

# Andrzej Czop, Marek Sokołowski

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## THE FOUNDATIONS OF LAW AND SECURITY CULTURE IN JAPAN

Andrzej Czop, Marek Sokołowski

### ABSTRACT

The paper shows the crucial elements of the Japanese spirit of law and security culture. Since the 1950s, the USA and European countries have witnessed global expansion and huge popularity of the phenomenon of *Budō* (Far-Eastern martial arts). The rules and traditions of martial arts favorably influence the field of security culture. For instance, *The Seventeen-Article Constitution* proposed ethical principles whose purpose was to ensure the security of the state and its residents. This document, coined by prince Shōtoku in 604, was based on both

Confucianist and Buddhist teachings, which by that time were well rooted in Japan. *The Constitution* included a principle stating that each person was part of a group, and should live in harmony with other members of the society. Most importantly, the documents instructed that morality should precede law. This notion is very close to the idea of natural law that should be the basis for statutory law. *The Articles* are also considered to be the first Japanese constitution.

### KEYWORDS

morality, law, security, security culture, public service

The purpose of this paper is to discuss the oldest Japanese moral, ethical, philosophical, religious, legal and political factors that have impinged on the issues of security and defense and are still influential in the Land of the Rising Sun. These factors manifest themselves in the habits of nearly every modern Japanese and whole social groups in which the descendants of the samurai live and work. These elements emerged at an early stage of the historical process of shaping the statehood of the ancient Yamato.<sup>1</sup> Historian, curator of a Japanese museum and expert in traditional martial arts: budo, Fumon Tanaka states that these issues became apparent in the Japanese Archipelago as early as 6<sup>th</sup> century BC<sup>2</sup>, mostly in clans that brought together Japanese warriors: *mononofu*, or the ancestors of the future samurai. In Japan, and probably in other parts of the world also, it is the military ethos is the source of culture of honor<sup>3</sup> (in a broad sense of the term), which contributed to a large extent to increasing the level of safety culture in specific tribal, and later state subjects, as well as within public services said subjects

formed. However, we should note that this phenomenon takes a rather unique shape in Japan. For a Japanese knight – a samurai (or “one who serves”), was a role model for every single inhabitant of the Land of the Rising Sun, regardless of their social class and background. In historical times, the scale of militarization of Yamato’s society was considerable. For this reason, among others, the moral and organizational influence of the army and of the members of its disposable groups was apparent even in ancient times, as early as the 6<sup>th</sup> century BC, when *mononofu* warriors had the lead in the battlefields of the islands. This moral strength and its impact on the entire society, the shape of internal policy and the security of the state increased even more when bakufu took the reign in the Empire. Bakufu was a form of military government, headed by shogun. This unique political situation in Japan lasted almost seven hundred years (between the 12<sup>th</sup> and 19<sup>th</sup> century). However, the public sphere, the operation of the army, the organization of clerical work, internal policy and mentality of the inhabitants of the ancient Nippon was greatly influenced by an unusual document of great importance to the state: the first constitution of Japan, which was coined as early as 604 AC. The document in question – *The Seventeen-article Constitution*, was formulated by Shotoku, also known as prince

<sup>1</sup> Yamato is the ancient name for the Japanese Empire. The word ‘Nippon’ connotes a similar meaning.

<sup>2</sup> F. Tanaka, *Sztuki walki samurajów*, Diamond Books, Bydgoszcz 2005, s. 13.

<sup>3</sup> J. Piwowarski, *Etos rycerski i jego odmiany w koncepcji Marii Ossowskiej*, Apeiron WSBPil, Kraków 2010.

Umayado<sup>4</sup>, the regent (*kampaku*) of Empress Suiko. *Kampaku* Shotoku supported the popularization of the Buddhist doctrine, as well as the Confucianist concepts of state and law among Japanese elites. He was also “the co-founder of one of *bujutsu* systems”<sup>5</sup>, which formed the basis for the perfect training of samurai and constituted an important element of the pedagogical and soteriological concept of *karada de oboeru*.

Literally, *karada de oboeru* means “learning through one’s whole body”. *Bujutsu* combat systems and budo martial arts that derive from them are excellent tools of implementing this method of education. Since the 1950s we have witnessed a global expansion of Far-Eastern martial arts: budo,<sup>6</sup> which is especially marked in the US and European countries. This popularity brought about the need for a renewed codification of the principles of budo in the historical context of the 20<sup>th</sup> century. Hence, the 1987 formulation of the Budo Chart, whose content proves the continuity of tradition throughout the ages: “Budo was developed and perfected based on a fundamental idea that the spirit, the technique and the body remain a unity, for which one strives through treating tradition with considerable gravity, discipline, etiquette and the training of physical strength”<sup>7</sup>.

The positive influence of Far-Eastern martial arts in increasing the level of safety culture is evident worldwide. The expansion of budo gathered incredible momentum after World War II, during the American occupation of the Japanese archipelago. The multifaceted attractiveness of budo, which in the 1970s gained recognition in such countries as (then) Czechoslovakia, Poland, the Soviet Union, Romania, Bulgaria and Hungary, is responsible for the quick, utilitarian adoption of martial arts into the skillset of uniformed forces worldwide: in the US, Western Europe, Australia, Southern America or Africa. Yet budo, besides its unquestionable utility in increasing physical fitness, also carries a great content of deep philosophy and a potential of safety culture that is rooted in it. This potential is based upon the directives

<sup>4</sup> Shotoku (574–622) – a regent and a politician on the Japanese imperial court in the Asuka period.

<sup>5</sup> J. Piwowarski, *Samodoskonalenie i bezpieczeństwo w samurajskim kodeksie Bushido*, Collegium Columbinum, Kraków 2011, p. 72 ff.

<sup>6</sup> Which is elaborated on by a member of Polish Academy of Sciences, Stanisław Tokarski, who is also an expert in judo and fought more than six hundred fights on the mat. [Tokarski 1987, 1989; Sterkowicz 1998; Ambroży 2004].

<sup>7</sup> W. J. Cynarski, *Podglebie japońskich sztuk i sportów walki według von Salderna*, „Rocznik Naukowy Idō – Ruch dla Kultury” 2000, T. 1, p. 88.

for self-improvement and perfect cooperation within a collective, so it can be very useful in shaping and managing security systems not only in those countries that currently undergo a process of dynamic social and institutional change. Japanese models may offer inspiration for the revitalization and intensification of what has needlessly withered and become routine in our own system of values<sup>8</sup>.

One of the symptomatic features of the tradition that underlies Japanese safety culture were the very first legal acts to appear on the Japanese archipelago which constituted the Empire. In 604 AC prince Shotoku, the regent of Empress Suiko, on behalf of the monarch released a fundamental law entitled *The Seventeen-Article Constitution (Jushichi-jo kempo)*<sup>9</sup>. It was drafted by himself and by a team of experts who assisted him, among others, by Buddhist monks. It was the first compilation of legal provisions of this magnitude and served as a fundamental guideline for officials of the Japanese Empire. At the same time, this “Pre-Constitution” proclaimed a system of values that would govern the subjects of the Japanese ruler, for it was assumed that officials were obliged to shape proper attitudes in all imperial subjects. One of the objectives Prince Shotoku placed before himself and his Seventeen-Article Constitution was the implementation rules that, if observed, would ensure the security of the state and its inhabitants. The groundwork of *Jushichi-jo kempo* was largely inspired by Buddhism, which at that time had already managed to take roots in Empress Suiko’s state under regent Shotoku’s rule. This document was also influenced by Confucianist teachings, which in China had already been widespread, alongside Buddhism, for a thousand years; however, it was slower to be incorporated into Japanese culture, even though it made an appearance on the archipelago as early as the 3<sup>rd</sup> century AC.

Similarly to its Buddhist and Confucianist sources, this earliest Japanese constitution placed morality as a manifestation of natural law over employing punishment and sanctions typical of statutory law. It contained guidelines aimed at spiritual growth and shaping appropriate ethical attitudes in man, who, should he follow them, would become a good, reliable clerk, ably building safety culture of the state.

<sup>8</sup> L. F. Korzeniowski, J. Piwowarski, *Przydatność dalekowschodnich koncepcji filozofii i kultury bezpieczeństwa dla polskich służb mundurowych*, [in:] *Nauka o bezpieczeństwie. Istota, przedmiot badań i kierunki rozwoju*, L. Grochowski, A. Letkiewicz, A. Misiuk (ed.), Uniwersytet Warmińsko-Mazurski, Wyższa Szkoła Policji, Szczytno 2011.

<sup>9</sup> J. Piwowarski, op. cit, p. 125.

Shotoku's Articles are also the foundations for the introduction of a central government shaped after Chinese models.

Let us underline the fact that *The Seventeen-Article Constitution* contains a very clear message that **morality should precede law**, if the latter is to be applied properly, that is in accordance with the teachings of Gautama Buddha and Confucius. There is no doubt that centuries-old ethical code of conduct of samurai: Bushido, is rooted, among others, in the philosophy that defined the ethical culture comprised within The Seventeen-Article Constitution. This is where was coined the set of virtues essential for those governing on the Emperor's behalf to achieve and cultivate.

Those principles were crystallized by the later, military administration of Japan: the shogunate, into the so-called Eight Virtues of the Samurai<sup>10</sup>.

1. **Gi.** Integrity that breeds wisdom, justice, ethos, and lawfulness.
2. **Yusha.** Bravery that is essential not only in fight, but also oftentimes in order to be honest.
3. **Jin.** Kindness toward all people that build culture of trust and helps maintain impartiality.
4. **Reigi.** Respect that build good customs and supports the growth which stems from natural hierarchy.
5. **Makoto.** Sincerity that is conducive to trust and safety culture and helps build social capital.
6. **Chugi, Meiyo.** Loyalty and honor as solid pillars of social capital of the entire nation and local communities, foundations of safety culture.
7. **Ko.** Familial piety as a basic and crucial school of higher feelings, social consciousness and morality in the broad sense of the term that is contained within all the aforementioned Virtues of Bushido.
8. **Kokki.** Self-control, especially crucial to people equipped with prerogative powers and great abilities connected to armament and military training.

The Eight Virtues of the Samurai are both a creative expansion and a synthesis of the writings pertaining to the philosophy of law and safety culture in the shape

<sup>10</sup> Ibidem; idem, *Siedem cnót Bushido*, „Zeszyt Problemowy. Nauka – Praktyka – Refleksje”, Wyższa Szkoła Bezpieczeństwa Publicznego i Indywidualnego „Apeiron” w Krakowie, no. 5, s. 9–19.

which first emerged from the concept of law affirmed at the dawn of the 7<sup>th</sup> century by Prince Shotoku.

The Meiji period, which began at the turn of 1867 and 1878, proved to be a breakthrough period in the history of Japanese statehood and legislation. At this time, modernization of enormous proportions was implemented.

In 1893, a new Civil Code came into force. It was coined to suit the needs of the Japanese people, but patterned on the French code. Interestingly, this modern legal act was formulated with the help from a European, which in Japan of that period was something of an oddity. It was elaborated by Gustave E. Boissonade (1825–1910), a notable Parisian lawyer. He was an enthusiast, as was Hugo Grotius (1583–1645), of applying the rules of natural law in as broad a range as possible as natural law manifested itself in the high level of ethical culture<sup>11</sup>. Natural law is based on the conviction that there are certain immutable, superior, even absolute laws. This belief of Gustave Boissonade was rooted in the legal concepts of the enlightenment era and, which is extremely important in this situation, was very close to Japanese mentality; the mentality that assigned primacy to integrity (morality) over the implementation of provisions of statutory law, and revered the ideal of nobility. A scholar studying martial arts, Wojciech Cynarski notes: “nobility in the 21<sup>st</sup> century has a different dimension and meaning than it did in the ancient or feudal times. For nowadays nobility is not inherited. A knight of today is an aristocrat of the spirit, a person seeking knowledge, wisdom and higher values, a man observing the rules of normative ethics”<sup>12</sup>. This intellectual and ideological closeness should be underlined as it is evidence that despite superficial cultural differences, people of various – Western and Eastern – cultural circles share the same foundation of natural law. In a way, the so-called Radbruch formula reminds about that. Gustav Radbruch, a German theoretician of law emphasized the fundamental and overriding meaning of natural law toward statutory law from the point of view of 20<sup>th</sup>-century's painful experiences<sup>13</sup>.

<sup>11</sup> J. Piwowski, *Samodoskonalenie i bezpieczeństwo w samurajskim kodeksie Bushido*, Collegium Columbinum, Kraków 2011, p. 62-63.

<sup>12</sup> W. J. Cynarski, *Sztuki walki IDŌ: IDŌKAN* [IDŌ Martial Arts: IDŌKAN. In Polish], SIP, Rzeszów 2009, 77.

<sup>13</sup> Cf.: G. Radbruch, *Ustawowe bezprawie i ponadustawowe prawo*, [in:] *Zarys filozofii prawa*, M. Szyszkowska (ed.), Temida 2, Białystok 2000; J. Zajądło, *Formuła Radbrucha. Filozofia prawa na granicy pozytywizmu prawniczego*, Arche, Gdańsk 2001; idem, *Dziedzictwo przeszłości. Gustaw Radbruch. Portret filozofa, prawnika, polityka i humanisty* Arche, Gdańsk 2007.

*The Seventeen-Article Constitution* and the influence of its spirit in Japanese culture to a large extent facilitated the reception of the prominent advocate for *ius naturale* and notable French legislator's idea. Gustav Boissonade spent a long, industrious time in the Empire, working as an expert for the Japanese Ministry of Justice (1873–1895). His example shows that in spite of seemingly insuperable differences and geographical distance, in the pursuit of the optimal ways of achieving morality, lawfulness and security, what binds us together is far greater than what divides us.

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## AUTHORS

**Andrzej Czop, MA** – PhD Candidate in Police Academy in Szczytno. Lecturer in School of Higher Education in Public and Individual Security “Apeiron”

**Marek Sokołowski, MA** – Lecturer in School of Higher Education in Public and Individual Security “Apeiron”.