

THE BIRTH
OF JAPAN'S
POSTWAR
CONSTITUTION

KOSEKI SHŌICHI
translated by Ray A. Moore



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Koseki Shōichi

EDITED AND TRANSLATED BY

Ray A. Moore

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To my grandchildren, Nicholas and Kelsey

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Ray A. Moore
Northfield, Massachusetts

A Note on the Translation

Japanese names in the text are given in Japanese order, that is, surname first and given name second. In the transcription of Japanese words, macrons are used to indicate long vowels except in the case of common place names. In some English sources Konoe Fumimaro is referred to as Konoye.

All material in brackets has been inserted by the translator. Unless otherwise noted, brackets in the original Japanese have been changed to parentheses by the translator. Whenever possible the translator has used the original sources in English rather than retranslated from Japanese.

Preface to the English Edition

When I was finishing the writing of this book at the beginning of 1989, the Shōwa period (1926–1989) came to an end. The death of Emperor Shōwa revealed to me clearly that the Japanese people's feelings toward their emperor had not changed much since before the war. With the emperor's death all the television channels were offering programs related to him. All the employees of Japanese automobile companies, which represent Japan, were shown on television bowing most reverently toward the imperial palace.

For most Japanese intellectuals and especially for those who had put their faith in democracy, the half year surrounding the emperor's death was without doubt a melancholy time. Needless to say, I was holding my head in my small study.

Until at least the 1970s most of the books written by Japanese, both those on postwar Japanese history and those on postwar legal history, depicted Japan's prewar and postwar political systems as completely different, that is, depicted a sharp break between the prewar and postwar periods. Many of the books published between 1945 and the 1960s especially emphasized this break in modern Japanese history. I recall clearly as a student being taught by a progressive professor that "there is only a very slight difference between the symbolic emperor system and a republican form of government."

Certainly the reforms carried out by the American occupation forces immediately after the war rivaled the Meiji Restoration in Japan in terms of their significance. Of these reforms, the Japanese Constitution drafted by General Douglas MacArthur's staff was epoch-making and was greeted by most Japanese with great surprise. But for about ten years after it was adopted, the constitution was not an important political issue. Those in the conservative camp were unhappy with this constitution but, being under a foreign military occupation, were unable to raise their voices in protest; they also had no political ideas for preparing a different constitution to replace this one. Those in the progressive camp under Marxist influence had much greater interest in a "people's revolution" than in this constitution. Most people who belonged to neither camp had

little concern for the constitution. From their experience with the Meiji Constitution, the new constitution was not something that had to do with their own human rights and consequently the Japanese Constitution was far removed from their lives.

The constitution only became a central political issue after Japan signed peace and security treaties in 1951 and became a member of the western camp and after the Korean War (1950–1953), when proposals were made under a conservative government to revise the constitution to make rearmament possible, to strengthen the emperor's position, and to restore the traditional family system.

These ideas for revising the constitution responded to the American demand that Japan rearm and, at the same time, included Meiji period constitutional values, which were based on the nationalism that the Japanese people had carried over from the prewar period. When ideas for revision were set forth, nationalist feelings appeared clearly in the argument that, because the constitution had been imposed on Japan by the American occupation, a new "independent constitution" should be written by the Japanese people themselves.

By contrast, the progressives took the position of opposing rearmament and protecting the Japanese Constitution, thus making the constitution the point of contention and setting up a conflict over Article 9, which prohibited the maintenance of military forces.

Because of the strength of those conservatives who wished to revise the constitution, the protectionists opposed revision of any part of the constitution and developed a great respect for it, greater than that for the Meiji Constitution. It was quite natural therefore that they came to see a sharp distinction between the prewar and postwar periods. That was due to the fact that in Japan the historical materials necessary for doing careful research had not been made public, but due also to the fact that most Japanese intellectuals of this period cherished the new values that were the products of the postwar reforms and did not wish to see a revival of prewar values.

During the 1980s, however, this kind of distinction began to seem less clear. One reason for this was that during the 1970s the SCAP records in the U.S. archives began to be opened to scholars. As research on the occupation advanced, the continuity between prewar and postwar gradually became evident. A second reason was that the conservative government holding power throughout the postwar period had, without amending the new constitution, gradually revived institutions of the Meiji Constitution in areas where the occupation reforms had been incomplete. The "end of the Shōwa period" was a symbolic event that presented clearly to the Japanese people an objective view of an emperor system that has continued from the prewar into the postwar period.

Some American and European Japan specialists, of course, have emphasized this continuity between prewar and postwar Japan for a long time. Japanese scholars, including myself, were first strongly impressed by this interpretation, I believe, when we attended the International Conference on the Occupation of Japan at Amherst College in the United States in 1980. Shortly after this conference, articles began appearing in Japan on the theme of "continuity and discontinuity." Interest in the problem then began gradually to shift from the issue of postwar Japan's sharp break from its prewar past to what had actually continued and what had not. And the new Japanese Constitution is certainly one of the things that has broken sharply with the prewar Meiji Constitution.

I myself had believed that the basic principles of the Japanese Constitution were completely different from those of the Meiji Constitution. But in carefully relating the details of the framing process of the constitution in this book, I have pointed out both the continuities and discontinuities. The Japanese Constitution that is a symbol of "postwar democracy" has an aspect of continuity with the prewar Meiji Constitution. And the Japanese Constitution that is generally regarded as being a product of General MacArthur's staff during the U.S. occupation was actually "Japanized" by conservative officials of the Japanese government. I emphasize these two facts because they are essential to know if one is to understand postwar Japan.

I am delighted that an international audience will have an opportunity to read this book, thanks to this English translation by Professor Ray A. Moore, the organizer of the 1980 Amherst conference, the first international conference I ever attended.

Koseki Shōichi

Introduction: Seeking a New Perspective

It is now half a century since the end of the Pacific War and Japan's adoption of a new constitution in 1946. Throughout that fifty-year period the constitution has been the center of controversy in Japan's postwar political system. To be sure, the controversy over the constitution goes well beyond the "postwar system" to broader and deeper principles that constitute the pillars of Japan's postwar democracy.

Everybody regards his or her own research topic as important and some may even become obsessed with its significance. My concern has been that the nature of Japan's "postwar democracy" has been reduced to the question of how the constitution was made, the issue that defined the point of departure for postwar Japan. Among the many reforms of the occupation period (1945–1952), the making of the constitution is one on which research is comparatively well advanced. In spite of this, however, I continue to have the uneasy feeling that much of the previous research has been unable to escape the ideological framework of the Cold War.

It was probably through Mark Gayn's book, *Japan Diary*, which was published in Japan at the end of the American occupation in 1951, that the Japanese people first learned the truth about the constitution being "imposed" on Japan during the drafting process.¹ However, this did not become widely known until later, in April 1952, shortly before the San Francisco Peace Treaty took effect, when the journal *Kaizō*, freed from occupation censorship, published an enlarged issue with the title, "The Secret History of the Secret History of Occupied Japan." But knowledge of the event at that point came primarily from Ashida Hitoshi, a cabinet minister when the constitution was being drafted, who talked about his own experience at a roundtable discussion;² and from discussions of the book *The Political Reorientation of Japan*, which the Government Section of MacArthur's headquarters (GHQ) had published in 1949. Even though this book was indeed a "secret history," the true facts surrounding what was called the "imposition" of the constitution on Japan were still not completely evident. Nor had these facts been incorporated into the framework of current Japanese politics as a major topic of debate.

The constitution became a political issue in July 1954 with the testimony of Matsumoto Jōji, former minister in charge of constitutional reform in the Shidehara cabinet, at the Liberal Party's Constitutional Investigation Commission, which had been established in March under the chairmanship of Kishi Nobusuke.³ The purpose of the commission was to make the constitution consistent with the existence of the Self-Defense Forces (established in 1954), which Japan was required to maintain under the 1953 Mutual Security Agreement with the United States. With Matsumoto's testimony, interest in how the constitution was written mushroomed and led in 1956 to the establishment of the government's Commission on the Constitution.

In short, interest in and research on the framing of the constitution was prompted by the effort in 1954 to amend it. And for that reason, the focus of that interest has always been on whether or not the constitution was imposed on Japan. Although several conclusions have been reached ("yes, it was imposed"; "no, it was not"; and, "yes, but it was unavoidable"), whatever the conclusion, the making of the constitution has invariably been presented as a confrontation between two nations or as a struggle between the United States (that is, General Douglas MacArthur as Supreme Commander of the occupying army) and the government of Japan. I myself cannot help thinking that, at least in terms of procedure, the constitution was indeed imposed on the Japanese government by MacArthur. Yet depicting the framing process and the interest that has been shown in it according to this analytical scheme has made it difficult to understand the real process by which the constitution was produced and, therefore, the true significance of the constitution itself.

In a fundamental sense, the Japanese Constitution rests on principles of internationalism. Both the pacifism expressed in the preamble ("We have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world") and the respect for human rights contained in Article 97 ("The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free") distinctively reflect an international perspective that transcends national boundaries.

Thus despite the fact that the Japanese Constitution contains a denial of the absoluteness of nationalism, which can be called a characteristic of post-World War II constitutions, and an international perspective,⁴ the enactment process through which such international concepts were manifested has been studied from the extremely nationalistic perspective of a confrontation between nation-states.

Moreover, this nation-versus-nation approach suggests that the outcome should be depicted as constitution-making by the use of force since, concretely, it was a case of the victor nation "imposing" a constitution on

a defeated nation. Accordingly, the revisionists have appealed to the remaining proud subjects of the Great Japanese Empire to “make our own constitution,” while, on the other hand, protectors of the constitution have battled to defend the “peace constitution.” Constitutional reform was certainly required of Japan in 1945–1946; it could not have been avoided under a military occupation. But neither can we deny that, intellectually, the historical significance of the process that produced the constitution has been studiously ignored for that very reason. Yet the process that gave birth to the Japanese Constitution was in fact complicated, varied, and rich, going well beyond the actions of any state.

The Japanese side was not of one mind about constitutional reform, nor was the U.S. government or MacArthur’s staff. With respect to constitutional ideas, one can see major similarities between the constitution that MacArthur’s staff drafted (the SCAP draft) and those drafts prepared by Japanese civilian organizations. Even among the members of the Japanese government’s Committee for Study of Constitutional Problems, there were some who wrote opinions similar to those found in the SCAP draft. Or again, organizations and individuals did not maintain their views on constitutional reform unchanged throughout the framing process. There were cases in which major changes took place in long-held views, such as the Socialist Party and the famous constitutional scholar, Miyazawa Toshiyoshi.

On the other hand, MacArthur, who “imposed” the constitution on the Japanese government, was harshly and continually criticized by his own government (the State Department) and by the Far Eastern Commission (FEC) for the high-handed procedure he used. Eventually, to be sure, the U.S. government ratified all of MacArthur’s actions. But by that time he was completely isolated. The process by which the American draft was written was in fact a complicated one. For example, the original draft of the women’s rights section, which was written by a woman in Government Section, contained many details that were ultimately cut out by men. However, when the Japanese government’s draft, based on MacArthur’s, was presented to the National Diet, Japanese women legislators of the lower house offered an amendment that was almost exactly the same as the original draft written by the woman on MacArthur’s staff. And just as had happened on the American side, their amendment was ignored by their male colleagues in the Diet.

In other words, the framing process of the Japanese Constitution cannot be elucidated simply by an analytical scheme that pits one nation-state against another. Only with a constitutional perspective that goes beyond the nation-state and with an approach that stresses the clash of legal ideas can we begin to clarify that process.⁵ In the Japanese Constitution there are provisions, for example, that were merely products of compromise, in-

serted without sufficient discussion; other provisions that are vestiges of the Meiji Constitution that Japanese legal bureaucrats, unnoticed by the Americans, succeeded in retaining; completely new provisions, not in the American draft, that Japanese officials or Diet members inserted; and provisions that, even though they were important in retrospect, ran counter to the trend of the times and disappeared at the early drafting stage. In short, the Japanese Constitution had the appearance of a mosaic.

Furthermore, trying to understand the constitution by peering through the lens of two nation-states confronting each other has made it extremely difficult to see the real continuity between prewar and postwar Japan. Both the revisionist school, which sees the Japanese Constitution as having been imposed, as well as the protectionist school, which values the constitution highly, ignore this element of continuity in the constitution. It would be going too far perhaps to say that the structure of the new constitution bears a close resemblance to that of the Meiji Constitution. But in the midst of the postwar reforms, unaccompanied as they were by a social revolution, the bureaucrat in the cabinet's Legislation Bureau who wrote the Liberal Party's draft constitution (which said that "Japan is a Monarchy") six months later became the minister in charge of defending and interpreting the government's bill to revise the constitution as it made its way through Diet deliberations. Or again, the bureaucrat in the Ministry of Education who at the end of the war served as director of the Student Mobilization Bureau one year later became director of the Administrative Affairs Bureau of the Society to Popularize the Constitution, with the responsibility of familiarizing the populace with the "peace constitution." These are examples of continuity between prewar and postwar Japan. Is it not precisely here that the present state of the constitution, with its fairly hollow peace and human rights articles, becomes blurred?

If we reexamine the origins of the new constitution from this angle, it is difficult to regard the date on which it legally took effect—May 3, 1947—as its real date of birth. Accordingly, this study treats the period from September 1945 to May 1949 as "The Birth of the New Constitution." Early in 1947, just months before the constitution took effect, MacArthur informed the Japanese government that there would be an opportunity to review it within a year or two. In August 1948, therefore, the National Diet established a committee to review the constitution. But there was no subsequent effort to propose amendments, and the opportunity for doing so was lost during the second Yoshida cabinet. Thus two years later, in May 1949, the constitution was established without being amended or even reviewed. When examining the thesis, therefore, that the constitution was "imposed" on Japan, this fact raises a very important question. It is for this reason that I deal with the issue until May 1949.

Finally, I wish to explain why I chose to call [the original volume] “The Birth of the New Constitution.” By the end of the 1960s the expression “new constitution” had generally fallen into disuse. It was about that time that the constitution, after the passage of some twenty years, had become fixed in people’s minds, and consequently the events of its framing were receding into the past. From the late sixties the new constitution generally came to be called “the present constitution,” or simply “the constitution.”

In spite of this, my reason for using “the new constitution” here is because I wish to single it out as a new document, completely different from the Meiji Constitution. The people, liberated from war and oppressive government, were delighted when the constitution took effect. They sang and danced; young people in remote mountain villages organized groups to study the constitution. The sight of them entering essay-writing contests about the constitution had never before, or since, been seen in modern Japanese history. Not only that. While one cannot ignore the role of government officials in the framing process, civilians not in government service and laymen without special legal training or knowledge also played a significant part in that same process. The wellspring of the Japanese Constitution, which still retains its modern significance today, is the extremely large role those laymen played (with the exception of the provision on the renunciation of war). No single Diet member or constitutional scholar came close to exercising the influence of those few laymen. The writing of proposals for constitutions that ultimately influenced the American draft, the clear statement of popular sovereignty, the making of normal education compulsory, and the writing of the whole text of the constitution in colloquial Japanese—all of these were contributions by laymen.

On the occasion of the 150th anniversary of the U.S. Constitution in 1937, President Roosevelt said that “the American Constitution is a layman’s document, not a lawyer’s.” The constitution of a modern nation indeed has that feature as its essential character.

Throughout Japan’s past “law” was the monopoly of government officials and legal specialists. In that sense the Japanese Constitution opened up new horizons, if even in a modest way. When we consider the constitution in this way, it still seems appropriate to bestow on it, despite its age, the appellation of “new constitution.”

Notes

1. Mark Gayn, *Nippon Nikki* (Tokyo: Chikuma Shobō, 1963), p. 356.
2. Symposium, “Kenpō wa nishūkan de dekitaka,” *Kaizō* (April 1952). Participants included Ashida Hitoshi, Iwabuchi Tatsuo, Suzuki Yasuzō, Miyake Kiyoteru, and Abe Shinnosuke.

3. From Matsumoto Jōji's testimony, "Nihonkoku kenpō no sōan ni tsuite," in *Kenpō chōsakai jimukyoku, Kenshi: Sōdai 28* (October 1958).

4. Higuchi Yōichi, *Hikaku kenpō*, rev. ed. (Tokyo: Rinsei Shoin, 1984), pp. 503 ff.

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

1

The Probing Begins

Konoe Fumimaro Calls on MacArthur

The first person to suggest the revision of the Japanese Constitution was General Douglas MacArthur. At 5 P.M. on September 13, 1945, Prince Konoe Fumimaro, prime minister three times before the war and minister without portfolio in the first postwar Higashikuni cabinet, made his way to the Customs Building near Yokohama Harbor, where MacArthur's general headquarters (GHQ) was located. On September 17 MacArthur would move to the Daiichi Insurance Building in Tokyo, across from the Imperial Palace, and on October 2 would establish his headquarters as the Supreme Commander for the Allied Powers (SCAP).¹ Meanwhile, however, he was commander of the United States forces in the Pacific. At the time, none of this was known to the Japanese, nor did it matter much, for Konoe needed to meet with MacArthur in any case.

Tomita Kenji, chief secretary in the Konoe cabinet before the war and later a close adviser to Konoe, has said that Konoe made the trip to Yokohama on September 13 because "MacArthur summoned him."² To the Japanese, however, Konoe's reasons for the visit were not that simple. The political critic and adviser to Konoe, Iwabuchi Tatsuo, thought that "the Japanese side felt it necessary to inform MacArthur of conditions in Japan," and later explained that the "request for the meeting was made" by Konoe.³ Obata Toshishirō, a minister in the Higashikuni cabinet who had worked with Konoe during the war, agreed with Iwabuchi's view of events.⁴ Konoe's position in the Japanese government certainly justified his request to meet with MacArthur. Konoe had exceptionally rich international experience: He had been appointed to the House of Peers at the age of twenty-five while still a student at Kyoto University; he had served roughly three years as prime minister during a long political career; he had attended the Paris Peace Conference in 1919 as an aide to the Japanese delegation; and he had later traveled to the United States and other countries.⁵ It was precisely for these reasons that he was appointed

to the cabinet in August 1945 and given the rank of deputy prime minister under Prime Minister Prince Higashikuni.

Konoe thus proceeded to MacArthur's headquarters in Yokohama, acting as the unofficial representative responsible for probing MacArthur's intentions. This was two days after the Supreme Commander had issued an order to arrest Tōjō Hideki and others as suspected war criminals. Konoe's meeting ended after only about an hour primarily because, it was said, MacArthur's American interpreter was unable to perform his duties adequately.

Konoe and MacArthur met a second time on October 4. The location this time was the waiting room next to MacArthur's office on the sixth floor of the Daiichi Insurance Building in Tokyo, the headquarters of the U.S. occupation. This time the interpreter was Okumura Katsuzō, a Foreign Ministry official who had also served as the interpreter at the first meeting of MacArthur and the Japanese emperor just a week before. The time was 5 P.M., the same time as their first meeting in Yokohama. Konoe first met MacArthur's chief of staff, Lieutenant General Richard Sutherland. Then, after waiting about twenty minutes, he entered the room where, besides MacArthur and Sutherland, George Atcheson, Jr., the political adviser to the Supreme Commander, was also waiting. On the Japanese side were only Konoe and his interpreter, Okumura.

The reason for the twenty-minute delay, according to Okumura years later, was that "Atcheson, who was in Japan as the representative of the State Department, also wished to hear what Konoe had to say. In order to summon him suddenly from the Mitsui Building in Nihonbashi, where he had set up his office, it must have taken some time."⁶ This is quite a shrewd observation, since it would have taken Atcheson about twenty minutes to drive from Nihonbashi to Hibiya. But it seems unlikely that this was the only reason for the delay. For on this day at 6 P.M., MacArthur had issued a very important directive to the Japanese government. Usually referred to as the "human rights directive," this document ordered the immediate release of political prisoners, the abolition of the Special Police, the abrogation of repressive laws, and so forth. Because of this directive, on the following day the Higashikuni cabinet resigned, and on October 10 some three thousand political prisoners—including Tokuda Kyūichi and other members of the Japan Communist Party—were released. It is clear now that MacArthur was finalizing approval of the human rights directive at the very moment that he was to meet with Konoe. It seems reasonable to surmise, therefore, that this was probably the reason for the delay. Meanwhile, Konoe had no way of knowing that a directive was being issued while their talks were in progress.

When the meeting finally got under way, Konoe, according to Okumura, launched into a monologue on the causes of the war. He spoke of

the militarists and Marxists and their responsibility for the war. "Cooperating with the militarists and nationalists, the Marxists were the ones who provided theoretical backing; and this union of militarists and leftists is what led Japan down the path to destruction."⁷ No matter how staunch an anticommunist MacArthur was, it is easy to imagine his astonishment when he heard Konoe's assertion that responsibility for the war lay with those leftist political criminals whom he himself was about to release from prison.

In any case, after talking at length, Konoe, "with a slight change of tone," asked MacArthur (Okumura reconstructs the conversation in the following way): "I'd like to know whether you have any ideas or suggestions regarding the organization of the Japanese Government and the composition of the Diet." On hearing this, MacArthur—suddenly sitting erect and speaking in a certain military tone—said in a loud voice, as if reprimanding him: "First of all, the Japanese Constitution must be revised. It is essential to introduce into government sufficient liberal elements through constitutional revision."⁸

Whether or not MacArthur in fact said "constitutional revision" on this occasion was later to become a major point of contention. The Foreign Ministry's record of the meeting, probably written by Okumura, indicates that MacArthur used these words.⁹ Furthermore, Atcheson's dispatch to the secretary of state on October 10 corroborates that the October 4 meeting was one "at which I was present and at which the General told Konoe that the Japanese Constitution must be revised."¹⁰ Thus it appears certain that MacArthur did in fact utter these words. Okumura states that in the car returning from the meeting Konoe said to him, "Today we heard something remarkable."¹¹

It was not only Konoe who thought that MacArthur had said "something remarkable." In fact, Atcheson thought so too. When he returned to his office, he quickly sent the following short telegram to the secretary of state:

As there appears to be considerable discussion among politically-minded Japanese in regard to questions of the revision of Japanese Constitution, it is suggested that completion of the directive on this subject be expedited as much as possible. Meanwhile please telegraph outlines of draft so that we may know direction which American Government thought is taking in the matter.¹²

For both Konoe and Atcheson, "something remarkable" had happened. They each began moving in earnest toward constitutional revision; Konoe, especially, moved quickly. As the Higashikuni cabinet had already resigned, Konoe would lose his cabinet post as soon as the next cabinet was formed. Determined to move ahead without delay, Konoe,

still formally a cabinet member, went to see Atcheson on October 6. This time at his side were Takagi Yasaka, Tokyo University professor and Japan's leading authority on U.S. political history; Matsumoto Shigeharu, chief editor at Dōmei News Service during the war and a close associate of Takagi; and Konoe's private secretary, Ushiba Tomohiko.

Atcheson had not yet received a reply from the secretary of state; nonetheless, he expressed his own views quite explicitly, while careful to remind Konoe and his associates that he spoke "unofficially." According to Takagi's memorandum of the meeting, Atcheson named nine points of revision to the Meiji Constitution,¹³ while Atcheson's own report to the secretary of state mentioned seven points, organized as special features of the Meiji Constitution.¹⁴ Although at a glance they may appear to differ, the contents of both reports are largely the same. The basic change that was discussed would make the Diet a representative institution elected by the Japanese people. The cabinet would be responsible to the Diet, and consequently the House of Peers and the Privy Council would be abolished. The major points were that the powers of the emperor, beginning with his right of supreme command of the army and navy, would be reduced; the legislative power of the Diet would be expanded; human rights would be guaranteed; and centralized control of police and education would be abolished. Nothing was said about the position of the emperor as sovereign.

The Struggle for Authority over Constitutional Revision

As soon as the meeting had finished, Konoe quickly called on the Lord Privy Seal, Kido Kōichi. Kido and Konoe agreed that Konoe would undertake the work of constitutional reform as a special appointee in the Office of the Privy Seal. The formation of the Shidehara cabinet was to take place the following day. Konoe, accompanied by Takagi, went directly to the home of Hosokawa Morisada, Konoe's son-in-law and private secretary. Over dinner they refined their plans for revising the constitution. They agreed to ask Professor Sasaki Sōichi of Kyoto University, with whom Konoe had studied, to direct the work of revision. Hosokawa hurriedly departed for Kyoto to meet with Sasaki.¹⁵

On October 9, Konoe had an audience with the emperor to explain events of recent days, and at noon on October 11 received as planned his appointment as special assistant in the Office of the Privy Seal. On the same day at 5 P.M., the new prime minister, Shidehara Kijūrō, called on MacArthur at his office. It was on this occasion that MacArthur issued instructions to Shidehara regarding what came to be known as the "five great reforms directive." Two days later MacArthur's judgment, intro-

duced as “the General’s view,” appeared in the morning papers: “In carrying out the Potsdam Declaration, the traditional social order under which the Japanese people for centuries have been subjugated will be reformed. This will unquestionably involve a liberalization of the Constitution.” Following this the “five great reforms” were presented.

Briefly, these were emancipating women, encouraging labor unions, liberalizing and democratizing education, abolishing secret and oppressive organizations, and democratizing economic institutions. In short, although MacArthur had already made clear that it was essential to revise the constitution, the revision itself was not to be included among the five great reforms mentioned in the directive to the Shidehara cabinet. Moreover, the directive was not mentioned in the lead articles of the newspapers. Instead, the top news stories reported the emperor’s appointment of Konoe to the Office of the Privy Seal. With the appearance of these news accounts, the Japanese people first learned that Konoe would be involved in constitutional reform. Without information on the contents of the two MacArthur-Konoe meetings, the news reports gave two distinct impressions: that the emperor had ordered Konoe to revise the constitution, and that MacArthur had ordered Shidehara to carry out five major reforms.¹⁶ Years later Takagi gave the following testimony at the Liberal Party’s Constitutional Investigation Commission on the background of how the events of this momentous day, October 11, were reported:

Since we predicted that the problem of constitutional reform would definitely come up in Shidehara’s meeting with MacArthur, we tried to develop a preliminary strategy by consulting with Brigadier General [Bonner] Fellers. That is, for us it was undesirable that constitutional reform should be included among the political reforms which we fully expected MacArthur would demand when the new Prime Minister went to see him on October 11. We called the attention of the other side to our hope that constitutional revision could be undertaken in a different way. We secured an understanding that no demand for constitutional reform would be made along with, for example, the issues of raising the status of women, reforming the system of labor unions and education and the other reforms suggested by MacArthur. On the basis of that understanding, Shidehara met with MacArthur. . . . In short, we on the Japanese side were trying to devise a way by which we could independently consider constitutional reform.¹⁷

The Japanese strategy seemed feasible in view of the fact that all newspapers were subject to daily American censorship, and because Takagi—a specialist on U.S. political history—had long had good connections with the American side. At the same time, it is clear that MacArthur and his staff were eager to accommodate the Japanese desire to revise the constitution themselves.

At the cabinet meeting on October 13, immediately after his meeting with MacArthur, Shidehara moved quickly to set up the Committee to Study Constitutional Problems, with State Minister Matsumoto Jōji as its chairman. Consequently, it appeared at the time that the decision to establish this committee was taken because MacArthur, in his meeting with Shidehara, had directed that the constitution be liberalized. In fact, however, Shidehara's decision seems to have been motivated by other factors. Judging by Matsumoto's own testimony later at the Constitutional Investigation Commission, during the cabinet meeting on October 11—the very day Shidehara met with MacArthur (probably immediately before the meeting with MacArthur)—Privy Seal Kido called Shidehara to say that "Prince Konoe was being entrusted with revision of the Constitution." On October 13 Konoe and Shidehara met with Matsumoto, who told them there was "no possible reason for excluding the Cabinet from constitutional reform. We too have already begun thinking about that."¹⁸

When viewed in this way, it appears that behind the Shidehara cabinet's sudden decision to appoint the Committee to Study Constitutional Problems was the desire to prevent Konoe from seizing the initiative on constitutional reform. On October 13 Sasaki Sōichi, accompanied by Konoe's messenger Hosokawa, arrived from Kyoto, went to the palace to receive the imperial appointment of special assistant in the Office of the Privy Seal, and continued on to Konoe's private residence in Ogikubo. Newspapers published editorials commenting on constitutional revision, *Asahi* under the headline "Democratization of the Present Constitution" and *Mainichi* under "The Urgency of Revising the Constitution." Thus by the middle of October, conditions were ripe for taking the first steps toward constitutional reform. It was also the beginning of a period of rivalry between the Office of the Privy Seal and the Shidehara cabinet. Beginning with Chairman Matsumoto's speech on October 15, the rivalry developed into a public dispute and confrontation.

Constitutional revision is an important State matter. At the time that Prince Itō (Hirobumi) drafted the Constitution, there was no clear distinction between the Court and the Privy Seal. Now, however, since the Constitution has been created by the Emperor, the Government must carefully investigate the matter, and it is the responsibility of a State Minister to advise on the exercise of the Imperial power to amend the Constitution. Who bears responsibility in this important State matter? Since the Emperor has no responsibility for it, obviously offering advice is the responsibility of a State Minister. Presently, in the Office of the Privy Seal research on the Constitution is being conducted by Prince Konoe. But I consider that merely preparation for the purpose of studying the Government's proposed constitutional amendment when it is presented for the Imperial consideration.¹⁹

The newspapers reported the speech the following day. *Mainichi*, for example, treated it in a special edition under the headline, "Round One in the Issue of Constitutional Reform," printing, above Matsumoto's statement, comments of a similar nature by Professor Miyazawa Toshiyoshi of Tokyo University and by Rōyama Masamichi. Miyazawa criticized the Office of the Privy Seal's work on constitutional reform more harshly than had Matsumoto:

That it is improper for both the Government and the Privy Seal to prepare a draft amendment of the Constitution is abundantly clear. I believe that misinterpreting the present Constitution and understanding constitutional reform as something that should be done behind the scenes, unrelated to the Government's advice and responsibility, is to ignore the very principles of constitutionalism enshrined in our Constitution.²⁰

In response to this, Sasaki Sōichi quickly published a rebuttal in the *Osaka Mainichi* of October 21. He argued that advice by the Privy Seal and the government were essentially different:

The Government's advisory role with respect to constitutional revision is to request that the Emperor undertake the actual act, or not undertake the actual act, of amending the Constitution. By contrast, the role of the Office of the Privy Seal is to bring the Privy Seal's knowledge of the matter to the attention of His Majesty and to be a source of information and assistance in reaching a proper Imperial judgment when the Emperor expresses the Imperial wish with respect to amending the Constitution.²¹

A basis for both arguments could be found in Article 73 of the Imperial Constitution of Japan (the Meiji Constitution), an article whose wording could be interpreted in various ways. It provided that "When it becomes necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order." Until this time, the question of amending this "Code of Immutable Laws" had never arisen, even as a matter of discussion, since the promulgation of the Meiji Constitution in 1889. Only with Japan's defeat in the war had amending the constitution become an issue. Therefore, it is not surprising that dissension arose over the proper course of action.

Sasaki's interpretation, however, was contrary to the principle of responsible government, which holds that "State affairs ought to be conducted responsibly and openly by the Cabinet." Sasaki himself cannot avoid the charge that he lacked a critical attitude toward the institution of the Privy Seal.²² Constitutional revision by the Office of the Privy Seal was also criticized by, among others, an editorial in *Asahi* on October 18.

Generally, most critics favored granting the cabinet the authority to revise the constitution.

As concern mounted in Japan over constitutional reform by the Privy Seal, strong criticism of Konoe's involvement appeared abroad, especially in the United States. The *New York Herald Tribune*, after reporting the story in a dispatch from Tokyo by its correspondent, Frank Kelley,²³ sharply questioned MacArthur's actions in the following editorial:

Among the foolish mistakes the United States has made in the Far East, the most egregious was selecting Prince Konoe as the drafter of Japan's new constitution. . . . If the Prince were already in prison awaiting trial as a war criminal, there would be absolutely no reason to object. For him to be appointed the drafter of Japan's democratic constitution with the formal approval of the American side is foolish in the extreme.²⁴

The notion of Konoe being in charge of constitutional reform was from the outset subject to criticism at home and abroad. In spite of this, Konoe and Sasaki proceeded with their revision plan to amend the constitution. They could do so because of the personal guarantee provided by MacArthur's October 4 suggestion to Konoe. But, as they were to learn, that suggestion was an unreliable guarantee at best.

The Konoe Group Begins to Write a Draft

Konoe and Sasaki eventually commenced work on their draft on October 22, 1945. For their place of work, they chose a remote mountain inn in Hakone Miyanoshita, in the foothills of Mount Fuji some sixty-five miles west of Tokyo. Sasaki and his assistant, Ritsumeikan University Professor Iwasaki Tatsugorō, occupied the whole third floor of the inn as they went about their work. At the same time, Konoe, living in a summer house in Odawara not far from Miyanoshita, engaged in almost daily discussions with Sasaki about the draft.

One wonders why Konoe had to take Sasaki and others to Hakone, a secluded mountain resort, to prepare a draft constitution for the nation. Matsumoto Jōji had said earlier, when criticizing constitutional reform by Konoe and the Office of the Privy Seal, that the historical circumstances of the framing of the Meiji Constitution had made a strong impression on Konoe. Although there were several drafts of the Meiji Constitution, the one that most resembled the final version was the so-called Natsushima Constitution. In 1887 Itō Hirobumi, under imperial command to prepare a draft constitution, began deliberations on the draft at the Azumaya Inn in Yokohama-Kanazawa, accompanied by Itō Miyoji, Kaneko Kentarō, and later Inoue Kowashi. Unfortunately, the Azumaya Inn was the object

of a burglary; a package containing money and the draft constitution was stolen. The money in the package was never found, but the draft was successfully recovered from a nearby field, where it had been abandoned. After this unsettling incident, Itō Hirobumi and his associates moved their quarters to a lodge that had been built on Natsushima, an isolated, uninhabited island off the coast of nearby Kanazawa (now the site of a factory's company housing; a memorial stone marks the spot). There they continued their work and soon produced a finished draft of what has come to be called the "Natsushima Constitution."²⁵ It appears that Konoe's decision in 1945 to take his drafting committee to the mountain resort of Hakone was an effort, in short, to use Itō's experience of framing the Meiji Constitution as a model for his own work.

While Sasaki pursued his work on a draft at Hakone, Takagi Yasaka tirelessly conducted his liaison with SCAP in Tokyo. According to Takagi's subsequent testimony: "On October 25th when we met with [John K. Emmerson], we heard in somewhat more detail that 'recent information from Washington supplements' earlier information."²⁶ Perhaps it would be more accurate to say that rather than coming "from SCAP," the information they obtained in the conversation with Emmerson was directly from the State Department in Washington. Two of Atcheson's subordinates, Emmerson and Robert T. Fearey, were present at the meeting. It seems unexceptional that Emmerson and his colleagues "provided more details" at this meeting. Takagi and Emmerson had had a close relationship before the war. Moreover, Emmerson had received from the secretary of state on October 17 the special instructions already mentioned. Based on this, Emmerson put together his own views on constitutional reform and submitted a memorandum to MacArthur on October 23.²⁷

The instructions from the secretary of state stated very concisely:

Attitude of the Departmental officers who have been giving consideration to this matter may be summarized as follows: There should be assurances that the Japanese Constitution is amended to provide for government responsible to an electorate based upon wide representative suffrage. Provision should be made that the executive branch of government derive its authority from and be responsible to the electorate or to a fully representative legislative body. If Emperor institution is not retained constitutional safeguards against that institution will obviously not be required but provision should be made for (1) Complete control by an elected congress of financial and budgetary matters, (2) Guarantee of fundamental civil rights to all persons within Japanese jurisdiction, not to Japanese only, and (3) Any action by head of state only pursuant to authority expressly delegated to him.

If Emperor is retained, following safeguards in addition to those enumerated above would be necessary: