMITTEE FOR THE PROTECTION OF CULTURAL PROPERTY, *Bunka-zai hogo no ayumi* [The Development of Cultural Property Protection] (Tōkyō 1960) 91

69 SATŌ, *supra* note 63, 50–51. However, the influence of the Arts and Museum Division’s activities remains far less clear regarding the inclusion of performing arts, such as *bunraku*, in the Japanese concept of intangible cultural property (Personal Interview with Shigeyuki Miyata, Chief Specialist for Cultural Properties, Agency for Cultural Affairs, Tōkyō, April 2015).

70 AZIMI, *supra* note 13, 79. See also bibliographical notice of Howard C. Hollis in the Monuments Men Foundation for the Preservation of Art’s website: <https://www.monumentsmenfoundation.org/the-heroes/the-monuments-men/hollis-howard-c>.

shūri go-ka-nen keikaku).⁷¹ The plan notably introduced a system of state subsidies which eventually inspired the Important Cultural Properties Restoration Grants.⁷² This late budgetary concession of the Ministry of Finance shows that cultural heritage was for a long time a low priority for the Japanese government, explaining the material deterioration of the immediate postwar period. Yet, even more importantly, this demonstrates that for those who cared about the preservation of cultural heritage on the Japanese side, the alliance with people from the American staff sharing the same goals proved to be essential in advancing their position against the reticence of other segments of the Japanese government.

2. *Tensions and Oppositions: Defending the Occupation's Objectives*

Alongside efforts to advance the emergency rescue plan, the Ministry of Education's staff was also aware of several limits in the prewar and immediate postwar preservation system.⁷³ Finding the right balance between an owner's rights and public needs was a constant problem. The fragmentation of the administrative structure between the Ministry of Education and the National Museum (*Kokuritsu hakubutsu-kan*) also created difficulties and affected efficiency negatively. The management of national treasures and important art objects was under the responsibility of the Ministry of Education's Social Education Bureau, while specialized tasks (such as repair, survey and other investigations) were conducted under the guidance of the National Museum following its establishment in May 1947.⁷⁴ The primary issue was, however, financial, with a very restricted national budget and so many cultural objects to preserve.⁷⁵

In the very early months after the surrender, the Ministry of Education decided to begin consultations in order to reform the prewar legislation. The Arts and Museum Division was kept informed through regular meetings and by means of materials translated in English. In October 1946, a personal proposal for the revision of the National Treasures Law was trans-

71 AOYAGI/IWATSUKI/FUJIOKA, *supra* note 14, 1998–1999.

72 S. ASANO, Transformation of Conservation Legislation in Japan, in: Research Reports of the Faculty of Engineering, Mie University, 23 (1998) 31.

73 AGENCY FOR CULTURAL AFFAIRS, *supra* note 57, 20.

74 AOYAGI/IWATSUKI/FUJIOKA, *supra* note 14, 1999. On 3 May 1947, the National Museum was established by the merger of the former Imperial Museum (*Teikoku hakubutsu-kan*) in Tōkyō with several sections of the Ministry of Education (such as the National Treasures Investigation Office). At the same time, the Imperial Household Museum of Nara (*Nara tei-shitsu hakubutsu-kan*) became the Nara Annex of the National Museum. See COMMITTEE FOR THE PROTECTION OF CULTURAL PROPERTY, *supra* note 68, 393.

75 AGENCY FOR CULTURAL AFFAIRS, *supra* note 57, 20.

ferred to the Division's staff.⁷⁶ Prepared by Tsuneyo Fujita and Minoru Ōoka from the Ministry, the proposal offered notably to designate all important art objects as national treasures, hence greatly expanding the latter category. In those days of political proclamation of Japan's re-foundation as a "cultural state", national cultural ambitions seemed to prevail over financial and material restrictions among a certain segment of the Japanese government. Subsequently, the topic of how many items should be enlisted and protected became a source of fierce debate with SCAP's far more skeptical Arts and Museum Division.⁷⁷

Despite the relative flaws of the prewar preservation legislation, the U.S. side was not advocating any major revision, assuming that partial change should be sufficient to adapt the Japanese prewar system to the new post-war circumstances.⁷⁸ The Division, however, was strongly in favor of a drastic reduction of the total number of designated objects and sites, due in particular to financial constraints.⁷⁹ From the early moments of the Occupation, fiscal responsibility and focused preservation efforts were among the important concerns of the Division's members. After a meeting with National Museum representatives on 16 July 1947, Division Chief Sherman E. Lee sharply criticized the Japanese position: "The officials present seemed to be under three misapprehensions, that they had unlimited funds at their disposal, that a Tokugawa period structure deserved equal priority with earlier and rarer specimens, and that a mistaken policy, once initiated, should be continued."⁸⁰ On the Japanese side, people from the Ministry of Education, the National Museum and the various expert committees were nonetheless almost unanimously hostile to the policy shift pushed by SCAP.⁸¹ The National Treasure Preservation Committee⁸² (*Kokuhō hozon-*

76 SCOTT, *supra* note 13, 379.

77 AOYAGI/IWATSUKI/FUJIOKA, *supra* note 14, 1999.

78 AGENCY FOR CULTURAL AFFAIRS, *supra* note 57, 19.

79 AOYAGI/IWATSUKI/FUJIOKA, *supra* note 14, 1999.

80 GHQ/SCAP Records, Civil Information and Education Section CIE(C)00369, quoted by *Ibid.*

81 AOYAGI/IWATSUKI/FUJIOKA, *supra* note 14, 1999.

82 Established by the National Treasures Preservation Law of 1929, this Committee was advising the Minister of Education on all important matters regarding national treasures. It was also responsible for submitting to the Minister the reports on cultural items that should be designated as national treasures. See A. EDAGAWA, *Waga kuni ni okeru bunka-zai hogo no shi-teki tenkai: to kuni senzen ni okeru kōsatsu* [A Study of the Historical Development of Cultural Properties Protection in Japan: With a Focus on the Prewar Period], in: *Bunka jōhō-gaku: Surugadai-daigaku bunka jōhō-gaku-bu kiyō* 9 (1) (2002) 43.

kai) went even further, declaring in a subsequent meeting on 19 September 1947: “There are not too many registered objects, there are too few.”⁸³

By mid-1948, when the Ministry of Education finished drafting a bill for the revision of the 1929 Law for the Preservation of National Treasures, the issue was still unresolved and divisive. Yet a new controversy emerged over this first attempt to reform Japan’s preservation system, illustrating another divergence between the Japanese government and SCAP. An English version of the Ministry of Education’s plan to revise the National Treasures Law was at a later point presented to the Arts and Museum Division. The text of the bill expressed the Ministry’s vision of a more ambitious institutional framework for Japan’s cultural heritage. The draft also included provisions aiming at “significant government control over cultural property” and “a compulsory designation system”.⁸⁴ Such an increase of governmental power was reminiscent of some of the prewar orientations. It was vigorously opposed by the Arts and Museum Division. Along with a genuine interest in preserving Japanese cultural heritage and a pragmatic mindset for the repair efforts to be engaged in during these critical times, the personnel of the Division also shared the same ideological premises as the rest of SCAP. It was crucially important for them to defend Japan’s democratization process and the newly established Constitution, including property rights (Art. 29), against state interference.⁸⁵ Despite the Arts and Museum Division’s opposition, the Ministry of Education refused to back down and apparently even received further support on the Japanese side. In March 1949, in sharp contrast to the hard budgetary negotiations of the previous years, Sōtarō Takase, appointed Education Minister only a few weeks earlier, declared: “Since the Finance Ministry’s concern for national treasures has become greater, the problem of appropriation for national treasure preservation is expected to be settled favorably”.⁸⁶

Consequently, both the extent of protected items and the government attitude towards private ownership continued to be major points of contention between the Japanese and U.S. sides during the early drafting stage of the LPCP, from February 1949 onward.

83 GHQ/SCAP Records, Civil Information and Education Section CIE(C)00383, quoted by AOYAGI/IWATSUKI/FUJIOKA, *supra* note 14, 1999.

84 SCOTT, *supra* note 13, 380.

85 *Ibid.*

86 Quoted by *Ibid.* 382. See also *Kokka ga sekinin o mote* [The State Has a Responsibility], in: *Yomiuri shinbun* (1 March 1949) for the original Japanese declaration.

IV. A FEW CONCESSIONS AND NUMEROUS AMBITIONS: THE LAW FOR THE PROTECTION OF CULTURAL PROPERTIES IN 1950

1. *Compromising in a Shifting Context: The 1949–1950 Legislative Process*

After the symbolic and emotional shock of the Hōryū-ji fire, the drafting of what would later become the Law for the Protection of Cultural Properties was undertaken by the Sub-Committee on Cultural Affairs, belonging to the Education Committee of the House of Councillors. At that time, the Education Committee was chaired by Kōtarō Tanaka, legal scholar and former minister of education (May 1946–January 1947) in the First Shigeru Yoshida Cabinet. In March 1950, Tanaka was replaced as chair by novelist and dramatist-turned-politician Yūzō Yamamoto.⁸⁷ On 26 April 1950, reporting on the Law at the plenary session of the Diet, Yamamoto expressed how the drafting and submission of legislation by Diet members, and not the government, was still new in these early years after the war. He explained how it was supposed to be “a natural thing under the Constitution [y]et, such natural thing rarely happened.”⁸⁸ Yamamoto also remarked, in the same address, how much this resulted from the observation of the U.S. situation. Hence, the originality of the Law for the Protection of Cultural Properties stemmed partly from the initiative taken by the House of Councillors to be at the center of the reform process, which was inspired by the spirit of the new Constitution and the American legislative model. This initiative started as early as late January 1949 with a Diet investigation team being sent to the Hōryū-ji to discuss the details of the incident with the local officers in charge. On 12 February 1949, following a report on the incident given by the Ministry of Education’s Social Education Bureau to the Education Committee, the Committee decided to have the Sub-Committee on Cultural Affairs work on a revision of the National Treasures Law while the Ministry of Education was to transfer all needed materials to the Sub-Committee.⁸⁹

One of the first tasks was to settle the issue of the scope of cultural items to be protected under revised legislation. Shinobu Iwamura, historian of East Asia and House of Councillors’ Standing Committee expert, was a key actor in bridging the gap between the positions of SCAP and the Japanese

87 7th Session of the National Diet, Education Committee Meeting no 8, <http://kokkai.ndl.go.jp/SENTAKU/sangiin/007/0804/00703020804008c.html>.

88 Quoted by TAKEUCHI/KISHIDA, *supra* note 10, 27. The LPCP was indeed one of the first pieces of legislation proposed by Diet members, after the Eugenic Protection Law (*Yūsei hogo-hō*, Law No. 156/1948) of 1948.

89 AGENCY FOR CULTURAL AFFAIRS, *supra* note 57, 20.

(particularly the Ministry of Education). On 14 March 1949, Iwamura presented to James M. Plumer, fine arts advisor in the Arts and Museum Division, a personal revision draft for the National Treasures Law. This draft contained the idea “to classify national treasure into two or more classes according to the degree of importance.” At the beginning of April 1949, Iwamura submitted his proposal to the Education Committee. In this text, a new class was introduced among national treasures, this being “special national treasures” (*tokubetsu kokuhō*), whose repairs should be entirely funded by the Japanese state. This was the origin of what eventually became the two-class system of the LPCP, separating the rarer and more prestigious national treasures from the more general “important cultural properties” (*jūyō bunka-zai*). This classification offered therefore a compromise on fiscal responsibility, fitting between SCAP’s concern about the cost of heritage preservation and the Japanese side’s refusal to drastically reduce the total number of designated items.

Initial versions of the LPCP bill also contained provisions for more governmental control of cultural properties.⁹⁰ The Arts and Museum Division remained firm in its opposition to what it considered unacceptable bureaucratic infringement of individual rights in property. After months of legislative process, this position eventually prevailed with a reference to the government’s respect of property rights in Art. 4, on the mental attitude (*kokoro-gamae*) of the various stakeholders. According to the research done by Sakaino and her colleagues, the text was first included in what they named the House of Councillors’ bill no 7, probably written in May 1945 just before the end of the 5th parliamentary session. The reference did not appear in the House of Representatives’ bill of 26 September 1946, but it was included in the next House of Councillors’ bill (no 8) and all followings versions of the Law.⁹¹ The final text reads as follows: “The Government and local governments shall respect the ownership and other property rights of the persons concerned in the enforcement of the present law.” (Art. 4 (3)).⁹² The issue of tax exemption for the owners of cultural property was

90 “*Kokka kanri*” *hō’an isogu* [“State Control” Hastening for a Bill], in: *Yomiuri shinbun* (1 March 1949).

91 A. SAKAINO/H. SAITŌ/S. YAMATO/A. HIRAGA, *GHQ/SCAP bunsho-nai no bunka-zai hogo-hō sō’an – hō’an no bunseki – kō’an. Bunka-zai hogo-hō no seiritsu katei ni kansuru kenkyū sono 1* [Analysis and Consideration of the Bills in GHQ/SCAP Records: Process of Enactment of The Law for the Protection of Cultural Properties (Part 1)], in: *Journal of Architecture and Planning* (Architectural Institute of Japan), 75 (647) (2010) 255.

92 See the English translation of a more recent version of the Law (Law No. 214/1950, amended by Law No. 7/2007): http://www.unesco.org/culture/natlaws/media/pdf/japan/japan_lawprotectionculturalproperty_engtof.pdf. The Japanese text, un-

also brought up by SCAP. In a memorandum dated 27 February 1950, SCAP's Economic and Scientific Section recommended that the national and local tax exemptions "be omitted".⁹³ The provision was eventually excluded from the LPCP, to the disappointment of the reform advocates.⁹⁴

Discussing more specifically the property rights' issue, Geoffrey R. Scott argues that the final version demonstrates the "considerable influence" of the Arts and Museum Division over Japan's LPCP.⁹⁵ The power asymmetry between both sides helped the Division to achieve its objectives.⁹⁶ The (late) timing of the reform and the political context also contributed to these compromises. On 23 January 1949, a mere three days before the Hōryū-ji fire, the Democratic Liberal Party (*Minshu Jiyū-tō*) won the general election and returned to power after less than two years of Socialist-Democrat coalition governments. One of the first measures of the newly elected party was to abolish the national management of the coal industry and to transfer back the decision-making powers from the bureaucracy to the coal mine owners.⁹⁷ Since 1948, the Occupation authorities were also engaging in the "reverse course"/"shifting of gears", in which strengthening Japan's economy became the main priority.⁹⁸ The new economic policy (the Dodge Line⁹⁹) stressed a balanced national budget and a decrease in the scope of government economic intervention.¹⁰⁰ Future Prime Minister (1964–1972) Eisaku Satō, at that time chairman of the

changed since 1950, reads as follows: "*Seifu oyobi chihō kōkyō dantai wa, kono hōritsu no shikkō ni atatte kankei-sha no shoyū-ken sono-ta no zaisan-ken o sonchō-shinakereba-naranai*".

93 ECONOMIC AND SCIENTIFIC SECTION (ESS), Memorandum to the Government Section regarding draft legislation (27 February 1950), in: GHQ/SCAP Records (RG331) (23) Box No. 2205 House of Councillors – 7th Diet. See National Diet Library Digital Collections: <http://dl.ndl.go.jp/info:ndljp/pid/9894492>. The reasoning behind this recommendation was explained as following: "Tax exemption is testament to an indirect subsidy and set a dangerous precedent for other groups who consider themselves equally deserving."

94 See notably remarks by Yūzō Yamamoto, chairman of the House of Councillors' Education Committee and his counterpart for the House of Representatives' Education Committee, Noboru Mizutani (quoted by TAKEUCHI/KISHIDA, *supra* note 10, 32 and 35 respectively).

95 SCOTT, *supra* note 13, 387.

96 See MATSUDA, *supra* note 3, 39.

97 H. SASADA, *The Evolution of the Japanese Developmental State: Institutions Locked in by Ideas* (London et al. 2012) 154–155.

98 TAKEMAE, *supra* note 2, 473.

99 Named after the banker Joseph M. Dodge, who oversaw the implementation of the economic program. See *Ibid.* 469.

100 *Ibid.* 469–470.

Democratic-Liberal Political Affairs Research Committee, was likely expressing the opinion of many other Japanese decisive players when he declared in March 1949: “Although some quarters advocate state control of national treasures, I think it would be going too far”.¹⁰¹ Indeed, by mid-1949 the political context was no longer on increased state control and massive public spending, especially in the cultural field; rather, the focus instead being more on government action.

2. *The 1950 Law: A New Cultural Heritage System for a New Japanese Nation?*

Despite the concessions made to SCAP’s demands, the bill drafted by the House of Councillors remained ambitious in its final version voted on in April 1950. The aspirations were reflected in the zeal displayed by Japanese lawmakers and the extent of activities organized by them, from meetings and interviews with a broad variety of stakeholders to field investigations conducted all over the country.¹⁰² These massive efforts resulted in ten different bills (nine by the House of Councillors and one by the House of Representatives) before the final text was adopted.¹⁰³ After a thorough examination of Japanese and U.S. sources, Sakaino concludes that all the bills come from the Japanese side. Available English versions are only translations or partial translation of Japanese drafts and bills, not original text redacted by SCAP.¹⁰⁴

Proclaimed in May 1950 and enacted in August 1950, the LPCP incorporated elements from the three principal laws of the prewar period: the Law for the Preservation of Historic Sites, Scenic Beauty and Natural Monuments of 1919, the National Treasures Law of 1929 and the Law for the Preservation of Important Art Objects of 1933. Items designated under the previous 1919 and 1929 laws were notably deemed to be designated under the new Law.¹⁰⁵ They were all gathered under one single legal term, “cultural property” (*bunka-zai*). *Bunka-zai* appeared in Japanese during the

101 Quoted by SCOTT, *supra* note 13, 381.

102 Yūzō Yamamoto quoted by TAKEUCHI/KISHIDA, *supra* note 10, 31–32. On field investigations, see, e.g., HOUSE OF COUNCILLORS, Records of the Education Committee’s Second Meeting, Fifth Session of the National Diet (24 March 1949): <http://kokkai.ndl.go.jp/SENTAKU/sangiin/005/0804/00503240804002c.html>

103 SAKAINO/SAITŌ/YAMATO/HIRAGA, *supra* note 91, 254.

104 *Ibid.* 260.

105 SCOTT, *supra* note 13, 387. However, items designated as national treasures under the 1929 Law were at first only designated as “important cultural properties” before a new selection of national treasures began in 1951. See AOYAGI/IWATSUKI/FUJIOKA, *supra* note 12, 1997, 2002.

Taishō period (1912–1926) as a translation of the German term “*Kultur-gut*”, and seemed to have been in common use within the Cultural Department of the Ministry of Education by the late 1930s.¹⁰⁶ Still, in 1950, the term of cultural property was employed in only a few countries (France, Italy) and was not an established concept in Common Law countries such as the United States.¹⁰⁷ In international law, the term appeared four years later with the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.¹⁰⁸

In Japan, the 1950 Law featuring the umbrella concept of cultural properties established a comprehensive framework for the protection of cultural properties, in sharp contrast with the fragmented prewar system. For Japan’s cultural properties administration, the concept opened the possibility of including a wider range of historical and cultural items than, notably, the existing concepts of national treasure and important art objects.¹⁰⁹ The new Law also marked a shift within the system from “preservation” (*hozon*) to “protection” (*hogo*). This change indicated a new emphasis on the preservation and utilization (*katsuyō*) of cultural properties on behalf of all Japanese people, and not just a few.¹¹⁰ The public display of cultural properties was also better regulated.¹¹¹ Overall, greater importance was given to the citizens as indispensable partners for achieving the objectives of the Law, this representing first steps towards a democratization of cultural heritage in Japan.¹¹²

National treasures and important art objects were regrouped under the category of “tangible cultural properties” (*yūkei bunka-zai*) which, still today, includes a variety of objects having significant historical or artistic value for Japan, such as buildings, pictures, sculptures, applied crafts and ancient documents.¹¹³ Similarly, historic sites, locations of scenic beauty and natural monuments were gathered into one single category.¹¹⁴ Despite

106 ISHIDA, *supra* note 12, 16.

107 PROTTO/O’KEEFE, *supra* note 12, 312.

108 Since then, the term cultural property has been criticized for its ideological baggage, emphasizing the ownership and commodification of cultural items. The term is, also today, considered to be too restrictive to encompass all the diversity of human cultural heritage. See *Ibid.* 307; BLAKE, *supra* note 4, 65–66.

109 OGAWA, *supra* note 60, 131.

110 AKAGAWA, *supra* note 31, 50–51. See Art. 1 (1).

111 Art. 4 (2) LPCP.

112 Art. 4 (1) LPCP. Noboru Mizutani talked notably about how Japanese citizens should be involved in a “democratic management” (*minshuteki un’ei*) of cultural heritage preservation (quoted by TAKEUCHI/KISHIDA, *supra* note 10, 35). Architect specialist Barbara Galli even goes as far as saying that “the importance of this law lies in its inclusion of civil society.” (GALLI, *supra* note 15, 28).

113 See notably Arts. 27 to 56 LPCP for Important (Tangible) Cultural Properties.

114 See Arts. 69 to 84 LPCP.

budget constraints, Japanese lawmakers innovated by introducing into the law categories such as “intangible cultural properties” and “buried cultural properties” (*maizō bunka-zai*).¹¹⁵ The category of buried cultural properties covers archeological sites, protected for the first time by law in Japan.¹¹⁶ The category of intangible cultural properties was an even more transformative change. It was the first introduction of protection for “intangible” forms of heritage in a piece of national legislation. The aim was to safeguard Japan’s dying traditional arts and craftsmanship (Art. 67 LPCP), such as armor-making, at a time of deteriorating living conditions for many artists and craftsmen.¹¹⁷ It soon became one of the most emblematic features of the Japanese cultural properties protection system worldwide, despite initial reluctance by SCAP regarding the potential cost of an extended cultural properties system.¹¹⁸

Finally, under the new law a Committee for the Protection of Cultural Properties was established to administer the system. The Committee, composed of five members and a secretariat, was notably in charge of the designation of new elements.¹¹⁹ In this regard, it was set up as an external bureau (*gaikyoku*) of the Ministry of Education in order to insure independence from the minister of education and prevent political pressure.¹²⁰ In their work, the Committee was assisted by a commission of experts (*Bunka-zai senmon shingi-kai*), comprising representatives from the National Museum and the research institutes of Tōkyō and Nara.¹²¹ Additionally, for the

115 See Arts. 67 to 68 LPCP for intangible cultural properties and Arts. 57 to 65 for buried cultural properties.

116 T. INADA, *Lois, administrations et mouvements pour la protection des sites archéologiques au Japon* [Laws, Administration and Movements for the Protection of Archeological Sites in Japan], in: Demoule/Souyri (eds.), *Archéologie et patrimoine au Japon* (Paris 2008), 119.

117 N. AIKAWA-FAURE, Excellence and Authenticity: ‘Living National (Human) Treasures’ in Japan and Korea, in: *International Journal of Intangible Heritage* 9 (2014) 40.

118 T. KONO, Keynote Speech – The Basic Principles of the Convention for Safeguarding of Intangible Heritage: A Comparative Analysis with the Convention for Protection of World Natural and Cultural Heritage and Japanese Law, in: Japan Foundation (ed.), *Okinawa International Forum 2004, Utaki in Okinawa and Sacred Spaces in Asia, Community Development and Cultural Heritage* (Tōkyō 2004), 39.

119 See Art. 27 LPCP.

120 K. WADA, *Bunka-zai seisaku no henshen* [The Changes of Cultural Heritage Policy], in: T. KAWAMURA/A. NEKI/K. WADA, *Bunka-zai seisaku gairon: Bunka isan hogo no arata na tenkai ni mukete* [An Outline of Cultural Property Policy: Toward a New Development in the Protection of Cultural Heritage] (Tōkyō 2002) 64. Also see Art. 5 LPCP.

first time in Japan local governments were given a more concrete role in the administration of cultural properties.¹²²

The many and substantial aims of the 1950 reform were perceived by SCAP staff, commenting on one of the last versions of the bill, as being “too ambitious and overly broad in scope”.¹²³ The (late) timing of the reform explains why the bill retained much of its ambitious character until the end. It was, after all, not a SCAP initiative. The reform occurred years after the main Occupation measures to democratize Japan were implemented or, at least, proposed.¹²⁴ For SCAP, the most controversial issues were solved by the compromises reached during the drafting process at the Diet. These compromises were made both to accommodate the Allied authorities and to satisfy part of the Japanese government, especially on some budgetary matters. The late timing provided increased leeway to the Japanese legislators but also allowed new reflections to emerge and served finally to obtain a fairly different law than the initial bill proposed by the Ministry of Education.

V. CONCLUSION

The LPCP resulted from the long maturation process and the particular timing of the reform, far more than from unilateral decisions of any side. The idea to comprehensively revise the prewar preservation system emanated indeed solely from the Japanese side. Although facing critical times and emergency situations all over the country, the Ministry of Education’s officials and cultural experts were also eager to radically improve the administration of Japan’s cultural heritage. These broad initial goals were met with skepticism and even hostility by SCAP’s Arts and Museum Division, especially when they appeared to conflict with the basic political objectives of the Occupation.

However, the harsh budgetary situation and the policy priorities chosen by both the Japanese government and the Allied authorities left no political opportunity to change the laws until the Hōryū-ji fire eventually revealed to all Japanese citizens the pitiful state of the nation’s historical objects and sites. During these many years, from the end of 1945 to the beginning of 1950, the particular conditions of the Occupation period created a new

121 WADA, *supra* note 120, 63. The National Museum and the research institutes of Tōkyō and Nara were also affiliated with the Committee.

122 T. SASAKI, *Bunka-zai hogo-hō no seiritsu* [The Formation of the Law for the Protection of Cultural Property], in: *Nihon bijutsu kōgei*, 143 (1950) 43.

123 “HC: Cultural Properties Protection Law” (undated), in: GHQ/SCAP Records (RG331) (23) Box No. 2205 House of Councillors – 7th Diet. See National Diet Library Digital Collections: <http://dl.ndl.go.jp/info:ndljp/pid/9894492>.

124 MATSUDA, *supra* note 3, 18–24.

environment for Japanese cultural heritage, disseminated new ideas and practices for its preservation and administration, and ultimately forced compromises and innovative solutions in the legislative process. As a result, the relatively late timing of the reform in the Occupation period, through the accumulation effects of multiple interactions and broader contextual changes, gave the LPCP its specific character.

While following in many ways the prewar legislation and integrating much of the original drafts from the Ministry of Education, the final version of the LPCP adopted in 1950 was the combined product of more complex contributions, born notably through the regular contacts and joint activities between SCAP and Japanese sides. The two-class system in the category of tangible cultural properties and the clear affirmation from the government regarding its respect for private ownership were the most striking examples of the compromises underlying the legal drafting of the 1950 Law. The integration of an intangible form of heritage within the concept of cultural properties presents a more subtle case as, despite the bilateral roots of the protection of intangible cultural property, the choice was made by the Japanese legislators over SCAP's criticism.

Indirect influences can also be discerned in many other parts of the 1950 Law. The support given by SCAP to the Ministry of Education during the budgetary negotiation with the Ministry of Finances in the years 1946–1948 led to a more concrete reality in the call for making Japan a “cultural state”, a claim often reduced to little more than a political slogan in the first years of the postwar period. In its more political context, the LPCP was also influenced by the U.S. Occupation. Eventually, the initiative to revise the Law came from Japanese lawmakers and not the bureaucracy or SCAP. This illustrated, even if mainly on a symbolic level, the democratization of the country. Such democratization can also be found in the greater importance given to citizens and public access to cultural property as well as in the role of local governments in the management of cultural heritage.

Going back to Iokibe's three types of Occupation reforms, these numerous influences and contributions proved the mixed nature of this legal cultural reform. Revised several times in the past sixty years, the LPCP remains today the backbone of the Japanese system. By influencing the conception of this law, the American Occupation period thus had an enduring effect on Japan's postwar system for protecting cultural properties.

SUMMARY

Following its defeat in World War II, Japan fell under the control of the Allied armed forces in the last days of August 1945. The Occupation of the country was

rapidly supervised by the Supreme Commander for the Allied Powers (SCAP), an organization largely dominated by American staff. Lasting almost seven years (1945–1952), this period of U.S.-led foreign administration witnessed drastic changes for Japan. Some of them were forced by the Occupation authorities, especially in the early years, in order to reach their initial objectives of transforming the former enemy nation into a democratic and peace-loving country. Other reforms were promoted by the Japanese government, wishing to satisfy the new dominant power – SCAP – at the lowest political cost. Most reforms, however, were the result of joint works by both sides aiming to rebuild an ailing country. The relations between SCAP and the Japanese side took a vast plurality of forms. They were particularly impacted by the abrupt changes of events in East Asia from 1948 onward, when it became more urgent than ever to accelerate the political and economic strengthening of Japan.

During these years of Occupation, culture was perceived by the U.S. side as a strategic tool to convert Japanese to new attitudes supportive of U.S. actions and interests. In the wide field of cultural policies, the protection of cultural heritage appears as a particular case. Despite the massive challenges of the war's consequences and the Occupation's harsh conditions, the major reform of the Japanese system, the Law for the Protection of Cultural Properties, was enacted in 1950, just two years before the San Francisco Peace Treaty of 1952 ended the Occupation. Furthermore, the legal reform was initiated and proposed neither by SCAP nor the Japanese government, but by Japanese Diet members overwhelmed by the fire incident which ravaged the Hōryū-ji in January 1949.

At the crossroads of political history and political science, this article investigates how the protection of cultural heritage has been reformed in Occupied Japan. After describing the critical situation of Japan's historical objects and buildings after the war, the research looks to the extensive collaboration between the American and Japanese sides, a collaboration also marked by some tensions and conflicts. From there, the article examines the compromises which were made during the legislative process and the ambitions which were pursued by the new Law. I argue that the multiple and constant interaction between those working in favor of Japanese cultural heritage on both sides of the Occupation was – as greatly facilitated by the late timing of the reform – eventually the decisive factor in shaping the Law for the Protection of Cultural Properties adopted in 1950.

ZUSAMMENFASSUNG

In Folge seiner Niederlage im Zweiten Weltkrieg fiel Japan Ende August 1945 unter die Kontrolle der Alliierten. Die Besatzung wurde rasch von dem Oberkommandierenden der Alliierten (Englisch: Supreme Commander for the Allied Powers, SCAP) kontrolliert, eine hauptsächlich von Amerikanern geführte Or-

ganisation. In der sieben Jahre andauernden Periode der durch die USA geleiteten ausländischen Verwaltung (1945–1952) erlebte Japan drastische Veränderungen. Einige wurden durch die Besatzungsmacht erzwungen, besonders in den Anfangsjahren, um ihr anfängliches Ziel – die Umwandlung Japans von einem Feindstaat in ein demokratisches, friedliebendes Land – zu erreichen. Bei anderen Reformen wollte die japanische Regierung der neuen dominierenden Macht des SCAP zuvorkommen, um dieses unter geringstmöglichen politischen Kosten zufriedenzustellen. Dem Großteil der Reformen liegt jedoch eine auf den Wiederaufbau des zerstörten Landes zielende Zusammenarbeit der beiden Seiten zugrunde. Dabei nahmen die Beziehungen zwischen SCAP und der japanischen Seite eine Vielzahl von Formen an. Diese wurden insbesondere durch die plötzlichen Veränderungen in Ostasien ab 1948 beeinflusst, als es wichtiger denn je wurde, die politische und ökonomische Stärkung Japans voranzutreiben.

Während der Besatzungszeit sahen die USA Kultur als ein strategisches Mittel, um in Japan eine unterstützende Haltung gegenüber den Handlungen und Interessen der USA zu erzeugen. Im weiten Feld der Kulturpolitik erscheint der Schutz von Kulturgütern dabei als besonderer Fall. Trotz der massiven Schwierigkeiten durch die Folgen des Krieges und der harten Umstände der Besatzung wurde eine bedeutende Reform des japanischen Systems, nämlich der Schutz von Kulturgütern, 1950 verabschiedet, zwei Jahre vor Beendigung der Besatzung durch den Friedensvertrag von San Francisco von 1952. Zudem wurde die Reform weder durch SCAP noch durch die japanische Regierung initiiert oder gefördert; dies geschah durch die japanischen Parlamentsmitglieder, die über das Feuer entsetzt waren, das den Hōryū-ji weitestgehend zerstört hatte.

An der Schnittstelle von politischer Geschichte und Politikwissenschaft untersucht dieser Beitrag, wie der Schutz von Kulturgütern während der Besatzungszeit in Japan reformiert wurde. Nach einer Darstellung der kritischen Situation von Japans historischen Objekten und Gebäuden nach dem Krieg, wendet sich die Untersuchung der Zusammenarbeit von amerikanischer und japanischer Seite zu, die mitunter von Spannungen und Konflikten geprägt wurde. Anschließend behandelt der Beitrag die im Zuge des Gesetzgebungsverfahrens entstandenen Kompromisse und die durch das neue Gesetz getragenen Ziele. Der Autor argumentiert, dass, erleichtert durch den späten Zeitpunkt der Reform, das vielfache und stetige Zusammenwirken beider Seiten der Besatzung für das japanische Kulturgut der letztlich entscheidende Faktor für die Ausgestaltung des 1950 erlassenen Kulturgutschutzgesetzes gewesen sei.

(Die Redaktion)