

The Hidden Logic of the US Occupation of Japan: Lessons from the School of Military Government

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The American occupation of Japan (1945-1952) was an anomaly under international law. Japan, with all of its government institutions intact, surrendered before Allied troops had set foot on the Japanese mainland. The Instrument of Surrender which ended active hostilities proclaimed Japan's unconditional surrender to the Allied forces, but was framed as a voluntary submission to the authority of the Supreme Commander of the Allied Powers. This was an unprecedented kind of military occupation.¹ International law at the time regarded occupation and the military government employed to administer it as tools of wartime control used under belligerent conditions.²

A central provision of the law of occupation was the principle of military necessity. Occupying forces were only supposed to undertake measures in an occupied territory which were militarily required to achieve the objectives of the occupation. The objectives were themselves supposed to be military in nature – neutralizing enemy forces, securing supply lines, and providing for the safety of troops in the occupied zone. The exact actions an occupying force could undertake under this principle of military necessity were ambiguous. In theory, the principle of military necessity was supposed to prevent an occupying army from completely overhauling the constitutional order, political institutions, and social establishments of the

¹ Eiji Takemae, *Inside GHQ: The Allied Occupation of Japan and Its Legacy*. Translated by Robert Ricketts and Sebastian Swann (New York: Continuum, 2002), 232.

² Id.

occupied state. Occupation, it was said, did not transfer sovereignty, the authority of a state to govern itself, to the occupying forces.³

Yet in Japan, the American military under the leadership of General Douglas MacArthur introduced sweeping political, economic, and social reforms. MacArthur was following orders issued by the Joint Chiefs of Staff in the Basic Directive, a document laying out all of the reforms MacArthur would need to carry out to ensure that Japan could never again be a military threat to the United States. Although framed in terms of military necessity, the Basic Directive contained provisions ordering MacArthur to implement changes that went well beyond the scope of what a conventional understanding of military necessity allowed, including the enshrinement of religious liberty, the promotion of democratic forms of government, and extensive educational reform. MacArthur took full advantage of the broad authority the Basic Directive granted him, intervening in everything from Japan's constitutional order to its primary school system.

The key to understanding how such wide-ranging reforms could be conceived of as militarily necessary lies in widely-held American views of Japan. Images of Japan as feudal, militaristic, and exotic enabled an unprecedentedly expansive application of the doctrine of military necessity, requiring not only institutional reform but also the transformation of the Japanese people themselves.

The U.S. military inculcated these images of Japan in its officers through a system of systematic schooling. Already during the war, US Army leadership expected military government to play an important role in the post-war period. Anticipating the need for qualified experts on military government, the War Department opened the School of Military Government at the

³ *Law of Belligerent Occupation*. Ann Arbor, Michigan: The Judge Advocate General's School, 1944, 31.

University of Virginia in May 1942. This was soon followed by the establishment of civil affairs training schools at prestigious universities across the country. Once the war had ended, graduates from these school were deployed to US-occupied territories, including Japan.

Instructors at the School of Military Government taught that the ultimate principle of military occupation was military necessity. Just about anything could be justified if it was deemed militarily necessary, and lecturers encouraged students to interpret that notion broadly. At the same time, students learned that international law forbade modifying local laws or altering existing institutions, a rule that was echoed in American legal doctrine and policy. Determining when military necessity justified alterations in an occupied territories' institutions would be one of the most complex issues in the post-war period.⁴

Lecturers at the School of Military Government explained that making determinations about military necessity was heavily dependent on local context. In the case of Japan, this context included the American Army's own ideas about Japan. Students at the School of Military Government learned that Japan operated according to "oriental," "feudal," and even "primitive" principles which were unintelligible to the logical western mind and incompatible with democratic values. The social and cultural "rules" were completely unlike anything they were familiar with, and they would not be able to make assumptions based on logical thinking. At the same time, lecturers at the School of Military Government were cautiously optimistic that the institutions of Japan could be reformed and its people educated in democratic values. The views they espoused were not limited to the classroom, but rather reflected widely held views in US military and academic circles.

⁴ Walter Hudson, *Army Diplomacy: American Military Occupation and Foreign Policy after World War II* (Lexington, Kentucky: University Press of Kentucky, 2015), 70.

Numerous scholars have written about the occupation of Japan. Some have explored the process of post-war planning the US military undertook while the Second World War was still raging. But few have studied the School of Military Government, and even fewer have looked closely at the content of what was being taught there. Hudson studies the School of Military Government as part of his exploration of how the US Army became the principal agent of American postwar governance policy.⁵ He examines a few of the lectures given there to reveal certain tensions in the American doctrine of military government.⁶ Kehoe and Bleakley review some of the School's materials in support of their argument that the US approach to military government was informed by the British model of absolute authority of civil affairs officers over local governing institutions and "the alignment of occupation rule 'with the political subdivisions of the occupied territory.'"⁷ Patterson studies the history of the school to draw lessons on how the US military today could more effectively train its soldiers.⁸ Janssens explored the images of Japan projected in the training materials used to prepare officers before their deployment in Japan, but focused almost exclusively on the civil affairs training schools.⁹

The approach of this thesis is inspired by Janssens's methodology, which looked at how images of Japan influenced policy.¹⁰ The focus here will be on how the image of Japan shaped the application of the law of military government, specifically the doctrine of military necessity, in post-war Japan. The lectures at the School of Military Government offer a compact summary of the US understanding of the law of military occupation. Given the relatively short length of

⁵ Id. 1

⁶ Id. 80

⁷ Thomas Kehoe & Paul Bleakley, "The Rhineland Catalyst: British Colonialism and the Development of U.S. Strategies for Military Occupation after World War I", *The Journal of Military History*, 2024, 72.

⁸ Patterson, *Revisiting a School of Military Government*.

⁹ Rudolf Janssens, "What Future for Japan?": *US Wartime Planning for the Postwar Era, 1942-1945* (Amsterdam: Rodopi, 1995), 74, 156-164

¹⁰ Id. vi

training officers underwent, instructors had to focus on what they considered the most salient takeaways for officers in the field. As such, the lectures given at the School of Military Government can provide insight into “the strategic thinking that prevailed in the military during this period.”¹¹ They are also an invaluable resource in understanding the development of the law of occupation, which was not formalized internationally until the Geneva Convention of 1949. Where appropriate, I also refer to a textbook entitled “The Law of Belligerent Occupation” published by the Judge Advocate General’s School in 1944, which confirms the doctrines taught at the School of Military Government and sometimes explores them in more depth.

Similarly, the area studies lectures on Japan given at the School of Military Government provide a conveniently condensed overview of the views of Japan which were prevalent at the time. Given the increased prominence of the civil affairs training schools for Japanese area studies after 1944,¹² I will occasionally refer to lectures given at the University of Chicago to show how certain ideas and approaches, particularly anthropological and sociological ones popular at the time, were not confined to lectures at the School of Military Government.

The legality of the American occupation of Japan is understudied in the English-speaking world, perhaps in part because at that time the Americans themselves were hardly concerned with the legal limits of their authority in Japan, raising the question seriously only once in a top-secret meeting on August 29, 1945.¹³ However, revisionist Japanese historians, right-wing politicians, and nationalists have attempted to attack the legacy of GHQ’s liberalizing reforms by questioning their legality under international law.¹⁴ Studying the lectures given at the School of

¹¹ Kehoe & Bleakley, “The Rhineland Catalyst”, 78.

¹² Janssens, “*What Future for Japan?*”, 158.

¹³ Cohen, Theodore. *Remaking Japan: The American Occupation as New Deal*. Edited by Herbert Passin. New York: The Free Press, 1987, 8.

¹⁴ See Takemae, *Inside GHQ*, 233. Footnote 74 in particular provides examples of such positions.

Military Government can help inform this debate by shedding light on the American understanding of the law of occupation, thereby providing a legal perspective that is underrepresented in the historiography. Furthermore, studying the lectures at the School of Military Government reveals patterns of thinking about occupation and military necessity prevalent in American legal doctrine at the time. Understanding these patterns allows modern historians to read the Basic Directive with new eyes to uncover a logic of military necessity in those documents that has gone largely unnoticed by the historiography due to the lack of attention to the legal context of the time.

This thesis does not trace specific policy or operational choices made by officers in GHQ back to what they learned in training. As Patterson has already pointed out, tracing the specific policy choices of individuals back to their education is a hazardous exercise, as it is difficult to determine what individuals retained from their education and to sort out the influence of ideas acquired elsewhere.¹⁵ Explaining the policy trajectory of an institution like GHQ based on the training of the individuals within it is even less plausible. MacArthur made an active effort to keep graduates from the School of Military Government out of Tokyo. Moreover, he was acting under orders from the Joint Chiefs of Staff and the President, none of whom had attended the School of Military Government.

Rather, this thesis treats the lectures given at the School of Military Government as reflective of broader doctrinal trends and social attitudes. The juxtaposition, sometimes literal in the archives, of lectures on military law and Japanese area studies facilitates seeing how the latter could influence the former to suit the needs of occupying forces in Japan. The lectures help plot

¹⁵ Patterson, *Revisiting a School of Military Government*, 10

points on the intellectual framework, the “mental maps,”¹⁶ of those in charge of planning and executing the occupation of Japan.

This framework will be explored in four parts. The first part will provide a general overview of the School of Military Government and the training system established by the US War Department. The second part will examine the American legal doctrine on the law of military occupation, as taught in the lectures of the School of Military Government. The applicable legal texts will be described first, followed by an examination of the ideas regarding military necessity, respect for national sovereignty, and the welfare of the occupied population. The third part will evaluate the image of Japan conveyed in the lectures. The fourth part will show how the Basic Directive and MacArthur’s reforms applied American ideas about Japan to American legal doctrine to allow for an exceptionally broad exercise of power that extended beyond institutional reform to the transformation of the Japanese people themselves.

I. The School of Military Government

The School of Military Government opened its doors in the law school building of the University of Virginia on May 11, 1942.¹⁷ The War Department established the school at the urging of Major General Allen Gullion, who assumed responsibility for the School’s operations, to train Army officers to serve as administrative and advisory assistants to military governors.¹⁸ The United States had set up military governments at various points in the 19th and early 20th

¹⁶ Dayna Barnes, *Architects of Occupation: American Experts and the Planning for Postwar Japan* (Ithaca: Cornell University Press, 2017), 7.

¹⁷ William Wranek, Press Release, June 6, 1942, Box 1, RG-6/34/1.131, School of Military Government Records, University of Virginia Archives, Charlottesville, VA (hereafter UVAA).

¹⁸ Patterson, Rebecca, “Revisiting a School of Military Government: How Reanimating a World War II-Era Institution Could Professionalize Military Nation Building,” *SSRN Electronic Journal*, 2011, 7.

centuries¹⁹ but had never formally recognized military government as a legitimate function of the army.²⁰ Awareness that management of an occupied territory would be more than a minor incident of war in future conflicts took hold only after the 1918 American occupation of the Rhineland following the First World War. The Hunt Report, named after the officer who drafted it, was a document reflecting on the US experience in the Rhineland occupation that called for more systematic preparation for military government.²¹

Recognizing the importance that military government would have in an era of total war, the leadership of the US Army established the School of Military Government to provide specialized training on the subject for the first time in US history.²² The curriculum covered a wide range of topics, including government administration, legal affairs, agriculture, industry and commerce, transportation systems, and public health, among others.²³ Students also received area studies lectures which focused on the three main enemies of the United States in World War II: Germany, Italy, and Japan.

The War Department initially planned on training one hundred officers per class, with each class operating on a four-month schedule.²⁴ But it soon became clear that the output at this rate would not be enough to meet demand,²⁵ so in September 1943 the school increased its

¹⁹ Earl Frederick Ziemke, *The U.S. Army in the Occupation of Germany: 1944-1946* (Washington: Center of Military history, U.S. Army, 1975), 3. Examples include Mexico in 1847-48; the Confederate states after the Civil War; the Philippines, Puerto Rico, and Cuba after the Spanish American War; and the German Rhineland after World War I.

²⁰ *Id.*

²¹ *Id.*

²² Patterson, "Revisiting a School of Military Government," 7.

²³ Patterson, "Revisiting a School of Military Government," 7.

²⁴ Hudson, *Army Diplomacy*, 82.

²⁵ The School of Military Government's first-class size was 49 students. By comparison, Germany in World War I had 3,500 military government personnel in Belgium alone, and during World War II had 7,000 in Poland. Hudson, *Army Diplomacy*, 82. Based on these numbers, the US Army estimated in 1942 that successfully managing occupied territories would require 6,000 officers worldwide, with another 6,000 to be recruited later as new areas were occupied. Patterson, "Revisiting a School of Military Government," 7-8.

capacity to 175 students per course and decreased the course length from four months to three.²⁶ In addition, civil affairs training schools (CATS) were established at elite universities across the country, including Harvard, Yale, Stanford, the University of Chicago, and Northwestern.²⁷ The School of Military Government focused on training officers ranked from captain to colonel for top administrative functions, while more junior officers studied at the CATS.²⁸ The curriculums of these institutions reflected the difference of audience. The School of Military Government focused on “theory and practice of military government, liaison with friendly civil governments, special conditions in certain foreign areas, and language study,”²⁹ while the CATS emphasized specialized language training and area studies.³⁰ Graduates from the School of Military Government were expected to deal primarily with their own staff, whereas CATS graduates would deal directly with the inhabitants of occupied territories.³¹

There were variations in the allocation of training responsibilities between the School of Military Government and the CATS until the entire program was phased out in 1946.³² The most important change to note is that after June 12, 1944, officers trained for the Far East would receive basic training for six weeks at the School of Military Government and then complete a six-month curriculum at one of the CATS offering courses in the Far East (Harvard, Yale, Michigan, Stanford, Chicago, and Northwestern).³³ Lessons learned at the School of Military

²⁶ Hudson, *Army Diplomacy*, 84

²⁷ In the last four months of 1943 alone, the School of Military Government and the various CATS together turned out around 2,000 officers. Patterson, “Revisiting a School of Military Government,” 10.

²⁸ Hudson, *Army Diplomacy*, 84; Janssens, “*What Future for Japan?*”, 156.

²⁹ Hudson, *Army Diplomacy*, 85.

³⁰ Janssens, “*What Future for Japan?*”, 156.

³¹ Patterson, “Revisiting a School of Military Government”, 9.

³² Hudson, *Army Diplomacy*, 85.

³³ Janssens, “*What Future for Japan?*”, 156-157.

Government would thus be reinforced elsewhere, with different schools favoring different points of emphasis.³⁴

It should be noted that MacArthur tried to avoid recruiting graduates from the School of Military Government because he was “unwilling to accept hundreds of officers whom he did not know into his close-knit headquarters.”³⁵ He was even in the habit of sending graduates from the School to Okinawa or Yokohama, from where they would be deployed to one of 46 prefectural military government teams all over Japan to ensure local implementation of orders coming from Tokyo. Nevertheless, key figures in MacArthur’s General Headquarters (GHQ) had studied at the School of Military Government, including Jules Bassin³⁶, chief of the Law Division and final arbiter on questions of military law, Mark Orr, Chief of the Education Division, and Justin Williams, head of the Parliamentary and Political Division situated within GHQ’s powerful Government Section.³⁷ Many in GHQ had also received at least some training at one of the civil affairs training schools.³⁸

³⁴ Id. 158. For example, instructors at the University of Chicago tended to stress anthropology and sociology, while history received more attention at Harvard.

³⁵ Cohen, *Remaking Japan*, 104.

³⁶ Jules Bassin would later comment on the usefulness of his training at the School of Military Government, as he learned about the law of occupation, “something you don’t learn in law school,” for the first time in his life. This indicates that schooling at the School of Military Government likely had a significant impact on the thinking of those who attended, at least as far as the law of occupation was concerned, since the courses on offer there were not part of the standardized legal curriculum elsewhere.

Bassin also mentioned that the School of Military Government “gave me a chance to associate with many officers who would later become my colleagues” at GHQ. This was “very important” to him because “when I got to Japan I wasn’t dealing with a stranger. I was dealing with...classmates of mine.” This provides additional evidence that MacArthur was not successful in keeping graduates of the School of Military Government out of GHQ and that the School’s graduates made up a meaningful contingent of GHQ’s staff.

Marlene Mayo, *Oral History Project on the Allied Occupation of Japan, Subject: Jules Bassin* (October 2, 1979), 28-29.

³⁷ Takemae, *Inside GHQ*, 172, 206, 183, 157.

³⁸ See Chapter 4 of Takemae, *Inside GHQ*, for a thorough catalogue containing biographical details of many GHQ staffers.

With this overview of the educational structure for officers in mind, we can now turn to what was being taught through these programs. We will first study the most important points of legal doctrine that students learned, and then examine the images of Japan which lecturers conveyed.

II. The Law of Military Occupation

A) Texts pertaining to Military Government

Before examining the American doctrine on the law of military occupation, it is indispensable to have an overview of three texts which instructors heavily referenced throughout their lectures: The Hague Regulations, Basic Field Manual 27-10, and Basic Field Manual 27-5. These three texts formed the core of rules and policies governing the American approach to military occupation.

The Hague Regulations concerning the Laws and Customs of War on Land of 1907 was the primary international text regulating the law of military occupation. Specifically, Section III laid out the rules governing the military authority of an occupying army over the occupied territory. However, lecturers at the School of Military Government called into question the relevance of the Hague Regulations for modern warfare even as they drew from them in their lectures. Speaking generally about international law, Colonel Lewis Underhill stated that “methods of modern warfare have changed,” with the result that some customary rules had been discarded, rules agreed to by treaty had been “whittled away by so-called interpretation,” and many nations had not even ratified the relevant treaties.³⁹ Lieutenant Colonel Paul Shipman

³⁹ Lewis K. Underhill, “Law of Military Government (1),” September 15, 1942, 1, Book 1, Correspondence Files Relating to the School of Military Government, Charlottesville, Virginia; and Its Successor, the School for Government of Occupied Areas, Carlisle Barracks, Pennsylvania, A1 442; Records of the Office of the Provost Marshal General, RG 389; Entry 442; National Archives at College Park, College Park, MD (hereafter SMG).

Andrews recognized in a March 1943 lecture that “marked changes” had taken place in the way war was being conducted so that “new situations” had been created which were “not covered” by the Hague Regulations.⁴⁰ Lieutenant Colonel Andrews pointed out elsewhere that the Hague Regulations of 1907 were a recognition of changes in the international conduct and customs of war that had taken place since the Hague Convention of 1899.⁴¹ In a similar vein, the United States in 1943 had to recognize that there were “changes in factual situations which have occurred since 1907,”⁴² implying that flexible treatment of the Hague Regulations was justified.

Perhaps unsurprisingly, American domestic regulations occupied a much more significant place throughout the lectures. The key American document regulating the conduct of the American military in occupied territory was Field Manual 27-10 “Rules of Land Warfare” (hereafter referred to as FM 27-10). As Colonel Underhill put it, “regardless of international law,” FM 27-10 was binding on field commanders because the Secretary of War had so ordered.⁴³ Students were made to understand that FM 27-10 was the best source to follow because it was partly based on international treaties like the Hague Regulations, but also filled in gaps missing in those treaties.⁴⁴ Underhill emphasized that FM 27-10 did not confer “rights to do things in enemy territory,” but rather consisted of rules that restrained certain activities.⁴⁵ In principle, occupying forces were therefore free to engage in whatever activities they deemed appropriate, and would only need to check the rules to make sure there were no explicit prohibitions on their contemplated conduct.⁴⁶ At the same time, Underhill forewarned his

⁴⁰ Paul Shipman Andrews, “What the Civil Affairs Officer Engaged in Liaison Work Should Be, Should Know, Should Do,” March 16, 1943, 1, Book 1, SMG.

⁴¹ Paul Shipman Andrews, “Necessity Molds the Law,” June 15, 1943, 5, Book 1, SMG.

⁴² Paul Shipman Andrews, “Necessity Molds the Law,” June 15, 1943, 5-6, Book 1, SMG.

⁴³ Underhill, “Law of Military Government (1),” 1, SMG.

⁴⁴ Lewis K. Underhill, “Organization of Military Government,” 2-3 September 1943, 1, Book 1, SMG.

⁴⁵ Lewis K. Underhill, “Government of Occupied Territory,” December 6, 1943, 1, Book 1, SMG.

⁴⁶ Underhill, “Government of Occupied Territory,” 1, SMG.

students that “a large part” of FM 27-10 “is not relevant to the subject of military government,” as most of the rules dealt with matters such as the commencement of hostilities, capitulations, neutrality, and other topics unrelated to military occupation.⁴⁷ Chapter 10, which dealt specifically with military occupation, was the most relevant section for students at the School of Military Government.

The final and most heavily referenced text throughout the lectures was Basic Field Manual 27-5 “Military Government” (hereafter FM 27-5). Whereas FM 27-10 dealt with the legal rules applicable to military government in a single chapter, FM 27-5 was entirely focused on military government policy, including the structure of military government and the kinds of measures it should implement in an occupied territory. FM 27-5 was meant to reflect the lessons learned from past American occupations, mostly notably the American occupation of the Rhineland in 1918.⁴⁸ In lectures at the School of Military Government, Colonel Underhill stressed to students that the provisions of FM 27-5 were not mandatory, lamenting that every time he lectured on it some students walked away treating it like the Bible.⁴⁹ According to Underhill, FM 27-5 was a guidebook, not a blueprint, and officers would need to adapt “everything” in it to conditions on the ground.⁵⁰

The Army published a first edition of FM 27-5 in June 1940. The realities of war soon prompted a revision in December 1943. The new edition was a joint Army-Navy publication. As the Navy began occupying islands in the Pacific, the chiefs of staff felt that joint publication (an extremely rare occurrence in those days) was an important step to signal FM 27-5’s relevance to

⁴⁷ Underhill, “Law of Military Government (1),” 1, SMG.

⁴⁸ Schöbener, Burkhard. *Die amerikanische Besatzungspolitik und das Völkerrecht*. Frankfurt am Main: Peter Lang, 1991. 53-54.

⁴⁹ Underhill, “Organization of Military Government,” 3, SMG.

⁵⁰ Underhill, “Government of Occupied Territory,” 8, SMG.

both services.⁵¹ The revision was also a response to certain doctrinal critiques within military circles that the first edition was “too lenient” in that it placed heavy emphasis on the occupied population’s wellbeing and prescribed a circumscribed role for occupying forces limited by a narrow conception of military affairs.⁵² This criticism was informed by lessons from one of the Army’s earliest occupation experiences during World War II. The Allied occupation of Sicily in July 1943 saw to the abolishment of the local fascist party and the abrogation of discriminatory fascist laws, even as administrators were told to keep military and “purely political matters” distinct.⁵³ The revised edition of FM 27-5 sought to clear up the “unease and confusion” which this distinction caused.⁵⁴ While the essentials of the first edition remained intact, certain shifts in degree and emphasis were made, most significantly in the role of military government in providing for the welfare of the occupied population.

The School of Military Government had a draft copy of the soon-to-be-released revised edition of FM 27-5, and Colonel Underhill spent a large portion of a September 1943 lecture going over the most important differences between the two versions.⁵⁵ Echoing one of the most widely held critiques of the 1940 version, Underhill criticized FM 27-5’s emphasis on the welfare of the governed, a point which will be explored further below. Underhill added in his own critiques as well, calling the first edition “inadequate to modern war” given how much warfare had evolved since 1940 (note that this lecture is dated September 1943). He found the

⁵¹ Hudson, *Army Diplomacy*, 70.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Underhill, “Organization of Military Government,” SMG.

text to be lacking in sufficient detail to be useful as a guide and criticized the wording in various spots which he considered misleading.⁵⁶

Now that we have an overview of the texts governing military government, we can turn to the more substantive portions of the lectures. The focus will be on the legal doctrines which would be most significant for understanding the American occupation of Japan.

B) Military Necessity and Respect for Sovereignty

The main legal principal that officers at the School of Military Government learned was the supremacy of military necessity. In an introductory orientation lecture, Colonel Lewis Underhill called military necessity the “primary underlying principle for the conduct of military government.”⁵⁷ In another lecture a few days later, Colonel Lewis Underhill would cite paragraph 9 of FM 27-5 to insist that all other guiding principles of military occupation were subordinate to military necessity.⁵⁸ Paragraph 9 listed military necessity as the first of a series of principles regarding military government, which could suggest that military necessity was but one of many legal considerations officers would need to take into account. But Colonel Underhill gave students a short excursion into the drafting history of the recently revised FM 27-5 to bolster his position that military necessity constituted the supreme command of occupying forces. According to Colonel Underhill, the drafters of the new version of FM 27-5 had intended to give military necessity its own separate paragraph. It was only because “somebody higher up had a passion for organization” that it was listed with other principles.⁵⁹ Students were not to be “deceived by the arrangement of paragraph 9” into thinking that military necessity was just one

⁵⁶ Underhill, “Organization of Military Government,” 3, SMG.

⁵⁷ Lewis K. Underhill, “Introduction and Orientation,” December 3, 1943, 3, Book 1, SMG.

⁵⁸ Underhill, “Government of Occupied Territory,” 2, SMG.

⁵⁹ Id

principle of military government among many.⁶⁰ To use the words of other lecturers, military necessity was the “cardinal doctrine”⁶¹ and the “first basis and foundation” of military occupation.⁶² Lieutenant Colonel E.R. Moran advised students to “call upon necessity freely and with a clear consciences” when seeking justifications for their actions.⁶³

As for how the term “military necessity” was actually defined, the lectures made clear that its scope was all-encompassing. In a lecture entitled “Necessity Molds the Law,” Lieutenant Colonel Paul Shipman Andrews stated that the “necessities of war” included the ability to suspend or make laws, engage in censorship, punish inhabitants, collect requisitions and contributions, and confiscate state funds.⁶⁴ A different lecturer suggested that military necessity required American forces to “be free from injustice and oppression at the hands of the enemy population.”⁶⁵ This rather odd phrasing placed the burden of the rule on the occupied population rather than on the occupiers. Normally, it would seem more likely that the occupying army would oppress the occupied population, hence the need to have a whole corpus of rules limiting the acceptable conduct of an occupying force. But here, it was apparently the occupied population which posed a threat to the occupying military. In this understanding, military necessity allowed the occupying army to prohibit any actions which would “interfere with winning the war.”⁶⁶ In this sense, military necessity was not only a limiting principle, but a permissive one as well. Major General Allen Gullion, head of the School of Military Government, provided the most succinct prescription for how military necessity should be

⁶⁰ Id

⁶¹ Joseph P. Harris, “The Administration of Military Government in Occupied Territories: Introductory Lecture”, September 4, 1943, 3, Book 1, SMG.

⁶² Paul Shipman Andrews, “Necessity Molds the Law”, June 15, 1943, 2, Book 1, SMG.

⁶³ E.R. Moran, “The Rules of Land Warfare (1)”, June 28, 1943, 2, Book 1, SMG.

⁶⁴ Andrews, “Necessity Molds the Law”, 2, SMG.

⁶⁵ Harold D. LeMar, “Military Tribunals”, September 14, 1942, 2, Book 1, SMG.

⁶⁶ Id.

understood in one of his speeches when he said that military necessity demands “complete control” by the conquering army.⁶⁷ Such control was justified for “as long as military necessity exists.”⁶⁸ Gullion did not provide criteria on how long military necessity would last, making the concept even more open-ended.

Military necessity required taking into account not only the immediate objectives of a given campaign, but also more long-term considerations of “national and allied policies.”⁶⁹ *The Law of Belligerent Occupation*, a textbook used at the Judge Advocate General’s (JAG) School in Ann Arbor, Michigan (hereafter, the JAG Textbook), gingerly suggested that military necessity “would seem comprehensive enough” to include “the elimination of the source or cause of war,” even if it was “rooted in the enemy’s traditional institutions.”⁷⁰ Changes to the law of an occupied country could be justified on similar grounds.⁷¹

Yet the relationship between military necessity and the power of an occupant to make changes to local laws and institutions was one fraught with tension. In a lecture on the rules of land warfare, Lieutenant Colonel Moran, relying on Chapter 10 of FM-10, explained that occupation did not transfer sovereignty to the occupant.⁷² Instead, the occupant only assumed some of the rights of sovereignty, substituting its own authority for that of the legitimate government.⁷³ The occupant was to respect the laws in force in the occupied country “unless absolutely prevented” from doing so, and those laws remained in force unless abrogated or suspended.⁷⁴ In separate lectures on the principles of public administration, Lieutenant Colonel

⁶⁷ Allen W. Gullion, “Military Government”, January 28, 1943, 3, Box 2, UVAA.

⁶⁸ Id.

⁶⁹ Harris, “The Administration of Military Government in Occupied Territories”, 2, SMG.

⁷⁰ *Law of Belligerent Occupation*, 38.

⁷¹ Id.

⁷² E.R. Moran, “The Rules of Land Warfare (2)”, June 30, 1943, 1, Book 1, SMG.

⁷³ Id.

⁷⁴ Id. 4, 6

Joseph Harris explicitly told officers that it was not the job of military government to establish democratic institutions; this task was to be left to civil authorities once the military withdrew.⁷⁵ He explicitly warned officers not to attempt reforming the occupied territory or its people since such attempts “are apt to be unsuccessful” and would even “defeat the objectives of military government.”⁷⁶ Nevertheless, the military governor remained free to suspend or change the occupied country’s law “if necessary to accomplish the objectives of military government.”⁷⁷

A careful reading of the JAG textbook further highlights the tensions between military necessity and respect for local sovereignty. It acknowledged Article 43 of the Hague Regulations, which prohibited occupants from modifying the existing law “unless justified by military necessity or the need for maintain public order and safety.”⁷⁸ It even provided an overview of international case law and legal doctrine documenting “the well-recognized” academic consensus that an occupying force should only undertake changes in an occupied territory’s laws and institutions in the rarest of circumstances, given the “provisional character” of military occupation.⁷⁹ But then the textbook pointed out that “historic facts are very different from theory” and highlighted the 1877 Russian occupation of Turkey, the British annexation of Transvaal and the Republic of Orange in the Boer war, the 1904 Japanese occupation of Manchuria, and the Italian takeover of Tripolitania to argue that “a new norm...is in the process of taking shape.”⁸⁰ This “new norm” was supposedly one that required occupants to “safeguard the maximum of social justice for the inhabitants of occupied territory.”⁸¹ The textbook failed to

⁷⁵ Joseph F. Harris, “Principles of Public Administration”, January 16, 1943, 3, Book 1, SMG.

⁷⁶ Harris, “The Administration of Military Government in Occupied Territories”, 5, SMG.

⁷⁷ Harris, “Principles of Public Administration”, 3, SMG.

⁷⁸ *Law of Belligerent Occupation*, 39

⁷⁹ Id. 40-41

⁸⁰ Id. 42-43

⁸¹ Id. 43

define the relationship between this developing norm and military necessity, but by contrasting the “historic facts” of military occupation with the conventional understanding of military necessity it seemed to suggest that military necessity could be understood as authorizing a greater scope for action than the academic consensus allowed.

This implication does not sit easy with the textbook’s own theory of sovereignty outlined a few pages earlier. The textbook stated that occupation did not transfer sovereignty to the occupant.⁸² The occupant derived its authority from the “necessities of war” while the sovereignty of the occupied country’s legitimate government was suspended during occupation, with the power to create new laws residing in the occupant.⁸³ Since the occupant’s authority was not based on sovereignty, the occupant “has no right to make changes in institutions, laws or administration” except for those justified by military necessity.⁸⁴ Acts which had “no reasonable relation to military necessity” were illegitimate.⁸⁵ The textbook even singled out changes to “fundamental institutions” of the occupied state as ordinarily excluded from the purview of an occupant’s authority, since such changes do not normally bear a direct relationship to the occupant’s legitimate war objectives and were an “unjustifiable assumption of sovereignty.”⁸⁶

Distilling a clear rule about what an occupant may or may not do from these considerations seems impossible by design. The historian Walter Hudson, one of the few historians to have explored the curriculum of the School of Military Government in depth, called the question of when military necessity overrode the requirement to respect local laws and institutions a “not-quite-resolved tension in the American understanding of military

⁸² Id. 31

⁸³ Id. 33, 35

⁸⁴ Id. 37

⁸⁵ Id. 36

⁸⁶ Id. 64

government.”⁸⁷ Hudson references a plumbing analogy used in one of the lectures to suggest that military government was understood as merely “providing basic services and keeping things running.”⁸⁸ In other words, the army was supposed to limit itself to the most basic of administrative tasks, deferring to civilian agencies of the government for larger questions of policy.⁸⁹ Yet those civilian agencies were not supposed to interfere with military government as long as military necessity prevailed.⁹⁰ And as Gullion’s speech discussed above indicates, military leaders were reluctant to provide clear criteria on when military necessity might end. One finds in these unresolved questions the seeds of controversy between the army and civilian government leaders,⁹¹ seeds which would sprout into full-blow conflicts between MacArthur and Washington throughout the Japanese occupation.

A source of confusion blurring the contours of the relationship between military necessity and local sovereignty was that the teaching materials tended to blend legal and policy considerations. As the JAG textbook states, necessity in a particular case “can be determined only by reference to the facts of the case.”⁹² It was therefore impossible to “formally exclude” any legislative or administrative action from the occupant’s sphere of control.⁹³ At the School of Military Government, lecturers emphasized respecting local laws and not attempting major reforms, while still reminding students that military necessity could justify departures from this principle. The Hague Regulations and FM-10 were legally binding rules requiring respect for local laws and institutions, but the lectures indicated that as a general matter it was also good

⁸⁷ Hudson, *Army Diplomacy*, 80.

⁸⁸ Id. 81

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.

⁹² *Law of Belligerent Occupation*, 40.

⁹³ Id.

policy to do so. Hudson shares this understanding of the lectures, pointing out that the lectures conveyed the idea that “noninterference was related not only to American benevolence but to practicality and necessity.”⁹⁴ The converse of this idea is that if noninterference happened not to be good policy in a given instance, the rules against altering the existing order no longer applied and the occupier would be free to intervene on the basis of military necessity.

Despite the fact that military necessity risked effectively swallowing up respect for sovereignty, there are indications that American military doctrine took seriously the proposition that military necessity should not be used to justify just anything. As has been described, the lecturers at the School of Military Government insisted that attempting to democratize occupied territories would run counter to the objectives of military government. Major General Allen Gullion, head of the school of military government, insisted that it was the “duty of the occupying authority” to preserve the “local institutions, laws, and customs of the occupied region.”⁹⁵ The JAG textbook argued that certain policies which the German army implemented in Belgium during World War I, such as transforming the university of Ghent into a Flemish institution or dividing Belgium into Flemish and Walloon administrative districts, were not justified by military necessity.⁹⁶

Hudson argues that FM 27-5 actually narrowed the doctrine of military necessity, as it tightened the linkage between occupation and “expressly military responsibility” so that the purpose of any given measure had to relate back to “primarily military ends.”⁹⁷ Yet even he acknowledges that the idea of military necessity was “broad enough to encompass any number of

⁹⁴ Hudson, *Army Diplomacy*, 81.

⁹⁵ Gullion, “Military Government”, 4, UVAA.

⁹⁶ *Law of Belligerent Occupation*, 40

⁹⁷ Hudson, *Army Diplomacy*, 67-68, 70.

reasons” why laws should be changed or local institutions altered.⁹⁸ The guardrails limiting military necessity were rather flimsy, even if official doctrine seemed to take them seriously.

Compounding the likelihood that military necessity would be interpreted broadly was the attitude of American military leaders, who did not seem to think they would have to worry about exceeding the bounds of military necessity. Gullion reassured listeners that “there be no fear lest the Army interpret military necessity too widely or liberally.”⁹⁹ Americans could trust the Army because “it is the people’s army.”¹⁰⁰ More dramatically, Gullion insisted that “if our democratic army is not worthy of trust than democracy is a failure.”¹⁰¹ Lieutenant Colonel Paul Shipman Andrews shared a similar faith in America’s ability to navigate the tension. The United States would not “resort to wanton aggression” in any war within the predictable future.¹⁰² Because of this, “we can be certain” that occupation would only last as long as necessary.¹⁰³ There were thus real boundaries to what military necessity allowed, but the US Army would never cross them. The goodness of the Army was the real key to resolving the tension.

C) Military Necessity and the Humanitarian Principle

Another aspect of the tensions in the military doctrine officers studied at the School of Military Government concerned military necessity, sovereignty, and the duties occupying forces owed to the occupied population. Broadly speaking, occupying forces were not supposed to mistreat the inhabitants of an occupied territory. Citing paragraph 4 of FM 27-10, Lieutenant Colonel Andrews stated that humanity and chivalry were the two other fundamental principles

⁹⁸ Id. 70

⁹⁹ Gullion, “Military Government”, 6, UVAA.

¹⁰⁰ Id.

¹⁰¹ Id. 7

¹⁰² Moran, “Necessity Molds the Law”, 8, SMG.

¹⁰³ Id.

besides military necessity which underlie all the other rules.¹⁰⁴ FM 27-10 defined the principle of humanity as prohibiting the use of violence beyond what was necessary for the purpose of war, while the principle of chivalry forbade “dishonorable means, expedients, or conduct.”¹⁰⁵ In another lecture, Major Harold LeMar explained that an occupying force had the duty to maintain order and public safety, without oppressing the local population “as far as practicable.”¹⁰⁶ The “as far as practicable” reservation indicates that even the principle of humanity was subject to military necessity. Other lecturers regarded consideration for local attitudes and public opinion as a matter of expediency to accomplish military government’s objectives rather than as a matter of principle, insisting that the military governor “is not responsible to the local population.”¹⁰⁷

The subordination of humanity to military necessity in the lectures is notable because they reflect a shift occurring in American military doctrine. The lectures available in the archives were mostly given in 1943, with a few dated 1942. Therefore, in addition to FM 27-10, lecturers had to draw on the 1940 version of the FM 27-5 policy manual. This edition of FM 27-5 ranked the humanitarian principle very highly, second only to military necessity. “The welfare of the people governed should always be the aim of every person” involved in military government, subject “only” to military necessity.¹⁰⁸ The hope was that military government guided by “the principles of justice, honor, and humanity” would “convert enemies into friends.”¹⁰⁹ Though still subject to military necessity, the idea that military government should be carried out for the good of the occupied constituted an independent value, and a high one at that.¹¹⁰

¹⁰⁴ Id. 2

¹⁰⁵ *Basic Field Manual (FM 27-10)*, 2.

¹⁰⁶ LeMar, “Military Tribunals”, 1, SMG.

¹⁰⁷ Harris, “Principles of Public Administration”, 3, SMG.

¹⁰⁸ *Basic Field Manual (FM 27-5) (1940)*, 2.

¹⁰⁹ Id. 4

¹¹⁰ Burkhard Schöbener, *Die amerikanische Besatzungspolitik und das Völkerrecht* (Frankfurt am Main: Peter Lang, 1991), 61.

This changed when the War Department issued the updated version of FM 27-5 in December 1943. All mention of governing for the welfare of the occupied or converting enemies into friends was gone. The principle of humanity was still listed second after military necessity, but its scope was limited to prohibiting the use of violence beyond what was necessary for military purposes.¹¹¹ A principle of chivalry was added which forbade “dishonorable conduct.”¹¹² These two new principles took up five lines in the new policy manual, as compared to the twenty lines of high-minded principles contained in the previous version. The principle of humanity was thus no longer an end in itself, but merely a tool to make military occupation proceed more smoothly.¹¹³ This message was reinforced through the inclusion of economic policy, absent in the previous version, which described occupied territory as a “source of supply” for the occupying army.¹¹⁴ Military governments would need to “sometimes” engage in economic activity to ensure “at least a minimum of necessary goods and services” for itself and, secondarily, for the local population.¹¹⁵

At least one lecturer at the School of Military Government was aware of the changes that would soon be taking place in the War Department’s official policy and taught his class accordingly. Colonel Lewis Underhill centered a large part of his September 1943 lectures on comparing the then-current version of FM 27-5 to the draft of the updated text which would be released three months later. Colonel Underhill criticized the 1940 edition of FM 27-5 for giving the impression that “promoting the welfare of the governed in occupied territory is almost as important as the objective of military necessity.”¹¹⁶ Underhill even contended that the older

¹¹¹ *Basic Field Manual (FM 27-5)* (1940), 2.

¹¹² *Id.*

¹¹³ Schöbener, *Die amerikanische Betsatzungspolitik*, 59.

¹¹⁴ *Basic Field Manual (FM 27-5)* (1943), 11; Schöbener, *Die amerikanische Betsatzungspolitik*, 60.

¹¹⁵ *Basic Field Manual (FM 27-5)* (1943), 11; Schöbener, *Die amerikanische Betsatzungspolitik*, 60.

¹¹⁶ Underhill, “Organization of Military Government,” 7, SMG.

version of FM 27-5 gave the impression that “the principal objective in invading a foreign country is to bring light to the heathen,” which Underhill dismissed as “unrealistic.”¹¹⁷ In line with the soon-to-be released new version of FM 27-5, Underhill emphasized that military government “is not a missionary enterprise” and that the “only one legitimate objective of military government” is to “win the war.”¹¹⁸ American occupiers would only pay attention to the welfare of the local population “because you are decent people” and because it would keep the governed from rising up in revolt.¹¹⁹ Putting the welfare of the governed “on par” with military necessity was “utterly misleading.”¹²⁰

Thus, even while the 1940 version of FM 27-5 was in force, lecturers at the School of Military Government were anticipating the War Department’s policy shift and already teaching students to regard the welfare of the governed as entirely subordinate to military necessity. This shift was significant because it made the task of military government significantly easier for Americans occupying countries like Japan. Had the American occupying forces been required to govern with the best interest of the Japanese people in mind, they would have potentially needed to study Japanese history and culture in depth and consult with local leaders to understand how to shape policies best suited to Japan. Thanks to military necessity, they could dispense with such a cumbersome undertaking. At least as far as American military doctrine was concerned, occupation policy really only needed to take American interests into account. Given the deeply exoticized view of Japan that held sway in American popular and academic discourse, this was a particularly helpful doctrinal development.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

III. The Image of Japan

We have just seen how the principle of military necessity gave extremely broad leeway to occupying forces to implement any changes deemed necessary in an occupied territory. At the same time, there were loose theoretical legal limitations on what that entailed, as well as policy considerations discouraging radical transformations in local occupied structures. But students at the School of Military Government did not just study military law. They also received lectures on Japanese history and culture. The images of Japan that lecturers conveyed to them would convince them that what was militarily necessary to ensure a successful occupation of Japan meant going far beyond the ordinary confines of military necessity.

The reason for including lectures about Japanese history and culture in the curriculum of the School of Military Government is not explicitly stated in the archival material. Lecturers at the School of Military Government had their own idea of why they were there. Yale historian Ralph H. Gabriel stated that the military governor “comes with power to a different culture.”¹²¹ He would have to “deal with that culture in accomplishing his mission.”¹²² “Dealing with” the occupied territory’s foreign culture required him to “understand it as far as he can,” in particular its “institutions and its values.”¹²³ Gabriel directly quoted FM 27-5’s language exhorting the military governor to respect “the habits and customs of the [occupied] people,” while warning that the military governor “carries the culture of the United States,” characterized by a “philosophy that there are universal human values that are valid in all cultures.”¹²⁴ The American military governor therefore faced the “practical question” of knowing “how far he can accept the

¹²¹ Ralph H. Gabriel, “Military Government and the Civil Population”, June 2 1943, 2, Book 2, SMG.

¹²² Id.

¹²³ Id.

¹²⁴ Id. 2-3

values of the particular culture with which he is dealing.”¹²⁵ Gabriel read into the language of FM 27-5 a “recognition of the fact of the uniqueness of cultures.”¹²⁶ Understanding Japanese culture was thus a prerequisite to faithfully carry out FM 27-5’s policy of respecting local culture as much as possible.

Gabriel’s explanation on the importance of studying Japanese culture sounds a little too optimistic when compared to the broader discourse about Japan in the United States at this time. The film *Our Enemy – the Japanese*, produced as training material for the United States Navy, more likely exemplifies the kind of rationale for why top military officials decided to include lectures on Japanese history and culture in the School of Military Government’s curriculum. The video begins with Joseph Grew, former US ambassador to Japan and one of the State Department’s foremost experts on Japan, explaining that “to defeat the Japanese...we have to understand them thoroughly.”¹²⁷ This was particularly important in the case of Japan because the Japanese were “as different from ourselves as any people on this planet” who had “minds” which operated according to a sense of logic that could not be measured by “any Western yardstick.”¹²⁸ Though their weapons were modern, their thinking was “2000 years out of date.”¹²⁹ The implication was that soldiers would need to be particularly wary of the Japanese, since it was impossible for Westerners to predict what the Japanese might do. While *Our Enemy – Japan* was a wartime film, the kind of logic it followed would be all the more true for future occupation administrators, who would have to confront an utterly foreign people whose value system and institutions needed a long overdue update. Though perhaps not the intention of the lecturers

¹²⁵ Id. 3

¹²⁶ Id. 2

¹²⁷ Office of War Information Bureau of Motion Pictures, “Our Enemy: the Japanese,” 1943, 0:39 to 0:48, <https://www.youtube.com/watch?v=7smDzv9knlc>

¹²⁸ Id. 0:59 to 1:17.

¹²⁹ Id. 1:17 to 1:25.

themselves, the function these lectures ultimately served was to highlight just how much American troops would need to throw out when they arrived in Japan, not to help administrators carefully demarcate what aspects of Japanese cultural could be preserved.

Before exploring the lectures at the School of Military Government, it is crucial to have an overview of the wider intellectual context to understand just how far Americans thought the Japanese were from themselves. The academic approach to understanding Japan in the pre-war and World War II periods was heavily shaped by a “culture and personality studies” movement that relied heavily on anthropology, psychology, and psychiatry.¹³⁰ These “national character studies” purported to be scientific and respectful of cultural difference.¹³¹ Though academics in this movement explicitly rejected racism, their work tended to reinforce stereotypes common to more vulgar racist thought.¹³² The most iconic work utilizing this approach was Ruth Benedict’s *The Chrysanthemum and the Sword*. While rejecting the idea that the Japanese were biologically inferior, Benedict tended to use language which suggested that Japan had a flawed culture in need of reforming to become more mature.¹³³ The more general anthropological literature of the 1930s tended to characterize the Japanese as primitive, immature, and neurotic.¹³⁴ The idea that Japan and the West were fundamentally incompatible was commonplace, and there was debate over whether the Japanese could ever truly adopt Western ways and ideas.¹³⁵

The most influential study of the “Japanese character” during the war was written by the anthropologist Geoffrey Gorer, who focused heavily on the psychological makeup of the

¹³⁰ John Dower, *War Without Mercy* (New York: Pantheon, 1986), 118.

¹³¹ Id. 119, 122

¹³² Id. 122

¹³³ Naoko Shibusawa, *America’s Geisha Ally: Reimagining the Japanese Enemy* (Cambridge, MA: Harvard University Press, 2010), 61.

¹³⁴ Id. 122

¹³⁵ Janssens, “*What Future for Japan?*”, 90.

Japanese people.¹³⁶ Gorer contended that “early and severe toilet training is the most important single influence in the formation of the adult Japanese character” because it instilled in the Japanese strong notions of control, cleanliness, and societal norms.¹³⁷ Gorer variously explained Japan’s drive towards empire as stemming from a psychological need to control the environment, as a technique for escaping from the repressive restrictions of Japanese society, and as a quest for warmer climates driven by exaggerated fear of the cold instilled in childhood.¹³⁸

The notion of the Japanese as “childish” also occupied an important place in American academic discourse on Japan. No less an authority than the famous anthropologist Margaret Mead used the term to describe Japanese culture.¹³⁹ Joseph Grew stated that the Japanese “really are children.”¹⁴⁰ One propaganda report prepared for General MacArthur described Japan as “toyland,” a country full of diminutive houses and people who “seemed to play at living.”¹⁴¹ The emphasis on the supposedly childlike nature of the Japanese would take on a transformed meaning following the end of the war, as post-war propagandists highlighted how the Japanese could grow and be led towards modernity in the right circumstances.¹⁴²

It was also common to label the Japanese as “feudal,” “premodern,” or even “primitive.”¹⁴³ Historians at this time were particularly fond of this idea. Herbert Norman, who wrote an influential account of Japan’s emergence as a modern state, wrote that Japanese agriculture remained essentially feudal,¹⁴⁴ even as he acknowledged the development of

¹³⁶ Shibusawa, *America’s Geisha Ally*, 124.

¹³⁷ Geoffery Gorer, *Japanese Character Structure and Propaganda* (New Haven, Connecticut, 1942), 9.

¹³⁸ Id. 25, 28, 7.

¹³⁹ Dower, *War Without Mercy*, 133.

¹⁴⁰ Id. 142.

¹⁴¹ Id. 143

¹⁴² Shibusawa, *America’s Geisha Ally*, 5-6.

¹⁴³ Id. 68

¹⁴⁴ Herbert E. Normann, *Japan’s Emergence as a Modern State: Political and Economic Problems of the Meiji Period* (New York: Institute of Pacific Relations, 1940), 154

capitalism in Japan. Hugh Borton, a professor at Columbia University and “a pioneer of Japan studies in the United States,”¹⁴⁵ shared Norman’s assessment of Japanese agriculture, writing that “it has made little real progress since feudal days.”¹⁴⁶ Since Japan was “still largely an agrarian country,”¹⁴⁷ the conclusion could only be that Japan as a whole was largely feudal. More explicitly, Borton contended that despite “certain external modifications of governmental forms under the influence of political theories imported from abroad,” Japan had largely “reverted” to totalitarianism, which was “a thing eternal and immutable to the Japanese,” the “fundamental principle of Japan’s national life for the past thirty centuries.”¹⁴⁸ For Borton, Japan followed the tradition of “oriental nations,” which focused on “rediscovering” itself and “returning to [its] ancient faith” rather than “making a new choice.”¹⁴⁹ Japan was thus an exotic nation which could not even be appropriately described with Western terms like fascist, totalitarian, or democratic, though Borton found himself using these terms “for lack of a better nomenclature.”¹⁵⁰ Linking the notion of childishness to Japan’s feudal system, Borton found that the Japanese people were at “an immature stage...in their progress toward political education.”¹⁵¹

Hugh Borton’s views are of particular interest because he was one of the primary lecturers on Japan at the School of Military Government in 1943. Unsurprisingly, his lectures reflect the views he developed in his earlier work and in some cases stated them more sharply. In one lecture, Borton found that a “brief summary of Japan’s Political History” required going all the way back to the Kojiki and Nihongi, 8th century texts recounting the mythical origins of

¹⁴⁵ Barnes, *Architects of Occupation: American Experts and the Planning for Postwar Japan*, 42.

¹⁴⁶ Hugh Borton, *Japan since 1931* (New York, New York: Institute of Pacific Relations, 1940), 87.

¹⁴⁷ Id. 20.

¹⁴⁸ Id. 54.

¹⁴⁹ Id.

¹⁵⁰ Id. xi.

¹⁵¹ Id. 20.

Japan, because the “present reverence for the Emperor...stems from primitive tribal beliefs.”¹⁵² Similarly, a “rapid glance” at 700 years of Japanese history from 1185 to 1868 was indispensable to understand “the Japanese feudal pattern,” many aspects of which continued to exist in the present day.¹⁵³ Borton found evidence for the continued existence of Japanese feudalism in the unquestioning acceptance of military authority and class difference, national solidarity arising from the complete control of a single centralized government since 1603, and the loyalty of “the ordinary citizen...to his immediate superior,” which Borton found “similar to feudal loyalty.”¹⁵⁴ In a separate lecture, Borton held out Tokyo, “at once modern and medieval,” as a symbol of Japan which was “modernized on the surface” but which still featured “many marks and wounds” of feudalism.¹⁵⁵ In more succinct terms, “Though modern on the surface, Japan still retains much of feudalism underneath.”¹⁵⁶

In his lectures, Borton did not neglect to highlight historical connections between Japan and Germany, the other great enemy of World War II. He pointed out that Ito Hirobumi, one of Japan’s most important reformers in the Meiji era, modelled Japan’s constitution on the German one which embodied a concept of absolute monarchy.¹⁵⁷ Borton further noted Ito’s admiration for Bismarck, claiming that Ito “envisaged himself as the counterpart of Bismarck.”¹⁵⁸ Little to no mention was made of the fact that Japan used other Western countries, including the United States, as models for other facets of its Meiji-era modernization campaign. It was insinuated that Japan had been as bad as Nazi Germany even before it began consciously emulating German

¹⁵² Hugh Borton, “Japanese Political History to 1868,” July 13, 1943, 1, Book 3, SMG.

¹⁵³ Id.

¹⁵⁴ Id. 4

¹⁵⁵ Hugh Borton, “Geography of Japan,” July 6, 1943, 4, Book 3, SMG.

¹⁵⁶ Hugh Borton, “Japanese Characteristics That May Affect Military Government,” April 27, 1943, 1, Book 3, SMG.

¹⁵⁷ Hugh Borton, “System of Government in Japan I and II,” March 15, 1943, 3, Box 2, UVAA.

¹⁵⁸ Id. 4

political institutions, as the Tokugawa Shogunate which immediately preceded the Meiji government “was as complete a dictatorship as any in existence today.”¹⁵⁹

Students at the School of Military Government were thus taught that the Japanese were essentially feudalists dressed up in Western clothes. Any apparently Western institutions were modelled on imperial Germany. As a consequence, an insurmountable divide existed between Japan and the United States. Venturing from a historical approach to the psycho-sociological method so popular at the time, Borton claimed in one lecture that the “Japanese mind” was extremely difficult to analyze because “it has had no training in logic.”¹⁶⁰ Even if the Japanese had been given courses in logic, “no one would have been able to pass them” since “the Japanese mind is not given to clear-cut thinking.”¹⁶¹ As evidence of Japanese “degeneracy of thinking,” Borton singled out the idiomatic expression *okagesama de*.¹⁶² Borton translated this phrase, used as a conventional greeting in response to the question “How are you?,” as “by your shadow, I am strong.” Since another person’s shadow “ha[s] little to do” with how one is doing, Borton found that the Japanese disregarded the specific meaning of words, leading to a double standard of honesty which at times caused the Japanese “to be dishonest in our sense of the term.”¹⁶³ Such attitudes about the incomprehensible nature of Japan were also present in offhand remarks found in lectures not related to Japan at all, as when in a lecture on the organization of military government Colonel Underhill stated that “when dealing with Orientals” he was not sure whether

¹⁵⁹ Borton, “Japanese Political History to 1868”, 3, SMG.

¹⁶⁰ Borton, “Japanese Characteristics That May Affect Military Government”, 2, SMG.

¹⁶¹ Id.

¹⁶² Id.

¹⁶³ Id.

it was safe to assume that “a Japanese who is not starving is less likely to take revenge on you by committing hara-kiri on your doorstep....than a Japanese who is absolutely starving.”¹⁶⁴

Borton further highlighted the mutually exclusive nature of Japanese and Western culture in his description of the customs of the Japanese upper classes. Japanese “aristocrats” led a life of “conflicts,” manifested in how they would wear Western clothes by day and “native dress” by night, enjoy a concert by Beethoven one evening and a concert of Japanese music another, or drink whisky and soda at noon but insist on sake in the evening.¹⁶⁵ If this was a life of conflicts, then the message was clear: there could be no bridge between Western and Japanese ways of life.

For all of the stereotypes and negative associations Borton conveyed, he did allow for the possibility of development towards a more liberal order in Japan. Borton admitted in front of students that Japan had been led by liberal leaders who were willing to work towards disarmament and international cooperation in the 1920s. The problem, according to Borton, was that there was no constitutional way to keep militarists from taking control since the army and navy were directly responsible only to the emperor.¹⁶⁶ It was still possible to establish “an effective liberal constitutional government” within the framework of the Meiji constitution if a few “minor changes” were made, such as curtailing the broad powers of the Ministers of War and of the Navy and making the cabinet directly responsible to the Diet.¹⁶⁷ Making such changes would be easy, because the emperor had the right to initiate amendments.¹⁶⁸ Implied in this statement and later explicitly stated, the emperor would need to be retained to prevent

¹⁶⁴ Underhill, “Organization of Military Government,” 7, SMG.

¹⁶⁵ Hugh Borton, “Social Psychology,” n.d., 2, Book 3, SMG.

¹⁶⁶ Hugh Borton, “Japan Becomes a World Power”, March 22, 1943, 1, Box 2, UVAA; Borton, “System of Government in Japan I and II”, 5-6, UVAA.

¹⁶⁷ Borton, “System of Government in Japan I and II”, 6-7, UVAA.

¹⁶⁸ Id. 6

“widespread anarchy” in Japan.¹⁶⁹ It was therefore possible, even essential, to retain Japan’s German-inspired constitution. Although reverence for the emperor stemmed from “primitive tribal beliefs,”¹⁷⁰ it was apparently possible to modernize the institution.

This would happen through “a slow educational process” that would teach the Japanese people how to “think independently” and “accept wholeheartedly the basic tenants of democracy.”¹⁷¹ Given how differently the Japanese mind supposedly operated, one might have thought it impossible to redeem the Japanese through education. Yet Borton seemed cautiously optimistic that making the Japanese people see the light was possible. As the war came to an end and the occupation began, this idea would increasingly become accepted orthodoxy. The fact that Borton was advocating this view at an official institution of the US Army was significant given the broader popular and academic discussions over whether Japan could ever adopt Western democratic ideas and institutions. Together with the other lectures on the topic, it indicates a wider institutional belief in the US military that Japan could be reformed.

Where Borton tended to emphasize history with some discussion of anthropology in his lectures, others made anthropology their primary methodology. They implicitly accepted the idea that Japan could be reformed along democratic lines and the desirability of doing so, but emphasized the need to be sensitive to Japanese cultural sensitivities.

Dr. Ernest Griffith, the director of the legislative reference service at the Library of Congress and responsible for research on the military effort in World War II,¹⁷² stated that understanding of foreign culture was “an essential tool” of an administrator in military

¹⁶⁹ Id. 7

¹⁷⁰ Borton, “Japanese Political History to 1868,” 1, SMG.

¹⁷¹ Borton, “Japanese Characteristics that May Affect Military Government”, 3, SMG.

¹⁷² Saxon, Wolfgang. “Ernest Griffith, 100, Researcher And Expert About Government.” *The New York Times*, 1997. <https://www.nytimes.com/1997/02/09/us/ernest-griffith-100-researcher-and-expert-about-government.html>.

government because it would help the military governor to preserve the “self-respect ...of the populace as far as possible.”¹⁷³ At the Chicago CATS, John Embree stressed the importance of allowing the Japanese to retain a certain amount of “opposition face,” defined as leeway for Japanese public officials to oppose occupation administration for purposes of preserving their own credibility in front of the Japanese public.¹⁷⁴ Embree advised students to “avoid paternalism” and give Japanese leaders “some sense of responsibility” in carrying out, but not creating, occupation policy.¹⁷⁵

The themes of authority and respect also surfaced in a lecture by E. Adamson Hoebel, a Columbia-trained anthropologist teaching at the Chicago CATS. Hoebel’s lecture is especially noteworthy because he used an anthropological approach to frame students’ understanding of how they should use law to effectuate change in Japan. Drawing on the stereotype of unquestioning obedience in Japanese society, Hoebel expected the Japanese people would transfer “their habits of obedience to officialdom” to the American occupiers.¹⁷⁶ The US occupiers would not be able to use social mechanisms, like ostracism, to effectuate change from within Japanese society, but they would possess “authority and force, which is the essential of law” to “direct the Japanese to the place where we want them as a nation.”¹⁷⁷ Yet the occupiers would have to be careful to exercise their legal authority so as to “gain respect and action,” or they would “get undying resistance.”¹⁷⁸ The truly skilled occupation administrator would look

¹⁷³ Id. 2

¹⁷⁴ John Embree, “Practical Suggestions for Public Administrators with Special Reference to Japan”, January 15, 1945, 3, Records Relating to the Training of Personnel in Civil Affairs and Military Government at Selected Universities and Military Institutions, A1 444, Records of the Office of the Provost Marshal General, RG 389, Entry 444; National Archives at College Park, College Park, MD (hereafter CCATS).

¹⁷⁵ Id. 4

¹⁷⁶ E. Adamson Hoebel, “The Function of Law”, December 1944, 6, CCATS.

¹⁷⁷ Id. 8, 13-14.

¹⁷⁸ Id. 13

beyond the technical aspects of law and understand the general function of law as a social institution to achieve social conformity. This would allow him to secure the greatest amount of acceptance from the occupied country without sacrificing the goals of occupation.¹⁷⁹

Back at the School of Military Government, Professor Gabriel, the historian from Yale University, highlighted the significance and even the primacy of anthropology in modern academia, which was “bringing about a rewriting of history” and making itself felt in fields as diverse as sociology, psychology, and law.¹⁸⁰ Employing the notion of culture, anthropology’s central conceptual tool, Gabriel emphasized the importance of respecting the occupied people’s way of life.¹⁸¹ Even so, Gabriel fell into the same trap that so many anthropologists at the time did. In insisting on the difference and uniqueness of the Japanese people, he promoted the kind of ideas that would lead the United States to attempt drastic cultural transformation in the Japanese people.

For example, Gabriel claimed that Japan was the “prime example...of the nation and culture that cannot be understood or dealt with without an understanding of its religion.”¹⁸² Religion was at the root of “the Japanese drive for power” and “an instrument of national policy” rather than an individual endeavor.¹⁸³ Gabriel did not draw any conclusions from this statement. Within the context of the lecture, it seems to have been intended as a neutral observation about the role of religion in Japan. Yet the obvious implication of such an idea for a military governor was not that religion in Japan should be respected as a unique aspect of local culture, but that it would need to be transformed if Japanese expansionism was to be suppressed. As discussed

¹⁷⁹ Id. 2

¹⁸⁰ Ralph H. Gabriel, “Military Government and the Civil Population”, June 2 1943, 1, Book 2, SMG.

¹⁸¹ Id. 1, 3.

¹⁸² Id. 7.

¹⁸³ Id. 7-8.

below, this is precisely the attitude MacArthur and his staff took during the occupation. Even as lecturers on Japanese history and culture touted high-minded principles of respect for different cultures, they provided a framework for people with a mindset more immediately focused on conquering the enemy that justified radical change in Japan.

IV. The Image of Japan and the Application of the Principle of Military Necessity

In fact, the widely-held images of Japan as feudal and utterly foreign informed the American understanding of what military necessity required in Japan. The Japanese themselves were fundamentally dangerous because of their ancient ways and strange mentality, so military necessity required not just a thorough reform of their institutions but a transformation of the people themselves. This conclusion is expressed in the American governing documents of the occupation, namely, the Basic Directive and SWNCC 150/4.¹⁸⁴ Since the Basic Directive was meant to make the principles enunciated in SWNCC 150/4 binding as a military order, much of the language between the two documents is similar. Most references will therefore be to the Basic Directive, adding in the language of SWNCC 150/4 when helpful.

Of immediate note is the first section of the Basic Directive defining the basis and scope of MacArthur's military authority. MacArthur, referred to in the documents by his official title of Supreme Commander for the Allied Powers (SCAP), had supreme power to carry out the terms of Japan's surrender. But SCAP was supposed to exercise power as much as possible through the institutions of the emperor and the Japanese government rather than through direct military rule. SWNCC 150/4 explains that indirect rule was meant to allow the United States to achieve its

¹⁸⁴ The Potsdam Declaration was another major reference point for the American occupiers, but since it was an international proclamation it less useful for our purposes of understanding how specifically American images of Japan were projected onto the application of military law. In any event, the Potsdam Declaration's major principles, including the demilitarization and the democratization of Japan, were incorporated into SWNCC 150/4 and the Basic Directive.

objective with a “minimum commitment of its forces and resources.”¹⁸⁵ Many historians settle for this explanation, commenting on how the United States did not have enough manpower and Japanese language experts to carry out direct military rule effectively.¹⁸⁶ The beginning of this sentence is typically overlooked, which also singles out “the present character of Japanese society” as an additional reason for indirect rule.¹⁸⁷ Given our previous discussion of the American perception of Japan, this apparently throw-away clause assumes a new significance, as it indicates that the US military leadership was explicitly factoring its understanding of Japan into the structure of occupation. The “present character” of Japan was feudal, oriental, and in many ways incomprehensible to the “western mind,” so that governance was best carried out by Japanese leaders who were apparently better able to implement US policy in a way that would work in Japan.

This perception of Japan informed not only the US military’s decision to favor indirect rule over direct rule, but also its very conception of the kinds of policies it needed to implement. Though not explicitly using the words “military necessity”, the Basic Directive made it clear that all of the orders it laid out were paramount to meeting the military objectives of the occupation. The “ultimate objective” of the occupation was to ensure that Japan would never again become “a menace to the peace and security of the world,” and MacArthur had the power to take “any

¹⁸⁵ State-War-Navy Coordinating Committee, Politico-Military Problems in the Far East: United States Initial Post-Defeat Policy Relating to Japan (Sept. 6, 1945), <https://www.ndl.go.jp/constitution/shiryō/01/022/022tx.html>. (hereafter SWNCC 150/4)

¹⁸⁶ Takemae, *Inside GHQ*, 64; Fumio Fukunaga, *The Occupation of Japan 1945-1952: Tokyo, Washington, and Okinawa* (Tokyo: Japan Publishing Industry Foundation for Culture, 2021), 51;

¹⁸⁷ SWNCC 150/4. The full sentence reads: “In view of the present character of Japanese society and the desire of the United States to attain its objectives with a minimum commitment of its forces and resources, the Supreme Commander will exercise his authority through Japanese governmental machinery and agencies, including the Emperor, to the extent that this satisfactorily furthers United States objectives.”

steps deemed advisable and proper to effectuate the surrender.”¹⁸⁸ In other words, MacArthur could undertake whatever military necessity required to achieve the objectives of the occupation.

At the same time, it was not MacArthur’s job to impose on Japan “any form of government not supported by the freely expressed will of the people,” nor was he to “assume any responsibility for the economic rehabilitation of Japan.”¹⁸⁹ These limitations on the scope of MacArthur’s authority correspond to the traditional understanding of the principle of military necessity. Occupying forces were not supposed to be concerned with institutional or economic reform beyond what military necessity required.

Despite these disclaimers, the Basic Directive’s instructions on the measures MacArthur would need to take to ensure that Japan would no longer pose a security threat to the United States and the rest of the world suggested that GHQ would need to intervene deeply in the structure of Japanese society. The required measures included not only demilitarization and the destruction of Japan’s wartime industries, but also the “strengthening of democratic tendencies in governmental, economic, and social institutions,” which included support for “liberal political tendencies,” freedom of religion, wide distribution of income and “ownership of the means of production and trade,” the “democratization of Japanese economic institutions”, and even the removal of militarist teachers in schools and reform of the Japanese education system.¹⁹⁰ In short, any measures designed to counteract Japan’s “feudal and authoritarian tendencies” were permitted and favored.¹⁹¹ These provisions show that the United States military had an expansive

¹⁸⁸ Basic Initial Post-Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (Nov. 3, 1945) (hereafter Basic Directive), *in* Gov’t Section, Supreme Commander for the Allied Powers, Political Reorientation of Japan: September 1945 to September 1948, at 429 (1949).

¹⁸⁹ *Id.* 429, 433.

¹⁹⁰ *Id.* 429, 433.

¹⁹¹ *Id.* 430

notion of what was militarily necessary to neutralize Japan. Their ideas about Japan explain why this notion was so far-reaching.

One product of the US Army that explicitly made the transformation of the Japanese people the key to military success was the instructional film titled *Our Job in Japan*. The War Department produced this training video for soldiers to watch on the way to their assignments in occupied Japan. The film begins by making it clear that whether the United States would “clinch our victory or muff it” depended on solving “the problem of 70 million Japanese people.”¹⁹² The Army’s job started “in the brain inside of the Japanese head” which were “physically no different than any other brains in the world” and were capable of doing “good things or bad things, all depending on the kinds of ideas that are put inside.”¹⁹³ Though Japan was “an old, backward, superstitious country,” the “Japanese brain” had begun to learn “modern” and “sensible ideas” in the early 20th century until it was hijacked by “warlords” (note the feudal connotations of the word choice).¹⁹⁴ Even as the video adopted the position held by Borton and others that the Japanese were reformable, it echoed ideas about the contradictory coexistence of the modern and the feudal in Japan. The narrator explains that “with such a brain, with its mixture of ancient and modern, some very interesting things could be done....a brain that thought in the modern way could be taught to use the latest modern weapons,” while “a brain that also thought in the ancient way could be hopped up to fight with fanatical fury.”¹⁹⁵ The task of the occupying forces would be to drive home the idea that “this is Japan’s last war” and prove to the Japanese that “our idea is better than the Japanese idea.”¹⁹⁶

¹⁹² War Department, “Our Job in Japan,” 1945, 1:12 to 1:21, <https://www.youtube.com/watch?v=pw-89Mco-xo>

¹⁹³ “Our Job in Japan,” 2:48 to 3:13.

¹⁹⁴ Id., 4:12 to 4:30

¹⁹⁵ Id.

¹⁹⁶ Id., 11:08; 12:05 to 12:08; 12:30 to 12:33.

Our Job in Japan is significant not only because it directly links the transformation of the Japanese mind to military victory. It also exemplifies how the Army's ideas about Japanese culture translated into specific policy choices during the occupation which on their face exceeded the bounds of military necessity. *Our Job in Japan* identified Shinto, "an old religion, out of date" as the primary instrument by which the "warlords" indoctrinated the "Japanese brain," making it into "a place where the people had to listen" to the "mumbo jumbo" dug up from "Japan's murky past."¹⁹⁷ By repeatedly telling the Japanese that "the sun goddess created the Japanese to rule all the other people of the earth," the "warlords" managed to convince the "Japanese family" that it was destined "to crush, to conquer, and to rule like gods over all the other people of the earth."¹⁹⁸

The Army's conception of Shinto as a feudalistic remnant that was transformed into a vehicle for ultranationalism was reflected in SCAPIN-448 "Abolition of Governmental Sponsorship, Support, Perpetuation, Control and Dissemination of State Shinto," GHQ's directive which abolished Shinto as Japan's official state religion and dismantled the entire system of state-sponsored Shinto. The interplay between American images of Japan and the demands of military necessity come to the fore in this directive. SCAPIN-448's stated objectives framed the suppression of state Shinto as the removal of a military threat and establishing peace in Japan, most notably in that it aimed "to prevent a recurrence of the perversion of Shinto theory and beliefs into militaristic and ultra-nationalistic propaganda designed to delude the Japanese people and lead them into wars of aggression."¹⁹⁹ The rationale here plausibly fits the logic of

¹⁹⁷ Id., 5:35 to 6:40

¹⁹⁸ Id., 8:10 and 9:50 to 9:55.

¹⁹⁹ General Headquarters, Supreme Commander for the Allied Forces, "SCAPIN-448: Abolition of Governmental Sponsorship, Support, Perpetuation, Control and Dissemination of State Shinto," <https://jahis.law.nagoya-u.ac.jp/scapindb/docs/scapin-448>.

military necessity: a successful occupation requires the elimination of ideas which promote aggression and resistance towards the occupying power, certain forms of Shinto have been used to promote these ideas, therefore such perversions of religious belief must be suppressed.

Yet SCAPIN-448's specific measures arguably went farther than what a strict understanding of military necessity required. Sponsorship of any form of Shinto at any level of government, teaching Shinto doctrine "in any form" in public schools, and even *kamidana* (literally, "god-shelves," miniature altars placed on walls) in any kind of public building were prohibited.²⁰⁰ These measures applied to all forms of Shinto, not just the ultra-nationalistic State Shinto instrumentalized by governing elites during the war. Rather than simply eliminate the instrumentalized version of Shinto, SCAPIN-448 aimed to establish an American-style separation of Church and State.²⁰¹ Such a dramatic step might seem like a policy choice more suitably left to the Japanese people rather than to an occupying power. But as we know from *Our Job in Japan*, the Army considered Shinto (in general, not just militarized State Shinto) as inextricably linked to the old feudal edifice of Japan. A feature of the feudalistic mentality which had inspired the Japanese to go to war, Shinto needed to be removed from its place of prominence in Japanese society as part of a larger project to cure the Japanese "brain" of the old ideas that predisposed the Japanese people to wars of aggression.²⁰² SCAPIN-448 is thus a prime example of how military necessity was informed by specific ideas about Japan.

²⁰⁰ Id.

²⁰¹ The drafter of SCAPIN-448, Dr. William K. Bunce, explicitly stated that his primary inspiration was the US Constitution. Takemae, *Inside GHQ*, 377.

²⁰² Bunce himself had a certain appreciation for Shinto due to his prewar experience as an English teacher in Japan and did not wish to discourage or restrict Shinto itself. Takemae, *Inside GHQ*, 356. However, as *Our Job in Japan* illustrates, negative views of Shinto as a worn-out feudalistic religion were actively promoted in the US military. MacArthur himself sought to use his powers to promote Christianity in Japan at the expense of Shinto as much as possible. Takemae, *Inside GHQ*, 357.

As far as Japan's political institutions were concerned, the doctrine of military necessity was pushed to its limits in GHQ's constitutional reform of Japan. As GHQ's internal memo on constitutional reform in Japan shows, MacArthur concluded that he had the authority to draft an entirely new constitution for Japan based on the Basic Directive's language ordering SCAP to encourage democratic tendencies and to favor changes in Japan's feudal and authoritarian orientation.²⁰³ Following MacArthur's orders, which explicitly commanded that "the feudal system of Japan will cease,"²⁰⁴ GHQ's staff produced a constitution in just one week which de-divinized the emperor, eliminated the House of Peers as a vestige of Japan's feudal system, and provided for a host of civil rights that was and remains "one of the most liberal guarantees of human rights in the world."²⁰⁵

The saga of GHQ's imposition of a new constitution on Japan reveals an explicit linking between the American view of Japan as feudal and the requirements of military necessity. MacArthur's orders to his staff, described just above, characterize Japan as feudal, in line with all of the ideas we saw promoted at the School of Military Government. GHQ's internal memo on constitutional reform states that MacArthur would be unable to accomplish his mission to encourage liberal democratic tendencies in Japan as ordered in the Basic Directive if he did not implement "fundamental changes in the Japanese constitutional system."²⁰⁶ This position represents a stark contrast with the ideas of Hugh Borton, who had been teaching students that the Japanese imperial constitution could be kept in place with a few relatively minor changes. MacArthur himself was initially willing to allow the Japanese government to tackle the question

²⁰³ See Alfred Hussey Papers; Constitution File No. 1." Birth of the Constitution of Japan.
https://www.ndl.go.jp/constitution/e/library/06/hussey/hussey_040l.html

²⁰⁴ John W. Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York: W.W. Norton, 2000), 361.

²⁰⁵ Id. 369.

²⁰⁶ Alfred Hussey Papers; Constitution File No. 1." Birth of the Constitution of Japan.
https://www.ndl.go.jp/constitution/e/library/06/hussey/hussey_040l.html

of constitutional reform. But the local context, the ultimate criterion determining what military necessity required, changed once he determined that the Matsumoto draft, the official Japanese proposal for constitutional reform, was too conservative.²⁰⁷ It then became necessary for the occupying forces to step in if they were to effectively carry out the Basic Directive's command to eliminate "feudalism" and strengthen "democratic tendencies" in Japan.

As expansive as this reading of military necessity was, it was not the most radical use of the doctrine. Military necessity in Japan required not only the total overhaul of Japan's constitutional order, but a transformation of the Japanese themselves. This is most apparent in GHQ's educational reforms. The Basic Directive ordered MacArthur to ensure that schools no longer acted as founts of militaristic or nationalist propaganda and that the whole system would be reformed to promote democratic values.²⁰⁸

In carrying out this reform, MacArthur was not acting in a legal void, as doctrinal sources in the United States had engaged with the question of educational reform by occupying forces. The conclusion was not supportive. The JAG textbook used the German reform of the University of Ghent as a case study of military occupiers overreaching the bounds of military necessity. During World War I, the Germans had "transformed the University of Ghent into a Flemish institution," something that military security did not require.²⁰⁹ The courses of instruction, the language classes were taught in, and the selection of professors were of "no legitimate concern" to the military occupant because they did not "endanger the interests of the occupant."²¹⁰ Yet in

²⁰⁷ Fumio Fukunaga, *The Occupation of Japan 1945-1952: Tokyo, Washington, and Okinawa* (Tokyo: Japan Publishing Industry Foundation for Culture, 2021), 112.

²⁰⁸ See Basic Directive, 433.

²⁰⁹ *Law of Belligerent Occupation*, 65.

²¹⁰ Id.

post-World War II Japan, military necessity justified those very same measures not just in the universities, but throughout the entire Japanese school system.

The tenuous connection between military necessity and institutional reform informed by ideas about Japan is illustrated by just how extensive GHQ's educational reform ended up being. While military necessity could perhaps justify removing militaristic school teachers or modifying war-promoting textbooks, it is harder to see how deciding that the first nine years of schooling would be free, coeducational, and compulsory, or that the bureaucracy in charge of administering education needed to be decentralized, had anything to do with strictly military objectives.²¹¹ The same could be said about the (ultimately unsuccessful) push to simplify the Japanese writing system.²¹² However, given what we know about the American perception of Japan, the tenuous link between military necessity and granular primary school reform becomes clearer. The Japanese were "childish," feudal in their unquestioning submission to authority, and programmed to think along non-logical or illogical lines. As Borton had insisted in his lectures, educational reform was essential to modernizing the Japanese and converting them to the virtues of liberal democracy. In this light, it makes sense why the Basic Directive would include measures like education reform as essential to ensuring that Japan would never again become a military threat. The problem was not only Japanese military or political institutions that could directly mobilize armed force against the United States, but also the Japanese people themselves who posed a security threat as long as they remained stuck in their feudal ways. This image of Japan meant that military necessity justified the kinds of incursions into the occupied society that were previously held to be beyond the scope of military government.

²¹¹ Takemae, *Inside GHQ*, 356.

²¹² *See Id.*, 359-361

GHQ's attack on Shinto, its overhaul of Japan's constitutional order, and its wide-reaching educational reforms reveal an apparent contrast between what military sources taught and what the US Army actually practiced in Japan. At first glance, objectives such as promoting religious liberty, establishing democracy, or reforming education do not appear to be "primarily military ends" of the sort Hudson believes contemporary US doctrine on military necessity had been limited to.²¹³ They seem more like encroachments on Japan's sovereignty of the kind military government law apparently forbade. But if we understand that the Japanese were considered pre-modern feudalists inclined toward absolutist government and military expansionism, then we can understand why intervening heavily in Japanese religious, political, and social institutions would have seemed to be militarily necessary. The Japanese themselves would need to be reformed to ensure that they would never again become militaristic and that they would become peaceful members of international society. Though the Basic Directive disclaimed any responsibility to install a democratic government in Japan or rebuild the nation economically, if Japan was as backward as the US thought, military necessity would inevitably require those measures.

V. Conclusion

GHQ's religious, constitutional, and educational reforms in Japan illustrate my argument that widely-held images of Japan as feudal, militaristic, and exotic enabled an unprecedentedly expansive application of the doctrine of military necessity, requiring not only institutional reform but also the transformation of the Japanese people themselves.

²¹³ Hudson, *Army Diplomacy*, 70.

Part II showed that, as taught in the classroom, military necessity was a flexible concept, but one that was at least theoretically bounded. While local conditions would be the ultimate factor deciding what military necessity required, the sovereignty of an occupied territory was to be respected as much as possible. Any measures an occupying force undertook would need to be justified by specifically *military* considerations of the occupier, not by concerns for the well-being of the occupied.

Part III explored how lecturers at the School of Military Government and the Chicago CATS conveyed to students the idea that Japan and the Japanese were feudal, totalitarian, childish, and fundamentally different from the West. At the same time, students were taught that the Japanese were capable of being educated to appreciate and accept Western democracy and liberal values. These ideas were typical of the broader American discourse on the Japanese, and the lectures are evidence that the then-widespread images of Japan were accepted as common orthodoxy in the United States military.

American images of Japan shaped GHQ's understanding of what military necessity required to successfully subdue occupied Japan. The law of occupation was not meant to be a tool for revamping an entire country's political, economic, and social structures. Even less was it meant to require occupying forces to install apparatuses which would reeducate and transform the inhabitants of an occupied territory. Yet this is precisely what MacArthur and his staff at GHQ believed was necessary in the context of postwar Japan due to their underlying assumptions about the country.

The methodology of this thesis has been to study the lectures given at the School of Military Government and the Chicago CATS. I have made the methodological assumption that the ideas and concepts delivered at US military training institutions were also present in the

minds of GHQ's staffers. Key documents like the Basic Directive, SWNCC 150/4, and GHQ's internal memo on MacArthur's power to undertake constitutional reform support this assumption, but space considerations have prevented a fuller exploration of GHQ's archival sources. While most studies focus on the policy aspects of GHQ's activity, this thesis has contributed to the relatively underdeveloped English language literature on the legal aspects of the American occupation of Japan. It has also shed light on the American understanding of the law of military occupation before it was formalized at the international level. Using the framework established here, a future study could examine the implementation of GHQ's detailed policies and the individuals driving that implementation to see how images of Japan interacted with the legal considerations of military necessity.