# "Yamazaki, Shoot Emperor Hirohito!" Okuzaki Kenzo's Legal Action to Abolish Chapter One (The Emperor) of Japan's Constitution

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**Okuzaki Kenzo, as featured in Hara Kazuo's film 'Yukiyukite shingun," 1987**

## Introduction

At the New Year's public opening of the Imperial Palace on January 2 1969, a Japanese war veteran by the name of Okuzaki Kenzō (1920–2005) fired three pachinko pinballs from a slingshot aimed at Emperor Hirohito who was standing 26.5 meters away on the veranda greeting about 15,000 visitors. All three hit the bottom of the veranda, missing Hirohito. Not many people seemed to notice that it was Okuzaki who fired them. Okuzaki then shot off one more, calling to the ghost of his war comrade, shouting, "Yamazaki, Shoot the Emperor (Hirohito) with a pistol!" Again he missed. Policemen on guard duty searched frantically for the perpetrator but could not identify him in the crowd. It was not certain whether Hirohito himself noticed the pinballs hitting the bottom of the veranda. Together with Hirohito, his wife Empress Ryōko, his two sons - Princes Akihito and Masahito - as well as their respective wives were also standing on the veranda, but it remains unclear whether any of them were aware of this incident.

Okuzaki approached one of the policemen frantically moving around the crowd and grabbed his arm, telling him, "It is me who shot the pinballs. Let's go to the police station." Obviously he did this intentionally, hoping to be arrested on the spot. Later he confessed that yelling "Yamazaki, Shoot the Emperor *with a pistol!*" was his tactic to attract police attention. He expected that the word "pistol" would immediately alert the police to the possibility of danger and that he would be arrested forthwith. Yet, disappointingly, this did not happen and therefore he had to ask a policeman to arrest him.[1]

**Scene of the Pachinko Ball Attack, Emperor Hirohito at the Imperial Palace, New Year 1969**

Okuzaki took this bizarre action in order to be arrested so that he could pursue Hirohito's war responsibility in the Japanese court system. In his trial, Okuzaki argued that Chapter 1 of Japan's Constitution (The Emperor), in particular Article 1, is unconstitutional.[2] Yet the judges of the Tokyo High Court, and subsequently the Supreme Court, ignored Okuzaki's argument. As far as I know, Okuzaki is the only person in Japan's modern history to legally challenge the constitutionality of the emperor system, and indeed to provide a compelling analysis.

This paper investigates how Okuzaki Kenzō, a survivor of the New Guinea Campaign of the Japanese Imperial Army, legally challenged Emperor Hirohito and his constitutional authority by pursuing his war responsibility in court. It particularly examines Okuzaki's legal claim that Chapter 1 (The Emperor) in Japan's postwar Constitution is incompatible with the fundamental principle of the Constitution elaborated in the Preamble.

## Okuzaki's Personal Background Prior to the New Guinea Campaign

In order to understand the above-mentioned bizarre incident, it is necessary to look into Okuzaki's personal background and war experience, as well as his immediate post-war life.

Okuzaki was born on February 1, 1920 in Akashi City of Hyogo Prefecture. In1930, when he was 10 years old, Japan was hit by a severe economic slump triggered by the Great Depression, which began in the U.S. in October 1929. Consequently, in the first half of the 1930s 2.5 million workers in Japan lost their jobs.[3] One was Okuzaki's father. Because of the acute poverty of Kenzo's family, he had to start work as soon as he finished his 6 years of elementary schooling. Unable to find a permanent job, he did odd jobs, mainly as a shop-boy at different shops in Kobe, Ashiya, and Nishinomiya. He also worked as a trainee seaman for two years.

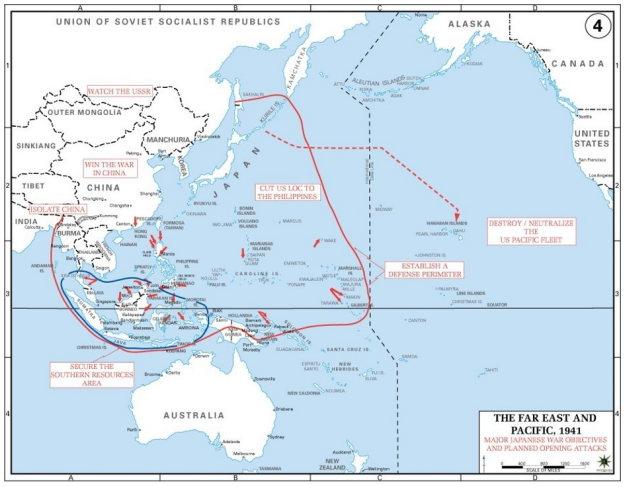
It seems that he had a strong appetite for knowledge, and when he had some spare time he read many books including the Bible. He also attended church services for a short period.[4] His interest in Christianity seemed to have contributed to creating his strong sense of justice and to formulating the unique idea of "god" he developed in the latter part of his life.

In March 1941, he was drafted into the Engineering Corps in Okayama, and as a member of a group of 60 newly conscripted soldiers he was sent to the Engineering

Division in Jiujiang in Central China. Here they received training for three months, after which they engaged in construction of bridges and roads in the occupied territories as well as occasional combat fighting against Chinese troops.

At the end of January 1943, twenty soldiers including Okuzaki were transferred to the 36th Independent Engineering Regiment (hereafter the 36th IER), and Okuzaki became one of 350 members of the 2nd Company of this Regiment. In late February of the same year, the 36th IER left China for Hansa on the north coast of East New Guinea on a convoy of transport ships, via Takao (Kao-hsiung) in Taiwan, Manila in the Philippines and the Palau.[5]

## Historical Background of the New Guinea Campaign



It is necessary to briefly look at the historical background of the Japanese Imperial Forces' campaign in New Guinea in order to understand Okuzaki's long and agonizing struggle for survival in this campaign.

Japanese war leaders, feeling exhilarated by an unexpected series of victorious battles in the first four months of the Pacific War after the Pearl Harbor Attack in December 1941, became overconfident. They swiftly expanded their war operation zone far beyond their capability to dominate it, leading eventually to the complete self-destruction of Japanese Imperial Forces.

As soon as Japan seized the entire southwest Pacific, the Navy leaders, who were initially cautious of expanding the war zone, began seriously contemplating invading Australia, believing that occupation of Australia was essential for defending the Pacific war zone. The Army leaders, preferring to save manpower and reinforce their operational capability for the future war against Soviet forces, strongly objected. As a compromise, the Navy and Army agreed to jointly carry out the Operations MO and FS in order to cut off the transportation line between the U.S. and Australia. Operation MO was designed to capture Port Moresby on the southeast coast of New Guinea by May 1942, and Operation FS was intended to seize Fiji, Samoa and New Caledonia by July that year.[6]

However, as a result of Japan's successive defeats in the battles of the Coral Sea, Midway, Guadalcanal, the Solomon Sea and the southwest Pacific between May and the end of 1942, the Imperial Headquarters called off Operation FS as well as the land attack on Port Moresby.

Yet, the Imperial Headquarters still had not given up on capturing Port Moresby. It drew up a new plan to send a large contingent of troops to Buna on the northeast coast of East New Guinea, and force them to march 360 kilometers to Port Moresby through dense jungle and the Stanley Mountains, which are 4,000 meters above sea level. For this plan, in mid-August 1942, about 15,000 soldiers from the South Seas Army Force (SSAF) and the 41st Infantry Regiment were sent to Buna. The food supply ran out within one month and the plan was a complete failure. When it was finally decided to withdraw the forces in January 1943, only 3,000 were rescued: more than 70 percent of the men had perished from starvation and tropical disease.[7]

Despite this series of colossal strategic failures of the Japanese military leaders and the resulting heavy casualties, less than a year after the opening of the war no one assumed responsibility. In fact neither the Army nor the Navy ever conducted serious studies designed to find reasons for those failures, and they made no effort to learn from them. On the contrary, Imperial Headquarters continued to provide false information to the nation regarding the state of the war. This total lack of a sense of responsibility on the part of the Japanese Imperial Forces was closely intertwined with the emperor system. Under the Imperial Constitution, the emperor, grand marshal of the Imperial Forces, was completely free from mundane responsibilities, being "sacred and inviolable." Because the head of state and the military were free from any war responsibility, no one else accepted responsibility either.[8]

Despite the disastrous failure of the plan to capture Port Moresby, the Imperial Headquarters came up with a new plan, this time to recapture Buna and seize Lae and Salamaua (Salus). Taking these three places would allow the Japanese to advance to Kerema on the south coast of New Guinea, 200 kilometers northeast of Port Moresby. After surrounding and occupying Kerema, the Japanese would then proceed to their final destination, Port Moresby. However, in order to complete even the first half of this expedition, the troops would have to march several hundred kilometers from the northeast coast to Kerema through dense jungle and mountains.

The plan was prepared by staff officers of the Imperial Headquarters in Tokyo who had no knowledge of the topography of New Guinea. They drew it up based on their own experience of warfare conducted in China, i.e., on battlefields of flat, wide and open plains. Many soldiers mobilized for this operation were also sent from Manchuria. They were utterly unfamiliar with combat in the tropical jungle environment.[9]

To carry out this inept and futile plan, from March 1943, many troops of the 18th Army landed on the northeast coast of New Guinea. Eventually as many as 148,000 soldiers were mobilized for the campaign including 1,200 soldiers of the 36th IER to which Okuzaki belonged. Most of these men wandered aimlessly about in the jungle, constantly pursued by Australian and American troops, while hovering between life and death due to lack of food, water, medicine and ammunition. Many of them even turned to cannibalism in order to survive. Eventually 135,000 men perished, mainly due to starvation and tropical diseases such as malaria and dysentery, and only 13,000 survived – the death rate was 91 percent.[10]

On the other hand, the Australian and U.S. forces had conducted a close study of the

geographical features of New Guinea and decided to fully utilize aircraft and battleships to counterattack the Japanese troops. They avoided as much as possible sending their own troops into dense jungle, being clearly aware of the dangers of jungle fighting. Instead they adopted the strategy called "leapfrog" or "stepping-stones," by which they captured and occupied only the vital strategic places on the north coast of New Guinea such as Madang, Wewak, Aitape and Hollandia. By doing so, the Australian and U.S. forces chased the Japanese troops towards the northwest coast of New Guinea by continuously conducting aerial bombing and naval bombardment. Many Japanese troops were caught between the Allied troops stationed at these places, and, while hiding in the jungle they starved to death.[11]

## Okuzaki's Desperate Struggle for Survival in New Guinea

The 36th IER, which landed at Hansa in early April, moved towards the east down to Alexishafen, where they were assigned to build an airfield. Being the rainy season, it took three months to transport all the heavy construction gear on wagons 200 kms along the trackless seacoast. By the time they arrived at Alexishafen, many soldiers were suffering from malaria and could not work. Although they managed to complete the construction of the airfield within the following few months, the Allied forces gained command of the air in this area before the end of 1943 and started bombing the airfield. The 18th Army headquarters' base on the mountain called Nagata located between Alexishafen and Madang also became the target of Allied bombing. In December 1943, the Japanese forces therefore decided to retreat to the base in Wewak, 400 kms west of Alexishafen.[12]

A long and desperate struggle for survival by Okuzaki and his fellow soldiers of the 36th IER and other troops of the 18th Army began at this point. When they reached Wewak in January 1944, they were ordered to retreat further west to Hollandia in West (Dutch) New Guinea, 400 kms from Wewak. There was a Japanese base in Aitape, which was located almost half way to Hollandia. Yet, as mentioned above, the Japanese bases in Aitape and Hollandia were attacked and taken over by the Allied forces well before the Japanese troops even reached Aitape.[13]

**A picture drawn by one of the surviving soldiers in New Guinea**

While walking in bush near Hollandia, Okuzaki was shot by a small group of Allied soldiers. His right thigh was wounded and the little finger of his right hand was severely injured. Yet, he managed to escape and still kept wandering around Hollandia for a few more days, searching for a passage towards Sarmi, a further 400km west of Hollandia. Eventually he realized that he did not have the strength to keep walking any longer and thus chose to be killed by enemy bullets. He boldly walked into Hollandia and surrendered, but he was taken prisoner and unexpectedly was treated well.

From there he was sent to a POW camp in Australia where he remained until the end of the war.[15]Walking in the jungle and taking the long way around the Allied bases, it took Okuzaki 10 months to reach Hollandia, while most of his fellow soldiers perished in the jungle. Out of 350 members of the 2nd Company of the 36th IER, only Okuzaki and one other man survived – the survival rate was less than 0.006%. The number of survivors out of 1,200 men of the entire 36th IER was a mere six – the chance of survival was 0.005%.[14]

It seems that there are at least a couple of important reasons why Okuzaki survived. First, it was because he was selected as one of about 20 men on the reconnaissance patrol of the Regiment – i.e., four or five men from each Company. Their primary mission was to locate the Japanese food deposits, most of which were in the territories already occupied by the Allied forces, and to retrieve as many provisions as possible from them.[16] It was quite a dangerous assignment, but by undertaking this task Okuzaki was able to gain sufficient food for himself from time to time. As time passed, Okuzaki and other members of this reconnaissance patrol became gradually separated from the rest of the troops as the patrol walked well ahead of them.

Eventually they were completely isolated from the many sick and starving soldiers left behind. As time passed, friction between the members of the reconnaissance patrol from different Companies also developed and eventually the patrols ceased to act in any cordinated fashion. For this reason, Okuzaki was not clearly aware at the time that cannibalism had become a widespread problem among the Japanese solders left behind in the jungle. It was not until 1982-1983, during the production of the documentary film "*Yuki Yuki te Shingun* (*Onward Holy Army*)," that he learned what had really happened among those starving fellow soldiers he had left behind.[17]

Another important factor for his survival was his personal character – a strong sense of justice and deep anger at unfairness. It is well know that, in the Japanese Imperial Forces, ill-treatment of soldiers by their officers and NCOs was endemic. *Bentatsu* (routine striking and bashing) was regarded by officers as a form of "spiritual training" for the soldiers. Defiance or mutiny by soldiers against their officers was severely punished, often brutally. Yet Okuzaki frequently resisted orders given by his superiors if he found them "unreasonable" or "unfair," and he did so even by resorting to violence. Surprisingly, his officers and NCOs did not punish Okuzaki for his behavior. It seems that, because officers and NCOs felt ashamed to publicize the fact that they were beaten by a rank-and-file soldier like Okuzaki, they remained silent. Whatever the reason, Okuzaki soon became regarded an eccentric and his "temperamental behavior" went unpunished within his own unit. Okuzaki's ability to distance himself from ironclad military rules and to maintain his independence was an important factor for his survival in the horrendous conditions of jungle warfare.

In 1969, while waiting for the trial of his "pinball incident" crime, Okuzaki wrote a long statement in preparation for the trial. He was at the time locked up in detention for many months. This statement can be called an "autobiography"; Part I is predominantly the detailed description of his horrific experience in New Guinea, and Part II is about his post-war life up to the "pinball incident" and the reasons for his action against Emperor Hirohito.[18]

Okuzaki's depiction of the one and a half years long struggle for survival in New Guinea is strikingly graphic. Despite a 24-year time lag, his memories of what happened in New Guinea were so vivid that he could describe them as if they had happened yesterday. In other words, those memories were so powerful that it was impossible to eliminate them from his mind. He

wrote of incidents such as a wild pig biting a sick soldier who could no longer stand up; a fellow soldier who had lost his mind due to an attack by a local villager with a poisoned arrow and could not stop calling Okuzaki's name for help because of acute pain and deep fear of death; a soldier suffering from malaria and starvation begging Okuzaki to shoot and kill him (Okuzaki had walked away and left him behind); his own sense of shame for having blackmailed members of the reconnaissance patrol from a different Company in order to secure food provisions for the soldiers of his own Company; one of his comrades, Yamazaki, perishing in the jungle despite his strong desire to go home and his humane concern about his fellow soldiers' fate.

In short, this statement is not a simple historical or intellectual account of the Japanese military campaign in New Guinea. Rather it is *an intense and compelling accusation of the victimization of Japanese soldiers by their own military leaders led by the Grand Marshal, Emperor Hirohito*. Although Okuzaki did not clearly express it in this statement, he was in fact suggesting that prosecutors and judges at the court, who would examine the "pinball incident," must take "responsibility for this war victimization," if they choose to condemn Okuzaki's conduct against Hirohito. In other words, the heart of his argument was the *absurdity of the war* imposed upon millions of Japanese men by the nation and the ultimate liability that Hirohito had as the head of the state and its military forces.

**The Postwar Life of Okuzaki**

In Part II of the statement, Okuzaki explains how hard he worked in order to survive in the immediate post-war economy and society. Initially he worked as a coal miner but nearly died because of an accident in the mine. Then he worked as a factory worker, and married a young widow, who was working as a caretaker of the factory's dormitory. He gradually set up a business selling car batteries.[19] Undoubtedly he was diligent, yet it seems that his long and harsh war experience made him deeply distrustful of Japanese society, in particular people who abuse their power and exploit others.

In 1951, he opened a business selling car batteries and second-hand cars in a small shop in Kobe. The business prospered, benefiting from the Korean War special procurement boom of the 1950's. As he needed larger premises for the shop, in early 1956 he decided to buy a house where he and his wife could live and run the business in the same building. He tried to secure a property through a real estate broker by the name of Nobuhara. However, Nobuhara was an infamous broker closely linked with *yakuza* gangsters. He made off with Okazaki's money and Okuzaki was unable to secure the property.[20]

Infuriated, Okuzaki decided to attack Nobuhara. As he told his wife, he was prepared to go to jail for a short period but he had no intention of killing Nobuhara. In fact he gave his wife some money and asked her to pay for Nobuhara's medical treatment if necessary. One day, Okuzaki went to see Nobuhara and stabbed him with a knife. Then he immediately took a taxi to a police station and confessed to the crime. About one hour later, while being investigated at the police station, Okuzaki was shocked learn that Nobuhara had died in hospital. Naturally he was immediately arrested.[21]

It was clearly a case of "bodily injury resulting in death," in other words "manslaughter," and according to Article 205 of the Criminal Law of Japan at the time, it was punishable by "more than two years' imprisonment." Considering the fact that Okuzaki voluntarily surrendered to the police, the prosecutors and the judge should have been lenient with him. Yet, the

prosecutors accused Okuzaki of attacking Nobuhara with a clear intention of homicide. Okuzaki's lawyer advised him to accept the prosecution's charges and express his "remorse and repentance." The solicitor said that such a humble attitude would bring a lenient judgment. In Japanese criminal trials, offenders' sincere expression of "remorse and repentance" is deemed an important factor, often leading to a lenient judgment.

Yet, Okuzaki not only refused to compromise, but sent a statement to the prosecutors and the judge claiming that "this trial is a farce or a burlesque. Prosecutors should see the real world more clearly." He was sentenced to 10 years' imprisonment, the maximum punishment for such a crime. It is obvious that his anti-authority behavior did not help him to receive a fair trial. Over the following ten years, Okuzaki submitted a request for a retrial numerous times from prison, but to no avail.[22]

## Development of Okuzaki's Ideas on Japanese Society and the Emperor System While in Prison

As a result of his defiance of the prison authorities, he spent ten years in solitary confinement in Osaka Prison. He used this state of forced isolation to read numerous books and reflect on his life, as well as to think about various social and political issues. Soon he realized that there are many "enemies of the people" like Nobuhara, yet punishing such people or eliminating them would not solve the problem. He concluded that the real "enemy of the people" is the social structure, which keeps reproducing bad people and social problems including war.[23]

That social structure is, he believed, hierarchical, with the emperor residing at the top and every corner tainted with emperor ideology. In his eyes, this fundamental nature of Japanese society had not changed after Japan's defeat in the war. Law, politics and religion still played vital roles in maintaining the inhumane social structure of the nation-state. He concluded that lawyers, politicians and religious leaders were obedient servants of the state and did not protect common people like Okuzaki. Thus he became deeply skeptical of the existing legal and political system.

Not long after he was imprisoned, he tried to gain permission from the head of the prison to send a telegram to the Minister of Justice, asking him to suspend the executions of all prisoners on death row. Following the telegram, he sought to send a statement to the Minister to explain his argument against capital punishment. He received no response to this request. Instead, he was examined by a psychiatrist, who diagnosed Okuzaki with "paranoia."[24]

He was convinced that the problem lay with the vicious structure of the Japanese nation-state that mobilized tens of thousands of men for war and sent them to their death. Yet Hirohito, the person most responsible for this national tragedy, was not only free at large but admired by many Japanese. For Okuzaki, the same Japanese social structure constantly produced soial problems inluding crime, industrial pollution, unhappiness. He believed that it was imperative to destroy this venomous social structure based on the emperor system in order to create a new world, in which all could live happily and humanely. The new world should be constructed in accordance with "god's will," based on the principle of universality, equality and absolute truth. It is not clear what he really meant by "god," as he did not elaborate upon this. He rejected state power, represented by the emperor, and claimed that people should be ruled by the principle of universality, equality and absolute truthfulness, not by the state. He did not elaborate upon "the principle of universality, equality and absolute truthfulness" either. However, here we can see a unique mixture of utopian anarchism and a

vaguely Christian religious idea.[25]

It is interesting to note that Okuzaki tried to show continuity between the wartime "Emperor Fascism" and Japan's so-called "post-war democracy." He denounced post-war Japanese society, saying that it was not democratic at all. His claim was that "democracy" by nature was not compatible with "the emperor system." He did not understand why Japanese people failed to realize this fact, which seemed self-evident to him.

The problem was that he could not articulate it lucidly, analytically or theoretically. It must have been extremely difficult to live for ten years without communicating with other people, except for a few prison guards. Although he had ample time to read, think, and write,[26] solitary confinement prevented him from discussing his ideas with other people and re-examining his own thoughts from the perspective of others. He had no one to guide his private research towards more intellectual and constructive thinking.

It is therefore not surprising that, as time passed, he became more and more firmly convinced that his own ideas on such issues as society, politics, law, religion and the emperor system were absolutely correct. Based on his uncompromising belief that Japanese society had to be completely changed, he tried to take legal action 93 times from his prison cell, petitioning the Japanese government on numerous issues over ten years. Among those issues were cases involving the abolition of capital punishment, the unconstitutionality of the Self Defense Forces and the abolition of the emperor system. Indeed he submitted six petitions against the emperor system during his prison term.[27] Although it was ironic that an anarchist like Okuzaki, who refused to recognize state power, submitted so many petitions to the government, it clearly demonstrates how deeply he felt about "injustice" in society. Sadly, however, the more obstinate his self-belief became, the more eccentric he was seen to be. This became a vicious cycle, particularly in his later life.

After his release from prison in August 1966, Okuzaki quickly re-established his business selling car batteries, working hard together with his wife. However, he was determined to disseminate as widely as possible the ideas that he had developed in prison. In pursuit of this aim, he attached banners to his business truck criticizing Hirohito as a war criminal and political statements such as "The real nature of the military and police force is violence! Nothing can be protected by violence!" Surprisingly many people expressed moral support for Okuzaki's action. Encouraged by this, he contemplated taking some kind of "non-violent" action against Hirohito in order to publicize his idea of abolishing the emperor system and establishing a new society. At the end of December 1968, two years four months after his release from prison, he told only his wife of his plan, saying that there was no need to worry, as he had no intention to harm Hirohito.[28]

## Okuzaki's Solitary Battle Against Hirohito and the Emperor System

Okuzaki reasoned, however, that "because the emperor is the symbol of evil in modern society . . . , killing Hirohito per se would not solve the problem unless the current form of society, which keeps producing new emperors as well as imperial features in various places in society, would be fundamentally reformed." Therefore he was not prepared to sacrifice his own life for such a futile act as killing Hirohito. His goal was to be arrested and have a chance to let the Japanese people know about his "idea of a new world without the emperor system."[29]He knew that there was little likelihood that the pinballs aimed at Hirohito from a distance were likely to hit him. Even if they hit him, he thought it unlikely that

Hirohito would be seriously injured. He nevertheless believed that "Hirohito deserves capital punishment for his crime of driving hundreds of thousands of Japanese men to their death in war." He wrote that he would not mind killing Hirohito and even consequently receiving capital punishment himself "if that would bring truly eternal peace, freedom, and happiness to us."

He succeeded in being arrested, yet, as mentioned above, few people around him noticed what Okuzaki had done while they were happily greeting the emperor and his family. Moreover, not even many among the 2,000 policemen standing guard became aware of what was happening at the time. The following day, all major national newspapers reported the incident, but all claimed that it was an act committed by a man suffering from paranoid personality disorder and amnesia, who had a criminal record of murdering a real estate broker. The *Mainichi Newspaper* was the only one to mention that Okuzaki was a survivor of the New Guinea Campaign in the Asia-Pacific War and that he had submitted six petitions holding the emperor responsible for the deaths of Japanese soldiers and calling for the abolition of the emperor system.[30] Therefore, Okuzaki's intention of politicizing his action against Hirohito and propagating his idea of establishing a new society miserably failed. In this sense, it was not Okuzaki but the majority of the Japanese population who were suffering from *amnesia* – i.e., remaining oblivious to the wartime suffering and the responsibility for it.

Shortly after Okuzaki's arrest, he was sent to a psychiatric hospital for about two months. It seems that the prosecutors were trying to dismiss the case by handling it as "an act committed by a person suffering from paranoia and amnesia" in order to avoid a trial. The prosecutors may have realized that the trial of Okuzaki could become politically sensitive because it directly involved the person of Emperor Hirohito. Yet, since medical specialists did not diagnose Okuzaki as "psychopathic," he was deemed capable of standing trial and so the trial had to be conducted.

The trial began in mid January 1970. In a minor assault case in which no injury occurs, the accused is usually released on bail prior to the trial. In fact, the Tokyo District Court accepted Okuzaki's application for bail on January 24 1971, more than a year after he was arrested. However, the Tokyo High Court overruled it and therefore Okuzaki was not released until his second trial was completed on October 7, 1971. He was therefore detained for one year and ten months including two months in a psychiatric hospital.

## Okuzaki's Court Battle Against Hirohito

It seems that such harsh treatment of Okuzaki was due to the fact that the target of Okuzaki's act of violence was not a common citizen but the emperor. If so, this was a violation of Article 14 of the Constitution of Japan, which guarantees the equality of all Japanese citizens under the law and forbids discrimination in political, economic or social relations because of race, creed, sex, *social status or family origin*. In other words, even the emperor must be treated equally as a Japanese citizen, otherwise Japanese citizens would be discriminated against on the grounds of "social

status and family origin." It seems that prosecutors and judges in the late 1960th were still under the influence of the old-fashioned concept of *lese majesty* (*fukeizai,* the crime of violating *majesty*, an offence against the dignity of a reigning sovereign) of the former Meiji Constitution.[31] It can be said that, even before the trial actually started, the Okuzaki case clearly reflected an idea expressed by George Orwell's phrase in *Anima Farm,* "All animals are equal but some animals are more equal than others."

This trial is apparently the first and thus far the only case to involve the emperor personally under the new Constitution and after abolition of *lese majesty* in 1946. The prosecutors accused Okuzaki of committing a crime of assault against the emperor. *A crime of assault* is legally defined as a crime committed against "a natural person," and therefore the emperor should also be regarded as a natural person, i.e., an individual, equal to all other Japanese citizens. Otherwise, as mentioned above, it would be a violation of Article 14 of Japan's Constitution. Yet, in the indictment, the emperor's personal name "Hirohito" was never mentioned, and only the term "Emperor" was used. In other words, the emperor was considered as some kind of "divine creature" and not as "a natural person." It was and still is a custom in Japan not to mention the emperor's personal name in public including newspapers and magazines because calling the emperor by his personal name is regarded discourteous.

Okuzaki and his lawyer strongly argued that "the crime victim" must be clearly identified as an individual in order to clarify the nature of the crime. Judge Nishimura Nori was sympathetic with this argument and advised the prosecutors to use the emperor's individual name. The prosecutors refused to accept the judge's advice. They appeared to see it as taboo to use the emperor's personal name. Indeed, they claimed that the crime victim was "the emperor as a natural person, who is in the position of emperor," and "there is no need to clarify his name as everyone knows who he is."[32] If that logic were followed it would mean that personal names of all the public figures such as Prime Minister, the Governor of Tokyo, and Vice Chancellor of Tokyo University would not be required in court cases. Clearly, the intention of the prosecutors was to preserve the special position of the emperor as opposed to Japanese citizens.

It was also extraordinary that the prosecutors presented no testimony of the crime victim, indeed, no evidence at all. It was and still is unimaginable to conduct the trial of a crime of assault without the victim's testimony concerning the crime as well as his/her personal feeling as a victim. A crime of assault may provoke in a victim fear, anxiety or anger toward the perpetrator, even when no injury occurs. Thus it is essential to examine the experience and the feelings of the target of the assault. Without examining such essential matters, it cannot be proved that a crime of assault actually took place, and the court cannot assess the seriousness of the crime or the appropriate penalty. Nevertheless, the court heard only a limited number of eyewitnesses – several people from the crowd and a policeman whom Okuzaki approached after he shot the pinballs. No one testified against Okuzaki identifying him as the perpetrator of the assault and not a single affidavit was submitted. Indeed, the prosecutors did not even try to obtain Hirohito's affidavit.[33]

Okuzaki requested that Hirohito appear as a witness, claiming that he had a right to a fair trial and to summon all the witnesses he required. He also submitted the following questions he wished to ask Hirohito during cross-examination.[34]

1. Name, Position and Career of the witness.
2. Do you know the accused Okuzaki

Kenzo?
3. Did you notice that the accused shot pinballs towards the right-hand side of the veranda of the Imperial Palace, where you and your family members were standing at the New Year's public opening of the Imperial Palace on January 2, 1969?
4. Did you know who on the veranda the pinballs were aimed at? Did you think that they were aimed at you?
5. After this incident, did you read any press reports or watched TV news concerning the accused action? Have you received any account of this incident from your chamberlains? Have you ever discussed this incident with your family members? Have you ever seriously thought over this incident?
6. Do you know that the accused is one of the surviving rank-and-file soldiers of the Imperial Army, who were drafted into the Pacific War conducted under the name of "the Holy War," fought in New Guinea, wounded and narrowly escaped death?
7. As a fellow human being, how do you explain the fact that you were the Supreme Commander of the Imperial Forces (the so-called "Holy Army") in which the accused was drafted, and that the above-mentioned war was conducted under your authority, and that the accused was one of the victims of the above-mentioned war?
8. How do you respond to the fact that the action by the accused was carried out to console the spirits of tens of thousands of his comrades who died as a result of starvation and injuries in New Guinea, and as a memorial service for them?
9. You are regarded as the victim of this incident. How do you assess the action carried out by the accused? Do you wish for clemency for the accused or punishment of the accused? How do your family members, who were together with you on the veranda, feel about this incident?
10. Other relevant questions.

The prosecutors opposed Okuzaki's request to cross-examine Hirohito without explanation. Judge Nishimura also rejected the request, simply claiming "there is no necessity to do that." When his request for summoning Hirohito was rejected, Okuzaki dismissed his lawyer and from this point the trial continued without a lawyer for the defense. By dismissing his lawyer, Okuzaki probably wanted to show his strong disapproval of the exercise of state power and the legal authority of the state. He might have thought that even his lawyer was part of the legal authority and thus of the state apparatus.[35]

As a result of this unexpected action by Okuzaki cross-examinations of witnesses including Hirohito – scholars, writers, war veterans, and relatives of the soldiers killed in action – were not conducted at all. It seems that Okuzaki could not organize those witnesses without his lawyer's assistance. Thus the trial was concluded *without identifying the name of the crime victim, without presenting the testimony of the victim, and without cross-examining the witnesses the accused requested*. In other words, this was an extraordinary trial case, which can be called a quasi-trial of *lese majesty*. Strictly speaking, it appears to have been an unconstitutional trial, in which prosecutors tried to punish Okuzaki by applying *lese majesty*, despite the fact that such crime had been abolished in 1946.

It was also extraordinary that the prosecutors demanded three years imprisonment for the accused when the maximum punishment for a crime of assault at that time was two years imprisonment. Although, in the judgment handed down on June 8 1971, Judge Nishimura acknowledged that Okuzaki's motivation for his action against Hirohito was to condemn Hirohito's war responsibility, he did not discuss whether Hirohito himself was partly

accountable for inducing Okuzaki's crime. Judge Nishimura claimed "considering relevant matters directly related to the case in question such as the motivation of the accused, circumstances, behavior as well as the purpose of Article 14 of the Constitution, it is improper to impose a sentence that exceeds the punishment stipulated by Article 208 of the Criminal Law, which the prosecutors demand ……"[36]

Thus Okuzaki was sentenced to one and a half years imprisonment with credit for the 180 days spent in detention, although he had already spent more than one year in detention by then. This gave the impression that Judge Nishimura paid attention to Article 14 of the Constitution and thus treated Okuzaki and Hirohito equally as "natural persons." Yet in the same judgment he discriminated against Okuzaki by treating Hirohito preferentially, stating that it was "a well prepared and planned crime carried out *against the Emperor*, ….. *therefore the criminal liability of the accused is serious.*"[37] Moreover, as already noted, the way that the trial was conducted as a whole appears to have been unconstitutional.

On June 8, 1970, i.e., the same day the judgment was handed down, both Okuzaki and the prosecutors' office appealed to the Tokyo High Court. This second trial, which was conducted by three judges – Chief Justice Kurimoto Kazuo, Judge Ogawa Izumi and Judge Fujii Kazuo, concluded on October 7, 1970. Okuzaki was found guilty again, and in the final judgment the judges strongly agreed with the prosecutors' opinion that "the case in question is a crime committed against the Emperor, who is the symbol of the state and of the unity of the people as defined in the Constitution of Japan, and therefore it is a crime of a vicious nature with serious impact on society."[38]

In other words, the judges condemned Okuzaki's act a crime violating Article 1 of the Constitution. Yet, there is no such "crime against the symbol of the state and of the unity of the people" defined by present Japanese criminal law. As *lese majesty* was abolished in 1946, Okuzaki's act could not be regarded as a criminal act except as a "crime of assault" under the current law. Therefore, as noted above, it is undoubtedly a violation of Article 14 of the Constitution to regard an act of assault against the emperor as particularly grave and serious in comparison with the same act committed against an ordinary Japanese citizen. Indeed, in this final judgment, unlike the judgment of the first trial, there was no reference at all to Article 14 of the Constitution. This judgment thus appeared a stronger application of *lese majesty* in comparison with the judgment of the first trial, and thus unconstitutional.

Nevertheless, as far as the actual penalty imposed upon Okuzaki was concerned, the final judgment supported the judgment of the first trial, i.e., one and a half years imprisonment, and rejected the prosecutors' demand for three years imprisonment as an excess over the legally specified maximum punishment. Furthermore, it gave credit for one and a half years spent in detention instead of 180 days. That allowed Okuzaki to be released immediately.[39] In this way, the reaction of the judges of the Tokyo High Court to this first criminal case committed against the emperor after the war was a strange mixture of the old fashioned idea of *lese majesty* and respect for the Criminal Law formulated under the new post-war Constitution promulgated in 1946.

## Okuzaki's Denunciation of Article 1 of the Constitution of Japan defining the position of the Emperor

Interestingly, Okuzaki's struggle against Hirohito and the emperor system did not stop here. Soon he appealed to the Supreme Court. In his appeal, he stated:

> Both the prosecutors and judges, who indicted or sentenced me at the first and second trials, respect the person, whom they regard as a victim of the case in question, as the *Emperor.* However, according to the Preamble of the Constitution, "we reject and revoke all constitutions, laws, ordinances, and rescripts in conflict" with the "universal principle of mankind." ***It is our clear common understanding that the existence of the emperor is in conflict with the "universal principle of mankind." The emperor's authority, value, legitimacy and life are only temporary, partial, relative and subjective.*** Therefore, the fundamental nature of the emperor is absolutely, objectively, entirely and permanently *depraved.* Hence, Articles 1 to 8 of the current Constitution, which endorse the existence of the emperor, are definitely invalid. For a person with normal discernment and mind, those Articles are nonsensical, obsolete and foolish …… (emphasis added)[40]

This is an extremely powerful and logical argument, and as far as I know, so far no one has ever deliberated such a compelling denunciation of Chapter 1 (Articles 1 – 8) "The Emperor" of the Constitution of Japan. In the same appeal, Okuzaki also stated that both of his previous trials were violations of Article 14 and Article 37. Article 37 guarantees Japanese citizens' right to a fair trial.[41]

On April 1 1971, the Supreme Court (Chief Judge Ōsumi Kenichirō, Judge Iwata Makoto, Judge Fujibayashi Masuzō, and Judge Shimoda Takezō) dismissed Okuzaki's appeal in a very short statement (five lines). It claimed that Okuzaki's argument on the invalidity of Articles 1 to 8 of the Constitution was "irrelevant to his case pertaining to Article 405 of the Criminal Law," and that his condemnation of the violation of Articles 14 and 37 is simply due to his "misunderstanding of fact." It gave no explanation whatsoever as to *why* Okuzaki's argument was irrelevant, or what he had misunderstood.[42]

Such an abrupt statement by the judges gives an impression that they did not take Okuzaki's case as a serious legal challenge to the Constitution. Or it could be speculated that Okuzaki's argument was so forceful and compelling that they were incapable of refuting it. In fact, during the second trial, Okuzaki presented a similar argument on the denunciation of Article 1 of the Constitution of Japan, but the judges of the Tokyo High Court claimed that Article 1 explains that the emperor's position derives "from the will of the people with whom resides sovereign power" and therefore it does not contradict the Preamble.[43] It is obvious, however, that the judges of the Tokyo High Court also avoided discussing the crucial issue, i.e., the contradiction between the universal principle of mankind and the emperor system that Okuzaki had sharply pointed out.

In order to truly understand Okuzaki's discussion of the relationship between the universal principle of mankind and the fundamental nature of the emperor system, we need to read the entire first paragraph of the Preamble including the part Okuzaki used in his appeal to the Supreme Court.

> "We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and ***resolved that never again shall we be visited with the horrors of war through the action of government,*** do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people,

> the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. ***This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith".*** (emphasis added)

As elaborated in the second paragraph of the Preamble, this universal principle of mankind also includes "*the preservation of peace; the banishment of tyranny and slavery, oppression and intolerance for all time from the earth; and the right to live in peace, free from fear and want.*" In Okuzaki's mind, if we have truly "resolved that never again shall we be visited with the horrors of war through the action of government," why is the person most responsible for causing "horrors of war" still free from punishment for his role as commander in chief in the Asia-Pacific War? If we have decided that we abide by the principle of mankind, why does such an irresponsible person, who destroyed peace, created tyranny, slavery, oppression and intolerance, and violated the right of many Japanese and Asian people to live in peace, free from fear and want, still enjoy the prestige defined by the Constitution supposedly established upon the universal principle of mankind?

In other words, Okuzaki was clearly pointing out the inherent contradiction between the basic philosophy of the Constitution and its Article 1 "The Emperor." Although Okuzaki did not discuss the source of this contradiction, it was undeniably created by the GHQ of the US Occupation Forces of Japan which decided to acquit Hirohito of his war crimes in order to politically exploit his majesty for the smooth control of post-war Japan, and to present him as a symbol of "peaceful post-war Japan" for the purpose of American benefit.[44]

As mentioned above, no one except Okuzaki has challenged the constitutionality of the emperor so vigorously and persistently. Post-war Japan produced many eminent writers, who produced novels and semi-autobiographies based on their own experiences as Imperial soldiers. Among them are Ōoka Shōhei, Noma Hiroshi, Gomikawa Jumpei, and Shiroyama Saburō, who conveyed strong anti-war sentiment thorough their moving stories. Some former soldiers, in particular those returned from China several years after the war, having been re-educated by the Chinese communist government, published honest and critical accounts of atrocities they themselves committed.[45] Yet, they hardly discussed Emperor Hirohito's war responsibility, and virtually none of them questioned the post-war constitutionality of the emperor.

Watanabe Kiyoshi, a survivor of the battleship Musashi destroyed and sunk by the U.S. forces in the Battle of Leyte Gulf in October 1944, wrote excellent essays for many years after the war, criticizing Hirohito's performance during and after the war. As far as I know he was the only former soldier, who sent a long open letter to Hirohito in 1961, harshly questioning him about his involvement in decision-making in various stages of the Asia-Pacific War. It is an excellent historical analysis of Hirohito's war responsibility based on Watanabe's thorough research of military and other official records. At the end of this open letter, however, Watanabe demanded that Hirohito abdicate the throne in order to show sincerity for his war responsibility, but did not question the constitutionality of Hirohito's status as the emperor.[46]

Furthermore, as far as I know, no constitutional scholar in Japan has ever discussed the issue of the constitutionality of the emperor. We Japanese need to ask ourselves *why* we have failed to question such a crucial matter. It surely has to be faced if we are to establish a democratic society based upon a genuinely

democratic constitution.

## Conclusion: Who is Responsible for Creating an "Eccentric Person" like Okuzaki?

It is sad to see that Okuzaki, who had such a sharp mind, strong will and fervent sense of justice, broke down as a human being after the failure of this legal battle, which was fought for the purpose of promoting his bold idea of establishing "a happy and peaceful society without the emperor system." The more people viewed Okuzaki as eccentric with extreme ideas, the more self-righteous and anti-authority he became, in particular toward lawyers and politicians. Okuzaki not only verbally condemned all who disagreed with him, but often resorted to violence in order to compel others to accept his ideas.

This is clear when we view his performance in the documentary film "*Yuki Yuki te Shingun*" produced between 1982 and 83. The dilemma and irony for viewers of this documentary film is that, without using violence to make former officers confess, Okuzaki probably could not reveal the fact that two of his comrades were executed by their officers 23 days after Japan officially surrendered to the Allied forces. Although they were executed on the excuse of "desertion in the face of the enemy," the real reason was that they had refused to participate in group-cannibalism in New Guinea during the war. Officers wanted to silence them to cover up this dreadful fact.

Okuzaki believed that his idea was absolutely and always right, and eventually he saw himself as a martyr, who had a duty to follow a sacred calling from his "god" – a calling to establish a free, egalitarian and happy society like the utopia that Thomas More described, in which no one is controlled or exploited by anyone else. In December 1983, he committed manslaughter again – killing a son of former officer Muramoto Masao, who gave an order to execute the above-mentioned two soldiers. For this crime he was imprisoned again for 12 years.

Undoubtedly war, in particular, war of aggression, is an act of madness. Regardless of the official reason for the war, one cannot kill so many people without deadening the conscience of society. At the same time, one cannot be prepared to be killed unless one is prepared to kill others. For Okuzaki, who was forced to experience the madness of war and saw many people dying in front of his eyes, it was unimaginable that the person, who was most responsible for creating such madness and driving hundreds of thousands of fellow human beings to their deaths, seemed to have no conscience and no sense of accountability at all. Equally unimaginable to Okuzaki was the fact that society shielded the emperor from responsibility for the deaths of millions.

Indeed, while Okuzaki's acts of violence against a few individuals bore opprobrium in postwar Japan, the person who created the madness of war that took the lives of millions continued to be venerated by the people as the symbol of a peaceful nation. For Okuzaki, this situation itself was mad. It must have been extremely difficult for him to encounter this madness, particularly to accept the fact that the large majority of his fellow citizens, including many former soldiers who had experienced that madness and saw their comrades die in vast numbers even as they barely survived themselves, saw this as neither "mad" nor "absurd."

For Okuzaki, people who considered him eccentric and appalling had failed to understand the madness of war. "How could you forget this madness?" We can vividly feel Okuzaki's intense anger when we read his appeal to the Supreme Court, or see the documentary film "*Yuki Yuki te Shingun*."

***"How could you forget this madness?"* Okuzaki's anger is palpable. But so engrossed did he become in pursuing Hirohito's war responsibility that he lost the ability to remember his own responsibility to respect the lives and basic human rights of others.**

The problem was, however, because he was so engrossed in pursuing the war responsibility of Hirohito and others that he lost the sanity of remembering his own responsibility to respect the lives and basic human rights of others. Indeed, he paid little attention to the fact that the war victims were not only Japanese soldiers but also many civilians, in particular those killed by indiscriminate bombings conducted by the US forces in the final stage of the war. Similarly, he hardly commented on the deaths of millions of Asian people, i.e., the victims of Japan's atrocious war conduct. In other words, he was not really capable of internalizing the pain of war victims other than his own fellow soldiers.

Therefore, we need to remember that we Japanese including Hirohito, who have failed to internalize the pain of war victims as our own and to carefully pursue Japan's war responsibility, are indeed responsible for creating a contradictory, complex and difficult person like Okuzaki Kenzō.
We may need to learn from Okuzaki's life that we should not forget that the madness of war actually paralyzes our sanity to understand how mad and absurd all wars are.

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# Notes

[1] Okuzaki Kenzō, 'Chinjyutsu Sho (Statement for the Preparation of the Trial)' (hereafter, Okuzaki's Statement) in *Yamazaki Tennō o Ute* (Shinsen-sha, Tokyo, 1987) pp.205-207.
[2] Chapter I The Emperor of Japan's Constitution: Article 1. The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people

with whom resides sovereign power. Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet. Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor. Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government. The Emperor may delegate the performance of his acts in matters of state as may be provided by law. Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable. Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet. The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet. Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people: Promulgation of amendments of the constitution, laws, cabinet orders and treaties. Convocation of the Diet. Dissolution of the House of Representatives. Proclamation of general election of members of the Diet. Attestation of the appointment and dismissal of Ministers of State and other officials as provided for bylaw, and of full powers and credentials of Ambassadors and Ministers. Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights. Awarding of honors. Attestation of instruments of ratification and other diplomatic documents as provided for by law. Receiving foreign ambassadors and ministers. Performance of ceremonial functions. Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

[3] Mori Takemaro, *Ajia Taiheiyō Sensō* (Syuei-sha, Tokyo, 1997) pp.50-52.

[4] Okuzaki's Statement, pp.5-6.

[5] Ibid., pp.7-10.

[6] Mori Takemaro, op.cit.,p186.; Fujiwara Akira, *Gashi-shita Eirei-tachi* (Aoki-shoten, Tokyo, 2001) pp.35-37.

[7] Fujiwara, op.cit., pp.41-47. Around the same time, the Japanese Imperial Army made a similar grave error on Guadalcanal Island. In early July 1942, the Imperial Navy sent approximately 3,000 troops plus 2,200 Korean forced laborers and Japanese construction specialists to build a large airfield at Lunga Point on Guadalcanal Island of the Solomon Islands - a vital point for the Allied forces to connect the U.S. and Australia. On August 7, shortly before the completion of the airfield, 11,000 U.S. Marines suddenly landed on Guadalcanal, capturing it as well as the nearby island of Tulagi. In repeated attempts to recapture Guadalcanal in the following six months, the Japanese continued to send lightly equipped troops without gathering sufficient information about the strength and activities of U.S. forces on the island. In addition, given US supremacy in the air and at sea in this region, the Japanese could not transport adequate ammunition, food and medical supplies to support their troops. By the time the Japanese abandoned Guadalcanal in February 1943, 20,860 of the 31,400 soldiers sent there had perished: about 15,000 of this total death toll were victims of starvation and tropical disease. For more details on the Battle of Guadalcanal, see Eguchi Kei-ichi, *15 Nen Sensō Shō-shi* (Aoki Shoten, Tokyo, 1991) pp.191-193.

[8] Concerning the inter-relationship between the lack of a clear sense of responsibility among Japanese military leaders and the emperor system, see Yuki Tanaka, *Kenshō Sengo Minshu-*

*shugi: Naze Watashi-tachi wa Sensō Sekinin Mondai o Kaiketsu dekinai no ka* (Sanichi- Shobo, Tokyo, 2019) pp.139-145.
[9] Fujiwara Akira, op.cit., pp.52-54.
[10] Ibid., p.51.
[11] Peter Charlton, *War Against Japan 1942-1945* (Time-Life Books Australia, Sydney, 1989) Chapter 4 'Taking the Huon Peninsular,' pp.112-129.
[12] Okuzaki's Statement, pp.12-14.
[13] Ibid., pp.17-19.
[14] Ibid., p.100.
[15] Ibid., pp.64-102.
[16] Ibid., p.30.
[17] The film revealed that two soldiers of the 36th IER were executed for the crime of "desertion in the face of the enemy" 23 days after the official surrender of Japan. The film implied that the two men were killed by their officers because they ran away in order to avoid participating in group cannibalism. For details of widespread cannibalism among Japanese soldiers in New Guinea, see Yuki Tanaka, *Hidden Horrors: Japanese War Crimes in World War II Second edition* (Rowman & Littlefield, 2017) Chapter 4 'Judge Webb and Japanese Cannibalism.'
[18] Okuzaki's Statement, Part I, pp.5-123, and Part II, pp.125-207.
[19] Ibid., pp.125-139.
[20] Ibid., pp.139-143.
[21] Ibid., pp.144-154.
[22] Ibid., pp.162-164.
[23] Ibid., pp.166-168.
[24] Ibid., p.177.
[25] Ibid., pp.168-176, 184-192.
[26] In ten years, he wrote down numerous ideas, comments and thousands of short poems in 36 thick notebooks. Some of these writings were truly remarkable; e.g., "It is much more courageous to become a POW rather than to be killed on a battlefield, controlled by confused mass psychology. Indeed, becoming a POW is a far more respectable human action. However, the most courageous thing to do is to absolutely refuse to go to war and kill enemies." "I am prepared to sacrifice myself for eliminating the emperor but not for the emperor." "Sadly human beings are controlled by the environment that they themselves create." "Happiness gained at the sacrifice of oneself or others is relative, improper, unsuitable, unnatural, impious, anti-social, irrational, emotional, beastly, and inhumane. Therefore it does not last very long, and sooner or later it turns into unhappiness for everyone. As any happiness in an unequal society is directly or indirectly created at the sacrifice of oneself or others, it is momentary, finite, toxic, and numbing." Some of these texts are reproduced in his book *Yuki Yuki te Shingun no Shisō* (Shinsen-sha, Tokyo, 1987)
[27] Ide Magoroku, 'Okuzaki Kenzō ni kansuru Oboegaki' in Okuzaki Kenzō, *Yamazaki Tennō o Ute,* p.245.
[28] Okuzaki's Statement, p.202.
[29] Ibid., pp.168-174.
[30] *Mainichi Shimbun,* January 3, 1969.

[31] *Fukeizai,* the crime of violating lese *majesty*, was officially abolished when Japan's new constitution took effect in May 1947. According to *Fukeizai* defined by Article 74 of the Meiji Criminal Law established in 1880, a person who committed an insulting or disrespectful act against the emperor, another member of the royal family or a shinto shrine belonging to the royal family was punishable for a maximum penalty of 5 years in prison. However, GHQ had regarded this law as extremely undemocratic and cruel, so already in May 1946 it instructed the Japanese government not to apply it to any legal case. In fact the judges of the Tokyo District Court contemplated punishing Matsushima Matsutaro with *fukeizai*, for participating in a mass political demonstration on May Day 1946 held near the Imperial Palace, holding a placard condemning Hirohito personally. The placard said that Hirohito was eating plentifully when the rest of the nation was starving. The judges tried Matsushima and pronounced him guilty of "defamation" of Hirohito, not of *fukeizai*. For details of the trial of Matsushima, see Yuki Tanaka, op.cit., pp.271-274.
[32] Okuzaki Kenzō, *Yamazaki Tennō o Ute,* pp.214-215.
[33] Ibid., pp.215-216.
[34] Ibid., pp.216-218.
[35] Ibid., p.219.
[36] Okuzaki Kenzō, *Yamazaki Tennō o Ute*, p.230; Hoshino Yasusaburō, 'Tenno-sei Hantai Jiken' in his book, *Zoku Nippon no Kenpō Hanrei: Sono Kagakuteki Kentō* (Tokyo Keibundō, Tokyo 1972) p.278.
[37] Hoshino Yasusaburō, op.cit., p.278.
[38] Ibid., 279.
[39] Ibid., p.280.
[40] Ibid., p.280-281.
[41] Ibid., p.281. Article 37 of the Constitution of Japan: 'In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.'
[42] Okuzaki Kenzō, *Yamazaki Tennō o Ute*, p.238. The Supreme Court judges did not even bother to utilize a minority argument that the Preamble is not formally part of the Constitution or law but simply a basic idea or philosophy embodying the Constitution.
[43] Okuzaki Kenzō, *Yamazaki Tennō o Ute*, p.233.
[44] For a more detailed analysis of the deep contradiction between the basic philosophy of Japan's Constitution elaborated upon in the Preamble and Article 1 "Emperor," and of the historical reason why such illogicality was embedded in the Constitution, see Yuki Tanaka, op.cit., Chapter 3, pp.169-230.
[45] Some testimonies written by these former Japanese soldiers stationed in China are available, for example, in the book, Arai Toshio and Fujiwara Akira ed., *Shinryaku no Shōgen: Chugoku ni okeru Nippon-jin Senpan Jihitsu Kyōjyusho* (Iwanami Shoten, Tokyo, 1999).
[46] Watanabe Kiyoshi, 'Tennō Hirohito e no Kōkai Shokan' in his book, *Watashi no Tennō Kan* (Keisō Shobō, Tokyo, 1981) pp.21-72.