



Koseki Shoichi. *The Birth of Japan's Postwar Constitution*. Boulder, Colo: Westview Press, 1998. xii + 259 pp. \$28.00 (paper), ISBN 978-0-8133-3495-0.

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Published on H-US-Japan (November, 1999)



Constitution-Making In Occupied Japan

On 26 July 1945, the United States, China, and Great Britain issued the Potsdam Declaration, which stated in part: "The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. The freedom of speech, of religion, and of thought as well as respect for fundamental human rights shall be established." Furthermore, these Allied powers stated that their occupation forces would leave Japan after a responsible government was established "with the freely expressed will of the Japanese people." [1] And the Potsdam Declaration demanded Japan's "unconditional surrender."

After the atomic bombings of Hiroshima and Nagasaki, and with Russian troops crashing into the Japanese-held territory of Manchuria in northern China, the Japanese government finally announced its surrender in a dramatic radio speech by Emperor Hirohito that was broadcast throughout Japan and all over Asia on 15 August 1945. The Emperor did not actually use the word "surrender" in his radio speech; but he did state that Japan accepted the terms of the Potsdam Declaration.

Despite the immense problems of war-torn Asia, when General Douglas MacArthur, the Supreme Commander of Allied Powers (SCAP) in the Pacific, arrived in Japan to take command of the Occupation forces in September 1945 he personally informed Prime Minister Shidehara Kijuro, former Prime Minister Prince Konoe Fumimaro, and Foreign Minister Yoshida Shigeru—soon to be Prime Minister for most of the Occupation Era—of the necessity to re-write Japan's existing Meiji Constitu-

tion into one based less on imperial sovereignty and more on individual, democratic rights.[2]

By early 1946, MacArthur had been growing impatient with the lack of progress being made by the Japanese government's Committee to Study Constitutional Problems, led by the conservative, dour Matsumoto Joji, who did not believe that the Meiji Constitution needed to be revised. On 1 February 1946, the *Mainichi Shimbun* published the draft of a proposed constitution by the Matsumoto Committee. Most of this "new" constitution had been taken directly from the Meiji Constitution, with the Emperor remaining as the sovereign power and Japan remaining as an imperial monarchy. Japanese media condemnation of Matsumoto and his committee's conservative approach to constitutional reform was immediate and virtually universal. Matsumoto and his committee members, Koseki Shoichi writes, "failed to understand fully the implications of Japan's acceptance of the Potsdam Declaration, the meaning of defeat in war, and, especially, the significance of a policy of democratization." (p. 61)

MacArthur then decided that SCAP would make a draft of a new constitution for what he hoped would be a New Japan. Led by Colonel Charles Kades, Lt. Col. Milo Rowell, and Commander Alfred Husseyall lawyers with Government Section of SCAP two dozen Americans were secretly organized into a "constitutional convention." In writing this draft constitution for Japan, the Americans relied upon "Reform of the Japanese Government System" (SWNCC-228), a secret document writ-

ten in Washington; “Three Principals” composed by MacArthur; and “Draft Outline of the Constitution” written by a private group of Japanese lawyers led by Takano Iwasaburo and Suzuki Yasuzo who called themselves the Constitution Research Association.[3]

Completed in one week, the American-drafted constitution was handed to the Japanese Cabinet, who were told they had to accept the American draft as the model from which to base their own new constitution. The Japanese government was also told to claim this draft as their own. After sometimes heated debates between Japanese and American officials—especially over how certain terms in the American-drafted constitution were to be translated into Japanese, and over the role of the Emperor in postwar Japan—the Japanese government revised the American draft, debated the proposed constitution in a newly-elected Diet (Parliament), and then it was overwhelmingly accepted by the Diet. It was promulgated on 3 November 1946, and took effect six months later on 3 May 1947. The postwar Constitution of Japan, which includes the war-renouncing Article 9, is certainly the most influential legacy of the Occupation Era: it is still in effect, and it has never been revised.

Koseki Shoichi is a professor in the Faculty of Law at Dokkyo University. His book, *The Birth of Japan’s Postwar Constitution* is a relatively concise, yet thorough analytical narrative of how this constitution was created. Originally published in Japan in 1989 as *Shin Kenpo no Tanjo*, Koseki’s study has been skillfully translated into English by Professor Ray A. Moore of Amherst College, who is also an eminent scholar of Japan’s postwar constitution.[4]

Koseki has interwoven two basic themes throughout his study. First, he now believes there is as much continuity as discontinuity between the Meiji Constitution of 1889 and the postwar Constitution of Japan. Until the 1980s, most scholars of the Occupation Era (1945-1952) viewed the postwar Constitution as representative of an overall discontinuity between pre-WW2 and post-WW2 Japan. The entire post-WW2 era was seen by many scholars Japanese and Western as a completely new era of Japanese history, with very few lines of continuity connecting it to Japan’s imperial past. *The Political Reorientation of Japan*, a study and collection of documents first released by the Government Section of SCAP in 1949, had strongly emphasized the break and discontinuity between pre-WW2 and the postwar Japan. This SCAP documentary source influenced most scholars as it was virtually the only substantial collection of documents on the

Occupation available for two decades. With the publication of memoirs by many of those involved in creating the postwar constitution, and with the release of a substantial number of relevant documents in the 1970s and 1980s, Koseki is not the only scholar who is re-analyzing the continuity/discontinuity interpretive framework of the postwar Constitution of Japan.[5]

Secondly, Koseki believes there are as many lines of continuity as discontinuity because conservative Japanese officials were successful at “Japanizing” the American draft of the postwar constitution by revising it in ways that connected it to Japan’s imperial past and to the Meiji Constitution.[6] Contrary to popular belief, the postwar Constitution was not simply imposed upon a war-weakened Japan and rammed down the throats of conservative Japanese political leaders by an omnipotent General MacArthur. Koseki demonstrates that Japanese officials revised and translated the American-written draft in ways that made the finished product more palatable to their conservative, traditional view of the relationship between the Japanese government and the Japanese people.

Koseki also demonstrates that MacArthur and his staff at SCAP did not have carte blanche when it came to constitution-making. The Far Eastern Commission (FEC) in Washington, the United States government, and US allies in the Pacific pressured MacArthur at various stages along the way. For example, although Article 9 forbid Japan from making war, some allies just plain did not trust Japan and wanted an additional article to put the clamps on possible future militarization of Japan. Primarily at the insistence of Chinese representatives to the FEC Hsuan-Tsui Lin and V.K. Wellington Koo the statement, “The Prime Minister and other Ministers of State must be civilians” was added to Article 66. MacArthur and Japanese officials believed such a statement was unnecessary. In hindsight, however, it is clear that this addition to Article 66—along with the more well-known Article 9—has helped keep Japan’s military aspirations in check.

Much of the information and analyses in *The Birth of Japan’s Postwar Constitution* will be generally familiar to those who study modern Japan and Japan-US relations. Nevertheless, there are enough nuggets of new information and analyses to interest even grizzled veterans of Occupation Era scholarship from the preface to the concluding chapter. To me, the freshest and most interesting part of Koseki’s work is Chapter 10, “Blooming Brightly in May: Popularizers of the Constitution.” Here Koseki describes and analyzes how the Japanese government at all

levels strongly promoted interest in and education about the new Constitution through booklets (20 million one for each household), songs, essay contests, and films.

Koseki occasionally makes questionable speculations in this study. For example, he speculates that SCAP may have “arranged” the *Mainichi* newspaper’s scoop of 1 February 1946: the publication of a very conservative draft constitution by Matsumoto’s Committee to Study Constitutional Problems. (pp. 78) The Japanese media and the Japanese public were outraged that Matsumoto’s Committee the official Japanese government committee selected to draft a new constitution were apparently doing no more than making minor revisions to the conservative, imperial Meiji Constitution. This key event gave SCAP justification for making its own draft of a new constitution and then forcing the Japanese government to utilize the American-written draft as the basis for what eventually became the postwar Constitution of Japan. But there is no evidence that the *Mainichi* reporter (Nishiyama Ryuzo) received the scoop from anywhere other than the Matsumoto Committee secretariat. Nor is there any evidence that SCAP knew of the so-called Matsumoto Draft before it was published in the *Mainichi* newspaper on 1 February 1946. However fortuitous the *Mainichi* scoop was for SCAP, all evidence clearly demonstrates that the *Mainichi* newspaper pulled off this scoop on its own.

The final chapter, “Yoshida’s Counterattack,” is also rather questionable because it contains a disdainful, overwhelmingly pessimistic view of the legacy of the postwar Constitution of Japan. Koseki starts this final chapter with the startling assertion that Japan’s new constitution “was only a change on paper.” (p. 228) Prime Minister Yoshida’s failed attempt to have acts of libel or insults against the Emperor considered as crimes against the state leads Koseki to dubiously claim that “the Japanese people were similarly attached” to the Emperor. (p. 232) Even more dubiously, Koseki claims that “neither Yoshida nor the Liberal Party nor indeed most of the Japanese people were much changed by the new constitution.” (p. 239) All of these statements are hard to accept at face value. If he really believes that the postwar Constitution of Japan is “only a change on paper” with no independent value or meaning, why would he spend at least a decade of his life researching and writing about it? If it means so little, why has there always been tremendous public opposition whenever the conservative Liberal Democratic Party raises the possibility of changing the postwar Constitution of Japan?

In fact, the rights, freedoms, and protections guaranteed by the postwar Constitution of Japan are much more expansive than those in the previous Meiji Constitution. And although Japanese courts have sometimes handed down decisions which do not accord with the postwar Constitution of Japan, the overwhelming majority of Japanese people have obviously benefitted from the rights, freedoms and protections in the postwar constitution, but which are absent in the previous Meiji Constitution. Permit me to cite just one example of what Koseki seems to have forgotten in his claim that little has been changed by the postwar Constitution of Japan: Half of the adult Japanese population (women, that is) were not allowed to vote under the Meiji Constitution. This change alone is assuredly much more than “a change on paper.”

Despite the occasional, questionable speculations, and a final chapter which fails to acknowledge the many substantial benefits that the Japanese people have received as a result of the postwar Constitution of Japan, Koseki Shoichi’s *The Birth of Japan’s Postwar Constitution* is still well worth reading for scholars and students of modern Japanese history, Japan-US relations, and legal history. It is a well-researched, readable, analytical narrative of the people, ideas, controversies, and compromises that resulted in a new constitution for one of the great nations of the world.

Notes

[1]. The USSR signed on to the Potsdam Declaration after it had been initially released.

[2]. The Meiji Constitution was formally titled, *Dai Nihon Teikoku Kenpo* (Imperial Constitution of Great Japan) and was promulgated in 1889.

[3]. After it became known in the fall of 1945 that SCAP wanted a new constitution for Japan, several organizations and political parties drafted proposed constitutions. The one drafted by the Constitution Research Association was first published in the newspapers on 28 December 1945.

[4]. Ray Moore and Donald Robinson have recently compiled, edited, and translated an 8,000-page collection of documents related to the creation of the postwar Constitution of Japan on CD-ROM that is certain to become a standard reference work for any scholar studying the Occupation Era. See *The Constitution of Japan: A Documentary History of Its Framing and Adoption, 1945-1947*. Edited by Ray A. Moore and Donald L. Robinson (Prince-

ton University Press, 1998). Previously published, but still very useful documentary collections on the postwar Constitution of Japan are: Supreme Commander of Allied Powers, Government Section, *Political Reorientation of Japan* (Washington DC: Government Printing Office, 1949, 1960); and Takayanagi Kenzo, Ohtomo Ichiro, and Tanaka Hideo, *Nihon koku kenpo seitei no katei*, The Making of the Constitution of Japan (Tokyo: Yuhikaku, 1972).

[5]. For example, see Inoue Kyoko, *MacArthur's Japanese Constitution: A Linguistic and Cultural Study of Its Making* (Chicago: University of Chicago Press, 1991);

and chapters 12 and 13 in John Dower's new study of the Occupation Era, *Embracing Defeat: Japan In the Wake of World War II* (New York: W.W. Norton & Company, 1999).

[6]. See also Koseki Shoichi, "Japanizing the Constitution," *Japan Quarterly* (July-September 1988).

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Citation: John E. Van Sant. Review of Shoichi, Koseki, *The Birth of Japan's Postwar Constitution*. H-US-Japan, H-Net Reviews. November, 1999.

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