

# Jailing Peace Protesters in Japan: Lessons from the “Tent Village” Case

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**Abstract:** *This article describes the arrest and prosecution of three peace protesters during the Iraq War era. It places these events within the broader context of the campaign to revise Japan’s Constitution, especially Article 9, to allow for the deployment of Self-Defense Force units abroad. It also introduces the great hesitancy of the Supreme Court to enforce Article 9.*

**Keywords:** *Constitution, Courts, Free speech, Peace protest, State security police, Self-Defense Forces*

When I told friends that I was working on a book about the prosecution of three Japanese peace activists in 2004, they almost universally replied, “Larry, I’ve never heard of that case.”<sup>1</sup> One early reviewer wrote that the story was “little known outside Japan, and not well remembered within the country,” and another that the trials the book describes “have received little or no attention in the West.”<sup>2</sup>

Why was this case forgotten? The first reason is surely that much time had passed since the actual events. I didn’t really begin to research the case until a decade after the final Supreme Court judgment and there was limited news reporting even when the events had unfolded. A second reason is that there were no celebrities or other well-known public figures involved who might attract wide attention to the story. And from the standpoint of professional scholars, the case held relatively little significance as

legal precedent. The final judgment of the Supreme Court broke no new ground. It merely reaffirmed the Court’s hardline stance against political speech critical of the government.

So why write a book about such a case?

## The Arrests and Prosecution

The story begins with a police raid at dawn on February 27, 2004. Armed with search and arrest warrants, police teams descended on the little office of an antiwar group called the “Tachikawa Self-Defense Force Monitoring Tent Village” and the homes of five of its members. After seizing computers, diaries, calendars, and other material, the police took three Tent Village members into custody on criminal trespass charges. The charges were based on the suspects’ delivery of antiwar flyers at a cluster of apartment buildings in Tachikawa a month before. The messengers took extraordinary care, quietly climbing building stairs in order to slip single-page flyers through mail slots. But the buildings were special: they provided homes for members of Japan’s Self-Defense Forces and their families.<sup>3</sup>

The police action occurred about one month after the Koizumi administration deployed a small contingent of the Ground Self-Defense Forces to southern Iraq. This was a historic event, the first-ever deployment of the SDF to an active war zone. Along with a large portion of the Japanese populace, the Tent Village activists thought this action violated Article 9 of

1 David McNeill reported the case early on. See “Enemies of the State: Free Speech and Japan’s Courts,” *Asia-Pacific Journal: Japan Focus*, February 16, 2006, <https://apjif.org/david-mcneill/1835/article> and “Martyrs for Peace: Japanese antiwar activists jailed for trespassing in SDF compound vow to fight on,” *Asia-Pacific Journal: Japan Focus*, May 3, 2008, <https://apjif.org/david-mcneill/2766/article>.

2 See “Critics’ Reviews” at <https://www.routledge.com/Japans-Prisoners-of-Conscience-Protest-and-Law-During-the-Iraq-War/Repeta/p/book/9781032046266>.

3 Details of the arrests, interrogations, and other details are reported in Lawrence Repeta, *Japan’s Prisoners of Conscience: Protest and Law During the Iraq War* (Routledge, 2023), especially Chapter 2.

Japan's "Peace Constitution," which prohibits Japan from maintaining war potential or using "the threat or use of force as means of settling international disputes."<sup>4</sup>

The three suspects were held in detention for 75 days before a court granted their requests for release on bail. For the initial period of 23 days, they were strapped into hard wooden chairs and subjected to interrogations that continued for hours each day.<sup>5</sup> Despite this treatment, the suspects remained silent. Defense counsel were banned from the interrogation rooms and all visits by friends and family members were prohibited. This harsh treatment led the international human rights organization Amnesty International to designate them as "Prisoners of Conscience," the first time that Amnesty applied the term for detainees in Japan.<sup>6</sup>

My goal in writing the book was to provide a detailed factual account that records the operations of the police and courts in a political speech case. The Tachikawa Tent Village case was ideal for several reasons. First, although there was limited news reporting, the defendants and their supporters had created a voluminous record of their experiences in articles, newsletters, a detailed blog created in real time, and other materials, including two full-length books. I gradually discovered that much of this raw

material was still available.<sup>7</sup> It was especially valuable because there is ordinarily no public access to criminal court records in Japan.<sup>8</sup>

Second, the Tent Village case presented a classic test of the constitutional right to free speech. The arrests were made just as the first SDF units were arriving in the Middle East. Overseas deployment of military forces is a matter of grave importance in any country, but especially so in Japan due to constraints imposed by Constitution Article 9. In a constitutional democracy, the people must be allowed to express their opinions on such matters and only restricted when their words threaten some great harm. Tent Village was founded in 1972 and prior to the 2004 crackdown, members had regularly exercised their speech rights through marches, flyer deliveries and other means with little problem.

Most ominously, the lesson from the Tent Village case is clear. Ryukoku University professor Ishizaki Manabu expressed it this way: "The investigative authorities, the prosecutors and the courts have sent a clear and forceful message to the people. They will use whatever laws they can find to shut down the activities of citizens who express opposition to important government policies."<sup>9</sup>

## Free Speech vs. Government Authority

For me, the primary question was: how would Japan's courts handle the balance between free speech and government authority presented by a case like this? As I thought about it, I recalled American cases from the Vietnam War era I had studied long ago.

4 The full text of Constitution Article 9, the only provision of a chapter titled "Renunciation of War," reads as follows:

"Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

"In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized."

Operating within the constraints of Article 9, the Diet passed legislation authorizing the Iraq deployment that limited SDF units to "humanitarian and reconstruction measures. Law concerning the Special Measures on Humanitarian and Reconstruction Assistance in Iraq, Law No. 137, 2003. See Mika Hayashi, "The Japanese Law Concerning the Special Measures on Humanitarian and Reconstruction Assistance in Iraq: Translator's Introduction," 13 *Pacific Rim Law & Policy Journal*, 579 (2004). <https://digitalcommons.law.uw.edu/wilj/vol13/iss3/4/>

5 Such abusive treatment is not uncommon. Human Rights Watch produced an authoritative report that documents these practices in 2023, "Japan's Hostage Justice System," available here: <https://www.hrw.org/report/2023/05/25/japans-hostage-justice-system/denial-bail-coerced-confessions-and-lack-access>.

6 See "The Forgotten Prisoners," at <https://www.theguardian.com/uk/1961/may/28/fromthearchive.theguardian>.

7 I found much of this material in quite obscure locations. One extraordinary publication titled "War and Sex" (*Sensō to Sei*), carried lengthy interviews with the Tent Village defendants, essays by Kato Katsuko and other material. <http://sensotosei.world.coocan.jp/> (Kato was one of the founders of Tent Village and served as representative of the group at the time of the arrests.)

8 See Lawrence Repeta and Yasuomi Sawa, "Chilling Effects on News Reporting in Japan's 'Anonymous Society,'" in Kingston (ed.), *Press Freedom in Contemporary Japan* (Routledge, 2017).

9 Ishizaki Manabu, "Freedom of Expression and Civil Society" [Seijiteki hyōgen no jiyū to shimin shakai], *Hō to Minshushugi* 430, July 2008, 28. Quoted in *Japan's Prisoners of Conscience*, 173.



Figure 1: Tent Village supporters march through Kunitachi, March 25, 2004. (Photo by Yutaka Osa-wa)

In one famous case, some Iowa students were suspended from a public school for violating a school policy by wearing black armbands to express their opposition to the Vietnam War and their sympathy for the war's victims. School authorities prohibited the armbands for fear they would lead to disruption at school. In a landmark judgment issued in 1969, the United States Supreme Court ruled that public-school students enjoy a constitutionally protected right to free speech and that school authorities had violated that right.<sup>10</sup> In another famous case, a man was arrested and charged with the crime of "disturbing the peace" for wearing a jacket that displayed the words "Fuck the Draft" in the public corridors of a Los Angeles courthouse. In a 1971 decision, the Supreme Court ruled the defendant not guilty on the grounds that his display of a four-letter word was not a sufficient justification to restrict the right to political expression protected by the free speech clause of the US Constitution.<sup>11</sup>

The facts and circumstances of each case are unique, but the principles are the same. The core free speech guarantee is essentially the same in Japan and the United States and, indeed, in all 173 countries that

<sup>10</sup> Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

<sup>11</sup> Cohen v. California, 403 U.S. 15 (1971).



Figure 2: Spectators await entry to the Hachioji courthouse, May 6, 2004. (Photo by Katsuko Kato)

have ratified the world's most fundamental human rights treaty, which declares that "Everyone shall have the right to freedom of expression."<sup>12</sup>

Balancing free speech rights against government authority is especially difficult in wartime because so much is at stake. American courts have had much experience seeking this balance because the United States so frequently engages in war. But for Japan's courts, this was a new problem. With the unstinting words of Constitution Article 9 prohibiting Japan's participation in war, Japanese courts had not had to address protest against deployment of military forces into a war zone.<sup>13</sup> But in 2004, Japanese boots were on the ground in Iraq and Tent Village members and other peace activists were angry and eager to speak out.<sup>14</sup>

<sup>12</sup> Article 19(2) of the International Covenant on Civil and Political Rights reads "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>13</sup> Constitution Article 9 has been the subject of great controversy throughout its history and much litigation, but prior to the Iraq case, these disputes did not concern deployment of military forces in a war zone. For an overview of the litigation prior to the Iraq War, see John O. Haley, "Waging War: Japan's Constitutional Constraints," 14 *Constitutional Forum* 18 (2005).

<sup>14</sup> Defendant Onishi Nobuhiro's stirring courtroom declaration on the illegality of the Iraq War and the SDF deployment is reported at *Japan's Prisoners of Conscience*, 62–63.

With all these parts in motion, I was eager to see how Japan's courts would manage the balance. Would they side with individuals speaking out against war like the U.S. Supreme Court of the Vietnam War era or would they uphold tough police action?

### Trial Court Judgment: Not Guilty

The trial was held in a branch of Tokyo District Court located just outside Tachikawa in the town of Hachioji. The three defendants were represented by a team of five attorneys.<sup>15</sup> The court held eight public trial sessions over a period of about eight months. Each side called three witnesses and the defendants themselves made lengthy speeches in court on their own behalf. A three-judge panel led by chief judge Hasegawa Ken'ichi issued its verdict on the afternoon of December 16, 2004.

In most cases, Japan's judges announce verdicts in very brief statements with little detail other than the result. But Judge Hasegawa thought this case so important that he spent about one hour reading aloud from the court's judgment. The spectators' seats were packed with Tent Village supporters who hung on every word while a crowd of supporters waited outside.

The court's lengthy judgment provides much detail on the history of Tent Village and the group's regular protest activities in the Tachikawa area along with a careful analysis of the law of trespass. The court waited till the very end to address Constitution Article 21, which guarantees protection for political speech.

Judge Hasegawa and his colleagues were clearly disturbed by the way the government singled out the peace activists for arrest and prosecution. Other uninvited visitors who regularly tread the same corridors with commercial flyers from real estate agents, restaurants, and other businesses were left alone; only the Tent Village messengers were charged with

a crime. As he reached his conclusion, Judge Hasegawa said

*the defendants' act of distributing flyers was an example of political expression protected by Article 21(1) of the Constitution which, as a pillar of democratic society, holds a preferred position when compared to the distribution of commercial flyers protected by Article 22(1) of the Constitution. When viewed in comparison to the treatment of distribution of commercial flyers at the Tachikawa Apartment Complex, which was not subject to any imposition of criminal liability, the sudden prosecution of the defendants without any formal prior notice of opposition or warning by the Defense Agency, the Self-Defense Forces, or the police, even though the same kinds of acts had long continued without complaint, cannot be said to escape suspicion when viewed in light of Article 21(1).<sup>16</sup>*

When Judge Hasegawa followed those words by declaring the defendants not guilty, the courtroom erupted in cheers and applause. Supporters marched through the streets of Hachioji that night and made a point of pausing before the local police station to shout out their rage. December 16, 2004 was a day of celebration for the three defendants and their supporters.

But the celebration would be short-lived. The government is allowed to appeal not guilty verdicts in Japan and it did so in the Tent Village case.

### The Government Appeals

Prosecutors lodged their appeal with the Tokyo High Court, located in the Kasumigaseki district of central Tokyo eight days later. Japanese attorneys sometimes call this court "the most conservative court in Japan."<sup>17</sup> In the Tent Village case, the court lived up to this billing.

<sup>16</sup> Tokyo District Court (Hachioji branch), Judgment of December 16, 2004. *Hanrei Jihō*, No. 1892, 15, *Hanrei Taimuzu*, No. 1177, 133.

<sup>17</sup> Tokyo High Court serves as a proving ground for judicial appointments to the Supreme Court. All six of the career judges currently serving on the Supreme Court previously served on the Tokyo High Court. Four of them held the post of Tokyo High Court "Chief Judge."

<sup>15</sup> This court was later moved from Hachioji to Tachikawa.





Figure 3: Supporters celebrate the not guilty verdict, December 16, 2004. (Photo by Yutaka Osawa)



Figure 4: Final Judgment at the Supreme Court, April 11, 2008. (Photo by the author)

The High Court overturned the District Court, issuing a guilty verdict on December 9, 2005. In this court's opinion, by walking the stairs and corridors of the apartment buildings to deliver their messages, the defendants had disturbed the "peaceful, daily life" (*hei'on na seikatsu*) of the residents and therefore committed trespass in violation of Criminal Code Article 130.

After quoting District Court language that stressed the importance of free political speech as a "pillar of democratic society," the High Court judges wrote, "even if freedom of expression should be interpreted in such a way, it does not immediately allow violation of the rights of others." The High Court judges were obviously troubled by the content of the message carried by the defendants, writing "It is clear from the text of the flyers that ... the defendants urged the SDF members to reject orders to deploy to Iraq, a so-called 'SDF member targeting operation'" (*jieikan kōsaku*).<sup>18</sup> Indeed, this was the very purpose of the Tent Village campaign.

## Final Judgment

Now it was the defendants' turn to appeal, this time to the Supreme Court of Japan, often called the "last redoubt" (*saigo no toride*) of justice. More than three years would pass before the Court ruled on their appeal, in a judgment issued on April 11, 2008.

The case was assigned to the Court's five-member second petty bench. Two justices dropped out, so the final judgment would be issued by a panel of only three, led by Justice Imai Isao, a veteran of more than forty years as a judge.<sup>19</sup>

Justice Imai briefly read some key passages from the judgment, including the Court's curt dismissal of the defendants' claims to constitutional protection:

*The first clause of Constitution Article 21 does not guarantee absolutely unlimited protection for free expression; it recognizes necessary and reasonable restrictions for the public welfare. Even if an act serves to express one's thoughts to others, if that act*

<sup>18</sup> Tokyo High Court. Judgment of December 9, 2005. *Hanrei Jihō*, No. 1949, 169.

<sup>19</sup> Fifteen justices serve on Japan's Supreme Court, but nearly all cases are decided by one of three "petty benches" of five justices each. In this particular case, one justice, a former prosecutor did not participate, presumably because of his service in the Ministry of Justice when the case unfolded. The other justice who chose not to participate also served as the Chief Justice of the entire Court. He was undoubtedly preoccupied with the administrative burdens of this position.

*improperly injures the rights of others, it cannot be allowed.*<sup>20</sup>

Then the justices stood up to leave. The proceeding was over in about two minutes.<sup>21</sup>

With his reference to “necessary and reasonable restrictions for the public welfare,” Justice Imai summarized the jurisprudence that had decided more than six decades of free speech litigation at Japan’s Supreme Court. Through all those years, the Court consistently rejected claims that the police or another agency of government violated free speech rights protected by the Constitution.<sup>22</sup> The Court frequently holds that government action serves the public welfare and therefore is immune from constitutional challenge. The term “public welfare” is not defined in the Constitution or other law so there is no clear limit to its application.

### Why prosecute three harmless protesters?

Tent Village members had been engaged in peaceful protest in the Tachikawa area for more than thirty years at the time of the arrests. They were well-known in the community and clearly printed their office address and phone number on every flyer. The local cops could have made a phone call or visited their office to tell them to back off. Instead, they called in the state security police who carefully laid a plan for dawn raids, arrests, and extended detention. Why?

The Tent Village prosecution did not occur in a vacuum. As Self Defense Forces units departed for Iraq and the police arrested harmless dissidents in this

and other cases,<sup>23</sup> Japan’s right wing was on the war-path, demanding revisions to school texts and penalties for public school teachers who refused to stand and sing kimigayo at school ceremonies, and above all, radical revision to the Constitution.<sup>24</sup> Regarding the last point, LDP leaders were hard at work on a “new constitution” to be proposed at the annual party congress the following year, with revision to Article 9 atop the list of priorities.<sup>25</sup>

After decades of LDP criticism of the limits on Japan’s defense policy imposed by Article 9, Prime Minister Koizumi took decisive action, ordering the SDF into a war zone. But the move was unpopular. A majority of the Japanese people have consistently supported Article 9 and opposed Japan’s return to the battlefield. This made suppression of dissent against the Koizumi Iraq policy especially important. If antiwar protests spread, the political damage to the otherwise popular prime minister could have been significant. By raiding the Tent Village office before waiting television cameras and locking the suspects away for an extended period, the police sought to send a message that would halt public dissent and thus perform a valuable service to the Koizumi administration.

The police campaign was a success. SDF members no longer found antiwar messages in their mailboxes. Anyone with the nerve to deliver such messages risked a stay of 75 days—or more—in a jail cell. For most Japanese people, jail time like this would mean the loss of employment and orderly family life. The police raid was also a success on a more strategic front. Police executives confirmed that in cases with

20 Supreme Court, Second Petty Bench, Judgement of April 11, 2008, Keishū 68(5), 1217. Major newspapers all included this statement in their reports on April 12, 2008.

21 *Mainichi Shimbun*, April 12, 2008. There is no mention whatever in the Supreme Court’s judgment of the police tactics. Measures such as lengthy detentions on trivial charges, interrogations behind closed doors with no lawyers present and denial of contact with family members are accepted as a matter of course. See Human Rights Watch, “Japan’s Hostage Justice System.”

22 For a recent discussion in English, see Keigo Obayashi, “Free Speech Jurisprudence in Japan,” in Shinji Higashi and Yuji Nasu, *Hate Speech in Japan* (Cambridge: Cambridge University Press, 2021). For a summary of the Supreme Court’s many rejections of claims to constitutional protection for free speech, see Shigenori Matsui, *The Constitution of Japan*, (Hart Publishing, 2011), 196–211.

23 I describe some of these cases in detail in *Japan’s Prisoners of Conscience*. Chapter 13 reports the arrest and detention of a Buddhist monk who followed his ordinary practice in delivering the *Akahata* and other material and chapters 3 and 8 report the fanatical surveillance conducted by the state security police of a government employee named Horikoshi Akio. Horikoshi was ultimately ruled not guilty by the Supreme Court, a rare case where the Court ruled against the police. <https://www.routledge.com/Japans-Prisoners-of-Conscience-Protest-and-Law-During-the-Iraq-War/Repeta/p/book/9781032046266>.

24 Lawrence Repeta, “Japan’s Democracy at Risk – The LDP’s Ten Most Dangerous Proposals for Constitutional Change,” *Asia-Pacific Journal: Japan Focus*, <https://apjif.org/2013/11/28/lawrence-repeta/3969/article>.

25 See Christian G. Winkler, *The Quest for Japan’s New Constitution* (Routledge, 2009). <https://www.routledge.com/The-Quest-for-Japans-New-Constitution-An-Analysis-of-Visions-and-Constitutional-Reform-Proposals-1980-2009/Winkler/p/book/9780415731508>

large political issues at stake, the prosecutors and courts would do their bidding.

Today, the risks faced by antiwar protesters are much greater than they were during the Iraq War era. Under the leadership of the late Prime Minister Abe Shinzo, the Diet passed a series of laws that both empowered the government to deploy the SDF abroad and to prosecute individuals who might organize in protest. Regarding SDF deployment offshore, the Diet passed extensive national security legislation in 2015 that included authority for “collective self-defense,” i.e., military operations conducted in concert with allies. The next time Japanese forces are sent into action abroad, they will likely be acting with the authority of the Diet at their backs.<sup>26</sup>

What about police surveillance and arrests of political dissidents? From 2013 to 2017, the Diet passed several landmark laws that increased police authority, including laws that expanded police wiretapping powers and introduced “plea bargaining.” Legislation that made “conspiracy” a crime was perhaps the most significant.<sup>27</sup> The Ministry of Justice had long sought such a law, but domestic opposition had been particularly vehement because of the potential for abuse. In 2017, local opposition was joined by UN Special Rapporteur on the Right to Privacy Joseph Cannataci, who expressed his disapproval in a letter to Abe.<sup>28</sup> As Cannataci explained, in order to establish the “preparatory actions” required by a conspiracy indictment, individuals to be charged could be subject to “a considerable level of surveillance beforehand.” This is especially disturbing in a coun-

try where the police have established a track record of deploying covert surveillance against targeted groups.<sup>29</sup> Abe’s leadership enabled the government to overcome such opposition and enact a conspiracy law in 2017.

Although the events took place two decades ago, the Tent Village story shows us what to expect if Japan’s government decides to deploy the SDF into an active war zone again. There is no reason to think the police would be more tolerant of government criticism next time. To the contrary, the Supreme Court judgment confirmed that their actions were lawful. If future protesters deliver flyers at SDF apartment buildings or otherwise cross some line drawn by the police, they will risk arrest, lengthy detention, and prosecution. And this will happen with the approval of Japan’s Supreme Court.

For the appendix to this article, please visit <https://apjif.org/2024/8/repeta>

## About the Author

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26 Regarding the 2015 legislation, see Christopher W. Hughes, “Japan’s security policy in the context of the US–Japan alliance” in James D. Brown ed., *Japan’s Foreign Relations in Asia* (Taylor and Francis Group, 2017). Hughes identifies the “most important element” of the changes to Japan’s defense policy to be the “breach on the ban of collective self-defense,” in other words, empowering the government to deploy Self-Defense Forces abroad in coordination with allies, the very act that caused controversy in 2004.

27 Colin P.A. Jones “Japan’s New Conspiracy Law Expands Police Power,” *Asia-Pacific Journal: Japan Focus* 15(16) Number 1, <https://apjif.org/2017/16/jones>. Lawrence Repeta, “Abe’s legacy of expanded police power,” *East Asia Forum*, August 23, 2023, <https://eastasiaforum.org/2023/08/23/abes-legacy-of-expanded-police-power/>

28 “Japan: UN Special Rapporteur Expresses Concern over the Government’s Conspiracy Bill,” *Human Rights Now*, June 1, 2017, <https://hrn.jp/eng/news/2017/06/01/japan-conspiracy-bill/>.

29 Lawrence Repeta, “Spying on Muslims in Tokyo and New York — ‘Necessary and Unavoidable’?” *Asia-Pacific Journal: Japan Focus*, September 15, 2016, 14(18) Number 2, <https://apjif.org/2016/18/apj> and “Police Surveillance of Muslims and Human Rights in Japan,” *Asia-Pacific Journal: Japan Focus* September 28, 2014 12(39) Number 1, <https://apjif.org/2014/12/39/asia-pacific-journal-feature/4190/article>.

*Government in the Heisei Era,” in Jeffrey Kingston (ed.), Japan in the Heisei Era (1989–2019) (Routledge, 2022).*