After the U.S. invasion of Iraq and during the subsequent occupation, the Bush administration and military authorities frequently referred to the success of the occupation forces in building up democracy after Japan’s surrender of August 15, 1945. The implicit meaning in those statements is that what in the case of Japan has been successful, will be successful in Iraq, too. However, this simple analogy overlooks several distinct characteristics in the development of political thought, institutions and people’s behavior in both countries, not to mention the different forms and processes of nation building against a completely different historical background in Japan and Iraq. The following remarks aim to illustrate some fundamental historical prerequisites for a democratic development in Japan, which are discussed at the level of political and constitutional theory.

1. A Rational View of Politics, Already Developed in Pre-Modern Times

First, we should consider the problem of modernizing political thought. Here we understand the concept of democracy in a modern society as a minimum concept, which comprises the separation of powers, some form of representative government, and guaranteed human rights. Even within the limits of such a minimal definition, the concept requires a departure from a view that considers political and social order as given and granted by heaven or god. A rational view of the political and social order is no longer substantiated by religious beliefs or theological arguments. From this, however, is does not follow that the role of religion is neglected in the society as a whole.
If we rely upon the work of Maruyama Masao (1914–1996), historian of political thought and political scientist, in his *Studies in the Intellectual History of Tokugawa Japan* written in the forties of last century, such a departure took place in Japan during the Tokugawa (or Edo) period (1603–1867). According to Maruyama, Ogyū Sorai (1666–1728), a state philosopher who served the Shōgun (generalissimus) from the ruling Tokugawa family, changed the basic concept of rule. Surely, some assumptions, which are included in the argumentation, are hotly debated in Japan, yet the findings of Maruyama still seem to offer valuable arguments.

Maruyama’s argument goes as following: First, he is pointing out in his *Nature and Invention in Tokugawa Political Thought: Contrasting Institutional Views* that “the direct intellectual genealogy of so-called enlightened thinking may have been its foreign derivation, but foreign ideas could only enter because the existing factors ‘within’ had changed sufficiently in nature to admit them without serious opposition.” (Studies in the Intellectual History of Tokugawa Japan, Tōkyō 1974, p. 191) Considering that every school of political thought in Tokugawa Japan, including the Sorai school, accepted the feudal social order, Ogyū Sorai’s attack on the predominant current in the neo-Confucianism of his time, the Chu Hsi (Zhu Xi) school, deserves attention. The political and social order of that period can be characterized as a rather rigid system of four main estates (warriors, peasants, artisans, and merchants), and with no political participation of the people. That social order in principle did not allow social mobility. Sorai searched for a legitimation of the shōgun’s rule (power did not rest with the emperor at that time) in a situation when social relations lost their balance and when it became necessary to strengthen the foundations of society once more. As Maruyama pointed out, Ogyū Sorai was “the first man in the Tokugawa period to raise the question of ‘who created the way?’ when he proclaimed his famous thesis that ‘the Way is not a principle which things adhere to, nor is it the natural way of heaven and earth. It is a way that was founded by the Sages.’” (ibid.) Whereas the Chu Hsi school had used a theory of natural order, the cosmological order being determined by the Way of Heaven, Sorai created a theory in which social order and rule appear to be invented by men. The inventors were the Kings of the ancient Chinese kingdom who were seen as “the sages.” Therefore, Maruyama found in Sorai’s writings a crucial transition: In his concept the political and social order was given no longer by nature (*shizen*), but by invention.
Democracy “From Without”? 
A Short Remark on Historical Preconditions in the Case of Japan

(saku'i), or, as the translator of Maruyama’s study put it in addition, by “artefact.” (However, he adds, without the pejorative connotations that the adjectival form “artificial” has attained in English.) Of course, such a theory gained no wide acceptance among the middle and lower strata of the populace, and one cannot speak of a weakening of religious beliefs of the common people. Nevertheless, the transition was a decisive step toward a rational view of politics.

2. Irrational Elements in the Constitution of Modern Japan

When Japan was confronted with Western demands to open a country, which for more than 200 years had followed a policy of seclusion (sakoku) in a relatively strict sense, rebellious elements of the warrior estate overthrew the shogunate of the Tokugawa and strove for building up a modern nation-state. That modern state became realized in Meiji Japan, named according to the reign of emperor Meiji (1868–1912). Which kind of legitimate foundation did they believe to being the most adequate one for the new state? Since they fought a struggle against the weakened shōgun under the slogan “revere the emperor and expel the barbarians”, they used the still existing, however almost forgotten emperor’s (tennō) house and the more than one thousand years old myth of its lineage as the cornerstone for the new constitution. Of course, the new ruling elite needed a visible symbol of national unity. Fostering the national consciousness was an urgent task, in particular towards the nation-states of the West. Besides, it needed a constitution to be recognized as a modern state by the Western powers. At that time, the new leaders came under pressure by the popular rights movement and its demands for political participation, which gained momentum especially during the decade from 1875 to 1885. The Meiji constitution of 1889, which was formally “bestowed on the people by his majesty”—the pressure exerted by activist members of the former samurai class, townspeople, wealthy peasants and poor peasants was not reflected in the official language—was built around the emperor as the center of the new state. For example, Art. IV reads: “The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them according to the provisions of the present Constitution.” And Art. V: “The Emperor
exercises the legislative power with the consent of the Imperial Diet.” Accordingly, besides emperor, cabinet, and privy council an Imperial Diet was established, consisting of the two houses of peers and of representatives. However, ministers were not responsible to the Diet, but to the emperor. (Art. LV) Although the principle of the constitutional government and of the separation of powers was established, the position of the emperor in the new political order gained much more importance. As reason for this the “divine origin” of the emperor was given. Art. I reads: “The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.” And Art. III: “The Emperor is sacred and inviolable.” Above all, Art. I contains a definition which cannot be found in the constitutions of European constitutional monarchies. The so-called hereditary monarchy (“Erbmonarchie”) and the divine rights of kings (“Gottesgnadentum”) are fundamentally different, as seen from the basic idea of the Meiji constitution. (Actually, there was a harsh debate between the German advisor to the constitution-making persons, Roesler, and the Japanese side, on this point.) This characteristic of the Meiji constitution was combined with the so-called kokutai (or “national essence”, originally “body politic”, i.e. the specific national polity of Japan, with the emperor as descended from the Sun goddess), which was first mentioned in the Imperial Rescript on Education of 1890, yet not defined there. The Rescript once again embodied Confucian values of obedience, loyalty to the (divine) emperor and filial piety. Both, constitution and Rescript, should be seen as closely related to each other.

Itō Hirobumi (1841–1909), sometimes called “the Bismarck of Japan,” declared in a speech before the Privy Council in July, 1888: “Thus in establishing this Constitution we must first seek this axis of the nation [in Maruyama’s interpretation: an equivalent for Christianity in European nations, W.S.] and decide what that axis shall be. Without an axis, with politics entrusted to the reckless deliberations of the people, the government will lose its guiding principle and the state will collapse. If the state is to survive and govern the people, we must see that it does not lose the means to rule effectively. Constitutional government in Europe has a history of more than a thousand years; not only are the people experienced in this system, but their religion has provided an axis that imbued and united their hearts. In Japan, however, the power of religion is slight, and there is none that could serve as the axis of the state. Buddhism (...), Shintō (...). In Japan, it is
only the imperial house that can become the axis of the state. It is thus
with this point in mind that we have placed so high value on imperial
authority and endeavored to restrict it as little as possible in this draft
constitution.” (Quotation from M. Maruyama, Nihon no shisō
[Japanese thought/Denken in Japan], Tōkyō 1961 (originally pub-
lished 1957), pp. 29–30).

The vague character of the kokutai later allowed ultra-nationalist
forces to attack liberal political theories and the constitutional law,
which had flourished during the first two decades of the twentieth
century. When T. Minobe, professor of constitutional law, described
the emperor as an organ of state, albeit the highest one, his theory was
attacked as a lese majesty. After fierce controversies, he finally had to
quit his position at Tokyo Imperial University, and his books were
banned in 1935. Note that neither Minobe nor the political scientist S.
Yoshino, who had argued for minponshugi (principle of “people
centeredness”) in politics two decades before, pleaded for the aboli-
tion of monarchy in Japan. To put it in a simplistic way: When
mythological, archaic elements such as kokutai were added to the
constitutional foundation of modern Japan, the political forces—
civilian and military—of the extreme right could gain power in state
and armed forces by using kokutai as a weapon against its “enemies.”
Although several people belonging to the extreme right were punished
and some even executed because of their attempt to commit a coup
d’etat, their adherents could use the logic of action “according to the
will of the emperor” in order to push officers, high-ranking bureau-
crats, and politicians step by step and to take repressive measures
against opponents (individuals and parties) who protested against war
and expansionist policies of Imperial Japan. Finally, oppression and
war led to the destruction of the Japanese empire.

What is important here, however, is the fact, that since the
beginning of the Meiji period, there have been various currents in
political thought, which opposed irrational reasons for legitimating
state policies. After 1945, the Japanese—be it scholars, be it ordinary
people—were able to resume those traditions.
3. Human Rights

Another point I would like to emphasize is the existence of the popular rights movement during the Meiji period and its insistence on human rights. Securing human rights—or the will and the institutionalized procedures to guarantee human rights—is one of the elements of the minimal definition of a democratic system. For the years of constitution-making and nation-building we can find groups of actors who were engaged in it. First, the Meiji government itself in its ardent to catch up with Western powers, and scholars who were close to it, for example the first proponent of German Staatsrecht, Katō Hiroyuki (1836–1916). Second, the political opposition, which articulated its demands against the new government since 1873 and can be subdivided mainly into three groups: (a) politically active groups, which adhered to the concept of natural rights—a term, which was rendered during the Meiji period into “rights given by heaven” (tenpu jinken); (b) public opinion leaders and at the same time leading members of associations in cities, like Fukuzawa Yukichi (1834–1901), the Meiji enlightenment thinker and educator, c) political associations in agrarian districts. Of special interest here is the third group, which was studied by the scholar of social history, D. Irokawa, and others during the sixties and seventies. Members of this group often combined human rights and a draft constitution with an evaluation of the international environment of Japan. For example, a young teacher named T. Chiba, living in a province north of Tōkyō, wrote in his draft constitution—and there were numerous such drafts having been detected by researchers: “Nothing weakens the Kingly Way (a concept taken from the Chinese classic Shih Ching, W.S.) more than a ruler who despises his people or a people that observes no restraints on his liberties. (...) Those who think only of increasing people’s rights without exercising restraints on their liberties are ignorant of Ōdō (the Kingly Way, W.S.) (...) Thus the true Kingly Way consists of establishing two sets of ‘restraints’ that are voluntarily observed by sovereign and people alike in a Great Harmony. These restraints are established by means of a constitution, and the Great Harmony is mutually observed by means of a national assembly. A ‘constitutional form of government’ consists of creating a constitution and a national assembly.” Besides a more radical accentuation of human rights, which can be found elsewhere in private draft constitutions of other individuals
and groups acting “from below,” we can read in this draft of a young teacher also an attempt to amalgamate traditional thought and new ideas of human rights and representation of the people. (D. Irokawa, The Culture of the Meiji Period, Princeton 1985, pp. 116–117)

In conclusion, I would like to emphasize the fact that in Japan there is at least a tradition of more than 120 years of modern democratic thought and movement, at times integrated by the government and bureaucrats of the new nation-state, at times oppressed by them. In particular, for the period between World War I and Word War II, we can observe a rise of democratic thought. Seen from this perspective, the founding of a new, democratic Japan after surrender in 1945 does not appear to be the consequence of a successful occupation policy by the United States alone. Rather, the element of “democracy from without” in post-war history raised the crucial point: How was the Japanese people able to acquire democratic institutions as subjects, by their own, and therefore able to develop the spirit of democracy in institutions? However, this problem is one of citizens’ daily behavior in Western democracies, too.