

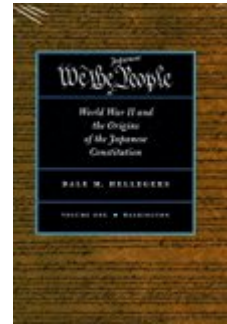
# H-Net Reviews

in the Humanities & Social Sciences

Dale M. Hellegers. *We the Japanese People: World War II and the Origins of the Japanese Constitution*. 2 vols. Stanford, Calif.: Stanford University Press, 2001. xvii + 826 pp. \$99.00 (cloth), ISBN 978-0-8047-3454-7.

Glenn D. Hook, Gavan McCormack. *Japan's Contested Constitution: Documents and Analysis*. London and New York: Routledge, 2001. 224 pp. \$57.95 (paper), ISBN 978-0-415-24100-7.

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The Japanese Constitution (JC) is, and remains, a most fascinating research topic, and a continuing focus of Japan scholars, peace historians, and international relations and legal experts. What makes the JC so intriguing (and contested) is its peculiar history as a product of the Second World War, especially the clause abolishing war as an institution—a most remarkable feature—and also its subsequent application and interpretation. Author Dale M. Hellegers in particular has with great accuracy and acumen delved into the intricacies of allied or rather U.S. planning for Japan and produced an admirable “case study in policy making” (p. x), using extensive, unpublished materials from university and military archives. Dealing broadly with the “legal aspect of unconditional surrender (‘a surrender of sovereignty’)” intended to bring about “drastic reforms” that were perceived as “essential to preventing a resurgence of aggression” (p. xi), Hellegers suggests that the United States was “reengineering” Japanese society from the bottom up. This assumption needs to be questioned.

Indeed, there is sufficient evidence of indigenous sources for the development of modern, democratic political institutions in Japan, prior to 1945. In the views of “those relatively few [!] who knew, by virtue of either age or scholarship, the history of Japanese-American relations,” like Henry Stimson, Joseph Grew, and Herbert Hoover, Japan had already before the war been “set on the road to democracy” (pp. 9, 167). Concerning the early origins of the modern constitutional state or constitutionalism, the Japanese, for instance, regard the Seventeen Articles promulgated by Shotoku Taishi (ca. 572-

621), the Prince Regent of the early Buddhist period in Japan, as a “Constitution.” It also had pacifist connotations.

Such a positive appraisal of modern Japan is diminished by the fact that there were strong Prussian, authoritarian elements in the Meiji Constitution that facilitated or even engendered the development of a militant autocracy. Consequently, Japan’s more enlightened traditions had been suspended by incidents of aggressive militarism in the twentieth century. On the other hand, there were noticeable pacifist and liberal trends during the Taisho era in Japan.

Why did Japan keep on fighting after the defeat of Germany? Hellegers’ two impressive volumes present evidence that while U.S. naval and military “authorities ... began to think [realistically] about how to lure the enemy into surrender” early in 1945, Japan was already “losing the war faster than the Allies were winning it” (p. 20). Yet the doctrine of unconditional surrender, first proclaimed by U.S. President Franklin D. Roosevelt and British Prime Minister Winston Churchill on 24 January 1943 at the Casablanca Conference, and later confirmed at Yalta, created obstacles because it was perceived by the Japanese “as a moral black hole” designed to “extinguish their very souls” (p. 10). Subsequently the realization on the American side, after the battle of Okinawa, that “the Japanese soldier invariably preferred death to surrender” (p. 28) led to considerations of opening the “Pandora’s box of chemical warfare,” and eventually the application of “an even more puissant and controversial weapon, the

atomic bomb" (p. 25). In any event, the view that conventional bombardment and blockade alone "might ... bring about unconditional surrender was implicitly discounted as wishful thinking" (p. 29).

Although the prospect of an eventual Soviet entry into the war could, according to the military and naval Joint Intelligence Staff (JIS), have made all Japanese "realize that absolute defeat is inevitable," this apparently played no part in Japan's unconditional surrender (p. 49). Nevertheless, the question of when the Russians (who had earlier concluded a neutrality pact with Japan) should be expected to declare war without endangering U.S. paramountcy in the area was crucial. Also, the Japanese must have realized—and wondered about—the ambivalence that while the United States "extended beneficence with one hand, bombs with another" (p. ix) to effect the unconditional surrender of Japan, the "European Allies [were] anxious to recapture their Asian colonies" (p. 19). Could this have been justification to keep on fighting?

In the first volume, set in Washington, Hellegers repeatedly refers to Japanese "peace feelers," confirming that peace groups "existed in Japan" that were prepared to topple the military "the moment it is clear to people that military disaster is leading to total destruction" (General Bonner F. Fellers to MacArthur on 28 March 1945, p. 64), but he falls short of providing exact details as to who they were and how they operated. Their chances of success were considered marginal. Hellegers does devote almost a full chapter to this question, including the famous "Zacharias Broadcasts" of U.S. Navy Captain Ellis M. Zacharias, who believed it was "possible to maneuver back into power Japanese leaders of the past, men whose views on advancing Japan's position in the world differed from those of the wartime leadership" (p. 73). In fact, by "monitoring Japanese broadcasts ... [he had] learned that some prominent Japanese political and naval leaders considered relatively friendly to the United States were active once again" (p. 72) to bring the war to an end.

Zacharias's plan, aiming at persuading Japan to seize a "suitable pretext for withdrawal" from its war efforts (p. 73), however, only began to "gather steam" with the demise of the Koiso government early in April 1945, when Admiral Suzuki Kantaro, a "one-time anti-militarist" (Hoover to President Truman, p. 96) became prime minister—evidence, as Zacharias believed, that "the peace party was in ascendance" (p. 75). As army analysts held a different view from that of the Office of Naval Intelligence, in the end the Joint Chiefs of Staff "hesitated

to gamble" on Japan's surrender (p. 79), rejecting assumptions that Japan might "end the war in exchange for assurances that there would be no occupation and that she would be allowed to retain Korea and the Kuriles" (p. 82)—and the Emperor.

Hellegers discusses the issue of the retention or possible trial of Emperor Hirohito at great length, and this was a major concern not only for the U.S. administration (and some allies) but also for the American public. There were many who felt that the Emperor should be tried as a war criminal and the Throne abolished. Others, like U.S. Undersecretary Grew, wanted to "use the Emperor of Japan as 'an instrument for ending the war' by transmitting a surrender appeal directly to His Majesty through diplomatic channels" (p. 89), because obviously—as another foreign service officer had earlier suggested—"soldiers were likely to lay down their arms if recommended to do so by their Emperor" (p. 86). Retaining the Emperor could also ensure the future stability of the Japanese state, as there was concern about Communist infiltration, a motive perhaps also for "the latest peace feelers from Tokyo center[ing] ... on the fate of the Emperor" (p. 119).

With officials like former President Herbert Hoover "disturbed by the prospect of Soviet hegemony in Asia," following the death of President Roosevelt, the Truman administration adopted a more aggressive policy, though it remained "unsure that invading Japan was the right course" (p. 105). Though an invasion had been scheduled for 1 November 1945, in mid-June Truman was still hesitant, writing "shall we invade Japan proper or shall we bomb and blockade? That is the hardest decision" (p. 110). Assistant Secretary of War John J. McCloy suggested a "political attempt to end the war," by avoiding the term "unconditional surrender," and allowing the Japanese "to choose their own form of government, including the retention of the Mikado ... on the basis of a constitutional monarchy" (p. 110). While the President and the Joint Chiefs of Staff were still discussing these issues in Manila on 18 June, the President's Interim Committee had already decided that atomic weapons would be used; but it was unsure about how or whether to tell the Japanese (p. 111). McCloy's advocacy of a "nonmilitary way" to achieve the surrender of Japan contrasted sharply with the views of the Joint Chiefs, who appeared "anxious to employ their own forces for the conclusion of the war" (McCloy, p. 111). Years later McCloy wrote he had thought "a warning of our coming nuclear attack" would have been more appropriate and could have brought about the "honorable surrender" of the Japanese

(p. 327 n. 56). Secretary of War Henry Stimson argued similarly that “giving a warning of what is to come and a definite opportunity to capitulate” would have been the right thing (p. 112).

At the Potsdam Conference, on 22 July, Truman and Churchill “formally resolved to use the atomic bomb against Japan if her government did not accept their demand for immediate unconditional surrender” (p. 129), as put forward in the ultimatum. Hellegers claims that “Truman and the rest of the American delegation brimmed with expectations that their warning ultimatum [containing no reference to the atomic bomb] would be rejected by Japan” (p. 129). Not only were the Japanese not warned, but also Stalin and Chiang Kai-shek were never informed of the new weapon; nor was the Potsdam ultimatum coordinated with the Soviets. Hellegers also points out the Potsdam Declaration was “never delivered to the Japanese government through diplomatic channels,” and suggests that it may have “been taken less seriously by Japan as a result” (p. 135). Following the negative response of the Japanese government, “Little Boy,” the first atomic bomb, was detonated over Hiroshima “with complete and conspicuous success” (p. 137); two days later, on 8 August, another bomb, “Fat Man,” destroyed Nagasaki; the Soviet Union declared war on Japan the same day. On 10 August Emperor Hirohito, on behalf of the Japanese people, accepted unconditional surrender “as defined [by the ultimatum], without invasion but not without great loss of civilian life” (p. 137).

At the Potsdam Conference it had been suggested that the Japanese people should be “free to choose their own form of government” (p. 118). Consequently the Potsdam Declaration stipulated that the Japanese Government should “remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people.... The occupying forces of the Allies shall be withdrawn from Japan as soon as ... there has been established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government.”

In volume 2 Hellegers discusses the practical operation and implementation of the term “unconditional surrender” by the occupation, following the laying down of arms. What was the ratio with regards to “the right to impose military government” in relation to the declared aim of allowing the Japanese government to continue to operate “with its powers intact” (p. 155)? The question was seemingly resolved in a statement issued by the State-War-Navy Coordinating Committee (SWNCC) to Gen-

eral Douglas MacArthur on 6 September, a few days after the surrender ceremonies aboard the USS *Missouri*. The document stipulated that “Control of Japan shall be exercised through the Japanese Government to the extent that such an arrangement produces satisfactory results,” while in other respects the “authority of the Emperor and the Japanese Government to rule the State” was to be “subordinate to you [MacArthur] as Supreme Commander of the Allied Powers” (p. 158). Details of these and the following issues are discussed at length in volume 2, the stage of which is set in Tokyo.

Concerning the provision in the Potsdam Declaration that the Japanese military forces were to be “completely disarmed,” and “irresponsible militarism” abolished, the post-war planners, however, did not consider “the permanent disarmament of Japan” (p. 182). Nor did the American planners ever seriously contemplate that Japan should not eventually maintain a regular military defense establishment (like Switzerland, perhaps). None of the draft papers even suggested revising the Meiji Constitution, to implement American reform objectives (p. 184), though it appears that some constitutional revision was discussed early on in the context of altering “the Emperor’s prerogative of supreme command,” and to “at least make certain that those exercising it in his name were responsible to the government” (p. 182). This, U.S. planners thought, could be “remedied by amendments to the Meiji Constitution” (pp. 239-40). Only when, on 27 November, SWNCC 228 was issued directing MacArthur to take further action, was it made explicit that “reforming the Japanese Constitution was his job” (p. 246).

In mid-October Konoe Fumimaro, a one-time prime minister, having received an Imperial mandate to the effect, was studying requirements for constitutional revision and, as Hellegers points out, improperly claiming that “MacArthur had handpicked him for the job” of constitutional reform (p. 455). Neither GHQ nor the newly appointed prime minister, Baron Shidehara Kij=r=, was ready and willing to accept or approve of these efforts. Shidehara insisted that this was “a matter of state and ... should be a Cabinet undertaking” (p. 463), although he seemed “not awfully interested” in the subject, believing there was no need to rewrite the Meiji Constitution. When Shidehara and MacArthur met for the first time on 11 October, constitutional revision was not on the general’s agenda, although he casually observed “liberalization of the Constitution” would “unquestionably” become an issue later on (p. 463). Taking the initiative, on 13 October the Shidehara Cabinet decided to instate a “Commission for the Investigation of Constitu-

tional Problems” under the chairmanship of Matsumoto Joji. The Minister without portfolio was a “fervent conservative” (p. 465), with “few professional qualifications for undertaking a study of the Constitution” (p. 466), and possessing only a limited mandate, the Committee was not “intended to draft its own reform proposal” (p. 468).

By 23 January the next year, notwithstanding its limited mandate, the Matsumoto Committee had completed a draft of its own—or two versions thereof, of which the more progressive one “omitted any reference to declarations of war,” and contained no constitutional provisions “relating to the military” (p. 474). The same day, however, Matsumoto decided that he would present the “minimal” draft to SCAP, not the one containing the “more reformative,” non-militaristic views (p. 481). The next day Shidehara, who had voiced his preference to “simply deleting those articles” in the Meiji Constitution that “pertained to the military” (p. 787 n. 2), conferred with MacArthur to discuss with him, among other things, the issue of the abolition of (the institution of) war, which had been high on the political agenda before the war. Unfortunately, Hellegers fails to make this connection. In any event, when the *Mainichi* newspaper prematurely published the Matsumoto draft on 1 February (pp. 515-516), both the occupation and the general public were alarmed and, rejecting the proposal, SCAP’s Government Section immediately set about writing its own draft constitution. Written under great pressure of time, by 8 February already the text was “virtually complete” (p. 486), and consequently the Matsumoto draft was “never ... adopted by the Cabinet” (p. 532) or even discussed. “Ironically,” also, the *Mainichi* had published “the wrong draft,” i.e. the more liberal version (p. 516), which some people suspected had been “deliberately leaked” by the Japanese government (p. 518) or some agency in the government, if not the prime minister himself.

Hellegers confirms the view of current American scholarship depicting Shidehara as a “reactionary” (pp. 494). “Shidehara’s main qualifications ... were that he was free of any taint of war responsibility; had extensive experience in foreign relations ... and had thus far [sic!] attracted no American animosity” (p. 445). Though mentioning his “well known ... record of opposition to the military” (p. 461), the author seems unaware of his role as “peace feeler,” with Yoshida Shigeru among others, to bring the war to an early end. On the contrary, “the Prime Minister and his cohorts had been tapped for their lack of prominent political exposure within recent memory” (p. 461).

It would have been fair to mention Shidehara’s daunting task of repatriating the hundreds of thousands of servicemen, who had to be accommodated in starving Japan, and his efforts to create a balance in his cabinet to serve both conservative Japanese and progressive anti-militarist concerns. None of these can be called “reactionary.” The author’s omission to report on the nearly three-hour conference between Shidehara and MacArthur on 24 January in particular, out of which came the secret notes that contained the essence of what was to become Article IX of the new post-war Constitution, is conspicuous. Though generally known in the literature as the “MacArthur Notes,” Hellegers refers to the principles enumerated therein as the “basic points” presented to a “top secret” GS constitutional convention on 4 February (p. 519), ignoring the well-established fact that they came out of the 24 January meeting between the general and Prime Minister Shidehara. Although in the appendix, or rather in the notes to the appendix, the author refers to the meeting between Shidehara and MacArthur “on the evening of 24 January to discuss the purge” (p. 787), it is not clear whether this is the same meeting in which the prime minister thanked the general for the penicillin he had previously received when he suffered from pneumonia (p. 560), and discussed the Emperor, abolition of war, and other issues. Of course this has been dealt with elsewhere and most competently by Professor McNelly.[1]

While delving into the intricacies of U.S. war-time and post-war planning for Japan is a useful exercise, to understand the renunciation of war in the Japanese Constitution requires some background knowledge of the Hague Peace Conferences, 1899 and 1907, in which Japan participated, and the development of constitutional law in general, during the inter-war period, relating to the abolition of war. Of course this was not part of Hellegers’s agenda, although a general reference might have been helpful. The author does, however, refer to “other draft reform plans” that were in the making in late 1945 and early 1946.

While the conservative Matsumoto Committee tried in vain to revise the Meiji Constitution, the most eminent, active group among Japanese who worked on a draft of their own was the Kenp= Kenky=kai, which stood in the liberal tradition of Ueki Emori (1857-1892), who had produced an enlightened, and by all standards modern, draft constitution for the new Japan in 1881, which had, however, been discarded in favor of the authoritarian Meiji Constitution. The “most detailed, liberal, and important” Kenp= Kenky=kai draft was the only one among several

Japanese drafts to be translated in its entirety, and then “passed on to MacArthur” (p. 502).[2] Hellegers states: “It would be nice to conclude that the Kenp= Kenky=kai reform proposal directly and substantially influenced the draft that emerged mid-February from Government Section” (p. 504). Why so? The author dismisses the possibility, but oddly he not only fails to mention Ueki Emori, on whose early draft the Kenp= Kenky=kai proposal was based, but his arguments that the “similarities between the Japanese [KK] draft and the American one resulted primarily from their authors’ consulting the same source materials,” and the (possible) fact that only a “handful of senior GS officers ... knew about it in detail,” are not convincing (p. 504). The assertion, tucked away somewhere in a footnote, that “neither Nelson nor Poole [two of GHQ’s drafters] recalled knowing” about “any ... Japanese draft” that contained an “explicit statement on popular sovereignty” (p. 562 n. 1), as did the Kenp= Kenky=kai proposal, is also not convincing, since the study group had “submitted an outline draft in Japanese and English” (p. 766 n. 93) to GHQ and the Shidehara Cabinet already on 27 December 1945 (p. 502), which surely must have included the item of popular sovereignty so vital to Ueki Emori’s original plan.

In any case, it would have been helpful if the readers had been told the details of the Japanese proposal the American drafters drew on. But then it might have become apparent that the Americans, none of whom was a constitutional expert, and who had very little time at their disposal, were probably just “emboldened” (p. 504) to copy as many of the Ueki provisions as were acceptable to them. As admitted by the author, they were the most striking “manifestation of progressive Japanese thinking” and had therefore “persuaded the upper levels of Government Section that there was a native constituency for more reforms far more radical ... than those timid alterations the Japanese government had in mind” (p. 505). Obviously, they would have checked the draft articles against similar provisions in the U.S., Weimar, and Soviet constitutions, which were almost all they had to go on. This does not diminish the sincerity and devotion of the American drafters to their task, but in the process of drafting, pragmatic considerations would have taken priority over those of origin and authorship. (Some details, e.g. that the Kenp= Kenky=kai draft “also provided for a plebiscite” [p. 567 n. 13], are hidden in the text’s footnotes to the appendix.)

The fact that an indigenous strand—that had been suppressed and only occasionally obtained preeminence, e.g. when Shidehara was foreign minister during the Taisho

era—achieved a breakthrough with the help of the American occupation after the Second World War, is highly significant—a significance that somehow escapes the author, however. Whether this is evidence that the United States actually “reengineered” Japanese society may be doubtful, especially since the Japanese government continued to function in its own capacity.

Concerning the origins of Article IX, it is only in the appendix that Hellegers alleges that “[l]ittle in Shidehara’s background or discussions with his Cabinet suggests that this idea originated with him” (p. 576), in spite of the fact that on several occasions both Shidehara and MacArthur made claims to the effect, and although the author mentions his having been “a judge at the Hague Court of International Arbitration (1918)” (p. 461), an institution that wanted to settle international disputes by making it obligatory to go to court instead of going to war. Hellegers also admits to Shidehara’s “belief that bearing arms was a sign of weakness, not of strength” (p. 787 n. 2), but this is not taken as evidence of progressiveness or support of the aims and purposes of the United Nations, for example.

Shidehara’s critical remark to MacArthur, however, when the two men talked about the abolition of war on 21 February, in response to the general’s suggestion that “Japan should assume moral leadership over the rest of the world by proclaiming its renunciation of war as a means of achieving national objectives” today takes on almost prophetic proportions. Shidehara was worried that kind of leadership might “find itself without followers” (p. 533). It seems odd also that the author assumes Shidehara, admittedly an anti-militarist, had been “weeping openly” on 5 March (p. 543)—not because his conspiracy with MacArthur to abolish war in the Constitution had finally been realized, but—because he lamented the loss of the military and/or the demise of the authoritarian Meiji constitution.

In spite of a certain one-sidedness, it is to be lauded that Hellegers has not only given a most detailed and authoritative description of U.S. war-time and post-war planning for Japan, but in the appendix also presents a thorough documentation of the process of drafting the Constitution by the Americans. It would have been interesting, also, to see the Japanese side, and document how the Japanese upper and lower houses dealt with the “MacArthur draft” later in the year, as this would have thrown some light on what Japanese politicians, including Shidehara, really thought, for instance regarding Article IX.

In the slim volume produced by Glenn D. Hook and Gavan McCormack, most of the above concerns are not included, nor did the authors intend to include them. Writing in a general way about the origin of the Constitution (pp. 4-5), the authors rightly assert that constitutions are “statements of the *raison d’être* of states and nations” (p. 4). “Written or unwritten,” the authors continue, “they define the balance of powers and duties between states, their parliaments, courts, governments, bureaucracies and armies, on the one hand, and their subjects, citizens, peoples or civil societies, on the other” (p. 4). These principles also apply to the JC.

The chief virtue of Glenn D. Hook and Gavan McCormack’s effort lies in having provided ground material with regards to the present-day discussions on constitutional revision. The two authors rightly suggest that successive interpretations or “supplementary legislation” of the Legislation Bureau (*naikaku h=seikyoku*) have eroded the original purpose and meaning of Article IX to some extent (though this was perhaps not intended). On the other hand, perpetual constitutional review also permitted “creative constitutionalists” (adherents of *s=ken*) to uphold the Constitution, while demanding the adoption of a “Security Law” to “supplement the constitution and clarify the legitimacy of the SDF” (p. 29). Besides those favoring a creative approach (*s=ken*, typically found among Social Democrats), there are those who support constitutional debate (*ronken*) and revision (*kaiken*) (p. 4). Unfortunately neither the two British authors nor Dale M. Hellegers discuss the legal concepts of “remedies” (*ky=saisaku*) and “self-help” (*jiriki ky=sai*) in relation to Article IX.

As Hook and McCormack appear to argue in favour of constitutional revision, their analysis seems one-sided on occasions, e.g. when they claim the “constitution’s three central features—the “symbolic emperor” system, popular sovereignty, and state pacifism—were non-negotiable demands imposed by the war’s victors” (p. 3). What is meant by “imposition” depends, of course, on whether one believes the Japanese (some of the more enlightened ones) were “playing” the Americans or whether they actually depended on the American intervention for their survival and success.

The new Constitution having come out of “a week’s intensive brainstorming by a specially appointed panel under the direction of General MacArthur,” the “responsibility for passing the Constitution Bill into legislation was assumed by Prime Minister Shidehara in the unreformed (militarist) Diet” (p. 5). The authors maintain that

the “decision to foreclose the question of war responsibility” by not prosecuting the Emperor created “a system of obfuscated responsibility ... blocking ... democracy ... as much as it promoted” it. In this light the “insistence on the retention and centrality of the Emperor was the core of the *oshitsuke* or American imposition of the Constitution” (p. 7).

Almost enthusiastically the authors therefore hail the “opening of deliberations in the Constitutional Research Councils” of the upper and lower house of the Diet in 2000, to review “post-war Japanese history, identity and place in the world” (p. 3), and they seem eager for Japan to “make a military contribution” and participate in wars, e.g. the Gulf War, which had “made the search for a new way forward ... imperative,” to support “the emerging new world order” (p. 4). In this context, Japan began to articulate its desire to “assume responsibilities in the UNSC,” however, only on condition that this would not involve “the use of force prohibited by the Constitution” (Prime Minister Obuchi at the UN on 2 April 2000, p. 34).

In any event, the Constitution’s “famous clause, Article 9 ... provides the basis for state pacifism,” and it is this provision, the “focus” in the Constitutional Research Councils, which has “long been the subject of greatest controversy, public debate and legal challenge.” Other constitutions also have adopted the renunciation of war from the French constitution of 1791; the Kellogg-Briand Pact in 1928 “outlawed ‘aggressive’ war,” and in Costa Rica’s constitution’s Article 12 a “real parallel can be found” (p. 8) to Japan’s war-abolishing clause. But otherwise there is no indication that authors Hook and McCormack have considered that—since the concept of collective self-defense by military alliances has “become meaningless”—“the concept of collective security conceived at the formation of the United Nations” should be revived, as the Sekai proposal purports (p. 101). The authors have no perception that Japan, by having “voluntarily relinquished part of its military sovereignty” (p. 107), is actually aiming at collective security. When the UN System of Collective Security was never put into effect, didn’t Japan have the right to self-defense? Unfortunately the authors don’t discuss the legal concept of self-help in this context. These are not terms with which the authors of the books under review are familiar.

The authors claim that “scarcely had the ink on the document dried and the constitution come into force than its contents were regretted.” In fact, “successive U.S. administrations applied pressure on Japan to circumvent, if not subvert, the constitution,” and in 1950 Japan was

“called upon to mobilize a 300,000-man army to support the U.S. [UN] effort in Korea” (p. 13). Out of this “national police reserve” the (unconstitutional) Self-Defense Forces (jieitai, SDF) eventually came into being in 1954. But are they really unconstitutional? Although “its forces came to constitute primarily a national disaster relief force,” the jieitai “were of a size and technological sophistication to compare to the defence force of the United Kingdom”; however, they have no nuclear weapons, aircraft carriers, long-range missiles, and other offensive weaponry (p. 14).

Anyway, though Article IX (not the UN?) was (mistakenly) understood to be “an alternative to reliance on the U.S.-Japan Security Treaty” (Ampo), it at least prevented “policy-makers [from] us[ing] the military as a legitimate instrument of state policy” (p. 21). Regrettably in this connection, the authors don’t mention Article X of the Ampo Treaty. Relevant in relation to Article IX of the JC, Article X was discussed in the beginning of the 1990s, in the hope that the United Nations Security System would be put into effect. The article stipulates that the U.S.-Japan treaty becomes obsolete once the UN system starts to operate. While these issues were debated in Japan, this discussion, so vital to understanding Article IX, escaped authors Hook and McCormack, although polls showed “substantial support for ... dependence on the UN rather than the security treaty with the U.S.” (p. 21).

Nevertheless, “the ceiling on military spending” (not to exceed 1% of GNP), the “ban on weapons export,” and the fact that “Japanese youth are also spared from conscription for armed service” are all regarded as “positive fruits of Article 9.” This includes SDF involved in UN Peacekeeping Operations (PKO) after the end of the Gulf War, though they have been able to do so only “with strict limitations being placed on their use of firearms.” Another positive provision that has been “taken seriously by many” Japanese is the “constitutional enjoiner to maintain popular freedoms and rights” “by the constant endeavor of the people” (Article 12)—notwithstanding a certain “weakness of the constitution at the official or bureaucratic level in protecting human rights” (p. 22).

The discrepancy between “wanting to retain Article 9 while at the same time accepting the constitutionality of the SDF” (p. 28) could only be resolved by informing that in the absence of a functioning UN security system the country has the right, if not the responsibility, to resort to self-help. In this light, when Article IX should have been regarded as a strong point in favor of a UN

system of collective security, as discussed in Japan, the authors’ conclusion that “for both conservatives and socialists, the end of the international and domestic cold wars destroyed the meaning of Article 9,” and “the function of Article 9 as a rallying point for political and social forces seeking to give meaning to the identity of Japan as a peace state through the implementation of a policy of unarmed neutrality collapsed,” seems devious. The “puzzling” ways the authors describe become less so, and the picture changes dramatically, if the Japanese government is not seen as bent on “revision by interpretation” (p. 31) to undermine Article IX, but as a responsible agency applying remedies to uphold it against many odds, including foreign pressure. It would have been interesting if any of the authors had discussed these positions. (Professor Theodore McNelly, the great authority on the Japanese Constitution and Article IX, was perhaps the first who outside Japan in 1981 mentioned Article IX in the context of collective security and the universal abolition of war.)

Under these circumstances, it is doubtful whether there really is such a great “gap between government and people on the issue of the constitution” (p. 15). While there are politicians who profess a distinct hawkish, even militarist view (claiming this to be “normal”), the government and the Legislation Bureau adopted remedies meant to preserve and protect Article IX. While the government may have failed to make this explicit, most politicians who want to revise the clause want to keep the pacifist principle intact. True, the “gap between the pacifist principle of the constitution and the reality ... grew and widened,” but it must be asked if this was not because the other industrialized nations, even after the fall of the Berlin wall did not “take ... appropriate measures to strengthen universal peace” (UN Charter, Art. 1, II). Ambiguity obviously is not a trait reserved to Japanese politicians alone.

Looking at the present Constitution from a historical, a legal, and a circumstantial point of view, the authors of the reviewed titles may be said to have neglected some basic historical and legal tenets, and dealt mainly with circumstantial evidence.

It is nonetheless extremely useful to study the “four different proposals,” of which two—that by Ozawa Ichirō and that by the *Yomiuri Shimbun*—are in favor of revision, and two—by the *Asahi Shimbun* and *Sekai*—are opposing it, though they also call for “legislation to clarify and supplement the constitution” (p. 36). The full texts with commentaries are included in the book. The four pro-

posals are, in the authors' words, "notable as much for the values they share—idealism, pacifism, internationalism, democracy and openness—as for what divides them" (p. 40).

The proposal by the *Yomiuri Shimbun*, "the largest newspaper in the world" with a circulation of about 11 million, "has played a leading role" (p. 36). In its detailed article-by-article revision of the Constitution, including Article IX, the *Yomiuri* in 1994 proclaimed that its aim was not merely to "maintain the principles of the existing constitution (such as pacifism) as to reinforce them [sic!]" (pp. 36-7), even to "curb firmly any effort to turn Japan into a major military power" (p. 86). In response to the question of "[h]ow to participate in international activities," the *Yomiuri* agrees that the "only one well-established international organization to which we can provide a part of our organization for self-defense" was the United Nations, though it does not rule out participation in "regional organizations ... in Asia" (p. 91). Authors Hook and McCormack note that the image of "Japan as a great power," with a permanent UN Security Council representation, is "a powerful attraction for nationalists," and this is blended with "a very internationalist, peace-oriented stance, drawing deeply upon the post-war commitment to Article 9." From 1995 on, however, following the ruling of the German Constitutional Court that "collective self-defense" also represented "Collective Security," the *Yomiuri's* proposals became more "defense-oriented, less idealistic," and even, in the authors' perception, "scarcely at all pacifistic in tone" (p. 37).

The monthly journal *Sekai* has been "long seen as the flag-bearer of the pacifist movement." Accepting the Constitution as "a basis for a defensive force," the *Sekai* proposal put forward in 1993 and 1994 was nonetheless "not endorsing the existing SDF" (p. 37). Instead it proposed the creation of a "Ministry for Peace and Disarmament" (p. 38). *Sekai's* position was not as strict as that of the "constitutional defense party" (gokenron), demanding "the immediate abolition" of the SDF as "unconstitutional"; instead it supported "creative constitutionalism" (s=kenron) (p. 93). In its "Outline" the proposal stresses the importance of "regional collective security" to ensure the "peace and security in the Asia-Pacific region." Thus, "along with positive participation in the various United Nations activities, every effort shall be made toward what can be termed common security on a global scale in the form of a UN-centered collective security apparatus." Since the "increasing wealth gap between North and South" constituted a "major source of conflict," the proposal also called for "every effort to rectify" this

situation in order to realize the "common security based on the United Nations Charter" (p. 96). Considering that with the end of the Cold War, the "age of world wars" that had "spanned the entire twentieth century ... has now passed" (pp. 99, 102), "we look to the demilitarization of the post-Cold War U.S.-Japan Security Treaty and its development and merger into a regional collective security system" (p. 97)—in fact just as envisaged in Article X of the Ampo Treaty. Time tested principles like the "prohibition on collective defense, the three non-nuclear principles," and "the ban on export of weapons," including the "ban on the overseas dispatch of Japanese troops," should continue to be upheld, and a "Minimum Defensive Force" (p. 111), "which is virtually a police force or coast-guard" (p. 112), replace the SDF. The "recent tendency to deal with regional conflicts by simply sending in armed forces" (p. 116) was counterproductive; instead armies should "vanish from individual countries," and "an international police force" be formed. The Japanese Constitution was "part of a search for a world without war," and the "end of the age of wars" had significantly increased chances "to realize the ideal" of the JC (p. 127).

The *Asahi Shimbun*, with a circulation of about 8 million, published a "detailed plan" on "Constitution Day" (3 May) 1995, suggesting that the Constitution be supplemented by what it called an "International Cooperation Law", and claiming for Japan the status of a "conscientious objector" nation. "In its essentials," the authors write, "this was very close to *Sekai*, and in spirit it also shares much with the *Yomiuri* proposals" (p. 38). The "6 Proposals" by the *Asahi Shimbun* put forward an "idealistic" view. Among others Japan should "take the initiative for reforming the UN," and "scale down the SDF into a force exclusively for defending the country" (p. 129), because "organized in Cold War years" they are now "too large" (p. 130). "Article 9 of the Constitution does not need to be revised" (p. 129). Like *Sekai*, the *Asahi Shimbun* also thought Article IX had "taken on added significance with the end of the Cold War," and "now" was "precisely the time" for the war-abolishing provision "to recover its brilliance" (p. 141).

Ozawa Ichirō, a former Secretary-General of the Liberal Party (LDP), in his proposal also conveyed "a forward and future-oriented interpretation of the constitution." "[B]orrowing wholesale from traditionally internationalist idealism," he suggested that Article IX "forbade only overseas military operations without UN sanction," but not their operation "on UN missions and under UN command ... participation in a UN standing army should present no constitutional difficulty." In his 1999 "Pro-



posal for Reforming the Japanese Constitution,” Ozawa assumed a more “constitutional revisionist” stance (p. 39), although he still maintained the centrality of the United Nations, suggesting that “Japan should take the lead in proposing a plan for a UN standing army,” because it was “no longer possible to defend national peace solely through individual and collective self defense.” “The only way to maintain order is through the concept of collective security, in other words, policing power on a global scale.” This was an idea Japan should “actively advocate ... to all countries that have the necessary economic and military power” (p. 167).

As an additional and useful reference, authors Hook and McCormack have given the texts of the Meiji Constitution, and the present “Peace Constitution” as well,

in the last part of the book. All in all, the works reviewed are useful resources for studying contemporary Japanese history, U.S.-Japan relations, and constitutional law, among others.

#### Notes

[1]. Theodore McNelly, *The Origins of Japan's Democratic Constitution* (Lanham and New York: University Press of America, 2000).

[2]. See Makiyo Hori, “The Constitution of Japan: A Logical Extension of the Ueki Draft Constitution (1881) and the American Constitution's Bill of Rights,” in *The United States Constitution: Its Birth, Growth, and Influence in Asia*, Barton Starr ed. (Hong Kong: Hong Kong University Press, 1988), p. 236.

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