

Freedom of speech in Japan and the Designated Secrets Law

Arthur Stockwin explains the four main areas where free speech is under threat in Japan.



The passage through the Japanese National Diet (Parliament) in December 2013 of the Designated Secrets Law was initiated by the government of Prime Minister Abe Shinz? elected one year earlier. It was, and remained, highly controversial, and marked a major shift away from the liberalism of the 1947 Constitution, launched under the Allied Occupation. The new dispensation in respect to freedom of speech reflected the authoritarian and nationalist instincts of the Abe government.

Article 21 of the 1947 Constitution stated: “Freedom of assembly and association, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated”

The Designated Secrets Law of 2013 (in full: the Act on the Protection of Specially Designated Secrets) did not cover all aspects of freedom of speech, but its remit was quite wide, including as it did many areas of vital interest to the mass media. The principal secrets that it sought to protect

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covered defence, diplomacy, public safety and counter-terrorism. For years US governments had been urging Japan to tighten its protection of State secrets, particularly where these overlapped with interests of the United States. But the practical application of the new law made it problematic for journalists to investigate, for instance, aspects of the nuclear meltdown at the Fukushima nuclear reactors following the earthquake and tsunami of 11th March 2011.

In the fierce debate that occurred before and after the law came into effect, four principal criticisms of it emerged.

1) It was argued that the definition of 'designated State secret' was unclear, and that the law gave to government agencies the power to decide on their own what constituted a 'State secret'. The way the law was administered gave incentives to government agencies to classify as many documents as possible so as not to lose their right to declare categories of document subject to the jurisdiction of the law. There seemed to be few checks on the willingness of government bodies to classify material, not on grounds of security, but rather in order to cover up embarrassing mistakes.

2) Arrangements to administer the law were criticised as inadequate. Committees were set up to ensure smooth functioning, but they only had advisory powers.

3) Punishments for infringements seemed draconian to many observers. A public servant disclosing classified information would face a ten-year jail term, and a journalist who accessed classified information "in an inappropriate manner" could expect five years. Journalists therefore faced enhanced obstacles to their central task of finding out what was actually going on. There were a number of instances where journalists and editors have come under daunting pressure from government representatives seeking to deter them from pursuing their proper role as investigators. This was important because, through the 'press club' system, different parts of the media tended to report uniformly, reflecting official messages they saw as their privilege to receive. In other words, serious investigative reporting had never been strong in Japan, but the Designated Secrets Law imposed an additional disincentive to follow clues wherever they might lead.

4) The time limit for release of particularly sensitive information was put at sixty years, or just twice the limit in the United Kingdom. Connected with this was the lack of any clear prohibition on destroying sensitive material. Officially, destruction of official material required permission from the Prime Minister, but there was evidence that some types of material were routinely destroyed.

Criticism of the new law was widespread, and came from lawyers, journalists, academics and others concerned about the erosion of guarantees of freedom of speech. Some critics looked back to the Peace Preservation Law of 1925, which was introduced shortly after the electorate was expanded to include all males over the age of 25. That law led to many thousands of arrests and prosecutions, largely of activists working for left wing causes. Even though the ostensible purpose of the Designated Secrets Law was to protect military and diplomatic secrets, there was widespread suspicion that its aims were far wider, namely to supervise domestic political debate

and emasculate the media. Later experience suggested that much of this criticism was valid. In other words, it was an important part of a wider government plan to crack down on dissent.

On the other hand, the legal specialist Professor Kimura S?ta made a number of points in favour of the law. He argued that its drafting predated the inauguration of the Abe government and was a reasonable response to problems of the leaking of official secrets. In his opinion, 'designated State secrets' were adequately defined in the law. He disagreed with the view that the arrangements for administration of the law were inadequate. He also distinguished between 'appropriate' and 'inappropriate' newsgathering. The past case of a journalist who had obtained secrets from his public servant girl friend was 'inappropriate', and therefore subject to the law. On objections to the 60-year non-disclosure limit, he maintained that this only covered a small number of secrets. Concerning the destruction of sensitive material he argued that this was not the business of this particular law, but of others. Finally, he believed that the law did provide for democratic accountability. Professor Kimura accepted, however, that governments might seek to abuse the law, and was highly critical of many Abe government policies.

His defence of the law made valid points, but it needs to be seen in a much wider general context than the text of the law itself. There is little doubt that the role of investigative journalism in Japan was adversely affected, not only by the Designated Secrets Law, but a tightening of controls on the media through formal and informal means (for instance threats to journalists and others who step out of line). The Abe government also appointed a man of extreme right wing views as Director of NHK, the rough equivalent of the BBC in the United Kingdom. The message from government absorbed by many journalists and other commentators is that it pays to play safe, whereas to challenge objectionable policies risks serious trouble for the investigator.

There was a long history in post-war Japan of non-disclosure, or non-transparency, on the part of government in relation to controversial policy issues. One long running example was that of secret agreements between Japan and the United States permitting US naval ships to dock in Japanese ports with nuclear weapons on board. Another continuing issue was the relocation of a US marine base on the island of Okinawa. This was hugely contentious on Okinawa itself and to a lesser extent in mainland Japan. Yet another was the question of the Fukushima No. 1 nuclear power station devastated by a massive tsunami in March 2011, failure of the Tokyo Electric Power Company (TEPCO) to protect the plant before the disaster, as well as issues in subsequent relocation and clear-up operations. The term 'Nuclear Village' was widely used to encapsulate the cosy relationships between the electric power companies and government agencies over a long period. The atmosphere surrounding the Designated Secrets Law seriously inhibited attempts by journalists to penetrate beneath the surface of official government statements. Even though the Fukushima disaster occurred on the watch of the previous government, the arrival in power of the Abe government in December 2012 exacerbated the difficulties of the media in trying to unravel the truth of this and the other issues mentioned above.

Another policy area where Prime Minister Abe worked to reverse liberal values and establish

something reminiscent of pre-1945 Japanese official practices was education. During his first period as prime minister between 2006 and 2007 he revised the national education law to mandate the teaching of patriotic values in schools. Over the post-war years education had been a battleground between defenders of liberal values –mainly teachers – and proponents of nationalistic and disciplinary themes corrosive of free thought. The latter predominated on the government side. In his second administrations after 2012, Abe reinforced the ‘patriotic’ obligations from his first administration, and came to propound the values of the Imperial Rescript on Education, which from 1890 up to 1945 had to be read out in schools every day. Even though the prime minister and members of his cabinet recommended its use in schools only on a voluntary basis, the long-running scandal in 2016 and 2017 of a nationalist school in Osaka supported by the prime minister’s wife, where children were required to recite the Rescript in unison, casts doubt on this ‘voluntarist’ intention. The main part of the Rescript read as follows:

“Ye, Our Subjects, be filial to your parents, affectionate to your brothers and sisters, as husbands and wives be harmonious, as friends true; bear yourselves in modesty and moderation; extend your benevolence to all; pursue learning and cultivate arts, and thereby develop intellectual faculties and perfect moral powers. Furthermore, advance public good and promote common interests, always respect the Constitution and observe the laws; should emergency arise, offer yourselves courageously to the State. And thus guard and maintain the prosperity of Our Imperial Throne coeval with heaven and earth”.

At first glance the wording may appear innocuous if old-fashioned, but in fact it reflected the ideology of a ‘family state’ with the Emperor seen as the ‘father of the people’, individual values subordinated to communal ones, and hierarchy outflanking equality. Japanese people were ‘subjects’ not citizens, and the duty of the people was to “guard and maintain the ...Imperial Throne...” As such, it was based on an ideology radically contrasting with that of the 1947 Constitution and of the decades of political and social experience accumulated under its guidance. In the pre-war dispensation, the balance was tipped in favour of authoritarian principles.

Some historians have argued that under the Meiji Constitution of 1889, and bearing in mind also the Imperial Rescript on Education and other important documents, Japanese politics might well have evolved in a democratic and liberal direction. To some extent it did so, but fitfully and principally in certain periods. But in the end authoritarian and militaristic principles won out over liberal and democratic ones, with disastrous effects for Japan and the rest of the world.

The shift towards authoritarian ideology and practice in Japanese politics was not simply the effect of electing the Abe government in 2012. Elements of it had been developing for a number of years, and its apogee in the 2010s represented a trend since the 1990s for pluralistic elements in the political system to decline. Abe Shinzō, an intelligent political strategist, was adept at attracting electors with soft policies (on the economy, for instance) as well as hard. Apart from this, it reflected widespread disillusionment with economic and social inequalities emerging as a result of globalisation and the advance of neo-liberal economic policies. In this, of course, we may

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recognise similarities with what was happening at the same period in many other advanced countries.

A key casualty of this process, in Japan as elsewhere, was the central liberal principle of freedom of speech. In circumstances of economic and social instability and change, electorates often appreciate what they regard as strong leadership, and elect leaders that they believe will re-establish stability, even though this may involve diminution of freedoms. Understandable though this may be, liberal values of individual freedom do not thrive in such an atmosphere, although in Japan's case developments in the 2010s came after more than half a century in which freedoms, including freedom of speech, were enthusiastically valued among the population at large. Liberal values are not incompatible with values of communal responsibility, indeed the two are closely connected. Neither liberalism in the sense of the freedom to say anything, nor authoritarian suppression of free speech, are desirable or widely desired, but measured responsible liberalism, involving sturdy protection of freedoms, and particularly of free speech, are as relevant in Japan as they are in the rest of the world.

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