“Induced Revolution”:
The Policy and Process of Constitutional Reform in Occupied Japan

General Douglas MacArthur wrote that the enactment of Japan’s democratic constitution was probably the single most important accomplishment of the Allied occupation of that country.¹ Many students of the Occupation concur in this evaluation of Japan’s new basic law, which prescribes the system of democratic government and guarantees the basic liberties enjoyed by Japanese today. The fundamental reform of the constitution was aptly described by one Occupation official as an “induced revolution.”²

During World War II, the American State Department officials who formulated policy on the surrender and postwar Occupation of Japan determined that its governmental system needed to be drastically reformed to end the dominance of the military and to protect political liberties. They disagreed bitterly, however, on what to do with the emperor system and about the extent of social and economic reform required. Decisions on specific reforms and the manner of their implementation were deferred until after the Allied forces actually set foot in Tokyo.

In its first formal offer to surrender, the Japanese government indicated its willingness to accept the provisions of the Potsdam
Proclamation (also known as the “Potsdam Declaration”) with the understanding that the prerogatives of the emperor as sovereign ruler would not be prejudiced. The Allied reply did not accept this proviso, but indicated that the emperor and government of Japan would be subject to the orders of the Allied supreme commander, who would enforce the surrender terms, and that “the ultimate form of government” would be “established by the freely expressed will of the Japanese people.”

When Japan surrendered three days later, the emperor, in a recorded statement broadcast to the Japanese people, said that in ending the war, the government had preserved the “structure of the Imperial State [kokutai],” which implied that the sovereign status of the emperor had not been impaired. This imperial statement may have represented wishful thinking and was probably intended to calm the military, who might not have laid down their arms without such an assurance.

The timely surrender helped save the monarchy. If the land war had been carried to the main islands of Japan, the emperor’s usefulness in saving lives by ordering a surrender would have ended, although he would still have been useful as a means of controlling a defeated Japan. After the surrender, the Allies applied the system of indirect rule in Japan, preserving the Imperial Japanese Government (IIG), which enforced directives it received from the Supreme Commander for the Allied Powers (SCAP). If it had been found that indirect rule was not working satisfactorily, SCAP could have abandoned it in favor of direct military government. But indirect rule made it possible in effect to carry out Occupation reforms in the name of the emperor, thus greatly facilitating the Allied administration.

The most controversial substantive issue in Japanese constitutional reform was the question of the future of the monarchy. The continuing utility of the emperor to SCAP as a means of controlling Japan meant that his abdication or trial as a war criminal and/or the abolition of the monarchy, widely advocated in the Allied countries, would have to be foregone or at least delayed.

**Initial Efforts**

Officials in the Japanese cabinet’s Bureau of Legislation were mindful that the fulfillment of the Potsdam terms might require some changes in the Imperial Constitution, and after the surrender ceremony they began a discreet preliminary study of what amendments might be necessary. The surrender was not regarded as contractual by the Allies, who reserved to themselves the right to interpret the nature and scope of Japan’s unconditional surrender, and who believed that they had full authority to order Japan to carry out specific reforms.

On October 4, 1945, General MacArthur suggested to Prince Konoe Fumimaro, vice premier of the Higashikuni cabinet, that he take the lead in democratizing the Japanese constitution. In a subsequent conference, MacArthur’s political adviser, George C. Atcheson, Jr., informally suggested to Konoe those points in the constitution needing revision, most notably the need to strengthen the authority of the Diet. Konoe obtained a commission from the emperor to investigate, within the Office of the Lord Privy Seal, the matter of constitutional revision.

On October 11, 1945, General MacArthur suggested to the new prime minister, Shidehara Kijirō, that the accomplishment of needed political and social reforms would “unquestionably involve a liberalization of the Constitution.” Shidehara, however, publicly asserted that the constitution did not need amending. Like most Japanese moderates, he believed that the militarists had “abused” the Imperial Constitution. All that was now required to achieve democracy was the proper interpretation and application of the existing constitution; political reform could be achieved by the enactment of appropriate legislation.

Strong public criticism both in Japan and abroad of Konoe’s involvement with constitutional reform was grounded in his alleged responsibility for causing the war. At the same time, Matsumoto Jōji, minister of state without portfolio, publicly asserted that constitutional revision was a matter of state to be handled by the cabinet rather than by the Office of the Lord Privy Seal. Matsumoto was appointed by the prime minister to head an informal committee of experts to make recommendations to the cabinet on possible constitutional revision.

On November 1, 1945, after a number of conferences between Konoe and his staff and representatives of SCAP’s political advisor, General MacArthur’s headquarters denied that the general had asked Konoe to revise the constitution. MacArthur’s repudiation of the Konoe effort seems to have been in part an aspect of the general’s effort to eliminate any direct involvement in Japanese internal politics by the State Department, represented in Tokyo by the Office of the Political Advisor. Nevertheless, American newspaper criticism of his choice of Konoe appears to have been MacArthur’s primary consideration.

Although deeply offended by the SCAP statement, Konoe and his principal collaborator, Professor Sasaki Sōichi, separately reported their findings and recommendations to the emperor on November 22 and 24.
Nothing concrete seems to have resulted from the Konoe and Sasaki recommendations, but the attendant publicity provoked public discussion of constitutional reform and may have stimulated Washington planners to clarify their policies on constitutional amendment. On January 1, 1946, the emperor publicly renounced the traditional notion of his divinity. This famous New Year’s rescript facilitated the rehabilitation of the throne and its current incumbent, both of which MacArthur and the more influential State Department planners wished to preserve. Also, the rescript weakened the principle of divine right asserted in Article 1 of the Imperial Constitution.

From December 1945 through February 1946, political parties, private groups, and individuals published proposals for constitutional reform. The drafts of the governing Liberal and Progressive parties stressed emphatically their support of the “national structure.” The Communists were the only political party to advocate a republican system of government.

The SCAP Initiative

In Washington, the interdepartmental State-War-Navy Coordinating Committee adopted its “Reform of the Japanese Governmental System” (SWNCC-228) on January 7, 1946. This secret document, about which more will be said later, was transmitted to SCAP headquarters, where no immediate action was taken on it. MacArthur had protested the decision made at the Moscow conference of foreign ministers in December 1945 to set up the Far Eastern Commission (FEC), consisting of representatives of the Allied Powers who would make policy for the Occupation of Japan.

In mid-January 1946 the members of the Far Eastern Advisory Commission (FEAC), the predecessor of the FEC, visited Tokyo. MacArthur had indicated that there were no billets available for the FEAC in Tokyo, but they made arrangements to reside aboard a U.S. naval vessel in Tokyo Bay. Once in Tokyo, they were politely treated by MacArthur’s staff. The FEAC representatives expressed great interest in the reform of the Japanese constitution. On January 30 MacArthur told them that this matter had been taken out of his hands by the Moscow agreement establishing the FEC and that SCAP headquarters “was not then working on it.” The interest of the FEAC stimulated SCAP headquarters to concern itself with constitutional revision.

On February 1, 1946, the Mainichi Shinbun published a draft constitution produced by the Matsumoto committee. Staff members of SCAP’s Government section (GS), comparing its provisions with SWNCC-228, found that it fell far short of SWNCC requirements. Also, on the same day, General Courtney Whitney, chief of SCAP’s Government Section forcefully indicated to General MacArthur the need and legality of prompt action by SCAP on revising the constitution before the newly organized Far Eastern Commission could remove the matter from MacArthur’s authority.

On February 4 General Whitney called a meeting of Government Section personnel and said that MacArthur had entrusted them with drafting a new Japanese constitution. “MacArthur’s Notes” would serve as the basis for their effort. These Notes read:

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 the 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 lines 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.

It is the “guess” of Charles L. Kades, Whitney’s chief aide, that the MacArthur Notes, on which the constitution was to be based, had been dictated by MacArthur to Whitney. But it seems possible that the ideas had originated with Whitney, who then obtained MacArthur’s assent to them. In later years, MacArthur repeatedly asserted that the no-war, no-arms provision had originally been suggested to him by Prime Minister
Shidehara on January 24, 1946, but some scholars question the general’s accuracy on this point.

While a student at Harvard, Charles L. Kades had been deeply impressed with the Kellogg-Briand pact renouncing war. He was also impressed by the reference in the emperor’s January 1, 1946, rescript to Japan’s “being thoroughly pacific.” On January 28, as General Whitney and Colonel Kades were driving to a meeting with Prime Minister Shidehara to discuss the purge, Kades “blurted out” to General Whitney, “Do you think that the Emperor could issue an imperial rescript renouncing war, which might also help remake the Japanese international image and help carry out the Potsdam declaration?”

At the close of the Shidehara-Whitney-Kades meeting, Whitney “said casually that some consideration might be given to a rescript renouncing war.” Perhaps Whitney then passed this idea to MacArthur, who a few days later incorporated the war renunciation in his Notes for incorporation in the constitution. In any event, it is clear that key figures in Tokyo were thinking along very similar lines.

The General Treaty for the Renunciation of War (Kellogg-Briand pact), which Japan had repeatedly violated, represented a potential problem for the emperor’s defenders, as it might be cited in an indictment of the emperor as a war criminal. The treaty’s language, however, might be used to embellish a new constitution that would preserve the monarchy.

It is improbable that the specific provisions of SWNCC-228 directly inspired the MacArthur Notes. The SWNCC paper stressed the importance of civilian control over the military rather than perpetual disarmament and emphasized the importance of responsible government and a more powerful legislature and cabinet that would take over powers hitherto included in the emperor’s prerogatives. The MacArthur Notes did not even mention the Diet and the cabinet. With respect to the emperor, SWNCC-228 had stated as a basic policy that “the Japanese should be encouraged to abolish the Emperor Institution or to reform it along more democratic lines” (emphasis added). According to Hugh Borton, the principal author of SWNCC-228, however, paragraph 4d3 of the paper “clearly implies” an expectation that the imperial institution would continue.

MacArthur’s first point gave the Japanese no choice in the matter, but dictated the preservation of the throne. It seems doubtful that, even had he wanted to, MacArthur at anytime had the personal authority to encourage the Japanese to abolish the emperor system, suggested as an option in SWNCC-228, since he had been previously directed not to “take any steps toward his [the emperor’s] removal” without first consulting the Joint Chiefs of Staff and “to take no action against the Emperor as a war criminal pending receipt of a special directive concerning his treatment.”

Because the status of the emperor was the topic of Point One of the MacArthur Notes, it would appear that the preservation of the imperial throne was uppermost in his mind in regard to constitutional revision. Only a week and a half earlier (on January 25), MacArthur had cabled Washington urging against trying the emperor as a war criminal and warning that to do so would probably require the maintenance in Japan of a minimum of a million troops “for an indefinite number of years.”

Very possibly because of SCAP’s attitude, on or shortly before February 5, 1946, the United States ambassador to the United Kingdom, John G. Winant, discussed the matter of the war criminal lists with Prime Minister Attlee and obtained his agreement that “no action ought to be taken by War Crimes Commission that might result in publicity on the possibility of the Emperor being charged as a war criminal [emphasis added].”

MacArthur’s Point One, which also referred to the “powers” of the emperor, did not call for the explicit statement of the principle that sovereignty resided with the people. As before, the monarchy would continue to be based on the hereditary principle. Point One alone might not have been enough to save the throne from the clamor in some Allied circles for its abolition. But Point Two, the renunciation of war and arms, might reinforce Point One. The main argument for abolishing the emperor system was that it might again be used to support militarism and aggression. A radical disarmament provision of this sort largely negated that argument.

Writing a Constitution

For the purpose of drafting a model Japanese constitution, the Public Administration Division of Government Section was divided into eight subject-matter committees, each concerned with one chapter of the constitution, and a steering committee that gave final approval to the drafts prepared by the other committees. (Some of the military and civilian authors served on more than one committee.) In civilian life General Whitney and all three male members of the steering committee had been lawyers. Other constitution drafters included a former
university professor specializing in Chinese legal history, a sociologist with prewar teaching experience in Japan, a former congressman, two specialists in public administration, and three women, including one who had lived for ten years in Japan and was fluent in Japanese. Several of the drafters had formally studied the Japanese language, and they were assisted by two interpreters. Colonel Charles L. Kades, a New Deal lawyer well briefed in Occupation policies before going to Japan, was chairman of the steering committee.

The Americans were much influenced by a draft constitution recently proposed by a group of prominent Japanese liberals, which enunciated the principles that sovereignty resided with the people and that the emperor's functions were purely ceremonial. Using the MacArthur Notes as the basis and SWNCC-228 as one of their references, the twenty-one Americans wrote the constitution within a week. MacArthur personally approved it with one change on February 11: deletion of a provision prohibiting amendments to the constitution that would impair or alter the bill of rights.

Although neither SWNCC-228 nor the MacArthur Notes prescribed an explicit statement of the principle of popular sovereignty, the authors of the draft constitution believed that the Potsdam Proclamation required it. That declaration had demanded that there be "established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government." GS officers believed that "this means that sovereignty is to rest with the people."17

The SCAP draft constitution provided that "the emperor shall be the symbol of the State and of the Unity of the People, deriving his position from the sovereign will of the people, and from no other source. He shall have no governmental powers." "War as a sovereign right of the nation is abolished. . . . No army, navy, air force, or other war potential will be authorized." The document protected the rights of the accused in criminal trials, guaranteed basic civil liberties, enumerated certain social and economic rights (including social security), and banned discrimination on the basis of "race, creed, sex, social status, caste, or national origin." The Diet would be "the highest organ of state power." The legislature would be unicameral, but the drafters felt that this issue could be used as a "bargaining lever" with the Japanese to be compromised if necessary to obtain some more important principle.18

On February 13, 1946, General Whitney, accompanied by three members of his staff, personally delivered fifteen mimeographed English-language copies of the SCAP draft to Foreign Minister Yoshida Shigeru and Minister of State Matsumoto. Whitney said that the Matsumoto draft was wholly unacceptable whereas the document he proposed "represents the principles which the Supreme Commander and the Allied Powers are willing to accept as a basis for the government of Japan because the principles enunciated in this document provide a basis for free democratic government in Japan and for carrying out the terms of the Potsdam Declaration."19 The Americans stressed the need to adopt the SCAP draft constitution in order to save the emperor from trial as a war criminal. This statement was interpreted by Matsumoto as a threat,20 but it was probably intended as friendly advice.21

Whitney also suggested that if the cabinet did not sponsor SCAP's draft constitution, MacArthur would present it directly to the people, who were already dissatisfied with the published version of the Matsumoto draft. The cabinet had a reactionary reputation and, to save itself, it had best adopt this draft constitution, Whitney stressed. The Japanese had expected the Government Section officials to discuss the Matsumoto draft and appeared flabbergasted by the boldness of the Americans in presenting this model constitution.

It seems possible that some of the unpleasantness of the February 13 meeting might have been averted if during the preceding months SCAP headquarters had played a more active role in counseling the Shidehara government about the Allied criteria for constitutional reform, which had been fairly well understood in GHQ ever since Secretary of State Byrnes' message to SCAP's political adviser on October 16, 1945. The Japanese might then have formulated an acceptable document and confrontation could have been averted.22

The Japanese Response

Matsumoto reported on the meeting to the prime minister and made a renewed effort to persuade GHQ to approve his committee's draft. The prime minister conferred with General MacArthur, and Matsumoto met with GS officers to work out a compromise. The only major concession made to the Japanese was an agreement to a bicameral legislature (the members of both houses being democratically chosen) rather than a unicameral body as called for in the SCAP draft. On February 22, following a meeting of the cabinet, Prime Minister Shidehara had an audience with the emperor, in which the premier (according to the best Japanese sources) evidently reported on the recent negotiations with
GHQ and the cabinet’s decision to formulate a constitution embodying the principles of the SCAP draft. 23

Japanese officials hastily prepared a document based on the outline and text of that draft but substantially modified in details. The new Japanese draft provided for a bicameral legislature. The provision in the SCAP document that “the ultimate fee to the land and to all natural resources reposes in the state” was thought by Matsumoto to provide for communism and was eliminated.

On March 4 at 10:00 A.M., Matsumoto and four other Japanese officials brought to Government Section their adaptation in Japanese of the Government Section draft. A bitter argument over the text developed between Matsumoto and GS officers, and the former departed at 2:30 P.M. leaving the other Japanese at Government Section headquarters. After 6:00 P.M. the Americans announced that the definitive text would have to be agreed upon that night. Informed of this, Matsumoto told the Japanese already there, including Satô Tatsuo, of the Bureau of Legislation, to work on the draft. At about 8:30 P.M. an article-by-article discussion of the document began, lasting overnight until about 4:00 P.M. on March 5. Throughout the day, batches of final text were sent to the cabinet for its study.

The Americans insisted on retaining unchanged the democratic preamble of the SCAP draft, which the Japanese had hoped to eliminate as inconsistent with the emperor’s legal role in initiating constitutional amendments. Except for the provision for a bicameral legislature in the Japanese draft, which the Americans accepted, there were no immediately obvious differences between the original SCAP draft and the document finally agreed upon.24

GHQ forwarded ten copies of the final English version to the Shidehara cabinet and asked whether they would accept it before the day was over. The cabinet members believed that if they did not accept the draft, GHQ would publish it anyway. In that case, the newspapers would probably approve it and the cabinet would have to resign in favor of a leftist government that would support the document. In an emotionally charged meeting, the cabinet decided that it had no choice but to accept the text before it.

Article 73 of the Imperial Constitution required that in amending the constitution the emperor assume “the initiative right” and that the amendment project be submitted to the Diet by “imperial order.” If it was the intent of SCAP and the Japanese government to follow legal procedure in amending the constitution, the emperor’s formal participation was essential. On March 6 the government published the Japanese version of the proposed basic law as an “outline” together with an imperial rescript dated March 5. The rescript referred to the acceptance of the Potsdam Declaration (which had provided that the ultimate form of government be decided by the people) and commanded the government to undertake revision of the constitution.

Also on March 6, MacArthur announced his satisfaction with the “decision of the Emperor and Government of Japan to submit to the Japanese people a new and enlightened constitution which has my full approval.” The emperor had successfully ordered the surrender of the Japanese military and naval forces in August, he had renounced his divinity in January, and in March he became an official sponsor of the democratic constitution largely written in MacArthur’s headquarters. MacArthur had publicly praised the emperor’s actions in January and March. It was now most unlikely the monarchy, thoroughly reformed in the proposed constitution conforming to SWNCC guidelines and approved by SCAP, would be abolished.

MacArthur’s Civil Censorship Detachment forbade any references in the Japanese press to the fact that the proposed constitution had been written by Occupation officials.25

Shortly after the publication of the outline constitution on March 6, representatives of the People’s National Language Movement League proposed to the government that the proposed constitution be written in colloquial style (kōgōtai) rather than the archaic literary style (bungōtai) hitherto used in Japanese laws and the Imperial Constitution. This suggestion was well received by the cabinet, and as a result the postwar constitution, the laws implementing, and all subsequent legislation have been written in the colloquial style. The principal advantage of kōgōtai is that it is readily understood by people of average education. In addition, the government thought that the kōgōtai text would have less the odor of translation widely noted in the first published Japanese version of the draft.

Procedural Problems

The Japanese government’s publication of its outline constitution (its adaptation of the SCAP model constitution) took completely by surprise the delegates to the Far Eastern Commission, which had just begun its meetings in Washington. During their visit (as the FEAC) to Tokyo in January MacArthur had told them that his headquarters was not working
on constitutional reform, and they were bitter that they had purposely been kept ignorant of SCAP activities. Even the United States government had not been informed of Government Section’s activities. When the draft constitution was published in Tokyo, no copies of it were immediately available in Washington.26

On March 20, the Far Eastern Commission suggested to SCAP that the general election (scheduled for April 10) be postponed to give more time for liberal elements to organize and to give more consideration to the issue of constitutional amendment. MacArthur replied that the purge had already removed reactionaries from consideration and that all of the political parties except the Communist “overwhelmingly favor the proposed constitution, which represents the work of men from many different groups and many different affiliations.” The election was held as planned.

Also on March 20, the FEC indicated its apprehension that MacArthur’s approval of the government’s March 6 draft might preclude consideration of other proposals for constitutional revision. The Commission wanted SCAP to make clear to the Japanese government that the FEC must be given an opportunity to pass on the final draft of the constitution before the Diet voted on it in order to determine whether it was consistent with the Potsdam Declaration and any other controlling documents.

The cabinet formally presented its proposed constitutional amendment to the privy council on April 17, as required by the imperial ordinance on the organization of that body. Prime Minister Shidehara told the councillors that the new constitution would establish the throne on a more solid basis. The president of the council, Suzuki Kantarō, who had been prime minister at the time of the decision to surrender, said that the national structure had been preserved in the surrender and that the proposed constitution would also preserve the national structure.

Privy Councillor Minobe Tatsukichi, the famous liberal interpreter of the Imperial Constitution and adviser to the defunct Matsumoto committee, raised the fundamental issue of the government’s procedure for constitutional amendment. According to Minobe, Japan’s acceptance of the Potsdam provision that the ultimate form of government be determined by the freely expressed will of the people had rendered invalid Article 73 of the Imperial Constitution, which assigned the initiative for constitutional revision to the emperor. At the same time, the preamble of the draft constitution stated that the people establish the constitution. Because Article 73 was invalid, he said, the appropriate procedure for the enactment of a democratic constitution would be to convocate a representative assembly that would formulate a constitution and submit it to a popular referendum.

In reply, the president of the Bureau of Legislation expressed his doubts that Article 73 had been invalidated by the acceptance of the Potsdam Declaration and said that free deliberation in the Diet, which represented the people, was one of various ways in which the people’s will could be freely expressed.27 Actually, in light of the radical nature of the draft constitution, the Shidehara cabinet had already considered the possibility of first amending Article 73 of the Imperial Constitution and later submitting the proposed constitution to a constituent assembly or a constituent Diet. On March 2, 1946, the cabinet decided that this idea was too idealistic.28 If it took too long to amend the constitution, unpredictable changes might occur internationally, and it was deemed necessary to move as rapidly as possible. In this matter the cabinet obtained the concurrence of GHQ.

The privy councillors dealt at length with points in the draft that made them unhappy, such as the unclear locus of sovereignty, the problem of defending a permanently demilitarized Japan, the nationalization of the imperial household property, and confusion about the composition of the House of Councillors. The hope was that further changes by the government and suitable implementing legislation might alleviate some of the numerous shortcomings of the draft. The new prime minister, Yoshida Shigeru, emphasized Japan’s obligations under the terms of the Potsdam Declaration to remove obstacles to democracy and to establish a government inclined toward peace as prerequisites for the withdrawal of occupying forces.

The emperor and his brother Prince Mikasa were present at the June 8, 1946, meeting of the Privy Council, at which the council’s investigating committee presented its report recommending approval of the government’s Constitutional Revision Bill. Prince Mikasa pointed out that if the emperor was removed from political affairs, as provided in the proposal, he would naturally tend to social work: “Unless the people come to revere the Imperial House not only religiously as they used to do but also materially, even the Emperor system may become a subject of discussion, and if the Imperial Household expenditure is reduced his intention for social work may become difficult to realize [emphasis added].”

The prince also expressed unhappiness that according to the proposed constitution the new Imperial House Law would be determined by the
Diet independently of the imperial family, which had a strong desire to participate in revising the law. He urged that the present session of the Diet limit itself to revising Article 73 of the imperial constitution and leave the work of making a new constitution to the next session. Refusing either to oppose or approve the government's Constitutional Revision Bill, the prince chose to abstain from voting and withdrew from the meeting. When the vote was taken on the Constitutional Revision Bill, "a large number stood up," but Minobe Tatsukichi did not. The president ruled that the bill had been passed by a majority. The record does not indicate that the emperor said anything at the meeting.20

In the meantime, the political left in Japan organized mass demonstrations on May Day and Food May Day (May 19, 1946). Some foreign journalists and Far East experts favored a violent revolution in Japan in which the "people" themselves would thoroughly destroy the militarists, monopolists and the reactionary monarchy. The basic post surrender directive to SCAP (November 1, 1945) had stated that changes in the government to make it less feudal and authoritarian were to be permitted and favored: "In the event that the effectuation of such changes involves the use of force by the Japanese people or government against persons opposed thereto, you as Supreme Commander should intervene only where necessary to ensure the security of your forces and the attainment of all other objectives of the occupation."

After the Food May Day demonstration, MacArthur issued a statement cautioning the Japanese people that "the growing tendency to mass violence and physical processes of intimidation, under organized leadership, present a grave menace to the future development of Japan. . . . the physical violence which undisciplined elements are now beginning to practice will not be permitted to continue."

Clearly, MacArthur would not permit basic political reform in Japan to be carried out by a revolution: constitutional change would have to be brought about peacefully and legally. Thus, as General Whitney has stressed, the constitution was reformed without resort to bloodshed.30

Policies of the Far Eastern Commission

Some members of the Far Eastern Commission doubted that the draft constitution expressed the free will of the Japanese people and feared that it would be pushed through the Diet without sufficient deliberation. On April 10 the FEC asked SCAP whether the Japanese were seriously considering alternative constitutional drafts and various democratic procedures for the enactment of a new constitution—including a constitutional convention or a plebiscite. They also asked MacArthur to dispatch a member of his staff to inform them of the plans of the Japanese government and SCAP and to relay FEC views on the constitution to SCAP.

MacArthur’s reply, received six weeks later, was that he could not send an officer because he was giving his personal attention to the constitution, no officer was in a position to express in detail his views, and the release of an officer would affect an impairment of his command. Both the U.S. delay in relaying the message and MacArthur’s attitude offended the FEC.31 At the same time, MacArthur is rumored to have been "furious" with the commission for its obstructionism.

On May 13 the FEC adopted its "Criteria for the Adoption of a New Constitution," which called for (1) adequate time for full discussion, (2) "complete legal continuity" from the 1889 constitution to the new constitution, (3) the adoption of the new constitution "in such a manner as to demonstrate that it affirmatively expresses the free will of the Japanese people." This policy statement was designed in part to aid the American effort to avert an FEC veto of the MacArthur draft constitution. Widely supported proposals in the FEC that the proposed constitution be deliberated on by a new Diet to be elected later or by a constituent assembly and then be submitted to a popular referendum were successfully resisted by the United States representative.

Legal continuity was necessary to prevent subsequent invalidation of the constitution. This would seem to imply adherence to the amendment procedure prescribed by the Meiji constitution, which required, among other things, the emperor’s formal initiative. Thus, the FEC apparently wanted to preserve the throne, at least for the time being, to facilitate the democratization of Japan. Indeed, on April 3, the FEC adopted a policy on the trial of war criminals in the Far East (FEC007/3) with the understanding that the directive to MacArthur be "so worded as to exempt the Japanese Emperor from indictment as a war criminal without direct authorization."32

As Whitney had told the Japanese on February 13, "the acceptance of the provisions of this new Constitution would render the Emperor practically unsailable."33 At the time of the Japanese government’s submission of the draft constitution to the Diet on June 21, General MacArthur issued a public statement closely paraphrasing the procedural criteria established by the FEC but not mentioning the commission or the possibility of a referendum. MacArthur pointed out that constitutional
revision had already been publicly discussed for more than eight months and specified that Article 73 of the Meiji constitution would be complied with, thus assuring legal continuity.

Japanese legal scholars differed as to whether under Article 73 the Diet had the power to do more than either pass or reject a constitutional revision bill presented to it by the emperor. SCAP and the Japanese government held that deletions, changes, and additions could be made by the Diet. Such a procedure would seem necessary in view of the Allied policy that a new constitution reflect the freely expressed will of the people. Government Section took the view that the substantive scope of the Emperor’s authority to initiate constitutional amendments was unlimited: “He is not bound to retain the fundamental principles of Japanese government, usually referred to as the national polity, because the Meiji constitution contained no such limitation and because the acceptance of the Potsdam Declaration has altered the national polity.”

The Emperor’s direct role in the implementation of the provisions of the Potsdam proclamation by formally initiating constitutional change was made clear in his message (chokusho) of June 20, 1946, in which he submitted to the Diet the imperial project for the amendment of the constitution. The imperial message referred to the elimination of obstacles to democratic tendencies and the revision of the constitution by the freely expressed will of the people. It was understood that any proposed changes in the draft required the concurrence of SCAP headquarters, and the necessary clearances were requested and often obtained by government officials and Diet members. The assumption at the beginning of the parliamentary session was that the Diet would not reject the proposed constitution because the governing parties had a majority and that the Socialists would support the surprisingly progressive document.

Throughout the Diet deliberations, Prime Minister Yoshida repeatedly made it clear that the early enactment of the new democratic constitution would fulfill a basic precondition for the withdrawal of the Occupation forces, that is, the establishment of a democratic form of government as provided in paragraph 12 of the Potsdam Declaration. It also was evident that to delay or defeat a draft that had MacArthur’s approval and was presumably acceptable to the Allied Powers might prolong or aggravate the Occupation.

At the outset of the debate in the House of Representatives on the Constitutional Revision Bill, which began late in June 1946, a Communist member urged that the deliberations be postponed because there had been no participation by the people in the preparation of the text presented to the Diet. The Communists and some Socialists advocated that a constitutional convention be held for the purpose of formulating the draft. This view, however, rapidly lost support because of the feeling that the international situation required expeditious action and that the content of the bill was in basic respects as progressive as the Socialists’ own draft constitution. The five Communists in the House of Representatives remained opposed to the draft and advocated a constitution that would establish a Japanese People’s Republic.

On June 28 the draft was referred to a special committee of seventy-two members representing all political parties. On July 23 the bill was sent to a fourteen-man subcommittee representing all parties except the small Communist party. Deliberating until August 20, the subcommittee kept its proceedings secret and often, when references to SCAP demands were made, stenographic note-taking was suspended. In the subcommittee it was possible to iron out discrepancies between the Japanese and English versions of the constitution, to make interparty agreements on a set of revisions to be recommended, and to incorporate changes asked for by SCAP. SCAP requests were not made directly to the Diet but through the government, and were never conveyed in writing. To ensure the necessary two-thirds majority vote in favor of the bill, the government found it expedient to concur with some of the opposition’s proposals.

**Popular Sovereignty and the National Polity**

On July 2, 1946, the Far Eastern Commission adopted its “Basic Principles for a New Constitution,” which was based on SWGCC-228. Although the general tenor of the FEC document resembled that of the SWGCC paper, it contained one significant difference: FEC policy called for recognition in the constitution that “sovereign power resides in the people.”

On July 10 Government Section officers drafted a four-page memorandum finding that “in every respect, the English of the Government Draft of the Japanese Constitution conforms to the Basic Principles of the Far Eastern Commission.” Although no specific provision of the draft constitution required that the ministers of state be civilians as prescribed by the FEC, “inasmuch as article 9 denounces [sic] the right of waging war and forbids the maintenance of land, sea, and air
forces, as well as other war potential, the existence of any Japanese military officers of any character is prohibited under the Constitution.\textsuperscript{35}

The FEC originally intended to publish its July 2 policy statement, but out of deference to MacArthur’s strong opposition to this plan did not do so. MacArthur asserted that its publication at that time “would tend to provoke a revulsion of the Japanese people against any such reform, irrespective of its terms, as the voluntary character of the work now in progress would instantly become clothed with the taint of Allied force” (emphasis added).\textsuperscript{36}

In light of MacArthur’s strong views on the importance of keeping SCAP and FEC influence on the constitution kept secret, it seems astonishing that in 1949, when the constitution was scarcely three years old and the Occupation was still in force, Government Section published virtually the whole story—ample documented—in its Political Reorientation of Japan. Commander A. Rodman Huyse, the author of the account of the constitution in that compilation, was himself very much surprised that General Whitney permitted its publication.\textsuperscript{37}

The governing Liberal and Progressive Parties were committed, along with the Yoshida coalition cabinet, to support the proposed constitution, but their members had been elected on platforms emphatically advocating the preservation of the “national polity” (kokutai, sometimes translated “national structure”). This exalted concept was both political and religious, and its central tenet was the idea that the emperor ruled by divine right.

Kanamori Tokujirō, the cabinet minister then in charge of constitutional revision, stressed to the Diet that the proposed constitution would not alter the national polity, but would preserve it. On the other hand, the Socialists in the political opposition pressed for clarification of the principle that sovereignty resided in the people and that the reactionary national polity would be changed. They were mollified by Kanamori’s statements that sovereignty would reside in the nation, which included the emperor.

At meetings with Kanamori on July 17 and 23, Colonel Kades complained that Kanamori’s statements that the draft constitution would not alter the national structure were undermining the determined efforts of MacArthur to preserve the emperor and the throne. If the Japanese did not make the necessary corrections in the ambiguous Japanese text and in their interpretations of this text, there would not be any essential difference between the present draft and the reactionary Matsumoto document. MacArthur was “not almighty”; he had to defend the new constitution to the Allied Powers, who were extremely critical of the emperor and the throne, and the Japanese were making it very difficult for MacArthur to do this.

According to Kades, popular sovereignty in the new constitution would mean that, if they wished, the Japanese could at some time in the future amend it so as to abolish the emperor system.\textsuperscript{38}

Kanamori prepared for Kades a memorandum clarifying his views, which, he explained, had been distorted by newspaper headlines. The national polity—in the sense that the emperor was legally sovereign—would change. The national polity as Kanamori understood it, however, did not mean that the emperor was a legal or political figure; he was a moral figure, the center of national “adoration” (akogare). Kokutai in this sense would remain unaltered by the new constitution. The political structure (seitai) would change in that sovereignty would rest with the people.\textsuperscript{39} Thus, Kanamori’s unusual, but not completely original, definition of kokutai permitted him to reassure the conservatives that the kokutai would not change in spite of any shift in the location of sovereignty.

Both Government Section and the Yoshida cabinet were seriously embarrassed by a widely noted discrepancy between the published English and Japanese versions of the draft constitution.\textsuperscript{40} The English text of the preamble stated that the Japanese people “proclaim the sovereignty of the people’s will,” whereas the Japanese version avoided the usual equivalents for sovereignty and stated “kokumin no sōgō shikō na mono de aru koto o sengen shi,” which has the much vaguer meaning of “declare that the general will of the people is supreme.” Likewise, Article 1 in English stated that the emperor derives “his position from the sovereign will of the people,” but in Japanese the words shikō no sōgō (supreme general will) were used.

While the Constitutional Revision Bill was being debated in the subcommittee, conservatives suddenly gave up their efforts to enhance the emperor’s authority and instead proposed amendments that would clarify the principle of popular sovereignty. In both the preamble and Article 1, the Japanese text was altered from shikō no sōgō to shukun to render the English “sovereignty.” Thus, Article 1 in the Japanese much more unequivocally meant “the emperor shall be the symbol of the State and the unity of the people, deriving his position from the will of the people with whom resides sovereign power.” The conservatives had reversed their view on this issue at the insistence of SCAP headquarters,
which was under pressure from the press and the FEC, both of which called for a clear statement of popular sovereignty.

It should, however, be noted that kokumin was not changed to jinmin or “people.” Kokumin refers to the Japanese people and carries a very strong connotation of “nation.” Thus, the constitution could be interpreted to mean that sovereignty resides in the Japanese nation.41

Another concern of GS officers was the possible implication in the Japanese version of Article 4 that the emperor had substantive powers that could be delegated by law. This, it was feared, might permit the establishment of an imperial affairs ministry that would enjoy a special status in the cabinet and would be able to exercise powerful veto power over other organs of government. At the request of GS, the text was amended to specify that the emperor would have no powers related to government.

The subcommittee adopted amendments proposed by the Socialists that provided for the people’s right to “minimum standards of wholesome and cultured living,” the “right and obligation to work,” and the fixing by law of standards for working conditions. Also adopted was the Socialist proposal that “peergage shall not be recognized.” This went beyond the milder original text, which would have prevented the future creation of peers and the inheritance of existing titles and would have deprived peers of governmental authority. This immediate abolition came as a pleasant surprise to SCAP officers, who had not been pressing for it.

The Socialists advocated that the principle of popular sovereignty be clearly stated in a separate chapter preceding the chapter on the emperor, that the provision on the inviolability of private property be modified to permit socialist take-over without compensation, and that the emperor’s functions be further limited. These proposals were defeated successively in the subcommittee, in the special committee, and finally, in the plenary session of the House of Representatives.

The subcommittee adopted a provisioin insisted upon by the FEC and relayed to the Japanese by SCAP that provided that a majority of the ministers of state had to be appointed from among the members of the Diet. (At the same time a provision in the original bill that the appointment of the individual cabinet members required Diet approval was deleted.)

The subcommittee also made changes (the “Ashida amendments”)—generally regarded at the time as of a minor nature—in the provisions renouncing war and arms. These changes in Article 9

attracted little attention in Japan at the time, but they became the object of very bitter controversy after the Occupation ended.

The “Ashida Amendments”

The final version of Article 9 (with the Ashida amendments shown in italics) reads as follows:

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential will never be maintained. The right of the belligerency of the state will not be recognized.

Paragraph 1 of Article 9 as amended may be interpreted to mean that war and the threat or use of force are renounced only as means of settling international disputes. War and force might therefore be permissible for self-defense. The phrase at the beginning of paragraph 2, “in order to accomplish the aim of the preceding paragraph,” could be understood as qualifying the renunciation of land, sea, and air forces. Thus, although armaments for settling international disputes are banned, armaments for other purposes, such as self-defense, are not renounced.42

When Ashida Hitoshi brought this amendment to Colonel Charles Kades for approval (all proposed amendments had to be cleared with GHQ), Kades made no objection. Kades interpreted the proposed modification in language as intended to clarify the sincerity of the Japanese commitment to peace and believed that any flexibility implied in the text would permit Japanese participation in a United Nations force.

When Ashida pointed out the importance of his amendments and asked if they should not be approved by MacArthur, Kades said no. He was under orders to permit changes that did not involve basic principles.43

Dr. Cyrus Peake, another Government Section officer, pointed out to General Whitney that these textual modifications would permit Japan to maintain defense forces. Whitney concurred in this interpretation and agreed that this change in the text was “acceptable.”44
The Nationalization of Imperial Properties

As originally written, Article 88 provided that all property of the Imperial Household, other than the hereditary estates, would belong to the state and that the income from the estates would be paid into the national treasury. The allowances for the expenses of the Imperial Household would be appropriated by the Diet in the annual budget. These provisions conformed with SWNCC-228. In the House of Representatives subcommittee the conservatives strongly advocated deleting the provision that the income from imperial estates be paid to the national treasury. They believed that the revenue from the estates should go to the imperial family to assure the economic security of the dynasty. The Socialists, on the other hand, defended the measure as it stood, claiming that the Diet appropriations for the imperial family should prove adequate.

The subcommittee, responding to strong SCAP pressure to bring this provision of the constitution into conformity with the FEC policy of July 2, 1946, eliminated the phrase that exempted hereditary estates from being taken over by the state and deleted the reference to income from hereditary states: all property of the Imperial Household would belong to the state. The government made it clear, however, that the individual members of the imperial family could own personal effects, and the palaces and appurtenances used by the emperor in his capacity as symbol of the state would continue to be at his disposal.

The speaker of the House of Representatives, Higai Senzō, and several other leading conservatives tried to prevent the subcommittee from adopting the change concerning the imperial properties by appealing to Prime Minister Yoshida. Before the House of Representatives began deliberation on the special committee’s report, the Socialists introduced a co-confidence resolution against Higai. Although the resolution was defeated, within a few days he had to resign in the face of a possible Socialist boycott of further proceedings.

The special committee approved the amendments recommended by the subcommittee but no other proposed amendments. On August 24 the House of Representatives passed by a vote of 421 to 8 the Constitutional Revision Bill with the amendments recommended by the special committee together with a supplementary resolution, or rider, which had originated in the subcommittee. The four-paragraph rider expressed the members’ dissatisfaction with aspects of the procedure and substance of the constitutional reform. It pointed out that even the outlines of the new Imperial House Law, the House of Councillors Law, and the Cabinet Law, among others, were not yet clear, making it impossible to deliberate thoroughly on the constitution. Social and economic reform was inadequately provided for in the new constitution. The members hoped that the composition of the House of Councillors, left unclear in the draft constitution, would not merely duplicate the House of Representatives, but would include persons of knowledge and experience from each specialty and occupation as members. The supplementary resolution may have represented more accurately than the constitution itself the real thinking of the Japanese legislators.

The Constitutional Revision Bill was now sent to the House of Peers for its decision. This aristocratic body had been decimated by the purge. Moreover, a number of eminent constitutional scholars had been appointed to membership to bring their expertise to bear on the deliberations. The views presented in the Peers’ debates were thus those of the individual speakers rather than those of political parties. The Peers’ interpellations, which reflected a high level of theoretical sophistication, focused especially on the status of the emperor in the proposed constitution.

The Civilian Ministers Clause

The Chinese delegate to the Far Eastern Commission was outraged by the changes in the disarmament clause made in the House of Representatives. In an FEC meeting on September 21 he asserted that Article 9, as now altered (by the “Ashida amendments”), was a trick by the Japanese militarists to deceive the world into thinking that Japan was absolutely renouncing military forces when actually they planned to rearm the country using the loopholes created by the textual changes in the draft constitution. If Japan was permitted to rearm under the new constitution, it was essential that civilian control over the military be established.

A provision that all cabinet ministers had to be civilians, although called for by SWNCC-228, had not been included in the SCAP draft constitution—evidently because Article 9 seemed to mean that Japan would not possess a military establishment. Prime Minister Yoshida had objected to the requirement that ministers of state be civilians (as embodied in the July 2 FEC policy statement previously cited and passed on to the Japanese by SCAP officers), holding that it was unsuitable
because there would be no military men in Japan in the future as a result of Article 9. Sympathizing with Yoshida’s view, General MacArthur had agreed not to require the insertion of such a provision.47

On September 25 the FEC passed another policy reiterating its requirements of July 2 that all cabinet members be civilians and that the proposed House of Councillors not have dominance over the House of Representatives.

By this time the Constitutional Revision Bill was being debated in the House of Peers. In response to the FEC’s repeated insistence on the principle that all ministers of state be civilians, General Whitney and Colonel Kades asked Prime Minister Yoshida to see to the insertion of this provision in the draft constitution. GHQ officers admitted that although they had previously agreed with the Japanese that such a provision was not necessary in the light of Article 9, SCAP could not counter the FEC’s insistence.

No Japanese word corresponded precisely with the English “civilian.” The cabinet’s Legislative Bureau, speculating that the provision was designed to perpetuate the purge, suggested the expression “persons without records as military officers.” Subcommittee members rejected this phrase as too restrictive, as it would ban from the cabinet even civilians who had once studied in a military academy. The subcommittee regarded the civilian-ministers requirement as essentially meaningless since all Japanese would be civilians as a result of Article 9. In order to meet but not go beyond the FEC requirement it was necessary to devise a Japanese word signifying “civilian,” no more and no less. After considerable discussion the subcommittee agreed upon a word that they coined as the closest approximation to “civilian”: bunmin (lit., literary person).48

Notwithstanding the Ashida amendments and the civilian-ministers amendment, Yoshida and his government maintained their interpretation that Article 9 forbade even defensive war and arms. It would have been disastrous for the image of Japan as a new convert to peace to announce that the proposed new “peace constitution” had been amended to permit rearmament.

On October 6, 1946, the amended Constitutional Revision Bill was passed by a standing vote in the House of Peers with only three or four members opposed.49 The bill as amended by the Peers was passed without debate by the lower house on October 7, and the Privy Council approved the amended bill on October 29. The new “Constitution of Japan” was promulgated in the form of an amendment to the Imperial Constitution on November 3, 1946 (the anniversary of the birth of the Meiji emperor) to become effective on May 3, 1947.

Immediately after the emperor had sanctioned the text of the edict of promulgation that had been prepared by the cabinet, Colonel Kades requested that the edict include the following: “As from the date of the enforcement of the Constitution on May 3, 1947, the Imperial Constitution together with the Edict of Promulgation should be abrogated.” The Japanese government believed that the Meiji constitution had not been abolished, but rather had been amended. All along, GHQ had stressed the legal continuity between the two constitutions. Besides, the purport of Kades’ text was already implied in the body of the new constitution. In the face of Japanese objections, Kades withdrew his proposal.50

Review by the Far Eastern Commission

Throughout the summer of 1946 some members of the Far Eastern Commission—especially representatives of the Soviet Union and New Zealand—had been demanding that the FEC have the opportunity to vote on the text of the draft constitution before its final approval by the Diet. MacArthur strongly opposed this procedure not only because the substance of the draft already conformed to Allied policy but also because this procedure would constitute a flagrant foreign intervention into a process that the Allies had already decided should reflect the freely expressed will of the Japanese people.51 The War Department successfully upheld MacArthur’s position in this matter.52

It was essential that the Soviet Union not be given an opportunity to veto the proposed constitution. The United States, supported by a majority of the members, was able to “get on the right side of the veto,” that is, prevent a formal vote on a policy approving the constitution, which would invite a Soviet veto.53 Consequently, the commission never formally voted for or against the new constitution either before or after its enactment. As we have noted, however, the FEC had successfully insisted on certain amendments to the text before it was finally voted on in the House of Peers.

On October 17, 1946, the FEC adopted a policy calling for review of the new constitution after its enactment and enforcement. Not sooner than one year and not later than two years after the constitution went into effect, “the situation with respect to the New Constitution should be reviewed by the Diet,” and furthermore, the commission itself would
review the constitution within this period. In addition, the FEC might require a referendum or some other procedure to ascertain Japanese opinion concerning the new basic law. At the request of the American representative, the FEC approved the review policy with the understanding that the “time and manner of issuance” of the decision would be subject for further consideration by the commission.

MacArthur indicated to the FEC his view that, in light of the constitutional provision for its amendment and the continuing authority of the Allied powers, the purposes of the review policy were unclear. Besides, the publication of the review policy “would be instantly viewed in the public mind as a display of force by the Allied powers.” On December 12 the commission nevertheless directed that the terms of the review policy “be formally communicated to the Government of Japan” and indicated that “the time and manner of the public announcement of this policy decision” were still being considered by the commission.54 General MacArthur then wrote a very informal letter to Prime Minister Yoshida on January 3, 1947, conveying to him the substance of the FEC policy, referring simply to the “Allied powers,” without mentioning the commission by name.

On March 20, 1947, the FEC made public the text of its review policy. Four days later, however, SCAP Government Section asked the Civil Censorship Detachment of MacArthur’s G-2 to “withhold from press or radio publication in Japan all reports that the Japanese constitution is to be reviewed by the Far Eastern Commission or by the Japanese people in compliance with a FEC directive.”55

MacArthur, in his message to the Japanese people of May 3, 1948, commemorating the first anniversary of the enforcement of the new constitution, made no reference to a review of it by the Diet, by the Far Eastern Commission, or by the people in a plebiscite.

During the review period (May 3, 1948 to May 3, 1949) Prime Minister Ashida Hitoshi and the speakers of the two houses of the Diet considered naming a Diet committee to deliberate on the possible revision of the constitution. After discussing the problem with political leaders, they decided against attempts to revise the new document, as such an effort in the first few years of its existence could undermine the constitution’s prestige in the minds of the public.56

The FEC formally began its review on December 9, 1948, with fewer than six months left of the specified review period. The American attitude was that the FEC should “as inconspicuously as possible and with a minimum of debate review promptly the Constitution,” and that the FEC should determine that the constitution met all FEC requirements and needed no further investigation or action, such as a referendum.57 MacArthur completely agreed with this American position.

The new constitution, the general informed the FEC in January 1949, was “now universally accepted as an indigenous product,” and there was, he said, “no slightest question but that the Japanese people with practical unanimity would vote to preserve the document unaltered were the matter referred for popular action.” He recommended that the Allies not force upon the Japanese people “a review of their constitution with the view to its modification.”58

Although the FEC transmitted to MacArthur the opinions of various members regarding possible specific amendments to the constitution, it did not extend the review period or enact a new policy on review. It is essentially correct to say that, following the publication of the FEC’s review policy on March 20, 1947, “no later action based on this policy was taken... either by the Commission or by the Diet.”59

The new constitution invalidated the provisions of many of Japan’s existing laws and necessitated a substantial overhaul of the legal codes. Forty-five major laws were hastily enacted to implement the new constitution. Among them were the new Imperial House Law, the Diet Law, the Cabinet Law, the Civil Service Law, electoral laws, the Habeas Corpus Act, and laws amending the Civil Code and the Codes of Criminal and Civil Procedures. All of these laws either were already being debated or had already been passed by the Diet before the Far Eastern Commission had an opportunity to examine them, and the commission’s influence on them was virtually nonexistent.

The fundamental principles of the new constitution usually cited by Japanese writers are (1) popular sovereignty, (2) pacifism, and (3) the guarantee of fundamental human rights. Chapter III, the “bill of rights,” is notable for its very detailed provisions for the protection of the accused in criminal trials. It also includes a few rather general statements of social and economic rights and forbids virtually all forms of discrimination. The new basic law prescribes a parliamentary-cabinet form of democratic government similar to that of England and explicitly provides for judicial review of the constitutionality of legislation as in the United States.

MacArthur had moved rapidly on constitutional reform in early February 1946 to avoid interference by the FEC. The adoption of the new constitution, MacArthur wrote, “would never have been
accomplished had the occupation been dependent on the deliberation of the Far Eastern Commission—with the Soviet power of veto!  

An “Induced Revolution”

It is frequently said that Japan’s present constitution was “imposed” on Japan by General MacArthur. While it cannot be denied that MacArthur’s role was decisive in the formulation and ultimate enactment of the constitution, it is an oversimplification to assert that he arbitrarily “imposed” it on Japan. (1) First we note that he was acting on orders from the U.S. government and the Allied Powers to bring about the democratization of the Japanese governmental system. (2) Second, we note that the timing of his efforts was intended to protect the monarchy, which the overwhelming majority of the Japanese people desired, from its abolition as demanded by some of the Allies. MacArthur, then was advising the Japanese government about the best way to achieve its primary objective in constitutional reform and warning them about the dangers to the monarchy if appropriate action was not taken.

(3) The Japanese cabinet’s original proposals were vetoed by MacArthur because they did not meet the Allied criteria for democratic reform. (4) SCAP’s Government Section, consulting Allied criteria and progressive Japanese thought, drafted a model constitution which would meet Allied criteria, and it became the basis of the new constitution. (5) This draft was modified both by the Japanese cabinet and then by the Japanese Diet. (6) MacArthur resisted efforts of the Allied Powers represented in the Far Eastern Commission to amend the proposed constitution and to make the final determination about whether it should be put into effect. Thus at this stage MacArthur sought to prevent imposition by the Allied Powers of their views.

Underlying these developments we should keep in mind a critical historical fact: In August 1945, the Japanese government had committed itself when it accepted the provisions of the Potsdam Declaration (1) to “remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people,” and (2) to establish “in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government.” Thus the Japanese government was obligated to a policy of democratic reform even before MacArthur arrived in Tokyo to oversee the fulfillment of the Potsdam provisions.

"Induced Revolution": Policy and Process of Constitutional Reform

The notion that only the sovereign emperor could propose constitutional amendments was altered by the principle of the sovereignty of the people implicit in the Potsdam declaration. Professor Miyazawa Toshiyoshi argued that the national polity had been basically changed in consequence of the acceptance by the Japanese Government of the Potsdam Declaration. The constitutional significance of Japan’s acceptance of the Potsdam provisions is clarified by Miyazawa’s theory of the “August Revolution.” Government Section’s Alfred Oppler wrote: “The fundamental political transformation which Japan is undergoing as a consequence of her defeat and occupation has been fittingly characterized as ‘induced revolution.’”

Although the proposal of a draft by a representative constituent assembly and its approval or rejection by a plebiscite would have been the ideal procedure from a strictly democratic view, this leisurely procedure entailed the danger of intervention by Allied Powers that might threaten the imperial institution that the Japanese wished to protect.

Instead, the procedure used to adopt the new constitution conformed to the provisions of the Imperial Constitution for its amendment, and lessened the possibility of intervention from outside of Japan.

Finally it should be mentioned that after Japan regained its sovereignty in 1952, it was no longer under compulsion to retain the document and was free to do what it wished with its new constitution. During half a century, although influential voices in Japan have freely advocated the amendment of constitution, the Japanese have chosen to make no textual change in the document, strongly suggesting that they have now freely accepted it.

It is true that conservative governments in Japan have interpreted the constitution in such a way as to weaken some of its pacifistic and democratic provisions. However, the parliamentary-cabinet form of democracy prevails and the political freedoms guaranteed by the basic law are enthusiastically exercised by political parties, interest groups, the media, and individuals in Japan.