

MacArthur's Japanese Constitution

By *Kyoko Inoue*
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When the Americans began their occupation of Japan in 1945, they were determined to mold the country in their own image—not a replica of America as it was but a manifestation of the image that they had of America. In addition, the wartime experience meant that they wanted a demilitarized Japan. The result was a massive program of economic, social, and political reform.

Many of these reforms were accomplished by legal edicts (the *zaibatsu* purge and agrarian land reforms come to mind), but laws are easily amended and did not reach deeply enough into the Japanese sociopolitical structure. Thus it was that the Office of the Supreme Commander for the Allied Powers (SCAP, which ran the Occupation) decided to push for far-reaching constitutional reform. This need was especially important given the American decision to leave the emperor on his throne rather than put him in the defendant's box at the Tokyo Tribunal.

On the other side, the leading Japanese did not believe that the Meiji Constitution had to be scrapped. Instead they saw it as a weak Constitution that had been subverted and needed only minor shoring-up.

How this difference was resolved is the tale of Inoue's book—not the outcome, which we all know, but the process of reconciling the two sides and devising terminology that would be acceptable to both (and it had to be at least minimally acceptable to the Japanese side because SCAP had decided that promulgation by the emperor and passage by the Diet was essential to giving the new Constitution greater legitimacy and establishing democratic precedents).

Part of the difference was mooted, of course, by the fact that the remaining Japanese power structure was not in a

position to argue too strongly with SCAP. Yet much of the rest was resolved by translation finesse, and it is this that interests linguist Inoue.

Advice and consent

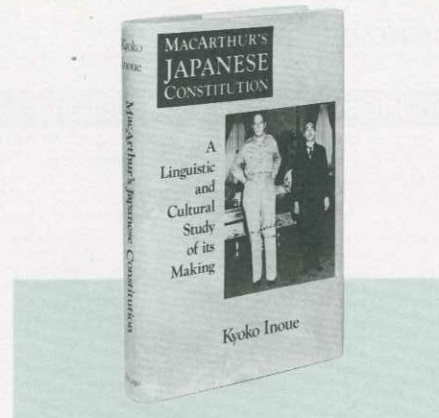
When SCAP drew up their initial draft in February 1946, they included, *inter alia*, (i) the emperor as deriving his position solely from the sovereign will of the people, (ii) individual dignity as the basis of marriage and the family, and (iii) freedom of religion and separation of church and state—all of which had other ramifications and all of which created problems for the traditionalists within the Japanese government. The disagreements over the emperor were perhaps central, and their disposition most revealing. For space reasons, let me simply cite Inoue's discussion of the "advice and consent" clause in Article 3.

For the Americans, it was clearly important that the emperor's powers be checked. For the Japanese, it was clear that, despite all that had been done in his name, the emperor had no serious powers to check. The Japanese, knowing that the emperor was bound to accept the Cabinet's advice and remembering that all laws, imperial ordinances, and imperial rescripts had to be countersigned by a minister of state, saw no need to change the Meiji Constitution's *hohitsu* (literally "assist" the head of state to carry out his duties).

The Americans wanted to make this "advice and consent" the same way that the advice and consent of the Senate is required, for example, in treaty ratification under the U.S. Constitution. As such, they wanted to institutionalize the idea that the emperor could not take independent initiatives.

In substance, this was no problem—except that SCAP wanted to go one step further and make the Cabinet clearly superior to the emperor (despite the fact that the Senate is not clearly superior to the president in modern practice) and the Japanese wanted to retain the emperor's symbolic position as head of state.

After several false starts, among them *hosa to doi* (literally assistance and agreement, with assistance being in the role of an assistant and agreement being



very status-neutral) and *hohitsu-sando* (with *sando* again simple agreement), the two sides finally settled on *jogen to shonin* (advice and approval, with the advice still being in the assisting sense but approval the same term as the Japanese side had rejected at one point as perhaps not deferential enough).

The nuances of status were very important, and Inoue recaptures both the two sides' concerns and the flow of the interpellations in the Diet—questions that the government representatives had great difficulty answering because they shared the questioners' misgivings and could not simply plead "SCAP's orders." It is a revealing look.

Better misunderstanding

Much of my own work is premised on the assumption that people who understand each other better will get along better—and especially that better understanding can reduce contentious international relations to manageable proportions. Yet Inoue's perceptive book provides a vivid illustration of how and why exactly the opposite was true for Japan-U.S. relations during that crucial period in which Japan's postwar Constitution was being drafted and adopted.

Associate professor of linguistics at the University of Illinois at Chicago, Inoue says she came to this project by accident when she noticed meaning discrepancies in some of the conditional sentences in the Japanese and English texts of the Constitution. In pursuing these differences, she eventually concluded that the two texts differed because of conscious and unconscious decisions made by their authors based on the two countries' sociopolitical heritages.

Inoue's *MacArthur's Japanese Constitution* is a little technical and may be difficult going in places, but it is well worth the reader's effort.

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