

When German Influences Met Competing Ideologies:
Constitutional Design of Executive-Legislative Relations in Post-WWII China and Japan

Carlos Hua

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Introduction

While the legal systems of China and Japan were both historically rooted in traditions, social rules, and Confucian values, Western laws and legal doctrines reshaped both countries' legal systems in large parts of their modern history. Among those Western influences, German laws played a crucial role. Shortly after the Second World War, China and Japan adopted their new constitutions in drastically different geopolitical and social contexts. However, at first glance, both constitutions bear significant similarities to the German constitutional designs—especially in the construction of executive-legislative relations. A detailed examination of these constitutions reveals that their German influence came from different sources and underwent distinctive paths of development. This article provides a comparative review of the Constitution of the Republic of China (1948) (“ROC Constitution”) and the Constitution of Japan (1948) (“Japanese Constitution”) within the historical context of their constructions. It also references the Constitution of the Kingdom of Prussia (1850) (“Prussian Constitution”) and the Constitution of the German Reich (1919) (“Weimar Constitution”) to discuss their influence on the Chinese and Japanese constitutions. The article provides (1) a brief overview of German legal influence on Chinese and Japanese legal systems, (2) a discussion of the influence of German constitutions in China's and Japan's constitutional designs, (3) a comparative analysis of the executive-legislative relations in the four constitutional texts, illustrating their similarities and differences, and (4) a discussion of how the German constitutional influence was mitigated by competing ideologies in China and Japan as well as how this mitigation is reflected in the constitutional texts. This article focuses on three features of executive-legislative relations: (1) the power to dissolve legislatures, (2) the executive's personnel powers, and (3) the fusion or separation of the powers of the head of state and the head of government. This article concludes that the executive-legislative relations in both China's and Japan's post-war constitutions have deep

German roots but underwent different transformations influenced by competing ideologies, both internal and external, in the post-war Chinese and Japanese societies.

German Legal Influence on China's and Japan's Legal Systems

Historically, both China's and Japan's legal systems were based on or significantly influenced by natural laws, such as Confucian legal philosophies as well as Shinto and Buddhist religious traditions (Luney 1989, 130, 145). At the end of the 19th century and the beginning of the 20th century, regime changes and significant societal reforms and revolutions across East Asia embraced influences and transplantation of European laws and legal systems (Tomášek and Historicky 2023, 445–46). These events included “the termination of shogunate in Japan in 1867” and “the termination of the Empire in China in 1911” (Tomášek and Historicky 2023, 445). Among the European systems, German laws arguably have the most widespread influence in East Asia (Tomášek and Historicky 2023, 446). In Japan, its “fundamental forms of [. . .] jurisprudence and legislature were widely determined by German models” (Kanamori 1999, 93). In Japan, the “six code of Meiji” were adopted during the era of Meiji Restoration following the German model, comprising of “the Constitution, the Civil Code, the Business Code, the Criminal Code, the Code of Civil Procedure and the Code of Criminal Procedure” (Tomášek and Historicky 2023, 446). Similarly, after the nationalist revolution in early 1910s, China established its German-influenced “six codes,” comprising of “the Organic Law of the Courts, Commercial Law, Civil Code, Criminal Code, Civil Code of Procedure, and Criminal Code of Procedure” (Luney 1989, 131). The German Civil Code had a major influence on both China's and Japan's establishment of formal legal systems. For example, China's Civil Code “followed the German civil law tradition and adopted the concept of ‘juristic act’” (Luney 1989, 131) and adopted the German approach in applying case law (Tomášek and Historicky 2023, 450). Japan's Civil Code similarly followed the German models and principles while integrating Confucian

doctrines and traditional Japanese values, such as “an extensive application of obligatory respect to parents” (Tomášek and Historicky 2023, 450–51).

The Influence of German Constitutions on China’s and Japan’s Constitutional Construction

This section reviews the historical contexts of China’s and Japan’s constitutional construction as well as the roles and influences of German constitutions in these historical contexts. The discussion here intends to offer a historical foundation for the comparative analyses and discussions in the following sections.

Historical Context: China

The development of constitutionalism in modern China dated back to as early as the failed Hundred Days’ Reform in 1898. The failed reform contemplated establishing constitutional monarchy to continue the Qing Dynasty’s rule. Over the next 50 years, China adopted a series of constitutional documents that were either provisional in nature or extremely short-lived. In 1908, Empress Dowager Cixi promulgated the Principles of the Constitution—the first constitutional document in the Chinese history. Three years later, the 1911 Revolution overthrew the Qing Dynasty and established the Republic of China, setting the stage for both broader and deeper development of constitutionalism. During the next three decades, frequent changes of power between warlords brought about multiple constitutional drafts (Luan 2021, 207). Among other issues, the constant fight for power not only militarily but also within the political institutions led to various designs of executive-legislative relations (Luan 2021, 207). While the Provisional Constitution in 1912 (中華民國臨時約法) and the Draft of the Constitution in 1914 (天壇憲草) created a parliamentary system to curb executive powers, the Organizational Outline of the Provisional Government (臨時政府組織大綱) in 1912, the original draft of the Provisional Constitution, and the ultimate Constitutional Compact (中華民國約法) in 1914

established presidential systems that eventually led to Yuan Shikai's restoration of monarchy (Luan 2021, 207–8).

Frustrated with the erosion of newly established constitutional order, Sun Yat-sen and his fellow Nationalists embarked on the Northern Expedition in 1926. Two years later, the Kuomintang (KMT) successfully established a nationwide government and began formulating an entirely new constitution (Luan 2021, 207–9). Starting from the Provisional Constitution in 1931 (訓政時期約法), KMT incorporated Sun Yat-sen's Three Principles of the People into the constitutional design. Central to Sun's ideology was the separation of five powers: dividing the governing organ into five branches—legislative, executive, judicial, supervisory, and examination—each with substantial authorities and ultimately answerable only to the political organ of National Assembly (Luan 2021, 208–9). However, during the one-party state era from 1931 to 1948, the five-power separation was not fully effectuated in light of KMT's authoritarian rule (Luan 2021, 210). In the meantime, the drafting process of a permanent constitution was active, and several drafts were proposed before the WWII ended (Luan 2021, 210). In 1946, with the participation of the Chinese Communist Party (CCP), the China Democratic League, and the Young China Party (YCP), the Political Consultative Conference formally proposed a draft for the permanent constitution. Balancing KMT's commitment to Sun's five-power constitutional system and CCP's and YCP's insistence of parliamentarism and responsible government, the National Assembly promulgated the Constitution of the Republic of China ("ROC Constitution") based on the Political Consultative Conference draft (Luan 2021, 222–23). The constitution went into effect in 1947, and its body text was never amended afterwards.¹

¹ There have been seven amendments in the form of Additional Articles since Taiwan's democratization in the 1990s.

German Influence on China's Constitution

Albeit not a draft formulated within the formal institutions, Carsun Chang's constitutional draft at the 1922 National Affairs Conference in Shanghai ("1922 Draft") had a major influence on the final content in the ROC Constitution (Hsueh 1999, 124; Luan 2021, 224). His 1922 Draft was eventually used by the Political Consultative Conference to address the conflicting viewpoints of KMT and CCP/YCP on institutional design (Luan 2021, 224), and he participated in finalizing the Political Consultative Conference draft in 1946 (Chen 2014, 129). For these reasons, Chang was regarded as the father of the ROC Constitution and the principal architect of its content (Hsueh 1999, 124; Chen 2014, 129).

During his second stay in Europe from 1918 to 1921, Chang witnessed sociopolitical changes brought by the October Revolution in Russia and the adoption of the Weimar Constitution in Germany (Hsueh 1999, 128; Chen 2014, 129). Upon his return to China, he wrote the 1922 Draft, drawing on his understanding and critique of the Weimar Constitution (Hsueh 1999, 131–34; Chen 2014, 128). The 1922 Draft constructed a dualistic semi-presidential and semi-parliamentary system significantly similar to the Weimar system, where both the president and the cabinet had substantive executive powers, and the parliament exerted meaningful checks over executive powers (Hsueh 1999, 131–32). However, Chang made several modifications to the Weimar model given China's unique sociopolitical context (Hsueh 1999, 131). For example, he replaced the popular election of the president with an indirect election similar to the design of the Electoral College in the United States, worrying about China's politically illiterate populace (Hsueh 1999, 134–35). Eventually, the 1922 Draft contributed significantly to the short-lived Cao Kun's Constitution (曹錕憲法) in 1923 and as discussed above, the ultimate ROC Constitution in 1947 (Chen 2014, 128, 129). In fact, the final draft of the ROC Constitution, of

which Chang was one of the principal drafters, is considered blueprinted based on the Weimar Constitution (Shen 2012, 41). As a result, there were clear historical roots and continuous presence of German influences in the entire process of drafting and construction of the ROC Constitution up until the final moment of promulgating the constitutional text.

Historical Context: Japan

Japan's stories were more straightforward. The success of Meiji Restoration marked the beginning of modern constitutionalism in Japan, where Japanese politicians “endeavored to establish the constitutional law system” back home after travelling to Europe and America and studying their political systems (Kanamori 1999, 93). One faction, led by Shigenobu Okuma, advocated for the British parliamentary model, while another faction, led by Hirobumi Ito, desired a more conservative model based on the Prussian constitution (Kanamori 1999, 94). Eventually, Ito's conservative faction won the competition (Kanamori 1999, 94). With the help of German constitutional and legal scholars, Japan promulgated the Constitution of the Empire of Japan (“Meiji Constitution”) in 1889, establishing an authoritarian, imperial system where the Emperor itself enjoyed substantial executive powers independent of parliamentary consent (Kanamori 1999, 93–94).

Although the story was more complicated than the Emperor abusing its powers, the pro-executive constitutional order under the Meiji Constitution was considered by the Allied Powers a contributing factor to Japan's militarism and fascism during WWII and something that must be changed (Bertolini 2018, 661–62). Shielding the Emperor Showa himself from responsibilities for the atrocities committed by Japan in the Far East, General Douglas MacArthur, the Supreme Commander for the Allied Powers, was dedicated to eradicating Japan's imperial system (Bertolini 2018, 661). The process of establishing a new constitutional order officially occurred

through the amendment procedures of the Meiji Constitution upon a resolution by the legislature (Inoue 2016, 3–4). However, the substance of the Meiji Constitution was radically modified. In the beginning, the Japanese government was hesitant in changing the imperial and authoritarian systems and produced drafts of “[nothing] more than cosmetic changes” (McElwain and Winkler 2015, 251). Eventually, MacArthur became dissatisfied with the Japanese government’s own efforts and came up with an outline of three principles for the new constitution: (1) the Emperor remained as the head of state but only with certain constitutionally prescribed powers, (2) the renunciation of war powers, and (3) the abolition of feudal systems and institutions (McElwain and Winkler 2015, 251–52; Bertolini 2018, 665; MacArthur 1946). Following these principles, the legal staff of the General Headquarters (GHQ) wrote a completely new constitutional draft in English (Bertolini 2018, 665). At the insistence of the Japanese government, the draft was further modified and preserved certain Meiji-era features such as bicameralism (McElwain and Winkler 2015, 252). In 1946, the Constitution of Japan was promulgated based on this draft, building upon popular sovereignty and setting forth democracy and basic human rights (Inoue 2016, 4; Nakasone 2017, 3).

German Influence on Japan’s Constitutions

The Meiji Constitution was directly “modeled after” the Prussian Constitution (Bertolini 2018, 641). Kowashi Inoue, a member of Hirobumi Ito’s faction, led the efforts of establishing Japan’s constitutional structure with the help of a German expert—Hermann Roesler (Kanamori 1999, 93–94). Roesler was considered “the most important foreign adviser to the Japanese government” for his overwhelming contribution to the Meiji Constitution (Kanamori 1999, 93; Bertolini 2018, 655). Iwakura Tomomi, also a member of Ito’s faction, was another important drafter of the Meiji Constitution (Bertolini 2018, 651). He identified “three main points that

Japan should borrow from Prussia”: (1) complete executive powers vested on the Emperor without possibility of a vote of no confidence; (2) “no collective responsibility of the ministers”; and (3) reserving the tax raising powers to the Emperor and their cabinet rather than the parliament (Bertolini 2018, 653–654). Based on Roesler’s recommendation and Iwakura’s outlines, Japan adopted the Meiji Constitution that significantly strengthened the Emperor’s powers (Kanamori 1999, 94; Bertolini 2018, 654–55). As a result, the Meiji Constitution bore substantial resemblance to the Prussian Constitution (Bertolini 2018, 641, 654–57).

With the promulgation of the post-war constitution in 1946, whether the German constitutional influences from the Meiji era remained became questionable. Certainly, the Emperor’s substantive powers were largely eliminated or transferred to the more democratic governance system (Bertolini 2018, 663; McElwain and Winkler 2015, 255–56). The renunciation of all war powers—a more controversial feature—also changed Japan’s constitutional system as a whole (McElwain and Winkler 2015, 254–55). However, little literature discusses the legacy of German constitutional influences in other institutional aspects of the post-war constitution, including the executive-legislative relations.

As a result, similar to China, there were clear historical roots of German influences in Japan’s modern constitutionalism. However, unlike the continuation of German influences leading up to the adoption of the ROC Constitution, the German influences in Japan were subject to more direct and forceful interruptions immediately before the promulgation of the post-war constitution.

Parallels and Distinctions in the Executive-legislative relations in the Chinese, Japanese, and German Constitutions

A comparative analysis of the ROC Constitution, the post-war Japanese Constitution, the Weimar Constitution, and the Prussian Constitution illustrate many similarities in the executive-

legislative relations among these four systems. However, important distinctions also exist in many aspects, including (1) the power to dissolve legislatures, (2) the executive's personnel powers, and (3) the fusion or separation of the powers of the head of state and the head of government.

To begin with the analysis, the executive and legislative bodies of each system are identified. (See Table 1.) Because the etymology and phrasing differ significantly across these constitutions, it is important to not only identify the *de jure* executives but also ascertain the *de facto* executives to guarantee meaningful comparisons.

	Republic of China (1947)	Japan (1946)	German Reich (1919)	Kingdom of Prussia (1848)
Head of state	President	Emperor	President	King
Head of government	President of the Executive Yuan	Prime Minister	Chancellor	King
<i>De jure</i> executive	Executive Yuan	Cabinet	National Ministry	King
<i>De facto</i> executive	Executive Yuan (while the President independently exercises certain executive powers)	Cabinet	National Ministry (while the President independently exercises certain executive powers)	King
Legislature	Legislative Yuan (unicameral) ²	House of Councillors (upper house) and House of Representatives (lower house) of the Diet	Reichsrat (upper house) and Reichstag (lower house)	Two legislative chambers

Table 1: Identification of executive and legislative bodies.

² In addition, some argue that the Control Yuan is modeled after the United States Senate and serves as a *de facto* upper house with “the powers of consent, impeachment, censure, and auditing” (Luan 2021, 223; Constitution of the Republic of China, art. 90). However, it lacks ordinary legislative powers and has very few interplays with the executive branch.

According to Arend Lijphart's eightfold typology of executive-legislative relations (Lijphart 2012, 106–13), the Chinese, Japanese, and Weimar systems all fall within the same category, and the Prussian system is technically off the chart. First of all, while the ultimate supreme executive, the King, in the Prussian system is not dependent on legislative confidence or censure, the executives in the Chinese, Japanese, and Weimar systems are all subject to some form of legislative confidence (Constitution of the Republic of China, art. 57, cl. 2; Constitution of Japan, art. 69; Constitution of the German Reich, art. 54). Secondly, in the Chinese, Japanese, and Weimar systems, the executives are selected by the legislature. While the Japanese system requires a selection of the prime minister directly by the Diet (art. 6, 67), the Chinese and Weimar systems require formal consent and confidence, respectively, by the legislature accompanying the president's appointment of the head of government (ROC, art. 55, cl. 1; Weimar, art. 53, 54). On the other hand, the executive in the Prussian system is selected by neither voters nor the legislature. The ultimate supreme executive, the King, is hereditary (art. 53); the cabinet ministers are appointed by the King at his full discretion (art. 45). Finally, while the Prussian system has a one-person executive (art. 45), all other three systems have collegial executives (ROC, art. 58; Japan, art. 66; Weimar, art. 52, 58). Therefore, the Chinese, Japanese, and Weimar systems all fall into the "parliamentary" category of Lijphart's typology (Lijphart 2012, 108). On the other hand, the Prussian system is off the chart because it is not a democracy. Had it been democratic while maintaining the same executive-legislative dynamics, it would probably fit into the "presidential" category—having a unitary executive selected through democratic process and not dependent on legislative confidence (Lijphart 2012, 108).

Parallels between the Chinese and the Weimar Systems

Lijphart's typology suggests that the Chinese and the Weimar systems are both "parliamentary" (Lijphart 2012, 108). Indeed, both constitutions have nearly identical language in structuring the power dynamics between the legislature and the cabinet. In both systems, the head of government is appointed by the President based on legislative confidence (ROC, art. 55, cl. 1 (requiring formal consent); Weimar, art. 53, 54). They may be removed by the President appointing a new head of government, and they must resign if the legislature expresses no confidence (although in different technical forms and with different thresholds) (ROC, art. 57, cl. 2; Weimar, art. 54). They have no term limits. They can nominate executive officials, such as other cabinet ministers (ROC, art. 56; Weimar, art. 53). They have express authority to introduce legislative proposals (ROC, art. 58, cl. 2; Weimar, art. 68). They possess the powers of general administration of the state (ROC, art. 53; Weimar, art. 56, 77). They also have the obligation to report to and be questioned by the legislatures (ROC, art. 57, cl. 1; Weimar, art. 33).

However, both systems display similar features of semi-presidentialism. There is a democratically elected head of state in each system (ROC, art. 27; Weimar, art. 41), who possesses partial but substantive executive powers. The Presidents in both systems are subject to a fixed term (ROC, art. 47; Weimar, art. 43). The Presidents unitarily exercise authorities of diplomatic representation (ROC, art. 35; Weimar, art. 45), command of the military (ROC, art. 36; Weimar, art. 47), appointment of civil and military officials (ROC, art. 41; Weimar, art. 46), mediation of executive-legislative conflicts (ROC, art. 44; Weimar, art. 74), and addressing emergency situations (ROC, art. 43; Weimar, art. 48). Additionally, the Presidents possess constrained executive powers to rule by decree, subject to the head of government's countersignature in both systems (ROC, art. 37; Weimar, art. 51). Similarly, the Presidents can

declare war and peace upon the President of the Executive Yuan's proposal in China (art. 38, art. 58, cl. 2) while only through formal legislative procedures under the Weimar Constitution (art. 45).

As a result, the Chinese and the Weimar systems have significant parallels throughout their entire structures of executive-legislative relations.

Parallels between the Japanese and the Prussian Systems

While Lijphart's typology may suggest that the Japanese parliamentary system is no longer modeled after the Prussian "presidential" system, a closer examination of the executive-legislative relations in both systems yield a different answer. The most important distinctions between the two systems are the *de facto* abolition of imperial powers (art. 1, 3) and the incorporation of legislative confidence (art. 69) in the Japanese system. As discussed in the previous section, these features were largely the result of the GHQ's insistence of Japan's democratization after WWII. However, if we disregard these otherwise defining features, the Japanese system will look significantly similar to the Prussian system.

Both systems have hereditary heads of state who appoint cabinet ministers (Japan, art. 2, 6, 67; Constitution of the Kingdom of Prussia, art. 53, 45). Both systems allow cabinet ministers to stay in their office indefinitely. The heads of state in both systems possess at least *de jure* authorities to conduct foreign affairs (Japan, art. 7; Prussia, art. 48), appoint civil and military officials (Japan, art. 7; Prussia, art. 47), and convene and dissolve the legislature (Japan, art. 7; Prussia, art. 51). Many other authorities exercised by the King in the Prussian system were still exercised exclusively by the executive in the Japanese system, albeit now in the name of the Prime Minister and the cabinet. These authorities include pardoning (Japan, art. 73; Prussia, art. 49), nomination of executive and judicial officials (Japan, art. 6, 68; Prussia, art. 45, 47, 87),

access to the legislature and legislative agenda setting (Japan, art. 53, 72, 73, 86; Prussia, art. 60), rule by decree (Japan, art. 73, 74; Prussia, art. 45), and general administration of the state (Japan, art. 72; Prussia, art. 45). Moreover, certain institutional arrangements exist in both systems, such as the cabinet ministers' obligation to report to and be questioned by the legislatures (Japan, art. 63; Prussia, art. 60).

As a result, the fundamental structures of executive and legislative powers of the Japanese and the Prussian systems display notable parallels despite the abolition of imperial powers and the introduction of legislative confidence in Japan. As illustrated in the Appendix, these parallels become more salient when compared to other systems.

Key Distinctions Introduced by the Chinese System

While the Chinese system is heavily influenced by the semi-presidential Weimar system, they are different in many regards. To begin with, the overall structure of the Chinese system is much more complex than the Weimar system. Under the Weimar Constitution, there are three major branches of the government: the President of the Reich along with the National Ministry, constituting the executive branch; the Reichstag and the Reichsrat, constituting the legislative branch; and the Supreme Judicial Court along with other courts, constituting the judicial branch. In contrast, under the ROC Constitution, there are two types of state organs: those exercising the powers of politics (政權) and those exercising the powers of governance (治權) (Luan 2021, 221). The National Assembly is the principal organ exercising the powers of politics (art. 25): it is popularly elected (art. 26), elects the President and the Vice President (art. 27, cl. 1, 2), possesses the sole power of amending the Constitution (art. 27, cl. 3, 4), and exclusively determines the rules for exercising the rights to initiative (創制) and referendum (複決) (art. 27). The powers of governance are exercised by five branches of the government: the Executive Yuan, the

Legislative Yuan, the Judicial Yuan, the Examination Yuan, and the Control Yuan (ch. V–IX). Being elected by the National Assembly, the President seems to be a principal official overseeing and coordinating the functions of the governance organs and assume overall responsibilities to the political organ. After all, the President under the Chinese system is empowered to call together the heads of the five Yuans “for consultation with a view to reaching a solution” when there are inter-branch conflicts—a power rarely seen in other constitutional systems (art. 44). Therefore, under this drastically different institutional structure, the executive-legislative relations under the ROC Constitution displays many distinctive features from the Weimar Constitution. This section focuses on three of them.

Lack of dissolution powers. The Weimar Constitution empowers the President to dissolve the Reichstag with certain limitations (art. 25). Although not a defining feature, such power is a typical design for parliamentary and semi-parliamentary systems because it balances the legislature’s powers over the executive through its potent vote of no confidence (Lijphart 2012, 113–14). However, such power is absent in the ROC Constitution. On the contrary, the Legislative Yuan is protected by fixed terms of three years (art. 65).

While the Reichstag serves a direct representation of the German sovereign, the Legislative Yuan is not. As discussed earlier, the National Assembly, being the sole organ exercising the powers of politics, represents the Chinese sovereign (art. 25). In theory, the Executive Yuan and the Legislative Yuan are equal constituents of the government exercising different powers of governance (Lin 1961, 125, 195). Thus, dissolution of the Legislative Yuan is less necessary to preserve the balance between executive and legislative powers under the ROC Constitution.

Moreover, the ROC Constitution sets a higher threshold for the legislative vote of no confidence. While the President's appointment of the head of the Executive Yuan is subject to the majoritarian consent of the Legislative Yuan (art. 55, cl. 1), the Legislative Yuan cannot force the head of government's resignation by a majoritarian vote of no confidence. The ROC Constitution prescribes two circumstances where the head of the Executive Yuan must resign, both of which require a two-third vote in the Legislative Yuan following disagreements between the two Yuans (art. 57, cl. 2, 3). More importantly, they are forced to resign only if the head of the Executive Yuan refuses to abide by the legislative mandate (art. 57, cl. 2, 3). In other words, the ROC Constitution affords the Executive Yuan with a powerful protection from resignation even if they effectively lose confidence in the Legislative Yuan. Thus, a power to dissolve the Legislative Yuan is not warranted to maintain the balance of executive and legislative powers.

More expansive personnel powers of the President. Another important distinction is the more expansive personnel powers of the President under the ROC Constitution. While both ROC's head of the Executive Yuan and the Weimar Republic's Chancellor nominate their cabinet members, the Weimar President has no separate personnel powers other than nominal appointment of civil and military officials (ROC, art. 56; Weimar, art. 53). Conversely, the ROC President can nominate all members of the Judicial Yuan and the Examination Yuan, subject to the consent of the Control Yuan (art. 79, 84). The ROC President can also nominate the Auditor General subject to the Legislative Yuan's consent (art. 104). This is consistent with the ROC President being the principal official of the governance organs: exerting substantive influences over personnel decisions to compensate for its lack of direct executive powers. Since the Judicial Yuan and the Examination Yuan are both nonpolitical and nonpartisan branches (art. 80, 88), this

expanded personnel power doesn't necessarily increase the President's political powers but only its constitutional authorities.

More separation of head of state and head of government functions. Being popularly elected, the President under the Weimar Constitution possesses more democratic legitimacy and consequently is empowered with more substantive executive authorities (Linz 1990, 62). For example, the President has the pardoning powers *sua sponte* and without the legislature's consent (Weimar, art. 49); it can exercise its emergency powers, including suspension of citizens' fundamental rights (art. 48); it can submit disagreements between the Reichstag and the Reichsrat to popular referendum (art. 74); it may also seek to overturn legislations enacted by the Reichstag by submitting them to popular referendum (art. 73). More importantly, it can exercise all these powers without the Chancellor's proposal or consultation with the Chancellor. Thus, the Weimar system is closer to semi-presidential, where the President and the National Ministry share executive powers. And the line between head of state and head of government functions is blurred.

In contrast, the functions of head of state and head of government are separated much more clearly under the ROC Constitution. The President may still pardon (ROC, art. 40, art. 58, cl. 2), exercise emergency powers (art. 43), and seek to overturn legislative decisions (art. 57, cl. 2, 3), but these powers are subject to the proposal by the head of the Executive Yuan. Thus, while the President plays a role in the executive functions, its roles are no different from those of a ceremonial head of state. In comparison, the Executive Yuan under the ROC Constitution is much closer to a "unitary executive," exercising most head of government functions. Therefore, there is a clearer division of head of state and head of government functions in the Chinese system.

Key Distinctions Introduced by the Japanese System

Although the fundamental structures of executive and legislative powers of the Japanese and the Prussian systems display notable parallels, there are significant distinctions between Japan's post-war constitution and the German models. A fundamental uniqueness of the Japanese Constitution was the institutional role played by the Emperor. As a result of the GHQ's insistence of a democratic regime, Japan abolished its imperial system after the Second World War (McElwain and Winkler 2015, 251–52; Bertolini 2018, 661). However, the Emperor was preserved as a sole remnant of Japan's dynastic history and was intended to play no political roles in the new constitutional order (McElwain and Winkler 2015, 251–52; Bertolini 2018, 665; MacArthur 1946). Distinctive from most monarchies, the Emperor “deriv[es] his position from the will of the people,” and sovereignty resides with the people rather than the Emperor (art. 1). The Constitution was explicit that “all acts of the Emperor in matters of state” must be subject to the “advice and approval of the Cabinet” (art. 3). On the one hand, this is different from constitutional monarchies such as the United Kingdom, where the cabinet's advice is by conventions, and the monarch's royal prerogatives are a major source of the cabinet's executive powers (Torrance 2024, 8, 18). On the other hand, unlike most parliamentary republics, the Emperor, as the head of state, doesn't have any democratic legitimacy either. Furthermore, the Emperor can perform only limited ceremonial functions specifically designated by the Constitution, such as conferring honors, appointing officials, and convoking and dissolving the parliament, and all of these functions are subject to the Cabinet's advice and approval (art. 7).

Albeit based on a draft written by the GHQ legal staff in English with the expressed intent to radically change the Meiji Constitution, the Japanese Constitution contains arrangements of dissolution and personnel powers largely identical to those under the Prussian

Constitution. However, because of the Emperor's unique institutional role, there is a salient fusion of head of state and head of government functions under the Japanese Constitution. As discussed earlier, although many head of state functions are still carried out by the Emperor, they are subject to the Cabinet's advice and approval (art. 7). The Cabinet and the Prime Minister thus possess the *de facto* authority to dictate how these powers are exercised. Moreover, certain head of state functions are explicitly transferred from the Emperor to the Cabinet, such as engaging in substantive diplomacy, pardoning, and declaring amnesty (art. 73). In comparison, all these head of state functions were exercised by the King under the Prussian Constitution, and the cabinet ministers exercised their substantive executive authorities separately (art. 47–50, 60).

This institutional arrangement may produce a strong or a weak executive depending on the actual political dynamics. When the Cabinet has firm parliamentary support, it becomes a strong executive with an expansive set of both head of state and head of government powers. There are no additional checks and balances from a separate head of state with comparable or even stronger democratic legitimacy. However, when the Cabinet has weaker parliamentary support, such as in a coalition government, the Diet expands its political powers into the head of state realm. Since all head of state functions are subject to Cabinet advice, they are in turn subject to parliamentary confidence. Thus, the Diet could have more weapons to engage in legislative encroachment by micromanaging apolitical and ceremonial functions of the state.

Mitigation of German Constitutional Influence by Competing Ideologies

While the previous section hints at some institutional explanations of these distinctions, this section examines them from an ideological point of view. In both China and Japan, the German constitutional models of executive-legislative relations have been mitigated by competing ideologies in the contemporary social contexts in each country.

Mitigation by Competing Ideologies in the Post-War Chinese Society

Since the founding of the Republic of China, its guiding—if not official—ideology is Sun Yat-sen’s Three Principles of the People. Namely, they are the principles of nationalism (民族), democracy (民權), and socialism (民生) (Sun 1905; Lin 1961, 124). Central to Sun’s principle of democracy are the theories of the Four Rights of the People and the Five Power Constitution. As mentioned before, the powers of the state are divided into the political powers, exercised by the people, and the governance powers, exercised by the government (Luan 2021, 221). While the Four Rights of the People are intended to carry out the political powers, the Five Power Constitution compartmentalizes the governance powers (Lin 1961, 125). Sun recognizes the Anglo-American concept of the separation of legislative, executive, and judicial powers, but he also incorporates the examination and control powers inherent in the Chinese political traditions (Lin 1961, 125). He aims to separate the power to regulate the civil service from the executive branch and the power to oversee government integrity and accountability from the legislative branch, reconciling the inefficiencies of the traditional legislative-executive checks and balances (Lin 1961, 125). And he intends the President to sit above and detached from the five branches and facilitate the “coordination and cooperation” of all branches to efficiently exercise the governance powers and serve the people (Lin 1961, 195). Throughout the entire constitutional construction process, many conservative and originalist KMT politicians insisted strict adherence to these instructions by Sun Yat-sen (Hsueh 1999, 138; Luan 2021, 222, 232).

Carsun Chang’s 1922 Draft was significantly different from the Five Power Constitution ideal and was heavily attacked by KMT members at the Political Consultative Conference in 1946. A follower of the Weimar Constitution, Chang contemplated a semi-parliamentary system with a politically responsible cabinet, thus reintroducing direct checks and balances between the

legislature and the executive (Hsueh 1999, 134–37). Opposition parties favored Chang’s design but also wished to go further (Luan 2021, 222–24). YCP advocated for a purely parliamentary system and further limitation of the President’s powers, and both YCP and CCP openly criticized the inefficiencies and defects of the five-branch system, which was used in KMT’s one-party interim government from 1928 to 1946 (Luan 2021, 222–23). In light of these disagreements, additional drafts were proposed at the Conference as compromises between a pure Five Power Constitution model and a strict parliamentarian system (Luan 2021, 223–24). For example, efforts were made to establish a functional parliamentary system with a politically responsible cabinet while preserving a *pro forma* five-branch structure (Luan 2021, 223–25).

After a series of back and forth between KMT and the opposition parties, these fundamental disagreements, among other things, eventually led to the failure of the Political Consultative Conference and the formal outbreak of the Second Chinese Civil War (Luan 2021, 229–31). However, these disagreements also produced compromises in the constitutional text ultimately adopted by the National Constituent Assembly.

For example, the executive’s power to dissolve the legislature and the legislature’s simple-majority vote of no confidence were removed to ensure basic compatibility with Sun Yat-sen’s five-branch constitutionalism. Complicated checks and balances between the executive and the legislative would undermine the capabilities and efficiency of the governance institutions, which were intended to be sufficiently powerful to carry out administration of the state. Constraints on their powers are achieved by holding them accountable to a popularly elected National Assembly (for the executive branch through the President) (art. 27, 55) and the electorate directly (for the legislative branch) (art. 62). Nevertheless, as a compromise to the opposition parties, some checks and balances between the executive and the legislature were

introduced to promote political accountability (Luan 2021, 230). As mentioned in the previous section, Sections 2 and 3 of Article 57 provides the Executive Yuan with a power to veto legislative resolutions and the Legislative Yuan with a counter-veto power. This arrangement effectively prescribes a vote of no confidence with a higher, two-third supermajority threshold. Such provision never existed in the Weimar Constitution or the older Prussian Constitution, but it brings back the traditional parliamentary feature of the executive's resignation and seems to draw references from the U.S. Constitution's design of presidential veto and congressional override.

The ultimate design of the executive-legislative relations in the ROC Constitution demonstrates how the Weimar model was mitigated by competing ideologies in the post-war Chinese society, predominantly Sun Yat-sen's Three Principles of the People but also European and Anglo-American constitutionalism embraced by opposition parties.

Mitigation by Competing Ideologies in Post-War Japanese Society

Japan's case was more complicated. After its loss of the Second World War, the Allied Powers occupied the country and imposed the project of democratic reform. However, discussions and proposals of constitutional reforms were not limited to external parties. Legal scholars, political parties, and even the wartime government were involved. During the Meiji era, constitutional scholar Hozumi Yatsuka coined the term *giin-naikaku-sei* (議院内閣制) and proposed a parliamentary system with a politically responsible cabinet (Kobori 2020, 152). For the ordinary people, they remain "largely reticent" but "came gradually to express their opinions about the Constitution" (Fujii 1965, 281). Clause X of the Potsdam Declaration, which was sometimes considered one of the legal bases of establishing popular sovereignty in post-war Japan (Inoue 2016, 4–5), recognized that the ideals of "democracy" and "freedom" existed in the

Japanese society before the war ended and thus only to be “reviv[ed]” and “strengthen[ed]” rather than imposed (Fujii 1965, 280). After the Allied Forces’ occupation began, the original Japanese government was retained and authorized by the GHQ to draft a new constitution (Inoue 2016, 5). During the process, Japanese jurists and writers produced many private drafts. Many of them incorporated liberal and even radical provisions, such as the acknowledgement of popular sovereignty, prohibition of discrimination, creation of public referendum processes in the Kenpō Kenkyūkai draft (Hellegers 2002, 502–3). On the other hand, the Japanese government, composed mainly of the conservative (despite its name) Progressive Party members at the time, eventually produced a conservative draft that “bore an all-too-striking resemblance to the Meiji Constitution” (Inoue 2016, 5). Apparently, the competing ideologies within the Japanese society would have influenced the final product of the post-war constitution, with their own mitigating effects to the Prussian model adopted by the Meiji Constitution.

However, the GHQ was satisfied with neither the Japanese government’s work nor the private drafts (Hellegers 2002, 503; Inoue 2016, 5). To them, these drafts failed to address more fundamental issues such as the imperial system and the role of peerage and extraconstitutional organs in politics (Hellegers 2002, 503–504). As a result, MacArthur demanded a draft written by legal staff in the Government Section of the GHQ in English (Inoue 2016, 5). In terms of executive-legislative relations, the GHQ draft was essentially modelled after a Westminster system with a unicameral legislature (Hellegers 2002, 519). The GHQ draft was “shocking,” “mystif[ying],” and “obviously not pleas[ant]” to the Japanese government, which didn’t want radical changes to the existing constitutional order, especially the complete removal of all substantive powers of the Emperor, and preferred a gradation of democratic reforms (Hellegers 2002, 528). GHQ threatened the Japanese government with the personal safety of the Emperor

and the political future of the Progressive Party leaders and forced the passage of its draft (Hellegers 2002, 528). The final version of the Japanese Constitution rendered the Emperor completely ceremonial but preserved the bicameral legislature at the insistence of the Japanese government (McElwain and Winkler 2015, 252). Consequently, many defining features in the Prussia-modeled Meiji Constitution were mitigated by the GHQ's forceful imposition of a British-like parliamentary system, producing the distinctions analyzed in the previous section.

There was another level of competing ideologies. While the GHQ drafters were instructed to “follow the Meiji Constitution ‘as closely as possible,’” they enjoyed substantial freedom to adjust the Meiji language and craft new provisions consistently with MacArthur's three principles for the new constitution (Hellegers 2002, 520). Due to this freedom, they “often found themselves . . . splitting along liberal-conservative fault lines or diverging according to different schools of legal thinking” (Hellegers 2002, 520). Some found themselves inevitably influenced by the complicated checks and balances and the construction of a unitary executive in the American model (Hellegers 2002, 520). Others favored the British model of parliamentary supremacy and collective executive, finding it more similar to the existing Meiji-era model (Hellegers 2002, 524).

These competing ideologies among the GHQ drafters produced constitutional design features not originating in the Meiji Constitution or the Prussian Constitution. As one example, while the Prussian model declares the independent exercise of judicial powers (Prussia, art. 86; Constitution of the Empire of Japan, art. 57), it doesn't specify the organization of the supreme and lower courts and the procedure of appointing judges. The Meiji Constitution contains only five short provisions for judicial powers, compared to twelve for legislative powers and seventeen for the Emperor as the supreme executive. In contrast, the post-war Japanese

Constitution has a lengthy chapter outlining an independent judicial branch (ch. 6). It explicitly provides that the Supreme Court is the “the court of last resort” and possesses the “power to determine the constitutionality of *any* law, order, regulation or official act” (art. 81) (emphasis added). This is a salient departure from most parliamentary and semi-parliamentary systems: under the Westminster system (before the Constitutional Reform Act 2005), the highest judicial power is preserved to the Monarch-in-Parliament as the *de jure* sovereign; under both the Prussian and the Weimar system, the highest judicial authority isn’t clearly granted to the supreme court, and other political branches seem to wield separate judicial authorities that bind the courts (Prussia, art. 49, 96; Weimar, art. 34).

Moreover, the post-war Japanese Constitution provides a public review procedure of the Cabinet’s nomination and the Diet’s appointment of Supreme Court judges, where the entire electorate can veto a judge’s appointment by simple majority (art. 79). This is unprecedented as it provides the judicial branch itself with a higher level of democratic legitimacy. As a result of these designs, both the executive and the legislature have weaker influence and control over a much stronger, independent judicial branch. Although not directly pertaining to executive-legislative relations, the constitution’s express guarantee and design of judicial independence provides institutional safeguards against both legislative encroachment and executive overreach (Albert 2009, 536–37). While the historical records don’t track specific institutional design features to their sources of constitutional models and legal thinking, it is reasonable to speculate that the separation of powers and judicial independence in the U.S. Constitution played a huge role in mitigating not only the original Prussian construction of judicial powers but also the British model of parliamentary supremacy.

Conclusion

While German influences have permeated in China's and Japan's legal systems, this article discusses their nuanced implications on both countries' post-war constitutions with a focus on the construction of executive-legislative relations. Historical and textual examinations reveal that their German influence came from different sources and underwent distinctive paths of development. By comparing the text of the ROC, Japanese, Weimar, and Prussian Constitutions and discussing the roles of competing ideologies in China's and Japan's contemporary social contexts, this article concludes that the executive-legislative relations in both China's and Japan's post-war constitutions have deep German roots but underwent different transformations influenced by those competing ideologies.

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Appendix: Comparison Chart of the Executive-legislative relations across the Four Constitutions

Topic	Republic of China (1947)	Japan (1946)	German Reich (1919)	Kingdom of Prussia (1848)
Selection of executive heads	Elected by the National Assembly (art. 27) (President) Appointed by the President with Legislative Yuan's formal consent (art. 55, cl. 1) (President of the Executive Yuan)	Dynastic succession according to statute (art. 2) (Emperor) Selected by the Diet and appointed by the Emperor (art. 6, 67) (Prime Minister)	Popular election (art. 41) (President) Appointed by the President based on the Reichstag's confidence (art. 53, 54) (Chancellor)	Hereditary in male line of the royal family (art. 53) (King) Appointed by the King (art. 45) (All Ministers)
Removal of executive heads	Removed by the National Assembly upon impeachment by the Control Yuan (art. 27, 100) (President) Removed by the President's new appointment (<i>see</i> art. 55, cl. 1) or resignation due to lack of support from two-third majority in the Legislative Yuan (art. 57, cl. 2) (President of the Executive Yuan)	N/A (Emperor) Resignation upon majoritarian vote of no confidence by the Diet (art. 69) (Prime Minister)	Removed by popular vote upon resolution from the Reichstag based on two-third majority (art. 43) [additional impeachment proceedings brought by the Reichstag in front of the Supreme Judicial Court (art. 59)] (President) Removed by the President's new appointment (<i>see</i> art. 53) or resignation due to majoritarian resolution of no confidence (art. 54) (Chancellor)	N/A (King) Dismissed by the King (art. 45) or convicted of certain high crimes by a supreme tribunal of the monarchy upon impeachment by either chamber of the legislature (art. 61) (All Ministers)
Succession of executive heads	Vice President and then President of the Executive Yuan (art. 49) (President) Deputy President of the Executive Yuan (art. 55, cl. 2) (President of the Executive Yuan)	Dynastic succession according to statute (art. 2) (Emperor) N/A (Prime Minister)	N/A (President) N/A (Chancellor)	Hereditary in male line of the royal family (art. 53) (King) N/A (All Ministers)

Topic	Republic of China (1947)	Japan (1946)	German Reich (1919)	Kingdom of Prussia (1848)
Term limits of executive heads	6 years for up to 2 terms (art. 47) (President) No (President of the Executive Yuan)	N/A (Emperor) No (4-year terms but no limit) (Prime Minister)	7 years with no limit (art. 43) (President) N/A (Chancellor)	N/A (King) No (All Ministers)
Diplomatic representation	President (art. 35)	Prime Minister through the Emperor (ceremonial) (art. 7) and the Prime Minister (substantive) (art. 73)	President (art. 45)	N/A, while the King has treaty powers with consent of both legislative chambers under certain circumstances (art. 48)
Declaration of war and peace	President (art. 38) upon the President of the Executive Yuan's proposal [implied] (art. 58, cl. 2)	<i>Such sovereign power is renounced</i> (art. 9)	President upon formal legislation procedure (art. 45)	King (art. 48)
Commander-in-chief	President (art. 36)	<i>Such sovereign power is renounced</i> (art. 9)	President (art. 47)	King (art. 46)
Conferring of honors	President (art. 42)	Prime Minister through the Emperor (art. 7)	N/A	King (art. 50)
Pardoning	President (art. 40) upon the President of the Executive Yuan's proposal (<i>see</i> art. 58, cl. 2)	Prime Minister (art. 73)	President (art. 49)	King with exceptions for legislative consent in regard to Ministers (art. 49)
Appointment (nominal)	President (art. 41)	Prime Minister through the Emperor (art. 7)	President (art. 46)	King (art. 47)

Topic	Republic of China (1947)	Japan (1946)	German Reich (1919)	Kingdom of Prussia (1848)
Nomination and personnel decisions	President of the Executive Yuan (executive officials) (art. 56) President (judicial, examination, and Auditor General) (art. 79, cl. 1, art. 79, cl. 2, art. 84, art. 104)	Prime Minister (executive and judicial officials) (art. 6, 68)	Chancellor (executive officials) (art. 53) N/A (otherwise)	King (executive and judicial officials) (art. 45, 47, 87)
Resolution of inter-branch conflicts	President (calling meetings only) (art. 44)	N/A	President (submit disagreement between the Reichstag and the Reichsrat to popular referendum) (art. 74)	N/A
Legislative agenda setting	President (calling extraordinary sessions) (art. 69) President of the Executive Yuan (budget proposal, budget ceiling setting, legislative proposals) (art. 58, cl. 2, art. 59, art. 70)	Prime Minister through the Emperor (convocation and dissolution) (art. 7) Prime Minister (budget proposal, legislative proposals, calling extraordinary sessions) (art. 53, 72, 73, 86)	President (dissolution) (art. 25) Chancellor (legislative proposals; access to the Reichstag and the Reichsrat) (art. 33, 68)	King (convocation and dissolution) (art. 51) (adjourning) (art. 52) All Ministers (access to both legislative chambers to be heard) (art. 60)
Declaration of martial law	President (art. 39) upon the President of the Executive Yuan's proposal (<i>see</i> art. 58, cl. 2) and upon legislative consent (art. 39)	N/A	N/A	N/A
Emergency powers	President upon the President of the Executive Yuan's decision and upon legislative consent once legislative session resumes (art. 43)	N/A	President but may be abrogated by the Reichstag's demand (art. 48)	N/A

Topic	Republic of China (1947)	Japan (1946)	German Reich (1919)	Kingdom of Prussia (1848)
Rule by decrees	President upon the President of the Executive Yuan's countersignature (art. 37)	Prime Minister (art. 73, 74)	President upon the Chancellor's countersignature (art. 51) Chancellor (explicit authorization to adopt regulations pursuant to legislations) (art. 77)	King (art. 45)
General administrative powers	President of the Executive Yuan (art. 53)	Prime Minister (art. 72)	Chancellor (art. 56; <i>see</i> art. 77; <i>see generally</i> § VI)	King (art. 45)
Reporting and questioning obligations by executive heads	President of the Executive Yuan (art. 57, cl. 1)	Prime Minister (art. 63)	Chancellor (art. 33)	All Ministers (art. 60)
Overturning legislative decisions	President of the Executive Yuan upon the President's consent (art. 57, cl. 2, art. 57, cl. 3)	N/A	President (submit legislations enacted by the Reichstag to popular referendum [including exclusive referendum authority for certain subject matters]) (art. 73)	N/A