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## Democracy and Discontinuity: Japan's Postwar Constitution

John Van Sant\*

Having, by virtue of the glories of Our Ancestors, ascended the Throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favored with the benevolent care and affectionate vigilance of Our Ancestors . . . , We hereby promulgate . . . a fundamental law of the State, to exhibit the principles, by which we are guided in our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

*From the Preamble of the  
1889 Meiji Constitution*

o o o

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

*From the Preamble of the 1947  
Constitution of Japan*

The initial draft of what became the 1947 Constitution of Japan was written in just over one week by a group of Americans working for the Government Section in the General Headquarters (GHQ) of the Supreme Commander for Allied Powers (SCAP), General Douglas MacArthur.<sup>1</sup> As in America's own constitution, the postwar Japanese constitution is based on the individual, who has fundamental human rights that the government must respect and protect. The individual, in the collective capacity as "the Japanese people," is also in possession of the nation's sovereignty. Conversely, the previous Meiji Constitution (formally known as the "Constitution of the Empire of Japan") bestowed duties and qualified rights on the individual. Furthermore, the national polity—the *kokutai*—was based on the Emperor, who was empowered as the head of the Empire, "combining in Himself the rights of sovereignty."<sup>2</sup> As with the 1947 Constitution of Japan, the 1889 Meiji Constitution signaled a major step forward in Japan's political development, and it was also influenced by foreign concepts of constitutional law—especially by the German constitutional monarchy. But the similarities end there. Like the Occupation era (1945-1952) as a whole, the postwar Japanese constitution represented far more of a discontinuity than a continuity with pre-World War Two Japan.<sup>3</sup>

In this paper, I will first describe and analyze the process of making the postwar Constitution of Japan. Then I will discuss the major linguistic problems that arose between SCAP officials and Japanese government officials when the two sides revised the initial American draft of the new constitution. As shall be seen, these linguistic problems were not really about language differences: they were about political differences between SCAP officials who drafted a democratic, even radical constitution and Japanese officials who wanted nothing more than a few token changes to the pre-war Meiji Constitution. In the final section, the dual themes of continuity and discontinuity in comparing Japan's postwar constitution to its pre-war constitutional heritage will be discussed.

## I

On July 26, 1945, the United States, the Republic of China, and Great Britain issued the *Potsdam Declaration* which stated: "The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. The freedom of speech, of religion, and of thought as well as respect for the fundamental human rights shall be established." Furthermore, Allied occupying forces would be withdrawn from Japan as soon as "a peacefully inclined and responsible government" was established in accordance with "the freely expressed will of the Japanese people." Despite these conditions and many others, the *Potsdam Declaration* also called for the "unconditional surrender" of Japan.<sup>4</sup> This inherent contradiction led to confusion during the Occupation. Whenever SCAP implemented reforms opposed by Japanese officials, these officials would accuse SCAP of not gaining "the freely expressed will of the Japanese people" as stipulated in the *Potsdam Declaration*. SCAP would typically respond by pointing out that the declaration also called for Japan's "unconditional surrender." Both SCAP officials and Japanese officials interpreted what they wanted to interpret from the *Potsdam Declaration*—a pattern that repeated itself during discussions on constitutional revision.

After the surrender, SCAP immediately stressed the need for constitutional revision to Japanese government officials. Prince Higashikuni Naruhiko, Prime Minister of the "surrender cabinet," met with General MacArthur in September 1945 and was told that the constitution needed to be revised "as a matter of first importance."<sup>5</sup> Prince Konoe Fumimaro, a prime minister before the Pacific war with the Western allies broke out in December 1941 and a state minister in the postwar Higashikuni and Shidehara cabinets, met with MacArthur on October 4, 1945, and told the general that, "the feudalistic forces must be allowed to exist, and progress toward the construction of democracy must be accomplished step by step."<sup>6</sup> MacArthur, however, emphasized that the Meiji Constitution must be revised. A few days later, SCAP political

advisor George Atcheson, who had been present at the earlier Konoe-MacArthur meeting, met with Konoe and other Japanese officials and re-emphasized the importance of revising the constitution. Shidehara Kijuro became prime minister after the fall of the Higashikuni cabinet in early October. In his first meeting with MacArthur on October 11, the SCAP commander advised Shidehara of the importance of revising the constitution.

Soon afterwards, the Shidehara cabinet established the "Constitution Problem Investigation Committee", with Matsumoto Joji, Minister of State and former law professor at Tokyo Imperial University as its chairman. Though Konoe was also a minister of state in the Shidehara cabinet, he was investigating the constitution in his capacity as Special Assistant to the Lord Keeper of the Privy Seal of the Imperial Household Agency.<sup>7</sup> The confusion of having two agencies investigating constitutional revision ended on November 1, 1945, when SCAP announced that Konoe had not been delegated to work on constitutional reform. Konoe was being criticized from overseas and from within Japan as a possible war criminal because he had been Japan's prime minister in the late 1930s and, therefore, exactly the wrong person to handle the task of reforming Japan's constitutional system. Already under criticism from the allies and the American press for allowing the war-stained Japanese government to continue functioning, American Occupation officials did not want to take on the additional burden of defending a possible war criminal's work on reforming the constitution. Too much of a liability, Konoe was dropped.<sup>8</sup>

During the short time Konoe studied the possibilities for constitutional revision, he "gave no indication that he envisaged anything but the most tokenistic of changes in the Meiji charter."<sup>9</sup> Foreign Minister Yoshida, who later served as prime minister for most of the Occupation, also wanted nothing more than token changes in Japan's constitution. He maintained that democracy "had always formed part of the traditions of our country."<sup>10</sup> Therefore, democratic reforms were unnecessary because Japan had been a democratic country for ages. Citing the "free will" clause of the *Potsdam Declaration* Matsumoto was even more conservative in



his approach to constitutional reform. A few years later, Matsumoto said, "We even thought it might be all right to leave it [the Meiji Constitution] as it was."<sup>11</sup> Shidehara was also extremely reluctant to revise the Meiji Constitution, but he knew that something had to be done to satisfy SCAP.

Japan was a very chaotic country during the early Occupation period. Over two million Japanese had been killed during the war. Fifteen million were homeless. Six million were being repatriated from scattered areas throughout Asia. The country had been devastated from constant bombing, including fire-bombing and two atomic bombings. Japanese government officials had more immediate and pressing problems than revising the constitution.<sup>12</sup> In addition they were just starting to interact with their foreign conquerors. Moreover, it is clear from the beginning of the Occupation that Japanese officials were in no mood for substantial revision of the Meiji Constitution. They were born and raised in the Meiji Era, and had faith in the tradition and image of a wise, benevolent Emperor as sovereign and paternal guardian of his subjects. They clearly recognized the abuses of the military, but felt that these abuses were aberrations that could not be repeated in a Japan that had been torn asunder by war. In addition to having more pressing problems to deal with, Japanese officials felt that any substantial constitutional revision would destroy the traditional social and political order they passionately believed in: the Emperor as a living god; the government controlled by elite bureaucrats; and the Japanese people as subjects, with limited political participation allowed only to males.

On December 8, 1945, Matsumoto presented his "Four Principles of Revision" to the Diet (the Japanese parliament). He demonstrated that continuation of the traditional social and political order was his committee's prime objective:

- 1) No change will be made in the grand principle of the Emperor's right of sovereignty; 2) The Emperor will exercise his right of sovereignty on fewer matters of state, and the Diet will make decisions on a

greater number of matters; 3) The ministers of state [cabinet ministers] will advise the Emperor on all matters of state and will be responsible to the Diet for their advice; 4) Guarantees of the rights and liberties of the people will be strengthened, and ample redress will be given for all cases of violation.<sup>13</sup>

Three of Matsumoto's principles concern the Emperor, and the relationship between the Emperor, cabinet ministers, and the Diet. Only one principle concerned individual rights. None of Matsumoto's principles contains the fundamental democratic concept of social and political equality. Matsumoto and his committee were transparently trying to maintain the political and social status quo of monarchical government through minor constitutional alterations.

As unimpressed as they were with the Matsumoto Committee, MacArthur and other SCAP officials had not yet directly interfered with the work of these Japanese officials. SCAP policy was to work through the existing Japanese government bureaucracy whenever possible. Not only did SCAP not have enough of its own people to carry out all the reforms and changes it felt were necessary in postwar Japan, SCAP wanted to avoid the appearance of being an alien, colonial overlord. As stated in the official history of SCAP, there was no direct interference at this early stage of the Occupation because too early and "too drastic a change might well carry the stamp of alien rule."<sup>14</sup>

For his part, Matsumoto did not consult with any SCAP officials to ascertain their views on revising Japan's constitution. Although he had assembled some of the most formidable legal minds to serve on his committee, none were experts on American law. The few Japanese experts on American law—such as Takayanagi Kenzo—were not consulted by the Matsumoto Committee.<sup>15</sup> Matsumoto took the "freely expressed will of the Japanese people" clause of the Potsdam Declaration at face value. Being a "supremely confident man," he believed that he and his

committee represented the "freely expressed will of the Japanese people" and so there was no need to consult with SCAP. It is also possible that Matsumoto was unaware that America's allies—particularly the allied representatives on the Far Eastern Commission who had endured years of suffering at the hands of the Japanese military—were pressuring SCAP for drastic constitutional reform.<sup>16</sup> In addition to fundamental differences between Japanese officials and SCAP officials over the principles of democracy, Matsumoto's lack of consultation and lack of information made it virtually inevitable that SCAP would directly interfere in and take control of reforming Japan's constitution. The only question was when.

Both the Japanese government and SCAP were prompted to act on February 1, 1946, when the *Mainichi Shimbun* newspaper published a proposed constitution draft from Matsumoto's Constitution Problem Investigation Committee. Most of this "Matsumoto Draft" had been taken directly from the Meiji Constitution, with the Emperor remaining as the sovereign power and Japan remaining as an imperial monarchy. The chief secretary of the cabinet unconvincingly denied that the draft constitution published in the *Mainichi* was the work of the Matsumoto Committee. The following day, the same newspaper severely criticized the proposed constitutional reforms:

We believe most people are deeply disappointed at the draft document prepared by the Constitutional Problem Investigation Committee. The draft is too conservative and simply seeks to preserve the status quo. . . . It is devoid of the vision, statesmanship, and idealism needed for a new state structure. . . . [Matsumoto] shows no understanding that Japan is in a revolutionary period.<sup>17</sup>

The *Nippon Times* warned that, "if the Government insists upon the adoption of the Matsumoto draft, public opinion will rise against it."<sup>18</sup> Press condemnation of the Matsumoto Draft's conservative approach to constitutional reform was widespread.



Jolted by the *Mainichi* criticism, the Matsumoto Committee hastily and informally presented two documents to SCAP: "Gist of the Revision of the Constitution" and "General Explanation of the Constitutional Revision."<sup>19</sup> SCAP was unimpressed with the minor modifications that left the fundamental structure of the Japanese political state in place and decided to take direct control of revising Japan's constitution. On February 3, 1946, MacArthur instructed Brigadier General Courtney Whitney, head of SCAP's Government Section, to make a draft constitution for Japan based on three principles: 1) the Emperor would be head of state, but "his duties will be exercised in accordance with the Constitution and responsible to the basic will of the people"; 2) the abolition of war as a sovereign right; and 3) the abolition of peerage and nobility, except for the imperial family. Colonel Charles Kades, Lieutenant Colonel Milo Rowell, and Commander Alfred Hussey—all lawyers with Government Section—were put in charge of twenty-one Americans who drafted the new constitution. The drafters relied primarily on three sources for ideas to incorporate into the proposed constitution: "Reform of the Japanese Government System" (SWNCC-228), a secret document written in Washington by the State-War-Navy Coordinating Committee; MacArthur's "Three Principles"; and the "Draft Outline of the Constitution" written by a private group of liberal Japanese lawyers known as the Constitutional Research Association. SCAP was impressed with this private group's "detailed and extensive recommendations for absolute guarantees" of social, political, and economic rights. On February 10, SCAP completed the draft of the proposed constitution for Japan.<sup>20</sup>

The proposed constitution was based on the democratic rights of the individual and not on the sovereign power of the Emperor. Although the Emperor was described in Article One as "the symbol of the State and of the unity of the people," it was explicitly stated in Article Four that he "shall not have powers related to government." The fundamental equality of all people and all nations were also major democratic themes of the proposed constitution. To Japanese government officials who believed in the

formality of an Emperor-centered state in the hierarchical society of traditional Japan, the political and social liberalism expressed in the democratic constitution written by a group of Americans was a radical departure from the imperial Meiji Constitution.

On February 13, 1946, Foreign Minister Yoshida, State Minister Matsumoto and other Japanese officials were shocked when Whitney, Kades, Hussey, and Rowell presented them with English-language copies of the SCAP-written draft of the new constitution for Japan. Whitney told Japanese officials present that the Matsumoto Committee proposals were "totally unacceptable." He also said that MacArthur was trying to protect the position of Emperor Hirohito from more severe allied proposals, such as demanding the abolition of the imperial system and trying the Emperor as a war criminal in the upcoming Tokyo War Crimes trials (formally known as the International Military Tribunal for the Far East). Whether he meant it as a threat or friendly advice, Whitney warned those at the meeting that if they did not quickly decide to enact the SCAP-written constitution or something similar to it, "General MacArthur would lay the issue before the people himself." As the Japanese press was severely criticizing the conservative approach of the government towards constitutional reform, Japanese officials at the meeting knew that the Japanese people would prefer the SCAP-drafted constitution to any of the conservative proposals they had so far devised.<sup>21</sup>

Japanese cabinet officials were divided between those who insisted upon Matsumoto's conservative proposals and those who wanted some form of democratic, liberal revision along the lines of SCAP's proposed constitution. Yoshida and Matsumoto led the conservative old guard, while Shidehara reluctantly inclined toward the liberals. After Emperor Hirohito advised Shidehara that he "fully supported the most thorough-going revision," the stalemate was broken and Japanese officials prepared a Japanese language translation of the SCAP-drafted constitution.<sup>22</sup> In making this translation, however, Japanese officials tried to retain as much of the traditional political and social order as possible by interpret-

ing Western concepts of liberal democracy within the Meiji constitutional heritage.

## II

At 10:00 AM on March 4, 1946, Matsumoto, Sato Tatsuo of the Cabinet Bureau of Legislation, and three other Japanese officials delivered their government's translated draft of the SCAP-written constitution to GHQ. As this draft was only in Japanese and had not been approved by the cabinet, SCAP ordered that a final version in English and in Japanese be prepared immediately. Kades, other Government Section officials and the Japanese officials worked non-stop in a guarded room until 5:30 PM the following day.

The Americans quickly discovered discrepancies between the original English draft of their proposed constitution and the Japanese version prepared by the Japanese government. There were many arguments over how the Japanese had translated Chapter I on "The Emperor," and Chapter III on the "Rights and Duties of the People." Four hours after the constitution re-writing and translating marathon began, an irritated and tired Matsumoto left, leaving Sato in charge of the Japanese side.<sup>23</sup> Sato valiantly attempted to preserve as much of the traditional political order as possible in making the Japanese translation, but he won few arguments with the Americans who insisted that Japan's new constitution be unequivocally democratic and a rejection of the imperial Meiji Constitution.

By far the most divisive issue between the Americans and the Japanese in making the new constitution was the Emperor. To the Americans—and the allies—Emperor Hirohito was responsible for the reign of destruction caused by the Japanese military in the 1930s and 1940s. Under the Meiji Constitution, the Army and Navy were responsible only to the Emperor, not to the Diet or Cabinet, and everything they did was in the Emperor's name. However, American Occupation officials knew that Emperor Hirohito did not personally approve of the military's destructive actions. After young, right-wing army officers and their reactionary civilian supporters assassinated government leaders in an attempted coup

d'état in the Emperor's name in the "2-26 Incident" (referring to February 26, 1936), Emperor Hirohito punished the military. American officials were also aware that Emperor Hirohito was a very reluctant supporter of the war against the Western allies begun in 1941. After atomic bombs were dropped on Hiroshima and Nagasaki in August 1945, he personally made the decision to surrender despite opposition from half of the cabinet. Nevertheless, the Americans drafting Japan's new constitution were adamant about limiting his powers and explicitly defining his limited role in a new Japanese government so that the Emperor's name could not be used to pursue such destructive policies in the future.

According to the Meiji Constitution, the Emperor is "sacred and inviolable", "combining in Himself the rights of sovereignty."<sup>24</sup> He had great power, but it was symbolic and formal power, not actual power. Japanese officials believed that the Americans did not understand the difference between the Emperor's formal power, which was immense, and his actual power, which was limited. Despite the impressive title of *tenno* (king/crown of heaven), Japanese emperors had not wielded much actual power for many centuries.<sup>25</sup> However, to Japanese steeped in the Meiji tradition, the Emperor was the heart of Japan's *kokutai*, the national polity. They were worried that the American-drafted constitution would overturn the *kokutai*. Overturning the *kokutai* was exactly what the Americans who wrote the proposed constitution intended.

One of the first discrepancies the Americans noticed in the Japanese translation of the SCAP-drafted constitution was how Japanese officials translated the phrase, "advice and consent." The Americans wanted the new constitution to clearly express the concept of the Emperor's non-superiority to the cabinet and Diet, and had written that the Emperor could act only with the "advice and consent" of the cabinet (Articles Three and Seven). Japanese officials translated "advice and consent" as *hohitsu*, a specialized legal term used in the Meiji Constitution meaning, "serving the Emperor by giving him advice in matters pertaining to the affairs of state." To the Americans, the use of *hohitsu* maintained the idea of the Emperor's formal superiority to the cabinet and was



therefore unacceptable. There were many arguments over this translation, during which Matsumoto got so upset he left GHQ and did not return until the following day. Both sides finally agreed to *jogen to shonin*, literally meaning "advice and approval," without the connotation of imperial superiority.<sup>26</sup>

The Americans wanted the sovereign power of Japan to be in the possession of the people and not the Emperor. As previously noted, the Emperor's sovereign power was considered by the Americans to be a major failing of pre-war Japan. In translating "sovereign" the Japanese first tried *hyosho*, meaning "symbolic," and then *shiko*, meaning "supreme." After these were rejected as being too vague, the term was then correctly translated as *shuken*, meaning "sovereignty" or "sovereign power." However, Japanese officials then translated "the people" as *kokumin*, meaning "country's people." In the earlier Matsumoto Draft, the Meiji Era term *shinmin*, meaning "subjects" had been extensively used. *Kokumin* was definitely an improvement over *shinmin*. The Americans did not object to the use of *kokumin* to stand for "the people" even though they were aware that another term, *jinmin* was more egalitarian. In later explanations to the Diet, cabinet spokesmen claimed the Emperor as one of the *kokumin*, thus he held at least some of the nation's sovereign power. Using the "Emperor-as-*kokumin*" interpretation, the cabinet tried to convince itself and members of the Diet that the traditional *kokutai* of Japan was not changed by the new constitution.<sup>27</sup>

While the position of the Emperor was by far the most controversial subject in making the new constitution between SCAP and Japanese government officials, there was surprisingly little debate over what has since become the most controversial part of the 1947 Constitution of Japan: Article Nine, the "Renunciation of War" article. The second of MacArthur's Three Principles was for Japan to abolish war as a sovereign right, "even for its own security."<sup>28</sup> Since the Manchurian Incident of 1931 and until August of 1945, the Japanese military had clearly been on an expansionist, militarist warpath throughout many parts of Asia, especially in China. MacArthur and the allies wanted to produce social and



legal conditions that would make it impossible for the Japanese military to recover in the foreseeable future. Thus, the initial SCAP draft of the new constitution contained the following article patterned after MacArthur's second principle:

War as a sovereign right of the nation is abolished. The threat or use of force is forever renounced as a means of settling disputes with any other nation. No army, navy, air force, or any other war potential will ever be authorized and no rights of belligerency will ever be conferred upon the State.<sup>29</sup>

The SCAP-drafted constitution dropped the "even for its own self-defense" clause contained in MacArthur's second principle, but the second paragraph unambiguously meant that Japan could not legally maintain any military forces whatsoever.

During Diet debates on the proposed constitution, Ashida Hitoshi, chairman of the House of Representative's Constitutional Committee (and Prime Minister from March to October 1948), added the phrase, "Aspiring sincerely to an international peace based on justice and order," before the first sentence and, "In order to accomplish the aim of the preceding paragraph," at the start of the second paragraph. The article could now be interpreted to mean that war and the use of military force would be permissible for self-defense of the nation, but not "as a means of settling disputes with any other nation." Although SCAP's early intention had been to disallow any Japanese military forces whatsoever in the constitution, Ashida's addition of clauses to Article Nine and SCAP's non-objection to these clauses opened up a loophole that has allowed the Japanese government to interpret the "renunciation of war" article as permitting the creation of a military organization—the Self-Defense Force—and the use of military force for national self-defense.

At the time, however, these changes attracted little attention among Diet members. Kades knew the "Ashida amendments" would allow for military self-defense, but he did not object.<sup>30</sup> However,

S.H. Tan, the Chinese representative on the Far Eastern Commission, realized what Ashida was doing and objected vehemently. The Chinese had suffered horribly under the boot of the Japanese military and their objection to the clauses added to Article Nine led to the only change in the proposed constitution not initiated by the Japanese or Americans. "The Prime Minister and other Ministers of State must be civilians," was added to the constitution at Tan's insistence.<sup>31</sup>

While the Americans who drafted the proposed constitution were attempting to upend Japan's traditional political structure, they were also trying to upend what they considered to be its backward, feudal social structure as well. They had an especially negative view of the status of women in traditional Japanese society and an article in their proposed constitution exemplified this view:

The family is the basis of human society and its traditions for good or evil permeate the nation. Marriage shall rest upon the indisputable legal and social equality of both sexes, founded upon mutual consent instead of parental coercion; and maintained through cooperation instead of male domination. Laws contrary to these principles shall be abolished, and replaced by others viewing choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.<sup>32</sup>

Beate Sirota, aged 22, wrote this article. Despite her youth, SCAP selected her to work on the proposed constitution because she had grown up in Japan before emigrating to the United States in 1938. Unlike most Americans working for SCAP, she was fluent in the Japanese language. There were three other women who helped draft the proposed constitution, but only Sirota was given the task

of drafting what came to be called the "Equality of the Sexes" article.<sup>33</sup>

Scholars who have researched women's rights in the Occupation era have not yet discovered how the conservative, all-male cabinet reacted to this article. However, as Inoue Kyoko writes, "it must have come as a shock."<sup>34</sup> According to the Meiji Constitution and pre-war legal codes, women did not have the right to vote, married women could not own property separately from their husbands, they were not allowed to inherit family property, and initiating divorce proceedings was almost impossible for Japanese women.<sup>35</sup> The article written by Sirota in SCAP's proposed constitution not only guaranteed equal social and legal rights for both sexes, it specifically blamed males and parents for traditional inequality.

When Matsumoto, Sato, and other Japanese officials arrived at GHQ on March 4, 1946, with their translation of the SCAP-written constitution that had been given to them in February, they had re-written and drastically reduced the above "equality of the sexes" article to the following: "Marriage has to be based only on mutual consent of a man and a woman, and maintained through mutual cooperation of the spouses with the equal rights of husband and wife as a basis."<sup>36</sup> Incorporating all of the specified equal rights into the new constitution could lead to social chaos, Japanese officials believed, and so most were dropped from their version of the constitution. American officials, however, insisted on retaining most of the specified rights in the original article, though Matsumoto and Sato succeeded in removing the "parental coercion" and "male domination" phrases. With a minor change in the one-sentence version written by Japanese officials, the following was added:

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and family, laws have to be enacted from the standpoint of individ-

ual dignity and the essential equality of the sexes.<sup>37</sup>

Similar in its approach to articles on the Emperor in which certain words and phrases were re-interpreted within the Meiji tradition, the cabinet adopted the view in later explanations before the Diet that despite the legal consequences of the "equality of the sexes" article (Article 24) in the new constitution, there would be no change in traditional gender roles in Japanese society.

The most significant interpretative change that occurred between the SCAP-drafted constitution of February 1946 and the Japanese Constitution promulgated in November 1946 (becoming effective in May 1947) was the use of colloquial Japanese (*kogotai*) in the Japanese version of the constitution rather than the classical literary style (*bungotai*) of the Meiji Constitution.

After an outline of the proposed constitution was published in the newspapers on March 6, 1946, an organization of writers and scholars, known as the People's National Language Movement, recommended to the Japanese government that the new constitution should be written in colloquial style Japanese. SCAP welcomed the use of colloquial Japanese, but had not initiated its use. Not surprisingly, Matsumoto resisted this idea as too undignified for the nation's most important document. Pressed for time and by other government officials who believed that the colloquial style was more suitable to the new, democratic constitution, Matsumoto relented.

Adopting the colloquial style had two major advantages. First, those with an average education could read it and understand it, unlike the Meiji Constitution which was difficult to read and even more difficult to understand. Second, as SCAP and the Japanese government were presenting the fiction of the proposed constitution as the work of the Japanese government, adopting colloquial language would facilitate the removal of the translation atmosphere in the proposed constitution.<sup>38</sup> Finding and/or creating classical Japanese terms to match the modern, democratic ideals expressed in the original English of the proposed constitution was

an extremely difficult linguistic undertaking that would require the use of awkward terms, raising suspicions that the proposed constitution had been translated into Japanese rather than originally written in Japanese by Japanese officials. The lasting influence of the adoption of colloquial language in the constitution is that all laws since that time have been written in colloquial language and have given a democratic character to postwar Japanese law.

In her linguistic and cultural analysis of *MacArthur's Japanese Constitution*, Inoue Kyoko demonstrates that using colloquial language had an unintended consequence that helped the Japanese government gain the approval of Diet members and the people alike. The original illocutionary force of commanding the government not to abridge the people's democratic rights and of committing the government to work on behalf of the people in the English version underwent a slight, but ultimately important transformation during the change to colloquial Japanese. The illocutionary force of the colloquial Japanese version of the constitution asserts and commits both the government and the people to respect democratic rights. In other words, it is in the language of shared responsibility.<sup>39</sup>

The illocutionary force of command and commitment in the English version of the Constitution of Japan was (and still is) expressed through "shall."<sup>40</sup> For example, the first part of Article 13 commands that, "All of the people shall be respected as individuals." This was translated into colloquial Japanese as, *Subete kokumin wa, kojīn toshite soncho sareru*. However, because it uses simple, non-past tense, this sentence is more accurately translated as, "All of the people are/will be respected as individuals."<sup>41</sup> While the general meaning is the same in English and Japanese, the Japanese translation does not convey the same illocutionary force of command that the English version does. Inoue demonstrates that in addition to the use of the simple, non-past tense, the use of *nakereba naranai* for "shall," and the use of *koto ga dekiru* for "may" changed the illocutionary force from command to a commitment of shared responsibility.<sup>42</sup>



The transformation of the illocutionary force when translating the English language, SCAP-drafted constitution into the Japanese language was unintentional and unnoticed by either SCAP officials or by the Japanese officials who made the translation.<sup>43</sup> Instead of the government commanding the people as in the Meiji Constitution, or the people commanding the government as in the American Constitution and to a large extent in the SCAP-drafted constitution, the shared responsibility and commitment expressed in the Japanese translation of the SCAP-drafted constitution was more conducive to the Japanese people's evolving view of the relationship between themselves and their government. This unintentional change in the constitution helped it gain approval in the Diet, as discussed above, and among the people as Japan's most important legal document.

The linguistic problems that occurred between American and Japanese officials in drafting and translating many of the new constitution's specific articles—particularly those on the Emperor and on individual, human rights—were not simply differences over language. Most of these problems occurred because Japanese officials desperately wanted to retain as much of their political and social heritage as possible, whereas the Americans wanted to create a new, democratic order for Japan. Having defeated Japan in war, they believed they had the right to create this new order for Japan in peace.

### III

On August 24, 1946, the Diet's House of Representatives approved the proposed constitution by a 421-8 vote. The House of Peers approved it the following month by a 298-2 vote. The final version of the constitution was then sent back to the House of Representatives and approved by a 342-5 vote. With Emperor Hirohito present, the Imperial Household's Privy Council approved the constitution at a special meeting on October 29, 1946. Subsequently, the Constitution of Japan was promulgated on November 3, and officially came into effect on May 3, 1947.

Despite certain cursory similarities, the postwar Constitution of Japan represents a fundamental—even radical—break with the pre-war Meiji Constitution. However, due to the linguistic and interpretive changes made from the initial SCAP-drafted constitution of February 1946 to the one that was promulgated later that year in November, one Japanese legal scholar writes that the Constitution of Japan was "Japanized."<sup>44</sup> In form, the new constitution was indeed "Japanized." Interpretations of the Emperor as still wielding a degree of sovereign power, and the unintentional change in illocutionary force from command by the people to the government to an assertion of shared responsibility were two of the constitution's major "Japanizing" elements. While there is a higher value placed on form in Japanese society than in most Western societies, the elements of the new constitution that were "Japanized" were in form only. The inherent substance of the document that emerged as the 1947 Constitution of Japan—i.e., the political ideology of democratic liberalism based on individual rights—was not "Japanized" during the drafting, translating, and amending process between SCAP officials, Japanese officials, and members of the Diet.

The vast majority of specific articles in Japan's postwar constitution were fundamentally different in substance from Japan's pre-war Meiji Constitution. Sovereignty was transferred from the sole prerogative of the Emperor to the collective will of the people. Article Four even stipulated that "the Emperor shall not have powers related to government," while Article Forty-One stated, "the Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State." Despite wishful interpretations by Yoshida Shigeru and other conservative officials, the position of the Emperor in Japan's *kokutai* was completely transformed from Ito Hirobumi's Emperor-centered Meiji Constitution.<sup>45</sup>

Almost all of the "Rights and Duties of Subjects" in the Meiji Constitution were qualified by "within the limits of the law," "except in," "unless," and other similar phrases while the "Rights and Duties of the People" in the 1947 Constitution of Japan contains

hardly any qualifying phraseology. Moreover, Article Fourteen in the new constitution guaranteed equality: "All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin." The only "equality" guaranteed to the people in the Meiji Constitution is in the duties they must perform for the state. Ironically, the American military officers and civilians working for SCAP who wrote the draft of the new Japanese constitution went over and above the democratic liberalism expressed in the American Constitution, particularly in the area of guaranteed equal rights.

In his memoirs, Yoshida argued that the 1947 Constitution of Japan was a continuation of his country's pre-war, democratic heritage. "[D]emocracy," he wrote, "had always formed part of the traditions of our country, and was not--as some mistakenly imagined--something that was about to be introduced with the revision of the Constitution."<sup>46</sup> As shown earlier, however, Yoshida did not approve of the SCAP-drafted constitution and consistently sided with Matsumoto Joji and other conservatives who fought hard to retain as much of the Meiji political and social heritage as possible.

Why did Yoshida strongly resist SCAP's democratic constitutional revision? Why did he later claim that the new postwar constitution was merely a continuation of democratic ideals already contained in the Meiji Constitution? As did many Japanese government officials of the Occupation era, Yoshida had also served in government in the pre-war era. From 1930 to 1932 he was Japan's ambassador to Italy, and from 1936 to 1939 he served as ambassador to Britain. He was also nearly 70 years old by the time the new constitution was promulgated while he was Prime Minister. With age, length of experience, and high government position being strong indicators of status and wisdom in traditional Japanese society, the elitist and paternalistic Yoshida fervently believed that he knew what was best for Japan and for the Japanese people. In his view, what was best for Japan was Ito

Hirobumi's Meiji Constitution, with a few minor modifications that did not upset the Emperor-centered *kokutai*

Faced with the impossibility of convincing American Occupation officials (or the Japanese public, as evidenced by the hostile press reaction to the conservative "Matsumoto Draft") that only minor modifications to the Meiji Constitution were necessary, he then adopted the wishful interpretation of the new postwar constitution as a continuation of the Meiji Constitution and of a democratic heritage that supposedly "had always formed part of the traditions of our country." He also characterized American Occupation officials as "naively optimistic," with "preconceived plans and ideas," "too idealistic," and they ignored the "feelings, history, and traditions that influenced equally well-intentioned Japanese officials" like himself.<sup>47</sup> Yoshida's characterization of Occupation officials was generally correct; which is precisely why the 1947 Constitution of Japan represented a discontinuity and *not*—as he believed—a continuity with Japan's pre-war constitutional heritage.

This is not to say that there was no democratic ideology in the Meiji Constitution, or that democratic elements were completely absent in pre-war Japan. The Meiji Constitution of 1889 did allow for the development of political parties, and for a small, but growing segment of the male population to vote for members of the House of Representatives in the Diet. By the 1920s (the so-called "Taisho Democracy" era), these democratic elements were beginning to have a noticeable effect on the Japanese government.<sup>48</sup> Nevertheless, by the mid-1930s these tenuous democratic elements were overwhelmed and crushed by the military and by its reactionary supporters. The imperial Meiji Constitution had done nothing to stop the military or to protect the few elements of democracy that had developed in pre-war Japan. The argument put forth by Kawai Kazuo and others that, "the old constitutional system had been evolving in a pragmatic manner into something with even liberal implications" is yet another wishful interpretation of Japan's pre-war and postwar democratic continuity.<sup>49</sup>



The 1947 Constitution of Japan is permeated by the political ideology of democratic liberalism. The individual rights specified in this constitution are based upon the American Constitution and on the New Deal values of SCAP officials, while the new government structure is based on the British parliamentary system. Legislative supremacy, separation of powers, judicial review, male and female equality, renunciation of war, and the people holding the sovereign power of the state with the previously "sacred and inviolable" Emperor descending to the "symbol" of the state are legal principles incorporated in Japan's postwar constitution that are radically different from the Meiji Constitution.<sup>50</sup>

Conservative, tradition-minded Japanese officials were hoping to hold the line on constitutional reform by dragging their feet, offering a few token changes to the Meiji Constitution, by incorporating traditional, linguistic phraseology in the SCAP-drafted constitution, and finally by interpreting the new constitution as a continuation of Japan's pre-war democratic heritage. They were Meiji Era men who were comfortable with Meiji-era political and social traditions. Despite the horrors of war and massive destruction of the 1930s and 1940s, they felt that these traditions should not be transformed into a new and unknown political and social order. In their negotiations with American Occupation officials and in deliberations before the Diet, Japanese officials were partially successful in interpreting the new constitution within the Meiji political and social order. Nevertheless, in both its fundamental political ideology and in its specifics, the 1947 Constitution of Japan is radically different from the imperial 1889 Meiji Constitution, and represents a break and discontinuity between the legal principles of the Meiji and Postwar eras.

#### Notes:

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Japanese immigration. He presented a paper entitled, "The Wakamatsu Colony: From Aizu to Gold Hill" at the Asian Studies on the Pacific Coast Association's annual conference at the Monterey Institute of International Studies in October 1993.

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1. Tanaka Hideo, ed., *The Japanese Legal System* (Tokyo: Tokyo University Press, 1976). This book has copies of both the Meiji Constitution ("Constitution of the Empire of Japan") and the 1947 Constitution of Japan. See also Inoue Kyoko, *MacArthur's Japanese Constitution: A Linguistic and Cultural Study of Its Making* (Chicago and London: University of Chicago Press, 1991), Appendix One, for both English and Japanese language copies of the 1947 Constitution of Japan.

Most documents referred to in this paper can be found in Supreme Commander for Allied Powers, Government Section, *Political Reorientation of Japan* (Washington D.C.: Government Printing Office, [1949]); and Takayanagi Kenzo, Ohtomo Ichiro, and Tanaka Hideo, eds., *Nihon koku kenpo seitei no katei; The Making of the Constitution of Japan* (Tokyo: Yuhikaku, 1972).

2. Article Four of the Meiji Constitution.

3. Continuity and discontinuity are major, dual themes of analysis throughout the study of Japanese history. For an overview of these themes as they relate to the study of the Occupation Era, see the essays in Harry Wray and Hilary Conroy, eds., *Japan Examined: Perspectives On Modern Japanese History* (Honolulu: University of Hawaii Press, 1983), chapter 11, "The Allied Occupation: How Significant Was It."

4. *The Potsdam Declaration*, in *The Japan Yearbook, 1946-1948* (Tokyo: The Foreign Affairs Association of Japan, 1948).

5. SCAP, *Political Reorientation of Japan*, p. 91.

6. Junnosuke Masumi, *Postwar Politics in Japan, 1945-1955*, trans. Lonnie E. Carlile (Berkeley: University of California Press, 1985), p. 46. Higashikuni Naruhiko was Prime Minister from August 17, 1945 to October 9, 1945, when he was succeeded by Shidehara Kijuro. Kijuro served as Prime Minister until May 22, 1946, when Yoshida Shigeru became Prime Minister in the aftermath of Japan's first post-war elections.

7. *Ibid.*, p. 49; and Yoshida Shigeru, *The Yoshida Memoirs*, trans. Yoshida Kenichi (Boston: Houghton Mifflin Company, 1962), pp. 129-130.

8. On December 6, 1945, SCAP issued an arrest warrant for Konoe. Ten days later, Konoe committed suicide before being taken into custody. Oka Yoshitake, *Konoe Fumimaro: A Political Biography*, trans. Okamoto Shumpei and Patricia Murray (Tokyo: University of Tokyo Press, 1983) has a description of former Prime Minister Konoe's work to revise the constitution in the final chapter.

9. John W. Dower, *Empire and Aftermath: Yoshida Shigeru and the Japanese Experience, 1874-1954* (Cambridge and London: Harvard University Press, 1979), p. 318.

10. Yoshida, *The Yoshida Memoirs*, p. 139.

11. Tanaka Hideo, "The Conflict Between Two Legal Traditions in Making the Constitution of Japan," in Robert E. Ward and Sakamoto Yoshikazu, eds., *Democratizing Japan* (Honolulu: University of Hawaii Press, 1987), p. 107.

12. Inoue, *MacArthur's Japanese Constitution*, p. 10.

13. *Ibid.*, pp. 10-11. See also Junnosuke, *Postwar Politics in Japan*, p. 52, and Yoshida, *Yoshida Memoirs*, pp. 131-132 for descriptions of "Matsumoto's Four Principles."

14. SCAP, *Political Reorientation of Japan*, p. 90.

15. Tanaka, "The Conflict Between Two Legal Traditions," pp. 116 and 119. Before World War Two, Takayanagi Kenzo spent many years studying and writing on foreign legal systems. He was especially interested in the American judicial system. During the Occupation, he served as one of the defense lawyers at the Tokyo War Crimes trials (formally known as the International Military Tribunal for the Far East). In the late 1950s and early 1960s, Takayanagi headed the Japanese government's Commission on the Constitution.

16. *Ibid.*, pp. 119-120. See also General Courtney Whitney's February 16, 1946 letter to Shirasu Jiro in Takayanagi, Ohtomo, and Tanaka, *Nihon koku kenpo seitei no katei*, p. 346.

17. *Mainichi Shimbun*, February 2, 1946, in Tanaka, "The Conflict Between Two Legal Traditions," p. 120. See also SCAP, *Political Reorientation of Japan*, pp. 611-616 for a copy of the Matsumoto Draft published on February 1, 1946 in the *Mainichi Shimbun*.

18. *Nippon Times*, February 3, 1946, quoted in SCAP, *Political Reorientation of Japan*, p. 100.

19. These documents can be found in *ibid.*, pp. 617-621.

20. Documents cited in this paragraph can be found in Takayanagi, Ohtomo, and Tanaka, *Nihon koku kenpo seitei no katei* and SCAP, *Political Reorientation of Japan*. Alfred Hussey wrote Section III, "The New Constitution of Japan" in SCAP's *Political Reorientation of Japan*. See also Theodore H. McNelly, "Induced Revolution: The Policy and Process of Constitutional Reform in Occupied Japan," in Robert E. Ward and Sakamoto Yoshikazu, eds., *Democratizing Japan* (Honolulu: University of Hawaii Press, 1987), pp. 81; and Tanaka, "The Conflict Between Two Legal Traditions," p. 114 for information cited in this paragraph. Robert E. Ward provides an in-depth analysis of SWNCC-228 on pp. 18-36 of "Presurrender Planning: Treatment of the Emperor and Constitutional Changes," in Ward and Sakamoto, eds., *Democratizing Japan*. Members of the Constitutional Research Association were Takano Iwasaburo, Suzuki Yasuzo, Morito Tatsuo, Murobushi Koshin, Sugimori Kojiro, and Iwabuchi Tatsuo.

21. A fascinating description of this February 13, 1946 meeting is in Takayanagi, Ohtomo, and Tanaka, *Nihon koku kenpo seitei no katei*, pp. 320-336. See also SCAP, *Political Reorientation of Japan*, p. 105, and Yoshida, *Yoshida Memoirs*, pp. 132-133.

22. SCAP, *Political Reorientation of Japan*, p. 106.

23. Inoue, *MacArthur's Japanese Constitution*, pp. 22-23. See also SCAP, *Political Reorientation of Japan*, p. 107, and Yoshida, *Yoshida Memoirs*, pp. 134-135.

24. The Meiji Constitution, Article Three and Article Four.

25. See Ishii Ryosuke, *A History of Political Institutions of Japan* (Tokyo: University of Tokyo Press, 1980).

26. Inoue, *MacArthur's Japanese Constitution*, pp. 166-173 is the basis for the information cited in this paragraph, except for the definition of *hohitsu* in Masuda Koh, ed., *Kenkyusha's New Japanese-English Dictionary* fourth ed., (Tokyo: Kenkyusha Limited, 1974), p. 471.

27. Inoue, *MacArthur's Japanese Constitution*, pp. 184-194, 204-205; Koseki Shoichi, "Japanizing the Constitution," *Japan Quarterly*, July-September 1988, pp. 238-239; and McNelly, "Induced Revolution" p. 91. See *Kenkyusha's New Japanese-English Dictionary* for definitions of Japanese terms used in this paragraph.

28. SCAP, *Political Reorientation of Japan*, p. 102; Takayanagi, Ohtomo, and Tanaka, pp. 98-100.

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29. Takayanagi, Ohtomo, and Tanaka, *Nihon koku seitei no katei*, p. 272.
30. McNelly, "Induced Revolution," pp. 92-93.
31. Koseki, "Japanizing the Constitution," pp. 237-238. Koseki believes that it was really Kanamori Tokujiro and not Ashida Hitoshi who inserted the "Ashida amendments" into Article Nine. See also Nakasone Yasuhiro, "Toward Comprehensive Security," *Japan Echo* Vol. V, No. 4, 1978, pp. 36-37; and Douglas MacArthur's December 5, 1958 letter to Takayanagi Kenzo, quoted in Takayanagi Kenzo, "Some Reminiscences of Japan's Commission on the Constitution," in Henderson, Dan Fenno, ed., *The Constitution of Japan: Its First Twenty Years, 1947-1967* (Seattle and London: University of Washington Press, 1968), p. 88.
32. Quoted from Inoue, *MacArthur's Japanese Constitution*, pp. 235-236. See also Takayanagi, Ohtomo, Tanaka, *Nihon koku kenpo seitei no katei*, p. 222.
33. Susan Pharr, "The Politics of Women's Rights," in Robert E. Ward and Sakamoto Yoshikazu, eds., *Democratizing Japan* (Honolulu: University of Hawaii Press, 1987), pp. 229-232. See also Beate Sirota-Gordon's interview in "Reinventing Japan," part 5 of the PBS documentary series, *The Pacific Century* (Pacific Basin Institute, Annenberg/CPB Project, 1992).
34. Inoue, *MacArthur's Japanese Constitution*, p. 236.
35. Kawai Kazuo, *Japan's American Interlude* (Chicago and London: University of Chicago Press, 1960; Midway Reprint, 1979), p. 243.
36. Inoue, *MacArthur's Japanese Constitution*, p. 236.
37. *Ibid.*, p. 237. The translation of Article Twenty-Four prepared by the Ministry of Justice in 1958 in Appendix One, pages 278-279 of Inoue's book is slightly different.
38. *Ibid.*, p. 30; and McNelly, "Induced Revolution," p. 84.
39. Inoue, *MacArthur's Japanese Constitution*, p. 82. *The Random House Dictionary of the English Language*, Second Edition, Unabridged (New York: Random House, 1987), defines illocutionary "as pertaining to a linguistic act performed by a speaker in producing an utterance, as in suggesting, warning, promising, or requesting."
40. Inoue, *MacArthur's Japanese Constitution*, pp. 76, 82-83.
41. *Ibid.*, pp. 87, 276-277.
42. According to Makino Seiichi and Tsutsui Michio, *A Dictionary of Basic Japanese Grammar* (Tokyo: The Japan Times, Ltd., 1989 ed.),

*nakareba naranai* is more precisely translated as "have to," pp. 274-276, and *koto ga dekiru* means "can" and "be able to," pp. 200-201.

43. Inoue, *MacArthur's Japanese Constitution*, p. 82.

44. Koseki, "Japanizing the Constitution," pp. 234-235.

45. Yoshida, *Yoshida Memoirs*, pp. 145-146. See also Ito Hirobumi, "On the Constitution of 1889" and "Speech on the Restoration and Constitutional Government," in Ryusaku Tsunoda, William Theodore de Bary, and Donald Keene, eds., *Sources of Japanese Tradition* (New York and London: Columbia University Press, 1958), pp. 668-671, 676-679.

46. Yoshida, *Yoshida Memoirs*, p. 139.

47. Yoshida Shigeru, *Japan's Decisive Century, 1867-1967* (New York, Washington, London: Frederick A. Praeger, 1967), pp. 58-59.

48. See Ishii, *A History of Political Institutions In Japan*, chapter 5, "Monarchical Constitutionalism," and Wray and Conroy, eds., *Japan Examined*, chapter 7, "How Democratic Was Taisho Democracy?"

49. Kawai, *Japan's American Interlude*, p. 240.

50. See Yanaga Chitoshi, *Japanese People and Politics* (New York: John Wiley & Sons, Inc., 1956), pp. 125-128, and Robert E. Ward, "Conclusion," in Robert E. Ward and Sakamoto Yoshikazu, eds., *Democratizing Japan* (Honolulu: University of Hawaii Press, 1987), pp. 429-430.

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