The Constitution of Japan

The Road to Promulgation

B.A. Thesis

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Abstract

American forces occupying Japan after World War II drafted the 1947 Constitution of Japan; later came to be known as the Peace Constitution through its renunciation of war. Liberal and idealistic, it brought to the Japanese people numerous rights, which they did not have before. Women were given equal rights to men; freedom of thought and religion were now inviolate; and education was made a right for all. These rights, along with many other changes, were brought to the country of Japan through the revision of their previous constitution, the Meiji Constitution. The difference between the two is immense. The latter placed the Emperor at the head of the state and proclaimed him to be sacred and inviolate. The people of Japan were defined merely as subjects of the Empire, as opposed to free citizens. The rights they had were few and could be limited by law. The radical change seen in the Peace Constitution is due to its American origins. This thesis will explore those origins, or to be more precise; the journey from conception to promulgation, and by what method an American draft attained promulgation.
Table of Contents

Abstract .......................................................................................................................... 2

Allied Objectives of the Occupation ........................................................................... 5
  Demilitarization and Democratization ...................................................................... 7

The Meiji Constitution and the Need for Revision ..................................................... 10
  MacArthur’s Order For Revision ............................................................................. 12

MacArthur and The FEC .............................................................................................. 15
  The Creation of The Constitutional Convention ................................................... 19

The Drafting At GHQ ................................................................................................... 22
  The Presentation of the American Draft to the Japanese Government ................ 24
  Deliberations in the Diet ......................................................................................... 29

Conclusion ..................................................................................................................... 31

References ..................................................................................................................... 32
Introduction

At the end of World War II Japan accepted the terms of the Potsdam Declaration, thereby surrendering and bringing an end to the war. The Potsdam Declaration listed the terms the Allies would require to be met after Japan’s surrender. Japan was to be occupied until the objectives set forth by the Allies in the Potsdam Declaration had been achieved. The objectives may be described using two words, demilitarization, and democratization. The Potsdam Declaration explicitly states that until a peacefully inclined and responsible government had been established, by the freely expressed will of the people the Occupation would continue. The Meiji Constitution had been promulgated in 1889 and come into effect in 1890. It was an imperial constitution in which the Emperor was declared to be sacred, inviolate and the sole sovereign ruler of Japan. The people of Japan were defined as merely the subjects of the Emperor, as opposed to free citizens, and had very limited rights. All of which were subject to law and could therefore be limited and changed by the government.

It was decided that for the purpose of democratizing Japan, the Constitution would have to be revised. Commanding the Occupational forces as Supreme Commander for the Allied Powers was General Douglas MacArthur. MacArthur’s primary task was to effectuate the objectives of the Occupation by any means deemed necessary. As Supreme Commander his authority was immense. MacArthur had tasked the Japanese government with the revision of the Constitution. When it became apparent that the Japanese government was unequal to the task he ordered his staff to prepare a constitutional guide for the benefit of the Japanese government. It was this guide that would eventually become the constitution of Japan. The aim of this thesis is to explore how an American constitutional draft came to be promulgated in Japan and the main factors will be covered in the following chapters.
Allied Objectives of the Occupation

In World War II, Europe rejoiced after Germany’s defeat in May 1945, but the war in the Pacific raged on. In July 1945, The Big Three, Joseph Stalin the Premier of the Soviet Union, President of the United States Harry S. Truman and Prime Minister of the United Kingdom Winston Churchill\(^1\), gathered in Potsdam, Germany, to discuss the war in the Pacific and the defeat of Germany. It was at this conference that the Potsdam Declaration was signed, by the United States, Great Britain and China\(^2\), urging Japan to see reason and cease hostilities; it was then issued July 26\(^{th}\), 1945 (Hasegawa, 2005; Jansen, 2000).

The document defined the terms of Japan’s surrender and was based on three years of work by the U.S. This was to serve as an ultimatum to Japan (Beer & Maki, 2002). Within the declaration the Allies listed their intentions that the Japanese people would not be exterminated or enslaved; that the soldiers were to be repatriated; that militarism and those leaders who had led Japan down the road of belligerency would be removed from power and war criminals brought to justice; freedom of speech, thought, religion and respect for human rights was to be established in Japan.

To achieve these ends Japan was to be occupied by the Allied Powers. The Occupation would not end until the listed objectives had been achieved and a peaceful and responsible government had been established by the freely expressed will of the Japanese people. One can therefore surmise that the objectives of the Occupation were based on a wish to rebuild Japan as a peaceful nation with respect for human

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\(^1\) Clement Attlee later took his place as Churchill’s party had lost the election. The declaration was issued however before Attlee became Prime Minister. (Hasegawa, 2005)

\(^2\) Stalin had expected to be asked to sign as well, even though the Neutrality Pact the Soviet Union made with Japan in 1941 was still in effect. (Hasegawa, 2005)
rights and to rid Japan of the elements that had led the country down the path of destruction and militarism ("Potsdam Declaration," 2003-2004).

However, the contents of the Potsdam Declaration had not specified as to the fate of the Emperor. Pyle (1996) suggests that it was in part due to this that the declaration was rejected by the Japanese. Joseph Grew, a former U.S. ambassador to Japan, made attempts to persuade the inclusion of an article regarding the fate of the Emperor but his advice was ignored and no such clause was included. Grew has claimed that had such an article been included Japan would have surrendered much sooner. At a press conference on July 28th, 1945 Prime Minister Suzuki declared his intention to reject the declaration by ignoring it (Bix, 2000).

Thus the war continued, and on August 6th Hiroshima was hit with an atomic bomb. On August 9th, the Soviet Union declared war on Japan citing their rejection of the declaration as a pretext3 (Hasegawa, 2005). Unrelenting, the U.S. dropped another atomic bomb the next day, August 9th, on Nagasaki (Bix, 2000). Eventually, the Japanese government relented and signaled their willingness to surrender.

The Japanese government made an attempt to negotiate the terms of their surrender. They were willing to agree to terms of the Potsdam Declaration providing that the sovereign rule of the Emperor would not be compromised. The Allies rejected this request by replying that the ultimate form of government would be decided by the freely expressed will of the Japanese people (Jansen, 2000).

On August 14th the Japanese government notified the Allies of their acceptance of the Potsdam Declaration and surrender (Bix, 2000). Emperor Hirohito announced the surrender of Japan by radio broadcast. In his speech, he asked his subjects to “endure the unendurable, bear the unbearable” (Gordon, 2003).

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3 Even though the Soviet Union had not been one of the signatories to the declaration. (Hasegawa, 2005)
Demilitarization and Democratization

The Instrument of Surrender was signed on September 2\textsuperscript{nd}, 1945 aboard the USS Missouri in Tokyo Bay whereupon they formally accepted the terms of the Potsdam Declaration. The subsequent Occupation was to last until the objectives set forth by the Allies had been achieved. The objectives can be described in two words, demilitarization and democratization. By signing the Instrument of Surrender, the Japanese surrendered the power of the Emperor and that of the government to one individual to be chosen by the Allied Powers. This individual would bear the title Supreme Commander for the Allied Powers (SCAP).

The Supreme Commander was to oversee the Occupation and ensure that the objectives of the Allied Powers were accomplished by any means he deemed necessary. His power and responsibility were tremendous. American General of the Army Douglas MacArthur was chosen for this position (Borton, 1948). Beer and Maki (2002) note that the use of the word ‘for’ as opposed to ‘of’ in the title \textit{Supreme Commander for the Allied Powers}, bears significance. The distinction between the two is significant as the word ‘of’ would have implied that the Supreme Commander would be of the Allied Powers and therefore accountable to them, a situation the United States wanted to avoid. By substituting the word ‘for’, instead of ‘of’, the situation was well avoided as he was serving as the Supreme Commander \textit{for} the Allied Powers. The United States could, therefore, rely on General MacArthur to conduct the Occupation by U.S. policy first and foremost.

The Occupation was, while a joint Allied undertaking on paper, primarily an American endeavor (Ward, 1956). As the United States had been the major player in the Pacific War, they felt that the Occupation should fall primarily into their court
The General had been the obvious choice for the position of Supreme Commander. General MacArthur had an impressive reputation and had considerable administrative experience. His grandiloquence and dreams for a future world of peace fit well with his new position. He also had the benefit of the trust and support of the Republican leaders, as the administration was Democratic this was a very valuable asset (Jansen, 2000).

The General had arrived in Japan only two weeks after Hirohito’s announcement (Hall, 1988). During his journey to Japan MacArthur had spoken with his aides of his hopes to root out those elements in Japanese thought and behavior that had led them to acts of aggression and his hopes to replace them with the seeds of democracy (McClain, 2002). MacArthur took his role in the Occupation of Japan seriously. He remarked that his guides during his mission in Japan were Lincoln, Washington, and Jesus Christ. He sought to bring about a spiritual revolution in Japan (Buruma, 2013).

The United States was well prepared for the Occupation in Japan, as the U.S. government had started planning the Occupation of Japan by as early as 1942, only six months after the attack on Pearl Harbor (Beer & Maki, 2002; McClain, 2002). The post-defeat policy had been drafted and re-drafted multiple times before the end of the war ("Formulating the Postwar Policy," 2003-2004). The final title of the policy was the U.S. Initial Post-Surrender Policy for Japan⁴ (USIPPJ), approved by President Truman on the 6th of September ("USIPPJ," 2003-2004).

Within the USIPPJ the ultimate objectives of the United States for the Occupation of Japan can be found, detailed and with some guidance as to how to effectuate the changes within. The objectives in the USIPPJ did not conflict with the

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⁴ It should be noted that the reference number for the document in question is SWNCC150/4
Potsdam Declaration; they were merely a more detailed description of how the objectives of the declaration were to be accomplished. Establishing a peaceful and responsible government was one of the ultimate objectives of the USIPPJ, but it was plainly stated that it was not the responsibility of the Allied Powers to establish any type of government within Japan that had not been a reflection of the freely expressed wishes of the Japanese people.

The second ultimate objective was also to guarantee that Japan would not become a menace to the United States or the world again. The USIPPJ continued on to specify the principle ways by which these ultimate objectives were to be achieved. The Occupation was to demilitarize and democratize; encourage among the Japanese people a desire for democracy and liberty; afford the Japanese the opportunity to form an economy harmonious with peace, and the sovereign borders of Japan were to be limited to the four main islands, along with some smaller islands which were to be specified by the Allied Powers (SWNCC, 1945).
The Meiji Constitution and the Need for Revision

The Meiji Constitution was bestowed upon the Japanese people in the form of a gift from the Emperor (Beer & Maki, 2002). It was promulgated in 1889 and came into effect in 1890. A product of much time and study, the Meiji Constitution was based largely upon what the Japanese had learned during their travels in Europe in 1882. The constitutional system of imperial Prussia and the advice from Prussian scholars had a significant impact on the Meiji Constitution (Campbell, 1993). The impact was such that in a guide on Japan that was distributed to American soldiers arriving to Japan for the Occupation, the constitution was described as having been fathered by Prussian tyranny; with British representative type government for a mother (Dower, 1999).

The Meiji Constitution defined the Emperor as divine and inviolable, demanding reverence from the people of Japan. All sovereign powers rested solely with him (Abe, Shindo, & Kawato, 1994). According to Pyle (1996) there was a general consensus in the U.S. regarding the need for revision of the Japanese constitution. The Supreme Commander felt that for political revision to be effective, revision was needed (Ward, 1956). Hugh Borton (1955), a Japanologist who worked at the State Department at the time was also of the opinion that for democracy to survive in Japan, a constitution based on democratic principles was essential (Pace, 1995). In January 1946, Washington released a policy paper titled Reform of the Japanese Governmental System, also known as SWNCC228.

While the policy was not made official until January 1946 its origins can be traced back to early 1944. One can therefore surmise that constitutional revision had
long been deemed fundamental to the democratization of Japan, according to Borton (1955). SWNCC228 listed what revisions to the constitution the U.S. deemed important and should be insisted upon during revision.

One of the most significant of the flaws to be mended was the definition of the Japanese people merely as subjects, as opposed to free citizens. The people had few rights, which were furthermore subject to law. This meant that the rights given in the constitution could be limited or simply removed by legislation. According to the SWNCC228, the government was not responsible to its people; the Emperor had direct control over the military, which in turn allowed the military to act independently of the Cabinet. Another flaw was the lack of limitations on the power of the Emperor. The document continued on for a total of 16 pages. Listing the flaws in the governmental system of Japan and suggestions as to how these flaws might be mended (SWNCC, 1946).
MacArthur’s Order For Revision

On October 4th, 1945, quite early in the Occupation, SCAP met with Prince Fumimaro Konoye, Deputy Premier of the Higashikuni Cabinet, and charged him with the task of undertaking constitutional revision. After having received official appointments to do so from the Emperor, Konoye started to investigate revision. George C. Atcheson, Jr., an ambassador to Japan and also a political advisor to SCAP relayed to Konoye twelve points considered basic by the Supreme Commander for the revision of the constitution. The appointment of Konoye was violently opposed in both the United States and Japan. His alleged war guilt and his position in government were among the reasons for the objections. His position in government was such that he was not accountable to the Diet or the Cabinet.

On November 1st, 1945 the General Headquarters (GHQ) of SCAP made a public announcement that Konoye had not been appointed by MacArthur to revise the constitution (McNelly, 1952). Theodore McNelly (2007), a Japanologist and former employee of SCAP, suggests that the main reason for MacArthur’s disavowal of Konoye was not the objections made to his appointment but rather his connection to State Department officials, whom MacArthur did not want to influence the constitution.

The “surrender” Cabinet of Prince Higashikuni was replaced on October 9th, 1945 by the Cabinet of Baron Shidehara. General MacArthur again stressed of the need for the liberalization of the constitution this time to Prime Minister Shidehara. However, Shidehara did not agree with MacArthur and publicly stated that to achieve
democracy revision of the constitution was unnecessary. Many conservatives shared his belief; they were of the opinion that all that was needed were additional laws for democracy to flourish.

However, at MacArthur’s insistence, Shidehara set up a committee to examine whether the constitution needed to be revised, and if so, to what extent. Leading this committee was Dr. Matsumoto Joji, a former law professor at Tokyo University and Minister without portfolio (Ward, 1956). The committee undertook their assignment with little enthusiasm (McNelly, 1950, 1959).

The Government Section (GS) of GHQ, headed by General Courtney Whitney⁶, had left them to revise the constitution without interference, adopting a hands-off attitude towards the committee. Various political parties, interested groups, and people had also tried their hand at drafting a new constitution. The drafts were published during the Matsumoto Committee’s closed-door meetings. Most of the drafts made were quite progressive in nature (Ward, 1956).

On February 1st, 1946 the Mainichi Shinbun, a newspaper, published one of the recently finished drafts of the Matsumoto Committee (Dower, 1999). On February 2nd MacArthur received a translation of the article with notes in the margins made by General Whitney stating that the draft was not only extremely conservative but had left the status of the Emperor nearly unchanged.

Public reaction was extremely negative, so much so that the Cabinet attempted to deny that the work had been theirs. Later admitting that it might have been the work of one member in the committee. The next day SCAP received a confirmation that the draft that had been published was a genuine reflection of the Matsumoto’s

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⁶ General Courtney Whitney, a lawyer, was Aide to General MacArthur and Chief of the Government Section. The Government Section (GS) was a department in GHQ. The main role of GS was to advise the Supreme Commander on how best to effectuate the objectives of demilitarization and decentralization in governmental matters (Kades, 1989; Ward, 1956).
Committee’s draft. That afternoon the Foreign Office of Japan had delivered two documents titled “Gist of the Revision of the Constitution” and “General Explanation of the Constitutional Revision Drafted by the Government”.

These two documents were substantially similar to the Matsumoto draft and included the same insignificant revisions. As an example of the proposed revisions; the status of the Emperor had been changed from “sacred and inviolable” to “supreme and inviolable” (Kades, 1989).

MacArthur was very displeased with the work of the committee and even considered the draft to perhaps be even worse than the original constitution (McNelly, 1952). He eventually came to the conclusion that the Japanese government was in need of a constitutional guide (McNelly, 1950).
MacArthur and The FEC

It has been suggested that MacArthur took over the constitutional revision so as to protect the Emperor from indictment as a war criminal. There was a lot of discussion of indicting the Emperor for war crimes and abolishing the throne. Had the Emperor been indicted it is quite likely that he would have been found guilty (Jansen, 2000).

MacArthur had long favored the retention of the Emperor. He was of the opinion that the Emperor had merely been a figurehead during the war. Assigning the blame for the war onto the warlords rather than the Emperor (Dower, 1999). Along the way, MacArthur had also come to the conclusion that the Emperor was essential for the Occupation to have any sort of permanent effect.

The Emperor would serve as a stabilizing agent for a country that had been ravaged by war and would facilitate reform. MacArthur wished for the Emperor to retain the throne and serve his country as a constitutional monarch. The Allies were not in agreement. Most of the Allied countries wished to see him indicted and the Imperial Institution destroyed (Pyle, 1996).

In early 1946, in response to a query from Washington, MacArthur expressed his opinion strongly by telegram. In the telegram he warns that should the Emperor be indicted, social chaos would ensue. He describes the Emperor as a uniting force for the Japanese people, without which Japan would crumble; and the democratic ideals which they had hoped would take root in Japan would have little chance of surviving after the Occupation ended. He felt the Japanese people had perceived the language of the Potsdam Declaration to allow for his retention. Feelings of betrayal following his removal would later evolve into feelings of hatred and resentment. Furthermore, he
felt that without the Emperor, guerilla warfare was a real danger. He warned that should the removal of the Emperor become a reality, he would need the Occupation forces to be increased by a minimum of a million men. Adding that the consequences of the removal of the Emperor should not be borne by the U.S. alone, but also by the other Allied Powers (G. D. MacArthur, 1946).

Premier Stalin had stated in the spring of 1945 that he fully expected to share in the Occupation of Japan. He wanted Japan to be split into zones for the Allies to occupy. This was not to happen, as the U.S. had never intended for Japan to be but one zone. Later in the Occupation, the Allies pressed the U.S. further for a more active role in the Occupation of Japan. It was then that the Far Eastern Advisory Commission (FEAC) was made.

The commission was to include all nations that had taken an active role in the war against Japan. The FEAC was only to be advisory in nature (Borton, 1966). The Soviets were not satisfied with the limitations of the FEAC and had refused to take part (Ward, 1956). Canberra and London were also unhappy with the situation. Finding the advisory commission to be wholly ineffectual as it was so clearly inferior to the Supreme Commander and had no executive powers (Thorne, 1978).

Later a compromise was reached and the FEAC was replaced. The Far Eastern Commission (FEC) and the Advisory Council for Japan (ACJ) were created as a compromise. The Soviet Union got a more active role in the Occupation, though not as active as they had wished, and the United States gave up their, up until that point, almost unilateral control of Japan to share the control of the Occupation with its Allies.

The ACJ, comprised of representatives from China, the U.S., the U.K. and the Soviet Union, would be stationed in Tokyo as an advisory body. The FEC, comprised
of eleven nations, would have the power to formulate policy. Four nations in the FEC were given the power of veto, the U.S., the U.K., China and the Soviet Union. The U.S. had additionally the power to issue interim directives independent of the commission, presumably when deliberations were at a standstill or in emergencies (Borton, 1966). The interim directives would not be able to be issued on constitutional matters. All directives which dealt with the constitution or any change in the government of Japan would have to be agreed upon by the FEC (McNelly, 1959).

SCAP expressed concerned that the veto power of the four nations would prolong the Occupation indefinitely should the FEC take over constitutional revision. He felt particularly perturbed by the veto power of the Soviet Union. He felt the constitution could not be accomplished in the hands of the FEC (D. MacArthur, 1964; McNelly, 1962). There was a real danger of the FEC taking over constitutional revision. If that were to happen, neither SCAP nor the GOJ would have any say in the matter (McNelly, 1977).

As it was very unlikely that the Japanese government would be able to make an acceptable draft before the plebiscite (Beer & Maki, 2002), MacArthur had to act quickly to make sure the FEC could not interfere in the constitutional revision, as they would most likely abolish the monarchy and indict the Emperor. The FEC was to meet on February 26th, if MacArthur wished to retain the Emperor he would have to make sure that constitutional revision would never make it to the desk of the FEC (Bix, 2000).

It is worth mentioning that the State Department, presumably concerned MacArthur might take constitutional revision into his own hands, had forwarded their final draft of the SWNCC228 in the beginning of January. Even though MacArthur had in his possession a previous version of the document (Borton, 1966), the State
Department sent him a final draft not as a directive but for his information. This final draft was sent soon after the decision to form the FEC had been made. One can surmise that the State Department feared that MacArthur would take the initiative on constitutional revision without their final input (Ward, 1956).
The Creation of The Constitutional Convention

Faced with Matsumoto’s public failure and the imminent commencement of an organization that would undoubtedly form policy and direct constitutional drafts unfriendly towards the throne; possibly even demanding his abdication and indictment. MacArthur must have felt it imperative to do whatever he could to protect the Emperor and to ensure a short and effective occupation.

On February 1st, the same day the Matsumoto draft had been published, General Courtney Whitney had prepared a memorandum for SCAP in which he stated that the Supreme Commander had the right to do whatever he deemed necessary to effectuate constitutional revision. However, should the Supreme Commander want to remove the Emperor he would need to consult the Joint Chiefs of Staff before any such action was taken. The memorandum went on to warn the Supreme Commander that any policy directives regarding constitutional revision made by the FEC would be controlling. This would mean that any SCAP directives concerning constitutional revision would be secondary and subject to objections by the ACJ once the FEC had issued their own policies on constitutional revision.

Having now ensured that it was within his legal rights to take any action he deemed necessary to effectuate constitutional revision it was clear to him that if any action was to be taken it would have to be taken immediately (Kades, 1989; D. MacArthur, 1964). February 2nd, Whitney was directed by MacArthur to immediately prepare a detailed rejection of the Matsumoto draft. He was to present this rejection at a meeting scheduled with government officials in which Matsumoto was to present the finished draft officially to GHQ (Kades, 1989).
MacArthur called in General Courtney Whitney. He handed him a note with basic points to be included in the draft and told him that the he was to order his staff to draft a constitutional guide for the benefit of the Japanese government\(^7\). (Kades, 1989).

I.
Emperor is at the head of the state. His succession is dynastic. His duties and powers will be exercised in accordance with the Constitution and responsive to the basic will of the people as provided therein.

II.
War as a sovereign right of the nation is abolished. Japan renounces it as an instrumentality for settling its disputes and even for preserving its own security. It relies upon the higher ideals which are now stirring the world for its defense and its protection. No Japanese Army, Navy, or Air Force will ever be authorized and no rights of belligerency will ever be conferred upon any Japanese force.

III.
The feudal system of Japan will cease. No rights of peerage except those of the Imperial family will extend beyond the lives of those now existent. No patent of nobility will from this time forth embody within itself any National or Civic power of government.

Pattern budget after British system.

(Kades, 1989, pp. 223-224)

The first point was to be included in the draft for the preservation of the Emperor. In a meeting with Shidehara on February 21\(^{st}\), 1946 he told him that the American draft had been made with the preservation of the throne in mind. Reforming the monarchy

\(^7\) Kades (1989) also mentions that it was his assumption that the note had come from MacArthur. He found the handwriting of Whitney and MacArthur to be very similar. Additionally, he admits that the ideas of the note might well have come from Whitney who had then received MacArthur’s concurrence.
in a way that would appeal to the Allies would allow for the retention of the throne (McNelly, 1959, 1962). In the same meeting, he also asserted the importance of the inclusion of a no-war clause. Considering the international climate (McNelly, 1959), MacArthur found the renunciation of war to be essential to retain the Emperor. The renunciation of war was not a novel idea at the time. The Kellogg-Briand Pact, which Japan had signed in 1928, had prohibited wars of aggression. Japan’s violation of the pact was to be heavily featured in the Tokyo war-crimes tribunal. It was a very clever tactic, described by Dower (1999) as a wedge tactic.

As the Allies were discussing whether or not to include the Emperor as one of the war criminals in the Tokyo Trials; the Emperor was being linked to radical pacifism. The sovereign, who had hitherto been associated with war, would now be forever connected to radical pacifism. (Dower, 1999). Later, MacArthur was to testify to a U.S. senate that the idea for the no-war clause had originated from a meeting with Shidehara in January 1946, in which it had been Shidehara that suggested the clause, not himself as many had thought (D. MacArthur, 1964; Stockwin, 2008).

However, many scholars doubt that Shidehara had intended for the no-war clause to be included in the constitution (McNelly, 1977). MacArthur (1964) knew that the renunciation of war would appeal to the wishes of the Allies. He also found the idea to be extremely moral. MacArthur had wanted for some time to abolish war. Additionally, he saw the practicality of the idea; no Military party could again seize power; and the rest of the world would be reassured to know that Japan would not be able to wage war again (D. MacArthur, 1964). General Whitney has also stated that he found the no-war clause to be a type of psychological disarmament of Japan (McNelly, 1977)
The Drafting At GHQ

The events in February unfolded at a quick pace. On February 1st, 1946 the Matsumoto draft had been made public and only two days later on February 3rd, General Whitney informed his subordinates in the Government Section, Commander Alfred R. Hussey, Lieutenant Colonel Milo E. Rowell and Colonel Charles L. Kades that they were to draft a model constitution for the benefit of the Japanese government. The model draft was to embody the basic principles the Allied Powers would require for the acceptance of a constitutional draft and use MacArthur’s note as a basis.

The model draft was to be finished before the Matsumoto meeting on February 13th, in which the Matsumoto draft was to be officially presented. In the meeting, GHQ would simultaneously reject the proposed draft of the government and hand them the finished model constitution. That night, Hussey, Rowell, and Kades decided that for this task they would divide the staff of the Government Section, numbering at about 25 people, into seven committees. The committees were to draft the part of the constitution they had been assigned and then hand them to the Steering Committee for review. The Steering Committee would be headed by Rowell, Kades, and Hussey.

On the morning of February 4th, Whitney informed the whole staff of the Government Section that they were to be a constitutional assembly (Kades, 1989; Ward, 1956). This enormous undertaking was the first of its kind, never in history had conquerors written, or in this case, rewritten the national charter of their defeated foe. The drafters faced their task with enthusiasm and idealism, here they had the chance to create from scratch a democratic government, the kind of society most Japanese

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8 Often referred to as a constitutional convention.
desired but were unable to effectuate (McClain, 2002). Jansen (2000) describes the staff as enthusiastic reformers, viewing it as their mission to liberate the Japanese people and to Americanize Japan.

The Constitutional Convention worked from the sixth-floor ballroom of the Dai-Ichi Insurance Building in utmost secrecy (McClain, 2002; McNelly, 1952). Along with MacArthur's note, which had been typed up and distributed to the committees along with the instructions to embody the basic Allied principles in the draft. The staff was instructed to also conform their writing to the principles set forth in the SWNCC228. It is important to note that the constitution was also drafted using Japanese sources. The constitutional drafts that had been published during the Matsumoto committee’s deliberations by political parties, such as the Social and Progressive Parties, various private groups and individuals were used during the drafting process. Additionally, about a dozen constitutions of other countries had been collected for reference.

The resulting draft guaranteed more human rights than even the U.S. constitution. The array of rights included; freedom of speech; the right to work; the right to an education; and discrimination based on sex, race, creed, family origin or social status was now prohibited, along with many other progressive provisions (Dower, 1999; Gordon, 2003). The draft had also included provisions for equal rights, more advanced than in the U.S.; the country of the drafters themselves (Jansen, 2000). With the inclusion of the no-war clause, which had never before been included in a constitution, the final GHQ draft was liberal, radical, idealistic and pacifist (McClain, 2002).

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9 SWNCC228, titled Reform of the Japanese Governmental System, was the policy sent to General MacArthur from the State Department in January.
On the 10th of February, the whole finished draft was submitted to MacArthur for approval, which he did the next day. He made only one change to the document and that was the removal of a prohibition against any amendment to the constitution in the future. The prohibition would not allow the civil rights to be altered, but would also hinder any additional rights the Japanese nation might want to incorporate into their constitution in the future. With a few other textual changes, MacArthur approved the final draft of the constitutional “guide” on February 12th (Kades, 1989). The resulting draft was more radical than any of the previous proposals made by the leading political parties. Although the Communist draft was an exception (McNelly, 1959).

The Presentation of the American Draft to the Japanese Government

February 13th General Whitney, along with the members of his Steering Committee, met officials of the Japanese government in the home of the foreign minister, Yoshida Shigeru. The meeting began with the planned rejection of the Matsumoto draft, after which they handed the Japanese officials the GHQ draft. While the officials were reading the draft, the American officials waited in the garden for about an hour (Kades, 1989). While they were waiting in the garden, Whitney commented that he had been “enjoying your atomic sunshine” while they had waited (Jansen, 2000, p. 684). Whitney and the other members were then called back inside when they had completed reading the draft. Matsumoto was taken aback and requested some time so that he could consult with Prime Minister Shidehara. Whitney reminded them that MacArthur had been a staunch supporter of the Emperor, and stood against those who would have him indicted as a war criminal. The General could not, however, defend
the Emperor forever, but he felt that the provisions within the draft would ensure his retention. Furthermore, the acceptance of the draft would also bring the Japanese people closer to freedom from the Occupation. General Whitney then emphasized that it was MacArthur’s wish that the draft, and the principles therein, would be presented to the Japanese people; intimating that if the Japanese government didn’t accept the draft and present it to the people on their own, SCAP would. As SCAP would want the Japanese people to have been introduced to the draft before the general elections that were to be held in April. He wished for the Japanese people to have a chance to express their preference regarding constitutional revision (Kades, 1989).

This caused concern with the politicians. Should SCAP publish the draft it was quite likely that the press and the people of Japan would take to the liberal nature of the draft. If that were to happen their political party would be replaced by the political parties that had supported the draft (McNelly, 1959) Before they left they emphasized that the draft would indeed carry out the term of the Potsdam Declaration, potentially shortening the Occupation (Kades, 1989).

On February 18th, Matsumoto sent Whitney a supplementary explanation for the Matsumoto draft in an attempt to have it reconsidered. He argued that forcing onto a nation a constitution so radically different from the traditions and culture of the nation would inevitably result in failure; “roses of the West, when cultivated in Japan, lose their fragrance totally.” (Kades, 1989, p. 231) Whitney replied that had the government of Japan not accepted the draft within forty-eight-hours, SCAP would present the draft to the people for consideration in the upcoming general election. The Cabinet replied with a wish for a forty-eight-hour extension, as a complete translation of the draft was not available.
On February 21st Shidehara called on MacArthur, a day before the extended time was to run out (Kades, 1989). MacArthur was determined, he believed that the Soviet and British representatives would insist on the abolishment of the throne. He expressed his support for the draft, believing liberalization of the constitution to be the only way to retain the Emperor (Kades, 1989; McClain, 2002). Insisting also on the inclusion of the no-war clause and the symbolic Emperor principle. MacArthur is said to have told Shidehara that he should be less concerned with domestic opinion and more concerned with international repercussions, as it was important to bear in mind the possible reaction of other nations (McNelly, 1962).

The next day, February 22nd, it was the Emperor who is said to have given his approval of the draft. However, Bix (2000) suggests that Shidehara would have accepted the draft much sooner had it not been for the reluctance of the Emperor. There is evidence to suggest that Emperor Hirohito did not approve of the draft and only accepted it when talks of his abdication increased.

The same day a meeting was held during which Matsumoto attempted to persuade GHQ that the best basis for constitutional revision would be the original constitution. He was rebuffed and the meeting went on. It was during that meeting that the Japanese government requested, that instead of a unicameral Diet, a bicameral Diet be considered instead. This request was granted, although the need for a popular vote into both houses was emphasized. Among other things discussed in this initial meeting was the no-war clause and whether a list of civil rights was really necessary (Kades, 1989). They asked whether the renunciation of war could not be put solely into the Preamble, rather than as an actual clause in the constitution. General Whitney said that to attract the world’s attention, including a provision renouncing war in the constitution was necessary (McNelly, 1962). At the end of the meeting, Whitney
pressed Matsumoto for a Japanese version to be completed by the end of February (Kades, 1989)

Sometime before the government accepted the draft, Kades, and Hussey had a private meeting with Chief Cabinet Secretary Wataru Narahasi. During the meeting, Kades and Hussey relayed to him in the strictest confidence how important it was that the Japanese government accept the GHQ draft. They told him that it had been reported that the Soviet Union and two or three other members of the FEC were intent on drafting a republican constitution for Japan. The draft, they said, had to be drastic enough so that the FEC could make no objections to it.

The Japanese translation Kades had directed to be complete by the end of February didn’t reach SCAP until March 4th. The translation was seemingly straightforward, however, a closer look revealed that the language of the GHQ draft had been watered down considerably. When Matsumoto had presented GHQ with the Japanese draft he hadn’t brought any English text for aid in translation. What happened next is known as the translation marathon. For thirty hours the two groups worked on translating the draft (Dower, 1999). According to McNelly (1959), the translation marathon lasted for thirty-six hours. The two sides worked to produce a translation the Americans could accept. In the end, the final Japanese draft matched the original English GHQ draft adequately. On March 5th, GHQ sent ten copies of the final English version to the Cabinet, inquiring also whether the Cabinet they would accept the draft before day’s end. Adding that should they reject the draft it would be made public in the evening. It was then that the Cabinet finally capitulated and accepted the GHQ draft (McNelly, 1959).
On March 6th, 1946 the Cabinet published the draft and presented it as their own work. The government had been taken aback when GHQ had insisted that the government present it as their own work (Gordon, 2003). The same day the Emperor declared his approval of the draft and the democratic principles therein. The implication was that he had been the one to order the democratic draft. General MacArthur’s emphatic approval was also published.

MacArthur’s approval and endorsement of the draft had been published without seeking concurrence from the Allies, which at that time the FEC had now come to embody (McNelly, 1952). The FEC was therefore presented with a draft that had been publicly endorsed and approved by SCAP, the Emperor and the government (McNelly, 1959). There were some members within the FEC that became angry at the news. Feeling that MacArthur had exceeded his authority and encroached on the FEC’s jurisdiction regarding the constitution (McNelly, 1959).

In the election of April 10th, 1946 constitutional revision played a secondary part to issues of economy, as the war had ravaged the land many suffered from economic difficulties, making the economy the most important issue for most people. Additionally, all political parties, except for the Communist Party, had announced their support of the GHQ draft. (McNelly, 1952).
Deliberations in the Diet

In June 1946, the April elections were over and the Ninetieth Diet convened. The newly elected Prime Minister Yoshida Shigeru stated to the Diet that constitutional revision was necessary to fulfill the terms of the Potsdam Declaration (McNelly, 1952). The Yoshida government had, however, been reluctant at accepting the constitutional draft. The fate of the throne, tipped the scales, however, and the Yoshida government accepted the draft as their predecessors had done (Jansen, 2000). The Constitution was submitted to the Diet on June 21st, as an amendment, not as a replacement, to the Meiji Constitution (Dower, 1999). No serious opposition in Diet was expected as the majority of the Diet supported the draft (McNelly, 1952). There was some concern expressed over the status of the Emperor and the no-war clause during deliberations. The question as to whether or not the no-war clause would endanger Japan’s security was sidelined by the belief that for the Occupation to have an early end they had to vote the constitutional draft through (McNelly, 1959). The FEC, though out-maneuvered by MacArthur regarding the draft, had no intention of leaving constitutional revision wholly to GHQ and the government of Japan without making a contribution. On July 2nd, 1946 the FEC issued their “Basic Principles for a New Constitution” (McNelly, 1952). These policies were heavily based on SWNC228, which had been among the documents upon which the draft had been based (McNelly, 1959). The GHQ draft, therefore, conformed to the FEC issued principles for the most part. There were some points to which the draft did not conform, but GHQ successfully influenced the Diet deliberations to include the changes necessary to conform fully to the principles of the FEC. The changes included a clarification of the principle that sovereignty resides in the people; that the Prime Minister and the majority of the Cabinet would be chosen from the Diet; all Cabinet members were to
be civilians; there was to be universal suffrage, and finally all property owned by the Imperial Household was to be transferred to the state. There were many smaller changes made during the Diet deliberations on the initiative of the Diet members, but none were significant. On October 7th, 1946 the amended draft was passed in both Houses of the Diet, almost unanimously. Dower (1999) suggests that since Party leaders had declared their support for the GHQ constitution; the rest of the Party members had simply fallen in line. Furthermore, he speculates that the constitution may have been voted through not only because they wanted to quicker end to the Occupation, but also because they believed that once the Occupation was over, the constitution could be revised. Although there were some objections made to the change of the status of the Emperor, the only Party that voted against the draft was the Communist party. On November 3rd, 1946 the new constitution was promulgated by the Emperor, as an amendment to the Meiji Constitution. It went into effect May 3rd, 1947 (McNelly, 1952).
Conclusion

The promulgation of an American draft; which subsequently became the Peace Constitution; is directly connected to the wish of General MacArthur and the government of Japan to retain the Emperor. MacArthur had wished to retain the Emperor to ensure a smooth and effective Occupation. He believed that without the stabilizing agent of the Emperor, social chaos would ensue. He did not believe that the Occupation would be able to affect real permanent change should the Emperor be removed. The FEC was in disagreement. Many of the nations in the FEC wished to see the Emperor indicted as a war criminal, and the throne abolished. The FEC was to take over constitutional revision once the committee started their work. It was due to this that MacArthur felt it imperative to have an acceptable constitutional draft ready before the FEC commenced their meetings; as they would surely remove the Emperor. An acceptable draft would be one where the presence of the Emperor would be acceptable to the Allies. MacArthur solved this problem by drafting a pacifist constitution in which the Emperor would serve as but a symbol. The constitution was also to conform as closely as possible to SWNCC228; and be drastic enough that the FEC would not be able to make any objections. The Japanese government was reluctant to agree to a draft so fundamentally different from the Meiji Constitution. They also had a hard time reconciling with the idea of a no-war clause, and the demotion of the Emperor from sovereign to symbol. SCAP and the staff of the Government Section urged them to accept the draft as the alternative might mean the removal of the Emperor. Eventually, the Japanese government relented and accepted the draft to ensure the retention of the Emperor. The draft made it through deliberations in the Diet without much change and was voted through to promulgation.
References


