

## CAN THE JAPANESE SUPREME COURT OVERCOME THE POLITICAL QUESTION HURDLE?

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*Abstract:* In 1947, a new Japanese Constitution (“Kenpō”) was born and its pacifist ideal was embodied in Article 9. Meanwhile, judicial review was transplanted, mainly from the United States (“U.S.”), into Japan. While the U.S. Supreme Court has narrowed its political question doctrine since *Baker v. Carr* in 1962, Japan developed its constitutional avoidance and political question doctrine in part to avoid deciding the merits of Article 9 disputes, including the legitimacy of Japan’s Self-Defense Force, the Security Treaty between the US and Japan, and the stationing of U.S. Forces in Japan. The Japanese Supreme Court (“SCJ”) adopted a deferential temperament to maintain stability with the political branches, thereby abdicating an effective means of settling critical disputes by routinely allowing executive interpretations of the Kenpō to stand unchallenged. Under the auspices of Prime Minister Shinzo Abe, an executive reinterpretation of Article 9 in July of 2014 sparked intense debate over the Kenpō’s fundamental principle of pacifism; it nearly divided Japan. In order to stimulate constitutional checks and balances, SCJ should seize the role of authoritative interpreter of the Kenpō. An important step in this direction can be accomplished by reexamining the unique text and history of the Kenpō and the development of political question doctrine in Japan. As the U.S. acted as Japan’s transplant donor of judicial review, the development of the U.S. political question doctrine could offer a model for SCJ to reconsider the weight of textual and historical considerations. We recommend that SCJ restate and clarify its political question doctrine using the development of the U.S. political question doctrine as a model. Further, agreeing to hear an Article 9 case will allow SCJ to play an active role in furtherance of a constructive dialogue between the government and the people to form a new consensus on its national security strategies and move Japan forward.

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