

Fall 1993

# A World of Regions: America, Europe, and East Asia

Peter J. Katzenstein

Follow this and additional works at: <http://www.repository.law.indiana.edu/ijgls>



Part of the [International Law Commons](#)

## Recommended Citation

Katzenstein, Peter J. (1993) "A World of Regions: America, Europe, and East Asia," *Indiana Journal of Global Legal Studies*: Vol. 1: Iss. 1, Article 4.

Available at: <http://www.repository.law.indiana.edu/ijgls/vol1/iss1/4>

This Article is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Journal of Global Legal Studies* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact [wattn@indiana.edu](mailto:wattn@indiana.edu).



**JEROME HALL LAW LIBRARY**

INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

# A World of Regions: America, Europe, and East Asia

PETER J. KATZENSTEIN\*

Recent events in world politics are creating a substantial break in the history of international politics comparable in this century only to the years 1917-22 and 1947-53. With specific reference to Germany and Europe as well as to Japan and East Asia, this essay argues that these changes in world politics tend to reinforce a new political regionalism that expresses different norms, which, in the foreseeable future, are unlikely to be assimilated fully into one normative global order.

## I. VICTORS AND VANQUISHED IN THE COLD WAR

The main protagonists of the Cold War, the United States and the Soviet Union, both lost that war to two trading and welfare states, Japan and Germany, who learned similar lessons from their disastrous involvement in power politics in the first half of the 20th century.

### A. Japan

The shift in financial power from the United States to Asia, and specifically to Japan, was a very prominent trend in the 1980s. It can be traced along many dimensions relevant to economic competitiveness and regional political power. Most dramatic and probably most important is the shift in global capital markets. In the history of capitalism there has never occurred a comparable shift of capital in as short of a time. From 1980 to 1990 the United States moved from a position of creditor of about 400 billion dollars to a position of debtor of about 400 billion dollars.<sup>1</sup> This

---

\* This paper was originally prepared for delivery at the Indiana University School of Law-Bloomington conference on *The Globalization of Law, Politics, and Markets: New Perspectives on Domestic Law*, Bloomington, Indiana, March 4-6, 1993. I am grateful to the participants in the colloquium for their critical reactions. The paper draws also on a forthcoming book on Japanese security policy as well as on an essay published under the title *Regions in Competition: Comparative Advantages of America, Europe and Asia*, in *AMERICA AND EUROPE IN AN ERA OF CHANGE* 105 (Helga Haftendorn & Christian Tuschoff eds., 1993).

1. U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1992, 785

800 billion dollar turnaround is reflected in the growing global importance of Japanese banks. In the second half of the 1980s most of the world's ten largest banks were Japanese, and Tokyo became the richest capital market in the world, which influenced the daily mood for trading on Wall Street, a development unthinkable at the beginning of the 1980s.

Furthermore, Japan's technological dynamism is heralding an important shift in political and military relations in coming decades. In the 1980s, civilian technologies came to drive military technologies, an unforeseen development that was appreciated fully by Japanese bureaucrats only when American defense officials became increasingly insistent on having access to some of Japan's civilian technologies with potential military applications. The "spin-on" from commercial to military products is beginning to replace the "spin-off" from military to commercial products. In areas such as electronics, infrared sensors, optics, avionics, and ceramics, Japan's leading manufacturers are often well ahead of American defense corporations.<sup>2</sup> Japanese firms also enjoy a substantial lead in many aspects of technology relevant to the defense industry. The Department of Defense has been aware of this technological development since the early 1980s.<sup>3</sup> Although only a few voices anticipated that Japan would wish to exercise direct political power over the United States,<sup>4</sup> the indirect use of Japan's growing commercial-military power is another matter altogether. While the American public was mesmerized by the success of America's high-tech weapons in the Gulf War in 1991, specialists know that the victory was won with weapons that embodied the technologies of the middle to late 1970s.<sup>5</sup> While military products have a life cycle of ten to twenty years, commercial products incorporate new technologies every three to five years, or three times faster. Japanese military officers watching the war on Cable News Network (CNN) must have been very much aware that the restraints on Japan's military power are primarily political, not technological.

---

(1992).

2. PETER J. KATZENSTEIN & NOBUO OKAWARA, JAPAN'S NATIONAL SECURITY: STRUCTURES, NORMS, AND POLICY RESPONSES 148-55 (Cornell East Asia Series No. 58, 1993).

3. U.S. DEPARTMENT OF DEFENSE, CRITICAL TECHNOLOGIES PLAN FOR THE COMMITTEES ON ARMED SERVICES U.S. CONGRESS (1990); *New Priorities for U.S. Technology Policy: Hearings on S.102-32 Before the Committee on Commerce, Science, and Transportation* (1991).

4. SHINTARO ISHIHARA, THE JAPAN THAT CAN SAY NO (Frank Baldwin trans., 1991).

5. Steven K. Vogel, The United States and Japan: Technological Rivalry and Military Alliance, Address at the Institute For Global Conflict Conference—Beyond The Cold War in the Pacific, San Francisco (1990).

Finally, as a prosperous and successful trading state, Japan has developed a deep confidence in the efficacy of markets. Japan took a very different perspective toward Iraq's invasion of Kuwait than did the United States. Because of the energy efficiencies that Japan has built into its economy since the oil shock of 1973, any increase in the price of oil will enhance rather than diminish its competitiveness over Europe and, in particular, the United States. From Japan's perspective, Saddam Hussein would eventually have had to sell Iraq's and Kuwait's oil. Furthermore, since Japan could afford to pay for oil at almost any price, in contrast to the Bush administration, Japan preferred a diplomatic rather than a military solution to the Gulf conflict. Even an Iraqi assault on Saudi Arabia might not have altered the economic logic of Japanese calculations. In contrast to the United States, Japan did not give much consideration to the objective of protecting a friendly leadership of Organization of Petroleum Exporting Countries (OPEC). Japan conspicuously lacked the ideological and political instincts that guided American diplomacy in the Mideast after August 2, 1990. However, when war turned out to be unavoidable, Japan joined Saudi Arabia and Germany as one of America's most generous financial supporters.

In the foreseeable future there appear to be two limits to Japan's increasing power. First, Japan's political imagination is still too constricted to have developed a clear-cut view of Japan's role in global politics. The criticisms levied against Japan in the wake of the Gulf War and the anticipation of the substantial political changes that the end of the Cold War might bring about in Asia, are providing a strong impetus for Japan's political leadership to remedy that shortcoming. However, it is unclear whether the blueprints that undoubtedly will be generated in the coming months and years will quickly transform Japan's cautious, follow-the-leader approach to diplomacy.

Secondly, political constraints, both domestic and international, weigh against a dramatic rise in Japan's military power. Some shrill voices (magnified by American publishers with a good instinct for what it takes to sell books in Tokyo) talk of "the coming war with Japan."<sup>6</sup> However, hardly anyone in Asia or the United States takes such talk seriously at this time. Rather, the real change since the late 1970s is a gradual military

---

6. See GEORGE FRIEDMAN & MEREDITH LEBARD, *THE COMING WAR WITH JAPAN* (1991).

buildup that is creating technological options for a national strategy that did not exist ten or twenty years ago. As long as Japan is not developing interballistic missiles, stealth technologies, and offensive, conventional military power in Asia on a large scale, we can be reasonably certain that Japan will operate within the political limits that it has imposed on its exercise of military power since 1945. This policy is hardly a surprise. Japanese policymakers define national security in comprehensive terms to include economic, social, and political issues besides military considerations. They are much more attuned to finding an appropriate political role for Japan, rather than seeking to develop national military options in a world marked by decreasing international tensions. Playing a central, perhaps the central, role in an Asia that is defined so broadly as to encompass also the United States, is a far more urgent and appealing task.

#### *B. Germany*

The decline of the Soviet Union and the ascent of Germany have also been very marked trends that found visible expression in the opening of the Berlin Wall in 1989, German unification in 1990, and the promise of the withdrawal of the last Russian soldier from German territory by 1994. Several examples illustrate the drastic divergence in the political fortunes of the former Soviet Union, Russia, and Germany. German unification within the context of an integrating Europe and the Western alliance is a culmination of West Germany's foreign policy objectives as articulated by Chancellor Adenauer in the early years of the history of the Federal Republic. This German experience contrasts sharply with the breakup of the Soviet Union and the growing problems of cohesion that mark the Russia of today. Ethnic and political tensions have become very strong in the crumbling central pillars of the Russian republic. It remains to be seen whether Russia will survive this period of retrenchment and reform as a decentralized state, or whether it will in fact break apart into different sovereign states.

In economic terms as well, Germany and the Soviet Union are striking. In the winter of 1990-91 the Germans organized an unprecedented, spontaneous, massive, private economic assistance program to help stave off hunger and starvation in the major Soviet cities where food supplies were reported to be barely adequate. This assistance supplemented extensive credits from the German government that run into the tens of billions of

dollars over the next several years. Furthermore, Germany has become the most ardent advocate pressing the Soviet cause in international meetings by trying to persuade the United States and Japan, which are less than ready to develop a broadly-based international economic assistance program, to help revitalize the Soviet economy.

The contrast between the economic crisis in the Soviet Union and that in East Germany evinces the great difference between the two countries. Germany was rich enough to mobilize about 100 billion dollars for the economic reconstruction of East Germany in 1991. Moreover, over the next decade total government funding of East Germany is likely to exceed one trillion dollars.<sup>7</sup> The German economy, at first, will turn inward for a few years to repair some of the material damages that forty years of socialism have wrought. Yet few doubt that Germany will emerge from this period as one of the most powerful export economies in the global economy.<sup>8</sup>

Finally, the contrast between the Soviet Union and Germany is striking in terms of the model the two countries provide for other states in Central and Eastern Europe. The Soviet Union in 1945 offered not only a political vision to many Europeans but also had a transnational political structure, the Communist Party, through which it could affect political developments in most major European states. Forty years later, the failure of the Soviet model and that of its former satellites in Central and Eastern Europe has been so dramatic that in the foreseeable future no political leadership can hope to gain or retain positions of power under a program dedicated to building "socialism in one country." The dissolution of Comecon and the Warsaw Pact in 1991 symbolize the political exhaustion of the Soviet model.<sup>9</sup>

Germany's social market economy, on the other hand, is inspiring political confidence in Central Europe as a form of capitalism worth emulating. Economic efficiency, private affluence, and good public services in a political economy that is fully integrated into a larger Europe both

---

7. Andras Inotai, *The Economic Impact of German Reunification on Central and Eastern Europe*, 1 INST. CONTEMP. GERMAN STUD. 10-12 (June 1992).

8. INTERNATIONAL MONETARY FUND, *GERMAN UNIFICATION: ECONOMIC ISSUES* (Leslie Lipschitz & Donogh McDonald eds., December 1990).

9. See KEN JOWITT, *NEW WORLD DISORDER: THE LENINIST EXTINCTION* (1992); See Daniel Deudney & G. John Ikenberry, *THE CRISIS OF LENINISM AND THE DECLINE OF THE LEFT: THE REVOLUTION OF 1989* (Daniel Chirot ed., 1991); *The International Sources of Soviet Change*, in 16/3 INT'L SECURITY 74 (Winter 1991/92).

economically and politically—these are the targets of economic and political reform efforts throughout Central and Eastern Europe, doubly so if the reform and modernization of East Germany succeeds within the next ten to fifteen years. After the failed coup d'état in the Soviet Union, the European Community (EC) signed ten-year associate agreements with the Central European States in December 1991. These agreements illustrate that the Central European governments lack viable political alternatives in the East and place their confidence in the political models of the West, particularly in the German model.

As is true of Japan, Germany's political role in world politics will remain restricted in the coming years for two reasons. First, the end of the Cold War, as well as the Gulf War, showed deep fissures in Germany's political culture. There is no consensus about the role that Germany should play in the world. The mix between political, economic, and military dimensions of power as well as the balance between national initiatives and international obligations remain very much contested. Second, as is true of Japan, Germany is unlikely to emerge as a major independent military power in the near future. German unification brought about a fifty percent cut in the combined military strength of West and East Germany. In terms of men and equipment the Soviet forces outnumber Germany's by a ratio of about 10:1. Furthermore, contrary to the claims of some who see Germany producing a national nuclear force to protect itself against ethnic strife in Eastern Europe and in the Soviet Union, a growth in Germany's nuclear military power is highly unlikely under national auspices.<sup>10</sup> Only an integration of Europe's defense policy conceivably might make Germany part of a European deterrent force. Rather than moving back to the politics of 1912, European integration as it is reflected in the EC92 process offers Germany the chance to participate in a European regional process that will help to define its role in the world during the next century.

## II. A NEW REGIONALISM IN INTERNATIONAL POLITICS

Germany and Japan are the centers of a new regionalism in Europe and Asia that will increasingly complement the system of strategic bipolarity—as long as Europe does not unite militarily and Japan forgoes the technological

---

10. John J. Mersheimer, *Why We Will Soon Miss the Cold War*, THE ATLANTIC MONTHLY, Aug. 1990, at 35.

options it has for becoming a military superpower. This regionalism differs from Hitler's New Order and Japan's Co-Prosperity Sphere in the 1930s and 1940s,<sup>11</sup> as well as from George Orwell's nightmarish projection of a tri-polar world in 1984.<sup>12</sup> What separates the new from the old regionalism is the difference between autarchy and direct rule on the one hand and interdependence and indirect rule on the other.

#### A. East Asia

Japan's growing role in the six member states of The Association of Southeast Asian Nations (ASEAN)<sup>13</sup> can easily be traced in the areas of trade, aid, investment, and technology transfer. In the two decades preceding the Plaza Accord of 1985, Japan accounted for close to half of the total aid and direct foreign investment that the region received.<sup>14</sup> The dramatic appreciation of the yen after 1985 led to a veritable explosion of Japanese investment, which between 1985 and 1989 was twice as large as between 1951 and 1984. This flow of aid has continued to increase as Japan seeks to recycle its trade surplus with the region.<sup>15</sup> All governments in Southeast Asia are bidding for Japanese capital, as is illustrated by the massive deregulation of their economies as well as by the lucrative incentives that they are willing to grant to foreign investors. More importantly, Japan's "developmental state" has become a model of emulation in both the public and private sectors. The establishment of private trading companies and a general commitment of governments in the

---

11. ROBERT E. HERZSTEIN, *WHEN NAZI DREAMS COME TRUE: THE THIRD REICH'S INTERNAL STRUGGLE OVER THE FUTURE OF EUROPE AFTER A GERMAN VICTORY: A LOOK AT THE NAZI MENTALITY, 1939-45* (1982); *THE JAPANESE COLONIAL EMPIRE, 1895-1945*, (Ramon H. Myers and Mark R. Peattie eds., 1989); *THE JAPANESE INFORMAL EMPIRE IN CHINA, 1895-1937* (Peter Duus et al. eds., 1989); ALAN S. MILWARD, *THE GERMAN ECONOMY AT WAR* (1965); ALAN S. MILWARD, *THE NEW ORDER AND THE FRENCH ECONOMY* (1970); ALAN S. MILWARD, *WAR, ECONOMY AND SOCIETY, 1939-1945* (1977).

12. GEORGE ORWELL, *NINETEEN EIGHTY-FOUR* (1949).

13. The governments of Indonesia, Malaysia, the Philippines, Singapore, and Thailand established ASEAN in August 1967 to further economic growth, social progress, and cultural development in Southeast Asia. Brunei joined in 1984.

14. Susumu Awanohara, *Conditional Generosity*, *FAR E. ECON. REV.*, Jan. 24, 1991, at 45; Jonathan Friedland, *Preparing for the Pacific Century?*, *INSTITUTIONAL INVESTOR*, Apr. 1988, at 211, 211-13.

15. Louise do Rosario, *Drop in the Bucket*, *FAR E. ECON. REV.*, Dec. 20, 1991, at 48, 48-49.



region to vigorous policies of export promotion evince the widespread appeal of the Japanese model.

The massive inflow of Japanese investments in recent years has aggravated severe bottlenecks in the public sector infrastructures of countries like Indonesia and Thailand. These bottlenecks are turning out to be a serious impediment for the future growth of Japanese investment. Roads and ports are insufficient and need to be expanded and modernized. The same is true of national systems of communications and the public services more generally. The New AID Plan (New Asian Industries Development Plan), which Japan revealed in 1987, signals that Japan has serious, long-term interests in the region.<sup>16</sup> The Plan addresses the needs of the public sector as they relate to Japanese industrial investments, as well as to the restructuring of the Japanese economy more generally. Broadly speaking, the program offers investment incentives for selected Japanese industries to relocate to ASEAN countries. A large number of Japanese government agencies are cooperating in this plan, which makes explicit Japan's hierarchical view of the international division of labor in Southeast Asia.

To some extent this view also pervades Japan's hierarchical perception of its relations with the Newly Industrialized Countries (NICs) in Northeast Asia: South Korea, Taiwan, Hong Kong, and Singapore.<sup>17</sup> Their takeoff into self-sustaining rapid growth occurred earlier than in Southeast Asia. In some of these countries Japanese trade, aid, investment, and technology transfer were crucial for the rapid success that they have enjoyed in international markets. Japan proved to be an important model for several of these states as well.<sup>18</sup>

Increased Asian regional cooperation appears to be an idea whose time has come, at least in terms of public debate. Enhanced regional cooperation is often invoked as a necessary response to the process of European integration as well as to the U.S.-Canada Free Trade Agreement, soon to be joined by Mexico. Demands for an Asian equivalent to the Conference on

---

16. Peter J. Katzenstein & Martin Rouse, *Japan As A Regional Power in Asia*, in REGIONALISM & RIVALRY (Jeffrey A. Frankel and Miles Kahler eds., forthcoming) (manuscript at 23-26).

17. Bruce Cumings, *The Origins and Development of the Northeast Asian Political Economy: Industrial Sectors, Product Cycles, and Political Consequences*, in THE POLITICAL ECONOMY OF THE NEW ASIAN INDUSTRIALISM 44 (Fredric C. Deyo ed., 1987).

18. ALICE H. AMSOLEN, ASIA'S NEXT GIANT: SOUTH KOREA AND LATE INDUSTRIALIZATION (1989); CUMINGS, *supra* note 17; ROBERT WADE, GOVERNING THE MARKET: ECONOMIC THEORY AND THE ROLE OF GOVERNMENT IN EAST ASIAN INDUSTRIALIZATION (1990); JUNG-EN WOO, RACE TO THE SWIFT: STATE AND FINANCE IN KOREAN INDUSTRIALIZATION (1991).

Security and Cooperation in Europe (CSCE) have subsided after it became clear that in the near future the CSCE would play no more than a subordinate role in Europe.<sup>19</sup> The Asia Pacific Economic Cooperation Conference (APEC), on the other hand, held its first meeting in Canberra in December of 1989. Like the Asian Development Bank it is a forum for the discussion of economic policy and thus may turn out to be useful for strengthening regional economic cooperation.

The sharp growth in Japanese influence and power in Asia has created widespread uneasiness about the political consequences of intensifying economic relations for an emerging regional political economy. Japan's power is simply too large to be met in the foreseeable future by any coalition of Asian states. With the total GNP of ASEAN amounting to less than ten percent of Japan's GNP, a world of self-contained regions in the Northern half of the globe would leave the ASEAN members at the mercy of a Japanese colossus.<sup>20</sup> In the view of the other Asian countries only the United States can act as an indispensable counterweight to Japan's growing power.

With the U.S. Navy committed to retaining its position in East Asia and with the consolidation of U.S.-Japanese security arrangements in the 1980s, the United States is likely to remain an Asian power. Furthermore, since virtually all Asian countries run a substantial trade deficit with Japan and a large surplus with the United States, the United States is essential for regional economic integration in Asia. An Asia that includes the United States has several virtues: 1) it can diffuse the economic and political dependencies of the smaller Asian states away from Japan, and 2) it can provide Japan with the national security that makes unnecessary a major arms buildup that would engender a hostile political reaction among Japan's neighbors.

---

19. Peter W. Schulze, *Competing for European Security: The CSCE, NATO, and the European Community in a Changing International Environment*, in *THE FUTURE OF EUROPEAN SECURITY* 327 (Center for German and European Studies, University of California-Berkeley, Research Series No.84, 1991); Paul B. Stares & John D. Steinbrunner, *Cooperative Security in The New Europe*, in *THE NEW GERMANY AND THE NEW EUROPE* 218 (Paul B. Stares ed., 1992).

20. Katzenstein & Rouse, *supra* note 16, at 6.

*B. Europe*

Regionalism in Europe is a force that is better defined than in Asia. This is mostly due to the presence of the European Community and the process of accelerating European integration in preparation for the elimination of all internal barriers in 1992. Furthermore, the EC has developed such strong political momentum that neutral states such as Sweden, Finland, and Austria were targeted, as of June 1993, to become full members of the EC on January 1, 1995.<sup>21</sup> As was true of Southern Europe in the late 1970s, the emerging democracies in Central Europe look to the EC rather than to any individual European state as the political and economic anchor during their difficult period of transition. A united Germany will figure prominently in an integrating Europe. But Germany is unlikely to want to build a "Fortress Europe," a concept clear to Nazi Germany, and for that reason alone lacking political appeal and support in Germany.<sup>22</sup>

Throughout the postwar era German foreign policy has always sought to avoid having to choose between France and the United States, i.e., between the European and the Atlantic option. There is little indication that in the coming years German foreign policy will deviate from this past line. Both Germany's economic and security interests are best served by a closer European integration that does not isolate itself from the United States. In economic terms it would be outright foolishness for one of the largest export nations in the world to favor building economic barriers. Moreover, the success of American corporations operating in Europe in preparing for 1992 and the European investment strategy of Japanese firms in important industries, such as automobiles, show that trade protection is no longer a very effective instrument for isolating national or even regional markets.

Furthermore, the EC92 program excludes security policy. British and French interests may converge with German interests in building up one or several European options on questions of security policy. The political revival of the West European Union (WEU) and the growing importance of

---

21. The Swiss government announced in May 1992 its intention of joining the EC; no firm date has been set. The result of the Norwegian election of September 1993 was to put on hold Norway's application to join the EC.

22. ECKART TEICHERT, *AUTARKIE UND GROBRAUMWIRTSCHAFT IN DEUTSCHLAND 1930-1939: AUßENWIRTSCHAFTSPOLITISCHE KONZEPTIONEN ZWISCHEN WIRTSCHAFTSKRISE UND ZWEITEM WELTKRIEG* (1984).

the European pillar in NATO reflect this fact. However, German unification has probably increased French and British resolve to retain a national nuclear option and to keep the United States involved, both politically and militarily, in European affairs. Although French and British policy differ in their emphasis, on this basic point they converge with German interests. (Through NATO, an American presence in Europe, symbolically with ground forces and strategically with sea-based and possibly air-based systems of nuclear deterrence, remains of fundamental importance in Germany's security policy, at least for the foreseeable future). The CSCE is, in German eyes, potentially a useful instrument of diplomacy which supplements NATO and the EC because it avoids a narrow definition of Europe and keeps the United States, as well as Canada and the Soviet Union, involved in European, and thus German, security affairs.

Just as Germany's political weight in Europe is increasing both economically and politically, so is Europe's political weight bound to increase vis-à-vis the United States.<sup>23</sup> This redistribution of power is unlikely to find political articulation in military terms. Instead, it will be fed by the compatibility between the German model of an efficient, capitalist, democratic welfare state and a political milieu of European states organized along similar lines and subscribing to similar political values. The compatibility between the German model and the European milieu is substantial and ranks high as one of the most important German foreign policy objectives.<sup>24</sup> This was very evident in the middle and late 1970s when Germany took the most active role in trying to shape the process of transition to democracy in Southern Europe. The Southern enlargement of the EC, which contributed greatly to the success of that foreign policy, provides something of a model with which Germany and its EC partners are approaching the daunting task of assisting the much more difficult process of transition in Central Europe. Similarly, in the 1980s the European Monetary System (EMS) was a very important instrument for establishing

---

23. Schulze, *supra* note 19; Stares & Steinbrunner, *supra* note 19; RICHARD H. ULLMAN, SECURING EUROPE 148-52 (1991); GERMANY IN A NEW ERA (Gary L. Geipel ed., 1993); GREGORY F. TREVERTON, AMERICA, GERMANY AND THE FUTURE OF EUROPE (1992); THE SHAPE OF THE NEW EUROPE 51 (Gregory F. Treverton ed., 1992).

24. PETER H. MERKL, GERMAN UNIFICATION IN THE EUROPEAN CONTEXT (1993); R. OLDENBOURG, AUSSENPOLITISCHE PERSPEKTIVEN DES WESTDEUTSCHEN STAATES (1971-72); R. OLDENBOURG, REGIONALE VERFLECHTUNG DER BUNDESREPUBLIK DEUTSCHLAND: EMPIRISCHE ANALYSEN UND THEORETISCHE PROBLEME (1973).

compatibility between Germany and Europe, largely on German terms. The stability of the Deutschmark and Germany's low inflation policy, at the cost of permanently high unemployment rates, became generalized throughout Europe. The conflicts over the technical aspects as well as the timing of the European Monetary Union are thus very important, for they define the extent of compatibility between Germany and its European milieu.<sup>25</sup>

European regionalism is better defined than Asian regionalism, and it is politically more easily constructed. The EC gives a well-institutionalized vision of European regionalism favored by the relative equality between Germany and the other major European powers. On the other hand, East Asian institutions are relatively weak and of recent origin; unlike the state of equality that exists among EC-member states, Japan towers over its neighbors, which makes it difficult to cooperate in a regional framework. Significantly, the United States will be part of both the emerging East Asia and the new Europe, in economic terms no less than in security issues. As is true of Japan, the high growth trajectory of many Asian states relies on access to American markets. Furthermore, the economic stake that American corporations have built up over decades in their European subsidiaries makes the United States a silent beneficiary of the EC92 program. Economic regions in the 1990s will be compatible with an integrating global economy. In security matters, the U.S.-Japan security arrangement is an indispensable instrument for alleviating the worries of Japan's Asian neighbors about Japan's rising power. And in Europe, through NATO, the United States will retain an important military and political voice that is welcomed by virtually all European states.

### III. NORMS IN THE INTERNATIONAL SYSTEM

Different regions in world politics embody norms that are to some extent divergent. These norms are important for one simple reason: the interests in forming state policy are defined, and become intelligible to the

---

25. The disruptions in the EMS in 1992-1993 were due largely to the unresolved political conflict between the German government and the Bundesbank. A sharp increase in both public borrowing and in Germany's inflation rate led the Bundesbank to impose extremely high interest rates, thus inducing a major recession in Germany and throughout Europe. The same policy also undermined the stability of most of the European currencies linked to the exchange rate mechanism of the European Monetary System. The timetable for the creation of a European Monetary Union (EMU) will in all likelihood have to be revised quite substantially. Alternatively, the EMU may have to be scrapped altogether.

analyst, only in relation to this normative context. For example, in Japan it is typically a dynamic relationship between social and legal norms, specific to particular situations, that helps define the interests guiding policy.<sup>26</sup> This relationship makes it difficult for Japanese decisionmakers to conceive of international norms in the society of states as distinct from enlightened self-interest. In contrast, in Germany the difference between legal and social norms is much less important. In Germany legal norms often define social norms. Furthermore, the very abstract character of legal norms makes it quite easy for German decisionmakers to be politically active in an international community of states to which they feel they belong and which, in their minds, they help shape through political practices that further German interests.

#### A. Germany

The norms characterizing Germany's domestic policy of internal security are centered around the idea of the lawful state (*Rechtsstaat*), which is the central concept that forms the self-understanding of the police, the elite civil servants, and the politicians. The lawful state is an abstraction that is not based on any substantive rule of law. It is the state, not social norms or moral values, that is the foundation for Germany's legal norms.<sup>27</sup> The police do not simply enforce the law, but rather the police are the business of the state. The power of the state is legally controlled, but in the interest of defending state security this power can also be legally imposed. West Germany's Basic Law balances its commitment to the primacy of individual rights with the provision that these rights can be limited, among others, by the principle of loyalty to the constitution. Organizations hostile to the constitutional order are explicitly prohibited (Article 9,2). On questions of state security, and perhaps more broadly, the state legitimates itself. The banning of neo-Nazi and Communist parties in 1952 and 1956 as well as the political screening of civil service applicants in the 1970s and 1980s are prominent examples.<sup>28</sup>

---

26. FRANK K. UPHAM, *LAW AND SOCIAL CHANGE IN POSTWAR JAPAN* (1987).

27. PETER J. KATZENSTEIN, *WEST GERMANY'S INTERNAL SECURITY POLICY: STATE AND VIOLENCE IN THE 1970S AND 1980S* 40-42 (Cornell Center for International Studies, Western Societies Program, Occasional Paper No. 28, 1990).

28. GERRARD BRUNTHAL, *POLITICAL LOYALTY AND PUBLIC SERVICE IN WEST GERMANY* (1990); Gregg O. Kvistad, *Civil Liberties and German State Employees*, in 19 *GERMAN POL. & SOC'Y* 14-26

Germany's changing social norms are typically codified in legal language. Constitutional amendments are thus passed with great regularity. Between 1949 and 1983, forty-nine articles of the Basic Law were altered, thirty-three were added, and seven were deleted. By contrast, Japan's postwar constitution has not been altered, and the constitution of the United States has been changed only about two dozen times during the last two hundred years.<sup>29</sup>

The abstract universalism that typifies Germany's domestic norms has made it easy for German officials to view the German state as part of an international community of states seeking to protect itself. Since 1945 Germany has participated with great energy in the process of furthering the evolution of international norms and in no arena more actively than in Europe.<sup>30</sup> This active role in furthering the evolution of international legal norms since 1949 was partly a concerted attempt to regain a measure of the legitimacy that the Nazis and their international legal specialists of the New Order had squandered.<sup>31</sup> More importantly, in the last three decades this active role has been shaped by the characteristic weight that German political leaders have given to the importance of legal norms in domestic and foreign affairs.

From the perspective of the German government, Europe has combined the advantages of furthering the evolution of international norms in a setting of relative political homogeneity. For example, in the area of human rights Western Europe has developed a strong regime in comparison to other regions in the world, such as Asia.<sup>32</sup> Germany's active participation in the process of furthering the evolution of international law was also very apparent in the central role it played in developing the European Convention on the Suppression of Terrorism in 1977, arguably the most important international convention establishing international norms and procedures for combatting terrorism. The Convention was drafted by the Council of

---

(1990).

29. JÜRGEN SEIFERT, *DAS GRUNDGESETZ UND SEINE VERÄNDERUNGEN* (4th ed. 1983); JÜRGEN SIEFERT, *GRUNDGESETZ UND RESTAURATION* (3d ed. 1974).

30. KATZENSTEIN, *supra* note 27. For example, in seeking to strengthen the normative foundation of its anti-terrorist policies, the West German government took a leading role in the drafting of the European Convention on the Suppression of Terrorism.

31. Detlev F. Vagts, *International Law in the Third Reich*, 84 *AM. J. INT'L L.* 661, 661-704 (1990).

32. Jack Donnelly, *International Human Rights: A Regime Analysis*, 40 *INT'L ORG.* 599-642 (1986).

Europe based on a political initiative of the German Minister of Justice. Broadly speaking, the Convention shifts attention away from a concern with the individual right to political asylum—characteristic of the 1930s, 1940s and 1950s—toward the preoccupation with the threat of terrorism that marked the 1960s and 1970s. With some justification one critic of the Convention has argued that it is an “international manifestation of the theory of the ‘strong state’—that states hold in reserve strong and wide-ranging powers with which to suppress possible dissent. Germany particularly . . . is generally associated with this view.”<sup>33</sup>

### B. Japan

Japanese legal norms, in contrast to their German counterparts, are deeply embedded in social norms rather than being constitutive of them. Further, none of Japan’s “radical” organizations have been declared illegal since 1945—not at all the case in Germany.<sup>34</sup> Since they have cultivated close links with the Japanese public, the Japanese police lack some of the instrumentalities of police power that the German police take for granted. For example, wire-tapping in Japan is severely constrained by law, even though these legal restraints may not be uniformly adhered to, as a scandal in 1986 confirmed.<sup>35</sup> With the exception of some drug-related crimes, the use of undercover agents is constitutionally prohibited. Compared to their counterparts in Germany, the Japanese police have been very reluctant to invest heavily in high-technology search methods.

In addition, Japan has avoided passing a spate of legislation on questions of state security. In the 1970s and 1980s the Diet passed only a handful of laws or amendments dealing with internal security.<sup>36</sup> The reason for this legal passivity lies in a political stalemate over the attempt to strengthen the legal and political position of the police that dates back to the late 1950s, despite intermittent efforts by conservatives in the Liberal Democratic Party

---

33. David J. Freestone, *Legal Responses of Terrorism: Toward European Cooperation?*, in *TERRORISM: A CHALLENGE TO THE STATE* 195 (Juliet Lodge ed., 1981).

34. PETER J. KATZENSTEIN & YUTAKA TSUJINAKA, *DEFENDING THE JAPANESE STATE: STRUCTURES, NORMS AND THE POLITICAL RESPONSES TO TERRORISM AND VIOLENT SOCIAL PROTEST IN THE 1970S AND 1980S* 124-26 (Cornell University Series No. 53, 1991).

35. KAREL VAN WOLFEREN, *THE ENIGMA OF JAPANESE POWER: PEOPLE AND POLITICS IN A STATELESS NATION* (1989).

36. KATZENSTEIN & TSUJINAKA, *supra* note 34.



(LDP) to revive the issue.<sup>37</sup> Confronted with this political reality, the police have adapted Japan's practice of bureaucratic informality to cope with problems of internal security. The police practice of informality (*unyo*) does not amount simply to arbitrary police discretion. Rather, in permitting a flexible application of police powers it gives a very broad definition to the legal restraints under which the police operate. In the 1980s leading police officials explicitly noted the fact that the police strategy of providing "comprehensive security" is very self-conscious in making intelligent use of the police powers to conduct investigations under all existing laws and ordinances.

The normative context of Japan's internal security policy, in contrast to that of Germany, is not intelligible without referring to the power of public opinion. As John Haley has shown in his analysis of German and Japanese antitrust law, the conceptual basis of German jurisprudence is informed by the wrongfulness of the conduct proscribed.<sup>38</sup> The apparent interaction of legal and social norms in Germany is strikingly different from the dynamic interaction of these norms in Japan. For example, in all of its actions the Japanese police have been careful not to lose their case in the "court" of public opinion. The media are cultivated and the pulse of the public is taken regularly. Patience in the face of prolonged provocations, as in the case of the student radicals of the late 1960s, was dictated not by legal considerations but primarily by police assessment of public sentiment.<sup>39</sup> This sensitivity to the public has permitted the police to rise dramatically in the esteem and trust that the general public places in them, occasional corruption scandals notwithstanding. Further, the public's good will is reinforced by the daily activity of the police in community life as well as by the deliberate efforts of the police to convince the public that public and police are on the same side in the effort to maintain a civil society.

With only few exceptions Japan appears to be in full agreement with evolving international norms, specifically in the area of human rights. However, the social embeddedness of Japanese law and its situational logic have made it more difficult for Japan than for Germany to involve itself actively in furthering the evolution of international legal norms prohibiting

---

37. *Id.* at 125-26.

38. John O. Haley, *Antitrust Sanctions and Remedies: A Comparative Study of German and Japanese Law*, 59 WASH. L. REV. 471, 471-508 (1984).

39. KATZENSTEIN & TSUJINAKA, *supra* note 34, at 133.

terrorism. Furthermore, a strong social consensus has favored the notion of Japan's uniqueness in the contemporary international system. Japan's international isolation is such a fundamental challenge for government officials because the Western system of international law is based on the presumption of universally valid principles that do not reflect how norms work in Japan's domestic political arrangements.

The extension of the abstract universalism of German law into a larger European space has no Japanese analogue. The process appears, rather, to have worked in reverse. In certain crisis situations, such as the danger that the Japan Red Army posed while operating abroad in the 1970s, the Japanese government passed domestic legislation so that it could ratify international treaties that it had signed previously.<sup>40</sup> In this instance, international norms shaped the evolution of Japan's domestic legal norms on questions of internal security. However, the effect of these security laws had little bearing on the practical work of the police and the legal profession dealing with questions of internal security.

In contrast to Germany, in none of the international organizations has Japan taken a leading role in seeking to further international norms. Moreover, in contrast to the European experience, over the last several decades Asian regionalism has not developed organizations that might give Japan a forum in which to articulate international norms more forcefully. Japan has a conception of international norms, and like other states it seeks to generalize to the international realm the institutions and practices that express and shape its domestic norms. However, Japan's preferred avenue for accomplishing this task is not through the venue of international law but rather through the process of international technological change and diffusion.

#### IV. CONCLUSION

In sum, the globalization of law is a process of undeniable importance in the modern world. It is one important legacy of the informal American empire that is gradually receding in world politics. However, because Germany, Japan, and other states in Europe and East Asia embody different norms and are endowed with different capacities, globalization will not lead

---

40. KATZENSTEIN & TSUJINAKA, *supra* note 34, at 137.

to homogenization. The spread of legal norms will remain politically contested. European integration is driven by a legal revolution; the integration of East Asia is not. The U.S. occupation of Germany and Japan after 1945 and U.S. involvement in European and East Asian affairs have been consequential and their effects will outlast the formal influence of the United States. Yet, these effects are unlikely to overcome two defining features of international affairs after the Cold War: that global politics will be polycentric in structure, and plural in substance.