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Early Meiji Private Draft Constitutions by the Ōmeisha and the Kyōzon Dōshū

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The Meiji constitution was not the only constitution written in Meiji Japan. Many other constitutions were drafted, both in and out of the government, before the Meiji constitution was promulgated in 1889. Looking at these private drafts and the groups that produced them can tell us a great deal about political and intellectual developments in this period, and give us a more complete picture of early Meiji Japan. It can also lead to conclusions challenging some of the common stereotyped assumptions about this period.

I am aware of 31 private draft constitutions. Over half of them were written between November 1880, when the Kokkai Kisei Dōmei (League for the Establishment of a Parliament) called for groups to prepare draft constitutions for consideration at its next convention, and the “political change” of October 1881, when an imperial decree promised the establishment of a parliament.¹⁾

Before looking at two of these drafts and the groups that produced them, some background is necessary. We need to see, first, what sort of groups were motivated to produce private draft constitutions, and second, how constitutional thought developed to the point where such drafts were possible. I will then say a word about the Ōmeisha and the Kyōzon Dōshū before looking at their drafts. Finally, I will offer some conclusions.

1) The best collection of draft constitutions is Ienaga Saburō, Matsunaga Shōzō, and Emura Eiichi, eds., *Meiji zenki no kenpō kōsō* (Tokyo: Fukumura Shuppan, 1967). Two other drafts are found in Irokawa Daikichi, Ei Hideo, and Arai Katsuhiro, *Minshū kenpō no sōzō* (Tokyo: Hyōronsha, 1983).

Nearly all of the private draft constitutions were produced by three types of groups: “enlightenment societies” (the term used by Eugene Saviak),²⁾ mainstream *jiyū minken undō* (liberty and popular rights movement) groups, and genuinely local groups.

By far the most famous of the “enlightenment societies” was the Meirokusha, though it never produced a draft constitution. Other “enlightenment societies,” modeled to varying degrees on the Meirokusha, which did produce drafts include the two groups under consideration here, the Ōmeisha and the Kyōzon Dōshū. These groups played important roles as transmitters of Western ideas and advocates of political and social change. Two important characteristics of these groups are often overlooked. First, they can not be called “opposition” groups, totally separate from and invariably opposed to the government. In fact, a third of the members of the Ōmeisha and the Kyōzon Dōshū were concurrently government officials.³⁾ Second, while these groups often shared common goals and ideas with groups in the *jiyū minken undō*, they were not completely a part of this movement until after the “political change” of 1881, when most of the enlightenment groups merged with the movement by joining the newly formed political parties.

The second type of group that produced private drafts were the mainstream *jiyū minken undō* groups. By far the most prominent of these was the Risshisha of Tosa, led by Itagaki Taisuke. Though this group was locally based, it played a major role on the national stage, beginning with its 1874 and 1877 memorials calling for a parliament.

Perhaps the best example of the third type of group that produced

2) Eugene Saviak, “The Case of Baba Tatsui: Western Enlightenment, Social Change, and the Early Meiji Intellectual,” *Monumenta Nipponica* 18 Numbers 1-4 (1963), p. 199.

3) Irokawa, et al., p. 360; Saviak, p. 199.

private drafts, the genuinely local groups, is the Gakugei Kōdankai (Arts Lecture Society) of Itsukaichi.⁴⁾ While these local groups had a surprising amount of contact with national or Tokyo-based groups, they were not formally a part of them. These local groups show that forward-looking men on the local level had the interest and ability to produce constitutions.

These three types of groups came together in the Kokkai Kisei Dōmei, or League for the Establishment of a Parliament. Its five national conventions between 1879 and 1881 brought together representatives from groups all over Japan. As noted earlier, the Kokkai Kisei Dōmei provided an important impetus for the private draft constitution movement with its November 1880 resolution calling for drafts to be considered and its October 1881 meeting. That 1881 convention, however, took place in the midst of the great “political change” of 1881, and never considered the draft constitutions. It was at this time that the scandal over the sale of Hokkaidō government properties occurred, Ōkuma Shigenobu was forced out of the government and followed by many of his supporters, and an imperial decree promised the establishment of a parliament in 1890. The Kokkai Kisei Dōmei turned its attention to the formation of a political party, the Jiyūtō. Few draft constitutions were written after this time; the parties were busy trying to influence the government and preparing to participate in the new system that would be created by the Meiji constitution. Nevertheless, with the promise of a constitution, those who had written private drafts could feel that their goals would be at least partly achieved.

4) On the Gakugei Kōdankai, see Irokawa, et al. In English, see Richard Devine, “The Itsukaichi Draft Constitution of 1881: A Commentary and Translation,” *Sophia International Review* 3 (June 1980), pp. 8–20. The English translation of Gakugei Kōdankai, “Arts Lecture Society,” is Professor Devine’s.

It is important to remember that the government played a key role in the development of constitutional thought to the point where private draft constitutions were possible. Most of the early interest in constitutions, going back even before the *Bakumatsu* period, was in the government. After the 1874 Tosa Memorial calling for a parliament, the debate became more public. However, this was not a debate over whether to have a constitution, but over how soon, and what type was best. Though non-government groups became more and more active, the government also continued its activity. In 1876 a Genrōin committee headed by Prince Arisugawa was ordered to prepare a constitution. Its 1878 and 1880 drafts, though not officially made public, were known to many of those who wrote private drafts. The Genrōin’s published translations of both western constitutions and western works on government were also quite helpful to the private draft movement.

Let us now, with this background in place, turn to two of the groups that produced private draft constitutions. First, the Ōmeisha. The Ōmeisha, as we saw earlier, was, along with the Kyōzon Dōshū, an “enlightenment society” partly modeled on the Meirokusha. The Ōmeisha was founded in 1873 by Numa Morikazu, who originally intended it to be a forum for lectures on law. Numa’s varied career is representative of those of many of his colleagues in the Ōmeisha and similar groups. He studied English and Chinese, fought for the *bakufu* at Aizu, studied law in England, worked for the Genrōin (leaving the government when Ōkuma was ousted in 1881), served as vice chairman of the Tokyo *fu* legislature, and edited the *Tokyo Yokohama mainichi shinbun*.

Numa was joined in the Ōmeisha by men such as Baba Tatsui and Kaneko Kentarō, and Prince Arisugawa often attended the group’s meetings. In addition to sponsoring meetings and lectures, the Ōmeisha published a magazine. In 1881 the Ōmeisha had 29 branches,

and was especially active in the Kantō area.⁵⁾ It was officially dissolved on police orders in 1882, but actually continued to exist as one of the main factions in the Kaishintō.

The Ōmeisha's untitled draft constitution was probably written in 1879 by a committee meeting two or three times a week, and probably at least half of the drafters were concurrently government officials.⁶⁾ This was the first important private draft constitution, and one of the most influential. This influence was partly due to timing. It was written before the 1880 Kōkkai Kisei Dōmei convention called for drafts, so it was available as a model. The Ōmeisha's influenced at least eight other private drafts, including those by the Kyōzon Dōshū, the Itsukaichi Gakugei Kōdankai, and the Risshisha. The Ōmeisha draft was not published, perhaps due to the May 1879 regulations restricting political activities of government officials. Nevertheless, it was widely circulated, and government restrictions clearly did not prevent interested people from seeing it.

The Kyōzon Dōshū was an "enlightenment society" founded in 1874 by Ono Azusa and others who had returned from studies in England, and its membership overlapped greatly with that of the Ōmeisha. Ono spent four years studying overseas, sponsored by the Finance Ministry. He then worked for the Ministry of Justice until

5) On branches of the Ōmeisha, see Neil LeRoy Waters, "A Political History of the Kawasaki Region: 1860-1890" (Ph. D. dissertation, University of Hawaii, 1978), p. 164; Waters, *Japan's Local Pragmatists: The Transition from Bakumatsu to Meiji in the Kawasaki Region* (Cambridge, Massachusetts: Harvard University Press, 1983), p. 96; and Emura Eiichi, "Jiyū minken undō to sono shisō," Iwanami Kōza, *Nihon rekishi* 15 (*Kindai* 2), (1976), p. 25.

6) Yoshino Sakuzō, "Kenpō happu izen ni okeru kenpō shosōan," *Kokka gakkai zasshi* 42 Number 10 (October 1927), p. 301; Yoshino, ed., *Meiji bunka zenshū* 3 (Tokyo: Nihon Hyōronsha, 1929), p. 6; Fujii Jintarō, *Nihon kenpō seitei shi* (Tokyo: Yūsankaku, 1929), p. 228.

1881, and was closely associated with Ōkuma. Even as a government official, he often wrote articles critical of the government.

Another important member of the Kyōzon Dōshū was Baba Tatsui, who was also a member of the Ōmeisha. Baba was a student of Fukuzawa Yukichi, and like Fukuzawa, he never served in the government. Baba was an interesting character who was deported from England for dueling with another student. He was arrested in Japan in 1885 when he purchased dynamite and was suspected of plotting violence against the government. He was allowed to go the United States, and is buried in Philadelphia, where he died in 1888.

The Kyōzon Dōshū sponsored speeches twice a month, built a large meeting hall, and published a magazine. Its activities were somewhat hampered by the 1879 ban on public speeches by government officials, and the April 1880 restrictions on public meetings. The group was officially dissolved in May 1880, but a group with the same name and same speakers—now calling itself an "academic" rather than "political" group—continued to exist. The group was really dissolved only when Ono and his followers joined the Kaishintō and Baba and his followers joined the Jiyūtō.

The Kyōzon Dōshū's draft constitution, probably written in the spring of 1881, is entitled "Shigi kenpō iken." It is nearly identical to that of the Ōmeisha, probably because of the two groups' overlapping memberships. "Shigi kenpō iken" was published in June 1881, but had far less influence than the Ōmeisha draft. This is probably due to its later date, and to the Kyōzon Dōshū's lack of strong connections with local groups. Clearly, then, whether or not a draft was published is not necessarily an indication of the amount of influence it had.

The Ōmeisha and Kyōzon Dōshū draft constitutions show signs of having been influenced by many western constitutions and govern-

mental systems, including those of Britain, Prussia, Italy, the Netherlands, the United States, Spain, Portugal, and France, and by the draft completed by the Genrōin in 1878.⁷⁾ A valuable resource for the drafters was a book entitled *Ōshū kakkoku kenpō* (*Constitutions of Various European Nations*), published by the Genrōin in 1877, which included translations of the Spanish, Portuguese, Dutch, Danish, Italian, and Austrian constitutions.

Both the Ōmeisha and Kyōzon Dōshū drafts begin with chapters on “The Emperor,” though there are some slight differences between the two. They then have identical chapters on “The Diet,” “Amendment of the National Constitution,” “Rights of Subjects,” and “Administrative Officials.” The Kyōzon Dōshū’s “Shigi kenpō iken” ends at this point, while the Ōmeisha draft has a final chapter on “Judicial Authority.”

Both drafts begin their chapters on “The Emperor” with sections on imperial succession and regents, topics the government left out of the Meiji constitution and dealt with instead in the Imperial House Law. The Ōmeisha draft passes the throne to a woman only if there are no males “among the imperial relatives,” while “Shigi kenpō iken” passes it to the emperor’s daughter if he has no sons. There are European precedents for both of these systems.⁸⁾ The Ōmeisha sets the emperor’s age of majority at 15, which was the usual age

7) The Ōmeisha draft is published in Irokawa, et al., pp. 373-381; and the Kyōzon Dōshū’s “Shigi kenpō iken” is in Ienaga, et al., eds., pp. 89-94. For evidence of the influence of other constitutions and governmental systems on these two drafts, see Asai Kiyoshi, *Meiji rikken shisō ni okeru Eikoku gikai seidō no eikyō* (Tokyo: Iwamatsu Shoten, 1935), pp. 359, 361; Sandra T. W. Davis, *Intellectual Change and Political Development in Early Modern Japan: Ono Azusa, A Case Study* (Cranbury, New Jersey: Associated University Presses, 1980), p. 69; Inada Masatsugu, *Meiji kenpō seiritsu shi* (Tokyo: Yūhikaku, 1960), I: 82, 83, 367, 370, 371; and Irokawa, et al., p. 352.

8) Inada I: 83.

for the *genpuku* coming of age ceremony, and also the age at which the Meiji emperor ascended the throne. “Shigi kenpōiken” and most other drafts set it at 18.

Both drafts state that “the emperor is sacred and can not be held responsible,” an article resembling Article 3 of the Meiji constitution: “The emperor is sacred and inviolable.” Perhaps all three were inspired by Article 43 of the Prussian constitution: “The person of the king shall be inviolable.”⁹⁾ According to both drafts, the emperor can declare war and make peace, but must notify the Diet when he does so. He can also make treaties, but in some cases must get Diet consent to this.

The section on “The Diet,” identical in both drafts, provides for a bicameral legislature. The emperor is given an absolute veto, and the British “king in parliament” theory is adopted in the article which states: “The Diet shall be made up of three parts: the emperor and the upper and lower houses.” The lower house is made up of members elected for three year terms by males over 25 years of age who possess “a predetermined amount of property.” The lower house originates bills concerning finances, and can send government officials to the upper house for impeachment. The upper house is composed of 50 members appointed to ten year terms by the emperor.

These drafts, like the United States constitution, provide for amendment by a special convention. However, a convention can not be called by the Diet without the approval of the emperor. Nevertheless, this system would make the constitution easier to amend than the Meiji constitution, under which amendments had to be initiated by the emperor and then voted on by the Diet.

9) James Harvey Robinson, “Constitution of the Kingdom of Prussia,” Supplement Number 8 to the *Annals of the American Academy of Political and Social Science*, September 1894, p. 35.

The two drafts grant subjects “freedom of association, assembly, speech, and publication,” but “they must exercise these according to the law.” This type of qualification, similar to that in the Meiji constitution, is in fact found in most of the private drafts.

The section on “Administrative Officials” describes a very British-style system. The prime minister heads a cabinet composed of the heads of the ministries, and these cabinet ministers are “responsible to the Diet.” They are appointed and dismissed by the prime minister, who merely has to inform the emperor of these actions, and “if they lose the confidence of the Diet. . . , they must resign.” The drafts do not specify how the prime minister is to be chosen, however.

The final chapter on “Judicial Authority,” found in the Ōmeisha draft but not the Kyōzon Dōshū’s, states that “judicial authority is held by the emperor and exercised by the courts.” Trials must be public, and judges are appointed for life. Jury trials are prescribed for those charged with felonies or treason.

In conclusion, first, it is obvious that this was an intellectually exciting period, at least as much so as the period of “Taishō Democracy.” The conventional, stereotyped wisdom about this period may be based on truth, but much of it is too simplistic to be useful.

The first major stereotype about this period is that politics were such that they can be described using an “opposition versus government” dichotomy. Neither side was monolithic; there were debates within the government, and there were a number of different types of political groups outside the government. In fact, one can not really even speak of two “sides” in the politics of this period at all, if a third of the members of the Ōmeisha and Kyōzon Dōshū were also government officials. In addition, the government actually helped the private draft movement with the Genrōin’s drafts and its trans-

lations of western constitutions.

While government “repression” did exist—censorship and restrictions on political activity escalated during this period—if one looks at how the “target” groups were actually affected, one sees that these laws could be, and often were, circumvented, at least up to the early 1880s. The government did not eliminate any of these groups, even though they may have been officially dissolved. Most eventually entered the Jiyūtō or Kaishintō. The great influence of the Ōmeisha draft shows that drafts could be widely circulated and easily acquired by interested groups even when they were not published.

The second major misleading dichotomization about this period is the division of constitutional thought into opposing Prussian and British schools. A careful look shows that all of the drafts borrowed from many different sources, including, in virtually every case, Prussia.

There have been several different evaluations of the significance of the private drafts. Many would agree with Ienaga Saburō that they show that the Meiji constitution was forced on the people and did not represent their desires.¹⁰ Of course most of the private drafts do differ significantly from the Meiji constitution, but there are also important similarities. Nearly all qualify the rights they grant, saying they must be exercised “according to the law,” so perhaps similar provisions in the Meiji constitution may not have been so objectionable as one might think. I realize of course, that the differences with the Meiji constitution are also important, and I do not mean to imply that the private drafts influenced the content of the Meiji constitution. I believe they influenced only its timing.

The *minshūshi* (“people’s history”) historians, such as Irokawa Daikichi, imply that the private drafts are evidence for their belief

10) Ienaga, et al., eds., p. 5.

in the indigenous origins of democracy in Japan. In fact, however, none of the drafts really grants sovereignty to the people, though the Risshisha's comes close. This is why I have translated *kokumin* as "subjects," not "citizens."

In closing, it is clear that interest in and understanding of constitutional ideas was amazingly widespread at this time. There were forward-looking men throughout the country involved in the private draft movement. I think the drafts are worth studying. It is true that they probably influenced no more than the timing of the Meiji constitution, but that is no reason to consider them simply failed products of the losing side of the debate, and to ignore them. In fact, study of the private draft constitutions can add significantly to our understanding of early Meiji Japan.