The "Constitutional Convention" in the Dai Ichi Building

On Monday, February 4, 1946, Brigadier General Courtney Whitney opened a meeting of the Administrative Division of Government Section (GS) with the announcement that during the current week the Government Section would sit as a constitutional convention that would draft a new constitution for the Japanese people and present it to the Japanese government on February 12. He cited notes that he held—the hand-written "MacArthur Notes" which MacArthur had said must be basic in the draft: The emperor would be at the head of the state, his powers would be determined by the constitution, war and the maintenance of arms would be forbidden, the feudal system would be abolished, and the peerage ended.

The Threat or Use of Force?

The often lively discussions among the American constitution drafters during that week are summarized in the Government Section's *Political Reorientation of Japan* and detailed in notes made by Ruth Ellerman, which are included in the The Rowell Papers. In her summary of Whitney's opening remarks, Ellerman wrote: "He [Whitney] intends to convince the Foreign Minister and his group . . . that the only possibility of retaining the Emperor and the remnants of their own power is by their acceptance and approval of a Constitution
that will force a decisive swing to the left. General Whitney hopes to reach this decision by persuasive argument; if this is not possible General MacArthur has empowered him to use not merely the threat of force, but force itself.\(^3\)

Eighteen years later, on September 2, 1964, before providing copies of his files to Professor Takayanagi Kenzô, Milo Rowell, who had been a member of the drafter’s steering committee, signed a notarized affidavit saying: 

\[\ldots\] that portion of the report \ldots reading as follows: ‘if this is not possible, General MacArthur has empowered him to use not merely the threat of force, but force itself,’ did not occur in the words stated in said report, nor did it occur in substance.\(^3\)

In 1988 I asked Charles Kades (the leader of the American drafters) about the “use not merely the threat of force, but force itself,” in Whitney’s February 4 address. Kades said he had complete confidence in the reliability of both Rowell and Ellerman. However Kades himself was not listening to Whitney’s speech at the time. He was so concerned about how he could get such a disparate group of people, including Roest, Wildes, etc., to write a constitution in such a short time, that he could not and did not listen to the speech.\(^4\)

Kades opposed the idea that the constitution was coerced, he told me in 1988. He said that the “person of the emperor” was not threatened (as sometimes alleged) on February 13, 1946, when the SCAP-drafted constitution was submitted to members of the Shidehara cabinet. The Americans’ powerful argument then was that SCAP might present the constitution directly to the people and the cabinet thought that that would result in their replacement by a more progressive group.

Given Ellerman’s meticulousness in the preparation of her notes, could she have made a massive blunder or told an untruth about the threat or use of force? Or was there a logical reason for what she wrote? Why did Rowell so emphatically contradict her statement?

My theory is that the text of SWNCC-228, with which Whitney and Ellerman were both familiar, explicitly indicated that under certain circumstances coercion might be used. “Reform of the Japanese Governmental System (SWNC-228),” adopted January 7, 1946, represented the policies of the U.S. State, War, and Navy Departments concerning the Japanese constitution.\(^5\) The SWNCC document stated: ‘Only as a last resort should the Supreme Commander order the Japanese Government to effect the above listed reforms, as the knowledge that they have been imposed by the Allies would materially reduce the possibility of their acceptance and support by the Japanese people for the future [emphasis added].’ This statement says yes, as a last resort, coercion could be used.

In the “Discussion [Appendix B]” of the same policy document we find the statement, “Although the ‘ultimate form of government of Japan’ is to be determined by the ‘freely expressed will of the Japanese people,’ the Allies, in accordance with the above provision and as part of their over-all program for the demilitarization of Japan, are fully empowered to insist that Japanese basic law be so altered as to provide that in practice the government is responsible to the people, and that the civil is supreme over the military branch of the government [emphasis added].”

In other words, the Allies have the power to insist. Thus imposition of constitutional reforms and insistence backed by power are options (although not the preferred options) according to SWNCC. SWNCC even went so far as positively suggest an initiative by MacArthur in the absence of action by the Japanese government: ‘Failing such spontaneous action by the Japanese, the Supreme Commander should indicate the reforms which this Government considers necessary before it can consider ‘a peacefully inclined and responsible government’ to have been established in Japan, a condition of the occupation forces withdrawal [emphasis added].”

Japan was under military Occupation and SCAP had the authority at any time to dispense with the Imperial Japanese Government (IJG) and rule the country by direct military government. Prominent Japanese politicians were being indicted as war criminals and the Japanese government suffered from an extremely negative international reputation. MacArthur had at his disposal the troops necessary either (1) to coerce the Japanese government to behave as ordered by the Allies or (2) to prevent the Japanese police from obstructing revolutionary forces favored by the Allies. Until the Japanese set up a peacefully inclined government, their country would remain under military Occupation—in effect held hostage. The threat of force was inherent in the situation.

After the Occupation ended in 1952, Japanese conservatives began to assert that the Americans had “imposed” the democratic constitution on Japan. This allegation ran contrary to the declared position of both the Japanese government and of SCAP that the democratic constitution had been proposed by the cabinet, enacted by the Diet according to the amendment procedure prescribed in the Imperial Constitution, and represented the “freely expressed will of the Japanese people.” This position was essential to protect the dignity of the Japanese politicians involved in the process and to assure the legitimacy of the democratic
constitution by emphasizing the legal and democratic procedures used in its enactment.

In the 1960s, the former GS constitution drafters were occasionally visited by the Japanese politicians with whom they had worked. During the Occupation, the Japanese had been cooperative and polite to their conquerors, who did not welcome suggestions that the benevolent American rule was ultimately based on coercion rather than on good will and sweet reason. Thus Rowell, when he graciously provided Japanese scholars with the hitherto secret Ellerman notes, understandably sought to discredit distasteful references to the threat or use of force in the notes.

Writing a Constitution for Japan

Two days (Monday, and Tuesday) were largely taken up with discussions about the procedure to be followed and basic provisions of the model constitution. It was understood that General MacArthur favored a unicameral legislature, but this would not be insisted upon. The structure and headings of the Imperial Constitution (1889 “Meiji Constitution”) would be followed, and the Japanese terminology of the old Constitution would, when applicable, be preserved. If necessary American terms would be used. Thus the English word “Diet,” referring to the Japanese legislature in the official English version of the Meiji Constitution, was preserved by American constitution drafters and is found in the present quasi-official English version of the Japanese constitution, even though the Japanese dropped the expression Teikoku Gikai (Imperial Diet) in favor of Kokkai (National Assembly).

Sovereignty would be placed “squarely in the hands of the people,” and the emperor’s role would be that of a “social monarch.” Relations between the executive and legislative branches and the selection and resignation of the prime minister were discussed. The chairmen of the subject matter committees were charged with ensuring the conformity of the committee proposals with SWNCC-228. The provisions of the United Nations Charter were to be kept in mind.

To draft a model Japanese constitution, the personnel of the Public Administration Division of Government Section were divided into eight subject-matter committees (sometimes referred to as “subcommittees”): Legislative; Executive; Civil Rights; Judiciary; Local Government; Finance; Emperor, Treaties, and Enabling Provisions; and Preamble. In addition, a steering committee would give final approval to the drafts prepared by the other committees. The twenty-one committee members included one colonel (Kades) and lower ranking commissioned army and navy officers as well as a few civilians. None of the members were career military personnel; all had civilian careers before the war and returned to civilian careers after the Occupation. Four civilian women (including Ellerman) were listed among the committee members. The committees ranged in size from one to four members, and each of the three male members of the steering committee served as members of subcommittees. The table of organization2 listed, separately from the committees, two “secretaries,” who were female civilians, and two “interpreters,” both of them male first lieutenants, products of U.S. Army language schools, who were weak in Japanese conversational skills and untrained in Japanese legal terminology.

In civilian life, General Whitney and the three male members of the steering committee had been lawyers. The chairman of the steering committee, Charles L. Kades, had been a New Deal lawyer, and was well briefed on Occupation policies before coming to Japan. Other constitution drafters included Dr. Cyrus Peake, a former Columbia professor specializing in Chinese legal history, Commander Guy Swope, a former congressman, and First Lieutenant Milton Esman and Major Cecil Tilton, specialists in public administration.

One member of the steering committee, Milo Rowell, a lawyer with a Republican background, had in December written an analysis of Japanese proposals for constitutional reform and had discussed these at some length with their Japanese advocates. Conspicuously absent from the GS files on the constitution that I have seen are the texts of Konoe and Sasaki proposals for constitutional revision or any critical analysis of their substance. The Rowell commentaries and the Ellerman notes do not even mention the Konoe effort. This is not surprising because, as noted in the previous chapter, MacArthur had publicly repudiated the Konoe effort (November 1, 1945), which had enjoyed the blessing of the State Department, and Konoe was later indicted as a war criminal and committed suicide. The product of Konoe’s revision effort was outside the pale of respectability so far as MacArthur’s headquarters were concerned and seems to be have been completely ignored by GS officers.7

In 1988, Kades told me that when GS was working on the constitution he was completely unaware of the efforts of Prince Konoe to revise the constitution in the fall of 1945. He was aware only of MacArthur’s instructions to Shidehara in October, 1945. I was amazed by this. He said that Dale Helligers [a researcher] had almost accused him of lying when he told her that he had known nothing of the Konoe
efforts. He was unaware of the controversy between Matsumoto and Konoe over the question of whether the revision of the constitution should be centered in the cabinet or in the Office of the Lord Privy Seal, where Konoe had been appointed as a commissioner to work on the constitution. I cited Professor Nathaniel Peffer’s letter to the New York Times and an editorial in that paper attacking MacArthur’s choice of Konoe to revise the constitution. Kades had not heard about these before Helligers told him of them. Government Section did not know about the Konoe business, and Kades does not believe that Rowell would have kept the Konoe bit from him. He said that at the time of the Konoe effort, Whitney had not yet come to Japan.  

Kades said that four political parties and a number of groups gave drafts of their constitutions to Government Section (Rowell), but not a word was received from Matsumoto Jōji, who chaired the cabinet’s committee studying constitutional reform. Kades wondered about this, and Rowell asked an officer of G-2 (Colonel Munson) about the matter. The officer told Rowell to “let them come to us.” Kades seemed to think that Government Section may have erred in not contacting the Matsumoto group.

Rowell assigned an especially high evaluation to the constitution drafted by the Constitution Research Society (Kenpō Kenkyūkai). This organization was led by three very prominent Japanese liberals, Takano Iwasaburō, director of the Ōhara Institute for Social Research and adviser to the Social Democratic Party, Morito Tatsuo, a noted sociologist and Socialist leader, and Suzuki Yasuzō, a constitutional expert. It published its proposals in December 16, 1945, and submitted its outline of constitutional revisions to the Shidehara cabinet.

Ozaki Yukio, the old statesman, used to come to Kades’ office, Kades told me in 1988. Ozaki was not stone deaf, as sometimes said. [Ozaki chaired the Constitution Discussion Society (Kenpō Kondankai), which had prepared a proposed constitution.] Kades regarded him as “venerable.” Some people wanted to purge Ozaki because he had been on Tōjō’s approved candidate list, but Kades did not.

The Ellerman notes of the proceedings nowhere refer explicitly to the Kenpō Kenkyūkai draft, even though that document and Rowell’s accompanying critique occupy prominent places in the Rowell Papers. But when I asked about its importance, both Rowell and Kades have emphasized its relevance to the work of the GS constitution drafters. The first portion of the SCAP draft bears strong resemblance to the Kenpō Kenkyūkai draft. One is left with the impression that (1) Rowell, as a member of the steering committee, usually had that draft and his commentary very much on his mind, and very likely reminded other members of the steering committee of it, and that (2) Kades especially valued this Japanese proposal because it provided strong evidence that progressive Japanese opinion would support the substance of the GHQ draft and lend it a degree of legitimacy. Thus this and other progressive Japanese proposals gave Kades and Whitney confidence that GHQ’s handiwork had a basis in Japanese public opinion that could lend support to the GS when it was engaged in negotiations with the conservative Shidehara cabinet.

Several of the drafters had visited Japan before the war. One was a “BIJ” (born in Japan). There was a prejudice in GHQ against BIJs and “old Japan hands,” because they were suspected of being unduly biased in favor of Japan’s “feudalistic” old regime. However, Ensign Richard Poole was forgiven as he had returned to the United States as a child and had not been brought up in Japan. No one was over middle age. Harry Emerson Wildes had taught in Japan before the war and written two books about Japanese society. In 1954, Macmillan published his candid book, Typhoon in Tokyo, which critically evaluated the Allied occupation of Japan.

Although discussions among the members were frank and direct, it is nevertheless true that they were all conscious of their military or civilian rank. Upon their rank depended what kind of billet they would be assigned, what kind of food they would eat, what kind of friends they would have, and whether they could ride in sedans instead of jeeps. None had been in Tokyo more than a very few weeks and there were settling-in problems, the solutions of which were rank connected. Billets were sometimes hotels, sometimes office buildings converted into hotels. There was much social activity, seeing exotic places and meeting new people, including Japanese people. It was clear to these Americans that it was the United States that had won the war. Among Occupation personnel there was racial prejudice against the Japanese, although this prejudice does not seem to have affected the constitution-drafters, who seemed genuinely determined to produce a constitution that would benefit the Japanese people.

The drafters had mixed feelings about drafting a constitution for Japan. Some, like Esman, felt that the democratic constitution would not outlast the Occupation; when the Americans left the Japanese would scuttle it. Peake felt like quitting, but believed that he could not just wash his hands of the project. Some felt that it was improper for foreigners to
write a constitution for Japan, but after the committees began their work they got into the spirit of the thing with some enthusiasm. Kades and Beate Sirota were proud of their involvement in the project and for decades followed with interest the fate of favorite constitutional provisions.

We have mentioned the twenty-one members of the committees charged with drafting the model constitution. However, also directly involved in determining the content of the draft were General Whitney, who on occasion met with the steering committee, and General MacArthur, with whom Whitney consulted. Thus including Whitney and MacArthur, a total of 23 personnel in GHQ were writing the constitution. All 23 were Americans. (At later stages, additional GS personnel, including Alfred Oppler, T.A. Bisson, Kenneth Colegrove, and Justin Williams became involved.)

Missing Persons

The Japanese government’s Constitutional Problem Investigation Committee, headed by Matsumoto Jōji, included some of the stellar names in the field of Japanese constitutional and public law, while the Government Section drafters included not a single constitutional lawyer.

The American personnel drafting the Japanese constitution were persons substantially above average in education and/or had practical experience in law and politics. On the other hand, they had not been originally recruited with the idea that they would be writing the constitution of a major nation. Their number was made up of all of the persons who at the time happened to be serving in the Public Administration Division of the Government Section. As a political scientist, I am struck by the fact that only one, Esman, was educated as a professional political scientist. The two most eminent American professors of political science who had published a book or scholarly articles on Japanese politics and government were in Tokyo when the new constitution was an issue, but there is no indication whatever that their expertise was drawn upon by the constitution drafters in Government Section. These scholars were Harold S. Quigley of the University of Minnesota and Kenneth Colegrove of Northwestern University. Colegrove joined the Government Section just before the Japanese government published its March 6 outline for a new constitution, based on the Government Section draft.

Quigley had authored Japanese Government and Politics, published by Appleton-Century-Crofts in 1932. This volume was long the standard work on the subject in English. Quigley was affiliated with the Civil Intelligence Section in G-2, in the Dai Ichi Building, the same building where the constitution was drafted. I was employed by the Civil Intelligence Section between the summers of 1946 and 1948. I mentioned to a veteran in CIS that I never saw Quigley in the CIS offices where I circulated. Quigley had an isolated office and did not mix with other CIS personnel. My friend’s attitude was that although Quigley had written a well-regarded book about Japanese government before the war, his expertise was largely irrelevant to the postwar situation. Besides, my friend said, Quigley, unlike many of the CIS personnel, had no knowledge of the Japanese language, and no one in CIS seemed to pay any attention to Quigley. My only conversation with Quigley occurred at the end of the day in front of the Dai Ichi Building awaiting transportation. I mentioned how exciting it was to be in Tokyo where history was being made. As a political scientist, I felt that this was better than just theorizing in a classroom. Quigley, who was conservatively dressed in a dark suit, did not seem impressed by my argument and mentioned how eager he was to return to the his campus. Quigley is said to have been rankled that the Government Section had not sought his advice in drafting the model constitution. Some of Quigley’s friends sought to persuade him to join the Government Section, where his special talents would have been better appreciated, but he preferred not to make the move from CIS to GS.

Professor Colegrove joined the Government Section early in March 1946, after Kades and company had drafted a constitution for Japan and delivered it to the Japanese government. Some people in GS reportedly suspected Colegrove of being a spy for the Far Eastern Commission and the State Department. Actually, as reported by Professor Koseki Shōichi, Colegrove became a defender of MacArthur’s policies on the constitution and in his correspondence with officials in Washington argued against the effort in the State Department and FEC to slow down the adoption of the SCAP-inspired Japanese constitution. In 1988, I asked Charles Kades for his view of Colegrove. He said Colegrove was a “royalist,” who believed in monarchy. Kades liked Colegrove, was friendly and sharp. Colegrove got invitations for Government Section people to the imperial family and Kase [Toshikazu]. (Kades never accepted.)

A third political scientist, John M. Maki, joined the Government Section shortly after the draft constitution had been written. In 1945
Knopf had published his book, *Japanese Militarism: Its Cause and Its Cure*. In 1948 he was awarded the Ph. D. by Harvard University, and later became successively a professor at the University of Washington (Seattle) and the University of Massachusetts. He has published important books on Japanese politics, Japanese Supreme Court decisions, and the work of the Japanese Commission on the Constitution.

During World War II Maki had worked in the U.S. Office of War Information. It seems probable that his government service as well as his book account for his being assigned to the Government Section. He joined Government Section after the model constitution had been drafted. He has told me that he was present in his office during the overnight negotiations between the Japanese government and SCAP officers (March 4-5, 1946). He did not participate in those negotiations, which he understood were primarily concerned with agreeing on the translation of the model constitution from English into Japanese. Given the fact that Maki's *Japanese Militarism* was one of the few books sponsored by a prestigious publisher in English on the reform of the Japanese political system, it is something of a surprise that it is nowhere mentioned in the Ellerman notes as a reference that was used by the constitution drafters. Of course, it is possible that the book may have been published very late in 1945 and that no copies of it had arrived in Tokyo in time for it to serve as a reference for the constitution drafters.

Another notable 1945 book on largely the same topic was Owen Lattimore's *Solution in Asia* (Boston: Little, Brown). Lattimore predicted that the “Japanese people are likely to overturn the throne unless we prevent them.” He added, “As a matter of political principle, I think we should make the worst possible mistake in trying to use for our own purposes either the present Emperor or a successor nominated by us.” He assumed that “the Japan of the future will be a republic” (pages 187-189).

Lattimore's views were shared by many concerned people in the United States and the other Allied countries, who regarded the Japanese emperor as a war criminal. Lattimore’s book and writing is not mentioned in the Government Section files on the constitution and seems to have had no influence in GS. The Ellerman notes make no mention whatsoever of any mention by the constitution writers of trying the emperor as a war criminal or abolishing the monarchy. Of course, point one of the MacArthur notes put the quietus on any anti-monarchical ideology in GS. Lattimore, a prominent Johns Hopkins professor who would in the 1950s become the principal target of Senator Joseph McCarthy, was never an employee in SCAP’s bureaucracy.

Kades told me in 1988 that at one point [the context suggests this point must have been at least as early as February 1946] he needed an expert on Japanese law and asked for [Charles Nelson] Spinks, who had been recommended by his friend Herbert Norman, and [William J.] Sebald, but neither was available. [Spinks was employed by CIS.] He wanted a German expert and got Alfred C. Oppler, a distinguished jurist from Germany. Oppler first reported to Government Section on February 23, 1946, after the drafting group had completed their work. He had injured his ankle and on March 5, 1946, while in the hospital, wrote in long hand a critique of the Government Section’s draft constitution after having read it but without the text in front of him. In criticizing the proposed system of election of the prime minister by the Diet and advocating the appointment of the prime minister by the emperor, Oppler seemed to support the Esman’s sentiments on this topic. It is interesting that nowhere in his eight-page analysis did Oppler mention the renunciation of war and arms in the draft. Later Oppler played an important role in the course of the enactment of the new constitution.

Justin Williams, a former professor of history in Wisconsin who later authored a distinguished book on the Occupation, would have been among the constitution drafters, but was temporarily incapacitated by lacquer poisoning shortly after arriving in Tokyo.

The members of the steering committee were no doubt very competent lawyers and understood American politics, but they seemed to have little systematic knowledge of comparative politics. Their provincialism, if it may be called that, was balanced to some degree by the cosmopolitan personalities in the civil rights committee. Of all of the Government Section constitution drafters, only Milton Esman, who was trained in public administration, seemed to have a clear grasp of the central lessons of comparative politics. We shall shortly see what happened to him.

It must be said in mentioning names of Quigley and Colegrove that although both had reputations as specialists in Japanese government, neither was a leader among American scholars of American constitutional law. The argument could be made that the constitution drafters in Tokyo should have included one or more famous authorities on American, or perhaps more to the point, British, constitutional law. If MacArthur had been more patient, he could have recruited a commission of leading American and British political scientists to advise him on constitutional revision. Indeed, between January 6 and March 15, 1946, right while the Government Section was becoming involved in drafting a Japanese constitution, the Mission on Japanese
Combinés, made up of economics and business experts appointed by the State and War Departments, was present in Japan, preparing a report on the zaibatsu. In March, 1946, The U.S. Education Mission to Japan, made up of 27 eminent American educators, visited Tokyo and consulted with their Japanese counterparts. Their report to MacArthur on March 30 would serve as a basis for the reform of the Japanese educational system.

It is conceivable that the dispatch of a commission of leading political scientists and constitutional scholars and relaxed but well-focused discussions between them and leading Japanese constitutional scholars could have produced a program of constitutional reform that would elicit more enthusiastic support from the Japanese side than SCAP’s secretly produced model document. Of course, the recruitment of such a commission was impossible given the time constraints that MacArthur strongly felt.

The “Numbers Game” and a Red Ghost

In a conversation with Professor Nishi Osamu in 1997, we discussed the “numbers game,” the problem of counting the American constitution drafters. The “official list,” used by most writers on the topic including myself, is a memorandum prepared and signed by Alfred R. Hussey, Jr., of the steering committee, on June 30, 1946, based on “existing records.” Here are listed 21 people, including Philip O. Keeney, Beate Sirota, and Milton Esman, whose names do not appear among those of the only 18 people who signed the memo of 13 January 1946 transmitting their opus to General Whitney. (I am not counting here the number of signatures, because some people signed more than once because they were members of more than one committee.) Beate Sirota and Milton Esman both explained to me that they were simply not present at the time of the signing. Keeney is another case.

Philip O. Keeney, formerly in the Office of Strategic Services, was a member of the local government committee among Government Section’s constitution writers. He attended a general meeting of the drafters to Wednesday, February 6. But after that date his name ceases to appear in the Ellerman notes. After the text of the entire model constitution had been agreed upon, the drafters signed a note transmitting the document to General Whitney. Signing under the name of the local government committee were Cecil G. Tilton and Roy Malcolm, but we do not see Keeney’s name. Although present in Ellerman notes, Keeney’s name does not appear in the list of constitution drafters in Kades’ definitive Political Science Quarterly article on the drafting of the constitution. In an interview with Professor Takemae Eiji, Kades said that the first draft of Chapter VIII of the constitution was made by Tilton, Malcolm, and Keeney. But later in the same interview, Kades said that Keeney was not involved in the drafting of the constitution.

For some time this researcher wondered what had happened to Mr. Keeney, whose name appears and disappears, ghostlike, in the literature. In a reference to various memoranda from Major General Charles A. Willoughby’s G-2 charging various members of the GS as communist security risks, Kades told Takemae that the only case he regarded as serious was that of Keeney. Keeney, Takemae noted, had been sent back to the U.S. because his wife had been excluded from the German Military Government because of her sympathy with the communists.

Kades said that Keeney was not involved in drafting the constitution, but was placed in charge of the library because of his academic background. But Kades realized that the library “was a sensitive place because all top secret papers came to the library. This memorandum [concerning Keeney] was the only memorandum [on communist security risks] that I thought worth the powder to blow it to hell with, as they say.”

Kades then asked General Kenneth Dyke, head of Civil Information and Education Section (CIE), to accept Keeney. Thus Keeney was transferred to CIE. The Keeney case suggests that Kades, an ardent liberal, was not entirely tone deaf concerning security issues.

Mr. and Mrs. Philip Olin Keeney were referred to as “known Communist couriers” in a Willoughby 30 November 1950 memorandum on the Herbert Norman case. The Keeney name was immortalized in James Burnham’s Web of Subversion. Mary Jane Keeney had served in the State Department and Philip in the Pentagon. They were associated with the notorious spies Lauchlin Currie and Nathan Silvermaster. Philip was “among the Fifth Amendment cases who served in the OSS.” “He became libraries officer in the Civil Information and Education Divisions of SCAP... It was his function to supervise the rebuilding of the library system of the Japanese, who are great readers. In 1952 he declined on ground of self-incrimination to answer the usual questions, including questions concerning the Institute of Pacific Relations, whose members were so active in Japan.” Mary Jane Keeney was “a fifth amendment case.”
It is said that finally the Keeneys (homme et femme) escaped from the United States in a Polish ship. Because of the fact that Keeney did not sign the report of the local government committee, of which he was a member, and also because of Mr. Osborne Haug, one of the drafters, very emphatically insisted to me in 1997 that Keeney had no part in drafting the Japanese constitution, there is a very real question as to whether it is correct to include his name among the drafters of the constitution. This would reduce the number of American authors (not including Whitney and MacArthur) from the usually mentioned 21 to 20.

Another question arises. Although four women are included in the “official list,” as committee members among the Government Section drafters, only one is depicted in the Ellerman notes as taking an active part in the discussions: Beate Sirota. Ruth Ellerman, of the steering committee, compiled the invaluable “Ellerman Notes,” and she is reputed to have strong opinions of her own, although she does not record any of the ideas in the notes as having been advanced by herself. Nor are the names of Margaret Stone and Gertrude Norman identified in the Ellerman Notes as contributing to the discussions of the committees with the steering committee.

One is almost tempted to suspect that the contributions of these three women were regarded primarily as secretarial rather than substantive. If we subtract the “secretaries” from our total we end up with only 17 drafters. (I am a bit reluctant to do this, especially because of Ellerman’s role. There are perhaps three versions of the Ellerman notes: [1] the original notes, scribbled in long hand on a tiny pad, [2] the first typed version, and [3] a revised typed version. In making her original notes Ellerman, who wrote longhand rather than shorthand, had to exercise considerable judgement about how to condense rapid oral statements and arguments into a sufficiently small number of words so that she could keep up with the discussion, like a student making notes on a professor’s lecture. The accuracy of the notes depended on her skills of selection, compression, and emphasis. It seems very likely that many important things were said that she failed to record. Unintentionally or intentionally, her biases could have colored her reporting, and she may have been too modest to mention any contribution that she may have made to the discussion.)

The total, corrected number of American authors of the Japanese constitution may actually be only 19 (that is 17 GS drafters plus Whitney and MacArthur), not the “official number” of 23 as is usually stated.

A constitution writer whose loyalty was questioned by Willoughby was Beate Sirota. Kades regarded the Sirota memorandum as ridiculous and never told Sirota about it for fear of hurting her feelings. She distinguished herself as the author of women’s rights provisions in the Japanese constitution and helped greatly with the translating during the March 5-6 overnight session with the Japanese.

**Rivalry between G-2 and Government Section**

Several prominent Government Section personnel who were not among the constitution drafters were also the targets of G-2’s suspicions of communist involvement. They were evidently victims of a fierce struggle for power between Generals Whitney and Willoughby for influence in the Occupation.

Colonel Kades ultimately had his own personal problems with G-2. Tsurumi Shunsuke, the prominent critic, has written that “Willoughby managed to force him [Kades] out of Japan . . . .”

In 1988, Mr. Kades and his wife Phyllis graciously invited me and my wife for a week-end visit at their home in rural Massachusetts. (It was hard to find at night as it was buried in the woods in the mountinous border with Vermont.) Among other things, I asked Kades what his reasons were for quitting SCAP.

Kades said that from December 1948 to April 1949 he was in Washington serving as representative in Washington for the Far East Command. He enumerated four reasons for his quitting SCAP: (1) He wanted to return to the States. Three years overseas was long enough. He wanted to return to his private law practice. (2) He wrote a memo at the end of 1947 or early ’48 indicating that he felt that Government Section had completed its functions and should retrench to eight or ten people. (3) There was Yoshida’s electoral victory [Government Section had unsuccessfully tried to prevent Yoshida from becoming prime minister], and (4) there were NSC 13/2 and the “Kennan-Draper alliance.” [NSC 13/2 was the new U.S. policy that emphasized the strategic importance of Japan and called for Japan’s economic recovery. George F. Kennan, of the State Department, and William H. Draper, undersecretary of the army, advocated that the Occupation give less emphasis on punishment and reform and more emphasis on economic recovery. After Yoshida became prime minister in 1948, Yoshida avoided contacts with Government Section, dealt directly with General
MacArthur, and frequently consulted General Willoughby at the latter’s
private quarters in the Imperial Hotel.

After talking with Draper and General John H. Hilldring, it was clear
to Kades that no more political reforms in Japan were contemplated.
Kades explained this situation to Cowles, the publisher, and Tolischus
of the New York Times, who wanted to do more.

Kades mentioned to me that while he was in Washington, General
John H. Hilldring asked Kades to be deputy undersecretary for occupied
areas. Kades originally turned down the position, thinking that he was
needed back in Tokyo. On further consideration, he was inclined to
accept the job if the position was divided so that Kades would be
concerned with Japan and someone else with Germany, about which
Kades denied having expertise. However, such an arrangement was
evidently not practicable.

MacArthur told Whitney to let Kades pick his own date to quit.
Kades chose 3 May 1949, the second anniversary of the effectuation of
the new constitution.23

The Modus Operandi

The constitutional project in Government Section was supposed to be
kept completely secret, not only from the Japanese but also from
personnel in other SCAP sections.

The Government Section personnel were surprised if not shocked by
the immensity of the task assigned to them—to write a constitution for
a nation of nearly one hundred million people. None, however, resisted
the order, issued by superior officers in the military hierarchy, and all
were determined to produce the best possible democratic document.

Everyone involved was keenly conscious of one another’s rank in the
military hierarchy. In several notable instances, a subcommittee strongly
advocated a constitutional provision that the steering committee did not
wish to accept. When the two groups could not reach a consensus, the
steering committee, apparently out of respect for differing views of the
subcommittee, sometimes refrained from arbitrarily vetoing the
subcommittee’s proposal and appealed to General Whitney for his
decision. In one instance, an issue was referred to General MacArthur
to decide. Given the time constraints, the efforts to achieve consensus
suggest the existence of a somewhat democratic attitude in the military
hierarchy. At the same time, one is reminded of the Japanese practice of
decision making, in which consensus is sought, but when it cannot be
achieved, there may be an agreement to appeal to a higher authority for
a final decision. (Such a procedure was followed by the Japanese cabinet
in 1945, when it could not achieve a consensus on whether to surrender
to the Allied Powers and asked the Emperor make the final decision.24)

The constitution drafters were distributed about the ballroom on the
sixth floor of the Dai Ichi Life Insurance Building (MacArthur’s
headquarters building) and it was possible for the members of the
different committees to consult informally with one another. Some
individuals served on more than one committee. MacArthur’s and
Whitney’s offices were on this same floor, but only Whitney had
unfettered access to the supreme commander. Sirota traveled about Tokyo
in a jeep discretely scrounging from local libraries books about national
constitutions. Milton Esman collected (“borrowed”) constitutional
materials, from Professor Miyazawa Toshiyoshi, an eminent Japanese
constititutional scholar.

Each of the subcommittees was expected to have completed the first
draft of its chapter by Wednesday, the following day, in the form of “one
original, three carbons, double-spaced.” A rough draft of the entire
constitution should be ready by the end of the week. From Wednesday,
February 6 to through Saturday, February 9, each of the subcommittees
successively met with the steering committee to present and defend its
written report. The “Ellerman notes” include both the subcommittee
reports and summaries of the respective discussions with the steering
committee. It appears that General Whitney, who was not a member
of any of the committees, did not take an active role in the discussions
except when his judgement was appealed to on several occasions when
irreconcilable debates among the drafters occurred.

Dissent and Exile

Some of the participants had strong political and ideological
convictions or past experiences and personal traits that engendered
emotional confrontations. On the other hand positive tropisms sometimes
arose between committee members, thus accounting for two marriages.

We shall describe here only some of the more dramatic debates that
occurred among strong personalities while they were writing a
democratic constitution for Japan.25 (For the text of the document
produced by the Government Section drafters, see the “SCAP Draft” in
the Appendix of this book.)
Milton Esman, a member of the committee on the executive, was 28 years old and a recent Ph.D. in public administration from Princeton University. He strongly held that the prime minister should be appointed by the emperor and that the prime minister should have the power to dissolve the parliament when the latter defeats the government's key legislation. He disagreed with the report signed by the chairman of the committee, Cyrus Peake. The steering committee insisted that the prime minister could request the emperor to dissolve the Diet only after the Diet had passed a no-confidence resolution or defeated a confidence resolution. But Esman argued against this limitation of the power of dissolution and pointed out that the instability and ineffectiveness of French governments in the 1930s stemmed directly from the cabinet's lack of power to dissolve the Chamber of Deputies. To severely limit the Japanese prime minister's power of dissolution would be ruinous for Japan. Esman wrote in defense of his position: "The irresponsible tendencies of the Diet, in keeping with decades of experience in Parliamentary government, can best be disciplined by an executive who enjoys the power to dissolve a Diet which fails to act favorably on his major proposals. This power and the threat of its use tend to assure a stable yet responsible executive."27

Esman was supported by Jacob Miller in the three-man committee, so that he represented a majority view in the committee, against the chairman, Cyrus Peake. Esman objected so stubbornly against the refusal of the steering committee to accept his view, that his argument with the steering committee, which extended into a second day, threatened to delay the prompt completion of the draft constitution. Kades arranged to have Esman ordered to take leave for "rest and rehabilitation" in Nikko in the dead of winter.28 As a result his signature is missing from the letter of February 13 transmitting to General Whitney the final Government Section draft constitution.29 (Peake and Miller signed the letter.)

After the democratic constitution had gone into effect, SCAP headquarters insisted that under the new constitution, dissolution could only occur after the lower house had voted no confidence in the cabinet. However, shortly after the Occupation ended in 1952, Prime Minister Yoshida asked the emperor to dissolve the House of Representatives (which the emperor did) in the absence of a vote of no confidence. Yoshida could cite Article 7 of the new constitution: "The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people: . . . Dissolution of the House of Representatives." Since that time, Japan’s prime ministers have brought about dissolutions when it was politically advantageous for the ruling party to have an election. The Japanese government's interpretation of the new constitution thus grants the prime minister the authority that Esman had unsuccessfully insisted be explicitly granted in the new constitution.30

On the matter of the emperor’s appointing the prime minister, which Esman advocated, the constitution, as written by GS and finally adopted, provides that the emperor appoints as prime minister the individual designated by the Diet.

I can empathize with Esman’s views on the power of dissolution. In the 1940s and 1950s it was the prevailing view among writers of textbooks on comparative politics (which was my major doctoral field at Georgetown and Columbia Universities in those years) that the premier’s lack of the power of dissolution was a principal reason for the frequent collapse of French cabinets. Ministerial instability had also plagued the Weimar Republic, so that the West German Basic Law (1949), provides for the "constructive vote of no confidence." This procedure requires that the Bundestag must designate the new chancellor (prime minister) at the same time that it votes no confidence in the current cabinet.

The Amendability of the Democratic Constitution

The subcommittee on the emperor, etc., urged that the new constitution forbid the enactment of any constitutional amendments for a ten-year period, in order to give time for democracy to stabilize in Japan. Ensign Richard Poole, like some of the other constitution authors, strongly believed that as soon as the Occupation ended and Japan resumed its independence, the Japanese would cast aside the SCAP-sponsored constitution. However, the steering committee vetoed the proposed ten-year ban, and agreement was reached to require a two-thirds vote in the Diet and a majority vote in a plebiscite to amend the new constitution.31

The subcommittee on civil rights advocated a provision that no future constitution, law, or ordinance could limit or cancel the rights guaranteed in the democratic constitution. Colonel Kades strongly objected to the assumption of infallibility implicit in this article. It would mean that one generation would deny the rights of future generations to order their own affairs. As written, the proposed article would make amendments to the “bill of rights” (Chapter III) invalid, and change could be brought only through revolution.
Colonel Roest held that human rights achieved up to the present should be guaranteed for all times. Mr. Wildes said that the omission of the proposed article would inevitably open the gates to fascism in Japan. Commander Hussey complained that the proposed article exalted opinion and a theory of government to the stature of constitutional law and in addition was impractical. The enforcement of such an idea would depend on the interpretations of the Supreme Court rather than on precise rules laid down in the constitution.

A compromise could not be reached, and it was decided to submit the article in question to the decision of General Whitney. General MacArthur himself ordered the deletion of the article prohibiting a constitutional amendment constitution that would impair or alter the provisions of the bill of rights. This is the only case in the record in which MacArthur involved himself in formulating the final text of the draft of the model constitution.

Although the bill of rights would not be protected by making it unamendable, the steering committee approved an interesting proposal by the judicial subcommittee: The decisions of the Supreme Court relating to constitutionality could be overridden by a two-thirds vote in the Diet, except for decisions related to Chapter III (the bill of rights) in the constitution.

(It seems plausible that the provision for the Diet’s power to override the Supreme Court may have stemmed from unhappiness with the conservative decisions of the United States Supreme Court on economic issues during the New Deal in the United States. At the same time there was a belief that somehow the Supreme Court was more solicitous of human rights than the legislature. It may be that the judicial subcommittee’s somewhat ambivalent attitude towards the Supreme Court represented an amalgam of the views of Hussey, a Democrat, and Rowell, a Republican.) The Diet’s proposed authority to override decisions of the Supreme Court does not appear in the Constitution of Japan as finally enacted.

Social and Economic Rights

The MacArthur Notes had nothing to say about “individual rights,” “human rights,” “social rights,” or “civil rights.” The Potsdam Proclamation, however, had referred to the need to establish “Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights” (Paragraph 10). SWNCC-228 objected to the limitations on rights in the Meiji Constitution by the phrases “except in cases provided by law” and “unless according to law.” SWNCC also pointed out that the rights in the Meiji document applied only to Japanese subjects and left “other persons in Japan without their protection.” (“Women’s rights” were not explicitly mentioned in these documents, and feminism in the 1990s sense was virtually unknown.) The three-member committee on civil rights had its hands full.

The committee members all had cosmopolitan backgrounds, college educations, and “progressive” or socialist leanings. The chairman, Lieutenant Colonel Peter K. Roest, an anthropologist with university teaching experience, has been described as “extremely liberal.” Harry Emerson Wildes had taught in a Japanese university before the war and had published a book about Japan. Miss Beate Sirota, having lived in Japan ten years as a child, was very conscious of the poor treatment of women in Japan. She was convinced that it was not sufficient to amend the Civil Code to assure equal treatment for women. Japanese society was traditionally patriarchal, and the new constitution, she believed, would have to require legal protection for women’s rights and sexual equality.

Miss Sirota was especially influenced by the socialist provisions of Germany’s Weimar Constitution. Most notably, the subcommittee incorporated in its draft her proposals on the family and women’s rights, including the following distinctive provisions:

19. Expectant and nursing mothers shall have the protection of the State, and such public assistance as they may need, whether married or not. Illegitimate children shall not suffer legal prejudice but shall be granted the same rights and opportunities for their physical, intellectual and social development as legitimate children.

20. No child shall be adopted into any family without the explicit consent of both husband and wife if both are alive, nor shall any adopted child receive preferred treatment to the disadvantage of other members of the family. The rights of primogeniture are hereby abolished.

When the subcommittee submitted its draft to the steering committee, Rowell (a Republican) objected that the establishment of a complete system of social welfare was not part of the Government Section’s responsibility. Wildes answered that the Americans had the responsibility to bring about a social revolution in Japan and that constitutional provisions were the most expedient way to do this. Rowell objected that one cannot impose a new mode of social thought upon a country by law.
The subcommittee and the steering committee could not come to a compromise agreement and the issue of social provisions in the constitution was referred to General Whitney. Whitney recommended that the minutes of social legislation be omitted and a general statement made that social security be provided.\(^37\)

In the course of the bitter debate over the inclusion of social provisions in the constitution, Beate Sirota wept when some of her provisions on women's rights were deleted.\(^38\) However, her very important statements on the "family as the basis of human society," which called for complete legal equality between husband and wife, among other things, were preserved almost intact.

It might be noted that it never was the intention of Washington nor, for that matter, of Generals MacArthur and Whitney, to convert Japan into a socialist state. The basic purpose of the Occupation was to prevent Japan from ever again becoming a threat to the peace-loving nations of the world (i.e., the Allied Powers). It was believed that the democratization of Japan would help assure the realization of this purpose, because the people are peace-loving and when they rule the country they will choose peace rather than war. The Allies were unanimously in favor of the establishment of democracy in Japan and Germany; socialism was a controversial ideology in the United States and Great Britain and continues to be so today. Reforms in the economic system, such as found in the New Deal, that would facilitate the political democratization of Japan were introduced, but the elimination of the capitalist system was nowhere among the objectives of the America-dominated Occupation. It is not surprising that the Government Section draft did not prescribe socialism for Japan, albeit certain members of the civil rights committee were reputed to be socialists.

At the same time, the draft constitution, even though it did not itself prescribe socialism, did suggest that the Diet enact legislation on social and economic matters without explicitly prescribing the content of that legislation.

Chapter III (the "bill of rights," or "civil rights" section) of the model constitution was entitled "Rights and Duties of the People"; note the use of "people" rather than "Japanese subjects" or "Japanese citizens." This chapter included Articles IX through XXXIX, making up a total of 31 articles (fully one third) of the 92 articles of Government Section's model constitution. A total of ten of the articles in Chapter III, are concerned with the rights of defendants in criminal proceedings. No mention is made of trial by jury, and the death penalty is not ruled out.

In 1988, Kades expressed to me his unhappiness with the provision in Article 13 of the constitution as finally adopted that the "right to life liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs." Kades said he feared this provision could eliminate freedoms. He attributed it to Wildes or Roest.

Kades also said that he had not wanted to make amending the new constitution too hard. He told Matsumoto (Jōji) that if one third of the members plus one were absent it would be difficult to amend the constitution. Kades preferred a smaller quorum and smaller majority required for amendment of the new constitution, but his view was not reflected in the document.

Local Government and a Personality Clash

The MacArthur Notes had nothing to say about local government. On the other hand, SWNCC-228 pointed out, "The popular election or local appointment of as many of the prefectural officials as practicable would lessen the political power formerly possessed by the Home Minister as the result of the appointment of governors of prefectures. At the same time it would further encourage the development of genuinely representative local government." The SWNCC document mentions the desirability of "strengthening of the prefectoral and municipal assemblies," but states that measures to strengthen the local assemblies "can be safely left, and would be better left, to be initiated by a [reformed] genuinely representative national government at Tokyo." SWNCC did not require the replacement of Japan's unitary system of government by a federal system, such as the American, in which the constituent major political subdivisions had powers that could not be constitutionally infringed upon by the central government. Aside from the matter of popular election or local appointment of prefectural officials, the local government committee was pretty free to exercise their imaginations.

The chairman, Major Cecil Tilton, had a Master of Business Administration degree from Harvard University, had taught at the Universities of Hawaii and Connecticut, had conducted economic and political research on the Far East in the University of Chicago Civil Affairs Training School, had written the Army Service Forces manual on Government and Administration of Japan (1945), had taken the Military Government Fiscal Officers course at Duke University, and attended the Civil Affairs Training School at Yale.\(^39\) Both Williams and Oppler
characterize Tilton as a conservative. Given his wartime involvement in preparing for military government, it would not be surprising if he expected a certain level of deference from his colleagues in Government Section.

However, according to Ellerman's account, "The original Committee Draft of the Chapter on Local Government was discarded as inadequate, and a new draft prepared by the steering committee." On the other hand, according to Hussey's account, the local government committee's report was "extensively revised." A comparison of the original committee report and the report prepared by the steering committee, make it clear that the steering committee wrote a completely new document, preserving none of the phraseology of the earlier document. The Ellerman report does not indicate the existence of any polite tribute to the efforts of the local government committee, but stresses that the final draft of the chapter on local government was the result of a reconciliation of views between two members of the steering committee, Lieutenant Colonel Rowell, "a strong home rule man," and Colonel Kades, "a warm central government man."

Given the proclivity of Republicans to favor local autonomy and the proclivity of New Deal Democrats to favor strong central government, one can readily understand the nature of the discussion between the Republican Rowell and the New Dealer Kades. Both Rowell and Kades, however, tended to be pragmatists and evidently could arrive at an agreement taking into account the local situation.

The Ellerman notes do not indicate the reason for the trashning of the Tilton committee report. In February 1985, Professor Nishi Osamu asked Tilton why the original draft of the local government committee was discarded by the steering committee.

Tilton flatly replied, "Well, they thought they were better than I was." . . . "It was an administrative problem." . . . "You have to understand what jealousy means."

Tilton expressed in graphic metaphorical language, which I will not quote, his extreme dislike of Hussey. "I don't know how he [Hussey] ever got the grip that he did with General Whitney." 42

Tilton was not universally popular. George A. Nelson, of the committee on the emperor, treaties and enabling provisions, regarded Tilton as "terrible." 43

An official reporting to Canada's Liaison Mission in Tokyo on 26 October 1949 described Tilton as a "waspish individual" who "expressed in open and sober conversations his dislike and distrust of the Jews, French, Filipinos, Koreans, Chinese, Institute of Pacific Relations, Far Eastern Commission, and General Marshall." In a cover letter to the report, E. Herbert Norman credits Tilton and his team with demonstrating "lingering traces" of the old crusading zeal for democratization. 44

Thus it appears that the discarding of the local government committee draft, rather than its mere revision, may have been the result of personal rivalries in Government Section. Tilton's rebuff by the steering committee seems not ultimately to have damaged his career in Government Section. Tilton oversaw the Diet's enactment of the Law Concerning Local Autonomy in April, 1947, a law intended to give effect to the local government provisions of the new constitution. Tilton was later chosen to author the section on local government in Government Section's Political Reorientation of Japan.). At some point he was promoted to lieutenant colonel.

In 1946 Japan consisted of 46 prefectures. Although these were the nation's major political subdivisions, they were very much under the control of the Home Ministry in Tokyo, which appointed the prefectural governors and exercised close supervision over prefectural activities. Anyone familiar with the American tradition of federalism cannot overlook the possibility that SCAP's constitution drafters might have been strongly tempted to adopt American federalism as their model for the reform of local government in Japan. Shortly before becoming involved in constitution drafting, Major Tilton made a tour of Japan and learned from prefectural governors the extent to which local governments had been dominated by the Home Ministry.

What did Tilton's committee propose? To summarize an already short document, prefectoral and municipal governments would have the power to tax and maintain local police forces and "such other powers of government not specifically reserved in this Constitution or at variance with laws passed by the Diet." Local governments would have the power to establish laws and ordinances conforming to the Constitution and laws passed by the Diet. Prefectural governors, municipal chiefs, and the respective assemblymen would be elective and all other local offices would be filled by popular election or local appointment.

Charles Kades has told Suzuki Akinori that the Tilton committee would have given excessive authority to local governments.45 The Tilton committee draft assigned to local governments "such other powers of government not specifically reserved in this Constitution or at variance with laws passed by the Diet." This provision was evidently the major
flaw in the Tilton committee draft. As a New Dealer, Kades was apparently suspicious of the reserved powers doctrine, stated in tenth amendment of the United States Constitution, which said that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people [emphasis added].” The reserved powers doctrine was frequently cited by American conservatives to support “states rights” in order to check the power of the New Dealers who dominated the national government. The steering committee’s report on local government provided that acts of the Diet could limit the authority of local entities. Kades pointed out to Mr. Suzuki that Japan’s small area meant that local autonomy such as practiced by states in the United States would be unrealistic.46

According to Hussey, the major objection to the committee’s draft was that “it established a form of local sovereignty with residuary powers reserved to local public entities [emphasis added].”47

Thus, although local officials and assemblymen would be elective, and substantially more autonomy would be granted local governments, Japan’s new constitution would not establish a federal system such as existed in the United States and other large countries like India and Canada.

It may be apropos to note that in July 1948, one of the very few constitutional features required by the Allied military governors of West Germany was the adoption of the federal system.48 Thus the West German Basic Law adopted in 1949 provided for a federal system, according to which a powerful upper chamber represented the governments of the constituent states (Laender).

According to Kades, Japan’s small size made federalism unsuitable for that country. However we might note that American policy enforced the federal principle for West Germany, even though that country was smaller in size than Japan. Of course, the federal principle had a strong indigenous basis in German tradition, unlike the situation in Japan. Switzerland, one of the world’s smallest countries, is organized on a federal basis. It might be said that other factors besides geographic size, such as cultural, linguistic, and political traditions, might explain the existence of federal systems.

Today under the democratic constitution, the structures and functions of prefectural governments in Japan strongly resemble those of county governments in the United States.

Given the strength of the American tradition of federalism and the fact that there were differences in view within the steering committee concerning home rule and central authority, it is not inconceivable that the steering committee might have approved the report of the Tilton group, which suggested the federal principle of reserved powers for the local governments, were it not for a clash of personalities. Did personal incompatibilities among GS constitution drafters prevent the adoption of something like a federal system in postwar Japan?

The Ghost of Abraham Lincoln

The drafting of the preamble was left almost entirely up to A. Rodman Hussey, a member of the steering committee. Hussey was noted for his strong ideological commitment to liberal democratic ideology. He insisted that democratic theory as he understood it be made explicit in the draft constitution, and resisted the suggestions of the more pragmatically minded Kades and Rowell that doctrinal statements were unnecessary and had no place in a legal document.

The Meiji Constitution did not have a preamble in the usual sense, but the Imperial Rescript that promulgated that document in 1889 often served in lieu of a preamble. That rescript in effect declared that the emperor, as the divine ruler of the country, had graciously granted the Imperial Constitution to his loyal subjects. The content of that rescript represented the antithesis of democratic government, and whether in form or substance was entirely unsuited to the charter that was being drafted in GS.

Neither SWNCC-228 nor the MacArthur notes said anything about a preamble. If there was to be a preamble, it would have to be a completely new product. Hussey was pretty much on his own when he authored the preamble.

Hussey drew freely from American history for the language of the preamble. Following is the complete text of the preamble (as finally enacted) together with its apparent sources in italics:

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.
The Constitution of the United States:
We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances and rescripts in conflict herewith.

[Theodore Roosevelt’s Gettysburg Address (November 19, 1863):
...and that government of the people, by the people, and for the people shall not perish from the earth.]

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world.

[“MacArthur’s Notes:"
It (Japan) relies on the higher ideals which are now stirring the world for its defense and its protection.]

We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth.

[Teheran Conference Declaration of the Three Powers (December 6, 1943):
We shall seek the cooperation and active participation of all nations, large and small, whose peoples in heart and mind are dedicated, as are our own peoples, to the elimination of tyranny and slavery, oppression and intolerance.]

We recognize that all peoples of the world have the right to live in peace, free from fear and want.

[Atlantic Charter (August 14, 1941):
Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all men may live out their lives in freedom from fear and want.]

The “Constitutional Convention” in the Dai Ichi Building

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

[Hussey’s original draft of this paragraph:
We acknowledge that no people is responsible to itself alone, but that laws of political morality are universal and it is by these laws that we attain sovereignty. (Kades opposed this provision, saying that it did not reflect reality and that its inclusion in the constitution would weaken the document. Whitney entered the discussion and the wording of the February 13 draft was agreed upon. The February 13 draft retained the words peoples, which at a later stage became nations.)]

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

[Declaration of Independence (July 4, 1776):
And for the support of this Declaration with a firm reliance on the protection of Divine Providence, we mutually pledge each other our Lives, our Fortunes, and our sacred Honor.]

It seems easy to identify Hussey’s sources, but the preamble is as interesting for what it does not contain as for what it contains. None of the phraseology suggests any origin other than American sources, although the phrases from the Teheran Declaration and the Atlantic Charter portray the global utopia envisioned by Allied propagandists as a war objective.

The preamble would have had a less provincially American tone if it had been inspired by British, French, or not inconceivably Japanese, sources. The Five-Article Charter Oath (1868) of the Emperor Meiji, for example, might have suggested some suitably liberal Japanese phraseology.

Actually the preamble stated, “we [Japanese] reject and revoke all constitutions, laws and rescripts in conflict herewith.” Thus the substance of the preamble blatantly repudiated basic ideas in the Japanese tradition and was clearly revolutionary. At the same time, any Japanese language translation of these foreign concepts almost necessarily would have sounded very strange to a Japanese in 1946.

When the Japanese officials submitted their first adaptation of the model constitution to the Americans on March 4, the Japanese version did not include the alien-sounding preamble. Because of the insistence of the American side, the government’s first published version of their
draft on March 6, included Mr. Hussey's preamble without a single textual change. Slight changes in the preamble were later made by the House of Peers.

Elsewhere in this book, I discuss the formulation of two of the most notable features of the democratic constitution: the provision banning war and military forces and the provision describing the emperor as "symbol of the state."

**Procedure for Ratification**

The "committee on the emperor and miscellaneous affairs" and the steering committee agreed upon the following text concerning the adoption of the proposed constitution:

> Article XCII. This Constitution shall be established when ratified by the Diet by roll-call vote of two-thirds of the members present.
> Upon ratification by the Diet, the Emperor shall immediately proclaim, in the name of the People, that this Constitution has been established as the supreme law of the nation.

Thus, the procedure for the adoption of the new constitution would largely conform with Article LXXIII of the Imperial Constitution, which required votes of approval by majorities of two-thirds of both houses of the Diet for constitutional amendments. However, it was felt by the Government Section drafters that the requirement of a roll-call vote of two-thirds of the members present would mean that "very few members of the Diet would dare to vote against ratification if it involved giving a negative vote in a public session of the Diet."

I asked Kades in 1988 if there had been consideration to holding a referendum on the draft constitution in Japan after the Diet had approved it. Kades said no; this had not occurred to him at the time because MacArthur regarded the Diet election in the spring of 1946 as a referendum on the proposed constitution. Hussey spent full time March and April promoting the draft constitution.

On February 13 General Whitney and the steering committee were slated to deliver their constitutional proposals to the Japanese government. Kades told me that General Whitney was so ill with a cold that day that his aides urged that he postpone the meeting. But Whitney feared that the postponement would be interpreted as a political move (a "diplomatic illness"), and he wanted to avoid any misunderstanding. He was so sick that Kades had to help him put on his clothing and boots.

I suggested that Whitney's reference to "enjoying the warmth of atomic energy" at the February 13 meeting with the Japanese officials might have been a sick man's response to the warmth of the sunshine. Kades said that there was not the slightest hint or threat or gloating at the February 13 meeting.

The Americans delivered fifteen mimeographed English-language copies of their draft constitution to Foreign Minister Yoshida Shigeru and Minister of State Matsumoto at Yoshida's official residence.

**Cold Realities**

During my 1988 talks with Kades, who had served in France during the closing stages of World War II in Europe, I asked whether he had been interested in constitution making in France at the time that the new Japanese constitution was being formulated and enacted. I mentioned that in France a Constituent Assembly was elected which then drew up a constitution. This proposed constitution was rejected by a plebiscite in May 1946. A new Constituent Assembly was then elected that drew up a second constitution. This provided for a bicameral legislature, unlike the earlier draft constitution, which had provided for a unicameral legislature. The second proposed constitution was approved by the voters. I recalled seeing a cable in SCAP records that described the formulation of the French constitution.

Kades said he did not recall knowing anything about the constitution drafting in France. (Kades was involved with civil affairs in the combat zone in South France in the D-day landing on 15 August 1944 at San Tropez to the Colmar pocket battle in Alsace the last week in January 1945. Kades had found it difficult to work with de Gaulle's people, some of General de Lattre's staff in particular.)

I asked Kades if he had given thought to there being a popular referendum on the new constitution after it had been passed by the Diet.

Kades tied the idea of a referendum to the review that the Far Eastern Commission asked for. The constitution was to undergo a review during the second year of its operation—between May 3, 1948, and May 3, 1949. By review was meant review by the House of Representatives, House of Councillors and attorney general. Suzuki set up a study group. After Yoshida was elected [prime minister in October 1948] this issue died.
I raised the question of the international situation at the time of the drafting of the Japanese constitution. I mentioned that on January 19, 1946, at the very first session of the UN Security Council, the Iranian government with American backing charged the Soviet Union with interfering with Iran’s internal affairs, thereby violating the UN Charter and other treaty obligations. The Soviets were delaying their troop withdrawal from northern Iran and were apparently trying to set up an autonomous Azerbaijan republic there. On March 6, 1946 [the date of the Shidehara’s publication of the American-inspired outline constitution] Secretary of State Byrnes sent a strong note to Moscow demanding immediate Russian withdrawal from Iran, and later Truman has said that he threatened to send American troops back to Iran if the Soviet forces did not leave. Kades insisted that he was completely unaware of the Iran crisis at that time, and seemed to have first heard of it from me. He reiterated an earlier statement that while he was in Japan he did not see American newspapers.

Also, Kades was at the time unaware of Churchill’s famous March 5, 1946, speech describing the “Iron Curtain,” delivered with Truman on the platform with him. I gratuitously observed that the folks in Tokyo were living in a sheltered environment. “Very true,” Kades agreed.

The Cat out of the Bag

For at least three reasons it was important to keep secret or at least de-emphasize the role of SCAP in the formulation of the new Constitution: (1) The legal procedure for constitutional amendment prescribed in the Meiji Constitution emphasized the key role of the emperor in constitutional revision. Certainly it did not contemplate the formulation of a constitution by foreign military people. (2) By maintaining the narrative that the Japanese government itself was initiating commendable democratic constitutional revisions (thus effectuating key provisions of the Potsdam Proclamation, which Japan had accepted when surrendering), interference in the Occupation by the Far East Commission would be minimized, especially if the constitution revision bill was in the hands of the Diet before the FEC became active. (3) SWNCC-228 had warned against any appearance of using force to bring about constitutional revision, lest a new democratic constitution bear the onus of being a foreign imposition.

The Civil Censorship Detachment of MacArthur’s G-2 was directed to prevent any reference in the Japanese media to reports of the foreign origin of the proposed new constitution. In spite of all of the efforts of the Government Section, the story got out. The June 25, 1946, issue of the Christian Science Monitor gave a fairly accurate narrative of how the first draft of the proposed new Japanese Constitution was written in deep secrecy in MacArthur’s headquarters. The narrative was also summarized in Mark Gayn’s Japan Diary, which was published by William Sloan in 1948, pages 124 to 131.

In late 1949, SCAP’s Government Section published its monumental two volumes, Political Reorientation of Japan: September 1945 to September 1948. “Section III. The New Constitution of Japan” was written by Rodman Hussey. Hussey’s account was evidently based upon the Ellerman notes. Although the story of the drafting of the Japanese Constitution was not new to readers of the Christian Science Monitor or the Japan Diary, Hussey’s narrative in the official GS report was an authoritative confirmation of journalistic accounts. I was asked to review the volumes for the Far Eastern Survey, which was published by the Institute of Pacific Relations (an organization regarded with suspicion by General Willoughby). The publication of my review was delayed by the outbreak of the Korean War, which took priority. My review particularly focused on the section on constitutional reform, which struck me as the most interesting part of the volumes. I am not aware of other published reviews of the work.

I must say that the Political Orientation account came as a great surprise to me because I had assumed that for the reasons previously given, MacArthur’s Headquarters would be most reluctant to reveal the full extent of its involvement in drafting the Japanese Constitution. In my luncheon conversation with Hussey in the early 1960s, Hussey indicated that he had been astonished that Whitney was willing to publish the very revealing account that he (Hussey) had written for Political Reorientation. I do not recall that he gave me the reasons for his astonishment, but my assumption is that they were those I have referred to above.

(It appears that because of SCAP censorship policies, most of the Japanese people did not know about the constitution drafting in MacArthur’s Headquarters until after the Occupation formally ended in April 1952.)

How then is one to account for the astonishing reversal of Whitney’s policy of extreme secrecy about the drafting of the Japanese Constitution? I offer the following speculations, which are not mutually exclusive: (1) The story had already been repeatedly hinted at or spelled out by
journals, so that it did not matter now if GS admitted the truth. (2) By the time of the publication of *Political Reorientation of Japan* in late 1949 or early 1950, MacArthur’s controversies with the FEC over the constitution were history, and that document was already firmly established as Japan’s basic law. (3) Liberal and leftist critics in the United States and elsewhere had frequently criticized MacArthur with being too soft on Japan and with compromising with reactionary politicians. The story of the general’s toughness when dealing with the Shidehara cabinet and of MacArthur’s role in the adoption of a democratic and pacificist Japanese constitution would serve as a reply to the critics of MacArthur’s softness. (4) The publication of *Political Reorientation of Japan* would enhance MacArthur’s reputation as a dynamic statesman at a time when he had ambitions to the presidency of the United States.

One final word. While aboard the *U.S.S. Wisteria* bound for Tokyo in 1946, I was told by a fellow passenger that General MacArthur was converting Japan into a democracy. From my understanding of Japan gained from my independent reading and graduate study of political science, I thought that such a conversion was an impossibility. Today I must admit that my view has considerably changed.

The constitution written in MacArthur’s headquarters was far and away more radical than anything American officials had envisioned or thought possible when they gave final approval to their “Reform of the Japanese Governmental System” (SWNCC-228) in January 1946. The principle of popular sovereignty, the emperor as a symbol, and the bans on war and arms were largely the product of MacArthur’s headquarters, but were welcomed and embraced by the Japanese people (if not by their conservative government). In the course of translation into the Japanese language and controversial interpretations of the text by successive Japanese governments and even by SCAP headquarters, some of the cutting edge of democratic reform was dulled. But in the perspective of fifty years the new constitution proved to be a surprisingly powerful weapon in the conversion of a militaristic, semi-feudal Japan into a peaceful democracy.