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The Usage of Modals and Voice in the Japanese Constitution –The English and the Japanese Versions in Contrast–

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Abstract

This paper aims to contrast the usage of modals and voice used in the English and the Japanese versions of the Japanese Constitution. In the first part, we focus on how differently the modals “shall” and “will” are used mainly in human rights articles and Article 9. In the second part, we discuss why there is voice conversion between the English and the Japanese versions. That is, the passive voice in the English version changes into the active in the Japanese. Four possible reasons, from legal, philosophical and grammatical perspectives are analyzed.

Key words: modal, voice conversion, English version, the Japanese Constitution, Judeo-Christian tradition

The current Constitution of Japan, which was drafted and established under the leadership of the GHQ¹ after the Second World War, was greatly influenced by the spirit of the Constitution of the United States. Accordingly, the respective documents are considered to share lots of similarities in structure and content. At the same time, when we pay attention to detail we notice there are some differences in certain aspects, such as in word usage. More precisely, we find inconsistency in the choice of modal auxiliaries and of the voice form.

It has been generally admitted among Japanese teachers of English that the usage of modal auxiliaries is difficult for Japanese learners to master. This is because they are basically used to express people’s delicate psychological states, such as request, command, prohibition and so forth.

In the first part of this paper, we will look at the usage of the modal auxiliaries “shall” and “will” used in two constitution articles. “Shall” is often used in legal documents to convey the sense of compulsion. Unlike “will”, “shall” is rarely used in everyday situations. Of note here is that, while some articles in the Constitution of the United States consistently choose “shall” as an order form, their counterparts in the English version of the Japanese Constitution occasionally feature “will” as well as the consistent choice of “shall.” Our discussion aims to find some standard in choosing the modals “shall” and “will.”

In the second part, we will take up the conversion of voice. Our examination of the Japanese constitution notes voice change, from passive in the English version to active in the Japanese one. In the English version, the passive voice is predominantly used, whereas, in the Japanese one, the passive is often converted into the active voice in the same articles. In order to find an

underlying principle, the documents were studied in context, both in terms of agency in the voice structure as well as the intentions of those who drafted the Constitution of Japan.

Modal auxiliaries used in the Japanese Constitution *The American Constitution and the English version of the Japanese Constitution*

After the war of Independence in America, the first priority for the citizens was to protect their rights and freedom from state authority. They made efforts to create a new constitution to build up a new government or political mechanism that would enable them to participate in the political process. As a result, the Constitution of the United States was established in 1788, incorporating two major political principles in the form of an “oath by citizens” to express the “commitment” and “order from the citizens to the new government”.

As far as the new Constitution of Japan is concerned, similar principles to that of the United States were introduced and the same two major principles were incorporated due to influence from the GHQ. These two major principles are as follows:

1 The commitment

An oath by the citizens to establish a new democratic constitution

→ This is incorporated in the Preamble of the Constitution using the modal auxiliary “shall”.

2 An order from the citizens to the new government in the United States.

Any national organization must not infringe the rights and freedom of the citizens.

→ This principle is incorporated in each article that uses the modal auxiliary “shall”.

The following are the Preamble and an example of the articles concerned.

The Preamble:

We, the Japanese people,..... determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessing of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of governmentdo firmly establish this Constitution.

*The sentences are underlined by the authors.

(日本国民は、(中略)われらとわれらの子孫のために、諸国民との協和による成果と、わが国全土にわたって自由のもたらす恵沢を確保し、政府の行為によって再び戦争の惨禍が起こることのないやうにすることを決意し(中略)この憲法を確定する。)

“Shall” is used here to describe the will of the Japanese citizens (= who established this constitution).

Article 32:

No person shall be denied the right of access to the court.

(何人も、裁判所において裁判を受ける権利を奪われない。)

“Shall” is used again to describe the order from the Japanese citizens to the national organizations.

The usage of “shall” and “will”

In western countries, the legislation of law and the religious concepts have been closely interwoven in Judeo-Christian terms; constitutions in Europe and the United States were established based upon the idea of “the Covenant with God”. Under this fundamental principle, people are endowed by God to enjoy the benefits of human rights and freedom.

Since the Constitution of Japan was born under the influence of the American occupation policy, the Japanese version had to adopt the basic principles of the former. Articles including “shall” and “will” read as follows:

Article 13:

All of the people shall be respected as individuals.
(すべて国民は、個人として尊重される。)

This can be interpreted as below:

All of the people shall be respected as individuals (by God).

*Underlined part is added by the writer.

In this structure, the reader will find that “shall” is used as authorization from God, as opposed to “will” which is merely used as an order from human beings. The examples below indicate the difference.

Usage of “shall”:

You shall love your neighbors. (strong form of command)

You shall not kill. (strong form of prohibition)
(Taken from Moses’ Ten Commandments)

If “shall” is used as an order form in informal situations, it will be taken as too strong by the addressee because of the implication that the addressor took the place of God and ordered imperiously. On the other hand, “will” is usually used in terms of the addressor’s own position. Therefore, the strength does not sound too direct.

Usage of “will”:

The audience will be seated.

(form of instruction or request)

You will not go out. (form of suggestion)

Therefore, the usage of “shall” is extremely limited in everyday settings because it implies a strong sense of authority, and it is mainly used as a legal term. Although “will” is also used as an order, this usage depends on whether the sense of authority is attached or not.

Kashiwano (2002)² says that the difference in the strength of the sense of authority can be derived from the original meaning of each modal auxiliary. (As given below, No 1 is the original meaning of each modal auxiliary. This meaning changes into 2 / 3.)
shall:

- 1 make someone do something
- 2 the order as the speaker’s intention
(God demands that you shall do ~.)

will:

- 1 prediction
- 2 demand to ensure the result of the prediction from the speaker
- 3 the order as the speaker’s intention
- 4 (I will predict that) you will do.

Regarding “will” as prediction, it shows very strong certainty (= close to 100%). Below is an example to indicate this.

Example:

*If it will rain tomorrow, I will not go out.

This sentence is grammatically unacceptable because “will” in the proverbial if-clause is not possible. In other words, an if-clause can show the possibility or the likeliness of tomorrow’s rainfall but cannot show the certainty of it. This means that “will” can show the speaker’s strong intention that is derived from the sense of certainty.

Example:

You will study hard!

(Education-oriented parents may repeat this to press their children to study.)

The problem of inconsistency in the usage of modals

The Constitution of the United States consistently uses the modal “shall” as an order form, however, in the Japanese counterpart, “shall” is not always used. Instead, “will” and other modals are irregularly used to mean the same as “shall.” The reader will find no consistency in terms of the usage of the modals in the Japanese Constitution.

The following shows the frequency in the use of these modals as an order form, including both affirmation and negation, in the Constitution of Japan:

Order (affirmation):

shall	38 times	(97%)
will	No usage	(0%)
can	No usage	(0%)
must	1 time	(3%)

Prohibition (negation):

shall not	28 times	(90%)
will not	2 times	(6%)
can not	1 time	(3%)
must not	No usage	(0%)

*Fractions here are rounded off, therefore, the items do not total 100%.

*Negation includes “never” and “no” as well as “not”.

*This survey is based on Article 1 (Emperor) to Article 40 (Rights and Duties of citizens).

The use of “shall” and “will” in English contracts

The following is a good example of an English contract that shows a significant difference between “shall” and “will.”

*A shall sell B a product newly developed hereof, and *B will purchase it at a price which will be agreed between the parties hereto at the time when the new product is developed; provided, however, that said price shall range between \$20,000 and \$25,000.

* “A” refers to a Japanese company and “B” to an American company.

Summary of the contract:

- ① A has been negotiating with overseas customer B to sell A’s product.
- ② A has agreed to sell the product to B.
A received the contract in English from B.

The underlined parts in the statement can be summarized as follows:

- (1) A shall sell B a product
- (2) B will purchase it at a price which will be agreed
- (3) The said price shall range between \$20,000 and \$25,000.

We can find in this contract that the modals “shall” and “will” are tactically changed for the following reasons:

- (1) The modal “shall” indicates a strong duty that is imposed on A. This means that B can require the obligation of A to sell the product. In other words, A **must** sell its products to B AND the price **must** be no more than a range from \$20,000 to \$25,000 under all circumstances.
- (2) The modal “will” implies a weaker duty imposed on B. A is eligible to require a lesser obligation of B. In other words, B is expected to make efforts to buy the product of A, but B has a weaker legal obligation to A.

Actually, the difference in the strength between “shall” and “will” does exist. Sato (2003)³, a lawyer who deals with oversea contracts, says, “If one contractor uses the modal auxiliary “shall” against the other party, it is to charge the stronger legal obligation against them, hence, that contractor can take stronger advantage in his / her position even if the case was brought to the court, while, if the contractor uses “will”, he / she will have clear disadvantage in legal procedure.”

The modals “shall” and “will” in the Japanese Constitution

The interpretation of Article 9

After the Second World War, many constitutions proclaiming fundamental human rights and freedom were established around the world in countries such as Germany, France, and Italy. These constitutions renounce aggressive wars as means of settling international disputes. The Japanese Constitution, too, provides Article 9 for the same purpose.

Of note here is that although “shall” is consistently used throughout the Constitution of Japan, the modal “will” is used only twice in Article 9.

Clause 2, Article 9 reads as follows:

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.

(前項の目的を達するため、陸海空軍その他の戦力は、これを保持しない。国の交戦権は、これを認めない。)

* Underlined by the writer

One dispute with regard to interpretation of this part was raised after the establishment of the Constitution. The controversy is focused on what is meant by the phrase “in order to accomplish the aim of the preceding paragraph (Clause 1, Article 9)” in Clause 2, Article 9.

Clause 1, Article 9

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.

(日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動たる戦争と、武力による威嚇又は武力の行使は、国際紛争を解決する手段としては、永久にこれを放棄する。)

*underlined by the writer

Bellow are the two major theories regarding interpretation of this issue.

Theory A:

“The aim” means to aspire “sincerely to an international peace.” Therefore, it must be interpreted that the whole war potential, including even means for preserving Japan’s own security (self defense), must be renounced.

Theory B:

“The aim” means to settle “international disputes.” Based on this interpretation, only wars of aggression as a national policy must be renounced, that is, war potential for preserving Japan’s own security (self defense) should not be banned. This viewpoint has been adopted as a standard interpretation of the International Law.

The Constitution of Japan has adopted Theory A as a standard interpretation for the following two main reasons:

Because “land, sea, and air forces, as well as other war potential will never be maintained” in Japan, there is no permission for potential war even for self defense.

There is no article in the Constitution that prescribes the substance of military force for potential war (except in *Article 66).

Clause 2, Article 66:

The Prime Minister and other Ministers of State must be civilians.

(内閣総理大臣その他の国務大臣は、文民でなければならない)

Here can be found the uniqueness of the Constitution of Japan that was born under the initiative and/or probable pressure of the GHQ.

The draft of the present Article 9

The problem here is what the GHQ had demanded of the Japanese Government in terms of “renunciation of war” when they proceeded to the drafting of the Constitution. There were two documents left by the GHQ before the final establishment of Article 9 in the

present Constitution of Japan. Those are arranged chronologically as below.

- (1) MacArthur’s original note
- (2) MacArthur’s draft

The usage of “as”

Since “as” is used to work as a complement, it can be paraphrased as follows:

We chose Mr. Smith *as* President of our company.
Mr. Smith *is* now President of our company.

Although all passages prescribe the renunciation of potential war, the definition of war varies from part to part. In order to distinguish the differences, let us examine the excerpts from (1) to (3) to make them stand in contrast.

- (1) MacArthur’s original plan

Japan renounces it (=war) as an instrumentality for settling its disputes and even for preserving its own security

*Underlined / Parenthesized / Enclosed / Boldfaced by the writer

→War must not be an instrumentality for settling its disputes and even for preserving its own security.

- (2) MacArthur’s draft

...the threat or use of force (=war) is forever renounced as a means for settling disputes with any other nation

*Underlined / Parenthesized / Enclosed / Boldface by the writer

→War must not be a means for settling disputes with any other nation.

- (3) Clause 1, Article 9:

...renounce war as means of settling international disputes

*Underlined / Enclosed / Boldface by the writer

→War must not be means of settling international disputes.

The definition of war is different in each article. In (1) MacArthur’s original plan, war must not be an instrumentality both for ① settling disputes and for ② preserving own security (i.e. both for aggressive war and war for self defense). Whereas, in (2) MacArthur’s draft, war must not be for ① settling disputes with any other nation (i.e. assertive war only). Furthermore, in (3) Clause 1, Article 9, war must not be means of ① settling international disputes (i.e. aggressive war only). The reader of these articles cannot understand clearly the aims of MacArthur and the other drafters.

The usage of the indefinite article “a”

Our next attention is paid to the use of the noun “instrumentality” or “means” that appears in each article cited above. The noun “means” used here can be interpreted both as singular and plural nouns.

Below are examples:

Ken took every means to achieve success.
(singular)

Susan took all possible means to defend herself.
(plural)

(1) MacArthur’s original plan

as an instrumentality for

→The noun “instrumentality” is identified as a singular noun with an indefinite article.

(2) MacArthur’s draft

as a means for

→The noun “means” is identified as a singular noun with an indefinite article.

(3) Clause1, Article 9:

as means of

→The noun “means” is identified as a plural noun with no indefinite article.

The readers of these articles are likely to have difficulty understanding the theoretical flow of the GHQ’s ideas or principles. This is because (1) can mean that not only did MacArthur ban aggressive war but war for self defense as well. However, (2) can be interpreted as meaning that he only banned aggressive war. Furthermore, (3) seems to apparently ban only aggressive war because the word “means (of settling disputes)” is a plural noun, so, “means” can be taken for the potential possibility of both war for self defense and aggressive war.

This complexity might be indirectly concerned with the long-lasting dispute over the interpretation of Article 9.

MacArthur may have foreseen a possible revision of Article 9, which would affect the Law of Self-Defense Forces in the future. Therefore, the authors of the Japanese Constitution might have chosen the modal “will” instead of “shall” in Article 9.

A contrasting opinion suggests that the fluctuation in MacArthur’s mind cannot be the reason for the choice of “will” (not “shall”). Because the GHQ had absolutely and determinedly demanded the renunciation of potential war by the Japanese government, it cannot be reasoned that the choice of “will” connects with the weaker version of “shall”. A strong case should be made for the usage of “will” as prediction that is close to 100% certainty, as mentioned before.

*If it will rain tomorrow, I will not go out.

By using “will” with the strong sense of certainty, MacArthur might have wanted to show his firm

intention for the renunciation of war to the Japanese people.

There are two possible interpretations regarding the meaning and the use of “shall” and “will”. One is the different strength in spite of the same order form. The other is the different usage in the meaning, i.e., “shall” is used as an order form and “will” is meant as firm intention that is derived from the prediction of certainty. However, we have not yet reached a firm conclusion with regard to interpretation. This issue has yet to be fully investigated. Future research may well yield a more definite result.

The function of voice in the Japanese Constitution**The function of the passive voice**

In the passive voice, the noun phrase of the agent is usually placed at the end of the sentence with [by + NP]; however, when the agent is vague or unspecified, the passive voice is used with the omission of [by + NP] because the agent does not help give any new information.

Below are the major cases of the passive voice in which [by + NP] is left out.

- (1) When the agent is unknown or does not need to be specified, such as assailant, criminal, and war enemy.
e.g. An old man was killed in a car accident.
- (2) When the agent is an unspecified number of people.
e.g. Front seats must be vacated for the aged and disabled.
- (3) When there are some reasons that the addressor does not want to mention the agent.
e.g. The work force will be reduced in our company.
- (4) When the agent is self-evident, such as in an order from boss to subordinates.
e.g. This report must be done by tomorrow (by you).
- (5) When the addressor wants to soften the tone.
e.g. Your seat belt must be securely fastened. (soft and indirect warning)
c.f. You must securely fasten your seat belt. (strong and direct order)
- (6) When the agent is someone whom we stand in awe of and respect, such as God.
e.g. Tom was born in the United States (by his mother < by God).
Ken and Susan were married (by Priest / by Minister < God).
Mr. Brown felt called (by God).
I was baptized at the age of twenty (by Priest / by Minister < God).
Rev. Lamb was ordained ten years ago (by Bishop < God).

The additional information provided in the parentheses indicates that these underlined actions are

supposed to be authorized by agents, such as mother, priest, et al., and the ultimate authority of these actions comes originally from God, which is indicated by “<.”

Because the Constitution of Japan was indirectly influenced by that of the United States, some articles share the same structure with the case of (6) listed above. Therefore, it can be regarded that the ultimate agent is God. This will be argued in the following section.

Voice change from legal and philosophical perspectives

When reading the English and Japanese versions of the Constitution, we find that there is a lack of consistency in the use of voice. In the English version, the sentence is basically structured by the passive voice, while the Japanese version mostly uses the active voice. Four reasons are likely to be responsible for this voice conversion.

Firstly, as mentioned earlier, the Japanese government was forced to accept a new democratic constitution by the GHQ. Despite such a tough situation, the government leaders of the day pretended that the new Constitution had been a product not of the GHQ, but of the people’s own will. Therefore, they wanted to eliminate the sense of compulsion that is caused by the usage of the passive voice, such as “Academic freedom is guaranteed to all” (not by the people’s own will but by the GHQ). To avoid this, they preferred the active voice, by which the direct sense of authorization from the Japanese government could, they thought, be maintained. Furthermore, the Japanese government did not feel agreeable toward the American mode of democracy where the people order the government to protect human rights and freedom. In fact, the government preferred the Japanese style of democracy where the nation and people cooperate with each other for the prosperity of their own country.

Secondly, the drafters of the Constitution provided some interpretation in the present tense as well as the active voice to indicate that the fundamental human rights and freedom had already been given to the citizens in modern democratic Japan. They wanted to describe it as “a matter of fact”.

Let us take a look at a few examples in which the passive voice is used in the English version, while the active voice is applied in the Japanese counterpart.

Clause 3, Article 15:

Universal adult suffrage is guaranteed with regard to the election of public officials.

(公務員の選挙については、成年者による普通選挙を保障する。)

Clause 1, Article 20:

Freedom of religion is guaranteed to all.

(信教の自由は、何人に対してもこれを保障する。(後略))

Clause 1, Article 21:

Freedom of assembly and association as well as speech, press, and all other forms of expression are guaranteed.
(集会、結社及び言論、出版その他一切の表現の自由は、これを保障する。)

Thirdly, there seems to be another important reason why the passive voice is not used in the above-cited human rights articles of the Japanese Constitution. Our assumption is that the reason is deeply rooted in the Euro-American mindset. In other words, the Euro-American legal cultures have their fundamental value system in the Judeo-Christian tradition. This means that the ultimate source of power or authority, including laws, is not man, but God. This is supposedly why various basic human rights are given or guaranteed by Him. This feature stands in a sharp contrast to the Japanese concept of law. Unlike the Euro-American tradition, there is no such concept as God. Since there is no divine authority to give or guarantee human rights, you cannot use the passive voice. Therefore, the authors of the Japanese Constitution presumably had no choice but to use the active voice, by which they made the agent obscure. Refer to the following example to see the difference.

Freedom of religion is guaranteed to all... (by God). (English Version)

(信教の自由は、何人に対してもこれを保障する (後略))

– (X) guarantee(s) freedom of religion to all...
(Surface translation)

The above illustration will be further discussed in the next section.

Lastly, in relation to the influence of Judeo-Christian values, the passive voice seems to be preferably used in these basic human rights articles for one more reason. This again has Biblical roots. Below is an example taken from the Old Testament.

”You shall not make wrong use of the name of the Lord your God; the Lord will not leave unpunished the man who misuses his name.” (EXODUS 20:7)

This is a good example showing why humans are not allowed to invoke God’s name without good reason. This can be a further explanation of why it is against social manners to use various forms of God’s names when we curse.

Voice conversion from a grammatical viewpoint

English takes a transitive-verb-oriented structure where the subject of the action is required and the transitive-verb comes next, while Japanese has an intransitive-verb-oriented structure where no subject is required or the subject can be omitted. Examples include, “A situation arises spontaneously” or “Something only exists in a given situation.” The

examples below show the difference in the sentence structure of the two languages: The sentences on the left are English examples and those given in the parenthesis are literal or surface translations into Japanese.

- ① I have a lot of money. (A lot of money exists in my account / There is ~.)
 ② We see the high mountain. (The high mountain is in a state of being seen.)

In Japanese, there is no need to give a subject. For example, in the sentence below, this feature can be described grammatically as follows:

- ③ Tom likes this town. (As for Tom, (he) is in a state of liking this town.)

Now, let us look at some Japanese examples and their appropriate translations:

- ④ ぼくはウナギだ。(ぼくはこの食堂でウナギを注文するんだ)

The direct translation:

I am the grilled eel.

- ⑤ As for me, (I am going to) order the grilled eel (in this restaurant).

→コンニャクは太らない (コンニャクについて言えば食べても太らない)

The direct translation:

Kon-nyaku does not put on fat.

As for Kon-nyaku, (people) do not put on fat (if they eat some).

Japanese does not need to place a subject, hence, there is no need to convert the active voice to the passive voice. This is one of the reasons that the active voice is mainly used in Japanese, as opposed to in English, where the passive voice is commonly applied. In the example below, "Academic freedom" is not a subject, but a topic of the sentence in the Japanese version.

Article 23:

Academic freedom is guaranteed.

(学問の自由は、これを保障する。)

This can be translated into English as below:

→As for academic freedom, (God) guarantees this.
 (学問の自由について言えば、これを保障する。)

*Explanation of the pronoun "this":

Theoretically, the sentence structure is supposed to have been processed as from ① to ⑤.

- ① Academic freedom is guaranteed (by God).
 ② God guarantees academic freedom.
 ③ Academic freedom, God guarantees.
 ④ As for academic freedom, God guarantees.
 ⑤ As for academic freedom, God guarantees this.

By inserting "this" as an object of the transitive-verb, the sentence takes on a so-called "topic-comment" structure. The separated "this" will be

accepted as if it were new information and it will underline the importance of human rights to the reader.

In English, the intransitive-verb is not used to make the passive voice sentence, but, it can be used in the Japanese structure. When the speaker feels it impossible to control the actions of an agent, this structure is used. The following sentences are samples of inability to control a situation.

Example:

(on a Japanese-structure basis)

- (I) was come by my students to my house at 3 a.m.
 「生徒に朝の3時に自宅に来られた。」(迷惑の受動態)
 (2) was cried by my girlfriend and (I) was felt at a loss.
 「彼女に泣かれてまいったよ」(同上)

Conclusion

Both the modal auxiliaries and the voice are not easy for Japanese learners of English because of their grammatical and cognitive complexity. In the modal auxiliaries, the addressor should be careful in the choice of words because the semantic range of these modals can be quite broad, as well as complicated. Regarding voice change, the addressee should be careful in terms of identifying the agency, since there is often a hidden psychological implication.

This paper has contrasted the use of modals and voice in English and Japanese, based upon the American and the Japanese Constitutions. From an ESP / EAP perspective, we hope this sort of interdisciplinary approach to English grammar, which includes legal contexts, may help socio-political majors to improve their reading ability. Moreover, it is our hope that this study will help make them cognizant of the subtleties and nuances which often color our most important documents.

Notes:

- ¹ The G. H. Q. stands for the General Headquarters.
² Kashiwano, K. *Eigo Jodoshi No Goho*. (2002, pp.112-113)
³ Sato, T. *Eibun Keiyakusho No Yomikata*. (2003, pp. 31-32)

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