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JAPANESE GOVERNMENT AND POLITICS

AN INTRODUCTORY STUDY

BY

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TO MY MOTHER

PREFACE

This book was undertaken to meet a need which the author has experienced and which others have expressed. It is offered as an introductory study and makes no pretensions to completeness or finality. Materials in its field are scattered and, in many instances, rendered inaccessible by difficulties of language. General works in any Western language are few, and none attempts to cover the whole subject, even in outline. Japanese scholarly works are discussions of legal relations rather than descriptions of institutions or analyses of actual procedures. Monographs are even scarcer than general works. It has been necessary to depend largely upon translations of documents, newspaper materials, and interviews with Japanese and foreign scholars, officials, publicists, and politicians.

Facilities for the translation of Japanese documents and treatises are difficult of access. There is urgent need that the indispensable collection edited by Dr. W. W. Mc Laren, "Japanese Government Documents," be supplemented with new volumes of translations covering the period since 1889, and that authoritative treatises of Japanese legal scholars be translated. It may, however, be pointed out that the works of Japanese scholars written in European languages, herein cited, all derive inspiration and substance from the recognized authorities—Minobe, Hozumi, Uyesugi, Shimizu, Ichimura, Yoshino, Sasaki, Moriguchi, and others—who customarily write in their own language and whose works still, unfortunately, await translation.

Four sojourns in Japan—in 1921, 1923, 1930, and 1931—have made it possible for the author to observe political life in that country through attendance at sessions of the Diet and of the courts and visits to ministries, to local government offices, and to the governments of Chosen and Kwantung Province. It was the author's good fortune that during the period of his 1930 visit a general election took place. Almost without exception, his inquiries met with the finest courtesy, and efforts were made to provide information concerning the activities under investigation. Many hours were given most graciously by officials high and low, university professors, missionaries, journalists, business men, students, and others.

Without suggesting that the facts or interpretations set down in this book are those which any of the following would have written, the author believes that he owes much to these persons for whatever freshness or reality he may have expressed in its lines: Professors T. Minobe, S. Moriguchi, M. Royama, K. Takayanagi, Y. Takagi, and T. Yabe; Prince I. Tokugawa, the late Marquis K. Komura, Count Soyeshima, Viscount K. Kaneko, Admiral Viscount M. Saito, Baron K. Shidehara, General K. Ugaki, and Admiral K. Kato; Doctors R. Fujisawa, T. Kameda, R. Masujima, I. Nitobe, K. Onozuka, S. T. Takeuchi, E. Uyehara, and S. Washio; Justice M. Miyake, Mayor C. Ariyoshi, and Governor Yamagata; Messrs. I. Abe, H. Ikeda, M. Ishida, H. Mori, T. Mayeda, T. Naruse, Y. Ozaki, T. Shiratori, N. Yamamasu, and M. Zumoto; also Professor E. W. Clement, and Messrs. Hugh Byas, C. L. DeVault, E. R. Dickover, Charles Hutchinson, C. A. Mac Donald, H. V. Redman, A. K. Reischauer, F. N. Scott, and Morgan Young. With all of the persons named, and with others whose help is no less appreciated, the author has enjoyed personal interviews, and with many of them long-continued acquaintance.

To the John Simon Guggenheim Foundation the author is deeply indebted for a fellowship which made possible a visit of three months in 1930. To the administrative authorities of the University of Minnesota he is grateful for sabbatical furloughs and for the allocation of library and research funds to stimulate Far Eastern studies. He owes much to his colleagues, Professors William Anderson, Oliver P. Field, Morris B. Lambie, and J. R. Starr, and to former colleagues, Professors Allan Saunders and Quincy Wright, for advice and encouragement; and to a number of graduate students—Misses Myrtle Eklund and Tomoko Murai and Messrs. Louis Beeson, Raymond Elvin, Ralph Norem, and William Verhage —for assistance in the gathering and preparation of materials. To his wife and children also, who have tolerated frequent fits of absence of mind and lengthy separations, acknowledgment is due. The courtesy of the editors of *Koloniaal Tijdschrift,* in permitting an article which is essentially identical with Chapter I of this volume to be republished, is appreciated.

Some comparisons with American and European institutions have been suggested, but they have not been pressed where they could not be asserted with certainty. Finality of dicta upon issues in controversy also has been eschewed—at times, it may seem, at the cost of clarity. The Japanese polity is stable, but it is not static, and

often one can better indicate trends than identify stages. It has, moreover, seemed to the author advisable to refrain from emphasis upon criticism and reformist suggestions in a book of which the purpose is to present facts as correctly and as understandingly as possible.

Japanese proper names, when given in full, are written in the Japanese fashion, surnames first. Some Japanese common nouns are italicized; others, such as *genro* and *samurai,* which are now staples of an English vocabulary, are not italicized. For convenience, the *Japan Weekly Chronicle,* to which this book owes a heavier debt than to any other single source, is written *Japan Chronicle.* The Osaka *Mainichi* and the Tokyo *Nichi Nichi* are referred to in the English editions unless the indication is otherwise.

The author wishes to take this opportunity to acknowledge an obligation of eighteen years' standing. It was during graduate years at the University of Wisconsin that he was introduced by Dr. Stanley K. Hornbeck to the field of Far Eastern studies, and the interest developed there has grown with the years. He would also express appreciation of the courtesy and assistance of Professor Frederic A. Ogg, editor of The Century Political Science Series. Information that will assist to correct mistakes (for which the author alone should be held responsible), and to fill gaps, will be received with gratitude.

HAROLD S. QUIGLEY.

Minneapolis, Minnesota
May 1, 1932.

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JAPANESE GOVERNMENT AND POLITICS

JAPANESE GOVERNMENT AND POLITICS

CHAPTER I

THE POLITICAL SYSTEM PRIOR TO THE MEIJI ERA

THE TRIBAL PERIOD

Until A. D. 645, the government of Japan may be described as tribal. In theory, the head of the Yamato clan was supreme over the other tribal chiefs, but in fact "he shared his power with local chieftains and the state resembled a federation of tribes under his hereditary leadership."[1] Nevertheless the existence of the imperial office was recognized early, its authority resting not simply upon superior military strength but upon accepted legend, according to which the first of the Yamato chiefs had been divinely commissioned to rule Japan. The officially recognized year of the founding of the empire is 660 B. C. *Kigensetsu*—festival of the beginning of the Japanese imperial era—is a national holiday observed annually on February 11 to commemorate both the conquest of opposing tribes by the Yamato chieftain Jimmu and the promulgation of the constitution in 1889. Adequate historical evidence is lacking concerning Jimmu, but the legends that are preserved in the *Kojiki* ("Records of Ancient Doings," A. D. 712) and the *Nihongi* ("Chronicles of Japan," A. D. 714) are believed by scholars to have a core of truth.

THE GREAT REFORM

Government during the tribal period was, of course, very primitive. The period is of significance here principally because it furnishes something of a prototype for the feudal period and because

[1] K. S. Latourette, *The Development of Japan* (2nd ed., New York, 1926), p. 17. See also S. Takahashi, *A Study of the Origin of the Japanese State* (New York, 1917).

out of it arose, as the present Japanese system arose out of the feudal era, a civilian administration modeled upon foreign institutions. It has been pointed out that the reforms of the seventh and eighth centuries, entitled the era of Taikwa ("Great Reform"), may have been hastened by the fear of the Emperor that his supremacy was being undermined by other chiefs.[2] However, the functions of government had so increased that sooner or later a new organization would have been required. It was natural that the Japanese should borrow from the Chinese an administrative system which the latter had built up during centuries, and that they should do so without sufficient regard to the differences in conditions between the two countries.

Although the Taikwa reforms did not find permanent lodgment in Japanese soil, they deserve attention for the thoroughness of the effort to apply them and because an effort was made to revive them in 1868. They brought about temporarily the increase of imperial power, which was their primary object. It is noteworthy that while the Chinese imperial model was held up as the evidence of the superiority of a strong central authority, that aspect of Chinese monarchy which contemplated popular revolt against evil rule as legitimate was rejected in Japan in favor of renewed emphasis upon the sanctity of the Emperor and the consequent sacrilege of efforts to depose a ruling monarch.

The civil government of the reform era consisted of a national council of three imperial advisers, or councilors, and eight administrative departments over which the three councilors had general supervision. The eight departments were (1) Imperial and Bibliographical, (2) Court Rites and Appointments, (3) Nobility and Etiquette, (4) Popular Affairs, (5) War, (6) Justice, (7) Finance, and (8) Imperial Household Finance. Beneath radiated a bureaucracy chosen partly upon examination as in China, but with greater attention to other considerations, such as noble blood, than was customary in that country. In A. D. 794 Kyoto became the capital. Governors were designated by the Emperor to rule the provinces (*kuni*). Magistrates for the districts (*kori*) were designated by the provincial governors, and headmen for the localities (*sato*), in the main by the householders themselves upon a customary basis. The clans were not dissolved but were deprived of their significance as administrative units, while the

[2] K. Asakawa, *The Early Institutional Life of Japan* (Tokyo, 1903), pp. 135–137.

tribal groups (*tomo*), which had been made up of clans and which had formed the intermediate agencies of pre-reform government, were abolished. New ranks of nobility supplanted the old. The aim was to create a system of government in which the political tie should be not one of blood but one of allegiance to the Emperor as the divine owner of land and people.

That the reform organization was enabled to function after a fashion there is ample evidence. But it is quite clear that older forces continued to find exercise within the new forms. The men who filled the offices were the same as those who had dominated in the tribal groups. They retained the headship of their clans, and had now added to this headship the recognition of an official status which set them, as rulers, above the people whose lot it was to support them. Their positions afforded them opportunities of adding to their lands and prestige. On the other hand, by destroying the tribal basis of the state the Emperor had deprived his office of its right to claim superiority over the clans as such. In China, as Professor Asakawa has pointed out, the imperial authority was sustained by the well-developed civilization of that country, of which the government constituted only a minor element. In Japan, social institutions still were crude, and the people were consequently more dependent upon some form of political organization. Lacking also, as yet, the sense of a national state, they had no traditional or spiritual bond to unite them to the new type of government.[3]

KUGÉ BUREAUCRACY

For several centuries the form of the new administration was maintained. The civil bureaucracy, however, never developed along the lines of the borrowed Chinese model, but came to be constituted largely of the adherents of a single great family, an offshoot of the imperial house, called the Fujiwara clan. It is to be noted that Nakatomi-no-Kamako, later called Kamatari, the leader of the reform movement, was the founder of the Fujiwara house. Into the hands of this clan was gathered—by fighting, by influence, by the marriage of its women to imperial princes, by intimidation of emperors and the compelling of their abdication—the control of political affairs. The Fujiwara clan concentrated its interest and effort upon controlling the civil administration. In this it was remarkably successful until other clans, which previously had been

[3] *Ibid.*, pp. 269–270, 328.

satisfied with the monopoly, to a great extent, of the military offices, became ambitious for power. Of these, the two important clans were the Taira and the Minamoto, both of the court nobility, or *kugé,* "cadet" houses of the Yamato dynasty. Because of the Fujiwara predominance in civil administration, the men of Taira and Minamoto had sought the important posts in the military organization, and in these posts they had made the country their debtors by conquering additional territory. They had also secured for themselves and their tenants the military experience which the civilian Fujiwara lacked, and were therefore able very easily to supplant the latter when they determined to do so.

This determination took effect in the twelfth century. It was assisted to success by the unrest and confusion into which the Fujiwara had allowed the country to fall. They had corrupted the monarchy and forced it into seclusion, rationalizing their action as the recognition of the proper position of a divine sovereign—one of freedom from the responsibilities of government and direct contact with common men—though the secluded Emperor occupied himself more frequently with worldly pleasures than with otherworldly meditations. The weight of taxation became extremely burdensome, and it continually increased as more and more land was exempted from taxation through absorption into noble estates. Many people were reduced to pauperism, lost their land, and became outlaws ready for service under any banner.[4] Others transferred their lands to larger landholders in return for their protection. There was created by decree a military class, which was non-productive and which the farmers were under obligation to maintain. From it developed the samurai, the "two-sworded men," who formed the most important social and political agency during the subsequent period of feudalism. Although this class was in theory the national militia, in fact it also was organized by clans. The central government was dependent for military action in time of necessity upon the support of the military clans.

ESTABLISHMENT OF FEUDALISM

The characteristics of the situation were very plainly those of feudalism. All that was required to complete the development was the overthrow of the civil bureaucracy and the assumption of the direct control of affairs by the military clans. This occurred be-

[4] Asakawa, *op. cit.*, pp. 334–337.

tween 1155 and 1160, when Kiyomori, of the Taira clan, was successful against the Minamoto in supporting the claims of Prince Go-Shirakawa to the throne. After a few decades of Taira ascendancy, the Minamoto clan secured control and created the system of military administration usually spoken of as the shogunate, from the word *shogun,* meaning "general." The imperial office was allowed to remain and to continue the semblance of authority which it had been accorded by the Fujiwara. The court nobility also was maintained for purely ceremonial functions at the imperial capital, Kyoto. The actual power was henceforth to rest, until 1868, in a feudal hierarchy, which did not attain final form until the seventeenth century. Seven centuries of feudalism were destined to give a trend to Japanese political life which remains to-day one of its marked characteristics.[5]

EMPEROR AND SHOGUN

The maintenance of the ancient monarchy was both a tribute to its hold upon the people and a recognition of the uses to which it could be put. Partly through legendary and religious influences, partly due to the family or patriarchal system on which the Japanese social organization was based, and to a considerable extent as the result of the careful encouragement of unquestioning belief by the clans which had profited thereby, a tradition of the imperial office had developed which enabled outsiders to exercise its powers with impunity. Legend described the entire Japanese people as descended from the gods and the Yamato dynasty as having been commissioned by the gods to rule the country. It recorded the success of the Yamato clan in obtaining mastery over other clans during the early centuries, and thus established its title to the loyalty of the whole empire. Early religion was a worship of the spirit-gods from which the people believed themselves to have sprung. Under the influence of Chinese ancestor-worship, this primitive belief was modified in the direction of exalting the Mikado to a status almost divine. From Buddhism the native Japanese cult took over a number of forms and the name *Shinto,* "the way of the gods," but it retained its identity as an apotheosis of the ruling dynasty. A powerful influence was the accepted relationship by which,

[5] On the persistence of the feudal spirit, see Ozaki Yukio, *The Voice of Japanese Democracy* (Tokyo, 1918), Ch. XII. See also Nakano Tomio, *The Ordinance Power of the Japanese Emperor* (Baltimore, 1923), p. 201.

within the Japanese family and, by analogy, within the circle of any nominally ruling authority, the head, whether daimyo, Shogun, or Emperor, was so bound up in the red tape of advisory councils, rules, and ceremonies as in fact to be subject to the control of others.

It had been, and it continued to be, comparatively easy for a powerful oligarchy to stimulate the general belief that an Emperor of divine attributes should not be called upon to deal with ordinary affairs of state, but should be permitted to remain isolated and free for meditation. *De jure* Emperor he was recognized to be. He invested each Shogun with office, and certain decrees were registered formally by him. But *de facto,* the Shogun dictated all decrees and exercised the other powers of government. The Emperor's decree became simply a magic passport to assure the acceptability of the Shogun's decisions. The popular adoration was rather intensified than abated by this astute arrangement. The imperial house and the court nobility did not, however, surrender the formal functions allowed them nor cease sporadic efforts to regain their old prerogatives.

POSITION OF THE SHOGUN

The full title of the Shogun was *sei-i-tai shogun,* meaning "barbarian-subduing great general." His position was that of commander-in-chief of the feudal army. The word *barbarian* was used to stigmatize, not any foreign foe, but the native Ainu, who still held unconquered territory in northern Japan. However, the position of the Shogun as the actual ruler of the country was not fully accounted for in his official title. That status is more fully represented in the illegal title *Taikun,* often rendered "tycoon," meaning "great prince," which certain shoguns arrogated to themselves and which was used in the first treaties entered into with Western states. He ruled without consultation with the Emperor; after 1634, for 200 years he refrained from attendance at court and forbade the other daimyo (feudal lords) to attend. The seat of the shogunate was placed at some distance from Kyoto, first at Kamakura (1192), later at Yedo, the present Tokyo (1615). There a splendid court was maintained and the actual central government carried on. Until the seventeenth century rivalries between clans or their branches prevented the development of a stable administrative organization. In 1603, the Tokugawa clan, a connection of

the Minamoto, fought its way to power, and to this clan particularly, which occupied the Shogun's throne until 1868, is to be credited the elaboration of Japan's unique dual system. The system is therefore properly denominated the Tokugawa system of government.

THE TOKUGAWA COUNCILS

The central agency of government under the Tokugawa was the *Goroju* ("Council of State"), usually numbering four or five members. The members took monthly turns in acting as president of the Council, in which office each in turn did all the business of that body. The Council was all-powerful. It met daily in the Shogun's palace to keep in touch with the work of the president. Of its members, Dean Wigmore wrote: "The real rulers of Japan (that is, of the part which the central power reached) were these councilors. From the time of Iyemitsu, the third Tokugawa shogun, there was probably not a single occupant of that commanding position (except Yoshimune, the eighth shogun) who did not register without hesitation whatever decree the councilors agreed upon."[6] The Councilors often served for life and practically filled vacancies in their own ranks by coöptation. They attracted the ablest men to these posts and they ruled the country well. If the Shogun were a minor, one of the councilors served as *tairo* ("regent").[7] The Council of State advised the Shogun, controlled the imperial palaces and the daimyo, and supervised the entire national administration.

Immediately below the Council of State and associated with it were the *Wakadoshiyori* ("Young Elders"), constituting the "Junior Council." This originally numbered six members and later varied between two, three, and four.[8] It served in many cases as a stepping-stone to the Council of State. Its members might be termed vice-ministers. They controlled the lesser members of the

[6] J. H. Wigmore, "Materials for the Study of Private Law in Old Japan," in *Transactions of the Asiatic Society of Japan*, Suppl. to Vol. XX (1892), p. 29. See also J. Murdoch, *A History of Japan* (London, 1926), III, 4–6. Murdoch disagrees with the statement quoted from Wigmore. He states that: "As regards the real amount of power wielded by the Roju, it differed greatly from time to time." On occasion personal favorites, scholars, relatives, or ladies of the palace were more influential than the Council.

[7] *Tairo* may be translated either "premier" or "regent." Originally it signified the former, being used in the sense of "superior or senior elder." The second meaning derives from the activities of such a dignitary during a Shogun's minority.

[8] Murdoch, *op. cit.*, p. 7.

feudal hierarchy. They appointed and supervised officials below the chiefs of bureaus in Yedo, the bureau chiefs being appointed by and responsible to the Council of State. In this way the shogunate placed one group of officials as a check upon another and guarded against the development of excessive power. The staffs of the bureaus of police, military affairs, education, and finance were among those directed from the Junior Council. Both councils were composed of feudal lords who could be relied upon as loyal to the shogunate. The lords as a class were called *daimyo,* "great names," and *hatamoto,* "bannermen," or lesser lords. Only lords who were vassals of the Shogun (called *fudai daimyo*), were appointed to the councils.

TEMPLE SUPERINTENDENTS

The close relationship that existed between politics and religion is to be noted in the important administrative functions of the *jisha-bugio,* or temple superintendents. These officials ranked next to the junior councilors. They supervised the maintenance of the clergy and temple management, and judged civil and criminal cases affecting the clergy. They were census officers, in view of the registration of all subjects in the temples. They also heard and determined boundary disputes between daimyo and cases between samurai and hatamoto (inferior vassals of the Shogun), and maintained prisons. In their turn, they sat for a month at a time on the Chamber of Decisions at Yedo.

FEUDAL DAIMIATES

During the period of Fujiwara ascendancy the growing power and the expanding estates of the great nobles had weakened the regular officials in the provinces and districts and blurred the boundaries within which they were supposed to have jurisdiction. Under the shogunate this process was completed, the political boundary lines coming to coincide with those of the feudal fiefs, nearly 300 in number. Within the fiefs the word of the daimyo was law. Under the daimyo the samurai, armed retainers corresponding to the knights of medieval Europe, conducted the administration, civil and military. Laws were promulgated from time to time by the shogunate, but remote or powerful daimyo might pay them scant respect. The Tokugawa shoguns, save the first three very

aggressive and powerful men, Iyeyasu, Hidetada, and Iyemitsu, did not interfere with the administration of the daimiates save for occasional tours of inspection. They kept in touch with developments by means of a system of inspectors and spies. The daimyo were kept in hand further by the requirement that they spend every alternate year in Yedo and maintain their wives and families there.

SHOGUNAL DOMAINS

The Shogun retained a number of provinces and the included cities, Yedo, Kyoto, Osaka, Sakai, and Nagasaki, within his own direct control. Such areas were administered by officers whom he directly appointed. They were not contiguous, but were scattered throughout the country. Civil administration differed so considerably amongst the various daimiates as to render it futile to attempt an outline of their organization.[9] That of many of the fiefs held by Tokugawa daimyo was in general similar to the system in the Shogun's domain. It lay in the hands of samurai especially fitted for office by their general knowledge of accounting, of civil and criminal law, and of the customs of the region. It tended to become hereditary, though no individual was likely to hold office for more than a few years. The important political units were the district, the town, and the village.

LOCAL GOVERNMENT

The Tokugawa districts and towns were governed by magistrates appointed by the Shogun but regardful of local customs and sentiment. These officers were drawn from the ranks of the hatamoto, retainers of the Shogun. The district magistrates were of two

[9] "Each daimioate, however petty, was a microcosmic government by itself. Fukui Han had its departments of the Treasury, Justice, Censorate, Census, Military Affairs, Coinage and Currency, and Public Works. The rice storehouses, taxes and pensions; prisons, power of trial, punishment or execution; oversight of the theatre, books, weights and measures, and religion . . .; census-work; arrow and spear arsenal, and, later of powder-mill, rifle factory, and artillery-train; issue of paper money, and copper and iron cash; the erection and care of the castle, daimio's mansion, mills, magazines, bridges, roads, break-water, school and chemical laboratory, were under the care of their respective departments." W. E. Griffis, *The Mikado's Empire* (New York, 1877), p. 587. A more thorough and complete description is given in Maurice Courant, *Les clans Japonais sous les Tokougawa*, Conférences au musée Guimet, Lyons, 29 Mars, 1903. The social and political structure of feudal Japan is most clearly described by Murdoch, *op. cit.*, III, 27–61.

grades, the higher called *gundai*, the lower *daikwan*, the rank being determined by the size or productivity of the districts. Like their Chinese counterparts, the Japanese district magistrates were all-inclusive repositories of functions, though they were mainly concerned with matters relating to the cultivation and assessment of the land. It was their primary business to see to it that the revenues came in, and that taxes were proportioned to the farmer's ability to pay. In arriving at the valuation of land they were under instructions to take all factors into account, temporary as well as permanent. They were expected so to administer the office as to encourage the farmer by treating him equitably rather than with too close attention to technicalities. Speaking generally, these offices were kept free from political jobbery and from arbitrary conduct toward the people.

The district was made up of villages, within each of which there was a considerable measure of autonomy. Over the village was a chief, or head-man, who was chosen by the larger landholders, and whose office tended to be hereditary. The head-man had a dual obligation—to the *daikwan* he was responsible for the people of his village, for their good conduct, their obedience, their tax payments; on the other hand, to the villagers he was an intermediary with the superior officers of government, an executive officer, and a judge in petty matters. There was also a village assembly which met occasionally, and in which only the large landowners might vote. The assembly was, however, attended also by the heads of five-family groups into which villages were divided for closer supervision and the assuring of vicarious responsibility. Its principal interest was the consideration of the local tax levy. Of village life, it has been written: "Before the Restoration a Japanese village was a hereditary despotism, softened by common sense like everything else in Japan." [10]

In the five towns or cities under direct shogunate rule, there were frequently two magistrates (*bugyo*) appointed by the Shogun, but the number at times was three. Under them were numerous officials to handle that part of town administration which was retained by the Shogun in the hands of his direct representatives. The magistrates were judges as well as administrators. It is not possible to state with finality the exact relationship of the two magistrates to one another. It is accepted that the dual headship

[10] A. Lloyd, "Notes on Japanese Village Life," *Transactions of the Asiatic Society of Japan*, XXXIII, Pt. 2 (Dec., 1905), 133.

was a device to maintain a check upon headstrong hatamoto. The magistrates alternated every month as chief executive of the town, but apparently the duties of one were not discontinued entirely during the month in which the other was in charge. The people of the town were represented by elders-at-large, originally chosen by them, but later in practice hereditary, and by head-men elected by the property owners of the numerous wards into which a town or city was divided. The two grades of people's representatives acted as buffers between the officials and the people. They supervised the assessment and payment of taxes and the expenditures in their respective areas, settled cases out of court where possible, made known to the people the orders of the magistrate, and brought to the attention of the latter the people's complaints.

THE TOKUGAWA JUDICIAL SYSTEM

The judicial system of the Tokugawa was not a complicated one, and resort to it was infrequent. The great majority of the difficulties that arose between individuals was settled by arbitration, and the person who took his case to court was regarded with suspicion. As in China, the village and ward elders best acquainted with the disputants were relied upon to find a basis of compromise. Often a recalcitrant offender was tamed by the threat of social ostracism. Appeals were seldom made to the higher authorities from the country, where family unity was strong, but were more common in the towns and cities.

Above the village and the ward were the courts of the district and the town magistrates, respectively. Over the temples and priests was another court, that of the temple magistrates. The district magistrate customarily referred cases brought before him back to the locality, sometimes placing them in the hands of neighboring village head-men. It was required, however, that important criminal cases should be laid before the town magistrates. By them cases might be referred to a still higher court, the *Hyojosho,* but the right of litigants to appeal was limited to instances in which a magistrate could be charged either with corruption or with undue delay in hearing or deciding a case. This limitation was less onerous than might be supposed, for the district and town magistrates were chosen largely for their knowledge of law and custom.

Appeals or matters referred by the town magistrates went to the high court at Yedo, the *Hyojosho* ("Chamber of Decisions") re-

ferred to above. Ordinary matters referred by the district magistrate went first to a central board of finance magistrates, thence, if necessary for settlement, to the Chamber of Decisions. It is noteworthy that the magistrates voluntarily referred many cases involving difficult points of law, lack of precedents, or reform of policy to the chamber. The Hyojosho was also the accepted court of first instance for cases involving different jurisdictions, including such as might arise between residents of the Shogun's fiefs and those of other daimyo, or between the latter only. During the eighteenth century the practice developed of delegating the chamber's original jurisdiction in cases arising in the central western regions to the town magistrates of Osaka, and sometimes to those of Kyoto and other places.[11]

Except where a vital public interest or the privilege of rank demanded that instructions be invited from the Council of State, the Chamber of Decisions was able to hand down a final decision in all matters without further reference. It was constituted *ex officio,* being made up of the two town magistrates and the four (later five) *ometsuké* ("great censors"). The court was supervised by the Council of State (*Goroju*) from which, from time to time, a member went to observe proceedings, provision being made for him to enter and depart from the court-room without being seen. On rare occasions the Shogun himself took this method of supervising the course of justice. Ordinarily only one magistrate from each of the three groups sat on a case, each judge taking his monthly turn in the proper order. The chamber sat six times a month.

FEUDAL LAW

The law administered throughout the whole country was in part the ordinances of the Shogun or daimyo, in part local custom. Five important bodies of written law are mentioned, among others, as prevailing during the Tokugawa period: (1) "Laws of the Imperial Court," (2) "Laws for the Feudal Nobility," (3) "Laws for the Court and the Shogunate," (4) "Orders Posted in Yedo," and (5) "The Hundred Written Regulations." The first two codes dealt principally with matters of ceremonial and conduct and with limitations upon certain types of action. The third stated the un-

[11] Wigmore, "Materials," etc., as cited, pp. 71–94. Murdoch notes that about 1696 the board of finance magistrates was divided into two sections, two members being assigned to purely financial functions and two to judicial functions (*op. cit.*, III, 13).

limited nature of the Shogun's authority and the proper relations to be sustained between the Emperor and his court and the Shogun and the other feudal nobles. The fourth was made up of notifications to the people at large, sometimes in the form of general admonitions to good moral conduct, sometimes of particular regulatins such as prohibitions against dealing in drugs, counterfeiting, and adulteration, or declarations concerning the standard load to be carried by pack-men or pack-animals. The "Hundred Written Regulations" was a congeries in 101 articles of assorted rules and maxims on a wide variety of subjects, including a digest of older criminal law and procedure which (supposedly, like the other codes) dates from about 1615. In the main, in view of the general attitude toward the use of the courts, local custom determined the settlement in the majority of cases. Custom, however, was itself to some extent molded by the edicts of generations of emperors, shoguns, and daimyo, while other important influences were religion and ethics spreading from Confucianism, Buddhism, Shintoism, and other religions or cults.[12]

POLICE AND SPIES

The police system of the Tokugawas was widely ramifying, though not of the modern type. Of it Baron Oura Kanetake wrote: "Its system and regulations seem to have been well adapted to the organization and condition of society in feudal times, and were quite efficient for the preservation of peace and order."[13] At the top of the organization were the *ometsuké* ("great censors or inspectors"), who have been called "the eyes and ears of the Shogun." Associated with the *ometsuké,* who were expected to observe the activities of the daimyo, were the *metsuké,* or inspectors of second rank, to keep an eye upon the hatamoto and samurai. The inspectors reported upon the conduct of the daimyo and lesser retainers, the discussions in public meetings, and the actions of government officials. "Indeed," wrote Dickson, "whenever two or three persons meet together in Japan, there seems to be some member of this silently observant office present. Reports of everything

[12] J. H. Wigmore, *A Panorama of the World's Legal Systems* (St. Paul, Minnesota, 1928), II, 461–529; also "Notes on Land Tenure and Local Institutions in Old Japan," ed. from papers of B. B. Simmons by J. H. Wigmore, *Trans. As. Soc. Japan,* XIX (1891), 49. See also J. H. Gubbins, "Some Features of Tokugawa Administration," *ibid.,* pp. 62–72, and J. E. de Becker, "Elements of Japanese Law," *ibid.,* XLIV, Pt. 2 (Dec., 1916), 3.

[13] Count S. Okuma, *Fifty Years of New Japan* (London, 1909), I, 281.

that goes on throughout the empire are sent in to this office for the information of government, and these reports are recorded for reference."[14] One of the principal duties of these officials was the supervision of the trunk highways and the administration of the regulations governing their use. They recall the Chinese Board of Censors. They were of high rank and enjoyed great esteem.

Beneath the *metsuké* there were two orders of police, the "thief-catchers," or police proper, and the spies. The former were sometimes attached to stations, but often they were priests, innkeepers, or persons of other occupations likely to bring them into contact with the public and thus to give them opportunities for observation and the gathering of information. Of this service Dickson explains that its aim was "thorough espionage, secrecy in detection and surveillance, as well as overpowering strength in carrying out the wishes of government."[15] The spies, so-called, served the police in the manner suggested by their title. They were men of low degree whom the government could employ secretly and for whose safety it might refuse to assume responsibility.

TOKUGAWA AND MANCHU INSTITUTIONS COMPARED

It will be apparent to one who compares Japanese local institutions under the Tokugawa with those of China under the Manchus that in their general aspect they greatly resemble each other. In both, there was the all-inclusive district magistracy; in both, the quasi-autonomous village community built upon a localized family system. In both, custom, rather than decrees or statutes, was the basis of law and government. There can be no doubt of the influence of Chinese political and social organization upon that of Japan. Feudalism in Japan, however, modified the spirit and administration of local institutions to a greater extent than autocracy in China was able to affect them. This was natural in view of the closer contact of the Japanese daimyo with their people and with their chief in Yedo. In Japan, administration was pervaded with the military spirit which, Wigmore says, "licensed [the farmer] to live in contented humility" but "crushed [him] without a scruple when he attempted to assert himself or dared to be dissatisfied with the rôle of a well-fed, plodding beast of burden."[16]

[14] Walter Dickson, *Japan* (Edinburgh, 1849), p. 316.
[15] *Ibid.*, p. 323.
[16] "Notes on Land Tenure and Local Institutions in Old Japan," article cited, by B. B. Simmons and J. H. Wigmore, p. 62.

In China, administration was in civilian hands from the bottom to the top of the official hierarchy. Granting the justice of Dr. Simmons's warning that "the laws for the government of the feudal lords and their retainers . . . must not be confounded with those affecting the common people,"[17] it is equally obvious that laws in themselves are lifeless and that their import is largely determined by those who apply them. In Japan, the samurai or military class were first in the social scale; in China, the scholar-official ranked highest. Although a civil bureaucracy may at times rule arrogantly, it was in China recruited from all classes, and, lacking the means of intimidation, it was compelled to respect popular opinion and to give way before a genuine protest. In spite of the differences, however, it remains true that feudalism in Japan did not disrupt the well-founded local institutions of the older time, but was a superstructure raised upon a foundation of a type differing rather in species than in genus from that of China.

The superstructure was indeed a different genus from the Chinese. Its keystone was the imperial house, of immemorial antiquity, of inalienable sovereignty, but ruling merely *de jure*, with "functions of no importance whatever."[18] The *de facto* authority rested with the greatest of the feudal lords who, or whose ancestors, had won it by the sword. The state was a feudal state dominated by the knightly ideals of *bushido*, the samurai code of honor, which were similar to, but not identical with, the military ideals of medieval Europe.[19] The samurai, men of unflinching courage, of sterling loyalty, and in some cases of high culture and unusual ability, were the cement that held the feudal elements together. They were both soldiers and administrators.

Characteristics common to both and others peculiar to each thus mark the political development of Japan and China. Circumstances which had rendered abortive recurring attempts to revive feudalism in China operated to the contrary in Japan, preventing the success of civilian administration. It is interesting to speculate as to what, in the course of generations, these similarities and differences of background will mean in the development of constitutional government in the two countries.

[17] *Ibid.*, p. 50.

[18] *Official History of the Empire of Japan*, quoted by E. W. Clement, *Short History of Japan* (Chicago, 1915), p. 75.

[19] I. Nitobe, *Bushido, the Soul of Japan* (New York, 1905).

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CHAPTER II

RESTORATION AND REFORM

CAUSES OF THE RESTORATION

The change from feudal to royal government is called the Restoration. It will be seen later that the aphorism "Every restoration is a revolution" does not apply fully to the situation in Japan. Nevertheless the Restoration was of primary importance, marking the end of the peaceful and pleasant Tokugawa period and the commencement of a new era, that of Meiji ("Enlightened Government"), destined to carry Japan through a constitutional reorganization and a series of international developments to the high status of a great power. The causes of the Restoration may be summarized very briefly.

There were two main causes: (1) the jealousy of the court nobles and of the so-called Western clans and their desire to oust the Tokugawa, itself disunited, from its long-held post of honor and power; and (2) the demand of the foreigner for admission to the country, which revealed the weakness of the dual system of government and stimulated a movement already under way to centralize authority in the Emperor, the nation's legitimate ruler. The jealous clans were able to take advantage of the Shogun's weakness in the presence of Western naval power and to charge him with disloyalty for consenting to treat with the foreigner. It may be said, therefore, that the foreign impact hastened the abdication of the Tokugawa Shogun and prevented the establishment of a new shogunate.

RESIGNATION OF THE SHOGUN

Into the history of clan warfare and of the negotiations with Western states in the middle decades of the last century there is no necessity to enter here. The Restoration was inaugurated November 3, 1867, when the Shogun, Keiki, gave up his title without demur; and it was consummated on January 16, 1868, when the Emperor, Mutsuhito, a youth of sixteen, became the beneficiary of "the

restoration of the ancient form of direct imperial government."[1] There is reason to believe that the young Shogun was sincere in his statement upon resigning: "Now that foreign intercourse becomes daily more extensive, unless the government is directed from one central authority, the foundations of the state will fall to pieces. If, however, the old order of things be changed, and the administrative authority be restored to the Imperial Court, and if national deliberations be conducted on an extensive scale, and the Imperial decision be secured, and if the empire be supported by the efforts of the whole people, then the empire will be able to maintain its rank and dignity among the nations of the earth."[2] The Emperor accepted Keiki's resignation and published an edict confirming the transfer of administrative authority to the court, which was "laying great stress on public opinion, and keeping all undisturbed those good customs and usages preserved under the Tokugawa régime."[3] Within a year Yedo, renamed Tokyo, was designated as the capital, the Emperor occupying the ex-Shogun's palace. Although the Shogun had not intended to give up his administrative functions along with his power, those functions were assumed by other clan leaders, who thus completely supplanted their former superior. "When the long line of Tokugawa rulers came to an end," writes Gubbins, "it had been in power for more than two and a half centuries. Of the fifteen Shoguns of the line, only the founder (Iyeyasu), and his grandson, the third Shogun (Iyemitsu), showed any real capacity. The former was brilliant, both as soldier and statesman; the latter had administrative talent. None of the others was in any way distinguished. Nor was this surprising. The enervating Court life of Kioto had been copied in Yedo. Brought up in Eastern fashion in the corrupt atmosphere of the women's apartments, Mikado and Shogun alike grew up without volition of their own or knowledge of the outside world, ready for the rôle of puppets assigned to them."[4]

2. SEIZURE OF POWER BY THE WESTERN CLANS

The Restoration having been accomplished principally through the efforts of four clans, Satsuma, Choshu, Hizen and Tosa, it was

[1] Words of the Tosa memorial to the Shogun, advising abdication. In J. H. Gubbins, *Making of Modern Japan* (London, 1922), p. 63.

[2] From the letter of resignation, printed by W. W. Mc Laren in "Japanese Government Documents," *Transactions of the Asiatic Society of Japan*, XLII, Pt. 1 (Tokyo, 1914), p. 2.

[3] Imperial edict. Mc Laren, "Documents," p. 2.

[4] *Making of Modern Japan*, p. 64.

but logical that they should become, as in fact they did become, the power behind the newly exalted throne. Among the leaders of these four great clans there were differences of opinion concerning the type of government that should be established. Eventually it was decided to discard the organization of the feudal period and revive the prefeudal civil bureaucracy, with certain limitations of Western institutions added. The majority of the occupants of the offices were not, however, the descendants of the Fujiwara house; as would be expected, they were the men who had created the changed order of things, the leaders of the influential clans and their followers. Actually the followers were the more important, and it was they, the samurai, rather than the nominal clan chiefs, the daimyo, who gave life and order to the revised political system. The samurai, who had managed the affairs of the feudal period, naturally carried over their knowledge and effectiveness into the revived monarchy. It is to these able and vigorous men that Japan owes her comparatively easy transition from a medieval to a modern form of polity. Foremost among them were the Satsuma samurai, Okubo Toshimizu and Saigo Takanon, Kido Koin of Choshu, Goto Shojiro of Tosa, and Soyeshima Taneomi of Hizen. Although the members of this group never received the title of *genro* ("elders"), they were in fact the forerunners of the genro, who stood upon their shoulders and completed their work.[5] It is to be noted, also, that the outstanding statesman among the earlier group, Iwakura Tomomi, was not a samurai but a member of the court nobility, and that a second highly influential and able member was another *kugé,* Sanjo Sanetomi.

It is customary to use the title Restoration for the years 1868–1871 and Reconstruction for those between 1871 and 1889. Constitutional development, however, exhibited much the same character throughout the entire period between the overthrow of the shogunate and the promulgation of a written constitution. The frequent changes that occurred are evidence of the difficulty that was being experienced in fitting new patterns into old molds. They are of interest, however, as experiments out of which a stable scheme of government evolved in a comparatively brief period.

CHANGED POSITION OF THE THRONE

The new status of the Emperor was not greatly affected by the process of constitutional evolution. What that status was may be

[5] *Ibid.*, pp. 301–302.

left preferably to fuller treatment in connection with the existing constitutional order. Mutsuhito was a mere youth in 1868; naturally his direct connection with affairs was slight. Moreover, although the shadow of outside domination had been lifted partially, the practice of diffused responsibility had not been discarded, but rather more consistently brought into effect. Instead of a single clan, a number of clans had been brought into advisory relations with the monarchy. Nevertheless the throne had gained enormously in political prestige by the Restoration. Fortunately, Emperor Mutsuhito proved himself a very broad-minded and wise sovereign, realizing the limitations of his position and content to wield great power rather through influence than by direct executive and administrative activity. What seemed to take place was a gradual increase in royal influence in affairs without observable increase of the Emperor's direct participation in government. The formulation of policy and its administration continued to lie, as they had lain for centuries, in the ministers and the official hierarchy.

The consistent and most important agency of the central government of Japan during the period under survey in this chapter was what Western students would recognize as a council of state, which underwent many variations in detail. With the council customarily were associated administrative departments, receiving their instructions from it, while the use of assemblies for purposes of discussion or legislation, tentative at first, came to be a recognized device, though one of little real effectiveness. Separation of functions along executive, legislative, and judicial lines did not occur immediately, but had been worked out before the end of the period. The evolution of local institutions proceeded somewhat more consistently than that of the national government, which would have been anticipated in view of the larger acquaintance of the Japanese people with the practice and problems of local administration.

THE SANSHOKU

The first government of the Restoration, created in 1867 and entitled the *Sanshoku* ("Three Offices") was recognizedly provisional. The model taken was the system introduced from China in the seventh century.[6] It was a council composed of a president (*Sosai*) and two groups of councilors, higher and lower, called respectively

[6] See Ch. I, p. 4.

gijo and *sanyo*. There were ten *gijo* and twenty *sanyo*. The *sanyo*, though of lower rank, were the more effective councilors. A few of the court nobility were included among the two classes of councilors, but the great majority were daimyo or samurai. In 1868, seven administrative departments were added—Shinto, Home Affairs, Foreign Affairs, Army and Navy, Finance, Justice, and Legislation—each headed either by a prince of royal blood or by a *kugé*. An eighth department—the Presidential Board—was created almost immediately. The departments were composed of the *gijo* and *sanyo*, and the departmental functions were defined. The whole organization thus presented the aspect of a council, the members of which not only discussed and formulated policy but administered the resulting legislation through their conduct of their respective departments. Judicial administration was wholly in the hands of the Department of Justice.[7] The censorate continued to exercise its power of criticism over central and local officials.

THE CHARTER OATH AND "CONSTITUTION"

Between the establishment of the first governmental system and that of the second, the well-known Charter Oath was promulgated. This document was the product of a compromise between the views of Uri, Minister of Finance, and of Kido. Uri, at the request of Iwakura, drew up five principles obtained from his study of Dutch institutions. These were criticized by Iwakura and the resulting form of the oath is Kido's compromise between Uri's views and those of Iwakura.[8] The most significant article in the oath was the first, which is now customarily translated as follows: "An assembly widely convoked shall be established, and thus great stress shall be laid upon public opinion." While by no means intended to presage a democratic parliament, this assurance later became a rallying cry of the liberal movement. Subsequently in the same year, 1868, there was made effective a so-called "constitution," which amounted simply to a revision of the *Sanshoku*. A new title was provided for the council—*Daijokwan*—but as in the *Sanshoku* the organization was that of a two-house council and a group of executive departments constituted of and presided over by mem-

[7] Mc Laren, "Documents," pp. 4–6.

[8] The authorship of the Charter Oath was explained thus to the author by Viscount Kaneko Kentaro. For the terms of the oath, see Appendix I.

bers of the council. The only substantial change was the telescoping of the *gijo* and the *sanyo* into a single "upper" house, in which the whole power of government was lodged, and the addition of a larger "lower" house, also composed of daimyo and samurai, for deliberation upon matters submitted to it by the "upper" house. The lower house was thus but a more complete edition of the upper rather than a distinctive body likely to exhibit essentially different points of view. Nevertheless, in Article 5 the "constitution" avers, "The object of establishing a deliberative body is to obtain open discussion and the opinion of the majority," thus expressing the purpose of realizing the benefit promised in the imperial oath. Another variation, amounting to little more than a detail, was the division of the principal executive functions between two of the *gijo*. Finally, the administrative departments were reduced to five —Shinto, Finance, War, Foreign, and Judicial. Each department was constituted of a minister, who was required to be either a prince of the blood, a *kugé* or a daimyo; a vice-minister; two grades of secretaries; and a clerical force. The provision of Article 3, "The legislative branch cannot possess executive functions, nor can the executive branch possess legislative functions," was quite neglected in practice, as was that of Article 9: "All officers shall be changed after four years' service. They shall be appointed by a majority of votes given by ballot."[9] The *Daijokwan* was maintained until 1885, undergoing revision in 1871 and in 1875. Various departmental changes which occurred during the years preceding the creation of a cabinet do not appear to justify special attention.[10]

Of major significance in the history of Japanese liberalism, if not in its own accomplishment, was the first deliberative assembly, the *Kogisho*, first convened in April, 1869. This was the "lower" house of the *Daijokwan*, summoned by the "upper" house to consider a wide variety of topics. Representatives were present from each of the 276 clans. As one would expect, the feudal delegates were not deeply interested in the business of discussion, although important issues were placed before them. Two sessions of the *Kogisho* were convoked, in the second of which its title was altered

[9] Mc Laren, "Documents," pp. 7–14. The oath was incorporated within the "constitution," constituting its first article.

[10] It may be helpful to point out that though the *Daijokwan* was stated in the "constitution" to be composed of seven departments, the word *departments* was used in the general sense of "divisions" or "parts" rather than the special sense of "administrative departments" or "ministries."

to *Shugi-in* ("National Assembly"). After October, 1870, no further meetings were held, and the institution was abolished in 1873, its functions being transferred to the *Sa-in*. The historical importance of the *Kogisho* lay in the recognition of it as the prototype of a more widely representative lower house.[11]

ABOLITION OF FEUDALISM

Prior to the governmental reorganization of 1871 occurred the abolition of feudalism, a logical development after the disappearance of the shogunate, but an action that cannot be explained on logical grounds alone. The underlying motive was the desire of the great clans to assure their own predominance. The continuance of disjointed local administrations was likely to bring about changes in the seat of power. To forestall the growth of separatism and cliques, it was essential to establish a centralized bureaucracy. That this was a remarkable example of foresight and a wholly sound program was demonstrated by the early years of the Chinese republic. In the absence of any unifying political organization, the Chinese Provinces became highly separatist in their attitudes toward the central government and toward each other. It must, of course, be recognized that in Japan Emperor-worship provided a much more natural agency of unification than the localism and provincialism that had always distinguished the Chinese state. Nevertheless it is clear that had feudal allegiance been turned inward and localized, rather than turned upward toward the throne, Japan might easily have fallen apart politically into hundreds of little states, each a hotbed of jealousy. That this did not happen must be ascribed to the wisdom of the able men who directed the Restoration.

The element in the situation which made it possible to bring the wise policy of the abolition of feudalism to fruition was the throne. Had the Japanese Restoration been a republican revolution, it is impossible to conceive of so peaceful a surrender of feudal privileges. No president could have won such an exhibition of loyalty. And the influence thus exercised by the throne, not as an individual or a dynasty but as a symbol of civilization, the apotheosis of Japanese history, continued and increased as the benevolent Emperor Mutsuhito grew to manhood and added to the prestige of an immemorial institution that of a personality of genuinely kingly

[11] Mc Laren, "Documents," pp. xxxviii-xxxix.

qualities. To Japan's wisdom in preserving the imperial throne is to be credited much of her rapid advancement in domestic reorganization and international standing.

The features of the abolition of feudalism may be stated briefly. The movement, which had been the subject of memorials to the throne from a number of clans, actually began to have effect in March, 1869, when the four principal Western clans, those of Satsuma, Choshu, Tosa, and Hizen, voluntarily surrendered their fiefs to the throne. The memorial stated that: "Two things are essential to the Mikado's administration. There must be one central body of government, and one universal authority which must be preserved intact. . . . [formerly] the Emperors . . . conducted the government in their own persons, the name and reality of power were continued, and consequently the nation was tranquil and contented. But from the time of the middle ages the administration became lax, and the authority of the Emperors came to be a plaything. . . . Finally the Mikado's government lost all real authority and was entirely dependent upon the will of the shogunate. . . . It is now sought to establish an entirely new form of government. . . . The land in which your servants live is the land of the Emperor, and the people whom they govern are his subjects. Neither the one, therefore, nor the other can belong to your servants."[12] It is interesting to note that this remarkable assertion of the sovereign's prerogatives was made in the same year that the *Kogisho* was convoked. Neither the assertion nor the *Kogisho,* however, expressed the real situation, namely, the location of power in the major clans.

The imperial rescript for the abolition of the feudal fiefs (the *han*) was not promulgated until August, 1871. The intervening period had been spent by the leaders of the movement in obtaining confirmations of support from their own and other powerful daimyo, in recruiting an imperial army, and in dissemination of anti-feudal propaganda. Promises of compensation to both daimyo and samurai, in the forms of official position and money, were made. Not the least influential argument was the importance of presenting a united front to the insistent foreign nations. The full meaning of the contemplated change was at first concealed behind the appointment of the daimyo, all but seventeen of whom voluntarily

[12] Mc Laren, "Documents," pp. 29–31. Uyehara, in *Political Development of Japan* (London, 1910), p. 60, states that the "real author of the memorial is supposed to be Kido," the leading samurai of Choshu. He had the active support of Okubo and Saigo, the principal Satsuma samurai.

placed the disposition of their lands and authority in the hands of the Emperor, as governors of their own fiefs.[13] No doubt a very important factor in the situation which led up to what must be regarded as a most remarkable surrender of wealth and privilege was the desire to "save face," to dissociate themselves from that discredited and destroyed institution, the shogunate. Contrive as one will, however, to analyze the action critically, one is compelled to acknowledge that the noble classes did exchange a valuable reality of individual power and wealth for a combination of a strengthened throne and a speculative personal compensation. Realizing the forces arrayed in support of the change, one must acknowledge that the two-sworded men were not cowards, and that they did not accept the program of Kido and his friends through fear. Granting that there were features of political foresightedness, business shrewdness, and militaristic stupidity in the abolition of feudalism, it is necessary to accept the strong element of idealism, of loyalty to Emperor and country, that tinges the surrender. Nor was this element simply the shibboleth by which the more intelligent leaders excited the imaginations of the feudal hierarchy. In the leaders as well there was exhibited a deep sense of devotion to the country and to the throne. To overlook or slight unduly the element of self-sacrificing loyalty in the Japanese people at that time would be to neglect a factor which was then, and is to-day, of primary political significance. On the other hand, to exalt the factor of idealism to the obscuration of the practical considerations that dominated the abolition movement would be to discount other historical data of equal importance.

The essential paragraph of the imperial edict of abolition read: "Profoundly regretting [the] condition of affairs, we now completely abolish the Clans (*Han*) and convert them into Domains (*Ken*) with the object of diligently retrenching expenditure and of arriving at convenience of working, of getting rid of the unreality of names and of abolishing the disease of government proceeding from multiform centers."[14]

SAT-CHO-HI-TO INFLUENCE INCREASED

The abolition of feudalism had important effects upon the various parts of the Japanese constitutional organization. The throne was

[13] Mc Laren, "Documents," p. 32.
[14] *Ibid.*, p. 33.

freed from the danger of revolting daimyo, but it was not left free to develop as it would; rather it was identified with the successful leaders of the abolition movement to whom it owed its increased prestige and security. The clans had been disposed of, juridically, but their influence remained, particularly that of the four great Western clans who formed a combination that came to be known as Sat-cho-hi-to. Membership in the clans was not a matter of blood relationship, but of attachment to a ruling house by residence within its territories. In the case of Satsuma and Choshu particularly, it was found to be politically advantageous to retain one's status as a member of the clan, due to the fact that as time passed these two clans attained larger and larger influence. Satsuma clansmen came to control the navy, Choshu men the army. Other clans gradually lost their individuality and disappeared in fact as in name. A third group, the people, formerly dependents of their lords, were freed by the abolition of feudalism and were given the opportunity of growing into an effective political agency. That they realized this opportunity soon was to be demonstrated.

MINOR GOVERNMENTAL CHANGES

The revision of the central government which took place in 1871 was not important. New names were given to the "upper" and "lower" houses and to the executive board, and the latter was enlarged by the inclusion of the department heads. The revised upper house of the *Daijokwan* was called the *Sei-in* ("Central Board"); the lower house, the *Sa-in* ("Left Board"); and the executive board, the *U-in* ("Right Board"). This third stage in constitutional evolution was a step backward in that the *Sa-in*, to which the deliberative functions of the *Kogisho* were transferred, was not even representative of the clans, which in 1871 were no longer legally in existence. It was an appointive body, resembling the *Sanyo* of the earlier *Sanshoku* not only in its membership but in its function. The real determination of policy lay with the *U-in* and the *Sei-in;* the *Sa-in* might consider and advise upon measures, but its suggestions carried little weight. It is apparent that, deprived of its basis of representation and unprovided with a new basis, the ill-fledged deliberative assembly had no effective sanction.[15]

[15] That the views of the *Sa-in* were not always negligible may be illustrated from the effect which the manifesto of the samurai in 1874 had upon the government. Uyehara, *op. cit.*, pp. 76–78.

FIRST ATTEMPT TOWARD SEPARATION OF POWERS

In 1875, following the investigations of a commission on administrative reform, composed of Kido Koin, Okubo Toshimizu, Ito Hirobumi, and Itagaki Taisuke, the three boards were abolished. For the first time there were constituted separate executive, legislative, and judicial agencies, respectively entitled the *Daijokwan,* the *Genro-in* and the *Daishin-in,* which may be translated, in the same order, the Privy Council, the Senate, and the Supreme Court. Although apparently the reorganization exhibited the aspect of three independent agencies, according with the principle of separation of powers, in fact the council remained supreme, even over the court. The creation of this system of government, conforming outwardly to more progressive standards, followed the Osaka Conference, at which a compromise had been suggested by Ito between the proposals of one group which was pressing for the establishment of representative government and those of a second group which desired to leave the power where it was until the people generally had become able, through education, to act responsibly in political affairs.

The new *Daijokwan* or Council of State was, like its predecessors, a combined council and group of departments, and was made up of the able samurai who for the previous decade had been conducting the country's politics. The *Genro-in* was composed of men appointed nominally by the Emperor from four specified classes. Its function was "to discuss and decide upon measures of new legislation or for the revision of existing laws." But it might consider only such matters as the council should place before it, and the council was authorized to indicate whether bills so referred were "for decision" or simply "for inspection." The Senate was empowered to make recommendations for legislation to the Emperor. Quite an elaborate manual of rules was promulgated for this body.[16] In effect the *Genro-in* may well be likened to the earlier councils entitled respectively the *Sanyo,* the *Kogisho,* and the *Sa-in.* All were more or less enlarged reproductions of the Council of State, which on occasion exercised some restraining influence upon the council but possessed no final authority.

The *Daishin-in* was a Supreme Court which has remained continuously in existence since its establishment. As in the case of the

[16] Note that the *Genro-in* had no connection with the extra-constitutional body known later as the genro.

Genro-in, the judicial arm of the new order also was brought strictly under the control of the council through the regulations which subordinated it to the Department of Justice. In fact, therefore, its appearance was important rather for the addition of a specialized agency for the final judgment of cases at law than for the erection of a bulwark against official illegalities and arbitrary actions. Associated with, but not a part of, the Department of Justice, hitherto the sole final legal resort, it was to be expected that the *Daishin-in* would make a valuable contribution to the evolution of the law and would exercise a regularizing and moderating influence upon its administration. This, in fact, it has done.[17]

AGITATION FOR AND PROMISE OF A PARLIAMENT

Between 1875 and 1885, the next important landmark in Japan's constitutional development, the agitation for a liberalizing of the government continued and increased. Itagaki of Tosa resigned from the council in protest against the limitations upon the *Genro-in.* Okuma Shigenobu, a samurai of Hizen, became the sponsor, with Itagaki, of the movement for a popular assembly. With such influences to placate, the powers behind the throne advised the Emperor to issue a decree declaring his intention of establishing a parliament, which he did on October 12, 1881.[18] He affirmed that: "We, sitting on the Throne which has been occupied by Our dynasty for over 2,500 years, and now exercising in Our name and right all authority and power transmitted to us by Our ancestors, have long had in view gradually to establish a constitutional form of government, to the end that Our successors on the Throne may be provided with a rule for their guidance," and declared that: "We shall, in the 23rd year of Meiji (1890) establish a Parliament." It was the wise thought of the men who advised the throne that changes of such great moment should be prepared for, whence the setting of a date nine years away for the culminating act. The proclamation of 1881 did not provide for a constitution, but the purpose to do so was to be inferred from the paragraph which read: "With regard to the limitations upon the Imperial prerogative, and the constitution of the Parliament, We shall decide hereafter and make proclamation in due time."

[17] For the documents of 1875, see Mc Laren, "Documents," pp. 41–52.
[18] *Ibid.*, pp. 86–87.

Emperor Mutsuhito recognized the necessity for assuaging the demand for a more popular assembly when he promised that a parliament would be convened in 1890 and that a constitution would be established. Numerous memorials had been sent in to the government during the previous decade praying for the ascertainment of the general opinion of the empire by public discussion, and political societies, destined to develop into permanent parties, had been organized to agitate for a parliament and to study the parliamentary institutions of other countries. The newspapers became a leading outlet for the expression of sentiment on both sides of the subject. A variety of reasons was urged in support of the proposal for a parliament, arguments following the views of individuals, and the sum of them tending to the conclusion that a parliament would prove a panacea for all ills as well as the satisfaction of the primary principle of popular government. Reference was made in many instances to the promise contained in the imperial oath of 1868.[19]

The principal motives inspiring those who spent their energies in the reform movement were two. One was the imitation of Western countries, the other the checkmating of the great clans. The first was in part the result of admiration of foreign systems of government, in part the desire to gain "face" with the foreigner and to persuade him to relinquish his special treaty privileges. The second looked inward for a means of influence which might be used with advantage by the men who had been left unprovided for in the distribution of offices because they were not members of the principal clans or would not accept the secondary positions which Satsuma and Choshu were willing to bestow.[20] The influences directed toward parliamentarism were powerful and able. The results of the movement are dealt with in the treatment of the constitution and the Diet.[21]

CREATION OF A NEW NOBILITY

It is significant of the spirit in which Ito, the foremost political thinker of the time and the chairman of the commission on constitutional investigation, went about the work of revision that in 1884, at his motion, a new nobility was created. The former *kugé* and

[19] See various memorials, etc., in Mc Laren, "Documents," pp. 426–484.
[20] See the treatment of party development in Ch. XII of this book.
[21] See Chs. III, X, and XI.

daimyo, civil and military nobles respectively, had been deprived of their titles in 1869 and grouped together as a single class, *kogoku,* without noble rank.[22] By reëstablishing the nobility, Ito accomplished a variety of useful purposes. He provided an institution familiar to the West; he attained the good-will of an influential and wealthy class in Japan; he secured noble rank for a number of leading samurai, including himself; and he established a conservative element as a legal institution, providing a reservoir from which to draw members for a future house of peers and a balance-weight for the liberal movement.

Five hundred men received titles of nobility: twelve, the title of prince; twenty-four, that of marquis; seventy-four, that of count; three hundred and twenty-one, that of viscount; and sixty-nine, that of baron. Of the total, only thirty-five were newly created, the remainder being the old *kugé* and daimyo. It was decreed that titles should be conferred upon nomination by the Emperor, endorsed by the Minister of the Imperial Household; also that they should be hereditary, descending to the eldest legitimate male child.[23]

THE CABINET ESTABLISHED

Clearly it was advisable that the executive department should be organized in advance of the legislature in order to be prepared to lay projects of law before that body and to become familiar with its more routine duties before its members should be called upon to assume their constitutional relationship toward a parliament. In 1880 and 1881, readjustments toward more effective administrative arrangements had been attempted. Heads of departments were appointed in 1880 from men outside the council, and the council was divided into sections to supervise their work. This was found to be clumsy, and in 1881 the former system was restored; but a bureau was set up in the council to coördinate the work of the various departments. In 1885 the Council of State was abolished, and in its place appeared the cabinet (*Naikaku*). The cabinet, like the Senate and the Supreme Court before it, was a recommendation of Ito, another result of his travels in the West and his study of constitutional systems. It was modeled upon the German cabinet created by Bismarck. In Ito's *Commentaries* is to be found his reason for suggesting the change from the immemorial privy council govern-

[22] Mc Laren, "Documents," p. 32.
[23] *Ibid.*, pp. 88–90.

ment: "By the said reorganization, the Ministers of State were made each separately to bear his share of responsibility to the Emperor directly. Over them was placed the Minister President of State. The object of this change was, on the one hand, to give weight to the functions of the Ministers of State and to impress upon them a higher sense of their responsibility and, on the other, to maintain the unity of the Cabinet and to avoid all complications and variances therein." [24]

It is apparent also that Ito wished to have a free hand with his constitutional program and had no intention of doing away permanently with the Privy Council. In 1888 a new council was established, with Ito himself as its president. It will be a later task to analyze the present constitutional relationship between the cabinet and the council, but it may be pointed out here that the relationship is distinctly different from that which prevailed prior to 1885, and that the purposes which Ito stated in the passage cited above in general were realized. Nine cabinet departments were created in addition to the office of Minister President. Ito was made Minister President, and the cabinet headships were allotted to three other members of the Choshu clan, four members of Satsuma and two others. It is noteworthy that not one name from among those previously mentioned as the Restoration leaders appeared in the cabinet list. A new group had arrived whose services to the state were to win for the greatest of them the popular title of *genro* ("elders" or "elder statesmen"). The first cabinet included Ito Hirobumi, Inouye Tsuyoshiaki, Yamagata Aritomo, and Mori Arinori, all of Choshu; Matsukata Masayoshi, Oyama Iwao, Saigo Tsugumichi, and Yamada Akuyoshi, of Satsuma; Tani Kanjo of Tosa; and Enomoto Baye of Hizen.

BEGINNINGS OF A MERIT SYSTEM

In 1885 and 1886 also occurred the establishment of a merit system for the civil service. There had been considerable criticism by the reformist element of the distribution of offices upon the basis of favoritism toward friends and persons of influence. Ito took the opportunity of meeting such criticisms and of strengthening his own influence. It was provided that appointment and promotion

[24] Ito Hirobumi, *Commentaries on the Constitution of the Empire of Japan*, translated by Ito Myoji (2nd ed., Tokyo, 1906), p. 99. Mc Laren, "Documents," pp. 94–108.

should be based upon examination by a commission, that success in examinations for first appointment should be followed by a period of probation, and that promotion should be conditioned upon age, character, health, and ability, as well as upon the results of examination. The reform was effective in reducing the evils complained of, and the regulations have been retained, with modifications.[25]

CREATION OF A NEW PRIVY COUNCIL

There remains to be noted but one more change prior to the promulgation of the constitution, the creation of the Privy Council (*Sumitsu-in*) in 1888. The break with the past which was marked by the disappearance of the *Daijokwan* and the setting-up of the cabinet was sufficient to permit creating the new council as an advisory body. The ordinance read: "Whereas we deem it expedient to consult personages who have rendered signal services to the State, and to avail Ourselves of their valuable advice on matters of State, We hereby establish Our Privy Council."[26] It will be seen later that the constitution expanded somewhat the functions of the council.[27]

REORGANIZATION OF LOCAL GOVERNMENT

The abolition of feudalism paved the way for the reorganization of local government. The evolution of local institutions was more logical and continuous than that of the agencies of national government, but this was to have been expected in view of the larger experience of the Japanese people in managing local affairs in previous periods.

The units which were created in 1867 and 1868 to form the base for local administration have not been superseded. They were entitled *ken* ("prefectures" or "provinces"), and *fu* ("urban prefectures").[28] The *ken* were the transformed fiefs, created first in 1868 out of the territories of the Shogun, and subsequently (1871) substituted for the remainder of the feudal *han*.[29] The *ken* were reduced in number from 302 to seventy-two in 1872, and to-day they

[25] Mc Laren, "Documents," pp. 97, 102–104. See also Ch. IX of this book.
[26] *Ibid.*, p. 127.
[27] See pp. 91–92.
[28] For a more complete examination, see Ch. XV.
[29] Mc Laren, "Documents," pp. 22, 32–33.

number only forty-three.[30] The *fu* on first creation (1868) numbered nine, but they were reduced to three—Tokyo, Kyoto, and Osaka—in the following year. Tokyo and Osaka are the largest and most important cities of Japan, while Kyoto retains its distinction by virtue of its long history as the imperial city.[31]

GOVERNORS' ASSEMBLY CREATED

In 1875 was established the *Chihokwankwaigi* or assembly of prefectural (*ken* and *fu*) governors, one of the features of the compromise scheme worked out at the Osaka Conference. Much was hoped for from this assembly as a medium for the expression of local sentiment, but it turned out to be little more than a convenience for the national government in instructing the localities. Nevertheless, it did contribute to the formulation of important legislation affecting local government in 1878 and subsequently. The assembly met irregularly until 1881, when it became what its constitution provided and what it is to-day, a regular annual conference of the Home Ministry and the governors.[32]

INTRODUCTION OF LOCAL ASSEMBLIES

Elective assemblies for the *fu* and *ken* were established in 1878. On the same date these areas were subdivided into counties and cities, while the counties in turn were subdivided into towns and villages.[33] From the beginning it was provided that the town and village head-men (*kocho*) should be elected by majority vote of the respective jurisdictions, with the requirement of approval of election by the governor of the prefecture.[34] In 1880 elective assemblies were ordained for each of the classes of local government except the counties, which did not obtain them until 1890.[35] In 1881 the assemblies of the *fu* and *ken* were authorized to divide into urban and rural sections for the smoother conduct of business. The two sections were to continue to meet as a single assembly to deal with matters of common concern.[36] At intervals, additional ordinances

[30] *Ibid.*, p. 251. *Japan Year Book*, 1931, p. 51.
[31] Mc Laren, "Documents," pp. lxxxvii, 28.
[32] Mc Laren cites a number of illuminating press reactions ("Documents," pp. lxxvi–lxxx). See also *ibid.*, pp. 505–529, for the relevant documents.
[33] *Ibid.*, pp. 270–276.
[34] *Ibid.*, p. 287.
[35] *Ibid.*, pp. 296–297.
[36] *Ibid.*, pp. 303–305.

were published for the local areas, of which the most important were those of 1888–1890, comprising a complete code of local government which is for the most part still in effect.[37] The local assemblies possessed the power to legislate in financial matters, subject to the approval of the executive authority of the locality, who was an appointee of the central government in all areas above the town and village.[38]

Local government had made rapid headway and was operating efficiently when, in 1889, the constitution was placed in effect. It will be seen later that great credit is due the legislators of Japan for the simplicity and uniformity of the local institutions created by them. It is also worthy of note that the establishment of local assemblies was a sound measure, providing an opportunity to become acquainted with their functions and methods of procedure and permitting a gradual transition to a full parliamentary régime. On the whole, however, the note of paternalism in the relations between the central government and the localities remains dominant throughout the whole period traversed in this chapter.[39]

LEGAL REFORM

It remains to be noted that along with the legislation providing new central and local constitutional machinery there were being worked out new statutes and codes to cover the whole field of public and private law. Japanese law had been borrowed from China in the seventh and succeeding centuries.[40] Early feudalism affected the administration of the law but did not alter its essential principles. Adaptation to Japanese conditions went on, however, and the excessive formalism of the Chinese law gave way to a simpler, more direct type of statement. During the Tokugawa period, as previously noted, notable codes for the regulation of the various feudal relationships were promulgated, in which the Chinese influence still was traceable.[41] And the early laws of the Restoration were revivals of the ancient Chinese models.

In general the motive for altering Japanese law in the period of Meiji was to meet the objections of foreign states which had

[37] Mc Laren, "Documents," pp. 305–425.
[38] This power over finance was essentially advisory.
[39] S. Shimizu in S. Okuma, *Fifty Years of New Japan* (London, 1909), I, 320–333.
[40] M. Tomii, *ibid.*, pp. 235–239.
[41] See pp. 14–15.

demanded and obtained extraterritorial rights in order to protect their nationals in Japan from the operation of laws which they regarded as unjust and obsolete. The weakness of Japan at the time of the treaty-opening gave her no choice but to bring her legislation into conformity with Western principles of jurisprudence and legal procedure if she would relieve herself of the indignity of foreign jurisdiction within her territories. Beginning in 1873, the development of a penal code and a code of criminal procedure modeled after the French was completed in 1880, and the codes were placed in operation in 1882. The code of criminal procedure was amended in 1890, and a revised penal code appeared in 1908. Of greater difficulty was the preparation of a civil code, since the civil law had been largely local custom, varying greatly from region to region, though somewhat unified by certain common principles running through the family system. The civil code also was largely an adoption and an adaptation of the French civil law, but owed something to the German code and the laws of other states. The work of drafting the civil code proceeded from 1870 until 1898, portions of it appearing in 1896. It became effective in 1899, on which date extraterritoriality ceased. On the same date a commercial code derived mainly from that of Germany was made operative. A code of civil procedure had become effective in 1891.[42] Thus, to quote Professor Tomii: "Statesmen in power skimmed the cream from the legal systems of other countries and appropriated it to the advancement of civilization in their own land." [43]

Thus the government of Japan, both central and local, exhibited by 1889 a number of features destined to be retained under the constitutional régime. The executive agencies—Emperor, cabinet, and council—were well defined. The civil service was in working order under a merit system. The Supreme Court had enjoyed nearly a decade and a half of experience. Local institutions were functioning which included some popular participation in affairs. An adequate body of law was in process of codification.[44] The essential problems still to be solved were the broadening of the representative character of the legislature—since the Senate, which had been maintained since its creation in 1875, had the nature of a house

[42] Tomii, as cited, pp. 241–250. K. Takayanagi, *Reception and Influence of Occidental Legal Ideas in Japan* (Tokyo, 1929), *passim.*

[43] Tomii, as cited, p. 250.

[44] Takayanagi Kenzo, *Reception and Influence of Occidental Legal Ideas in Japan*, published as a pamphlet by the Japanese Council, Institute of Pacific Relations (Tokyo, 1929), *passim.* This is a thoughtful, brief survey of the subject.

of peers—and the determination of the relations and the division of powers between the executive and legislative departments.

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CHAPTER III

THE CONSTITUTION

Constitutions, if they are to be workable, must be human documents growing out of conditions that dominate in the society for which they are prepared. In Japan those conditions opposed the drafting of a constitution that would have conferred upon the people rights of individual liberty and of representative government such as they had never enjoyed. Proposals for a democratic constitution were regarded by the governing class as *lèse majesté*. To them such a document would have been a reckless gesture in that it discarded the sheet-anchor of the state—that centralized authority which alone meant government. On the other hand, a desire existed and a necessity was felt for a fundamental instrument of government which should embody an agency for the expression of public sentiment in the form of a legislative assembly and symbolize to the West the development which had taken place in Japanese political thinking.

THE DRAFTING OF THE CONSTITUTION

Following upon the issue of the Charter Oath, Ito Hirobumi, a former samurai of Choshu, was sent to Washington to study the American system of government.[1] This was in 1870. He discussed his purpose with the Secretary of State, Hamilton Fish, who placed in Ito's hands copies of the American constitution and of important statutes and also a copy of the *Federalist*. The latter Ito studied carefully, and he referred to it frequently during the drafting process later in Japan. However, although the *Federalist* was of great service to Ito in explaining the principles of constitutional government, its influence upon the Japanese constitution was negative rather than positive. It instructed in what to avoid, due to differences in circumstances. Its positive influence lay in the sugges-

[1] The author owes this account of the drafting of the constitution to Viscount Kaneko Kentaro, one of the three men most intimately associated with Ito in the drafting work. It accords a larger part in the process to Emperor Mutsuhito than Japanese scholars are accustomed to acknowledge.

tions it afforded upon drafting methods and the conduct of discussion.

The success of Prussia in the war with France brought German political institutions into greater prominence, and the works of Stein, Gneist, Bluntschli, Jhering, and others were the media for their interpretation. In 1881, as previously noted, came the imperial promise of a parliament. Two years before that date, in 1879, occurred the visit of General Grant to Japan. It was natural, in view of the many demands then being voiced, that Grant should be asked for advice upon Japan's constitutional problem. He expressed the opinion that the grant of a constitution was inevitable and advised that while imitating the form of Occidental documents and agencies, Japanese statesmen should take care to preserve their own national precedents as the foundation of the new political structure. Considerable importance was attached to Grant's views by Ito and his colleagues.

Prussian rather than American models were destined to be adopted by Japan, and Ito, having found the American models ill suited to his needs, was sent to Germany in 1882. There he formed an acquaintance with Bismarck and also discussed his problems with Gneist and Stein. The greater part of his time was spent in Prussia. Returning to Japan in 1884, Ito was appointed to draft a constitution. He chose as secretaries three men of exceptional ability, all of whom had traveled abroad and one of whom, Kaneko, was a graduate of an American law school. The three were Ito Myoji, Inouye Tsuyoshiaki, and Kaneko Kentaro. All were clansmen. The four men constituted a bureau, which was attached, not to the administrative branch nor to the Senate, but to the imperial household, thus signalizing the imperial initiative and the high importance of the task.

Ito had a summer home on a small island, Matsushima, near Yokosuka. It was there that the drafting committee had many of its meetings, which were held at intervals over a period of two years. Ito was Prime Minister and could not devote a great deal of time to the actual business of phrasing constitutional articles or selecting model articles from the constitutions of other states. He indicated his desires broadly, leaving details to be supplied by the secretaries. Inouye was the principal drafter of the constitution, while it fell to Ito Myoji to draft contemporaneously the law of the houses and to Kaneko to draft the law on the organization of the House of Peers and the election law. Article by article, the

work of one secretary was scrutinized by the others and by Ito, and when their work was finished the constitution was laid before the Emperor. Professor Hermann Roessler, a German professor at the Imperial University of Tokyo and an adviser to the cabinet, was the only foreigner consulted to any extent by the drafting bureau.

The question then arose: How should the constitution be ratified? Was it sufficient that it receive imperial approval, or should some more democratic method be employed? Okuma and Itagaki, the leaders of the new political societies, urged a constitutional convention representing the whole country. The officials in general favored acceptance by the sovereign alone. Ito decided upon a middleway and called the Privy Council into being to discuss the document. Resigning from the premiership, Ito took the presidency of the Privy Council and appointed his three secretarial collaborators secretaries of the council. Both Okuma and Itagaki were appointed members of the council. Okuma accepted appointment, but Itagaki declined it.

The Privy Council held its constitutional deliberations during the period from May, 1888, to January, 1889. The closest secrecy was maintained, so that not a single article was known to the public prior to promulgation. Neither members nor secretaries were permitted to take documents away from the conference room in the imperial palace. If a member desired to give individual study to an article or section, he was obliged to remain at the palace and to be accompanied in his work by a secretary. This procedure was decided upon after Kaneko discovered that the deliberations of the American constitutional fathers had been in secret.

Emperor Meiji took the greatest interest in the discussions and attended every session of the council while they continued. Frequently he commanded the attendance of Ito and raised questions as to the advisability of this or that provision. Willing to be convinced that a decision taken by majority in the council was wise, the Emperor also was stanch in supporting a minority view if he felt confident that it was the more suited to Japanese conditions. At times his arguments led Ito to ask reconsideration of such decisions. The instruction in matters of state which the Emperor had received in his earlier years from such ministers as Sanjo Sanetomi and Iwakura Tomomi had given him a useful basis for a contribution to the constitutional debates.

Ito Myoji was the principal author of the *Commentaries* which

were submitted to the Emperor and the Privy Council with the constitution and were published to explain it to the general public. They are, however, the product of the discussions between the secretaries and between them and Ito. It was decided by Ito that the *Commentaries,* written somewhat after the style of the *Federalist,* should not be published as an official document. Consequently he obtained the copyright and took the responsibility for them, issuing them in his own name.

GENERAL CHARACTER OF THE CONSTITUTION

The instrument thus elaborated has been denominated by Dr. Uyehara as "a document embodying Japanese political principles under the cloak of representative institutions."[2] As the same author wrote: "It is true that the Constitution may be regarded as an embodiment of greatly advanced political principles, if looked at purely from the standpoint of our traditional political ideas and theories and the environment in which it was framed and adopted."[3] But he takes the position that its framers "lost sight of the true principle of representative institutions" and failed to leave an available avenue for democratic development, and it cannot be denied that the constitution is, in terms, designed for the oligarchical absolutism in which it began its career. Nevertheless, the history of the Diet, with all the exceptions allowed for, is a history of increasing popular control. In later chapters there is an account of the travail compelled by a constitution of very limited provisions for representative government in order that real constitutionalism might come into being.

That the promulgation of the constitution was attended with but little criticism does not prove that it was satisfactory to all sections of opinion, since the radical newspapers had been suppressed and orders given to the rest to refrain from unfavorable

[2] *The Political Development of Japan* (London, 1910), p. 119. For the constitution, see Appendix IV. Nakano has written: "With the exception of the constitutions of some of the German monarchical States, at the time of its promulgation the Japanese constitution was, perhaps, the most autocratic constitution in the world. In view, however, of the strong monarchical tradition . . . it must have been regarded . . . by the Japanese as democratic in character." T. Nakano, *The Ordinance Power of the Japanese Emperor* (Baltimore, 1923), p. 252.

[3] *Op. cit.,* p. 119. It is difficult to believe that Ito was wholly sincere when he wrote: "The original national polity is by no means changed by it, but is more strongly confirmed than ever," unless he was using the term *polity* in a very restricted sense. *Commentaries on the Constitution of the Empire of Japan* (2nd ed., Tokyo, 1906), p. 2.

comment for a time.[4] Undoubtedly, the men who in 1881 framed the document known as the "Draft of a Constitution," a distinctly more advanced though by no means revolutionary body of suggestions, regarded the imperial gift of 1889 as lacking in generosity.[5] But those men spoke for no more than a fraction of the influential class, not to mention the unpolitical masses. Furthermore, it cannot be charged that the constitution was retrograde in contrast with the imperial oath of 1868. The *Kogisho* was regarded in its day, by the men who had framed the oath for the young Emperor to proclaim, as satisfying its promise of deciding measures of state after full discussion. And certainly the Diet represented a long stride in advance of the *Kogisho.*

THE CONSTITUTION PROCLAIMED

The constitution was presented to his people by Emperor Mutsuhito on February 11 (1889), a date which was already the annual public holiday *Kigensetsu.* It was read in the palace before a large audience of notables—an unprecedented mode of action—but there was no sort of referendum. It became effective on November 1, 1890. It is a comparatively short document, shorter than the constitution of the United States, containing a preamble and seven chapters of seventy-six articles.[6] The language is simple and concise. The law thus provided is a mere skeleton, leaving to other imperial ordinances such matters as are contained in the "Imperial House Law," the "Ordinance Concerning the House of Peers," the Law of the Houses of the Diet, the law of election, and the law of finance, all of which were promulgated with the constitution. It is shown hereafter that in Japan custom also is highly important in modifying the tenor of the written constitution, as it is in every country, since it is impossible for a mere document to supplant indigenous institutions by ignoring them in its terms.

It is of interest to note that there appeared with the constitution and the ordinances just recited two statements similar to the preamble, one entitled the "Imperial Oath at the Sanctuary of the Imperial Palace," the other the "Imperial Speech on the Promulga-

[4] W. W. Mc Laren, *A Political History of Japan* (London and New York, 1916), p. 186.

[5] Mc Laren, "Documents," pp. 484–495.

[6] The terminology of the translation in Ito's *Commentaries* is followed here rather than that of the American constitution, in which the term *article* was used instead of *chapter* and *section* instead of *article.*

tion of the Constitution."[7] The three statements amount to affirmations of two principles, namely, (1) that the ancient prerogatives of the dynasty have not been impaired by the grant of a constitution and (2) that the dynasty should observe forever its self-imposed obligation to rule in accordance with the provisions of the constitution. Aside from these important declarations, the three documents are devoted to eulogy of the glories and beneficent influence of the royal house through the ages.

THE CONSTITUTION AND GERMAN PROTOTYPES

The seven chapters of the constitution have to do, respectively, with the Emperor, the rights and duties of subjects, the Diet, the ministers and the Privy Council, the judiciary, finance, and supplementary rules. The Japanese borrowed extensively, in drafting the constitution, from German models. Unfortunately no commentator has produced evidence on this point from the mouth or pen of Ito. But from comparison of texts, coupled with a knowledge of Ito's movements while studying European constitutionalism, reliable conclusions may be drawn. A Japanese scholar, Nakano Tomio, has made an exhaustive comparison of the Japanese and contemporary European constitutions.[8] It is his conclusion that only three articles in the Japanese document, viz., 1, 31, and 71, may be regarded as wholly original. Of the three, the first is a complimentary reference to the dynasty, the second embodies the familiar executive power to declare martial law, and the last somewhat resembles the Bismarckian device of governing without a budget. Among the remainder, Nakano traces forty-six articles to the constitution of Prussia and eighteen others to various provisions in the constitutions of other German states. Observing so heroic an effort to cut Japan's newly adopted constitutional costume upon German lines, one naturally asks how successful her tailors were in the transfer of style.

DISTRIBUTION OF POWERS

The Japanese system of government is highly centralized both functionally and geographically. The three departments—execu-

[7] See Appendix II; cf. the Sanctuary Oath with the Charter Oath (1868); the latter is Appendix I.

[8] Nakano, *op. cit.* Ch. xv.

tive, legislative and judicial—are set off distinctly from one another, and functions and powers are assigned to each. But the separation strongly favors the executive. The letter of the constitution places not only the executive but the legislative and judicial power in the hands of the Emperor. That this rendering of the situation is theoretical rather than practical is explained hereafter. As between central and local governments, the former controls the latter down to the minutest detail. The constitution makes no reference to local government, which is organized and administered under ordinances and statutes. The Japanese polity is *sui generis*, founded upon traditional principles which have been carried over from feudal days, and which are to-day subject to the strictures of reformers. The student must guard against too great emphasis upon either the older or the newer ideas and agencies. He must analyze the living constitution to reach his own estimate of its relation to the fundamental document.

INTERPRETATION AND AMENDMENT OF THE CONSTITUTION

There is no provision in the constitution which expressly indicates in what agency lies the authority to interpret the constitution. Uyehara declares that the courts have no power to interpet the constitution, and that the power belongs to the Emperor.[9] The ordinance of 1888 creating the Privy Council made it one of the council's functions to advise the Emperor "as to the interpretation of the constitution, or of the laws appertaining thereto." This does not mean that the council exercises a continuous function of judicial interpretation. The ordinary courts interpret and apply the laws and ordinances through which alone constitutional provisions are brought into operation upon private individuals. The administrative court exercises the same function in cases between private parties and a governmental agency save in certain excepted types of issues. Only when an issue of constitutionality is raised between governmental agencies, e. g., between the Diet and the cabinet, is recourse taken to the council. To date, there has been but one instance of such recourse. It occurred in 1892 upon an issue between the two houses of the Diet regarding their respective powers over the budget. The question of interpretation was referred to the

[9] *Op. cit.*, p. 131. Minobe holds that the Emperor has no power to interpret the constitution. He places the ultimate power of interpretation in the Emperor and the Diet, acting by legislation. See N. Kitazawa. *The Government of Japan* (Princeton, New Jersey, 1929), pp. 61–62.

Emperor, who invited the opinion of the Privy Council and accepted it when rendered, thereby creating a precedent which continues to be recognized.[10]

The Japanese constitution never has been amended. It contains, however, complete provision for amendent. The process is an extremely difficult one to bring into operation under present conditions, since the initiative must come from the Emperor. This may mean either upon the Emperor's own suggestion or upon the suggestion of the forces behind the Emperor, the suggestion being made through him. A project of amendment must secure the approval of the Diet. The project may not even be discussed in either house unless at least two thirds of the members of that house are present. Approval requires the affirmative vote of at least two thirds of the members present. It is also provided that no modification may be made during a regency.[11] These provisions constitute the least flexible system of amendment to be found in any existing constitution. The document is held to partake of the Emperor's sacred character, and proposals of alteration would be treated as sacrilege. Fortunately it has been possible for the "working" constitution to evolve by legislation, ordinance, judicial precedent, and custom.

Secondary only to the constitution is the Imperial House Law, regulating the succession and the administration of the imperial family. Over this law the Diet has no control. The Imperial House Law may not, however, run counter to the constitution.[12] Amendment may be effected by the Emperor with the advice of the imperial family council and the Privy Council. It was amended in 1907 and again in 1908.

Neither the constitution nor the Imperial House Law may be amended during a regency. Ito's conception of the Emperor's share in the amendment process is clarified by his commentary upon this point: "the fundamental laws of State and of the Imperial House being of far superior importance than the office of Regent, which is in its nature provisional, no personage other than the Emperor has the power of effectuating the great work of making an amendment to any of them." [13]

[10] Uyehara (*op. cit.*, p. 185) states that this "shows that the Emperor is in actuality neither the maker of the law nor the interpreter of the constitution."

[11] Articles 73, 75.

[12] Article 74.

[13] Article 75; *Commentaries*, p. 157.

The "Law of the Houses," Article 77, provides that "Neither House can receive petitions for amending the Constitution," suggesting that the thought of amendment was not a proper subject for private consideration. Such a provision was anomalous even when written, since the régime inaugurated by the constitution grew out of the reform efforts of private individuals and organizations. It was quite possible that the imperial initiative for amendment might be incited by an address of one or both houses which had been prompted by petition. With the progress of the democratic spirit, its stages marked by the electoral reform bills, the anomaly becomes more obvious.

CONTINUATION OF EARLIER LAWS

Article 76 of the constitution makes the following provision: "Existing legal enactments, such as laws, regulations, ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force." Thus the new constitutional order of things reached back to confirm in effect the great body of legislation which the era of the Restoration had produced. So completely had this earlier legislation covered the field of institutions that the constitution created none but the Diet. A considerable part of the task of law revision had been accomplished by 1889. To a number of enactments the term *law* had been applied, though no definite understanding existed as to the distinction between the sources of laws and ordinances up to the establishment of the Diet. Concerning amendments of pre-constitution legislation, Ito holds that Article 76 infers the following: "It is therefore provided in the present article not only that existing laws, ordinances and regulations shall possess binding force but also that such enactments as are required by the Constitution to be promulgated in the form of laws shall possess the same force as laws. When it has become necessary in future to make amendments of such enactments, the amendments are to be carried out as laws notwithstanding that the original enactment in question has been promulgated in the form of Ordinance or Notification." [14]

FUNDAMENTALS IN THE ORDINARY LAWS

It is fortunate that a number of fundamental elements in the Japanese political sytem have been embodied in ordinary legisla-

[14] Ito, *Commentaries*, pp. 157–164.

tion or ordinances. Among these are the qualifications of electors and candidates for the Diet, the apportionment of representation in the houses, the establishment and organization of executive departments and the courts, the system of local government, the budget and its working, and other highly important features of the governmental system. Ito remarks that the Diet must not think itself entitled to evade the amendment clause through legislation (*Commentaries*, p. 155). The same might well have been said regarding the use of imperial ordinances.

INFLUENCE OF CUSTOM

Mention has been made of the influence of custom in the development of the constitution. Certain "conventions" or "understandings" exist which, though not of a legal character and not judicially enforceable, have profound importance in the actual workings of the government. Among them may be mentioned the various advisory activities of the genro, including the naming of premiers, the practice of mutual responsibility by cabinet members, and the collaboration of the cabinet with political parties in the Diet. These and other constitutional understandings hereafter explained give vitality to the formal structure created by constitutional law.

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CHAPTER IV

CITIZENSHIP AND CIVIL RIGHTS

SIGNIFICANCE OF THE "BILL OF RIGHTS"

A constitution which consecrates the superior authority of an Emperor obviously leaves no place for the principle of popular sovereignty. Such a document may, however, provide for the protection of subjects or citizens in the exercise of rights regarded as of fundamental significance. This the Japanese constitution does, at the same time declaring certain obligations owed by the subject to the state. Ito makes the point that the bill of rights symbolizes the abolition of the old privileges of the military class.[1] In feudal Japan, as previously noted, the only "rights" that the people could claim were those that they could point to as customary. The persistence of the feudal spirit in contemporary Japan renders the bill of rights less important than it will become as the people realize their power. On this point Clement is illuminating: "The writer was living in Japan . . . when the Constitution was promulgated . . . ; and he can testify from personal observation and experience to the progress which has been made in a quarter of a century in the expansion of personal rights and liberty."[2]

DETERMINATION OF CITIZENSHIP

The constitution prescribes the rights and duties of "subjects" (*shimmin*). Ito uses the words *subject* and *citizen* as synonymous in his *Commentaries,* e. g.: ". . . the status of subject or citizen is necessary for the enjoyment of civil rights in whole and of public rights." (p. 40); also: "In every country it is the common rule of public law that public rights shall be determined by the constitution or by special law and that they shall be enjoyed solely by native subjects or citizens, to the exclusion of aliens" (p. 41).

Article 18 prescribes that the "conditions necessary for being a Japanese subject shall be determined by law." Such a law was

[1] Ito, *Commentaries,* p. 39.
[2] *Constitutional Imperialism in Japan* (New York, 1916), p. 359 (29).

passed in 1899 and became effective on April 1 of that year. It was amended in 1916 and again in 1924. Nationality is obtained by birth, by marriage, by adoption, or by naturalization.

Nationality by birth is obtained (1) by a child whose father was a Japanese subject when the child was born; (2) by a child whose father was a Japanese subject at the time of his death prior to the child's birth; (3) by a child whose father was no longer a Japanese subject when the child was born, provided that the father had lost his nationality through divorce or cessation of the relationship of adoption; (4) by a child born in Japanese territory whose father and mother are unknown; and (5) by a child born in Japanese territory whose father and mother possess no nationality.

Nationality by marriage is obtained (1) by a foreign woman who marries a Japanese subject; and (2) by a foreign man who, upon marriage to a Japanese woman who is the head of her house or family, enters the wife's family.[3]

Nationality by adoption is obtained by a foreigner who becomes the adopted child of a Japanese.

Nationality by naturalization is obtained in accordance with the following process: (1) application to the Minister of Home Affairs; and (2) satisfaction of the following conditions: (a) continuous domicile of five years in Japan, (b) minimum age of twenty, (3) freedom from any disability under the law of one's former nationality, (d) good moral conduct, (e) possession of property or of such skill or learning as would enable one to earn an independent living, and (f) non-possession of any other nationality or the renunciation of any other nationality.

The same process of naturalization is applied to both men and women. A married woman may be naturalized only in company with her husband. She is naturalized in consequence of her husband's naturalization in all cases save where the naturalization law of the country of former allegiance prescribes a different rule. In such cases, however, the wife may be naturalized separately even though she fails to meet all the conditions ordinarily required. Minor children acquire Japanese nationality upon the naturalization of the father unless the law of the former nationality provides a different rule for the naturalization of minors. Special provisions render naturalization somewhat easier in the case of a foreigner whose father or mother was Japanese, or who is the husband of a Japanese, or who was born in Japan, or who has lived for more

[3] Lafcadio Hearn became a Japanese by this method.

than ten years in Japan, or who has rendered service of special merit to Japan.

Japanese nationality is lost (1) by a person who freely acquires foreign nationality; (The Japanese law provides that such action automatically cancels the Japanese nationality.) (2) by a person, born of Japanese parentage in a foreign country designated by imperial ordinance, who is a national of and domiciled in the country of birth and who has not declared the intention of retaining Japanese nationality; (Persons who have made such declarations may divest themselves subsequently of Japanese nationality. Declaration of intention to renounce Japanese nationality operates to the forfeiture of that nationality. If the foreign country of birth has not been designated by imperial ordinance as one to which these provisions apply, it is necessary for the person seeking to transfer his allegiance to obtain the permission of the Japanese Home Minister.[4]) (3) by the wife and children of a person who has ceased to be a Japanese subject, provided they were of his nationality; (4) by a Japanese woman who marries a foreigner, provided she thereby acquires the husband's nationality; and (5) by a Japanese subject who has acquired a foreign nationality by legitimation, except when such subject is the wife of a Japanese or, as the husband of the head of a Japanese family, has entered that family or has been adopted by another Japanese subject.[5]

POSITION OF THE ETA

In 1867 the *eta* or class of outcasts, so regarded even to-day for reasons explained by the occupations in which the majority of its members formerly engaged, was placed on a legal equality with the rest of the population. Japanese opinions differ as to the emphasis properly to be placed upon the various historical incidents

[4] The provisions of this paragraph are the result of amendments, passed by the Diet in an extra session in July, 1924, which became effective on December 1, 1924. Their purpose is to obviate, in designated countries, the former obligation of all natural-born Japanese males to do military service, an obligation which had aroused criticism, especially in the United States, for its effect in maintaining dual nationality. Countries so designated at present are: Argentina, Brazil, Canada, Chile, Peru, and the United States. The designations were made by imperial ordinance of October 15, 1924.

[5] T. Miyaoka, "The Japanese Law of Nationality," etc., in *International Conciliation*, No. 206 (Jan., 1925); also M. O. Hudson and R. W., Flournoy, *Nationality Laws* (New York, 1929), pp. 381–388. It should be noted that subjects in a territory conquered by or ceded to Japan become Japanese subjects. They do not, however, *ipso facto*, acquire the civil rights of subjects in Japan proper.

constituting the development of the *eta*. Probably all would agree that lines of distinction between the *eta* and ordinary people were deepened by the introduction of Buddhism, which regarded as unclean the occupations of butchers and tanners. But prior to that development, there had been in existence a class of outcasts composed of persons thrown off by society for a variety of reasons, among them descent from the aboriginal Ainu, accusation of crime or moral delinquencies, and, particularly, participation in the "unclean" business of caring for the bodies of the dead. This class continues to feel the effects of the unfortunate but deeply rooted attitude which the centuries have implanted in the minds of the mass of the people toward it. It has begun to take action to secure the social recognition to which the laws entitle it. It has formed societies, the most important being the *Suiheisha,* or "Equality Society," which holds conventions, and the members of which have not scrupled to engage in bloody encounters with their fellow-Japanese who fail to accord them the treatment to which they believe themselves entitled. As a class, the *eta* are in a much better position to-day than in 1867 and their status is continually improving.[6]

NATURE OF CIVIL RIGHTS IN JAPAN

Private rights, provided for in the second chapter of the constitution, are the rights not of "persons" but of Japanese subjects.[7] In the absence of common law protections, therefore, aliens in Japan are dependent upon treaties, statutes, and ordinances for their civil rights. The rights of Japanese themselves are subject to limitation by law, i. e., by legislative statutes. The constant recurrence of such clauses as "within the limits of law" recalls similar qualifications in European constitutions, not to mention Magna Carta. They were regarded, according to Ito, as the only means by which "the security of personal liberty can be maintained."[8] This expression assumed the existence of a law-giving body desirous of securing

[6] An editorial in the *Japan Chronicle* for June 4, 1925, pp. 697–698, gives useful recent data concerning the *eta* class. An authoritative article by Dr. Kita appeared in the same paper on May 10, 1923, pp. 655–656.

[7] Ito (*Commentaries*, p. 40) states that the distinction was intended. He recognizes, however, that "at present there is a tendency in almost every country to enable aliens to enjoy, with one or two exceptions, civil rights equally with natives" (p. 41). This is true to-day in Japan. See J. E. de Becker, *International Private Law of Japan* (Yokohama, 1919), Bk. II.

[8] *Op. cit.*, p. 50.

personal liberty. It may be asked, Where else than in the Diet could authoritative determinations of the content of these new privileges be made? Possibly in the courts, as in the United States. But the United States is unique in this respect. As Goodnow has written, "at the present time we find two conceptions of private rights. By the one which is held only in the United States these rights exist for most practical purposes apart from the positive law. . . . The rights of man as an individual human being are set forth in a written constitution which it is beyond the power of the legislature to change. . . . The other conception of private rights is the English, now become the European conception. This is based upon the principle that the existence of the right is dependent upon the ordinary lawmaking body of the state. The rights recognized are not so much substantive rights as rights to a certain sort of procedure. Thus an individual's property or liberty may be taken from him, but only in the way or by the methods specified in the law."[9]

ENUMERATION OF RIGHTS

The list of civil rights resembles that of many Western constitutions. It embodies both personal and property rights. The first in order of enumeration is the right of liberty of abode, with its corollary right of movement from place to place—departures from the older rule of attachment to the soil, which, as Ito remarks, reduced the people "to the level of plants."[10] Freedom from illegal arrest, trial, or punishment provides such security of individual liberty as the laws may allow,[11] and is supported by the provision that trials must be conducted by the tribunals regularly established.[12] Domiciliary entrance or search must be preceded by the consent of the householder or by the presentation of legal authorization.[13] The correspondence of individuals may not be opened arbitrarily.[14] Religious liberty is assured so long as its exercise does not conflict with the duties of worshipers to the state.[15] Article 29 purports to grant freedom of speech, of the press, and of associa-

[9] F. J. Goodnow, *Principles of Constitutional Government* (New York, 1916), pp. 278–280.
[10] Article 22; Ito, *Commentaries*, pp. 48–49.
[11] Article 23.
[12] Article 24.
[13] Article 25.
[14] Article 26.
[15] Article 28.

tion. Finally, there is to be noted among the rights of persons that of presenting petitions to the throne, an ancient right which was not abolished with the creation of a parliament, but which has rather been widened in its scope to include petitions to the Diet and to executive agencies.[16] Petitions may not be presented directly to the Emperor, but may be presented in accordance with "the proper forms of respect" and "the rules specially provided" for them. Property protections are embodied in the single article which guarantees that, aside from measures necessary to the public welfare, the right of property shall be "inviolate." [17]

DEFINITION AND ADMINISTRATION OF RIGHTS

The rights of Japanese subjects are limited both by legal definition and in administration. One reason for this situation is the general lack of interest and knowledge regarding rights in a country which has so recently adopted the rule of law. Another is the weakness of the Diet under the constitution and the influence exercised by the executive over the business of statute-making. A third is the fact that police ordinances, while incompetent to supersede statutes except in emergencies, may operate in the absence of statutes or may narrow statutes through the regulations for their application.[18] The very wide ordinance power of the executive renders this method of limiting popular liberties of great significance. Finally, there is the distinction of European countries, followed in Japan, between administrative and ordinary matters, according to which an official is not amenable to the ordinary courts for acts within his competence.[19]

[16] Article 30; Ito, *Commentaries*, p. 64.

[17] Article 27. Oda points out that the enumerated list of rights is not exhaustive in any constitution; that the subject possesses liberty under a constitutional régime save as he is restricted by law. *Principes de droit administratif du Japon* (Paris, 1928), pp. 59–60.

[18] In addition to the general constitutional provision of Article 8, there is specific limitation expressed in Article 31: "The provisions in the present chapter [the bill of rights] shall not affect the exercise of the powers appertaining to the Emperor in times of war or in cases of national emergency." Nakano believes that the suspending power is "vested in the emperor as the commander-in-chief of the army and navy" and that "it can be exercised only in case its use is directly necessary to military operations." *The Ordinance Power of the Japanese Emperor* (Baltimore, 1923), pp. 170–173.

[19] Article 61 of the constitution reads: "No suit which relates to rights alleged to have been infringed by the illegal measures of the executive authorities, and which should come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by a court of law." Uyehara recognizes the implications of this provision when he writes: "There is nothing in the Constitution to safeguard the rights and liberties of

To determine the extent of the civil rights enjoyed by Japanese subjects would require an examination of the whole field of legislation concerning them—obviously a task justifying a separate book—as well as an estimate of the enforcement of such legislation. Mr. T. Miyaoka dealt with the subject briefly in an address in 1918 before the American Bar Association. He pointed to the following as supporting Articles 23 and 24, which provide against illegal arrest and trial: (1) the protection against detention and trial provided by the preliminary investigation of the procurator; (2) the uniform interpretation of law rendered possible by a well-knit judicial organization; (3) the assurance of a trial, with opportunities for appeals, to persons accused of crime or other illegal acts.

Respecting Article 25, by which illegal entrance or search is forbidden, Miyaoka further pointed out that (1) domiciliary visits may not be made against the wishes of the occupant unless it is believed that the person sought is hidden in the premises, in which case a warrant must be shown and witnesses must be present; (2) such visits may also be made, under certain circumstances, where evidence is sought concerning a case *sub judice;* (3) fear of imminent danger to life or property or suspicion of disorderly conduct justify search by the proper officials without the occupant's consent and at any time.

The absence of any process of *habeas corpus* renders the position of persons imprisoned and awaiting preliminary examination or trial one of disadvantage. Such persons have been kept under arrest for several consecutive months, refused legal advice or conference with friends, subjected to being awakened roughly during the night for terrifying questioning to make them confess. In their absence, their houses have been searched. The most extreme police methods are practised and may be justified under the law. The apprehension felt of recent years concerning communism has produced a great number of such cases, in many of which the persons thus arbitrarily handled have been students. In

the people from the encroachment of the permanent executive officials." *The Political Development of Japan* (London, 1910), p. 132. Nakano has written: "Although, with the ever-increasing mass of legislation in recent years, the police ordinances issued under Article 9 have been to a great extent superseded by statutes, liberty still remains as insecure as before. This insecurity of liberty is due to three facts: lack of elaborate statutory control of the police power, lack of judicial remedy against illegal acts of the police authorities, and lack of the participation of local self-government in the administration of police matters." *Op. cit.*, p. 14.

1926, forty-eight students were kept in jail from January to September for "preliminary" examination.[20]

As to Article 26 of the constitution, Miyaoka mentions penalties for the opening of correspondence by private individuals, but none for such action by government officials. He states that "there is no law in Japan that relates to the limitation of faith or that gives preference to any form of religion." He declares that in none of the laws touching freedom of speech or publication "is there any restriction on the legitimate enjoyment of the freedom of speech." Such measures as are taken are those "which all civilized states adopt for their own safety." He notes that no secret society is permitted, and that the police law restricts the formation of political parties, gatherings, and demonstrations.[21]

RESTRICTIONS UPON THE PRESS

There is no questioning the fact that the expression of opinion in Japan is restricted. Newspapers may be compelled by the censors, i. e., the police, to delete any matter regarded as injurious "to peace or good manners." The *Hochi*, a leading Tokyo daily, declared in 1924 that publishers often have no idea why an issue is suppressed, or what part is regarded as disturbing to peace and order. The Tokyo *Asahi* denounced the press law as the worst in existence, asserting that its tyranny was generally recognized. The *Asahi* pointed not only to the suppression of articles or entire issues but to the impossibility of redress through the courts. The obligation upon newspapers to keep from 500 to 2,000 yen on deposit with the government for the payment of prospective fines has been attacked as a restriction no longer found in progressive countries.[22] It is evident not only that the press regulations are illiberal but that they are unevenly administered. From the beginnings of newspaper publishing in Japan there has been criticism of the legislation affecting the press.[23] A student of the history of Japanese legislation in this field concluded in 1927 that "press-law development fails . . . to justify the hopes of liberty which were anticipated by the Restoration leaders." The existing law

[20] Editorial, *Japan Chronicle*, Sept. 23, 1926, pp. 356–357.

[21] T. Miyaoka, *The Growth of Liberalism in Japan*, Publication No. 16 (1918), Division of Intercourse and Education, Carnegie Endowment for International Peace.

[22] *Japan Chronicle*, Jan. 1, 1925, p. 25.

[23] See, for the early laws and the protests raised against them, Mc Laren's "Documents," p. 529–566.

is, in fundamentals, the ordinance of 1887, somewhat amended in 1897 and 1909. Four ministers, viz., those of Foreign Affairs, Home Affairs, War, and the Navy, are empowered to forbid newspapers to publish specific items and to suspend the publication of any paper which prints items considered likely to affect their respective functions adversely. Judicial proceedings are necessary, however, for the permanent suppression of a paper.[24] Government bills introduced in the sessions of 1925–1926 and 1926–1927, neither of which was passed, sought to restrict press initiative still further. Fifteen leading newspapers and news agencies of Japan united on December 15, 1930, in the issuance of a joint declaration which was occasioned by a particular instance of police action, but which had its background in the generally repressive attitude of the Minseito government. The statement elicited an apology for the incident from the Home Minister and a promise not to hamper "the actions of the gentlemen of the press in connection with their duties." One editor affirmed that the Home Minister had issued 1,400 prohibitions to print.[25]

THE PEACE PRESERVATION LAW

Freedom of the press being but one manifestation of free speech, it is not surprising to find that the individual is greatly limited in the expression of his opinions in other ways. The success of the manhood suffrage movement in 1925 was accompanied by the passage by overwhelming majorities of a law which is known as the peace preservation law. The first three of the seven articles which compose the law read as follows:

"Art. 1. Anyone who has organized a society with the object of altering the national constitution (*kokutai*); or anyone who has joined it with full knowledge of its object shall be liable to imprisonment with or without hard labor for a term not exceeding ten years. Anyone who has organized a society with the object of fundamentally negating the system of private ownership or anyone who has joined it with full knowledge of its object shall be liable to imprisonment with or without hard labor for a term not exceeding seven years.

[24] H. E. Wildes, "Press Freedom in Japan," *American Journal of Sociology*, XXXII (1926–1927), 601–613; also, by the same author, *Social Currents in Japan* (Chicago, 1927), pp. 27–51, and pp. 104–134. The article includes a list of press laws and discussions of the laws in Japanese newspapers and books. Worthy of some attention is K. Kawabe, *Press and Politics of Japan* (Chicago, 1921).

[25] Osaka *Mainichi*, Dec. 17, 1930, p. 1; Dec. 21, 1930, p. 1; *Japan Chronicle*, Dec. 25, 1930, p. 703.

"The attempt to commit the crime falling under the purview of the first or second paragraph of the present Article shall be punished.

"Art. 2. Anyone who has discussed the execution of matters specified in Paragraph 1 of the foregoing article with the object mentioned therein shall be liable to imprisonment with or without hard labor for a term not exceeding seven years.

"Art. 3. Anyone who has instigated the execution of the matters specified in Paragraph 1 of Article 1 with the object mentioned therein shall be liable to imprisonment with or without hard labor for a term not exceeding seven years." [26]

Three years later an urgency imperial ordinance was promulgated increasing the penalty for organized effort toward constitutional reform. The first and second articles of the ordinance read:

"Art. 1. Those who have organized a society with the object of altering the national polity, together with the office-holders and those who have performed the duties of leaders of such a society, shall be liable to capital punishment, life imprisonment or imprisonment with or without hard labor for a term of not less than five years.

"Art. 2. Those who have joined such a society as that mentioned in the foregoing article with a knowledge of its aims, together with those who have either held office or otherwise performed the duties of leaders of the society, or those who have committed acts designed to carry out the aims of the society, shall be liable to imprisonment with or without hard labor for a term of more than two years." [27]

Neither the law nor the ordinance in terms required that such alteration of the "national constitution," or the "national polity," as the societies in contemplation might attempt or plan should be accompanied by the use of force or should contemplate its use. Promulgated as they were, however, at a time when a strong apprehension of communist outbreaks was general in Japan, they were admittedly inspired by fears of violent action, whether or not the fears were justified. Premier Tanaka stated publicly that the very severe penalties added by the ordinance were necessitated in view of the approaching coronation of Emperor Hirohito, who, while regent, had narrowly escaped assassination. The discussion of the bill in committee and on the floor of the Diet suggested that the government, as well as the members of the Diet, was some-

[26] *Japan Chronicle*, Feb. 26, 1925, p. 272. See article by H. E. Wildes, "Japan Keeps the Peace," *Nation*, CXX, April 15, 1925, 418–419.

[27] *Japan Chronicle*, May 24, 1928, p. 652. The ordinance received the approval of the Diet during the following session.

what uncertain regarding its scope and probable effect. At its introduction the bill contained the clause "or the form of government (*seitai*)" after the words "national constitution (*kokutai*)" in Article 1. Mr. Wakatsuki, Home Minister, said in introducing the bill, "It aims at prohibiting such illegal societies as are subversive of the fundamental principles underlying the national organization." Pressed to define the words *kokutai* and *seitai*, he replied that *kokutai* meant the national polity under an unbroken line of monarchs, while *seitai* meant the constitutional monarchy. Movements to abolish the Privy Council or the House of Peers would not, he said, fall within the prohibitions of the bill.[28] Subsequently, in committee, Mr. Ogawa, Minister of Justice, gave a broader interpretation to the term *seitai*, stating that it comprehended the "parliamentary system." A third member of the government modified the interpretation still further by saying that the bill was not designed to prevent such alteration of the representative system as was "consonant with the progress of the times." Yet the same official when asked whether a general constitutional amendment plank in a party platform would be illegal under the bill declared that it would. Asked to state the government's definitions of anarchism and communism, Mr. Wakatsuki replied that it was anarchism to contrive to alter the national constitution and form of government, while it was communism to negative the system of private ownership.[29]

Ultimately, the reference to *seitai* was eliminated; it may be concluded that the bill as passed into law was designed to sustain the monarchy and the existing royal house. This conclusion is drawn from the fact that the Diet's criticisms did not center upon the term *kokutai*, "national constitution," but upon *seitai*, "form of government." Apparently, therefore, Mr. Wakatsuki's definition of *kokutai*—"the national polity under an unbroken line of monarchs"—was generally understood and accepted. Consequently, the prohibition of the peace preservation law and ordinance was much narrower than the English words "national constitution" would suggest. In Japanese, the word for the constitution as a document is not *kokutai* but *kempo*. Nevertheless it is significant that the opposition to the bill stressed the danger that conservative governments might not scruple to interpret the implications of *kokutai* to the disadvantage of liberal movements.

[28] *Japan Chronicle*, Feb. 26, 1925, p. 270.
[29] *Ibid.*, Mar. 5, 1925, pp. 304, 306.

ENFORCEMENT OF THE LAW

Acting under the law, on March 15, 1928, and succeeding days, the government instructed the police of several cities to arrest all persons suspected of membership in the Communist party. Over 1,000 persons were arrested on suspicion during the night hours.[30] The reason for the action was not revealed. Not until the arrested persons had been in prison for a month without opportunity to communicate with friends was permission given to publish news of the arrests. At the trials of those indicted, who numbered approximately 400, the offense charged was conspiracy to bring about the destruction of the national constitution. The defendants were, in most cases, members of the Ronoto, a labor party which had elected two members to the House of Representatives, but which had been dissolved after the election. Prison terms of varying length were imposed upon those convicted. Sweeping police raids against communists were carried out in 1929, and a third series of raids occurred in 1930.[31]

RESTRICTIVE POLICE REGULATIONS

A rigorous curb upon the expression of opinion is maintained through the operation of the ordinary police regulations, other ordinances, and the laws. Under them an individual may be forbidden to speak in public, and his professional activities—e. g., as a teacher—may be interrupted. Frequently, university professors are peremptorily ordered by the police to refrain from discussion of political or economic questions, and at times they are compelled to resign on pain of prosecution. Public meetings, particularly during elections, although authorized by the police, are broken up or certain speakers are stopped for trivial criticisms of existing conditions.[32] Political parties are dissolved, with no recourse beyond appeal to the Court of Administrative Litigation, which they find useless. The Proletarian party, founded in 1925, was allowed but three hours' existence. In 1928, the government dissolved the

[30] *Japan Chronicle*, April 19, 1928, p. 461; July 12, 1928, p. 42.

[31] *Ibid.*, May 28, 1931, pp. 572–573. The official ban upon publication of news of arrests made in February, 1930, was not lifted until April and May, 1931.

[32] Earlier ordinances regulating public meetings are published in Mc Laren's "Documents," pp. 495–505. Ito construed the constitution (Article 29) as placing such restrictions beyond the sphere of ordinances and within that of law (*Commentaries*, pp. 61–62).

Ronoto ("Farmer-Labor party") and other labor parties, without a hearing, for alleged communistic tendencies. It peremptorily ordered a number of universities to discharge "blacklisted" professors and to break up student societies for the study of sociology. The orders were meekly obeyed. The students protested vigorously, but in vain.[33]

"LYNCH LAW" IN JAPAN

An extralegal method exists in Japan for suppressing free speech and accomplishing other acts of terrorism. This is the use of organized gangs or societies of "patriots," members of which are, in many cases, thugs and assassins. The most notorious of these gangs is the *Kokusuikai* ("National Essence Society"). Liberals and socialists are the particular *bêtes noires* of these bullies. The *soshi*, as they are called in Japan, may be hired to invade houses and intimidate public officials or professors, to waylay members of opposing political parties, to commit arson and wholesale murder, to break up political meetings and even to attack speakers in the tribune of the House of Representatives. It is not unknown for the major parties to hire such characters for the nefarious purposes named. Governmental authorities find it difficult to punish the crimes committed by these men, both because they themselves stoop to using them at times and permit officials, including chief priests of shrines, to accept offices in such societies, and because upper-class opinion regards the organizations as patriotic and opposes the suppression of their activities. Members of the Diet are numbered among the *kyokaku* ("dare-to-dies") who compose the organizations. A law was passed in 1926 to strengthen the criminal code provisions against armed rowdyism, but it has not curbed the evil.[34]

[33] *Japan Chronicle*, April 26, 1928, pp. 502–503. Professor Kawakami Hajime of Kyoto Imperial University resigned at the request of the President of the university, who, Kawakami stated, assigned as reasons for the request that Kawakami had written and spoken in an "improper" way on socialism and that certain students, members of a university society for the study of sociology of which Professor Kawakami was a leader by appointment of the President, had disturbed public peace.

[34] The law is printed in *Japan Chronicle*, March 18, 1926, p. 328. For the articles of association of the Kokusuikai, see Stephen King-Hall, *Western Civilization and the Far East* (New York, 1924), p. 260, n. 1; cf. editorials in *Japan Chronicle*, Feb. 14, 1924, pp. 210–211, and April 5, 1928, pp. 400–401. Attacks upon prominent political leaders, such as Ozaki Yukio, are not infrequent. In 1928 a Kokusuikai gang at Wakayama which had supported a Seiyukai candidate in the general election murdered four Minseito members (*Japan Chron-*

THE QUESTION OF RELIGIOUS FREEDOM

By declaring "official" Shinto not to be a religion (1900), the government enabled itself to compel the observance of Shinto rites by the whole populace without a breach of the constitution. But it is well understood that these rites *are* regarded as religious by the people in general.

The issue of religious freedom has been a somewhat disturbing one in contemporary Japan. The withdrawal of official recognition of Omotokyo, a large neo-Shinto sect, in 1921, was induced by the attempt of its leaders to extend the Japanese legendary conception of the creation of Japan by the gods to the rest of the universe, regarded by the authorities as *lèse-majesté*. Moderation guided the government in that case, and though recognition of the sect was withdrawn, its adherents were not interfered with in their worship.[35] The bogy of communism recently has been raised, however, in the religious as in other realms, and has led to attempts at defining the scope of religious freedom by law.

The so-called "religions bill," drafted by the Ministry of Education, was submitted for study to a commission of thirty-nine persons chosen to represent the government (seven members), the houses of the Diet (six each), the universities (four), Buddhism (eight), Shinto (three), Christianity (two), the Privy Council (one), the Court of Administrative Litigation (one), and the Peers' School (one). The vice-president of the Privy Council was chairman of the commission. The commission approved the draft, but to date it has failed of introduction into the Diet. Its main principles were as follows: (1) The government might order a change in doctrines, or rites, or forbid them altogether if found to be "subversive of public peace and order and public morals or contrary to the obligations of Japanese subjects." (2) Land, buildings, and income should be exempt from taxation. (3) Religious bodies should be amenable to prefectural governors and to the Minister of Education, the latter to be advised by a religious commission. (4) Suits in opposition to administrative orders should

icle, April 26, 1928, pp. 504–505). When a "patriot" killed a labor member of the Diet in 1929, he was the recipient of numerous presents (*Japan Chronicle*, April 4, 1929, p. 24). In the following year Premier Hamaguchi was wounded so seriously that his death ensued nine months later. In February, 1932, Inouye Junnosuke, Finance Minister under Hamaguchi and Wakatsuki, was shot dead. Both Hamaguchi and Inouye had opposed military control of national policy. Recently, societies of this character have been organized by radicals.

[35] Morgan Young, *Japan under Taisho Tenno* (London, 1928), pp. 209–214.

be filed in the Court of Administrative Litigation. (5) Non-religious bodies should be forbidden the use of titles similar to those of religious bodies. (6) Religious teachers (including priests) should be at least twenty years old, with at least a secondary school education including knowledge of the religion they were to teach, and not disqualified by bankruptcy or conviction of crime. Appointments and dismissals of teachers should be reported to the governors. (7) Licenses of teachers should be subject to suspension or withdrawal for reasons signified in (1). (8) Organization of new religious bodies should be subject to the sanction of governors.[36]

PETITIONS

The right of petition is traditional in Japan. "In the reign of the Emperor Kotoku (A. D. 645–654) a bell and a box were hung out, through which the people might make their representations and complaints."[37] Of recent years there have been several attempts to present petitions to the Emperor in person, which is regarded as contrary to the constitutional requirement that petitioners observe the proper forms of respect. The latter require that petitions be presented through the Minister of the Imperial Household. Direct presentation of petitions involves the certainty of arrest, but the punishment is light and the publicity obtained is likely to be effective in promoting a cause, e. g., that of the *eta*. The police have forbidden the collection of signatures to petitions.

By the Law of the Houses (Article 62) either house may receive a petition from a Japanese subject provided it is presented by a member of the receiving house. After examination by a committee on petitions, it may be returned to the presenting member, if not "in conformity with established rules," or reported out for consideration. If the house votes to entertain the petition, it is sent to the cabinet with a memorial from the house attached, and the house may, "according to circumstances," demand a report upon it from the government. Neither house may receive petitions for amending the constitution or "interfering with" the administration of justice or administrative litigation.[38]

[36] *Japan Chronicle*, June 3, 1926, p. 654.
[37] Ito, *Commentaries*, p. 62.
[38] Law of the Houses, Ch. XIII. See Appendix IX. Writing in 1910, Uyehara affirmed that "petitions to the Diet are not considered by the people as a very effective method of obtaining the legislation they desire" (*op. cit.*, p. 151).

POLITICAL RIGHTS AND OBLIGATIONS

The rights provided for are political as well as civil. The right of suffrage is not mentioned in Chapter II of the constitution, but is conferred in general terms by Article 35, which provides for election of a House of Representatives by the people.[39] The "bill of rights and duties" specifies only the right of appointment to civil, military, or other public office, which is to be enjoyed equally by those who possess the legal qualifications.[40] This provision disestablishes the old system of appointments by hereditary right and throws open the avenue to office to men of ability, whether or not they can assert nobility of birth. Balancing the statement of equality in this invaluable right are articles imposing the obligations of military service in either the army or the navy[41] and of paying taxes.[42] The former obligation carries with it the revival of conscription and the abolition of the favored position of a military class.

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[39] See Ch. XIII of this book.
[40] Article 19.
[41] Article 20.
[42] Article 21.

CHAPTER V

THE EMPEROR

AGE OF THE YAMATO DYNASTY

Not only is the Yamato dynasty the oldest ruling family now existent, but it probably has existed longer than any other in the history of the world. The historical accuracy of the date officially recognized as that of the founding of the imperial line, 660 B. C., has not been established and is now regarded by scholars as at least 600 years too early. Even so, the ruling house of Japan would be eighteen to nineteen centuries old.

The contention of the Japanese that the Yamato dynasty has held the throne continuously from the beginnings of the state has been disputed, but not disproved. It is a certainty, however, that this claim could not be made had not the institutions of concubinage and adoption played significant parts in maintaining the imperial line. The long-continued usurpation of the shogunate, with its consistently cavalier treatment of the matter of succession, further lessens, though it does not destroy, the significance of the dynasty's claim to continuity. Official records chronicle the accession of 115 emperors and nine ruling empresses.

SUCCESSION TO THE THRONE

The succession to the throne is regulated to-day by the constitution and the Imperial House Law, promulgated in 1889. They discard the precedent of female associated with male succession. To quote the law, "The Imperial Throne of Japan shall be succeeded to by male descendants in the male line of Imperial Ancestors" (Article 1). Article 2 of the constitution is worded almost identically. The law further provides for succession by the eldest son of the Emperor or, failing a son, the eldest grandson, etc., through all the degrees of relationship. Further, provision is made for the succession and enthronement upon which a new era begins, to last for the period of the reign. The present era is termed Showa ("Radiant Peace"), that preceding it was Taisho ("Great Right-

eousness"), and the era of Mutsuhito is called Meiji ("Enlightened Government"). Upon succession, the new Emperor is invested immediately with the sacred sword, mirror, and jewel [1] in the presence of the Privy Council. The Emperor and heir-apparent attain majority at the age of eighteen. Article 42 of the law provides that "No member of the Imperial Family can adopt anyone as his son." [2]

ORGANIZATION OF THE COURT

The organization of the imperial court is provided for in the Imperial House Law, which may be amended by the Emperor with the advice of the family council and the Privy Council. Membership in the imperial family is clearly defined, and all its members are under the Emperor's control. The imperial family council is composed of the princes of the blood. Not members of the council, but associated with it for deliberation, are the Lord Keeper of the Privy Seal, the president of the Privy Council, the Minister of the Imperial Household, the Minister of Justice and the president of the Supreme Court. This council is concerned only with matters that affect the dynasty. No member of the family may be arrested or summoned before a court of law without the consent of the Emperor. Civil actions by private individuals against members lie within the jurisdiction of the Tokyo Court of Appeal. The affairs of the court are conducted by the Imperial Household Ministry, the head of which, though called a minister, is not a member of the cabinet. The expenses of the court are met out of Diet appropriations, which at present are fixed at 4,500,000 yen ($2,250,000) a year. In addition, the imperial house receives income from its landed estates and investments which amounts to several hundred million yen yearly. It is the wealthiest family in Japan.[3]

KOKUTAI

"The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal." In this, the first article of the constitution, lies the nerve-center of the constitutional

[1] These emblems of authority were, according to mythology, given by the sun-goddess to her grandson the first ruler, Ninigi, in token of sovereignty.
[2] The Imperial House Law is printed as Appendix V.
[3] *Japan Year Book*, 1930, p. 56.

system. It embodies the idea known as *kokutai*, which cannot be more succinctly or clearly translated than in the words of the article. Subsequent articles declare the Emperor's powers; to enumerate them would be to enumerate all the powers recognized to exist, except the judicial power, which is to be exercised in his name.

Attention has already been given to the position of the Emperor in earlier periods of the history of Japan. What that position is to-day is not easy to estimate in definite terms. On the one hand one hears phrases applied to the Emperor which carry the idea of absolute power; on the other, the Emperor is described as no more an actual ruler than is the British king. There is disagreement, however, not only between those who view the subject theoretically and those who have practical circumstances in mind, but also between theorists.

THEORIES OF IMPERIAL POWERS

More numerous, if not more weighty, are the authorities who recognize the legal theory of absolutism. "The Divine Right of the Emperor," wrote Uyehara, "is the fundamental principle on which the Japanese polity was first established and on which it still rests."[4] Nakano, writing still more recently, is in agreement with this statement: "The Emperor is the head (supreme organ) of the State, uniting in his person all the sovereign power of the State."[5] Hiroshi Sato's statement is terse: "The government of Japan is in theory an absolute monarchy."[6] Griffis regards the constitution as in part a "limitation of the prerogative of the Throne."[7] Professor Clement has written: "The 'divine right of kings' was carried to such an extreme in England that Charles I lost his head; but in Japan 'the divine right of the Emperor' is acknowledged to a degree of which no Stuart ever even dreamed."[8] However, there is no unanimity on the subject, as Iwasaki points out.[9] He distinguishes two schools of constitutional interpretation —a "conservative" school, led until his death by Professor Y.

[4] *The Political Development of Japan* (London, 1910), p. 19.
[5] *The Ordinance Power of the Japanese Emperor* (Baltimore, 1923), p. 5.
[6] H. Sato, *Democracy and the Japanese Government* (New York, 1920), p. 1.
[7] W. E. Griffis, *The Mikado, Institution and Person* (Princeton, New Jersey, 1915), p. 6.
[8] E. W. Clement, "Constitutional Imperialism in Japan," *Proceedings of the Academy of Political Science*, VI, 325 (5).
[9] U. Iwasaki, *Working Forces in Japanese Politics* (New York, 1921), Ch. II.

Hozumi, and subsequently by Professor S. Uyesugi, recently deceased; and a "liberal" school, led by Professor T. Minobe, and including Professors S. Sasaki and S. Ichimura. The former take the position above set forth. The "liberals" hold, in Iwasaki's words, "that he [the Emperor] rules not as an absolute monarch, but as the supreme representative of the nation, which is composed of the Emperor and the people." [10]

The issue involved between these groups is that of the character of the constitution, i. e., whether it is the expression of the Emperor's will to limit himself, revocable at his option, or the embodiment of limitations expressed as they are in order to ease the transition from the rule of persons to that of law—in other words to "save face" for the dynasty and the age-old forces behind it. It may be pointed out that Ito, the framer of the constitution, was not entirely on the "conservative" side of this issue. Even had he been so, there was every influence impelling him to tread with circumspection.

THEORY OF ITO HIROBUMI

It is worth the trouble to review briefly what Ito had to say about the Emperor's power. To begin with, he did not enshrine the popular superstition of the Emperor's divine origin and character in the constitution; recognizing that informed Japanese no longer accepted it, he was content, instead, to have the constitution declare simply that "the Emperor is sacred and inviolable" (Article 3). Ito has pointed out both in his *Commentaries* and in his contribution to Okuma's *Fifty Years of New Japan* that the Emperor's power is not, even in theory, unlimited. In the former he wrote, "The combination of all the governmental powers of the State in one person is the essential characteristic of sovereignty, and the carrying of those powers into effect in accordance with the provisions of the Constitution denotes the exercise of sovereignty. When the essential characteristic of sovereignty exists without its exercise in the manner just stated, the tendency will be towards despotism." [11] It is obvious without proof that if power cannot be exercised despotically, it is to some extent limited. Further on Ito continues, "A constitution allots the proper share of work to each and every part of the organism of the state, and thus main-

[10] *Ibid.*, p. 25.
[11] Ito, *Commentaries*, p. 8.

tains a proper connection between the different parts, and assigns functions to the same; while on the other hand, the Sovereign exercises his proper functions, in accordance with the provisions of the constitution. It will thus be seen that the theory of absolute power, which once prevailed in Rome, cannot be accepted as a constitutional principle."[12]

Ito's views of the imperial power are put more clearly in a statement of later date. Writing on the problems that confronted the men who drafted the constitution, Ito reveals that he was under no illusions either as to the authority of the crown or as to the vitality of the reformist spirit: "For example, the Crown was, with us, an institution far more deeply rooted in the national sentiment and in our history than in other countries. It was indeed the very essence of a once theocratic State, so that in formulating the restrictions on its prerogatives in the new Constitution, we had to take care to safeguard the future realness or vitality of these prerogatives, and not to let the institution degenerate into an ornamental crowning piece of an edifice. At the same time, it was also evident that any form of constitutional régime was impossible without full and extended protection of honor, liberty, property, and personal security of citizens, entailing necessarily many important restrictions of the powers of the Crown."[13]

Iwasaki regards Ito as a thorough "conservative" and takes no notice of these qualifications of his theory. He bases the argument of the "liberals" upon the contentions that (1) the constitution is to be interpreted as a whole rather than in a few provisions; (2) the enumeration of imperial powers would be unnecessary if the crown were omnipotent; (3) the Emperor cannot legislate alone; and (4) executive powers are to be exercised, not by the Emperor but by the ministers. He goes so far as to affirm that "now it is generally recognized that the Emperor is not an absolute ruler, but the supreme representative and organ of the nation."[14]

ENUMERATION OF LIMITATIONS

Since it is impossible to reach a sound conclusion on this question without taking note of the limitations which the constitution carries upon the Emperor's recognized legal supremacy, these may

[12] *Ibid.*, p. 9.

[13] Ito Hirobumi, "Some Reminiscences of the Grant of the New Constitution," in S. Okuma, *Fifty Years of New Japan*, I, 128.

[14] Iwasaki, *op. cit.*, pp. 26–27.

be summarized at this point. They are to be found in Articles 4, 5, 8, 9, 10, 14, 18–32 inclusive, 37, 38, 39, 41, 42, 45, 46, 51, 52, 53, 55, 57–60 inclusive, 62, 63, 64, 66, 68, and 70–75 inclusive, a total of forty-seven articles out of the seventy-six which compose the constitution. These may be grouped into limitations exercised by the Diet (nineteen articles), by the ministers (one article), by the courts (three articles), by private rights (fifteen articles), and by the constitution itself (fifteen articles).[15] The limitations imposed by the constitution itself are summarized in Article 4: "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."

The several limitations involved in the grant of powers to a national legislature include the obligations to obtain the Diet's consent to legislation (Articles 5 and 37) and to emergency ordinances (Article 8), to convoke the Diet annually and to hold elections within a stated period if the lower house be dissolved (Articles 41 and 45), to refrain from interference with the free speech of members of the Diet (Article 52), financial limitations (Articles 62, 64, 66, 68, 70 and 72), and the obligation to obain the Diet's approval for amendments to the constitution. The limitation imposed by the establishment of a cabinet is that of obtaining the endorsement of its members to the imperial signature (Article 55). The creation of a judiciary involved its legal organization and operation (Articles 57 and 59) and the legal protection of its members (Article 58). And in respect to a number of rights, the individual was guaranteed the protection of the law (Articles 18–32).

THE "KELLOGG PACT" CONTROVERSY

The process of ratification of the Treaty for the Renunciation of War as an Instrument of National Policy, familiarly known as the "Kellogg Pact," gave rise to a heated controversy over the prerogative. The treaty was phrased as signed by the heads of cosignatory states "in the names of their respective peoples" (Article I). The Japanese representative, Viscount Uchida, signed the

[15] Limitations imposed by the powers of the Diet exist in Articles 5, 8, 37, 38, 39, 41, 42, 45, 46, 51, 52, 53, 62, 64, 66, 68, 70, 72, and 73; by those of the ministers, in Article 55; by those of the courts, in Articles 57, 58, and 59; by private rights, in Articles 18 to 32 inclusive; and by the constitution itself, in Articles 4, 9, 10, 14, 57, 58, 59, 60, 62, 63, 66, 71, 72, 74, and 75. Six articles—57, 58, 59, 62, 66, and 72—embody double limitations.

treaty, and it was accepted by the cabinet as satisfactory, but such a storm of criticism was evoked during the consideration of the quoted phrase in the Privy Council that it was found necessary to accompany Japan's instrument of ratification with the following statement: "The Imperial Government declare that the phraseology: 'In the names of their respective peoples,' appearing in Article I of the Treaty for the Renunciation of War, signed at Paris on August 27, 1928, viewed in the light of the provisions of the Imperial Constitution, is understood to be inapplicable insofar as Japan is concerned." [16]

This controversy was explained in part as an effort of the opposition party, the Minseito, which during the previous campaign had been accused of setting the Diet above the Emperor, to discredit the Seiyukai government. But the men who led the attack in the council were either independents or friendly to the Seiyukai. Perhaps the least expected attack in the Diet came from Japan's foremost liberal, Ozaki Yukio, who fought shoulder to shoulder with the arch-conservative, Count Ito Myoji, most powerful member of the Privy Council, against the offending phrase. Ozaki introduced a lengthy interpellation which included the following paragraphs:

"According to the English or the French text of the treaty, it is the Japanese people, not the Emperor, who are the subject of the pact. In face of this, does the Government believe that the treaty neither contravenes the Japanese constitution nor impairs the national policy of this country?

"If the anti-war treaty is ratified by the Emperor in its present form, it will mean that the Emperor declares for the exclusion of war either 'on behalf of the people' or 'by the mandate of the people.' In the case of monarchies like Britain and Belgium, where the monarchs simply preside and do not rule, it is proper that the peoples should be the subjects of treaties to be concluded, but in the case of this country, where the Emperor controls and exercises the supreme sovereign authority (Article 4 of the Japanese constitution), and monopolizes the right of concluding treaties (Article 13 of the Japanese constitution), it is impossible for the people to become the subject of a treaty. . . . After what it has done, the present cabinet ought to go into sackcloth and ashes and await the Emperor's pronouncement of judgment on its offense." [17]

One may conclude from this interesting controversy that it is the older men, whether known generally as liberals or as conservatives, who resented the signature of a treaty in the name of the people. The cabinet, not otherwise known for liberalism, treated the

[16] Press release, United States Department of State, July 24, 1929.
[17] *Japan Chronicle*, March 7, 1929, p. 285.

phrase either as rhetorical or as an expression of the fact—as true for Japan as for other countries—that constitutional kingship is the symbol, not the reality, of power. It is not impossible that men even closer to the throne than the privy councilors did not relish this latter-day revival of the shibboleth of imperial absolutism in the conduct of foreign relations. It was out of harmony with their program for a people's sovereign. And it was superficial only. What the opposition objected to was not the decision of foreign policy by the crown, that is, the Emperor and his advisers, rather than by the Emperor alone. It was the oral recognition of the situation which they believed dangerous to *kokutai*—the eternal rule of the Yamato dynasty.

ADVICE TO THE EMPEROR ON HIS ACTS

This effort to distinguish between theories and to itemize limitations takes on the aspect of dialectic when the principal fact of the working constitution is grasped, viz., that the Emperor *never* acts without advice. Putting the same thought positively, he always acts in accordance with the recommendations of his advisers. This is not equivalent to stating that the Emperor does not exercise power; he does make appointments, receive foreign envoys, sign statutes, treaties, and ordinances, issue rescripts, attend sessions of the Privy Council, hold conferences with cabinet ministers, declare war, etc., through all the various categories of functions reposed in him by the constitution. Nor is it correct to imagine that the policy formulated and carried out in the various acts is arrived at uninfluenced by his views. It is simply to point out that the Emperor arrives at decisions, not alone, not arbitrarily, not as a despot, but in conference with those officials which the working constitution of the state provides. Japan is not an absolute monarchy, but a quasi-constitutional oligarchy. It is ruled, not by the titular sovereign, but by the crown.

COMPONENTS OF THE CROWN

What elements compose the crown? This is a question impossible to answer fully from the written constitution and other written law. An adequate answer would require an acquaintance unavailable to any foreigner and to only a half-dozen Japanese—none of them inclined to be garrulous—of what is called in Japan govern-

ment "behind the curtain." There are agencies that are seen—the cabinet, the Privy Council; others are unseen—the genro, the Imperial Household Ministry, the Board of Marshals and Admirals, perhaps others. It would be quite untrue to say that the Emperor always acts upon the advice of the cabinet. He may and he may not. If he does so act, it is only after consultation with closer advisers "behind the curtain." Thus the policy of a party ministry is required to pass the scrutiny of men wholly aloof from party politics, men steeped in the feudal tradition but, on the other hand, highly capable, long-experienced, devotedly loyal.[18]

Too obvious to require elaboration is the conclusion that the share of an Emperor in government depends principally upon his qualities of mind and character. Intelligence or leadership or both must—as in the Emperor Meiji—lend determining weight to the imperial voice. But a weakling or a mediocre occupant of the throne can have slight influence. Such a man is simply a figurehead, a symbol, a rhetorical expression.

Professor Clement has written privately, "I doubt if the Emperor's part in the actual administration is increasing; but I am sure that he can make his influence felt. He need not bother himself with actual details but he is interested in policies and principles. 'He reigns but he does not rule.' " The eminent parliamentarian, Ozaki Yukio, may also be quoted: "Our Emperor's part in administration is not increasing. Constitutionally, he is nearly the same as the English king; he will become so in practice."

ATTITUDE OF THE PEOPLE

From the stand-point of administration, it is less important to know what legal and political theorists think about an institution or what power it actually wields than to appreciate the attitude of the people toward it. This is quite as true in the Orient as in Western countries. Perhaps the scene outside the palace in Tokyo as the Emperor Mutsuhito lay dying will suggest most clearly what the Japanese people think of the Emperor: "On the esplanade fronting the Imperial Palace, in Tokyo, thousands of people were gathered. On their knees, or bowing low in prayer, they pleaded with the Unseen Powers for the life of their Emperor. Many creeds were

[18] Premier Tanaka was criticized, in 1929, for presenting to the Emperor certain cabinet proposals without the presence of a member of the Imperial Household Ministry. This topic is developed more fully in Chs. VI and VII.

represented, but there was but one heart, and one silence of inward prayer uniting the Buddhist priest, the devotee of Shinto, and the Christian." [19]

If it be said that Mutsuhito was a great sovereign and had won his people's affections by his services to the state, it is only necessary to recall the grief shown by the nation upon the death of Emperor Yoshihito, who had been compelled by illness to retire from public affairs seven years prior to his decease.[20] Iwasaki gives great weight to the tradition of divine descent, which he believes is mainly responsible for the continued popular reverence for the crown.[21] Writing in 1924, Uyehara could say: "So far as the mind of the mass of the people is concerned, the traditional sanctity and influence of the throne practically remain as before." It is considered to be improper to gaze upon the Emperor, to bring his name into discussion, or to make him the agent of political maneuverings. All of these things are done, however, on occasion.

The contemporary attitude of the Japanese people has been well expressed in the following paragraph:

"That Japanese conceptions of the Imperial House, and its closer relation to the common people, have become more modern in sympathy and outlook must not be misinterpreted to imply that there is any decrease of faith in the divinity of the ruler; he is still no less the Son of Heaven in the eyes of the nation than were his ancestors. Japan is still, and, for some time to come, must remain, a theocracy. The first Emperor of Japan was a divine ruler, as have been all his successors ever since. The Emperor is the centre and head of the organization of the empire. The distinction between ruler and subject remains vital and permanent. The sovereign is sacrosanct, infallible and inviolable, and obedience to him and his government is implicit. To him is due the same worship and obedience as to his ancestors, the gods of the nation. That the Emperor rules by virtue of his divine descent in unbroken succession from the Creator is the foundation of government and national polity." [22]

AN ENTHRONEMENT RESCRIPT

The imperial rescript [23] read by the Emperor Showa at his enthronement may also be quoted as a sympathetic expression of

[19] Griffis, *The Mikado*, pp. 2–3.

[20] Clement, in 1916, wrote that "the feeling toward the present Emperor does not seem as yet to be the same as that toward his illustrious father, Mutsuhito the Great." *Constitutional Imperialism*, p. 329 (9).

[21] Iwasaki, *op. cit.*, p. 28.

[22] J. Ingram Bryan, in his article "Japan's New Emperor," *Contemporary Review*, CXXXI, 349–350.

[23] New York *Times*, Nov. 11, 1928, p. 20. Such rescripts are written not by the Emperor but by scholars attached to the Imperial Household Ministry.

the relationship believed to exist between the imperial house and the people:

"Our heavenly and imperial ancestors, in accordance with the heavenly truths, created an empire based on foundations immutable for all ages, and left behind them a throne destined for all eternity to be occupied by their lineal descendants. By the grace of the spirits of our ancestors this great heritage has devolved on us. We hereby perform the ceremony of enthronement with the sacred symbols.

"In building up the empire and reigning over the people our ancestors looked upon the State as their household and the people as their children. This tradition has been followed from era to era, so that the virtues, benevolence and magnanimity shown by their sovereigns have deeply influenced the people, who, in turn, are united in reverence and loyalty to the throne.

"This spiritual union between sovereign and people is the essence and flower of our nationality and should remain unchanged as heaven and earth. Our imperial grandfather, wisely choosing between the old and the new, decided to enter upon the great work of imperial restoration, and, giving due regard to conditions, both at home and abroad, adopted a far-sighted system of constitutional government, and by virtue of civil as well as military achievements completed a task seldom paralleled in history.

"Our imperial father, who followed in the footsteps of his great predecessor, built upon and added lustre to this glorious bequest. Being called to the throne at this juncture we are only too sensible of our own failings. Therefore our ardent desire that we may have the protection of the spirits of our ancestors and the support of our beloved millions, and thus be enabled to discharge our sacred duties in a manner not unworthy of the great past.

"It is our resolve to endeavor to promote and cultivate friendly relations with all nations, and thus contribute to the maintenance of world peace and the advancement of the welfare of humanity. We call upon you, our beloved subjects, to be of one mind and, sinking selfish aims for public service, work with one accord, helping us to attain these our aspirations in order that we may in some measure add to the illustrious traditions to which we have succeeded, and that we may with good conscience face the heavenly spirits of our ancestors."

EMPEROR HIROHITO'S WAY OF LIFE

The way of life of the present Emperor may hardly be described in more accurate and interesting words than those of a recent writer:[24]

"The Emperor rises at six. He dislikes valeting or any kind of ostentatious personal service and shaves and dresses himself. He breakfasts at

[24] Hugh Byas, in *Japan Advertiser*, Feb. 2, 1930, p. 4.

seven with the Empress in their sitting room. The meal is a simple one in 'foreign' style—fruit, oatmeal, coffee, toast, bacon and eggs. When it is over the small Princess is brought in or the Emperor and Empress may walk to the nursery to talk to her. Then the Emperor reads the newspapers. The papers are not clipped or their contents selected for him. He receives them as they are published. All the leading vernacular newspapers and the principal English language papers are laid on his table. He reads them carefully and when his day's work begins he is well acquainted with the news of the day.

"At ten o'clock, the business of the day begins, and it is interesting to note that His Majesty begins it by study. Since his accession his studies have been largely concerned with the duties of his own position. The laws and rules of the Imperial Household, the laws governing his Imperial prerogatives and functions, have been exhaustively studied with the aid of experts. Afterwards he may listen to a talk by an expert on topics of the moment or history, or foreign affairs, or subjects such as biology, in which he is specially interested. At eleven o'clock there is an interval of fifteen minutes for rest, but occasionally utilized for some public engagement—the audience to a foreign ambassador or home statesman which can be conveniently dovetailed in.

"At noon lunch is served. It is a simple meal, sometimes in Japanese style, sometimes in foreign style. Large official luncheons are fairly frequent; at other times His Majesty's guests may be members of the Imperial Family, high officials of the Government, the Household Minister or Grand Chamberlain or other public personages. When the midday meal is in foreign style it is the custom of the Emperor and Empress to take a Japanese-style evening meal. Their tastes are simple; they eat ordinary food and enjoy the standard Japanese dishes. When he visited Osaka officially the Emperor invited a number of leading citizens to lunch with him, and surprised them, it is said, by the comparative simplicity of the food which was placed before them. But even that, simple as it seemed to the millionaires of the commercial capital, was more elaborate than the usual fare in the Palace.

"After lunch His Majesty, as often as his engagements will permit, takes an hour of exercise in the open air, golf one day, riding another. The afternoon is taken up till six o'clock or later with business of state. Numerous audiences have to be given; the heads of the Government, of the army and navy, governors and governors-general have to be received; the chief of the state must be in contact with all the far-reaching ramifications of an empire of eighty million persons. There is a constant stream of official documents to be read and signed. These come in at all hours but the main stream flows into the Emperor's office between four and six in the afternoon when the departments have completed their work and the orders and commissions, approved by the Cabinet and countersigned by the Minister responsible, are brought to the Emperor for the signature which makes them valid. His Majesty is a methodical worker and insists upon regularity and order. He will not deal with state papers in his sitting room or study but goes to the office appointed for the purpose. No cluttered desks or accumulations of papers are permitted; at whatever hour work comes in it is attended to in its proper place.

"At six-thirty in ordinary times the affairs of the day are over. The Emperor and Empress dine quietly together and the young Princess comes in to play for a little and prattle of her small adventures. The Emperor glances through the evening papers. If the radio offers anything of especial interest it is switched on. The radio and newspapers are His Majesty's direct contacts with the life of his people. All other communications are transmitted through the responsible officials. The press is the open window through which the Palace looks on the multitudinous life outside. His Majesty takes a catholic interest in the news and discusses it freely. He knows what is going on in the world of wireless and he likes to listen-in occasionally to a sporting event, such as the university ball games, or to hear the late news, or any special feature which the broadcasting station may have arranged. But oftenest after dinner he is to be found reading a book on biology, his only engrossing hobby, or arranging his specimens or studying through the microscope his latest subject. His special branches are the study of Mendelism and marine biology; when he is at the seaside he is continually looking for new specimens of shellfish; in his walks through the palace grounds his eyes are on the trees where he has discovered a number of new specimens of mycetozoa. If he were not an Emperor he would be by choice a biologist; it is significant that in his favorite private portrait he chose to be photographed beside a table on which his microscope was placed.

"A life of regular work and simple habits which begins at six A. M. does not crave for midnight excitements. Between ten and eleven their Majesties retire; the lights in their quiet suite are extinguished; and long ere the streets of the city outside are deserted, only the call of the owls in the trees and the tread of the sentries break the silence of the heart of Japan."

SHINTO AS A DYNASTIC CULT

The connection between the Shinto religion and the dynasty continues to be an important element in the popular feeling toward the latter. Shinto includes the reigning Emperor in its list of deities and erects imposing shrines to the greater of his predecessors. In it the ordinary man finds assurance of a common origin with the Emperor, and both are hailed as descendants of the gods who created great Japan. It fosters nationalism by the canonization of military heroes and the dedication of shrines to them. Though not in law a state religion, Shinto enjoys special patronage by the imperial family and its priests are appointed, educated, and supported by the government.

Shinto was the religion of the state from 1868 until 1872. Thereafter, until 1900, Shinto and Buddhism were accorded equal recognition. Shinto and Buddhist priests both were officially designated "teachers of religion and morals." Since 1871 the appointment of Shinto priests at the shrines has been a governmental function, and

all the shrines of Japan have been classified into government shrines (four grades), national shrines (three grades), and local shrines (four, later three, grades). In 1875 an imperial ordinance was published determining the rituals and ceremonials to be observed at Shinto shrines.

The year 1882 marks the beginning of an effort by the government to differentiate Shinto as a national cult from Shinto as a religion. In that year a legal distinction was made between Shinto shrines and Shinto churches or temples. This change did not affect the rituals performed at the shrines, but merely provided a status for private Shinto associations. It did not decrease the importance of the shrines, but rather increased it; every Japanese, of whatever religious faith, was still expected to visit the shrines out of gratitude and loyalty to his ancestors.

The constitution, promulgated in 1889, granted freedom of religion. With a view to demonstrating its good faith, the government, in 1900, declared the Shinto shrines to be non-religious and set up two bureaus in the Home Ministry, one to regulate the shrines, the other to supervise religions. As in 1882, however, the close connection of the government with the shrines was maintained, and so were the official shrine rituals. Shinto remained the established state cult, and since the core of the people's religion was expressed in that cult, the changes in official titles and modes of administration were of little effect. The masses continued to view shrine attendance as religious worship. Since non-Shintoists were required to attend the shrines, the government's strategy was seen to have maintained national unity while according formal deference to the principle of religious freedom.[25]

IMPERIAL SHRINE ATTENDANCE

The relationship between Shinto and the imperial house is rendered obvious by the frequent visits paid by the Emperor and Empress and by his nearest relatives and their consorts to the most important shrines—those of Amaterasu O-Mikami in Ise prefecture, of the Emperor Meiji in Tokyo, and others. Every significant happening within the household of the Emperor—births, marriages, tours abroad, recoveries from illness, success in the execu-

[25] An excellent treatment of this subject, which includes translations of significant ordinances and official statements, is given by Dr. D. C. Holtom in his monograph, "The Political Philosophy of Modern Shinto," published in *Transactions of the Asiatic Society of Japan* (Tokyo, 1922), XLIX, Pt. 2.

tion of some policy of state such as the reconstruction of Tokyo after the great earthquake, enthronements, the coming of age of princes and princesses, etc., in never-ending series—is reported to the spirits of departed Emperors at the great shrines. The Emperor and other imperial personages frequently attend at the shrines for those purposes; at other times, court ritualists are sent instead. Undoubtedly these ceremonies impress the populace as acts of piety and help to maintain the national conception of the imperial family as descendants of the gods.

CONTINUED VITALITY OF MONARCHY

Tradition is powerful, particularly so when it wears the vestments of religion. But is education not stronger still? What will happen to the loyalty of the masses when they learn that many of the tales of the *Kojiki* and the *Nihongi* which they have been taught, and are still being taught, to regard as history are nothing but fables? The real rulers of Japan are alive to this question and are building a new foundation for the monarchy. It is personal loyalty of the sort that maintains the English monarchy; and, that it may develop, the people are being allowed to see their *Tenno* frequently, to buy his picture, to read of his daily activities. These are most fully chronicled in the newspapers and accompanied with explanations and photographs. The Emperor and Empress, the princes and princesses, are continually in the public eye. Successes of state are ascribed to the Emperor's wisdom and virtue as well as to his heavenly ancestry. When he passes in procession on fête days, the devoted subjects who line the streets are not required to kneel, to avert their gaze, even to doff their hats, but are permitted to shout solemnly, "*Banzai, banzai.*" In return the Emperor, sitting alone in his limousine, surrounded by snorting motor-bicycles carrying guards in side-cars with rifles ready, may be seen gravely saluting.[26] There can be little question that the love of the people for their Emperor will continue indefinitely. It is something too deeply rooted in their whole conception of existence to be supplanted, something unique in the modern world which seems likely always to retain its religious element in spite of the passing of the vast army of gods and goddesses, from Ame-no-Minaka-Nushi-no-Mikoto to Jimmu, into the mists of mythology.

[26] The present Emperor, while Crown Prince, attended a baseball game and was instructed in the play by Abe Isoo, the socialist leader of the Shakai Minshuto (Social Democratic party). He was the first imperial heir-apparent to travel in Europe. Two of his brothers have followed his example.

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CHAPTER VI

THE EXECUTIVE

COMPOSITION OF THE EXECUTIVE

The executive department of the Japanese government is not a single agency, but a group of agencies. It includes the Emperor; the cabinet and associated agencies; the composite of the military and naval agencies sometimes entitled the "supreme command," sometimes referred to as the "camp"; the Privy Council; the genro; and the Imperial Household Ministry. The genro, or "elder statesmen," are extra-constitutional and extralegal, but of great importance in the actual conduct of the executive department. The advisory relation of the Imperial Household Ministry to the Emperor constitutes it a member of the executive. These several organs compose the permanent executive of the central government. For brief periods others have been set up for special purposes, as hereafter noted. A previous chapter dealt with the Emperor; others that follow deal with the various ministries and the civil service. The present chapter is concerned with the cabinet, the supreme command, the Privy Council, the genro, and the Imperial Household Ministry—the actual repositories of the executive powers which belong legally to the Emperor.

STATUS OF THE CABINET

The constitution does not mention a cabinet, but does provide for ministers of state and indicate generally their position in the governmental system. Article 55, the sole article dealing with the cabinet, provides: "The respective ministers of state shall give their advice to the Emperor, and be responsible for it. All laws, imperial ordinances and imperial rescripts, of whatever kind, that relate to the affairs of the state, require the countersignature of a minister of state." As already noticed, the cabinet (*naikaku*), was created in 1885, and was continued after 1889 with recognition in Article 76 of the constitution.[1] Imperial proclamation 69, issued in

[1] See Appendix IV.

1885, declared, "The cabinet shall consist of the following members," thereafter listing the ministers.[2] In the same year an imperial decree, issued to the ministers, contained the statement that "what is essential to a cabinet is that it should have direct control of all affairs of state and that its action should be uniform and expeditious."[3] Thus it is apparent that the cabinet, as in Great Britain, France, and the United States, is extra-constitutional. It has, however, a much more complete legal basis in Japan than in the other countries named.

In 1889, an imperial notification took full cognizance of the cabinet by listing seven categories of matters which were required to be submitted to it. These were (1) drafts of laws, estimates, and settled accounts; (2) treaties with foreign states and international questions of importance; (3) imperial ordinances relating to administrative organization or to the execution of regulations and laws; (4) disputes concerning the relative competence of ministers of departments; (5) petitions from the people handed down from the throne or submitted to the imperial Diet; (6) expenditures apart from the budget; and (7) appointments of *chokunin* officials and local governors, as well as their promotion and removal. The notification further provided that "In addition to the above, any matter that comes under the duties of the ministers of departments and having some important relation to the higher aspects of the administration shall also be submitted for deliberation by the cabinet."[4]

The cabinet also is consulted upon such matters regulated by the Imperial House Law as bear upon the general interests of the state, e. g., the succession to the throne, the setting-up of a regency, or a change in the law itself.

ENUMERATION OF PORTFOLIOS

In practice, the ministers meet as a "cabinet council," and they have found it politically expedient, though not legally necessary, to act as a group. The distinction found in France between an administrative council of ministers and a policy-forming cabinet is not paralleled in Japan. Consisting at first of the Minister Presi-

[2] Mc Laren, "Documents," p. 95.
[3] *Ibid.*, p. 96.
[4] *Ibid.*, pp. 232–233; printed in this book as Appendix VII. For definitions of the different forms of legal enactments, see Mc Laren's, "Documents," pp. 673–674.

dent and nine ministers, the membership of the cabinet was increased in 1918 by the addition of a Minister of Railways. In 1924, the Ministry of Agriculture and Commerce was divided into two ministries, one of Agriculture and Forestry, the other of Commerce and Industry. For two years, 1895–1897, a colonial department was maintained.[5] Its revival, under the title "Ministry of Overseas Affairs," occurred in 1929, raising the total cabinet membership to thirteen. Ministers without portfolio may be appointed.

ITO'S VIEWS CONCERNING THE CABINET

In creating the cabinet Ito had in mind the work of Bismarck. Of the relationship between premier and ministers, he wrote, "The Minister President of State is to make representations to the Emperor on matters of state and to indicate, according to His pleasure, the general course of the policy of the State, every branch of the administration being under the control of the said Minister. The compass of his duties is large and his responsibility cannot but be proportionally great." Thus he placed the premier in a position of distinct superiority, responsible for the administration as a whole and empowered to direct it.

Concerning the other ministers Ito wrote, "They are severally held responsible for the matters within their respective competency; there is no joint responsibility among them in regard to such matters." He then pointed out that each minister was "controlled by the will of the Emperor," and that the danger in creating a cabinet with joint responsibility was the growth of "party combination" which, it was feared, would "ultimately overrule the supreme power of the Sovereign." Yet he recognized that there were important matters of concern to all the ministers, that regarding them the premier would naturally consult with the ministers, and that "in such matters it would of course be proper for the Cabinet to assume joint responsibility."[6] Thus it may be said that Ito contemplated individual responsibility of cabinet ministers for matters pertaining to their respective departments, joint responsibility for general matters, and responsibility of the premier for both types of decisions.

This view of the premier's position and its relation to that of the ministers is borne out fully by the imperial notification of 1889 already quoted:

[5] *Japan Year Book*, 1911, p. 473.
[6] *Commentaries*, pp. 103–105.

"II. The minister president of state stands at the head of the ministers of state, reports affairs of state to the Emperor and, in compliance with imperial instructions, exercises general control over the various branches of the administration.

"III. The minister president of state, should he deem it necessary, may suspend any measure or order of any branch of the administration, pending an imperial decision on the subject.

"IV. All laws and imperial ordinances affecting the administration as a whole shall bear the countersignature of the minister president as well as that of the minister from whose department they directly emanate. All imperial ordinances affecting a certain department only shall be countersigned only by the minister of that department.

"VII. With the exception of military or naval affairs of grave importance which, having been reported directly to the Sovereign by the Chief of Staff, may have been submitted by His Majesty for the consideration of the Cabinet, the ministers of state for war and the navy shall report to the minister president of state."

INDIVIDUAL RESPONSIBILITY VS. UNITY OF THE GROUP

In practice, the Japanese cabinet is closely unified. One writer suggests that this unity is due, not to subservience to the premier, but to the "group spirit" which has "ordained that the policy of the State should be framed by the Cabinet as a whole, and not by the Premier alone." He notes that "except in rare instances, the Cabinet as a whole has felt it necessary to assume the responsibility for the actions of any of its members."[7] Imperial notification 135, noted above, while leaving to the single countersignature of the head of a department imperial ordinances affecting only that department, reduced that independence to a formality with the several restrictions ensuring control by the premier or consideration by the cabinet.[8] It is apparent that while the head of a department is alone responsible for the conduct of his department, as is evidenced by individual consultations with the throne and by individual resignations, he is required to conform to the views of the Minister President or of the cabinet as a whole, with results equivalent to those obtained where mutual responsibility is recognized. Similarly, although each minister is not responsible for the acts of the cabinet, he is bound, in practice, to recognize their validity.[9] Obviously, there is observable here the conflict between a

[7] W. M. Mc Govern, *Modern Japan* (London, 1920), pp. 107–108.

[8] See Appendix VII.

[9] Uyehara has a clear statement on this point (*The Political Development of Japan*, pp. 137–138). A rule of practice exists whereby civilian ministers report to the throne through the premier rather than directly on all matters of state policy.

monarchist theory which fears the development of party control of a unified cabinet and the fact that cabinet government, even of a quasi-responsible type, is not fully workable unless unity exists. It is not too much to say that the rule of purely individual responsibility has become a fiction.[10]

TO WHOM IS THE CABINET RESPONSIBLE?

The constitution is indefinite concerning the direction in which ministerial responsibility runs, stating simply, in Article 55, that "the respective ministers of state give their advice to the Emperor and are responsible for it." In this respect Japan falls in the same class as the German Empire and Fascist Italy. Although the general tenor of the constitution is so clearly monarchist, a few Japanese writers have been inclined to regard this clause as intentionally ambiguous. Miyaoka has written, "The constitution of Japan is silent as a sphinx when it comes to the question to whom the ministers of state are held accountable"; and he suggests that "the first paragraph of Article 55 was purposely left a political sphinx."[11] Fujisawa takes the same view in words almost identical.[12] Even Professor Clement is somewhat attracted by it.[13] All of these writers agree, however, with Ito, Uyehara, Mc Govern, and many others that in practice the cabinet has recognized responsibility to the Emperor.

It is doubtful whether the views of Ito, generally cited as unequivocally declarative of responsibility to the Emperor, have been fully understood. Ito's statement in explanation of Article 55 is a qualified one. He says at one point, "Ministers are directly responsible to the Emperor and indirectly so to the people"; at another he recognizes a responsibility to the "law"; and in a third

[10] Ozaki declares that the fiction has had no basis for existence, since "the great Emperor Meiji, from the time the cabinet system was first organized, graciously ordained that the cabinet should be an integral body, and adopted the system of joint appointment and dismissal." He states the Japanese principle of responsibility as follows: "For acts done by the head of a department of state of his own volition and not by virtue of resolutions passed in the cabinet, the Minister concerned alone is responsible, while for acts done pursuant of resolutions passed in the cabinet, all the ministers are conjointly responsible" (*The Voice of Japanese Democrary*, pp. 63–64).

[11] T. Miyaoka, "The Growth of Liberalism in Japan," Publication No. 16 (1918), Division of Intercourse and Education, Carnegie Endowment for International Peace, pp. 3–4.

[12] R. Fujisawa, *Recent Aims and Political Development of Japan* (New Haven, Connecticut, 1923), p. 55.

[13] E. W. Clement, "Constitutional Imperialism in Japan," *Proceedings of the Academy of Political Science*, VI, 336 (16).

paragraph he is far from thinking of the ministers as royal puppets: "Therefore, the Ministers of State have towards the Emperor the duty of encouraging all that is proper and of discountenancing all that is improper; and when they fail to discharge this duty they will not be able to release themselves from responsibility by pleading an Order of the Sovereign." [14] He evidently had in mind a dual responsibility, primary to the Emperor, secondary to the people. Practically all later commentators have followed Ito, but the majority have stressed more than he the ministers' obligations to the Emperor. Ito, more logical, qualified the theory in order to admit of some participation by the Diet in the direction of public affairs—indirect participation, but nevertheless not to be neglected.

CLANS BEHIND THE THRONE

In view, however, of the facts that the Emperor does not take a consistent part in administration, that the cabinet has not, as yet, absorbed all executive power, and that the influence of the Diet is still weak, the ministers are checked by other executive agencies. Until recently the influential leaders of the Choshu and Satsuma clans controlled executive policy through their positions in the genro, certain offices in the Imperial Household Ministry, the Privy Council, and high military bodies. This was the necessary corollary of the principal phenomenon of the Restoration and the pre-constitutional era—the survival of clan control. While clan influence is now comparatively less important, it continues to exhibit itself in a variety of ways, reference to which will be found in this and other chapters. The degree to which this control has been diluted by the new political forces allowed to develop by the rise of constitutionalism is difficult to state. The term *hambatsu seifu* ("clan government") was frankly used throughout the first quarter of the present century. Except Saionji and Okuma, all premiers until the appointment of Hara (1918) were either Satsuma or Choshu clansmen. Thus responsibility to the Emperor has, until very recently, meant essentially responsibility to such prominent clan statesmen as Yamagata, Ito, Katsura, and others. This situation is changing with the passing of the genro and the rise of powerful political parties.

[14] Ito, *Commentaries*, pp. 94–103.

CABINET APPOINTMENTS AND PERSONNEL

The ministers are appointed nominally by the Emperor, but actually by the Minister President or premier, who is appointed by the Emperor upon the advice of the genro or the Imperial Household Ministry. Here Japanese practice follows the usual custom of parliamentary governments. On occasion, an outgoing premier has nominated his successor; in 1916, however, when Okuma, upon retiring from the premiership, named Viscount Kato as his successor, the genro recommended Terauchi, who was appointed. As in England and France, there is no law requiring ministers to be members of parliament, but ministerial position is compatible with membership in either house of the Diet, and there are usually more representatives than peers in the cabinet. As a rule, Diet members in the cabinet average about one half of the total. The other civilian ministers are likely to be party leaders or men in the higher ranks of the civil service. Cabinet ministers possess *shinnin* rank. The premier's salary is 9,600 yen ($4,800 at par) per year; the ministers receive 6,800 yen ($3,400). The salary of the Imperial Household Minister is the same as that of a minister of state. Salaries of high officials were sharply reduced in 1930. Previously, the premier had received 12,000 yen ($6,000), and the ministers 8,000 yen ($4,000) annually. Japanese cabinet ministers are better paid than those of France, but their salaries are lower than in Great Britain and the United States.

CABINET MEETINGS

The cabinet meets as a council, presided over by the premier or by another minister designated to act *pro tempore*. Meetings are held *in camera*, in the official residence of the premier or, during sessions of the Diet, in the Diet building. Regularly, the cabinet meets once a week, but it is always subject to the premier's summons. As in England, records of the deliberations are kept but not published. The premier's secretary may furnish communiqués to the newspapers. Matters are discussed freely by all ministers, the views of the premier carrying most weight. Votes are not taken, decisions being reached in accordance with the premier's view of the consensus of opinion.

STATUS OF THE SUPREME COMMAND

The peculiar position of the military and naval ministries and

of the military and naval general staffs is indicated in imperial notification 135 of 1889, paragraph 7: "With the exception of military or naval affairs of grave importance which, having been reported directly to the Sovereign by the Chief of Staff, may have been submitted by His Majesty for the consideration of the Cabinet, the ministers of state for war and the navy shall report to the minister president."

This notification accords with the constitution, which deals with the Emperor's military power in several articles. The first, Article 11, reads, "The Emperor has the supreme command of the army and navy." The second, Article 12, provides that "The Emperor determines the organization and peace standing of the army and navy."

Professor T. Minobe points to a historical differentiation, which was carried over into the constitutional system, by which the control over military affairs was divided between the military and civilian agencies. He refers to Ito's remark that "A general staff office has been established for his imperial majesty's personal and general direction of the army and navy."[15] Under the principle thus recognized, the civilian ministers do not advise the Emperor on the "command" of the army and navy, but this function is exercised by the Ministers of War and Navy, the heads of the two staffs (army and navy), and such other agencies as may exist for the purpose. The function is exercisable not only respecting questions of strategy and tactics, but also in the formulation of plans for national defense. Nakano states clearly that "Under the existing system the supreme military command, which is vested in the emperor, is exercised by the emperor not through the ministers of the Departments of War and the Navy but through the chiefs of the General Staff of the Navy and War, who are responsible only to the emperor."[16] However, he appears to err in narrowing the exercise of this function to the staffs.

The Ministers of War and the Navy, as well as the two chiefs of staff, may report directly to the Emperor concerning matters within the purview of the supreme command. These officials must be, under imperial ordinance, high military and naval officers re-

[15] *Commentaries*, p. 28.

[16] T. Minobe, "Cabinet and Camp," translated from an article in *Asahi* (Tokyo) and reprinted in *Japan Chronicle*, May 15, 1930, pp. 503–505. Nakano Tomio, *The Ordinance Power of the Japanese Emperor* (Baltimore, 1923), pp. 154–156. But Nakano does not accept the thesis that the supreme command is exercised constitutionally (*ibid.*, pp. 157–165).

spectively. The practice dates from the earliest cabinet and was embodied in an ordinance of 1894, affecting both ministries; in another of 1900, amended in 1912, for the Ministry of the Navy; and in a third of 1908, amended in 1912, for the Ministry of War. The earlier ordinances required that a Minister of War hold at least the rank of lieutenant-general and a Minister of the Navy at least that of vice-admiral, in both cases in active service. The amendments of 1912, urged by the Seiyukai, made it possible for a man on the retired list to act as minister. In no case as yet has a civilian held either post.[17] The same rules apply to the permanent vice-ministries.

The implications of this unique position of the military agencies in Japan are dealt with in the next chapter. It is sufficient here to point out that it justifies the treatment of the "supreme command" as a distinct executive agency. This is true because, within the sphere allotted to it, the composite of military and naval agencies is supreme over the cabinet and the Privy Council. The Ministers of War and the Navy have a dual status. They are members of the cabinet, reporting on general affairs, including some of a military character, through the premier. They are also members of the supreme command, reporting directly and independently of their colleagues in the cabinet. Hence it is impossible to set up or maintain a cabinet without them. Thus the military services and the influences that work through them hold a favored position for the control of governmental policy.

CRITICISM OF THIS SITUATION

A considerable weight of criticism by statesmen, politicians, scholars, and journalists has been leveled at the specially privileged status of the agencies comprising the supreme command. Obviously, it is an anachronism in the presence of the manhood suffrage act, and it renders impossible the completion of the development of

[17] Nor had a retired officer held either post when this book was published. On two occasions, during the absence of the Naval Minister at the Washington Conference (1921–1922), and at the London Naval Conference (1930), a civilian premier acted as Minister of the Navy. In reply to an interpellation in the House of Representatives, General Ugaki, Minister of War, said, "The provision of Article 9 of the cabinet regulations may be applied to the Minister of War. Its application or otherwise shall, however, be determined according to the circumstances prevailing at the time." Article 9 provides that, in case any minister is prevented from attending to his duties, another minister shall either discharge his duties temporarily or take control of the duties by his order. See *Japan Chronicle*, May 8, 1930, p. 473.

parliamentary government. The reduction of the military and naval services to their proper relation to civilian determination of policy would have advantageous consequences both at home and abroad.

HIGH MILITARY COUNCILS

A small but highly distinguished group of marshals and admirals constitutes an advisory "Board of Marshals and Fleet Admirals." Since to gain the distinction of appointment as *gensui* ("marshal" or "admiral"), a man must have proved high military qualities in actual warfare, the perpetuation of this board depends upon the country's participation in war. The board has no regular meetings, but may be convened by the Emperor, on advice of the military and naval heads, to give its counsel upon especially difficult issues.

A larger advisory board is the "Supreme Military Council," which includes the above-named persons and a number of other military and naval officers especially designated. The senior officer present presides at meetings, which are held irregularly at the summons of the Emperor to discuss important military problems. One of its capacities is to advise upon the correlation of functions between the various units of military administration. The council may meet in sections for the consideration of issues affecting only the army or the navy.

THE PRIVY COUNCIL

Attention was previously drawn to the establishment of the Privy Council in 1888 because, to quote the ordinance, "We deem it expedient to consult personages who have rendered signal services to the State, and to avail Ourselves of their valuable advice on matters of State." Although Ito had dispensed with the older council, the *Daijokwan,* in order to give the newly created cabinet a sense of unity and responsibility and a chance to make an unhampered start, he recognized the value of a council, calling it "the palladium of the Constitution and of the law," the "highest body of the Emperor's constitutional advisers." Its task he summarized as that of "planning far-sighted schemes of statecraft and of effectuating new enactments, after a careful deliberation and calm reflection, by instituting thorough investigations into ancient and modern history, and by consulting scientific principles." [18]

[18] *Commentaries,* pp. 108–109.

THE COUNCIL'S ADVISORY FUNCTIONS

The constitution (Article 56) recognized the continued effect of the ordinance of 1888 and stated with entire definiteness that the Privy Council should engage in deliberation when it was consulted by the Emperor. Since the Emperor leaves the initiative in and decision of most matters to his ministers, this condition upon Privy Council action amounted to a provision that its advice might be asked by the premier on behalf of the Emperor upon important issues. Due, however, to the influences that play upon the cabinet, advice may at times be asked when the ministers feel quite competent to get on without it. Custom has rendered mandatory upon the cabinet a relation to the council which the terms of the constitution make appear optional.

The ordinance creating the council specified that "the Privy Council shall hold deliberations, and report its opinions to the Emperor for his decision" on certain matters, as follows:

"1. Differences of opinion as to the interpretation of the constitution, or of the laws appertaining thereto, and questions relating to the budget or other financial matters.

"2. Drafts of amendments of the constitution or of laws appertaining thereto.

"3. Important imperial ordinances.

"4. Drafts of new laws and drafts for the abolition or amendment of existing laws; treaties with foreign countries, and the planning of administrative organizations.

"5. Any other matters whatever besides those mentioned above, touching important administrative or financial measures, upon which the opinion of the Privy Council has been specially required by order of the Emperor; and matters upon which the opinion of the Privy Council has to be taken by reason of some special provision of law or ordinance."

The imperial ordinance of 1888 was amended in 1890 so as to be more definite and restrictive. Article VI, above cited, thereafter read:

"Upon His Majesty's submission for advice, the Privy Council shall hold deliberations and report its opinions upon the following matters:

"1. Matters which are under its jurisdiction according to the provisions of the *koshitsu tempan* or Imperial House Law.

"2. Drafts and doubtful points relating to the provisions of the constitution and laws and ordinances supplementary thereto.

"3. Proclamations of martial law under Article XIV and the imperial

ordinances to be issued under Articles VIII and LXX of the constitution as well as all other imperial ordinances having penal provisions.

"4. International treaties and agreements.

"5. Matters relating to the amendment of the organization of the Privy Council and to the rules for the conduct of its business.

"6. Matters specially submitted to its deliberations for advice in addition to those above mentioned." [19]

EXTENT OF COUNCIL'S FUNCTIONS

It will be seen at once that while the amended ordinance is subject to less liberal interpretation than the original, its terms enable the council to exercise influence over the fields of legislation and treaty-making as well as to share in the decision of policies particularly concerned with the organization and powers of the executive department. The approval of the council is required for appointments made by imperial ordinance. The premier reports upon routine business to the council. Although these specific powers exist by ordinance, rather than by constitutional enumeration, their maintenance is controlled by the council through its power to approve or disapprove ordinances touching its own status. The council gains prestige from its intimate associations with the imperial house. The Imperial House Law gives it the function of advising the Emperor and the imperial family council on a number of matters, among them a change in the regular order of succession, the setting-up of a regency, appointment of a mentor or "governor" for an Emperor in his minority, the determination of the property within the imperial hereditary estates, the amendment of the Imperial House Law, etc.

COMPOSITION AND PROCEDURE OF THE COUNCIL

Since first constituted, the Privy Council has contained twenty-six members—a president, a vice-president, and twenty-four councilors. In 1930, the number of councilors was increased to twenty-five. Cabinet ministers "are entitled, by virtue of their offices, to sit in the Privy Council as Councilors and have the right to vote." Members must be at least forty years of age. They are appointed nominally by the Emperor, actually by the premier after consulta-

[19] Imperial ordinance 22 (1888). Mc Laren, "Documents," p. 128. Also imperial ordinance 216 (1890). The latter ordinance was translated for the author by Dr. Sterling Takeuchi. The ordinance of 1888 is printed in this book as Appendix VI.

tion with members of the council and the genro. They hold *shinnin* rank. They are appointed for life, but a councilor may resign, and he must surrender his place as such upon entering the cabinet. Councilors may, however, sit in either chamber of the Diet. There is a considerable "turnover" in the membership of the council. Members receive 5,800 yen ($2,900) a year, the president 6,600 yen, and the vice-president 6,200 yen. Though the Privy Council is a powerful body and appointment to it is a very high distinction, it is sometimes true that the appointees are chosen from political considerations. Ten members form a quorum, so that the members of the cabinet might do the business of the council if councilors were disinclined to attend. The latter contingency, however, never arises.

The president of the council may be a powerful figure, and such distinguished statesmen as Ito, Saionji, Kuroda, Oki, and Yamagata have held the post. Since the death of Prince Yamagata, leading genro, who held the presidency from 1905 to 1922, presidents have been selected from members distinguished rather as scholars than as politicians. The designation of the president and vice-president is made nominally by the Emperor, actually by the premier. The president recognizes those members that he wishes to have take part in discussions; and he has a casting vote. He controls the agenda and meetings and signs all documents. He may order the preparation of reports by the secretaries under his own supervision or that of councilors whom he designates. He applies the closure upon debate and announces the results of votes taken, which are determined by a majority of the members present. Members voting with a minority may have their objections recorded. The meetings are not open to the public, but minutes are taken. As a rule, no deliberation is commenced before members have had full opportunity to read reports that have been ordered in connection with a subject under investigation and documents that bear upon it. After debate, if a decision is necessary the president takes the vote and declares the outcome. The results of the discussion and vote are drawn up in writing, with explanatory statements appended. Dissenting members may request that their votes and reasons therefor be noted in the report. Copies of the opinion are sent to the Emperor and to the premier. The newspapers experience no difficulty in reporting upon the discussions in the council and the votes taken. Meetings of the council are held in the imperial palace in Tokyo, and on important occasions the Emperor attends, though

he neither presides nor takes any part in the discussions. Council committees, however, need not meet in the palace.

The council does the bulk of its work through committees. A proposal referred to a committee does not reach members until the committee is ready to report. Members may not attend committee sessions unless as members of the committee. These regulations have conduced to dilatory handling of business and have raised sharp protests recently in the council's own ranks as well as in the cabinet.[20]

CONTRASTS BETWEEN JAPANESE AND BRITISH COUNCILS

It is noteworthy that while superficially there is a parallel between the cabinet and Privy Council in Japan and similar institutions in Great Britain, the distinctions are more important than the similarities. In Japan, there is no historical connection between the two bodies, no growth of cabinet out of council. There, cabinet members are merely *ex officio* members of the council; in Great Britain, the cabinet derives its status essentially from the membership of the ministers in the Privy Council. If not already a member of the Council, a British cabinet minister is appointed to it on taking office. No limitations of numbers or age exist in Great Britain. In the latter country, too, the importance of the cabinet is such that, to quote President Lowell, the functions of the council "have become a shadow."[21] In Japan, the political system has not yet evolved to the stage at which cabinet government takes the place of council government, though it is obvious that evolution is in that direction.

INCREASING COUNCIL PARTICIPATION IN POLITICS

The Privy Council has no relations with political agencies other than the Emperor and the cabinet and none with private agencies or persons. It receives no communications or petitions from the people or the Diet. Ito suggests the purposes behind this limitation

[20] *Japan Chronicle*, Oct. 16, 1930, p. 458; Oct. 23, 1930, p. 485.

[21] A. L. Lowell, *The Government of England* (New York, 1920), I, 79. Professor Ogg has pointed out to the author that in these days of increasing government by Orders in Council the statement of Lowell is less true than when written; also that the statement was misleading, even when written. The important work of committees of the British Privy Council should not be overlooked. See F. A. Ogg, *English Government and Politics* (New York, 1929), pp. 118-122.

when he affirms that privy councilors should not seek to use their offices to gain publicity, and points out that the value of the council would depend largely upon its members' impartiality, their ability to offer a "deliberate and calm" opinion without "leanings to this or that party." [22]

Individuals in the council exercise considerable influence in politics, due in part to their age and experience, in part to their ability, and in part to the establishment of working relations with influential men in the parties. Mere seniority, which in the past has given the council prestige, is no longer sufficient to overwhelm the views of cabinet ministers, who show a continually increasing irritation at the extreme conservatism of the council as a whole. Younger members of the Minseito have urged the abolition of the council, and a plank of the right-centrist labor party, the Zenkoku Minshuto, called for the same reform.

THE GENRO

The genro, or "elder statesmen," compose an agency which is *sui generis*. Reduced to-day (1932) to a single member, Prince Saionji, who is eighty-two (not ninety-two, as is frequently stated) years old, it continues to show vitality. Opinions are divided as to the fate of the group upon the death of Saionji. Present conditions appear at once to call for the genro and to require a somewhat different type of agency.

The genro (the term is applied to individuals as well as to the group) were the counterpart in national life of the family and village elders, men of maturity, experience, and ability who had gained general confidence and had come to be relied upon for wisdom in council. The term was not applied to the leaders who carried through the Restoration, though some of these lived on into the latter part of Meiji, but to the second generation of the clan statesmen, who took over the duties of government during the eighties and conducted affairs under the trying conditions that prevailed after the establishment of a constitution.[23] Not only did these men assume the principal offices, civil and military, but they

[22] *Commentaries*, pp. 108–109. On the general topic of Privy Council organization and powers, see the scholarly articles of Professor Kenneth Colegrove in *American Political Science Review*, XXV (Aug., 1931), pp. 589–614, and *ibid.* (Nov., 1931), pp. 881–905. Translations by Dr. Sterling Takeuchi lend added importance to these articles.

[23] Iwasaki states that the term *genro* was first applied in 1900 (*Working Forces in Japanese Politics* [New York, 1921], p. 38).

formed an extra-constitutional advisory council which actually ruled the country. They were able; they had a group consciousness strengthened by ties created by intermarriage and adoption; and to them Japan owes a great debt for maintaining unity and order during the transition from medieval to modern conditions.

FUNCTIONS OF THE GENRO

The genro advised both the Emperor and the cabinet, and no decision of consequence was taken until they had been consulted. The functions of this agency are not documented, because its warrant for existence and action is not in the written constitution, in statutes, or in ordinances, but in tradition and the resultant understandings of the Meiji era. Perhaps it might be said that the genro has been a shogunate in commission. In the presence of a composite executive made up of a transcendent Emperor and several authorities competent to advise the throne on terms of equality with each other, the genro was essential to the working of the governmental machinery. Without it deadlocks were inevitable, since there would have been no ultimate authority to decide among the Emperor's several advisers.

THE LIST OF GENRO

Examination of the list of genro reveals the payment which they took for the debt owed to them by the state—the maintenance of clan control as opposed to the development of real party government. Yamagata Aritomo, Ito Hirobumi, and Inouye Tsuyoshiaki of Choshu and Oyama Iwao and Matsukata Masayoshi of Satsuma composed the original genro. Of later recognition, by imperial rescript, were Katsura Taro, a Choshu clansman, and Saionji Kimmochi, a *kugé* (member of the old civilian nobility). Saionji was the only non-clansman, and his point of view, inclined since his youth to liberalism, has been of some assistance to the progress of parliamentary government. He desires that the genro as an institution shall die with him.[24] Okuma is not regarded as having been a full-fledged genro, though his apostasy from his long-held leader-

[24] It is said that in 1925, after the fall of Kiyoura's ministry, Saionji made it known that he wished the genro to end with him. It does not appear, however, that he contemplated the immediate recognition of cabinet government through the disappearance also of the control exerted over ministers by the army and navy, the Privy Council, the Peers, etc. See S. Washio, in *Trans-Pacific*, April 17, 1930, p. 6.

ship of the liberal forces won for him the privilege of sitting in the genro councils during his last years. Other men who have been called quasi-genro are Admirals Yamamoto Gombei and Kabayama Sukenori, recently deceased, and Count K. Kiyoura, all of Satsuma. None of the original genro was born of noble blood; all were samurai and won their positions of confidence by ability and accomplishment.

PROBABLE FUTURE OF THE GENRO

The current issue is the probable future of the genro. Clement regards the institution as doomed to die with Saionji. But he considers it probable that there will always be special advisers, possibly acting only as individuals, but distinct from the Privy Council. Ozaki Yukio has expressed the same view, adding that it would be preferable that the unseen and extralegal advisory agency should disappear altogether. Fujisawa has the advantage of lengthy acquaintance with conditions upon which to justify his statement concerning this institution: "The days of the all-powerful genro are gone forever. . . . A new institution . . . is necessary. . . . [It] will include the remnants of the genro . . . the president of the Privy Council . . . the number [should be] not less than two and not more than perhaps four or five."[25] Gubbins foresaw a rather large circle of influential men coming to be recognized by position, experience, or clan connection as worthy to be consulted on state affairs.[26]

The genro expresses that general tendency toward the creation of an inner circle of influential people in political or other types of institutions. It has gradually lost control, due to losses of irreplaceable men by death, to a corresponding growth in strength of the cabinet and the Diet, and to the dispersion of political influence over a wider field with the growth of industry, commerce, and finance. No less noteworthy, however, than the general prediction of the demise of the genro is the accompanying consensus of opinion anticipating the continuance of "unseen ministers of state." It would seem inevitable that such survivors must decline in influence, though retained because of their proved adaptation to the unique Japanese polity.

[25] R. Fujisawa, *op. cit.*, p. 120. In January, 1924, the choice of Viscount Kiyoura as premier was preceded by interviews held by the president of the Council (Kiyoura himself), the Imperial Household Minister, and the Lord Keeper of the Privy Seal with the surviving genro, Matsukata and Saionji (*Japan Chronicle*, Jan. 31, 1924, p. 151).

[26] J. H. Gubbins, *The Making of Modern Japan* (London, 1922), p. 304.

IMPERIAL HOUSEHOLD MINISTRY

The Imperial Household Ministry must be reckoned with in any attempt to distinguish the sources of policy in the Japanese state. This is true because certain members of the ministry are the continuous confidants of the Emperor, the guardians of the inmost shrine of the sacred dynasty. Through them, or in their presence, the Emperor comes into touch with cabinet projects and with the views of the several other governmental bodies authorized to approach the throne. From time to time influence appears to move from the head of the ministry to the Lord Keeper of the Privy Seal or to the Grand Chamberlain. Apparently, the lord-keepership is the most important post in the ministry, since occupants of the post of Minister of the Household regard a transfer to it as a promotion.[27] Its duties are "to keep the imperial seal and the seal of state" and "to advise his imperial majesty and preside over the deliberations of the court councilors."

When Premier Tanaka resigned in 1929, the Emperor consulted first with Count Makino, Keeper of the Seal. Makino sent Admiral Suzuki, Grand Chamberlain, to Prince Saionji. The genro came to the palace and discussed the matter of a successor to Tanaka with the Emperor once more and recommended Mr. Hamaguchi as the next premier.[28] This is the usual practice.

Ozaki Yukio, distinguished liberal member of the House of Representatives from its first session, interpellated the government in March, 1925, regarding (*inter alia*) the influence of the Lord Keeper of the Privy Seal. He declared that the office was a sinecure, established to provide for Prince Sanjo when in 1885 his office, that of *Dajodaijin*, was abolished in favor of the premiership. He criticized Sanjo's successors for acting outside their proper rôle —court administration—as though they were "grand tutors" to the throne and "leaders of state politics."[29] Prince Saionji was understood, in 1925, in connection with his opinion favoring the abolition of the genro, to have suggested that the function of recom-

[27] Count N. Makino became Lord Keeper of the Privy Seal after having held the offices of Minister of Education, Minister of Foreign Affairs, Minister of Agriculture and Commerce, and Imperial Household Minister. He is the son of Okubo, a samurai of Satsuma, one of the Restoration leaders. When Prince Katsura became Keeper of the Seal he was looked upon as a sort of revived shogun, but he died before giving the office the character of a shogunate. He held the post of Grand Chamberlain concurrently.

[28] *Japan Chronicle*, July 4, 1929, p. 21.

[29] *Ibid.*, Mar. 5, 1925, p. 308.

mending a new premier to the throne be taken over by the Lord Keeper of the Privy Seal.[30]

In view of the fact that the Imperial Household Ministry is not in the cabinet, nor subject to cabinet control beyond such influence as the premier may exert over appointments of its members, the position of such officials as the Minister of the Household, the Lord Privy Seal, and the Grand Chamberlain resembles that of the genro, and it may be reasonable to think of them as quasi-genro. This circumstance becomes more apparent and important in the prospect of the passing of the last of the genro. It is not relished by Japanese liberals, as Mr. Ozaki's protest reveals.[31]

DIPLOMATIC ADVISORY COUNCIL

A "Diplomatic Advisory Council" was set up by imperial edict in June, 1917, with the expressed purpose of obtaining the views of the people concerning the grave issues in foreign relations then perplexing the government. It lasted only until September, 1922, though observers of its composition and activities had suggested the possibility of its permanent retention as the successor of the genro. It met in the palace and was made up of persons enjoying the rank of cabinet ministers. Its membership numbered eight, including the premier, the Ministers of Foreign Affairs, War, and the Navy, the presidents of the two principal political parties, and two members of the Privy Council.

This council appears to have operated, not as a clearing-house of public opinion, nor yet as a non-partisan group, but as a lever by which the active forces in the government held in line the "politicians," i. e., the party leaders. It also received credit for sound advice to the Foreign Office on a number of occasions. It did not attain a controlling authority, but instead provoked much criticism, and as the tension of the war and post-war apprehensions

[30] S. Washio, "The Genro and Party Government," *Trans-Pacific*, April 17, 1930, p. 6.

[31] The *Asahi* (Tokyo liberal newspaper), condemned the appointment of Viscount (now Count) Makino as Minister of the Household in 1921. While recognizing his qualities as an individual, it deprecated the appointment of the most prominent and promising member of the Satsuma clan, stating that he showed pronounced bureaucratic leanings. The Choshu clan, according to the *Asahi*, had controlled the household for a long period, and the time had come to rid it of clan influence. See *Japan Chronicle*, Mar. 3, 1921, p. 298. The *Asahi* criticized as obsolescent the view that Count Makino, Admiral Yamamoto, and Count Kiyoura, as well as the Privy Council, should be consulted before a final decision was reached on the London naval treaty. See *Japan Chronicle*, May 22, 1930, p. 527.

decreased, it became a merely formal agency. Apparently the attempt to mix elements hitherto at odds affected the authority of the council and contributed to its discontinuance.[32]

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[32] *Japan Chronicle*, Sept. 7, p. 330; Sept. 21, p. 383; Sept. 28, p. 414, 1922. See also Iwasaki, *op. cit.*, pp. 32–34. Later Premier Tanaka sought to establish a similar body, but he failed to find support for his idea in the major opposition party.

CHAPTER VII

EXECUTIVE POWERS

It should now be clear that while the law of the constitution recognizes the Emperor as the sole repository of executive power and represents him as not only reigning but governing, its "understandings" reveal a highly bureaucratic system in which several agencies coöperate. To observe this coöperation is to test the actual share of each agency in the work of government, to establish more definitely the "understandings" which transform an inert document into a highly interesting, if somewhat ineffective, instrument of administration. It is believed that clarity is served by using the term *executive* instead of *Emperor* when citing or discussing such constitutional or legal clauses as declare powers or functions generally understood to be exercised by the executive as a whole or by some agency other than the Emperor himself. The "executive" already has been described as a composite of the Emperor, the cabinet largely controlled by the premier, the supreme command, the Privy Council, the genro, and the Imperial Household Ministry.

EXECUTIVE POWERS DEFINED IN CONSTITUTION

The theory of "constitutional imperialism" is expressed in the fourth article of the constitution: "The Emperor is the head of the empire, combining in himself the rights of sovereignty and exercising them according to the provisions of the present constitution."

The powers of government belong to the Emperor; the manner of their exercise is, in theory, constitutional. The various articles hereafter discussed are to be viewed as expressing the manner of exercising the Emperor's power. They are not superfluous; they do not simply restate more specifically the fact of absolutism. They constitute a definition, an interpretation, of the fourth article, in so far as it relates to executive action. They do not limit the prerogative save as they do so in express terms, e. g., the last clause of

the ninth article: "But no ordinance shall in any way alter any of the existing laws."

ADMINISTRATIVE ORGANIZATION

The executive exercises the power of organizing the "different branches of the administration" and fixing the salaries of "all civil and military officers."[1] The only administrative organ which is constitutionally left to the creation of the Diet is the Board of Audit.[2] Consequently the extensive business of creating ministries, determining their organization and functions, establishing and revising provincial and local administrative agencies, and fixing official salaries, much of which belongs, under modern Western constitutions, to the legislature, is monopolized in Japan by the executive. It includes the organizing *in toto* of colonial governments.[3] The maintenance of the Privy Council and the appointment of ministers, privy councilors, judges, and auditors are mandatory upon the executive. The power of organization involves the power of direction.

It would appear, however, that Article 10, which declares the existence of this power in the executive, may be so interpreted as to give the Diet concurrent power. The entire article reads as follows: "The Emperor determines the organization of different branches of the administration and the salaries of all civil and military officers and appoints and dismisses the same. Exceptions specially provided for in the present constitution or in other laws shall be in accordance with the special provisions (bearing thereon)." On this point Japanese authorities disagree, some holding that the second sentence vests the Diet with power to create new offices and to control the administrative organization, others that it does not. In practice, the Diet has not limited itself to such organizational activities as the constitution specifically delegates to it.[4] Furthermore, the necessity of obtaining the consent of the Diet to appropria-

[1] Constitution, Article 10.

[2] *Ibid.*, Article 72; however, the Diet determines the judicial organization, including the Court of Administrative Litigation (Articles 57, 61).

[3] Nakano Tomio, *The Ordinance Power of the Japanese Emperor* (Baltimore, 1923), p. 93, text and note 16.

[4] For a discussion of the point, see Nakano, *op. cit.*, pp. 94–96. See also Y. Oda, *Principes de droit administratif du Japon* (Paris, 1928), pp. 115–116. Oda cites as examples of administrative agencies created by statutes the councils for the discipline of seamen, the council for the conservation of old temples, the council of inquiry into complaints respecting customs duties, and the council on military equipment.

tions for new administrative agencies compels the government to consult it before such agencies are created.

In practice, the cabinet refers its projects for administrative changes to the Privy Council, though there appears to be no clear understanding as to the nature of the subjects that must be submitted to the latter body. It is believed that the practice of referring such matters to the council was enjoined by a secret decree of Emperor Mutsuhito. Changes made by "important imperial ordinances" automatically fall under the review of the Privy Council. Resentment was expressed by councilors when, in 1926, the cabinet failed to submit certain revised regulations governing local officials for the council's approval.

The genro is consulted upon general problems in the field of governmental organization. Ministers wait upon Prince Saionji frequently and receive his advice.

APPOINTMENTS AND REMOVALS

The most important offices are filled by appointment over the sign manual of the Emperor. These include all of *shinnin* rank.[5] Selection is made not by the Emperor but by the premier, who may be nominated either by the outgoing premier and the genro or by the genro alone. Cabinet ministers, privy councilors, ambassadors, the president of the Supreme Court, and a few others are thus designated. The approval of the Privy Council is required for appointments made by imperial ordinance.

Posts of lesser importance are also within the imperial appointing power, but the actual appointments are made by the premier or the heads of departments, subject to the civil service regulations. The power of removal is complete in the appointing officer save in the case of judges and procurators of the ordinary courts and members of the Board of Audit, who may be removed either upon judicial conviction of crime or by way of disciplinary punishment, which is administered by disciplinary tribunals within the judicial branch according to regulations passed by the Diet.[6] The president and the other members of the Court of Administrative Litigation, who are nominated by the premier, likewise may not be retired, sus-

[5] For ranks in the civil service, see p. 143. The law recognizes no incapacity for appointive office on account of sex or age. The only legal disqualifications are conviction of crime and alienage. See Nakano, *op. cit.*, p. 88, n. 3.

[6] These tribunals, in four classes, are explained briefly by Nakano (*op. cit.*, pp. 89–90, n. 5).

pended, or transferred to other functions save in consequence of a judgment by their colleagues.[7]

Appointments to offices regarded as political are influenced by the leaders of the party in power. They, in turn, accept the nominations of influential men in the local branches of the party with regard to prefectural and local "spoils." The premier and the Home Minister are likely to exert greater control over appointments than do any other officials. Nepotism plays a part in the recommendations for jobs, as does the sense of obligation to recognize service to the party. The influence of members of the Diet, as such, is not large, and no rule similar to that of "senatorial courtesy" exists.[8]

THE MILITARY POWER

The preceding chapter included some reference to the unique position of the military agencies in their direct relationship to the throne. It was noted there that "the Emperor has the supreme command of the army and navy" and that "the Emperor determines the organization and peace standing of the army and navy." A further provision is that he declares war and makes peace and declares a state of siege.[9] Thus the constitution resembles its Western contemporaries, while placing in executive hands a number of decisions which certain Western constitutions reserve for the legislature. Executive control of the organization and peace standing of the military services is supported by the financial clauses of the constitution. By Article 67, "already fixed expenditures," in which are included the ordinary expenditures required for these services, are guaranteed against rejection or reduction by the Diet.

DIVISION OF FUNCTIONS BETWEEN CABINET AND COMMAND

The division of the advisory function in the field of military affairs appears to constitute the cabinet and the military agencies combined in the "supreme command," two coördinate advisers, the former in the sphere of organization and peace standing and of declarations of war and of martial law; the latter in the sphere of

[7] Oda, *op. cit.*, pp. 547–548.

[8] For a further discussion of appointments, see Ch. IX.

[9] Constitution, Articles 11, 12, 13, 14. For comparison, it may be noted here that the powers of the English executive over the army are very large. The English executive declares war. The French executive declares a state of siege under conditions stipulated by statute.

strategy, tactics, and defense requirements. Professor Minobe, already cited on this subject, recognizes a difficulty in locating precisely the boundary between these two spheres, pointing out that the two military services themselves differ as to where it should be drawn. The Privy Council may be called upon to resolve constitutional issues, but may hardly advise the Emperor in favor of one of his military advisers over the other when they are acting separately within their allotted spheres. Professor Minobe cuts the Gordian knot by asserting that the military agencies advise the Emperor as "generalissimo," the cabinet advises him as Emperor; that, consequently, the Emperor as Emperor, being superior to the Emperor as generalissimo, may accept the cabinet's advice when it conflicts with that of the military agencies without doing violence to the constitution.[10] But this interpretation has the appearance of a question-begging evasion, since it is difficult to conceive of the Emperor in two capacities and since practice does not support a distinction.

The constitution is in process of evolution, and it would be strange if the present dualism did not give way to the principle found in Western systems by which the civil power is supreme, the military power advisory to it. Since the Japanese practice rests not upon the precise words of the constitution, but upon an interpretation derived from history and prompted by the unusual influence of feudal survivals, it is logical to anticipate the gradual growth of other understandings which may overcome the existing obstacles to the free working of democratic institutions.

CLAN INFLUENCE UPON MILITARY SYSTEM

So long as the "clan system," i. e., the control of policy and administration by the Choshu and Satsuma clans through the genro, was accepted as inevitable, if not desirable, the question of civilian-military dualism was unimportant, because the genro controlled both. Moreover, all but one of the original genro were high military or naval officers, and consequently they found it natural that the military agencies should, on occasion, decide what action the government should take. They sought to perpetuate their influence by filling the military and naval commands with Choshu and Satsuma youth. The civilian and the military viewpoints were united to form

[10] T. Minobe, "Cabinet and Camp" (translation), *Japan Chronicle*, May 15, 1930, pp. 503–505.

one general attitude in which the latter was predominant. Civilian statesmen and politicians exerted their efforts against it without hope of success.

INSTANCES OF MILITARY INFLUENCE UPON POLICY

The effective way in which the military organs formerly controlled policy when they were determined to do so was exhibited in 1913. General Uyehara, Minister of War, compelled the resignation of Premier Saionji (not then a genro), by resigning in protest at the premier's objection to increasing the garrison in Chosen (Korea) by two divisions. The Minister of War sent his resignation directly to the Emperor. No other military officer would accept office, and no civilian was eligible; hence Saionji resigned. Even more audacious than the *coup d'armée* of 1913 was that of 1905 in which, following the war with Russia, a great increase in the strength of the army and navy was decided upon and the Emperor's approval was obtained before the plan was submitted to the premier.[11]

DECLINE OF CLAN CONTROL

To say how far Choshu and Satsuma influence still extends in the military services is difficult. It appears to be declining, but it is strong even to-day. On the other hand, the great military and naval genro have passed away, and the present surviving genro, Prince Saionji, is neither a clansman nor a military or naval officer. It may be too soon to assert that new Choshu and Satsuma generals and admirals will not arise to carry on the tradition of military control of national policy, but the present trend is in the opposite direction.

This is due principally to the rise of political parties to an effective part in government, which, in turn, is due to many causes elsewhere discussed. The cabinets of the third decade of the twentieth century have had a courageous precedent set them by Premier Hamaguchi Yuko and Foreign Minister Shidehara in their successful struggle for the London naval treaty. It appears safe to suggest that that struggle was testimony to a greater power of resistance

[11] U. Iwasaki, *Working Forces in Japanese Politics* (New York, 1921), pp. 72–76, gives an interesting sketch of the development of clan influence over the army and navy. See also Mc Laren's *A Political History of Japan During the Meiji Era* (New York, 1916), pp. 170–176. For references on "dual diplomacy" see pp. 114–117.

in the civilian ministers and their backers in the press, the Diet, and the ranks of business, which will be continuously more effective in the future against the military agencies.

LONDON NAVAL TREATY CONTROVERSY

The controversy of 1930 is likely to be a *cause célèbre* in the history of Japanese constitutionalism, and it is for that reason that it is deemed worthy of a brief résumé here. It arose out of the objection of the naval staff to the modifications proposed at the London conference to the program of naval strength which had been worked out for the Japanese delegation. When it developed that the Foreign Office was ready to accept the compromise, the office was embarrassed by a statement emanating from the admiralty, in which the naval staff also has its offices, revealing the terms of the compromise and declaring them inacceptable to the naval authorities.[12]

The compromise, nevertheless, was accepted, and the treaty signed. Thereupon Admiral Kato Kanji, chief of the naval staff, obtained an audience with the Emperor, following which he issued this statement:

"The naval staff has authority to submit its views regarding naval affairs to the sovereign directly. I cannot disclose what views I have submitted to the sovereign, but I may state that in the present circumstances the naval authorities are using the utmost caution. I may also state that the naval staff office, which is responsible for the defense of the country, does not agree with the assignment of the naval ratio based on the American plan. The naval staff office held the same view from the first, and it is determined to do all that it can to ensure the safety of the national defense, acting on its own convictions." [13]

Following the signature of the treaty in the face of such determined opposition from the naval strategists, several months intervened before ratification. The naval members of the supreme war council, at the insistence of Admiral Kato, met to hear a report of the conference from Admiral Takarabe, Minister of the Navy, who as one of the delegates had signed the treaty. They were unanimous in the opinion that the government should have obtained the ap-

[12] *Japan Advertiser*, March 18, 1930, p. 1. This statement aroused such feeling that it was declared by the departments of foreign affairs and the navy to be "unofficial." However, the editor of the *Advertiser* stated next day that: "Yet the comments now disavowed were handed in written form to representatives of the Tokyo press by officers employed at the admiralty to whom the journalists are accustomed to go for information" (*Japan Advertiser*, March 19, 1930, p. 4).

[13] Osaka *Mainichi*, April 5, 1930, p. 1.

proval of the naval staff before authorizing signature. Admiral Takarabe expressed his agreement with the other councilors, explaining that he had acted under orders.[14] The council reported to the Emperor that the treaty was deficient in its provisions for the national defense, but that measures might be taken to compensate for its deficiencies.

Admiral Takarabe remained in office as naval minister until the treaty was ratified. Admiral Kato, chief of staff, the vice-chief of staff, and the Vice-Minister of the Navy resigned prior to that action. It is significant that the government experienced no difficulty in filling any of the high positions thus vacated.

The issue thus far appeared to be a clear one between the naval staff and the cabinet, the latter taking a different view from that stated above regarding the coördinate positions of the cabinet and the "camp" as advisers to the Emperor in military affairs. At this point, however, the thread was broken. When the treaty appeared before the Privy Council, the premier evaded any challenge of the constitutional position of the military agencies. Instead, he rested his case upon an affirmation that Admiral Kato had been fully consulted and finally had withdrawn his opposition, an affirmation that stated much less than half the truth, but which the council could only accept. This turn of events made it appear that the traditional constitutional position of the advisers of the supreme command was not directly affected by the outcome of the struggle. The fact was, however, that the orders to sign had gone to London in the face of bitter opposition from the naval staff. The situation constitutes an undeniable precedent in which the naval staff, acting within its proper sphere and supported in theory by the naval minister and the Supreme Military Council, was compelled to give way to the cabinet.

It will be asked: How may this humiliation of the "camp" be explained? The answer is that the genro and the influential members of the Imperial Household Ministry favored the treaty and advised its ratification.[15] For the sake of the treaty they were willing to

[14] After Kato resigned, the following memorandum was drawn up between Takarabe and Taniguchi, the new chief of the naval staff: "Matters relating to the tonnage of the navy should be disposed of according to usage, and in this case there should be an agreement of views between the minister of the navy and the chief of the naval general staff" (*Japan Chronicle*, June 26, 1930, p. 683).

[15] "*Asahi* understands that the government is encouraged to shape its course in this way by the information that its policy meets with the approval of Prince Saionji, Count Makino, Dr. Ikki, and Admiral Suzuki" (*Japan Chronicle*, June 19, 1930, p. 661). The three latter were respectively Lord Keeper of the Privy Seal, Imperial Household Minister, and Grand Chamberlain.

advise the throne to disregard the slight which the naval authorities had suffered. Why did they favor the treaty? It is fair to assume that they were influenced, in part at least, by the extraordinary popular favor which the treaty enjoyed in Japan and in part by the overwhelming victory of the government in the general election, which occurred during the progress of the London conference. It is extremely difficult to gauge the influences, old and new, which combined to give victory to the cabinet. It is important to remember that the victory was gained in connection with a treaty and not over a wholly domestic issue. But, with proper allowances for special circumstances, it is fair to conclude that the precedent is likely to have an important influence toward the encouragement of those new understandings which may be expected in time to relegate the "camp" to a position secondary in all matters of policy to that of the cabinet.

THE PRIVY COUNCIL IN MILITARY POLICY

The Privy Council may expect to be informed by the cabinet upon the stages in the development of military policy, and imperial ordinances, treaties, and statutes in execution thereof require its approval. Premier Hamaguchi did not seek the Privy Council's advice upon the advisability of signing the London naval treaty (1930) against the wishes of the naval staff. During the consideration of the treaty by the council's committee, the premier declined to allow Admiral Kato, chief of the naval staff, to attend and reply to questions; he also refused to submit the report which the Supreme Military Council had made to the throne concerning the treaty, and he declared that the government's proposals for naval replenishment were not yet complete. However, the Minister of the Navy attended and underwent the questioning of the committee on the matter of requirements for naval defense. The sessions of the council and its committees are secret, but it was known that the defense issue in all its aspects was the principal subject of the council's discussion in that instance.[16]

DECLARATIONS OF WAR

A declaration of war is the result of imperial sanction given to a decision of the cabinet. The general staffs of the army and navy,

[16] *Japan Chronicle*, Sept. 11, 1930, pp. 314–319.

the Board of Marshals and Admirals, and the Supreme Military Council may be and are consulted in such cases, but the responsibility for the decision rests with the cabinet. The commencement of hostilities by military forces before such a decision is reached and made known is permissible only in circumstances that compel such action in self-defense.[17] However, according to Nakano: "Though the declaration of war and conclusion of peace are placed under cabinet control, the General Staffs, having the supreme command of the armed forces, could force the declaration of war and the conclusion of peace by sending an aggressive expedition against a foreign power or withdrawing troops from the field." [18]

MARTIAL LAW

The declaration of a state of siege partially suspends the operation of the ordinary law and constitutional guarantees and places administrative and judicial powers partly or entirely in military hands. Article 14 of the constitution qualifies the executive power in declaring a state of siege by authorizing the determination by law of the "conditions" and "effects" of a state of siege. "By 'conditions' is meant the nature of the crisis when a state of siege is to be declared, the necessary limits as to territorial extent affected, and the rules needful for making the declaration. By 'effect' is meant the limit of the power called into force as the result of the declaration of a state of siege." [19]

Article 31 of the constitution partially nullifies this qualification by providing that the bill of rights "shall not affect the exercise of the powers appertaining to the Emperor, in times of war or in cases of a national emergency." Article 1 of the military proclamation of September 19, 1917, requires the countersignature of a minister to the declaration of a state of siege. Declarations take the form of an imperial ordinance, which is submitted to the Privy Council before proclamation. However, in emergency cases the commander of an attacked or besieged force or of one engaged in suppressing internal disorder may act alone in declaring a state of siege.

The Diet has not revised the act of 1882 passed by the *Daijokwan*

[17] T. Minobe, *Kempo Seigi* (*Commentaries on the Constitution*, 2d ed., (Tokyo, 1928), pp. 265–266. Portion cited translated into English by Dr. Sterling Takeuchi.

[18] *Op. cit.*, p. 155.

[19] Ito, *Commentaries*, p. 31.

to regulate the state of siege. That law does not in fact limit the executive discretion in determining whether circumstances that exist justify martial law. Nor is the executive obliged to submit proclamations of the type under consideration to the Diet. Civil law and procedure are restored by the same methods that apply to their suspension.[20]

CONTROL OVER FOREIGN RELATIONS IN JAPAN AND IN GREAT BRITAIN

A Japanese publicist has remarked that Japan adopted the "so-called English system" for the control of foreign relations.[21] It is apparent that this statement is easily susceptible of a mistaken interpretation. The Japanese constitution, in Article 13, recognizes that "the Emperor . . . concludes treaties." By this provision and others, indirectly affecting foreign relations, the executive was granted complete control in that field. In Great Britain the conduct and control of foreign relations is a part of the royal prerogative. Although the cabinet, which actually exercises the power in question, is more free from control in respect of foreign affairs than domestic, it is responsible to parliament and may be driven from office by the House of Commons on an issue of foreign policy. In Japan the political responsibility of the ministers to the Diet is gradually approaching realization. It remains true that in the field of foreign relations the Diet is free to criticize, but control lies elsewhere.

CABINET-COUNCIL CONTROL

It is not the Emperor, but the cabinet, advised by the Privy Council, that conducts and takes responsibility for the country's relations with other states. The constitution is very brief in its treatment of foreign relations, confining itself to the statement: "The Emperor declares war, makes peace and concludes treaties."[22] Ito comments, "The principal object of the present Article is to state that the Emperor shall dispose of all matters relating to foreign intercourse, with the advice of His Ministers, but allowing no interference by the Diet therein."[23] He thus applies the article deal-

[20] Nakano, *op. cit.*, pp. 167–170.
[21] See T. Miyaoka, "Treaty-making Power under the Constitution of Japan," *International Conciliation*, No. 221 (June, 1926), pp. 10–12 (302–304).
[22] Article 13.
[23] Ito, *Commentaries*, p. 31.

ing with the general duties of the cabinet to the conduct of one of the executive functions. The Minister of Foreign Affairs alone countersigns imperial rescripts issued externally. No countersignature is necessary for a personal message or a letter of congratulation or condolence from the Emperor.

TREATIES

The word *treaty* is construed to stand for all forms of international agreements. Japanese treaties may be brought into force upon signature (e. g., the treaty of 1910 with Korea), but the regular practice is that signed treaties require ratification by the Emperor, advised by the cabinet and the Privy Council. Treaties signed without reservation as to ratification are valid without ratification, since the Emperor's full powers are delegated to the plenipotentiary. Treaties are promulgated by publication in the official gazette and are self-executing. According to Minobe, treaties may amend or repeal statutes or ordinances—excepting the Imperial House Law and ordinances concerning the imperial house—but may not be affected by statutes or ordinances.[24]

INSTANCES OF PRIVY COUNCIL ACTION

The cabinet's administration of foreign relations is subject to the advisory power of the Privy Council. This is exercised in connection with appointments and the ratification of treaties. Although both party and non-party ministries have shown a distaste for the council's supervision over treaty-making, the council has on several occasions asserted its right emphatically and successfully. In December, 1922, a non-party cabinet presented the council with an excellent opportunity to assert itself by referring to it a postal convention with China after, instead of prior to, ratification. The council took advantage of the opportunity by passing an unprecedented memorial of protest to the throne, taking this action in spite of the presence of the ministers and the explanation of the Foreign Minister that urgency had not permitted prior submission.[25] At that time there occurred considerable discussion of the

[24] Minobe, *Kempo Seigi* (*Commentaries on the Constitution*), pp. 263–265, 279.

[25] *Japan Chronicle*, Jan. 11, 1923, pp. 42–43; Jan. 25, 1923, pp. 98–99. The Prince Regent summoned the Premier, Admiral Baron Kato, and the President of the Privy Council, Viscount Kiyoura, to an audience at the palace. The record of what took place was not published, but the issue was regarded as closed

council's constitutional position and also of the effects upon the progress of democracy that might follow a successful assertion of its powers. It was argued that since the council might meet only upon the call of the Emperor, advised by the premier, it had no automatic or necessary connection with the treaty-making process. Article 8 of the imperial ordinance creating the council is definite in its statement that "Though the Privy Council is the Emperor's highest resort of counsel, it shall not interfere with the executive." On the other hand, it was contended that the ordinance is mandatory as to the council's duty to "hold deliberations and present its opinions" on a number of matters, among them "treaties with foreign countries." Practice had rendered the imperial initiative a mere formality and recognized the council's deliberations as a necessary element in the constitutional process. Fear was expressed that the council would attempt to raise itself from a consultative to a legislative agency by asserting a right of veto over cabinet policies and over the various types of international agreement.[26] The tradition of checking one organ of government with another has been powerful in Japan.

The following sentences from the *Japan Chronicle* of April 7, 1927, assist to an understanding of the Privy Council's part in the control of foreign relations. They refer to the "Nanking Incident" of March 24, 1927, involving the attack of Chinese troops upon Japanese and other foreigners: "The *Jiji* [a daily newspaper] says that the Privy Council takes a serious view of the Nanking affair and is trying to collect information concerning it. Some Privy Councilors are so excited over the incident that they are seriously questioning the responsibility of the Foreign Minister. The damage inflicted on the Japanese Consulate at Nanking and a 'certain deed' committed by the Southerners against Japanese marines are held by these Councilors as positive insults to the Japanese nation. In view of this mood prevailing among the Privy Councilors, it is expected that the Foreign Minister will shortly

(*Chronicle*, Feb. 1, 1923, p. 133). Subsequently the newspapers carried unofficial reports stating that the Prince Regent had graciously warned the Premier against "mistakes in formalities." Discussion in the Diet and in the newspapers was continued for some time after the issue of the imperial rescript (*Chronicle*, Feb. 22, 1923, p. 259).

[26] Dr. Uyehara Etsujiro contributed to the discussion an interesting article in the magazine *Taiyo*. This article was republished in English in *Japan Chronicle*, Mar. 8, 1923, pp. 328–329. See also article by John Hart, "The China Question in the Politics of Japan," *Weekly Review* (Shanghai), XXIV, (Mar. 17, 1923), pp. 82–83. Professor Minobe has written: "Consultation of the Privy Council . . . is not an essential requirement for a treaty's validity" (*Kempo Seigi*, p. 271).

attend a meeting of the Privy Council and submit a detailed report on the regrettable affair, at the same time detailing the China policy of the Government with a view to reaching an understanding with them." The same paper on April 14 stated that "At the Privy Council meeting on the 9th instant, Baron Shidehara, the Foreign Minister, offered a detailed explanation on the conditions prevailing in China."

When the so-called "Tsinan Incident" was settled in 1929, Premier Tanaka failed to submit the signed joint declaration of settlement to the council. The council expressed resentment, whereupon the premier apologized to the throne and reported upon his apology to the council.[27]

The council was not satisfied with the General Pact for the Renunciation of War of 1928 until the government of Baron Tanaka submitted the declaration quoted in an earlier chapter in which the offending clause "in the name of their respective peoples" was declared inapplicable to Japan.[28] Its discomfiture over the London naval treaty of 1930 already has been explained.

DUAL DIPLOMACY

"Dual diplomacy," while by no means peculiar to Japan, has been a marked feature of the conduct of foreign affairs in that country. The term connotes the interference of other administrative agencies with the proper functions of the department of foreign affairs, more especially interference by military departments. Interference may occur incidentally—as in the case of the London naval treaty controversy—or by design, as when an independent action such as the despatch of troops is intended to accomplish a divergence from the policy of the foreign office.

It is well established that it was the advisers of the supreme command rather than the foreign office who were responsible for the sending by Japan of fourteen times the number of troops suggested by the United States in initiating the Siberian intervention in 1918.[29] Previously, on May 16, 1918, two agreements were nego-

[27] *Japan Chronicle*, April 4, 1929, p. 405.

[28] Ch. v, pp. 70–72. See also *Japan Chronicle*, April 4, 1929, p. 411.

[29] Statement of Acting Secretary of State Polk, Aug. 5, 1918. See also H. K. Norton, *The Far Eastern Republic of Siberia* (New York, 1923), pp. 75–83. Norton states that during the intervention a struggle occurred in Japan between the military services and the commercial interests, the former demanding, the latter opposing, an independent program in Siberia and Manchuria. The struggle was won by the latter, thereby averting war with the United States.

tiated with China by military and naval officers respectively, in anticipation of intervention.[30] Military influence caused the maintenance of troops in Saghalien long after joint intervention had ceased.[31] The same control was exhibited again in 1925 when, after a clash between the departments of Foreign Affairs and War, additional troops were sent to South Manchuria in order to maintain a barred zone along the South Manchuria Railway against fighting Chinese factions.[32]

The government of General Baron Tanaka, 1927–1929, was dominated by military influences, and its fall was due, at least in part, to militarist handling of policy toward China. Two incidents betrayed the militarist complexion of the Tanaka policy, namely, the Shantung intervention of 1927–1928, and the assassination of Marshal Chang Tso-lin while passing in a train through the zone of the South Manchuria line, under Japanese patrol. In connection with the latter incident, Japanese officers in Manchuria subsequently were disciplined. In its fight for the London naval treaty and in its conciliatory handling of relations with China, the succeeding government of Premier Hamaguchi was no doubt aided by the resentment expressed by the business interests and the newspapers at Tanaka's "positivism." The conclusions suggested above in connection with the defeat of the naval staff in the naval treaty controversy apply to the whole problem of dual diplomacy.

The most portentous instance of dual diplomacy is that which marked the Japanese intervention of September 18, 1931, in Manchuria, and the subsequent hostilities in other parts of China. The military authorities were incensed by the murder, in June, of a certain Captain S. Nakamura and an innkeeper by Chinese soldiers in Inner Mongolia. Nakamura and his aides were traveling disguised as students. Baron Shidehara, as Foreign Minister, demanded punishment of those guilty and an indemnity of $50,000 silver. The government at Mukden investigated and, after some evasion and delay, announced that the guilty persons had been apprehended and would be punished. The General Staff sent Major Mori to watch the negotiations between Consul-General Hayashi and the Chinese authorities at Mukden. Major Mori informed the latter that the army was ready to use force to obtain satisfaction. In Japan, Minister of War Minami made public a statement of his

[30] Texts in J. V. A. Mac Murray, *Treaties and Agreements With and Concerning China* (New York, 1921), II, 1410–1413.
[31] *Japan Chronicle*, Oct. 19, 1922, pp. 501–502.
[32] *Ibid.*, Jan. 7, 1926, pp. 6, 8.

own to division commanders, in which he pointed to the decline of Japan's prestige and called upon the army to show a stronger sense of loyalty and public service. Before a settlement had been reached, the army struck, using as the occasion for its occupation of Mukden, Kirin, Changchun and other cities, the bombing of a few feet of the South Manchuria Railway, an act which occurred in circumstances that justified uncertainty as to whether it had been committed by Chinese or by Japanese soldiers. The rapidity and efficiency of the army's movements demonstrated the completeness with which plans had been laid. Military operations began without cabinet authorization and without investigation of the circumstances in which the alleged bombing occurred.[33]

Several thousand troops were despatched from Chosen to Manchuria, subsequent to the first skirmishes, by the commander-in-chief in Chosen, without waiting for orders from Tokyo.[34] Yet Minister of War Minami stated that military action had terminated on September 24 and that thenceforth matters were to be left in the hands of the Foreign Office. The unsubstantial nature of this statement was revealed a few days later when the military authorities bombed the temporary capital of Marshal Chang Hsueh-liang at Chinchow, after dropping leaflets which informed the people that the Japanese troops were unwilling to recognize Chang's government and were taking "positive action to overthrow the headquarters" of his government.[35] This step, and similar measures in other parts of Manchuria, were taken after the Japanese government had promised the Council of the League of Nations to withdraw the troops to the railway area as soon as it could safely be done. Baron Shidehara criticized General Honjo, commander of the Japanese garrison at Mukden, in a meeting of the cabinet, for invading the field of diplomacy, but the Minister of War defended his subordinate.[36] Thereafter the military tone of foreign policy increased in strength, the Foreign Office becoming the mere mouthpiece of the supreme command.

During the "shogunate" of the powerful Yamagata, who was a military man, the military and naval influence in diplomacy was expressed by the genro. There was no opportunity for a clash between a constitutional agency seeking to stretch its powers to the utmost and the extra-constitutional elders. The military agencies

[33] *Japan Chronicle*, Aug. 27, 1931, pp. 247–248, 253–254.
[34] *Ibid.*, Oct. 1, 1931, pp. 405–406.
[35] *Ibid.*, Oct. 15, 1931, pp. 460–474.
[36] *Ibid.*, p. 479.

are attempting to present the same bold front as before, but, since the death of Yamagata, with continually lessening success. The genro is no longer so closely identified with them, and at the same time the business community and the general public are becoming more influential. Nevertheless, in the immediate presence of contemporary military policy toward China, it seems hardly safe to say that dual diplomacy is on the wane in Japan.

PARDONING POWER

"The Emperor orders amnesty, pardon, commutation of punishments, and rehabilitation"; thus runs Article 16 of the constitution. " 'Amnesty,' " wrote Ito, "is to be granted, in a special case, as an exceptional favor, and is intended for the pardoning of a certain class of offenses. 'Pardon' is granted to an individual offender to release him from the penalty he has incurred. 'Commutation' is the lessening of the severity of the penalties already pronounced in the sentence. 'Rehabilitation' is the restoration of public rights that have been forfeited."[37] Thus, as Nakano remarks, "the pardoning power of the emperor embraces all of the categories of pardon." He further states that it covers all sorts of crimes. While amnesty may be exercised either before or after condemnation for crime, pardon, commutation, or rehabilitation may only follow sentence.[38]

The power of pardon in its various aspects is used customarily and extensively on important state occasions, such as the accession of a new ruler or the birth or marriage of an imperial prince or princess. It is exercised upon the advice of the Minister of Justice. Executive control over the grant of amnesty is in contrast with the position in Western states, where that power usually resides in the legislature.

TITLES AND HONORS

Titles of nobility, ranks, orders, and other honors are conferred over the Emperor's sign manual upon the recommendation of the premier. A considerable number and variety of honors are provided for. Of noble ranks, there are five—those of prince, marquis, count, viscount, and baron. All peerages are granted with the right

[37] *Commentaries*, p. 35.
[38] *Op. cit.*, pp. 145, 147–149, 153.

of hereditary succession. They may be surrendered or withdrawn. In 1910 a Chosenese (Korean) peerage was created, composed of marquises, counts, viscounts, and barons. A peerage is sometimes granted at the death of the recipient, thereupon descending to his heir. Grants of money attend only those peerages created in recognition of distinguished service, beginning at 15,000 yen ($7,500) for a baron. In 1894, the sum of 2,000,000 yen was distributed among the peers who had been created from among the former *kugé.*

Court ranks in eight classes are conferred upon those Japanese citizens whom the government wishes to honor for their services to it or to the country in a public or private capacity. Each class exists in two degrees, senior and junior. They are conferred upon non-peers, while peers hold court ranks corresponding to their status in the peerage. Ladies of the court enjoy the honor of court rank in varying degrees. Many persons have received rank in recognition of monetary contributions to public enterprises. Service to a political party is one route to titles and honors.

Decorations are conferred in seven orders of varying numbers of grades. The highest honor is the Grand Cordon of the Chrysanthemum, the second the Grand Cordon of the Rising Sun and Pawlonia; thereafter follow the orders of the Rising Sun, in eight grades; of the Sacred Treasure, in eight: of the Crown, in eight grades and conferred only upon women; of Pawlonia, in eight grades; and of the Golden Kite, a military order in seven grades. Although the higher orders are restricted to very few persons. the lower are conferred generously. In but one case, that of holders of the Golden Kite, does the honor carry with it an annuity.[39]

ORDINANCE POWER

The ordinance power is that power by which an executive agency declares the manner of exercise of its authority. In Japan, the ordinance power corresponds in scope with the wide authority of the executive. It goes beyond the effectuation of statutes and the delegation of functions, to which the ordinance power is essentially, though not entirely, restricted in Great Britain and the United States. It follows the model of the Continental European type by which the executive exercises a limited inherent power of legislation at its own discretion. In Japan, this inherent power of

[39] *Japan Year Book*, 1926, pp. 60–62, 589; 1911, pp. 32–35.

legislation by ordinance is greater than in any other constitutionally governed state, even surpassing that in pre-war Prussia.

CATEGORIES OF ORDINANCES

The ordinance power in Japan may be divided into the two general categories of administrative and legislative powers, and the latter category subdivides into general, police, and emergency powers. Administrative ordinances are those "necessary for the carrying out of the laws" [40] and those having the same relationship to legislative ordinances. They supplement more important enactments, supplying the detailed regulations through which the latter may be applied. Nakano suggests the difficulty experienced in Japan of confining law-executing ordinances within their proper bounds.[41] There is a strong tendency to incorporate creative sections into instruments designed only to elaborate and effectuate acts or ordinances of a legislative character.

DELEGATION OF ORDINANCE POWER

The ordinance power of the Emperor may be delegated, in part, and thus gives rise to ordinances issued by the Prime Minister, by the heads of ministries, by governors-general, by prefectural governors, and by other administrative officials. Save for two special classes of ordinances issued by the governors-general of Chosen (Korea) and Taiwan (Formosa), the ordinances arising out of delegated power are regarded as administrative, i. e., as carrying out law rather than creating it.[42] However, imperial ordinances, normally reserved for legislative purposes, may be employed in the execution of law. In such a case, as Nakano says, "an ordinance issued for the execution of a law is not only a detailed rule for the execution of the law but is also a supplement to the statute." [43]

GENERAL LEGISLATIVE ORDINANCES

By "general" legislative ordinances is meant those accomplishing, under the constitution, a variety of purposes which are, in many Western states, left to the legislature. They embrace in Japan

[40] Constitution, Article 9.
[41] *Op. cit.*, pp. 80–82.
[42] Oda, *op. cit.*, pp. 71–74.
[43] *Op. cit.*, p. 82.

the power to establish the whole administrative hierarchy, to "determine the organization and peace standing of the army and navy," to declare war, to make peace, and to conclude treaties. By imperial order, a session of the Diet may be prolonged or the duration of an extra session decided. The scope of this field of power coincides with that of the combined executive powers which have been discussed hitherto in this chapter.

POLICE ORDINANCES

A category in which ordinances may be either administrative or legislative or both is that which comprises the executive share in the police power—"the maintenance of the public peace and order and . . . the promotion of the welfare of the subjects." [44] In this field executive discretion is restricted only by the provision that "no ordinance shall in any way alter any of the existing laws." Apparently it is constitutional to accomplish anything within the broad field of police power by ordinance provided no existing law stands in the way. The only controversy among Japanese jurists that raises a possible exception to this statement is that which concerns the interpretation of the word *law* as used in the bill of rights. Minobe interprets it to mean either "statute" or "ordinance" and holds that "the emperor is vested with power, in so far as it belongs to the proper domain of the police power, to regulate by ordinances any matters irrespective of the provisions of the Bill of Rights." [45] Nakano states, however, that "All well-known writers, excepting Dr. Minobe, are unanimous in their opinion that the legislative reservation of Chapter II of the Fundamental Law is excluded from the reach of the police ordinance power." He grants that Minobe's view "is worthy of consideration because it is an attempt to uphold the governmental practice of the police ordinance power, which has been regarded as unconstitutional by jurists, and, secondly, because it is an opinion which the opposing writers have never been able to refute." [46] Ito's interpretation viewed the police ordinance power as limited by the bill of rights:

"Emergency Ordinances mentioned in the preceding article [VIII], may take the place of law. But the administrative ordinances mentioned

[44] Constitution, Article 9.

[45] Nakano, *op. cit.*, p. 107. Minobe's view is not affected by personal predilections, as he is one of the more liberal of Japanese jurists.

[46] *Ibid.*, pp. 105–107.

in the present article shall take effect within the limits of law, and although they can supply the deficiencies of law, yet they shall have no power to either alter any law or to regulate those matters for which a law is required by express provision of the Constitution." [47]

Although Ito treated police ordinances as administrative rather than legislative in character, they may, as above noted, be either or both, since the bill of rights is not an exhaustive enumeration of private rights and does not completely provide for the intellectual and material welfare of the people. Thus it leaves a considerable field open to regulation by ordinance. In practice, moreover, "the government has issued, under an extremely strict construction of the constitutional guarantees of Chapter II, innumerable police ordinances, thus constitutionally infringing the liberty and property of individuals. . . . Although, with the ever-increasing mass of legislation in recent years, the police ordinances issued under Article 9 have been to a great extent superseded by statutes, liberty still remains as insecure as before." [48]

The above quotation allows the inference that it is within the power of the legislative department, i. e., of the Emperor and Diet, to regulate the police power by statute to any degree deemed advisable. Arguing from that assumption, the present wide scope of police ordinances is not a necessary feature of the constitutional system but a consequence of the coincidence of bureaucratic strength and parliamentary weakness. The trend appears to be toward the gradual transfer of police legislation to the Diet.

In Japan, as in other states, the police power is employed not only to compel obedience to law and to protect the community from disease, fire, and other calamities, but to further the intellectual and material welfare of the people. Thus, if statutory provision is lacking, ordinances may be issued to create and maintain public works; to provide subsidies to individuals and corporations both for the improvement of social conditions and for the development of commerce, industry, and other economic interests; to confer upon private enterprises a public character; or to establish charges in kind or money for maintaining public welfare activities.[49] However, property rights may be appropriated only by law and for the public benefit.[50]

[47] *Commentaries*, pp. 20–21.

[48] Nakano, *op. cit.*, pp. 113–114. Penalties up to a fine of 100 yen ($50) or imprisonment or penal servitude for three months may be assessed by a minister of state; prefectural governors may ordain fines up to 50 yen.

[49] *Ibid.*, p. 116.

[50] Constitution, Article 27.

EMERGENCY ORDINANCES

Emergency ordinances are, in theory, to be issued only in circumstances of urgent necessity when public safety must be maintained or a public calamity averted. Since they have the force of statutes, they may be issued only when the Diet is not in session, must be laid before the Diet at the session next following issue, and must be withdrawn if disapproved by the Diet.[51] Such an ordinance may amend or repeal existing statutes, but if it fails of approval, "any law which it has abolished or modified shall regain its former efficiency." [52] Non-approval does not affect the past operation of the ordinance.[53]

A separate emergency ordinance power exists for financial purposes. Under Article 70 of the constitution, "when the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety," this power may be employed. Ito explained that Article 70 is not applicable if it is possible to call an extraordinary session, whereas Article 8 is not similarly conditioned. "More precaution," he said, "is taken in the case of the present article [Article 70], as it relates to financial administration." [54] Emergency financial ordinances must be submitted to the Diet for approval, but failure to approve has no retroactive effect.

ORDINANCES BEFORE THE PRIVY COUNCIL

It will be understood from what has been said under other headings of this chapter that the Privy Council takes an important part in the operation of the ordinance power. An illustration of its power was afforded when, by requiring changes in an imperial ordinance issued to put the factory law into operation, the council prevented the enforcement of the law on the anticipated date.[55] In 1927 the council, for the first time in its history, caused the resignation of the cabinet by failing to approve an emergency ordinance for relief of the Bank of Formosa.[56] In 1928 it approved an emergency ordinance increasing the penalties in the peace-

[51] Constitution, Article 8.
[52] Ito, *Commentaries*, p. 17.
[53] *Ibid.*, p. 18.
[54] *Ibid.*, p. 147.
[55] *Japan Chronicle*, June 1, 1916, p. 881. The council made numerous suggestions for revision of the ordinance.
[56] *Ibid.*, April 21, 1927, p. 444.

preservation law, but attached a strongly worded rider criticizing the cabinet for appearing to circumvent the Diet.[57]

Aside from the political bias of the council toward the Seiyukai —an extremely difficult matter to gauge [58]—the determining factor in its acceptance of the peace-preservation ordinance and its rejection of the financial relief ordinance was its conclusion that the former was validly issued under Article 8, the latter invalidly under Article 70, of the constitution. Premier Tanaka dissolved the lower house on January 21, 1929, to forestall a non-confidence vote. In the general election that followed, the Seiyukai were returned, but without a majority. The cabinet dared not venture to propose an amendment to the peace-preservation law in the extra session. After the session was adjourned, the government carried out a sweeping drive against communists, arresting hundreds of people on suspicion. Upon this evidence it based the case for the ordinance. The Minseito cabinet of Premier Wakatsuki sought to save the Bank of Taiwan (Formosa) by authorizing large advances by the Bank of Japan under government guarantee. The government had obtained legislation supposedly sufficient to protect the banks in the Diet session which had recently closed, but apparently had not gauged the needs of the Bank of Formosa at that time. The council insisted that an extra session of the Diet should have been convened, and refused its approval.[59]

LEGISLATIVE POWERS

The legislative power, considered as the power to enact statutes, is exercised by the executive and the Diet. The extensive share of the executive in the legislative process may be indicated as follows: (1) It may convoke, open, adjourn and prorogue the Diet. (2) It may dissolve the House of Representatives. (3) It may prolong a session of the Diet. (4) It may convoke extraordinary sessions and determine their length. (5) It may order the Diet to hold secret sittings. (6) Ministers or their delegates may sit and speak in

[57] *Ibid.*, July 5, 1928, p. 29.

[58] Ex-Premier Wakatsuki denounced the council as a tool in the hands of the Seiyukai (*ibid.*, May 5, 1927, p. 495).

[59] A member of the council, Viscount Kaneko, was quoted as saying that more than seventy emergency measures had been submitted to the council under Article 8 of the constitution, and that the council had approved them all; but that the council never had approved an emergency ordinance submitted under Article 70 (*Japan Chronicle*, July 5, 1928, p. 24). Furuya, however, mentions two such ordinances issued during August, 1894, in the early days of the Sino-Japanese War. H. Furuya, *Système représentatif au Japon* (Brussels, 1899), p. 158.

either house and in committee hearings. (7) The government may bring in bills and may claim precedence for them on the orders of the day. (8) Government bills may be amended or withdrawn by the government at any time. (9) The executive may veto bills. (10) It exercises large financial powers.

The majority of these powers are of routine character, but certain of them are of the highest importance, placing, as they do, the legislative function in executive hands, subject to the criticism and possible rejection of its proposals by the houses of the Diet.[60] It is to be remembered in this connection, that a similar statement would describe the position of the British cabinet in the field of legislation. While the Japanese cabinet's lack of responsibility to the Diet compels one to interpret the statement differently when applied to the British system, the steady growth of political parties in Japan appears to be bringing about a relationship of the Diet to the executive which resembles that of the British parliament to the cabinet.

EFFECTIVENESS OF THE EXECUTIVE

Analysis of the Japanese executive into its component elements inevitably prompts two questions: (1) Where does the ultimate decision lie? and (2) Does the system "work"? It is, therefore, desirable that the relations between the various executive agencies should be summarized and the executive as a whole evaluated.

In theory the system is simple and workable in a high degree: all agencies advise the Emperor, the Emperor decides and issues decrees, and the agencies administer the orders received. But the simplicity vanishes when the single fact is recalled that the Emperor never makes decisions, that he always acts in accordance with advice. This forces the inquiry under the surface of constitutional terms, and there the situation described in this and the preceding chapter is discovered.

The executive agencies other than the Emperor himself may be divided into two groups, the "seen" and the "unseen," or, in other words, one group of agencies constitutionally authorized to advise the throne and another group not so authorized—in terms —and not operating publicly but, by force of tradition, competent to advise. In the first group are the cabinet, the Privy Council,

[60] Attention is given to the part of the executive in legislation in the chapters on the Diet (X and XI).

and the supreme command; in the second group are the genro (including the quasi-genro) and the Imperial Household Ministry.

As between these two groups, it may be affirmed confidently that the latter is still the more influential. In it lies, even to-day, the actual power to decide questions upon which it wishes to exercise its power. Moreover, it is impossible, in respect of such decisions as might be deemed less important, to assert that they have been decided by the first group or some agency within it, because of the continuous contact maintained between the two groups. These affirmations cannot be proved by documents. They are based upon observations, the revelations of persons in authority, and the general acceptance in Japan of their validity.

Within the "unseen" group the genro is predominant, though the Lord Privy Seal is very powerful, and certain distinguished statesmen—the so-called quasi-genro—must not be overlooked. With the passing of Prince Saionji, the genro will disappear, and the leading members of the Imperial Household Ministry will find their influence increased. They will, on the Emperor's behalf, consult the quasi-genro, but will themselves exercise greater control over decisions. On the other hand, the whole "unseen" group will find itself the target of a severer criticism from the legally qualified advisers and from the people than the genro has experienced.

The question of *ultimate* power to decide is more readily answered than that of the relative control of the agencies in the "constitutional" group over *primary* decisions. The latter question may be rephrased in these words: In what circumstances does the Emperor act upon the advice of the cabinet, of the supreme command, of the Privy Council? This might be answered very simply: In those circumstances in which he is so advised to act by the genro. But the issue now under consideration is that of the respective *constitutional* claims of the cabinet, the command, and the council to the control of policy.

A beginning may be made with the observation that the supreme command, when acting within its proper sphere, is supreme over the civil power. Neither the cabinet nor the Privy Council plays any part here. The supreme command may be said to speak in the name of the Emperor when advising within its sphere in the same sense that the cabinet speaks in his name when advising upon matters of general policy. These facts are anomalous in a constitutional scheme of government, since they create an *imperium in imperio,* place the Ministers of War and the Navy in an equivocal position,

and preserve antagonism between the cabinet and the general staffs of the army and navy and the high military councils. Until the right of directly reporting to the throne is withdrawn from the supreme command, Japan's government cannot be called "constitutional" in the democratic sense of the term.

Recognizing, while deploring, this situation, the inquirer asks whether the Japanese system provides a method of confining the military power within its proper sphere. There is no agreement between the civil and military authorities upon the limits of their respective spheres, and their disagreement is one of the factors that brings confusion into executive operations. It results in the spectacle of the Emperor receiving advice from the cabinet which contradicts the advice received from the supreme command. In such cases, one of three things must happen: (1) the Emperor must decide, or (2) some third agency must decide for the Emperor, or (3) a deadlock must occur.

The first alternative might be taken under the Japanese constitution—as certain high authorities in the field of Japanese constitutional law are urging that it should be. However, in practice, it has not been taken. The Emperor has remained aloof, at times exerting influence, but never making political decisions. Consequently, if the first alternative were taken with results in general favorable to the cabinet, one would be justified in concluding therefrom, not that the Emperor's position had changed, but that the cabinet had, through the processes of constitutional evolution, become supreme over the military power, even in the latter's peculiar sphere.

If it may be assumed that this stage of constitutional progress has not yet been reached, the second alternative is to be considered. The enumerated functions of the Privy Council suggest that it may be the proper adviser through which a deadlock may be prevented. May the Privy Council rescue the Emperor from the horns of the dilemma by advising him which advice to take? It is believed that constitutionally the Privy Council, as the Emperor's adviser in interpreting the constitution, may declare the locus of the boundary that separates the civil from the military power. A categorical affirmation might be made by the council in response to an inquiry from the cabinet, or the line may be drawn by decisions upon constitutional points in specific matters brought before the council. A contrary conclusion on this point would place the supreme command outside the constitution. It may be observed in passing that the council always includes first-rate constitutional

authorities through whom, acting as a committee, it is competent to interpret the constitution. However, its marked conservatism renders it more sympathetic toward the supreme command than toward the cabinet.

Another question: Does the advice of the Privy Council upon a matter referred to it determine the Emperor's decision? The answer in practice has been in the affirmative, and theory appears also to give an affirmative reply. The cabinet may not appeal to the Emperor over the heads of the council. The inference that the cabinet is obliged to resign when defeated in the council is not, however, to be drawn, although defeat on a major line of policy may induce resignation.

Finally: May the Privy Council exercise a political as well as a constitutional control over issues brought before it in which the cabinet and the supreme command are in disagreement? Again the answer appears to be in the affirmative, since otherwise there would be no point to referring such issues of policy to the council. Thus it is in the power of the Privy Council, without touching directly upon issues of constitutionalism, to sway the balance toward or away from the establishment of cabinet supremacy.

Thus the general conclusion is possible that when the cabinet alone advises the Emperor, he acts in accordance with its advice; when the cabinet and the supreme command advise contradictorily, the Emperor is unable to act under the constitution unless the Privy Council can be brought into the process, in which case he follows its advice; when the cabinet's policy is vetoed by the council, the Emperor takes the latter's advice. In matters of high importance, the genro, the quasi-genro, and certain members of the Imperial Household Ministry either advise the Emperor directly or, through their contacts with the agencies of administration, smooth out differences and seek to prevent deadlocks.

Governmental procedure is notoriously clumsy, but that of Japan's executive is especially so. It is painfully slow; it conceals responsibility in a maze of interchanges; it does not ensure against deadlocks; and it places the cabinet at the bottom of a hierarchy of oligarchical agencies of control. Such a system may hardly be called either effective or constitutional. It is fortunate that the situation can be metamorphosed without amending the constitution; so that, as popular influence and knowledge of affairs increase, the cabinet may assume its true rôle as the working executive, the Privy Council and the supreme command acting as advisers to it,

while the responsibility of the executive to the Emperor and to the people is guaranteed by the Diet.

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CHAPTER VIII

MINISTRIES AND RELATED AGENCIES

THE MINISTRIES ENUMERATED

The cabinet is composed of a Prime Minister and twelve heads of ministries. The Minister of the Imperial Household is not in the cabinet. The cabinet ministries are: Ministry of Foreign Affairs, Ministry of Home Affairs, Ministry of Finance, Ministry of War, Ministry of the Navy, Ministry of Justice, Ministry of Education, Ministry of Commerce and Industry, Ministry of Agriculture and Forestry, Ministry of Communications, Ministry of Railways, and Ministry of Overseas Affairs. All ministries have their seats in the capital, Tokyo, and are located in various buildings in the neighborhood of the imperial palace. The premier ordinarily is without portfolio, but he may hold one or more portfolios if he so desires. In addition to the ministries, there are to be noticed the Cabinet Office, the Board of Audit, the General Staff Office, the Military Education Department, and the Naval Staff Board.[1]

THE PREMIER

The premier "stands at the head of the ministers of state, reports affairs of state to His Majesty the Emperor and, in compliance with imperial instructions, exercises general control over the various branches of the administration." He is, in other words, the principal repository of administrative authority save as his powers are limited by those of the supreme command and the Imperial Household Ministry. He may issue cabinet ordinances and suspend any measure or order of any branch of the civil administration. He directs and supervises the prefectural governors and the Metropolitan Police Board. He convenes cabinet meetings, presides, and submits the agenda.[2]

[1] *Japan Year Book*, 1931, pp. 102–107.

[2] Imperial ordinance 135 (1889), as amended by imperial ordinance 7 (1907). *Genko Horei Shuran* (*Collection of Laws in Force*, Government Printing Office, Tokyo, 1927), I, Bk. III, 1.

THE CABINET OFFICE

The Cabinet Office is the premier's secretariat. It comprises a chief secretary, three bureaus, and three boards. Its functions, some of which are general, others special in character, are considerably more extensive than those of the cabinet secretariat in England, or than those of the "under-secretary to the presidency of the council" in France while it existed (1917–1926). The post of chief secretary rivals in influence and importance that of most of the ministers.

The general functions of the secretariat are essentially those of an archives and transmission office. It preserves the constitution, the laws, imperial and other ordinances, and the records of rank and official service. It publishes statutes, ordinances, and lesser documents. It keeps the seal of the cabinet, maintains the cabinet library, and administers cabinet finances. The agencies of the Cabinet Office are as follows: (1) bureau of pensions, (2) bureau of statistics, (3) bureau of printing, (4) board of legislation, (5) board of decorations, and (6) natural resources board.[3]

BUREAU FUNCTIONS IN THE CABINET OFFICE

The bureau of pensions recommends persons deserving of pensions and distributes pensions to those entitled to them. The bureau of statistics procures, compiles, and publishes general statistics of domestic and international administration, also population, labor, and other statistics of a non-governmental character. It administers the exchange of statistical data with other sources, public and private. The employment and training of statisticians is among its duties. The bureau of printing is charged with the printing of laws, ordinances, records, periodicals, bulletins, stamps, and other public documents and forms. The Government Printing Office, located at Osaka, is an official establishment under the direction of the bureau of printing.

The board of legislation drafts laws at the request of the premier, assists cabinet ministers in law-drafting, and offers suggestions for the amendment or repeal of laws. Associated on occasion with this board is a council of thirty-two members, composed of members of both houses of the Diet and other persons, chosen by the premier to give prior consideration to drafts of laws.

[3] A bureau is purely an administrative unit, composed of sections if necessary. A board is partly administrative, partly consultative, composed of regular and *ex officio* members.

The board of decorations assists the premier with advice concerning the award of ranks, decorations, medals, and money. A chairman and fifteen members of high rank constitute the board. The board of natural resources is charged with the preparation of plans to preserve, utilize, and increase the country's natural resources. It is presided over by the premier, and includes experts and statisticians from civil and military branches of the government service.[4]

THE IMPERIAL HOUSEHOLD MINISTRY

The Imperial Household Ministry conducts the work of administration for the imperial court and therefore has its own peculiar organization, quite independent of the cabinet, including chamberlains, masters of ceremonies and rituals, bureau directors and chiefs, the Lord Keeper of the Privy Seal, and other functionaries. Through important officials of the ministry, the Emperor is kept in touch with public affairs. Imperial Household officials may be privy councilors or members of the House of Peers, and they pass back and forth between posts in the Household and in the cabinet.

GENERAL ORGANIZATION OF CABINET MINISTRIES

The cabinet ministries are organized upon a common plan. Each is headed by a minister, and each has two vice-ministers, one the parliamentary vice-minister, the other the permanent vice-minister. The parliamentary vice-ministries were not established until 1924, when it was found necessary to create additional sinecures for party men disappointed over their failure to obtain high executive posts. Each ministry also includes a parliamentary counselor. This office was created simultaneously with that of parliamentary vice-minister and ostensibly for the same purpose—liaison between the government and the houses of the Diet. There is thus a vice-minister or a counselor for each house attached to each ministry; but there is no requirement that either of these officials, who are always members of the Diet, be a member of the house in which he is functioning. The occupants of these positions change with the cabinet, while the permanent vice-ministers are contemplated as holding office without regard to such changes in order to assure administrative continuity, though in practice they also may be removed with the advent of a new cabinet. Premier Kato insisted that parliamentary vice-ministers and counselors were essential to "smooth" adminis-

[4] *Genko Horei Shuran (Collection of Laws in Force,* 1927), I, Bk. III, 1–4.

tration.[5] The ministries accomplish their work in part through a number of bureaus, averaging six in each ministry, rising to ten in the Ministry of Communications, and dropping to three in two ministries and to four in three others. In addition, there are included chiefs or directors of special services and divisional superintendents in nearly all ministries. Each ministry has a secretariat which keeps its records and seals, including personal records, and handles correspondence and the transmission of ministerial documents.

FUNCTIONS OF MINISTERS

Under the ordinance concerning the organization of ministries, the ministers are declared individually responsible for all matters falling within their competence. They may draft laws and imperial ordinances and prepare repeals or amendments touching their respective ministries. They may issue departmental ordinances. Prefectural governors, the governor of Hokkaido, and the superintendent of the Metropolitan Police Board are under their supervision and subject to their orders. A minister may order the suspension or withdrawal of orders or other decisions of these latter authorities if he deems them to be illegal or contrary to the public interest.

Each minister exercises full control over his department. He appoints and removes all officials therein of fourth (*hannin*) and lower rank. The minister and permanent vice-minister control the choice and tenure of third (*sonin*) rank officials. The Minister of Home Affairs submits the recommendations for appointment and dismissal of *sonin* officials in the prefectural service to the throne through the premier, i. e., the Home Minister in practice exercises controlling influence. Ministers may recommend their subordinates for honors.[6]

THE MINISTRY OF FOREIGN AFFAIRS

The Ministry of Foreign Affairs contains five bureaus, dealing respectively with Asiatic affairs, European and American affairs, commerce, treaties, and intelligence, and also a department of cultural undertakings. In its charge lies the conduct of relations with

[5] *Japan Chronicle*, July 24, 1924, p. 131; Aug. 21, 1924, p. 271. No doubt Kato, who held the British system of government to be superior to others, intended, in this connection, to model the Japanese system upon the British.

[6] Imperial ordinance 122 (1886), several times amended. See *Collection of Laws in Force* (1927), I, Bk. III, 13. See also Y. Oda, *Principes de droit administratif du Japon* (Paris, 1928), pp. 128–132.

foreign states, the development of commerce, and the protection of citizens abroad. Its head, though on occasion a party-leader, is usually a non-party man. It directs the work of nine embassies, eighteen legations, the permanent delegation to the League of Nations at Geneva, and more than 100 consulates.

The Asiatic bureau assists the Foreign Minister in administering the empire's relations with China, Hongkong, Siam, and Mongolia. The special position of Japan in southern Manchuria and eastern Inner Mongolia, based upon treaty rights and concessions, imposes upon this bureau the protection of emigrants, the surveillance of incidents arising out of local antagonisms, and the fostering of railway, mining, industrial, and other enterprises.

The European and American bureau performs informational, advisory, and administrative functions respecting all parts of the world not within the purview of the Asiatic bureau. The commercial bureau handles a wide variety of matters in the economic field. The furtherance of commerce, industry, communications, and transportation are functions implied in its title. It is the supervisor of consular activities and the adviser upon questions involving commercial, maritime, and international law. It issues passports and is concerned with the protection of the lives and property of Japanese citizens abroad. The entrance and departure of foreigners are part of its concern. The treaty bureau is charged with the drafting of treaties, and is the principal recourse of the government for authoritative interpretation of all classes of treaties and of public and private international law. It prepares treaties and statements upon international law for publication.

The intelligence bureau is the center for the receipt of news as published in foreign and local papers and in magazines. It also distributes such information as the foreign minister considers advisable to have published. The department of cultural undertakings was recently founded to prepare and administer plans for cultural enterprises in China consequent upon the government's decision to return the remainder of the payments of Boxer Indemnity funds to which it was entitled.[7]

THE MINISTRY OF HOME AFFAIRS

The "Home Office" is the center of administration, national and local. It contains the bureaus of shrines, local affairs, police, public works, sanitation, social welfare, and reconstruction.

[7] *Collection of Laws in Force* (1927), I, Bk. III, 14–15.

The bureau of shrines administers the national non-sectarian Shinto shrines which are maintained at state expense in recognition of their importance to national strength and unity. These shrines numbered 112,191 in 1928, and were served by 14,985 priests, who are members of the civil service. Chief priests and subchief priests hold *sonin* rank, and are appointed by the premier, subject to the approval of the Emperor, upon the nomination of the Home Minister. Subordinate priests are of *hannin* rank and are appointed by the prefectural governors.[8]

The Home Ministry is the principal central agency controlling local government. The minister nominates the prefects and local officials of *sonin* rank and instructs them in their conduct of administration. The police bureau controls the Metropolitan Police Board of Tokyo, and, through the governors, the prefectural and local police. Thus the entire police organization, central, prefectural, and local, is administered under the direction of the Home Ministry.[9] Public works, administered by one of the bureaus, covers a broad field, comprising roads and bridges, rivers and harbors, water supply and sewerage, irrigation and drainage, sand arrestation and coast protection. The bureau of sanitation is the center for public health work. It is advised by experts on food and drugs and controls the administration of public health regulations. The bureau of social welfare concerns itself with the carrying out of legislation and ordinances affecting labor and social reform. The reconstruction bureau was created in February, 1924, to repair the damage due to the great earthquake of 1923.

THE MINISTRY OF FINANCE

Five bureaus, named respectively the bureaus of accounts, taxation, finance, banking, and monopolies, compose, with the deposit department and the mint directorate, the Ministry of Finance. The functions of this ministry include the compilation of an annual budget, the collection and disbursement of the revenues, and the preparation of national accounts. The monopolies bureau is necessitated by the three government monopolies—tobacco, salt, and camphor. The bureau of banking is the link between the government and the great semi-official banks through which the nation's

[8] D. C. Holtom, "The Political Philosophy of Modern Shinto," *Trans. As. Soc. of Japan* (Tokyo, 1922), XLIX, Pt. II, pp. 32–35.

[9] Oda, *op. cit.*, pp. 234–237, outlines the police organization.

financial destinies are determined. It administers the laws and regulations that control private banks.

BUDGETARY ADMINISTRATION

Imperial ordinance 269 of 1898 provided in its first article: "The Minister of Finance shall control the national finances, handle the business concerning revenue and expenditure, taxation, national debts, money and currency, deposit, storage, trust business and banking, and look after the finances of the various provinces, counties, municipalities, and public gilds." It is not too much to say that the Minister of Finance, on behalf of the government, controls all public finance, central and local. Writing in 1917, Professor Charles A. Beard could say: "At a time when a balance sheet is almost unknown to American legislators, it is refreshing to learn that Japan has installed and is actually operating a budget system which contains nearly all the elements of a model plan." [10]

The four bureaus—accounts, taxation, finance, and banking—collaborate in preparing the draft budget, which is based upon the estimates of amounts requested by the ministries, etc., and the revenue esti nates of revenue officers. These estimates reach the Ministry of Finance on identical forms by May 31, i. e., ten months prior to the beginning of the fiscal year for which they are prepared. The fiscal year runs from April 1 to March 31. Items different from the previous year's estimates are accompanied by explanations.

The Minister of Finance, assisted by the above-named bureaus, reviews, corrects, and arranges the estimates and places them before the cabinet by June 30. His collective estimate is explanatory and takes the form of a draft budget. The cabinet discusses the figures, suggests revision of items, and by July 15 sends it back to the Ministry of Finance. The various spending departments are then requested to redraft their estimates, and the revised estimates must be in the hands of the Ministry of Finance by August 31. The estimates are prepared by each ministry in considerable detail, and bureau directors as well as the ministers and vice-ministers hold interviews upon them with officials of the Ministry of Finance. Upon the basis of the data thus obtained, the budget is compiled for submission to the Diet.

[10] R. Uchiike and Y. Sakamoto "The Budget System of Japan," *Municipal Research*, No. 83 (New York, 1917), pp. 1–44, prefatory note.

The budget consists of four sections: (1) General Account, (2) Special Account, (3) Supplementary Estimates, and (4) Continuing Expenditure. Each section includes both revenue and expenditure estimates. The General Account carries the principal items of revenue and expenditure, classified under two heads, ordinary and extraordinary. Items in the Special Account must be such as are already authorized by law. Among them are found the estimates of revenue and expenditure for the several overseas territories, the government railways, the mint, the monopoly bureau, the imperial universities, etc. The Supplementary Estimates cover deficiencies and amounts incidental to the execution of existing laws or contracts. The Continuing Expenditures are those of major public works involving, as in the case of the Diet building, a series of years for their completion.

In the execution of money measures, two fundamental principles are observed: (1) receiving and expending offices are independent of one another; (2) the Treasury is independent of the officers charged with authorizing expenditures. Furthermore, the receiving officers are divided into two groups, (1) those issuing orders for collection and (2) those making collections or receiving money. Receiving officers are required to give security. The central receiving office, called the Treasury or Cash Office, is managed by the Bank of Japan. No disbursement of cash may take place without passing through the Cash Office.

The disbursing officers also are divided into two groups, (1) those who issue orders of payment and (2) those who pay out the funds. Orders for payment are issued by ministers, or others properly authorized, upon the Treasury only, and no funds are held on deposit in other departments. At any time the Minister of Finance, or the head of any ministry, may inspect the books and cash of receiving officers, and if a shortage is discovered he may demand reimbursement from the responsible officer before the Board of Audit has acted. Receiving offices are required to make a report of transactions twice a month to the Board of Audit.[11]

THE BOARD OF AUDIT

Article 72 of the constitution provides for a Board of Audit and prescribes that its organization and competency shall be determined by law. Ito refers to the latter provision as giving the board

[11] Uchiike and Sakamoto, *op. cit.* Oda, *op. cit.*, pp. 481–502.

an independent character and placing it "beyond the reach of administrative ordinances." [12] Thus the Diet divides control over the board with the cabinet and the courts.

The Board of Audit consists of a president, three chiefs of sections or divisions, and twelve inspectors. All members of the board bear the general title Inspector of Accounts. The president is appointed by the Emperor upon the advice of the premier, and the board is thus to some extent subject to cabinet control. Members may not, however, be dismissed, transferred, or placed on the retired list except "by the effect of either a criminal or a disciplinary trial." Father and son may not be inspectors concurrently, nor may brothers. Inspectors may not occupy other official posts, nor be members of the Diet or of local assemblies.

The functions of the Board of Audit consist in the inspection and confirmation of all final accounts of the central government except secret service accounts. The board also inspects the final accounts of corporate bodies and public or private enterprises receiving government subsidies or guarantees. It may delegate the inspection of accounts of a government office to that office, receiving its report and possessing the authority to make a second inspection if dissatisfied. The same procedure may be followed with corporations and undertakings holding a government subsidy or guarantee. Inspection by members of the board may be, and usually is, carried out in the offices of the board, but may be conducted on the spot upon due notice to the service to be investigated. The board may require government offices to forward to it needed records, and may demand explanations from public or private officials.

After examining the accounts of a particular office or other agency, the board either certifies their correctness to the officials in charge, or, in case it finds that the accounts are not in order, informs the officials' superiors. It may also assess fines, which may not be remitted or reduced except by the grace of the Emperor.

The board not only conducts investigations of accounts but holds general and divisional meetings at which decisions are reached by majority vote. Meetings of the full board must be held whenever memorials to the Emperor or replies to questions asked by the Emperor are to be discussed. General meetings are necessary also for the confirmation of reports, for arriving at opinions upon departmental ordinances in the accounting field, for making rules concerning the work of the board, and in all other circum-

[12] *Commentaries*, p. 152.

stances deemed by the president to call for consideration by all members. All decisions upon inspections of accounts must be reached at either a general or a divisional meeting.

Annual reports are submitted to the Emperor. It is provided by law that reports shall deal with three items, as follows:

"a. Whether or not the amounts of money mentioned in the general final accounts and in the final accounts of the different departments of state correspond with the amounts of money mentioned in the accounts by the different accountants.

"b. Whether or not the provisions of the budget and of laws or imperial ordinances have been observed in the imposition and collection of revenue, in the disbursement of expenditures, and in the acquisition, sale, transfer or employment of government property.

"c. Whether or not the approbation of the Diet has been obtained for such expenditures as exceed the appropriations of the budget or for such expenditures as are not provided for in the budget."

If the board desires to suggest changes in the law or conduct of its functions, it may address a memorial upon the matter to the Emperor.

Forms of accounts and of proofs of accounts, the time that they shall be submitted for inspection, and other matters of procedure are determined by the board. It must be informed of departmental ordinances relating to procedure in the collection and disbursement of funds prior to their publication, and may express its opinion concerning them.[18]

THE MINISTRY OF WAR AND RELATED AGENCIES

The War Ministry contains bureaus of military affairs, personnel, supplies, arms, finance, medical affairs, and law. In addition, there are in the Ministry directors and chiefs of departments, the arsenal, and a woolen factory. The General Staff Office is an independent agency. It includes a chief, a vice-chief, a chief of general affairs, four chiefs of sections, and a survey department chief. The chief of the general staff is appointed by the Emperor on the recommendation of the premier. He ranks with the Minister of War and reports directly to the Emperor. He is the final authority in matters of strategy and is supreme director of the army. A third independent unit of military administration is the Military Educa-

[18] Law of 1889 on the organization of the Board of Audit. Mc Laren's "Documents," pp. 219–224. Uchiike and Sakamoto, *op. cit.* Oda, *op. cit.*, pp. 502–506.

tion Department, which conducts the Military Staff College and some twenty schools devoted to various phases of military education.

THE MINISTRY OF THE NAVY AND THE NAVAL STAFF BOARD

Bureaus of military affairs, personnel, supplies, construction, education, medical affairs, accounts, and law, with a number of departments and depots and the directors of the Naval Staff College and a number of schools, compose the administrative force of the Ministry of the Navy. Motives of economy are accountable for the inclusion of the college and school directors within the ministry. An independent Naval Staff Board corresponds to the General Staff Office of the army.

The chief of the Naval Staff Board, like his counterpart, the chief of the General Staff Office, is appointed by the Emperor on the advice of the premier. He ranks with the Ministers of War and the Navy and the chief of the general staff. His equality with the latter dates from the Russo-Japanese War. His functions comprise the supreme direction of the naval forces and the decision of problems of naval strategy and national defense. Under him are placed a vice-chief, the commanders-in-chief of naval stations, the commanders of secondary naval ports, the chiefs of naval arsenals, and the fleet commanders.

THE MINISTRY OF JUSTICE

The Ministry of Justice has unusual powers, due to the close connection maintained between the executive and the courts. It contains three bureaus concerned respectively with civil matters, criminal matters, and prisons. Its prime functions are the prosecution and defense of crown cases. Prison administration is another of its tasks. The Minister of Justice supervises the activities of judges and procurators. The Administrative Court (Court of Administrative Litigation) is a separate agency, and is not subject to executive supervision through the Ministry of Justice.

THE MINISTRY OF EDUCATION

The Ministry of Education has bureaus devoted respectively to the supervision of special schools, common schools, and technical

schools; also a library bureau, a bureau of religion, and a bureau of social education. The bureau of religion was transferred in 1913 to the Ministry of Education from the Home Office. Other agencies within the Ministry are the epidemic disease laboratory, the aviation institute, and the seismic institute. The centralization of control over the educational system of the entire country in the Ministry of Education renders its functions of utmost importance. In it lies the duty of supervising the national or "government" institutions and the determination of educational policy for all ranks of public schools.

THE MINISTRY OF COMMERCE AND INDUSTRY

The Ministry of Commerce and Industry performs its functions through bureaus of commerce, industry, mining, insurance, and patents. It administers the Government Iron Foundry.

THE MINISTRY OF AGRICULTURE AND FORESTRY

Bureaus of agriculture, stock-breeding, forestry, fisheries, and sericulture compose the administrative staff of the Ministry of Agriculture and Forestry.

THE MINISTRY OF COMMUNICATIONS

The Ministry of Communications has a large number of bureaus —those of postal affairs, postal savings, telegraphs and telephones, electricity, mercantile marine, lighthouses, construction, aviation, finance, and petty insurance. The telegraph and telephone systems, as well as the post-office, are government undertakings.

THE MINISTRY OF RAILWAYS

Bureaus in the Ministry of Railways are those of traffic, construction, way and works, engineering, finance, electricity, and private railway administration. On April 1, 1929, more than two-thirds of the railway mileage (8,509.4 miles out of 12,198.15) was government-owned.

THE MINISTRY OF OVERSEAS AFFAIRS

The Ministry of Overseas Affairs was established in June, 1929. It took over the functions of the former colonization bureau in the Cabinet Office, being created in view of the increasing responsibili-

ties of the government in the colonial field. Previously, the burden had fallen upon the premier, who supervised the activities of the bureau of colonization. The ministry contains bureaus of superintendence, industry, and colonial affairs. In addition to the colonial territories, the ministry takes charge of emigration and settlement abroad.

Owing to Korean opposition to giving the Overseas Ministry control over the Governor-General of Chosen (Korea), a division of opinion upon the wisdom of the step developed in the Privy Council.[14] Admiral Viscount Saito, whose successful periods of office as Governor-General rendered his attitude on this issue highly important, took the Korean side, expressing the fear that to include Chosen within the ministry's purview would arouse strong resentment and greatly hamper administration.[15] He believed that the ministry might act as the administrative channel between the premier and the Governor-General, but opposed control as tending to lower the status of Chosen in the eyes of its people. Nevertheless the departmental regulations included Chosen, along with Taiwan (Formosa), Karafuto, Kwantung Leased Territory, and the mandate area, within the ministry's jurisdiction. In announcing the decision to include Chosen, Premier Tanaka stated that it did not signify that Chosen is regarded as a colonial possession.[16]

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[14] *Japan Chronicle*, April 25, 1929, p. 482.

[15] *Ibid.*, May 16, 1929, pp. 556–557.

[16] *Ibid.*, June 20, 1929, p. 703. The Minseito cabinet, on September 29, 1931, decided to abolish the Ministry of Overseas Affairs, in the interest of economy. However, the succeeding cabinet, which was composed principally of members of the Seiyukai, and which took office on December 13, 1931, reversed the decision of its predecessor and appointed a colonial minister. *Ibid.*, Oct. 1, 1931, p. 417; Oct. 8, 1931, p. 438; Dec. 24, 1931, p. 811.

CHAPTER IX

THE CIVIL SERVICE

HISTORY

A civil service upon a merit basis was established at the instance of Count Ito, appointed the first premier of Japan but a few days previously, in December, 1885.[1] At that time Ito issued instructions to the ministers of state which covered (1) a definition of official responsibilities, (2) the principles to be applied in making appointments, (3) the multiplicity of official documents, (4) the reduction of unnecessary expenditures, and (5) official discipline.[2] It was laid down therein that "thenceforward offices of *sonin* [third] rank are to be conferred only on those who pass a high examination." Examinations were to be given in two categories—scientific and ordinary. Vacancies of *hannin* (fourth) rank were to be filled by candidates who should pass an ordinary examination. No requirements were included with regard to ranks above the third.

Examinations were inaugurated in 1887. Graduates of Tokyo Imperial University and certain schools under its supervision were exempt. This discrimination was criticized by the new party politicians as undemocratic, and the exemption was withdrawn in 1893. It was found expedient as early as 1896 to create additional offices of second rank to which appointment was made without examination. During the four months' tenure of the party cabinet of Okuma and Itagaki in 1898, the higher posts were quite generally filled by non-career men from the ranks of the parties. This abrupt transition from the feudal to the party spoils system had its advan-

[1] Acknowledgment is due to Sterling T. Takeuchi, recently research fellow in political science at the University of Chicago, for translations of the documents herein referred to and for material on the development of the service. Information received from official and academic sources in Tokyo also has been used in this chapter. No extensive treatment of the civil service exists in any European language. In Japanese there are a number of treatises. These are listed by Takeuchi in the work by White cited below (p. 524). Y. Oda, in his *Principes de droit administratif du Japon* (Paris, 1928), gives brief attention to the subject. Takeuchi's translations of legal sources are printed in Leonard D. White, *The Civil Service in the Modern State* (Chicago, 1930).

[2] Mc Laren, "Documents," pp. 99–108.

tageous aspects in the shock which it administered to the clan bureaucracy and in the fresh breath of popular interest which it introduced into the officious routine of governmental activities. But it resulted in the weakening of official discipline and led to the promulgation of three imperial ordinances in 1899 which brought the posts of second rank under the examination system and provided greater security of tenure and regular methods of discipline. The powerful genro, Prince Yamagata, seconded by the Privy Council, was responsible for these important buttresses of the civil service structure.[3]

The system as thus supplemented remains but slightly modified in spite of strenuous efforts by several hard-pressed premiers to loosen the restrictions excluding unqualified men. Under Premier Hara, in 1919, a number of higher ranking positions were opened to non-career men. In 1929 the list of optional subjects for the higher examinations was increased by the inclusion of the social sciences, and the compulsory subjects were reduced in number.

COMPOSITION: RANKS

By a series of ordinances the civil service has been developed into an admirable hierarchy composed of four ranks and fourteen grades. These ranks and grades constitute the classified service. The ranks are entitled, in the order of importance, (1) *shinnin,* members of which are appointed by the Emperor directly; (2) *chokunin,* appointed by the Emperor indirectly; (3) *sonin,* appointed with the Emperor's approval; and (4) *hannin,* appointed by a superior officer. The distinction indicated by the titles of the first three ranks is procedural rather than substantive, as the appointments are made in all cases by or upon the recommendation of the Prime Minister. *Shinnin* appointees attend at the palace and receive from the Emperor patents of office signed by him. *Chokunin* and *sonin* certificates of appointment bear the privy seal.

The premier, cabinet ministers, privy councilors, governors-general of Chosen (Korea) and Taiwan (Formosa), ambassadors, the highest judicial officers, and a few others hold *shinnin* rank, of which there is but a single grade. Of *chokunin* rank, which exists in two grades, are the vice-ministers, the judges and procurators, the directors of bureaus, prefectural governors, and the holders of

[3] *Horei Zensho* (*Collection of Laws*, Tokyo 1899), I, imperial ordinances (*chokurei*), pp. 68–78. White, *op. cit.*, p. 521.

a considerable number of other posts. The *sonin* rank is held by secretaries of bureaus, chiefs of sections, etc., and comprises seven grades. Collectively, the personnel of the second and third ranks are entitled *kotokan* ("higher officials"). The fourth rank, *hannin,* includes all others in the classified service, and is divided into four grades. At the end of 1927 the three lower ranks of the service numbered 154,199 members, of whom 1,264 were *chokuninkan,* 13,274 *soninkan,* and 139,661 *hanninkan.*[4] In addition there were at that time 277,887 employees in the unclassified service. Thus the civil service approached a total membership of 435,000. This number is exclusive of the personnel of the Imperial Household establishment, which lies wholly outside the ordinary civil service. The regulations covering the unclassified clerks, employees, and agents make no provision for security of tenure.

RECRUITMENT

Appointments to posts of *shinnin* rank, since they are in theory made by the Emperor personally, are not restricted by ordinance.[5] A number of offices of less exalted status also are excluded from the application of the imperial ordinances concerning the appointment of civil officials. Instructors, technical experts, and other civil officials requiring special scientific or artistic knowledge may be appointed without examination to positions in the upper or lower ranks upon recommendation of the examination committee in charge of examinations for the rank to be filled. They are chosen from among graduates of universities and technical schools.

Save for the exceptions thus noted, appointments in the classified service are made upon examination or upon evidence of qualifications of education or experience equal to the examination requirements. Two grades of examinations are provided for by ordinance, namely, "ordinary" and "higher." To qualify for a post of *hannin* rank, it is necessary either to pass the ordinary civil service examination or to be a graduate of a middle school (equivalent to an American high school), or to have "finished the entire course of three years of those schools where law, politics, the science of ad-

[4] *Kan* is a noun having the general meaning "official."

[5] Imperial ordinance 261 (1913), as amended. *Collection of Laws in Force* (1927), I, Bk. III, 349. White, *op. cit.,* pp. 532–534. Article 1 provides for the exclusion of the posts of Chief Secretary of the Cabinet, Director of the Bureau of Legislation, all parliamentary vice-ministers and counselors, the Chief of the Police Affairs Bureau of the Home Office, Superintendent of the Metropolitan Police Board, chief secretaries, and the secretaries of both houses of the Diet.

ministration, and economics are taught, in accordance with the 'Ordinance concerning Colleges,' " or to have held a post as a civil official for two years or as an employee in the unclassified service for four years. The tenure of a post of *hannin* rank for a period of years does not qualify for positions of higher rank. However, *hannin* officials may be—but seldom are—promoted to the *sonin* rank by "special order."

For posts of the rank of *sonin* the usual qualification is the passing of an examination, given in three branches, called the higher civil service examination. Persons who have served for not less than two years as judges or public procurators, or who possess the qualifications prescribed by law for judges, procurators, or probationary judges or procurators, and who have seen two years' service in military, naval, or colonial courts are eligible to posts of *sonin* rank. Teachers holding *sonin* rank may, after two years' service, be appointed as civil officials of *sonin* rank in the Ministry of Education. The first appointment to this rank may not be above the sixth grade.

Second-rank (*chokunin*) officials are, as a rule, appointed from among those of *sonin* rank who have passed the higher examinations and who are eligible for promotion. Two years' service in a *sonin* rank of the third grade is required for eligibility. Examination may be waived if a candidate has held a post of *chokunin* rank for one year or a post of *sonin* rank, third grade, for two years. If examination is waived, candidates must be recommended by the examination committee. The ordinance concerning appointment specifies nine offices of *chokunin* rank to which men may be appointed, upon the recommendation of the examination committee for the higher examination, "from among those possessing the necessary knowledge, technical skill, and experience," without examination.[6] Generals and admirals are eligible to appointment to civil posts of *chokunin* rank in the War and Navy Ministries.

STATUS OF EXAMINATIONS

The appointment regulations, it is clear, fail to make examination mandatory for any grade of official in the classified service. And they reserve not only the highest posts—those of *shinnin* rank

[6] The "plums" thus reserved for deserving party men are the following: directors of the Government Iron Works, the reconstruction bureau, the monopoly bureau, the Government Printing Office, the mint, the Senju woolen factory, and the monopoly bureau in Taiwan; also financial commissioners abroad and division chiefs of the monopoly bureau.

—but also a large number of those only slightly less lucrative for political appointees. They take account of the necessity of experts in certain posts and of the utility of academic qualifications as a substitute for examinations.

The ministers are the appointing officers for positions in the classified service below *chokunin* rank. To them the permanent vice-ministers submit the lists of candidates successful in the examinations. As a rule, the ministers seek the advice of an *ex officio* committee of bureau chiefs and confidential secretaries upon appointments. The premier, similarly, discusses possible appointees for *chokunin* posts with cabinet members before making his recommendations to the throne.

Women and aliens are not, in terms, excluded from the classified service, but in practice women are wholly excluded and aliens are appointed only as experts or advisers. Professor Minobe, the leading authority on the administrative law of Japan, considers that aliens are ineligible to civil posts in the absence of special provision by law, ordinance, or treaty.

EXAMINATION COMMITTEES

The "higher" civil service examination committee is made up of a chairman, directors of divisions, standing members, and temporary members.[7] It is placed under the control of the premier, and is in charge of the higher examinations, of recommendations to certain posts not filled by examinees, and of supervising the "ordinary" examination committee. It fulfills, in part, the functions of the civil service commission in the national government of the United States. The chief of the bureau of legislation in the cabinet office is chairman and is also director of one of three divisions composing the committee, i. e., the administrative division. The Vice-Minister of Foreign Affairs and the Vice-Minister of Justice are members of the committee and directors, respectively, of its diplomatic and judicial divisions. Corresponding to the divisions of the committee are the examinations, those in charge of the administrative division covering all branches of the service save the diplomatic and the judicial.

The remaining members of the committee are chosen from the personnel of the ministries and from the ranks of scholars, princi-

[7] Imperial ordinance 9 (1918), as amended. *Collection of Laws in Force* (1927), I, Bk. III, 4. White, *op. cit.*, pp. 542–544.

pally from university faculties. The standing members, aside from the three named above, are eight in number. They are appointed by the premier, with the Emperor's sanction, from the ranks of the *kotokan,* or higher officials, and are distributed among the three divisions. The temporary members are not limited in number and are selected by the premier from the classified service and from among recognized authorities in law and the social sciences. Attached to the committee are counselors to advise it concerning appointments of instructors, technical experts, and other higher officials to posts requiring special scientific or artistic knowledge. Ten standing and a number of temporary secretaries assist the committee.

There is but one "higher" examination committee, seated in Tokyo and conducting its examinations there. Of "ordinary" examination committees there is a considerable number, one in each *kancho* or government office, both national and prefectural. These committees are appointed by the head of the office to which they are attached and are constituted of officials and public school teachers.

EXAMINATIONS

Higher civil service examinations (i. e., those qualifying for posts of *sonin* and *chokunin* rank) are held annually in Tokyo, the time and place being announced in the *Official Gazette.*[8] The examinations for the three divisions are conducted on different days, and candidates may take examinations in two divisions. Persons "who have been sentenced to graver punishment than imprisonment" and persons not yet rehabilitated after being declared bankrupt or insolvent are disqualified from taking the examinations.

The higher examination is divided into a preliminary and a main examination, both of which are required. However, graduates of junior colleges and candidates certified by the Minister of Education to be equally well qualified are exempt from the preliminary examination. This examination consists of tests in essay-writing and one foreign language, the latter being chosen by the candidate. It is open only to graduates of high schools or schools in Japan or abroad

[8] Imperial ordinance 7 (1918), amended by imperial ordinance 15 (1929) (*Official Gazette,* Mar. 28, 1929, pp. 766–768); also imperial ordinance 8 (1918) (for "ordinary" examinations) (*Collection of Laws in Force* [1927], I, Bk. III, 385). Detailed regulations, not dealt with here, in various cabinet ordinances may be found *ibid.,* pp. 383–384. See also White, *op. cit.,* pp. 535–541.

of equal grade, and to candidates who have passed examinations in Japanese literature, Chinese classics, history, geography, mathematics, physics, and chemistry equal in difficulty to those undertaken by high school seniors upon graduation. The standards of schools and pre-preliminary examinations are determined by the Minister of Education.

PRELIMINARY HIGHER EXAMINATIONS

Preliminary examinations must be held at least once a year. A candidate must present an application to the Minister of Education through the prefectural office, accompanied by a *curriculum vitæ,* i. e., a record of his name; class in society; position in his family; date of birth; names of father, mother, adoptive father, adoptive mother, wife, and children; permanent domicile; present address; academic career; present occupation; official career; and a list of rewards and penalties received. He must also present a copy of the census register, a photograph taken bare-headed and within three months of the date of application, and a certificate of educational qualification. The preliminary examination fee is five yen ($2.50 at par).

MAIN HIGHER EXAMINATIONS

The regulations (Article 9) declare that "The object of the main examination is to determine whether the candidate possesses the necessary knowledge, as well as ability to apply it to concrete situations." It consists of written and oral tests. The scope of the written tests in each of the three divisions may best be indicated by parallel lists of compulsory and optional subjects:

Administrative Division	Diplomatic Division	Judicial Division
Compulsory subjects	*Compulsory subjects*	*Compulsory subjects*
1. Constitutional law	1. Constitutional law	1. Constitutional law
2. Administrative law	2. International public law	2. Civil law
3. Civil law	3. Economics	3. Commercial law
4. Economics	4. One foreign language	4. Criminal law
		5. Law of civil procedure or law of criminal procedure

Optional subjects (any three)	*Optional subjects (any three)*	*Optional subjects (any two)*
1. Introduction to philosophy	1. Introduction to philosophy	1. Introduction to philosophy
2. Ethics	2. Ethics	2. Ethics
3. Logic	3. Logic	3. Logic
4. Psychology	4. Psychology	4. Psychology
5. Sociology	5. Sociology	5. Sociology
6. Political science	6. Political science	6. National history
7. National history	7. National history	7. Japanese literature and Chinese classics
8. Political history	8. Political history	8. Administrative law
9. Economic history	9. Economic history	9. Bankruptcy law
10. Japanese literature and Chinese classics	10. Diplomatic history	10. International public law
11. Commercial law	11. Japanese literature and Chinese classics	11. Law of civil procedure or law of criminal procedure
12. Criminal law	12. Civil law	12. International private law
13. International public law	13. Commercial law	13. Economics
14. Law of civil procedure	14. Criminal law	14. Social policy
15. Law of criminal procedure	15. Administrative law	15. Criminal policy
16. Public finance	16. International private law	
17. Agricultural policy	17. Public finance	
18. Commercial policy	18. Commercial policy	
19. Industrial policy	19. Commercial science	
	20. Social policy	

The oral examination for the administrative division is confined to administrative law and two other subjects designated by the candidate from among those taken in the written examination; that for the diplomatic division comprises international public law and the foreign language and two other subjects taken in the written examination; that for the judicial division is constituted of three subjects upon which the candidate has written, one of which must be either criminal law or civil law.

Two examiners are designated for each subject. Examinations usually are held in June or July. Following the written examinations, the results are tabulated, and candidates who have satisfied the examiners are admitted to oral tests which are conducted by the same examiners. From those successful in the oral trials the

appointments are made. Appointees spend a period of apprenticeship under a section chief before being inducted into responsible posts. During this period they are known as "probationers."

A candidate successful in one division need not, as a rule, take the same subject should he attempt to qualify in another division. He must, however, take administrative law in the administrative division, international public law in the diplomatic division, and either civil law or criminal law in the judicial division. Success in the written examinations renders a candidate eligible for the oral examination of the same and the next year.

DETERMINATION OF SUCCESSFUL CANDIDATES

The ordinance leaves to the committee the method of determining successful candidates. The committee has followed different rules in different divisions. In the diplomatic division, only those required to fill existing vacancies are declared successful. It is apparent that the permanent Vice-Minister of Foreign Affairs is the deciding member of the diplomatic divisional committee. In the other two divisions, a grade of 60 per cent is sufficient to assure the success of a candidate. Thus the administrative and judicial divisions produce a large crop of eligible candidates. The examination committee has no authority to propose individuals or small groups of candidates for specific vacancies. It simply turns in the results of the examinations, leaving the choice among the candidates to the appointing officers.

A fee of fifteen yen ($7.50) is paid by each candidate in each division of the examination entered by him. Certificates are issued to successful candidates. Cheating or violation of the regulations entails exclusion from the examination and possible disqualification for a period up to three years.

ORDINARY EXAMINATIONS

"Ordinary" civil service examinations, testing qualifications for posts of *hannin* (fourth) rank, are held when deemed necessary by the government office concerned. They are conducted in Tokyo and other places, and notice must be given both in the *Official Gazette* and in local newspapers. Candidates pay a fee of two yen.

These examinations cover not less than five high school subjects, the standard set being that of the final high school examinations.

The usual subjects are arithmetic, Japanese language, Chinese classics, elementary law, and elementary economics. The examination committee decides the subjects that shall compose the examinations, subject to the approval of the higher examination committee. The same rule applies to the determination of successful candidates, to whom certificates are issued. The disqualifications provided for the higher examinations apply to the ordinary examinations. *Hannin* appointees spend a period of apprenticeship, during which they are known as "attachés."

INFLUENCES AFFECTING APPOINTMENTS

Appointments are, in theory, made solely on the basis of capacity for the office. Only recently has the growth of party influence begun to break down the strong bureaucratic esprit de corps which permeates the service. In the Ministries of Foreign Affairs, War, and the Navy, political appointments are still practically unknown. In other ministries, the spoils system is in force to-day to some extent, being most in evidence in the Home Office and the prefectures.

Transition from the civil service to the party organizations is, however, a factor to be taken into account in estimating the effects of the reverse process upon the service. The leaders of the political parties are recruited from the civil service; the appointed members of the House of Peers are likely to have made their reputations as officials of career. To an important degree, therefore, the "spoils system" of Japan is a process in which the parties give back to the service men whom they have taken to build up their strength in parliament and in the constituencies. There are comparatively few "politicians" in the sense in which the term ordinarily is used in the United States—that of men untrained in anything but practical politics.

EXTENT OF THE SPOILS SYSTEM

The extent to which appointments are political emerges from a comparison of the personnel of the "permanent" vice-ministries and bureau headships before and after the Minseito displaced the Seiyukai in 1929. In the Foreign Office, the bureau heads remained, while the vice-minister was replaced only in order that he might be appointed ambassador. In the Home Ministry, the vice-minister

and one bureau head were retained, while six new bureau heads were appointed. The Vice-Minister of Finance and three bureau heads of the Finance Ministry were removed, and two bureau heads were retained. In the Ministry of War, the vice-minister and six of the seven bureau heads were changed, the judicial bureau alone retaining its head. In the Navy Ministry the vice-minister and five bureau heads lost place, three bureau heads holding over. The Vice-Minister of Justice was not changed, but two of the three bureau heads gave way to new men. The Vice-Minister of Education was retained, with two of his five bureau heads. In the Ministry of Commerce and Industry, the new *kotokan* (higher officials) included the vice-minister and three of the four bureau heads. A new vice-minister and two out of five new bureau heads appeared in the Ministry of Agriculture and Forestry. The Ministry of Communications received a new vice-minister, while at least four out of nine bureau heads were new men. The vice-minister and all seven bureau heads in the Ministry of Railways were new. No comparison was possible for the newly created Ministry of Overseas Affairs. The significance of these data may be clarified by a table:

Ministry	*Vice-minister*	*Bureau heads removed*	*Bureau heads retained*
1. Foreign Affairs	Appointed ambassador	None	All (5)
2. Home Affairs	Retained	6	1
3. Finance	Removed	3	2
4. War	Removed	6	1
5. Navy	Removed	5	3
6. Justice	Retained	2	1
7. Education	Retained	3	2
8. Commerce and Industry	Removed	3	1
9. Agriculture and Forestry.	Removed	3	2
10. Communications	Removed	4	1
11. Railways	Removed	All (7)	None

Thus the displacement of one party by another resulted in the removal of eight out of eleven "permanent" vice-ministers and forty-two out of sixty-one bureau heads.[9]

SALARIES AND ALLOWANCES

Rank is the index of salary range for all offices. Salaries of *shin-*

[9] Facts taken from *Japan Year Book* and other non-official annuals.

nin officers (1930) range from 6,500 yen ($3,250) to 12,000 yen ($6,000). *Chokunin* officers receive from 5,200 to 7,000 yen. Salaries within the *sonin* rank rise from 1,200 yen to 4,500 yen; within those offices classified as *hannin*, from 480 yen to 2,400 yen. Official residences are provided for cabinet ministers and a number of other officers.

Several grades of diplomatic and consular officers are provided with post allowances of substantial amounts where circumstances require it. Ambassadors receive only 7,500 yen a year, but their allowances vary from 28,000 to 45,000 yen, being adjusted to living costs. Ministers, with salaries of from 5,200 to 6,500 yen, receive supplementary allowances of from 15,000 to 25,000 yen.

Counselors of embassy, in the same salary range as ministers abroad, receive from 9,000 to 16,000 yen in allowances. Consuls-general, salary 5,200 yen, receive from 6,000 to 15,000 yen additional; consuls are paid from 3,800 to 4,500 yen plus allowances of from 4,000 to 9,000 yen; vice-consuls, salary from 3,100 to 3,400 yen, receive, in certain countries, from 5,850 to 7,750 yen in allowances. Men on foreign duty are more fortunate than their colleagues in the Foreign Office, who receive small allowances or none at all. The Foreign Minister, however, receives—as do the other heads of ministries, privy councilors, and certain other officers—an allowance from the Emperor in token of the personal relationship between sovereign and servant. The governors of certain prefectures also receive post allowances, of 600 yen in seven cases, of 800 yen in five.[10]

PROMOTIONS

No ordinance exists concerning promotions, although the promotion of military officers is fully regulated by ordinance. The records of service kept by the departmental secretariats and the corresponding offices in the prefectures assist the appointing officers, whose general impression of a subordinate's accomplishment is the most important element in securing his promotion. Seniority is another important requisite. Political influence affects promotions as it does appointments, but to a smaller degree.

[10] *Japan Year Book*, 1930, pp. 89–90. In 1931 salary reductions ranging from 3 to 20 per cent were decreed for all officials receiving more than 100 yen ($50) per month (*Trans-Pacific*, June 4, 1931, p. 8).

DIRECTION AND CONTROL OF PERSONNEL

The personnel of each ministry and of external services directed by it is subject to the control of the minister. Records of efficiency are kept by the secretariat of each ministry. In the ministries of Foreign affairs and Justice there exists a personnel section for the handling of all items of personnel administration. The ministries of War and the Navy contain personnel bureaus. The bureau of accounts in the Ministry of Finance exercises considerable influence over the direction and control of personnel in connection with the preparation of the budget.

LEGAL RESTRICTIONS UPON PERSONNEL

An early ordinance still in force prescribes that: "Officials shall regard loyalty and diligence to the Emperor and to His Majesty's Government as their primary duty and shall discharge their duties in obedience to laws and ordinances."[11] The same ordinance requires obedience to superiors, a high sense of honor, prudence, courtesy, and honesty in financial matters. Secrecy is enjoined both during and after a term of office. Without permission of superiors, officials may not be absent from duty nor live in other places than those officially prescribed. The same condition applies to becoming an officer in a business concern, engaging in business, or receiving presents in connection with their official functions. The sanction of the Emperor is required before officials may accept decorations or other gifts from foreign governments. Superior officials are forbidden to receive bequests from those under them; the receipt of passes from private mail steamship companies or private railway companies is forbidden to all officials.

Officials "having direct connection" with the following classes of persons may not accept dinners from them: (1) contractors for government enterprises; (2) persons who handle government funds; (3) persons who undertake enterprises receiving government subsidies; (4) dealers in government commodities; (5) contractors with government offices.

Officials are subject to discipline if they fall into debt beyond their means or become insolvent through extravagance. Superior officials are authorized to supervise subordinates in their respective

[11] Imperial ordinance 39 (1887). *Collection of Laws in Force* (1927), I, Bk. III, 446–447. White, *op. cit.*, pp. 548–550.

bureaus and other divisions, to give warnings, and, if necessary, to report serious derelictions and the evidence upon them to those higher in authority and competent to take disciplinary action.

The discipline of civil officials other than judges, *shinnin* officials, and others specially dealt with is provided for in an ordinance of 1899 which has been amended a number of times.[12] The general principle of the disciplinary regulations is thus stated: "Officials may be subject to disciplinary punishment . . . (1) when they have acted contrary to, or have neglected, their official duties; (2) when, whether in connection with the discharge of their official duties or otherwise, they have committed acts that might impair official prestige or confidence." Three forms of discipline are prescribed: (1) removal from office; (2) reduction of salary; and (3) reprimand. Disciplinary removal entails non-appointment to any office for two years and, in grave cases, the surrender of honors. Salary reduction may be made effective for periods of from one month to one year, the amount of reduction not to exceed one third of the salary.

DISCIPLINARY COMMITTEES

Disciplinary committees of two grades—higher and ordinary—are employed to advise the executive officials in whose hands the disciplinary authority rests. These committees deliberate and report upon cases submitted by the supervisory officials. Dismissals and reductions of salaries of *chokunin* (second-rank) officials must be submitted to the Emperor for sanction by the premier, with the recommendations of the disciplinary committee. Dismissals of *sonin* (third-rank) officials similarly are submitted to the Emperor by the executive officials concerned through the premier. Reductions of salaries of *sonin* officials, and dismissals and reductions of salaries of *hannin* (fourth-rank) officials are dealt with by the appointing officers "according to the decisions of the disciplinary committees." Reprimands are handled by the appointing officers concerned. Disciplinary committees may not deliberate upon a case *sub judice* in a criminal court.

The "Civil Officials' Higher Disciplinary Committee" is composed of a chairman and six other members. It is this committee that examines all disciplinary inquiries into the conduct of *kotokan*

[12] Imperial ordinance 63 (1899). *Collection of Laws in Force* (1927), I, Bk. III, 434–435. White, *op. cit.*, pp. 551–555.

(higher officials). The chairman is appointed upon the premier's recommendation from the Privy Council, the remaining members from the Court of Administrative Litigation, ordinary judges of *chokunin* rank, and other civil officials of that rank. Six deputies are provided to fill up vacancies that may occur. The committee decides by majority vote, the chairman casting his vote if necessary to break a tie. Members and deputies serve for three years.

There are many "Civil Officials' Ordinary Disciplinary Committees," at least one to each office authorized to appoint *hannin* officers. The chairman in each case is the appointing officer. Two to six members, appointed by the chairman from the higher officials of his office or appointed from a higher office, assist the chairman. *Hannin* officers may be called before the committee and, if so, are entitled to traveling expenses.

REMOVALS

"Civil officials shall not be deprived of their posts except as a result of criminal sentence passed by a court of law, or of a disciplinary measure, or in accordance with the present ordinance." [13] Thus runs the second article of the "Ordinance Concerning the Status of Civil Officials." It specifies two causes justifying removal: (1) incapacity for duty, either physical or mental, and (2) a superfluity of personnel due to administrative reorganization or to modification of the fixed number of officials. A third situation—the abolition of an office or other administrative establishment—automatically compels the retirement of the personnel involved. Before removal occurs under the first cause, an inquiry is instituted by a disciplinary committee. Physicians are attached to the committees for such inquiries. Dismissals are carried out in the case of *chokunin* officials by the premier with the formal sanction of the Emperor; in that of *sonin* officials, by the appointing officer with the approval of the premier; and in that of *hannin* officials, by the appointing officer. No official may be transferred to a lower post against his will.

In the absence of cause, if removal is desired, it is customary to ask for resignation. If this method fails, an official may be placed on the list of those temporarily retired. This action may be

[13] Imperial ordinance 62 (1899); amended by imperial ordinance 156 (1903). *Collection of Laws in Force* (1927), I, Bk. III, 428–429. White, *op. cit.*, pp. 545–547. Covers all civil officials except *shinnin*, ministers abroad, confidential secretaries, and others for whom special provision has been made.

taken when an official is under investigation by a disciplinary committee, when he has been accused of crime or informed against, when reorganization has resulted in surplus personnel, or when "retirement is made necessary because of business arrangements" in the office to which he belongs. The generality of the latter two provisions allows the appointing officer to place any official under his supervision upon the suspended list. While on the list, officials perform no duties but receive one-third salary. Higher officials (*chokunin* and *sonin*) not reappointed within two years and lower officials (*hannin*) not reappointed within one year are considered to have been dismissed from the service. It is apparent that security of tenure is lacking in the Japanese civil service. Dismissed officials may appeal to the Court of Administrative Litigation, but in practice they do not appeal.

THE RETIREMENT SYSTEM

A new retirement law was passed in 1923 and is now in force, replacing a number of older laws and ordinances.[14] It covers both the civil and the military services, increasing the rate of civil service pensions from one-fourth to one-third salary and that of military pensions, not here dealt with, by 30 per cent. No age limit is prescribed for other than judicial personnel, but the maximum term of service is forty years. A contribution of 1 per cent of monthly salary is required of all persons entitled to pensions. Early rather than late retirement is customary, due in part to the pressure of younger men for promotion, in part to the belief that younger men are the more efficient, in part to the tendency of parents to transfer responsibilities to their sons.

The retirement law provides for pensions and retiring allowances, the distinction between the two lying in the fact that the recipient of a pension has completed a prescribed term of service, while retiring allowances are paid to members who retire before completion of their terms. In both categories of payments the determinants of amount are length of service and salary at the date of retirement.

The pension law, as revised in 1923, provides five classes of compensation, namely, (1) ordinary pension, (2) additional pension due to physical incapacity, (3) retiring allowance, (4) pension paid to dependents of deceased officers, and (5) retiring allowance paid to dependents of deceased officers.

[14] *Japan Year Book*, 1931, pp. 100–101.

Police and prison officers are entitled to ordinary pension after ten years of service, other civil service officers after fifteen years. One who accepts a pension after fifteen years' service is entitled to 50/150 of his salary at the date of retirement. The pension increases by 1/150 for each additional year of service up to forty, making the maximum ordinary pension 75/150 or one-half the salary. Additional pensions, paid when retirement is due to sickness or physical injury sustained in line of duty, range between 240 and 2,880 yen. They are determined in relation to the rank of the officer and the degree of incapacity that he has sustained. Pensions paid to the dependents of an official who dies in office at a pensionable age, or while holding a pension, amount to 8/10 of full pension if death is due to illness or physical injury sustained in line of duty, otherwise to 5/10 of full pension. Dependency is recognized in widows, minor children, widowers, parents, and grandparents.

Retiring allowances are calculated by multiplying the monthly salary of the recipient at the date of retirement by the number of years of his service. They are paid in a lump sum. Dependents of officials who die in the service before becoming entitled to pensions receive the full amount of the retiring allowance due the deceased. The degrees of family relationship recognized in dependents are identical with those of dependents entitled to pensions. In 1927, pensions and retiring allowances were paid to 53,879 officials and totaled 30,833,565 yen ($15,416,783 approx.). Annuities numbering 21,052 and amounting to 5,711,918 yen ($2,855,959 approx.) were paid to the dependents of deceased officials.

ORGANIZATIONS OF CIVIL SERVANTS

The government permits associations among unclassified workers of non-clerical grades, such as postal, railway, and munitions workers, naval dockyard laborers, etc. Such associations exist but may not become affiliated with unions of laborers in private employ; nor may associations in one department combine with those in other departments. Organizations of the clerical staff are forbidden. The Police Friendly Society is limited to services of mutual aid and protection not related to official duties.[15]

[15] In January, 1930, seven postmen were discharged in Kyoto. The men belonged to the Postmen's Association. The president of the association sought reinstatement of the discharged men, who were believed by their co-laborers to be the victims of official displeasure for having led the movement of Kyoto postmen to join the association. He was unsuccessful, whereupon the association

CHARACTER AND PROBLEMS OF THE SERVICE IN GENERAL

The "cream" of the university graduates enter the civil service, an official career being generally regarded as the highest to which young men may aspire. The general level of official intelligence is correspondingly high. This is ensured by the admission of able young men without regard to wealth or social position.

The esprit de corps of the service is highly bureaucratic and hostile to non-career appointees. There is a clearly recognized cleavage between the men in the career service, generally known as the "bureaucrats," and the men who seek political preferment through the parties and parliamentary life, who are called the "politicians." The keen bureaucratic spirit of the civil service personnel has not prevented the development among its members of a liberal attitude toward economic and social problems. They pride themselves on being more liberal than the politicians who make glib but insincere professions. The examinations have been criticized as being too academic, too little designed to test the experience of candidates in practical affairs; and the lack of any general classification of positions based upon a common criterion is a notable deficiency of the service.

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issued a manifesto which set forth its efforts toward a settlement and declared its willingness to negotiate further but threatened resort to "stronger measures" if a "peaceful solution" were not soon reached. Subsequently an order for a general strike was issued to association members to the number of 2,800 in the post-offices of the principal cities. The strike was called for February 16. On February 15 the trouble was settled by a compromise. Two men were reinstated, the reinstatement of three others was to be considered, and two were left unprovided for. Osaka *Mainichi*, Feb. 5, 14, 16, 1930.

CHAPTER X

THE DIET: ORGANIZATION AND PROCEDURE

DERIVATION FROM THE PRUSSIAN DIET

Japanese call their national parliament the *gikai*. From its inauguration, they have translated *gikai* as "Diet," revealing thereby the German pattern used by framers of the constitution. The prototype of the *gikai* was the Prussian Diet, which was a deliberative body of two houses. The *Commentaries* disclose no doubt concerning the advisability of two houses: "Now, when all the political forces are united in a single House and are left to the influence of excited passions and abandoned to one-sided movements, with no restraining and equalizing power over them, that House may in the intemperance of biased excitement, overstep the limits of propriety, and, as a consequence, bring about the despotism of the majority, which may in turn lead to anarchy. Evils would be greater under such a state of things than they were in the days when there was no representative system at all." [1] Furuya, writing in 1899, expressed the following view: "The system of two chambers is absolutely indispensable in Japan, where the feudal régime was abolished scarcely a quarter-century ago. Legally, all Japanese are equal before the law as in all civilized countries, but no one can deny that from the point of view of social relations there still exists a very powerful aristocracy." [2]

THE DIET BUILDING

The Diet consists of two large chambers, the *Kizoku-in* ("House of Peers") and the *Shugi-in* ("House of Representatives"). The former resembles in composition the *Genro-in*, or Senate, which immediately preceded the establishment of the Diet, but the House of Representatives is a wholly new departure from precedent for Japan. Housed up to the present in temporary structures, the Diet is about to occupy the finest modern building in Japan. The new

[1] Ito, *Commentaries*, p. 71.
[2] H. Furuya, *Système représentatif au Japon* (Brussels, 1899), p. 69.

building has been under construction for thirteen years, and will be completed in 1934. It will have cost 20,000,000 yen ($10,000,000), and will rank with any parliament building in the world. It occupies a commanding position in the center of Tokyo, the capital city.

GENERAL CHARACTER OF THE DIET

Ito and his colleagues in drafting the constitution believed that representative government could "never be free from the evil of partiality without the provision of two chambers," though they were informed upon the current criticism of the House of Lords in England. They thought of the House of Peers very frankly as an "assembly of the higher class of the community," yet they held that the object of its establishment was "not limited to making it a bulwark for the imperial house or to the preserving of conservative elements. . . . If the House of Peers fulfills its functions, it will serve in a remarkable degree to preserve an equilibrium between political powers, to restrain the undue influence of political parties, to check the evil tendencies of irresponsible discussions, to secure the stability of the Constitution, to be an instrument for maintaining harmony between the governing and the governed."[3]

The *Commentaries* does not point out parallel advantages in the creation of a House of Representatives, being content to remind the members-to-be that they are "all of them representatives of the people of the whole country. . . . Representatives, therefore, are to speak freely in the House, according to the dictates of their individual consciences, and are not to regard themselves as the delegates only of the people of their respective districts, commissioned to attend merely to matters entrusted to them by their constituents."[4]

SESSIONS

The constitution (Article 41) requires the Diet to be convoked annually. The period of an ordinary or regular session is three months but may be prolonged, if necessary, by imperial order. In urgent necessity, extraordinary sessions may be convened in the same manner.[5] Summoned by an imperial proclamation, the Diet

[3] *Commentaries*, pp. 69–72.
[4] *Ibid.*, p. 74.
[5] Constitution, Article 42. Furuya contends that sessions held after dissolution where no urgency exists are ordinary sessions (*op. cit.*, pp. 119–120). In fact, however, no distinction is made between such sessions and those convoked in cir-

meets in the latter part of December. The holiday recess at the New Year begins within a day or two of the opening of each annual session and lasts a month, cutting down the regular session by one-third. Extraordinary sessions have been comparatively frequent, totalling nineteen up to May, 1932—nearly one third of the sixty sessions held from the beginning to that date. This is due to the large number of dissolutions which have entailed special sessions for consideration of the budget.

Several sessions have been very short. The eleventh and the nineteenth sessions lasted but one day. The twenty-ninth session lasted two days, and the seventh session four days. A number of sessions were prorogued or dissolved before the expiration of a fortnight. Thirty sessions continued for the constitutional period. Several sessions have been extended by imperial order. Fourteen have been terminated through dissolution of the lower house,[6] preparatory to general elections. Following dissolution, a general election must, by constitutional requirement (Article 45), be held and the new Diet convoked within five months. The duration of an extraordinary (or special) session is determined by the rescript convoking it. This is justified as in accord with the constitutional article expressive of the Emperor's power of convoking and terminating sessions.

ORGANIZATION

"The Emperor convokes the Imperial Diet, opens, closes and prorogues it, and dissolves the House of Representatives."[7] All the acts enumerated are taken upon the advice of the premier, who is bound by the constitutional articles above outlined. They are, however, accompanied by the issue of rescripts which are actually signed by the Emperor.

The "opening" of the Diet is marked by the appearance of the Emperor before a joint sitting of the two chambers. Prior thereto, the organization of each house occurs. Members of the lower house deliver their certificates of election to the bureau of the house, where they are collated with the official list of elected members.

cumstances of urgency. "Three months" is now established, by custom, as ninety calendar days from the ceremonial opening of the Diet, the period between convocation and opening ceremony not being counted. Days of recess are included within the period of a session. The New Year recess, customarily lasting a month, is taken upon the motion of the houses.

[6] *Japan Year Book*, 1931, p. 91. The election of 1932 followed dissolution.

[7] *Constitution*, Article 7.

No oath is taken in either house.[8] The first function of a newly returned House of Representatives is to nominate to the Emperor candidates for the positions of speaker and vice-speaker.

ELECTION OF THE SPEAKER AND VICE-SPEAKER

In accordance with the Law of the Houses (Article 3), three persons are nominated for each office by vote of the house, and the Emperor appoints one of the three. In practice, he appoints the candidates who receive the greatest number of votes for the respective offices. There is apparent here the growth of a convention, similar to that which developed in England, by which imperial appointment has become election by the members themselves. Following the voting, the premier waits upon the Emperor, who hands him the certificates of appointment. The premier returns to the house, and the officers are formally installed.[9] They serve during the life of the house that nominated them.

APPOINTMENT OF PRESIDING OFFICERS IN THE HOUSE OF PEERS

The president and vice-president of the House of Peers are not nominated by the house but appointed directly by the Emperor from among the members for a term of seven years. The present president, Prince Tokugawa, has held the office since 1903. Appointment is not made without consideration of the wishes of the house.

SEATING AND SECTIONING

Choice of presiding officers in the lower house, now determined along party lines, is followed by the seating of newly elected members and the division of the house into nine sections. The sections are an obvious imitation of the bureaus in the French Chambers. Sectioning is done by lot and anew for each regular session. For extra sessions, the sections of the previous regular session are retained. A "chief" and a "manager" or "director" are elected by each section to conduct its business. The presidents and vice-presidents of the houses are excluded from membership in sec-

[8] Furuya, *op. cit.*, p. 126.

[9] *Trans-Pacific*, Jan. 2, 1930, p. 10. Should but one candidate receive a majority on the first ballot he is, customarily, appointed, even though on subsequent ballots other candidates may receive a larger vote.

tions.[10] In each house, a chief secretary and several secretaries compose a bureau to conduct the clerical work. House-guards, police, and pages compose a considerable force of lesser officials and employees. Dining-rooms serving both native and foreign-style meals require a staff of servants.

CEREMONIAL OPENING

The Emperor opens each regular session in person. The members of both houses attend, standing, in the Peers' chamber. Standing before a throne chair back of the president's desk and elevated a step above the rostrum, the Emperor reads a rescript in the following style:

"Lords and Gentlemen of the House of Peers and the House of Representatives:

"We hereby declare the Imperial Diet open and are pleased to announce that our relations with the treaty powers are on the footing of ever-increasing friendship.

"We have instructed the ministers of state to draw up the budget for the fifth year of Showa [1930–1931] and various projects of law, and to submit them to you. We hope you will discharge your deliberative functions in a spirit of harmony and circumspection." [11]

Should the Emperor be unable to be present, the premier reads the rescript. To this message both houses reply, their respective presidents attending at the palace to deliver the replies to the Emperor. A recent reply of the House of Representatives reads:

"May it please Your Imperial Majesty.

"We, Your Imperial Majesty's humble subjects, are highly impressed with Your Imperial Majesty's condescension in personally opening the 57th session of the Imperial Diet and addressing gracious words to us.

"It will be our constant endeavor to fulfill our deliberative functions in a spirit of prudence and circumspection so as to comply with Your Imperial Majesty's august wishes and to respond to the trust put in us by the nation.

"I, Zembei Horikiri, Speaker of the House of Representatives, hereby beg to present this address to Your Imperial Majesty with the utmost civility and reverence." [12]

[10] Standing Orders of the House of Peers, Articles 5–11; Standing Orders of the House of Representatives, Articles 17–23. Printed in English in *A Guide to the Imperial Japanese Diet* (Tokyo, 1905).

[11] *Trans-Pacific*, Jan. 2, 1930, p. 11.

[12] *Ibid.*

REASSEMBLY AFTER RECESS

When the Diet reassembles after the New Year recess, the House of Peers convenes in the forenoon, the House of Representatives in the afternoon. Each house begins its business without formality. The ministers attend each of the opening meetings, and the Prime Minister and Minister of Foreign Affairs address each house. The Minister of Finance addresses only the House of Representatives. The addresses vary in length with the importance of the subjects to be discussed, sometimes lasting for an hour or longer. They are prepared with great care, and are often highly important as explanations of policy, particularly when a general election impends. They review ministerial activities since the last session, endeavor to meet opposition and general public criticism, and to some extent set forth future policy. An opportunity is afforded for discussion of the speeches, and at this time opposition leaders and others mount to the tribune to voice their criticisms. No vote is taken upon the ministerial speeches.

ROLL-CALL

There is no roll-call as that term is employed in Western legislatures, but the attendance is taken by doormen. In both houses members are expected to attend regularly unless excused. Members of the House of Peers, with the exception of imperial princes, actually do attend regularly. They wear a small purple button in their lapels. The members of the *Shugi-in* also are very faithful in attendance. Their emblem of membership, formerly a yellow button, is now one of silver.

COMPOSITION

In assembly, the two houses bear a superficial resemblance, both being largely composed of middle-aged men. Morning clothes are more common in the upper house. Japanese costume is worn by a small minority in both houses. Some members of the lower house appear in sack coats. The frock coat has practically disappeared. Whereas the administrative departments and the courts are staffed very largely by men below forty-five years of age, the houses of the Diet contain a large proportion of men above fifty. In the House of Representatives, the proportion of older men has steadily increased.

THE HOUSE OF PEERS

The House of Peers is made up of six classes of members: (1) princes of the blood; (2) princes and marquises; (3) representatives of the three lower orders of the nobility; and (4) imperial appointees (three classes): (a) imperial nominees selected for service to the state or for erudition; (b) representatives of the highest taxpayers; and (c) representatives of the Imperial Academy.

An act of 1925 altered the existing law by repealing the requirement that imperial appointees (groups 4a, b, and c above) might not exceed in number the noble members, and by adding the group of four members from the Imperial Academy. It also specified that the three lower orders of nobility should be represented by eighteen counts, sixty-six viscounts, and sixty-six barons. Previously, the three ranks were free to elect a total of 143 members, the number from each rank being determined by the proportion which the total membership of the rank bore to the total membership of all three ranks, but never being more than one-fifth the membership of the rank. The act also limited the number of representatives of high taxpayers to sixty-six.[13] No change was made in the rule limiting group 4a to 125.[14] The membership of the upper house, which has increased by approximately 100 since the Diet was established, now averages 400. At the convocation of the 58th Diet session on April 21, 1930, the membership was as follows:

Princes of the blood		16
Princes		13
Marquises		30
Counts		17
Viscounts		65
Barons		66
Imperial appointees, group	a	121
	b	64
	c	4
	Total	396

[13] *Japan Year Book*, 1927, p. 78. *Japan Chronicle*, Feb. 26, 1925, p. 265; Mar. 19, 1925, pp. 367–368; April 2, 1925, pp. 424–425. The reform measure, drafted by the government as a bill, was, after approval by the Privy Council, submitted to and passed by the House of Peers, with amendments. It was not submitted to the House of Representatives. The procedure accords with that prescribed in the Imperial Ordinance concerning the House of Peers, Article 13.

[14] Imperial Ordinance on Peers, Article 5. See Appendix VIII.

Selection of Peers, Their Terms.—Princes of the blood, princes, and marquises sit by hereditary right.[15] Counts, viscounts, and barons are elected by their respective orders and sit for seven years. Imperial appointees for merit or learning are in practice selected by the premier, though they receive their formal appointments from the Emperor. They are entitled to sit for life. Representatives of high taxpayers are elected by men who pay 300 yen or more in direct taxes upon land, industry, or commerce. Each prefecture is entitled to one such member, the more populous prefectures to two. The Emperor's appointment merely confirms the prefectural elections. The Imperial Academy, Japan's *Académie Française,* having a membership of one hundred learned men appointed by the Emperor, elects four of its members. Their election is confirmed by imperial appointment. Members of the two groups last mentioned sit for seven years. The lower age limit for members of the House of Peers is, in general, thirty years. Exceptions are: members of group 1 may enter the house upon attainment of majority; counts, viscounts, and barons at 25; while the high taxpayers' representatives must have reached the age of forty.

Salaries in the House of Peers.—Salaries of 2,000 yen per year were provided by the Law of the Houses for the non-hereditary members of the House of Peers, i. e., for all classes above indicated except 1 and 2. By the same ordinance, the salary of the president was placed at 5,000 yen and that of the vice-president at 3,000 yen. Traveling expenses also were authorized for the same officers and members of the house. At present, non-hereditary members receive 3,000 yen, the president receives 7,500 yen, and the vice-president receives 4,500 yen, annually. Passes are provided on the government railways; also official residences for the president, vice-president, and chief secretary. No salaries, however, are paid to the hereditary peers, and other members may decline to receive a salary. Members of interim committees may be paid five yen a day while the committee is meeting.

Seating in the House of Peers.—The seating of members of the House of Peers is in the hands of the president. He is bound, however, to follow a complicated rule which takes account of royalty, noble rank, court rank, official rank, age, and other factors.[16] Con-

[15] Princes of the blood do not exercise this right. They maintain a tradition of rigid abstention from politics.

[16] Standing Orders of the House of Peers, Article 4.

sequently, members of groups do not occupy blocks of seats, a circumstance contributing to discourage group or party development. Members' seats are comfortably and tastefully upholstered, and are provided with desks upon which small name-tablets are affixed. On three sides of the chambers of both houses there are galleries for the press, the general public, high officials, and members of the other house. The imperial gallery is directly opposite the president's desk, and to the left of it is the diplomatic gallery.

Members face the rostrum in a semicircle. The president and vice-president occupy the highest platform, but immediately back of the president's chair is a recessed area, curtained with silk on all four sides. The floor of this small chamber is raised a step above the rostrum, and upon it stands the richly decorated chair occupied by the Emperor when he opens each session of the Diet. In the Emperor's absence, the front curtains are drawn aside, and whenever a member or official takes his seat in the house he first bows toward the Emperor's chair. The ministers, in equal numbers, sit, as in the House of Representatives, on either side of the tribune, which is a step lower than the platform of the president and immediately in front of his desk.

THE HOUSE OF REPRESENTATIVES

The House of Representatives is composed entirely of members elected by the people. Under the electoral law of 1925, the membership is 466; under the original law the number was 300. An increase to 381 occurred under the law of 1900, a further increase to 464 under that of 1919. Members sit for four years and receive an annual salary of 3,000 yen ($1,500) plus free passes on the government railways and traveling expenses. They do not possess the franking privilege. The speaker receives 7,500 yen a year, the vice-speaker 4,500 yen. The speaker, vice-speaker, and chief secretary are provided with official residences.

AGE OF REPRESENTATIVES

Perhaps the most remarkable fact about the membership of the lower house is the increase in the average age of members. This is exhibited by the following table [17]:

[17] *Japan Year Book*, 1930, p. 81. For 1930, *Japan Chronicle*, March 6, 1930, p. 224. The former source is in error in designating the election of 1902 as the fifth and that of 1912 as the tenth. The table in the *Chronicle*, copied from the *Asahi*, errs in translating percentages into numbers on the basis of 466 members throughout.

Election	*30–39*	*40–49*	*50–59*	*60–69*	*70 or older*
1st (1890)	51.3%	35.0%	10.0%	3.7%	None
5th (1898)	35.	47.	15.	3.	None
10th (1908)	16.1	46.4	34.	3.4	None
14th (1920)	12.9	32.3	41.2	13.6	None
15th (1924)	14.2	37.7	38.2	9.9	None
16th (1928)	7.9	38.6	34.8	18.7	1.9
17th (1930)	4.5	34.6	36.3	22.3	1.7

This record, in the presence of the steady development of parties and parliamentarism, appears paradoxical. In part, it is explained by the respect which Japanese voters feel for persons older and more experienced than themselves. Another element is the influence of the same attitude of dependence upon the elders within the parties. Previous membership in the house is an outstanding factor in a candidate's favor. In 1930, 126 members were elected for the first time, 281 had been members of the previous Diet, and 59 had served in earlier Diets.[18]

Vocations of Representatives.—Figures have been published[19] showing the vocations of representatives in percentages as follows:

	Elections					
	1st (1890)	*5th (1898)*	*10th (1908)*	*14th (1920)*	*15th (1924)*	*16th (1928)*
1. Civil and military	20.2	0.7	0.3	6.5	3.2	10.2
2. Medicine	1.2	1.3	1.9	1.7	3.0	2.2
3. Journalists	6.7	2.7	4.5	5.4	6.5	7.3
4. Lawyers	8.0	8.3	16.9	14.7	13.8	15.6
5. Business men	8.7	17.0	16.1	28.4	27.8	22.2
6. Farmers	48.0	48.7	27.4	20.0	17.9	9.5
7. Manufacturers and miners	3.3	1.7	3.2	5.8	5.0	9.7
8. Others	1.7	4.3	6.3	3.5	5.8	5.2
9. No vocation	2.7	15.3	23.5	14.0	17.0	18.1
	100.5	100.	100.	100.	100.	100.

The transition of the country from a highly agricultural to a largely industrial and commercial economy is strikingly reflected in these figures. Farmer members declined from 48 per cent of the total membership to 9.5 per cent, while business men increased from 8.7 to 22.2 per cent and industrialists from 3.3 to 9.7 per cent.

[18] *Japan Advertiser*, Feb. 24, 1930, p. 1.

[19] *Japan Year Book*, 1930, p. 81. Figures for 1890 in *Japan Year Book*, 1924–1925, p. 84; this total is 0.5 per cent too great, indicating a small error in computation.

Lawyers doubled their percentage, journalists barely held their own. Business and industrial representation, taken as a unit, nearly tripled its strength, becoming the largest in the house.

Educational Qualifications.—Following the election of 1930, an educational census of representatives was taken by newspapers in Tokyo. It was found that more than half of the members were graduates of universities. Of 288 thus distinguished, nineteen were graduates of American universities. Tokyo Imperial University had graduated eighty-three of the total, Kyoto Imperial University only fifteen. From Waseda University, founded by Marquis Okuma, had come sixty-five; from Keio University, famous for its graduates in the business world, eighteen. On the other hand, 107 members had not graduated from a middle (i. e., high) school.[20]

Seating in the Shugi-in.—Seating arrangements in the *Shugi-in* closely resemble those of the *Kizoku-in.* There is, however, no imperial chair back of the speaker's desk. As in the upper house, the ministers have seats on either side of the tribune, and the seats of members form a semicircle. The government party occupy the center seats, the opposition sit on their left, the members of smaller parties and the independents occupy the right. There is no opposition bench. On each member's desk is a hinged post on which his name is written and which he sets upright while occupying his seat.

DISQUALIFICATION OF MEMBERS OF THE DIET

"The House of Peers decides upon the qualifications of its members and upon disputes concerning elections thereto."[21] The only qualification of the jurisdiction of the peers in this sphere is the provision of the peers' reform act of 1925 which brought elections for representatives of high taxpayers under the penal clauses of the election law of that year.[22]

The House of Representatives has no power to sit in judgment upon election disputes, which are handled by the ordinary courts. It has, however, competency to decide whether or not a member possesses all the necessary qualifications for membership and

[20] *Japan Advertiser*, Feb. 26, 1930, p. 2.

[21] Imperial Ordinance on the House of Peers, Article 9.

[22] *Japan Year Book*, 1927, p. 78. Although empowered to determine the procedure for exercise of this jurisdiction, the peers have continued to apply an imperial ordinance of 1890 issued as a temporary instrument. A committee of nine members, elected at the beginning of each session, hears charges of invalid elections and disqualifications and submits reports thereon to the vote of the chamber. See Furuya, *op. cit.*, pp. 86–88.

whether he is performing any disqualifying functions. Its power in this field was not clearly defined when the Diet held its first session, and some members sought to bring charges of invalid elections. The uniform practice of the special committees set up to fulfill the relevant provisions of the Law of the Houses has been to decline to deal with matters placed by law within the jurisdiction of the courts.[23] An unfavorable vote of either house unseats a member.

IMMUNITIES AND PRIVILEGES OF MEMBERS

Members are protected by the constitution in the exercise of freedom of speech and from arrest during sessions. They may not be held responsible for opinions or votes given within their respective houses. They are as free as the members of any legislative body to speak their minds, and, it may be remarked, they do not leave their freedom untasted. If, however, they disseminate their views outside the Diet by speaking, writing, or distributing printed documents, they are subject to the same legal liabilities as nonmembers. Proceedings receive official publication.

Freedom from liability to arrest, except with the consent of the house concerned, is qualified appreciably. Members may be arrested if taken in flagrant delicts or involved in "offenses connected with a state of internal commotion or with a foreign trouble." Members under detention when a session is convoked are not entitled to release.[24]

Members may obtain leave of absence for short periods. A member of the lower house may offer his resignation, which the house is empowered to accept. Elected and appointed members of the upper house may petition the Emperor through the president of the house for permission to resign.[25]

PRESIDING OFFICERS

The presidents in each house are theoretically independent of party, i. e., simply moderators. In practice, the president of the *Kizoku-in* tends to be aligned with the government, while the speaker of the *Shugi-in,* being chosen by a party, is subject to

[23] Law of the Houses, Articles 76–80. Standing Orders of the House of Representatives, Articles 67–72. Furuya, *op. cit.*, pp. 107–108.

[24] Furuya, *op. cit.*, pp. 183–184. Constitution, Articles 52 and 53.

[25] Law of the Houses, Ch. XVI; Standing Orders of the House of Peers, Ch. IX; Standing Orders of the House of Representatives, Ch. XI.

party influence. The presidency of the House of Peers is the more powerful office, due to the comparative aloofness of the house from party politics. The speaker of the lower house is the instrument rather than the dictator of his party, and is overshadowed by the premier.

The functions of the presidents are highly important. While either house may entrust the appointment of a special committee to the president, the normal methods of selection are by election in the chambers or sections. The presidents are empowered to maintain order, to preside over the houses, and to represent them in their relations with the Emperor and in all contacts outside the houses. They direct the policing of their respective houses during sessions, and may order the removal of members or spectators who disturb debate. They may suspend a sitting if they find it impossible to bring the house to order. They determine the orders of the day, recognize members who desire the floor, announce the results of votes, and cast the deciding ballot in case of a tie vote. They may attend all committee hearings and take part in investigations, but may not vote. They may apply closure in debate. Their direction of the business of their respective houses continues during the periods between sessions.[26]

COMMITTEES

Each house may sit as a committee of the whole, and each employs both standing and special committees. Chairmen of the committees of the whole, one for each chamber, are elected at the beginning of each session. One third of the members constitutes a quorum in either committee. The chairmen of sections in each house may act for the chairman of the committee of the whole. The chairmen occupy the seats of the chief secretaries rather than those of the presidents of their respective houses. A committee of the whole may not vote to adjourn. When its deliberations are concluded, the chairman requests the president to resume the chair and reports to the house. The president may resume the chair without request if disorder occurs in the committee's debate.[27]

The House of Peers makes use of five standing committees; the House of Representatives has four. In each house the committees

[26] Law of the Houses, Articles 7–15. See Appendix IX.

[27] Law of the Houses, Articles 20–22; Standing Orders of the House of Peers, Ch. II, sec. 2; Standing Orders of the House of Representatives, Ch. II, sec. 2.

are elected anew at each session. The Peers' committees are those on the budget (sixty-three members), on discipline (nine members), on petitions (forty-five members), on accounts (forty-five members), and on qualifications of members (nine members). In the House of Representatives there is no standing committee on qualifications. The four committees correspond in title to the first four named for the upper house and their membership is, in the order named, sixty-three, twenty-seven, forty-five, and forty-five. Either house may elect additional standing committees at any time.

The members of standing committees are chosen by the sections, each electing one or more members in accordance with the size of the committee. Sections are likely, but are not required, to elect their own members. In both houses the parties caucus to select committeemen and the choices thus made are ratified in the sections. Thus the committees carry the complexion of the parties that control the houses. It is worthy of note that when committees were selected by the bureaus, in France, the party groups did not operate as here described, so that party strength in committees was left a matter of chance. In the House of Representatives, a party or group is not entitled to participate in the designation of committeemen unless it has at least twenty-five members. The major parties, however, are inclined to countenance proportionate representation on committees for such groups. Each standing committee elects its own chairman from among its members. Minutes and other records are kept and preserved in the archives of the house.

Hearings of standing committees are held *in camera,* and only ministers of the government and members of the house may attend. No witnesses are called, and no investigations outside the committee rooms are undertaken. Information is obtained from the ministers and from committee members who, of course, are in close touch with the informational activities of the parties to which they belong. Committees may subdivide themselves in order to expedite their inquiries. Reports are printed and distributed to members of the house before being presented for action. One third of a committee may demand the inclusion of a minority report.[28]

Special committees, which ordinarily have a membership of nine or eighteen, are usually elected by the houses or sections, but may

[28] Standing Orders of the House of Peers, Ch. II, sec. 3. Standing Orders of the House of Representatives, Ch. II, sec. 3. In the House of Commons, members make some use of the information services provided by the parties.

be left to be appointed by the presidents. Such committees choose their own chairmen, keep minutes, conduct their inquiries, and present their reports in the same manner as do standing committees.[29] Their number is large, in consequence of the very limited scope of the work of the standing committees. The Diet has no agencies corresponding to *les enquêtes parlementaires* in France, parliamentary committees and royal commissions in England, and congressional inquiries in the United States.

LEGISLATIVE PROCEDURE

The constitution prescribes public deliberations for each house, but authorizes secret sittings upon demand of the government or by resolution of a house. It also prescribes that one third of each house shall constitute a quorum. A third constitutional requirement is that votes shall be taken in each house by absolute majority, and that, in case of a tie, the president shall have the deciding vote.[30] Save for these articles, the determination of legislative procedure is left to law and the standing orders of the houses.

In each house, the president determines the orders of the day. These are published in the *Official Gazette* and distributed among the members of the house. The House of Peers meets at 10 A. M. and adjourns not later than 4 P. M., as a rule; the House of Representatives meets at 1 P. M. and adjourns at 6 P. M. unless urgent business requires a longer sitting.

Bills are introduced by the government or by a private member—in the latter case with the support of twenty members. Bills are printed and distributed to members. Three readings are required, but this rule may be dispensed with by a two-thirds vote in either house. At first reading, the bill is explained; but if no explanation is necessary, the president may dispense with the first reading. Thereupon a government bill or a bill sent over from the House of Peers is referred to a committee. A private member's bill, on the other hand, may or may not be referred. In the latter case, it is discussed as a whole and a vote taken on the question of a second reading.

Bills reported out of committee are discussed as a whole and a vote is taken on the question of a second reading. If the vote is unfavorable, a bill is dead; if favorable, it receives a second read-

[29] *Ibid.*, sec. 4.
[30] Constitution, Articles 48, 46, 47.

ing. Each article is read and voted upon separately at that time. But again the president may dispense with the reading. Amendments may be proposed, in writing, at the second reading. The bill may be referred to a committee for verbal adjustments and arrangement of clauses necessitated by amendments. It then passes to the third reading, when it is voted upon as a whole, no amendment being admitted beyond those necessitated by clerical errors or legal inconsistencies.[31]

A bill passed in one house is despatched to the president of the other house by the hand of the chief secretary. If one house amends the other's bill, the amendment may be accepted with but one reading. If it fails of acceptance, resort may be had to a conference committee. Each house elects or appoints an equal number of members, not exceeding ten, who meet together in a special conference room. The committee members from each house separately choose a chairman from their own membership. The two thus chosen occupy the chair at alternate meetings of the committee, the chairmanship of the first meeting being determined by lot. Voting is by secret ballot. A chairman may vote in case of a tie. After the committee has reached agreement, it reports to the house in which the bill originated, from which, if accepted there, the bill passes to the other house. Motions to amend a bill after conference action are out of order.[32]

Upon final passage, a bill is presented to the Emperor, and if approved is promulgated before the next session of the Diet. Approval is given by affixing the imperial sign manual and the privy seal. Bills not voted upon before the session closes are dead unless either house, with the consent of the government, causes an interim committee to examine them.

BUDGET PROCEDURE IN THE DIET

The constitution (Article 65) requires that the budget be laid first before the House of Representatives; and before the opening of a regular session, each member of the house receives a printed copy. The document is sent to the budget committee, which is divided into subcommittees corresponding in number to the cabinet ministries. Within twenty-one days the committee's consid-

[31] Standing Orders of the House of Peers, Chs. III–IV; V, secs. 1 and 2. Standing Orders of the House of Representatives, Chs. IV–V; VI, secs. 1 and 2.
[32] Law of the Houses, Ch. XII.

eration must be completed and a report brought in. The report takes the form of an appropriation bill. The discussion in the house is brief, frequently lasting not more than one day. The bill is discussed and voted upon by chapters. An amendment may be proposed by thirty members.

From the House of Representatives the budget goes to the House of Peers, where it passes through an identical process within a maxium period of twenty-one days. If the Peers concur, the budget goes at once to the Emperor for sanction. If they amend it, the lower house is so informed. The latter may be unwilling to accept the Peers' amendments, in which case a conference committee is appointed. If the budget as reported by this committee fails of acceptance in either house, it becomes necessary to apply that of the previous year.[33]

JOURNALS AND RECORDS

Each house keeps a journal and a stenographic record of proceedings, which are printed. The journal contains the following items: (1) matters relating to the organization of the house, the facts of the opening and closing of the session, and the dates thereof; (2) the date of opening, adjourning, and closing of the sitting; (3) the names of the ministers of state and the delegates of the government present; (4) imperial speeches and proclamations; (5) the reports of the president or of the chairman of a committee; (6) the titles of bills discussed at the sitting; (7) motions proposed or made the subject of debate, with the name of the mover; (8) resolutions passed; (9) the result of votes taken and the number of ballots, if counted, in favor of and against the proposal; and (10) other matters considered necessary by the house to be noted in the journal.[34]

RULES AND CONDUCT OF DEBATE

The rules of debate are the same in both houses, though the actual conduct of discussion would suggest the contrary to an observer. Preference in addressing either house is given to members who give prior notice of a desire to speak. Speeches of any

[33] R. Uchiike, and Y. Sakamoto, *op. cit.*, pp. 1–44.
[34] Standing Orders of the House of Peers, Articles 117–122. Standing Orders of the House of Representatives, Articles, 135–141.

length are delivered from the tribune. Members may speak but once upon any subject, except to raise or answer questions or to call attention to errors. Ministers, government delegates, committee chairmen, and proposers of motions are, however, not bound by this rule. As a rule, the presidents apply closure, but they may call upon the houses to decide in case a motion supported by twenty members is made for closure. All rulings upon points of order are made by the presidents unless referred by them to the houses respectively.[35]

Debate in the House of Peers is conducted with dignity and decorum. Scurrilous remarks are practically unknown, and sarcastic or provocative statements are comparatively infrequent. Debate in the *Shugi-in* is attended with frequent interruptions from members, who bait the occupant of the tribune individually or in chorus. The most vitriolic remarks are made concerning the intelligence and character as well as the political acumen of fellow-members. There are frequent outbursts of hand-clapping and of appreciative or derisive laughter. Stalwart policemen guard the steps to the tribune and are posted at each entrance to the chamber. A hand-to-hand mêlée may develop at any moment. A noted member of the *kizoku-in* referred to the lower house as a "zoo, with apologies to the animals." "Bear garden" is another appellation given to it. Courage, readiness in bold repartee, and a strong set of vocal cords are prime requisites for a successful representative. These aspects of procedure make the lower house far more interesting to spectators than the upper house.

On a number of occasions one party or another in the lower house has gone to the length of employing *soshi* (ruffians) to attack a speaker of the opposing faction. A snake was thrown from the gallery to enliven one discussion. Spectators now must leave overcoats and packages in the cloak-rooms and submit to a tapping of their pockets by attendants before admission to the galleries.

DISCIPLINE

Each house is empowered to discipline its members. The presidents exercise the power of police, and may summon both house-guards and police officers whenever necessary. Motions for disciplining a member, if supported by twenty members, are referred

[35] Standing Orders of the House of Peers, Ch. v, Sec. 3. Standing Orders of the House of Representatives, Ch. vi, sec 3.

to the committee on discipline. The president, in certain circumstances, may refer a case to the committee. The house discusses the committee's report, and the president delivers the judgment of the house. Penalties in four degrees of severity may be imposed: (1) reprimand at an open meeting of the house; (2) requirement that a proper apology be made in an open meeting; (3) suspension; and (4) expulsion.[36]

VOTING

Votes on bills and resolutions in either house are taken most frequently by standing. A second method in common use consists in the dropping of small balls colored white for affirmative, black for negative, into a box. At the same time, members drop into the box cards bearing their names. If the number of cards fails to tally with the number of balls, a second vote must be taken. Tellers count the balls by dropping them into larger boxes where depressions catch them in rows. When it is desired to take a record vote, members deposit small white or colored wooden slabs bearing their names in the ballot-boxes. These are counted by piling them against a small pane of plate-glass upon which figures indicate the number of votes cast. Roll-call may be used, but has not been applied in practice. The ordinary passing vote is an absolute majority of members present; in case of a tie, the president has a casting vote.[37]

PROROGATION AND DISSOLUTION

Both houses of the Diet are subject to prorogation by imperial order, and the lower house is subject to dissolution by the same process.[38] The government also "may at any time order the prorogation of either house for a period of not more than 15 days."[39] And either house may recess at its own initiative for an indefinite period.[40] Ito's *Commentaries* defines *prorogation* very broadly: "By prorogation is to be understood the suspension of the deliberations of the Diet. In the case of prorogation for a

[36] Law of the Houses, Chs. XVII, XVIII.
[37] Standing Orders of the House of Peers, Ch. IV, sec. 5. Standing Orders of the House of Representatives, Ch. VI, sec. 5.
[38] Constitution, Article 7.
[39] *Ibid.* Law of the Houses, Article 33.
[40] Furuya, *op. cit.*, p. 114.

stated length of time, deliberations will, on the expiration of that time, be resumed where they left off."[41] Thus defined, the term covers both adjournments for a set period and the termination of sessions. The houses sit concurrently, and prorogation of the House of Peers always accompanies dissolution of the House of Representatives. In the earlier sessions, brief prorogations by the government were comparatively frequent, but the rise of party cabinets has reduced the number until at present only occasional recourse is had to this device of control.

Dissolution is carried out by imperial rescript. The rescript, wrapped in purple silk, is brought into the *Shugi-in* by the chief secretary of the cabinet at the moment predetermined by the ministers. At the sight of the purple covering, the business of the house stops instantly and members rise and listen, with heads bowed, to the reading of the rescript by the president. As the reading ends, members cry *banzai* ("hurrah," literally "ten thousand years"), honoring the Emperor's order. The premier repairs to the palace and reports the dissolution to the Emperor. A statement of reasons for the action may be issued by the cabinet.

OBSERVATIONS ON DIET PROCEDURE

The Law of the Houses and their standing orders are impressive for the completeness with which they cover procedural necessities. Formal requirements are adequately met, including provision for printed documents. Physical facilities also, while never elaborate, have been sufficient for dignity and the conduct of business, and will be, in the new Diet building, more spacious and beautiful than executive agencies enjoy. Undoubtedly the splendid edifice now approaching completion is a symbol of the Diet's increasing consequence.

In certain of its aspects, however, Diet procedure is inadequate. Sessions are too brief, with the result that even committee action is hurried, while debate is practically non-existent save in the form of interpellations. A longer session also would increase the opportunities of the private member. If sessions were opened in January rather than in December, the loss of time occasioned by the length of the New Year holiday would be avoided.[42]

[41] *Commentaries*, p. 14.

[42] Use of the present date is customary, not legal. If, however, the date were changed to a day following the holiday, the assumption generally accepted is that the change would work a violation of the constitutional requirement

Standing committees are too few. The excessive use of special committees deprives the members of the valuable experience gained in standing committees and involves loss of valuable time. Failure to admit outsiders to committee hearings is undemocratic and promotive of uninformed reports.

Salaries are proportionate to those of third-grade officials, if viewed as annual rather than quarterly stipends. It is obvious that such salaries will not attract men competent to hold *chokunin* or *shinnin* executive posts. A *sonin* House of Representatives also will not have the prestige nor the unselfish interest in public affairs that are essential supplements to mental capacity.

With due recognition of the fine spiritual qualities of Japan's older men, it may nevertheless be affirmed that the Diet would be stronger if it contained a larger percentage of men between the ages of thirty and fifty. On the other hand, the horse-play that so riotously and continuously characterizes both the regular and the committee meetings of the lower house is no recommendation of the younger men who indulge in it. The better newspapers omit reports of such antics, in the hope of discouraging publicity-seekers. It is doubtful whether severer rules of discipline can remedy this evil, which appears to grow worse year by year. It may well be that the increased resort to rough filibustering reflects a keener consciousness among members of the Diet's impotence, and that it will only subside when the Diet is raised to a position of power.

The House of Peers was "reformed" in 1925, but the "reform" increased the representation of the plutocracy and decreased the proportion of members appointed for reasons of distinction or service to the state. The composition of the House of Peers is one of the anachronisms in the Japanese system of government. It purports to provide representation for "interests" rather than areas, but it represents no interests that might be termed popular. Individually, the peers are superior to the representatives, but the House of Peers is, essentially, a perpetuation of feudalism. Thus the popular chamber is compelled to fight front and rear battles concurrently.

of annual sessions. It would seem to be possible to satisfy the constitution by holding a brief session in the year when the change took place.

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CHAPTER XI

THE DIET: FUNCTIONS AND POWERS

FUNCTIONS OF THE DIET

The Diet is essentially an organ of legislation. It was established to assist the Emperor in the legislative process, and the powers delegated to it relate primarily to the legislative function. It is, however, enabled by the constitution and the Law of the Houses to exercise certain additional functions. It is entitled to participate in revision of the constitution, and it partially controls finance. It receives and considers petitions. It operates as a check upon executive action through the exercise of a number of powers. Neither house has executive functions, but each acts in a judicial capacity to determine the qualifications of its members.[1] The House of Peers is the Emperor's adviser on the privileges of peers.

THE DIET'S POWERS

The powers of the Diet—over and beyond those already discussed as being concerned with the organization and conduct of the houses and with their proceedings—may well be grouped in accordance with its functions, as shown in the following outline:

1. Constituent power
   a. Action upon proposed amendments to the constitution
2. Legislative power
   a. Action upon government bills
   b. Initiation of bills and resolutions and action upon them
   c. Action upon emergency ordinances
3. Reception and consideration of petitions
4. Finance power
   a. Action upon non-excepted portions of the budget
   b. Imposition of new taxes; modification of existing taxes
   c. Action upon loans and other treasury liabilities
   d. Action upon emergency financial ordinances
   e. Action upon reports of Board of Audit and upon final accounts
5. Discussion of foreign relations

[1] On this point, see pp. 170–171.

6. Advisory power
   a. House of Peers in relation to privileges of peers
7. Control of the cabinet
   a. Representations to the government
   b. Presentation of addresses to the Emperor
   c. Interpellations
   d. Resolutions of censure

EQUALITY OF THE HOUSES

The powers of the two houses are equal unless the right of the House of Representatives to receive the budget estimates first be regarded as an advantage.[2] The House of Peers exercises powers peculiar to itself in the decision of disputed elections, in its advisory relation to the Emperor respecting the rules that govern the privileges of the nobility, and in voting upon amendments of the imperial ordinance concerning the House of Peers.

The House of Representatives has cherished the idea that budget items accepted by it are not subject to revision or deletion by the House of Peers. Although the latter has been inclined to allow such items to stand, it may hardly be said to have accepted the conclusion which the lower house wishes to draw. On occasion, e. g., in 1914, when the upper house cut forty million yen from the estimates accepted by the House of Representatives, and in 1931, when it persuaded the government to restore an item previously deleted at the request of the lower house, it has shown its continued opinion of its equality in financial matters.[3]

CONSTITUENT POWER OF THE DIET

The method of constitutional revision, apparently taken from the

[2] Constitution, Article 65. In 1892 an issue arose between the two houses respecting their respective rights in connection with consideration of the budget. The issue was referred to the Emperor, who referred it to the Privy Council. The decision set the precedent of equality: "With regard to the right of consent to the budget vested in the House of Peers and the Representatives respectively, neither house is superior or inferior to the other except in one particular that, according to the 65th article of the constitution, the lower house receives the budget from the government before the upper. Therefore the house which deliberates subsequently is in no respect bound by the decisions of the house which deliberates previously, and it consequently follows that the restoration of any items which may have been excised by the house previously deliberating falls strictly within the right of revision vested in the house subsequently deliberating. The house subsequently deliberating has only to employ the method indicated by the law of the houses, namely to seek the concurrence of the house previously deliberating." Mc Laren, *A Political History of Japan During the Meiji Era* (New York, 1916), pp. 214–215; Furuya, *op. cit.*, pp. 151–152.

[3] *Japan Chronicle*, Mar. 19, 1931, pp. 291–292, 300.

constitution of Bavaria,[4] unites initiative by the executive with approval by both houses of the Diet, sitting with a quorum of two-thirds and voting approval by two-thirds majority. Thus the Diet is impotent in this respect save as the progress of the parliamentary system enables it to control the initiative of the government. Apparently an address to the Emperor or a representation to the government might embody a proposal for amendment of the constitution. According to Ito, "The essential character of the constitution should undergo no alteration" though "it may become necessary . . . to introduce more or less modification in the less important parts of the political institutions, so as to keep them in touch with the changing phases of society."

Ito explains the part of the Diet in the amendment process as follows:

> "Why is the draft of a proposed amendment to the constitution to be submitted to the Diet by imperial order, while the projects of ordinary laws have to be laid before the Diet by the government or initiated by the Diet itself? Because the right of making amendments to the constitution must belong to the Emperor himself, as he is the sole author of it. If, it may be asked, the power of amendment is vested in the Emperor, why is the matter to be submitted to the Diet at all? For the reason that the Emperor's great desire is that a great law, when once established, shall be obeyed by the imperial family as well as by his subjects, and that it shall not be changed by the arbitrary will of the imperial family." [5]

The nature of the Japanese state is such that the power of amending the formal constitution becomes of less importance in the degree that the cabinet becomes responsible to the lower house of the Diet. This follows from the fact that the powers attributed to the Emperor by the constitution actually are exercised by his ministers. The constitution enumerates the powers but leaves it to law or ordinance to define their limits. Thus constitutional change is unnecessary unless it should be desired to abolish the monarchy or the institutions recognized by the constitution. The private citizen, likewise, finds the interpretation of his civil and political rights in statutes and ordinances. Such changes as a sovereign Diet may consider essential, e. g,. the limitation of the ordinance power or the executive's finance power, can be attained either through amendments suggested by the Diet or by the development of conventions

[4] H. Furuya, *Système représentatif au Japon* (Brussels, 1899), p. 130, citing F. R. Dareste, *Les constitutions modernes* (2d ed., Paris, 1891), I, 221.

[5] *Commentaries*, pp. 153–154.

under which the executive refrains from the use of powers that may come to be regarded as anachronistic.

LEGISLATIVE POWERS

The powers of each house over its organization and procedure were indicated in the previous chapter. The general legislative power was provided for in the fifth article of the constitution: "The Emperor exercises the legislative power with the consent of the imperial Diet." This, in practice, brings the cabinet, advised by the Privy Council, and to a degree, even to-day by the genro, into collaboration with the Diet in the legislative process.[6]

According to the constitution, "Both houses shall vote upon projects of law submitted to them by the government and may respectively initiate projects of law."[7] In practice, all important bills are introduced by the government. It is entitled to have its bills placed first on the orders of the day, and it controls the time of the houses. On the other hand, it is a mistake to suppose that the private member does not utilize his right of initiative in the introduction of bills. The following are examples of private members' bills introduced in a typical session, the fifty-second (1926–1927), into the House of Representatives: (1) a bill to extend the electoral privilege to qualified persons in Karafuto (southern Saghalien); (2) a bill to limit the amount of individual contributions to the funds of political parties; (3) a bill to determine publication rights; (4) a bill to amend the police law; (5) a bill to enfranchise women in local elections; (6) a bill for the teaching of Roman letters in the schools; (7) a bill to regulate the use of intoxicants by minors.

Such bills often are in the nature of *ballons d'essai,* if they awaken considerable interest, the government may introduce its own bills and exert its influence toward their passage into law. The prospects of a private member's bill becoming a statute are very slight. In the session of 1924–1925 forty private-member bills were introduced. Four were passed by both houses. Two of these dealt with revision of the chamber of commerce law, one with revision of the law governing the practice of dentistry, and one with passes on railways. In the same session the government introduced fifty-four bills, of which all but five were passed.[8]

[6] For the legislative powers of the executive, see pp. 123–124.
[7] Constitution, Article 38.
[8] *Japan Chronicle,* April 9, 1925, pp. 453, 468.

LAWS VS. ORDINANCES

The extensive ordinance power exercised by the ministers in the name of the Emperor operates, obviously, as a blanket limitation upon the legislative function of the Diet.[9] Reference was made in an earlier chapter to the interpretation officially placed upon the first paragraph of Article 76 of the constitution, which continues existing legal enactments in force. By this interpretation pre-constitutional ordinances, if having the nature of statutes, were to be viewed as statutes. Amendment or repeal might thereafter be accomplished only by statute.

In another connection Ito remarks,

> "What comes within the sphere of law and what within that of ordinance differ according to the condition of the political development of each country. These limits ought to be ascertained for each country by reference to its constitutional history. But there are two definite cases of limitation: *first,* when a given matter is required to be embodied in a law by an express provision of the constitution, and *secondly*, in case of the modification of a law, in which case nothing but law can effect the modification." [10]

The legislative power being in legal theory a part of the prerogative, it is as extensive as the field of subjects requiring legislation save as limited by the Emperor's power to regulate the imperial household. The ordinance power is made clearly subordinate to the legislative power, since such ordinances as may be issued in urgent situations to take the place of statutes may be issued only when the Diet is not in session. And they lose their validity if the Diet at its next session fails to give approval. The failure of either house to approve is sufficient for invalidation. The importance of this legal superiority is great, whatever the current practical difficulties in giving it effect. It is further attested in the constitutional provision that "no ordinance shall in any way alter any of the existing laws." [11] An emergency ordinance which has received the Diet's approval is an exception to this rule.[12]

It is apparent that in practice the power of the Diet to disapprove

[9] For a discussion of the ordinance power, see pp. 118–123.

[10] *Commentaries*, p. 76. The constitution requires the determination by statute of a considerable number of matters. See Articles 14, 18–30, 35, 51, 57–63, and 72. Oda, in *Principes de droit administratif du Japon* (Paris, 1928), pp. 69–71, finds that both general and specific rules may be made either by statute or ordinance, but that only statutes may create new rights and obligations.

[11] Constitution, Article 9.

[12] Ito, *Commentaries*, p. 17.

emergency ordinances is an ineffective check upon a government which, for lack of an assured majority or other reason, sees fit to resort to such instrumentalities to obtain its desires. In 1928, Premier Tanaka issued the notorious peace preservation ordinance within two months of the adjournment of a Diet session. The Diet had no opportunity to consider it until its next regular session. By that time the government had a majority in the lower house, and the ordinance was approved without difficulty. On other occasions dissolution has intervened before an ordinance had been placed before the Diet, so that the life of the ordinance was prolonged at least until the following session.

The Diet may refuse approval to an emergency ordinance on any ground. It has shown an independent attitude toward such ordinances, frequently withholding approval. The Diet may not amend an ordinance, but must either approve or disapprove it *in toto*. Disapproval has no retroactive effect. It revives the force of laws temporarily suspended by the effect of an emergency ordinance.[13] A difference of opinion exists upon the question whether the Diet is entitled to take action upon emergency ordinances which have been placed in operation but which have been rescinded by the government prior to the convening of the Diet.[14] Whatever the answer to this question, it is evident that a statute, repealed by an emergency ordinance rescinded without submission to the Diet, would revive with the act of rescission, since statutes are superior to ordinances.

PETITIONS

Either chamber of the Diet may receive petitions from citizens through its members, and may either make them the subjects of legislative proposals or transmit them to the government, with an expression of opinion attached and a request for a report.[15] The use of petitions is extensive. At a single session the standing committee of the lower house on petitions considered more than 1,000 petitions and reported 284. The action of the committee was approved by the house without debate.[16] Petitions reported are not

[13] *Ibid.*, pp. 17–19.

[14] In 1923 the Yamamoto cabinet failed to bring before the extraordinary session three emergency ordinances which it had rescinded before the session convened. An argument developed on the point in the House of Peers, and Dr. Hanai Takuzo insisted that the government was constitutionally obligated to submit the ordinances. The government failed to bring them in. *Japan Chronicle*, Dec. 20, 1923, p. 869.

[15] Constitution, Article 50.

[16] *Japan Chronicle*, Mar. 31, 1927, p. 368.

considered by a house unless the committee or a group of thirty members requests consideration, and not even then if the house decides to the contrary.[17]

FINANCE POWERS

The Budget.—The budget is presented by the cabinet first to the House of Representatives and afterwards to the House of Peers.[18] Under the constitution, "the expenditure and revenue of the state require the consent of the imperial Diet by means of an annual budget." [19] The budget of Japan, according to Ito, is not a law, but is "simply a sort of gauge to be observed by the administrative officials." [20] Furuya avers that "in voting the budget the Diet exercises supervisory power [*pouvoir tutelaire*] but not legislative power [*pouvoir législatif ordinaire*]." [21] The budget, therefore, is an instrument essentially executive but requiring, for certain items, the approval of the Diet. It might be described as something between a statute and an urgent imperial ordinance. Existing laws may not be repealed or amended by a budget.

The entire budget, which takes the form of an appropriation bill, is voted upon by both houses of the Diet by chapters, but there are important categories of items that may not be altered by the Diet without the concurrence of the government. Put positively, this means that the Diet must accept such items unless it can persuade the ministry to modify or delete them. It does not carry the inference that the Diet can establish *any* items of the budget *without* the concurrence of the government, but rather that there are *some* items which the government may not establish without the concurrence of the Diet.

The first category of excepted items is "those already fixed expenditures based by the constitution upon the powers appertaining to the Emperor." Concerning this category, Ito wrote that it includes: "all the expenditures which are based upon the sovereign powers of the Emperor as set forth in Chapter one of the constitution, to wit: ordinary expenditures required by the organization of the different branches of the administration and by that of the

[17] Law of the Houses, Ch. XIII. *Standing Orders of the House of Peers*, Ch. VIII. Standing Orders of the House of Representatives, Ch. X. Furuya, *op. cit.*, pp. 163–167.

[18] Upon their relative power over the budget, see p. 183.

[19] Constitution, Article 64.

[20] *Commentaries*, p. 133.

[21] Furuya, *op. cit.*, p. 145.

army and navy, the salaries of all civil and military officers, and expenditures that may be required in consequence of treaties concluded with foreign countries." [22]

Under the limitations of this clause the Diet is powerless to withdraw appropriations once agreed to—or which were in effect before the Diet was established—for the conduct of a ministry or any division thereof. It is not, however, restrained from effective disapproval of appropriations entailed by new ordinances, e. g., an item for the creation of a new ministry or other agency or for increase of salaries or other modifications upward of an existing budgetary item.[23] Whether or not it may reject a decrease in such items of excepted—or of non-excepted—categories is an unsettled point, although the power to reject a decrease would appear to be the logical complement of the power to reject an increase.[24] The Diet's incapacity to refuse appropriations entailed by treaties also is limited to old treaties, i. e., treaties which it has previously implemented with appropriations. It is free to refuse money to carry out new treaties.[25]

The second category of excepted items is "such expenditures as may have arisen by the effect of law." Of this class are "the expenses of the houses of the Diet, annual allowances and other miscellaneous allowances to the members, pensions, annuities, expenses and salaries required by the organization of offices determined by law and other expenses of a like nature." [26] Items in this category in part resemble those in the first group, but have their basis in law rather than in imperial ordinances or treaties. They may be altered only by the modification of the statutes authorizing them. In such cases the Diet will have had an opportunity to debate the principles involved in the authorizing act, but it is not free to re-

[22] Constitution, Article 67. Ito, *Commentaries*, p. 141. This rule resembles that which prevailed in the German Empire respecting funds for services once established.

[23] Ito wrote: "From the wording 'already fixed expenditures' it is to be understood that in regard to new expenditures or to the increase of existing ones, though based upon the sovereign powers of the Emperor, the Diet may have the power to freely deliberate upon them" (*Commentaries*, pp. 142–143). Furuya's statement of the rule on this point is definite: "As for new expenditures, even those based upon the Emperor's powers, the Diet has the right to suppress them or to diminish them freely" (*op. cit.*, p. 154).

[24] G. E. Uyehara, *The Political Development of Japan* (London, 1910), p. 143. N. Kitazawa, in *The Government of Japan* (Princeton, New Jersey, 1929), p. 79, quotes Minobe as authority for the statement that the Diet, as a consequence of its incapacity to initiate a budget, has no power to increase it.

[25] Kitazawa, *op. cit.*, p. 80.

[26] Ito, *Commentaries*, p. 141.

pudiate its decision by refusing the necessary items of the budget.

The third category of excepted items is "such expenditures as appertain to the legal obligations of the government." These "include the interest on the national debt, redemption of the same, subsidies or guarantees to companies, expenses necessitated by the civil obligation of the government, compensations of all kinds, and the like."[27] Funds to maintain temples, to provide agreed sums to subsidize navigation companies, railways, and schools, and to pay damages, interest, rentals, etc., fall within the third class of exceptions to the Diet's budgetary veto. As in the case of acts entailing appropriations, the Diet shares the power to borrow and repay money, but the executive has independent power over the items of compensation and indemnity in the third category. It is perhaps unnecessary to note that the concurrence of the government in modifications of items in the excepted categories is not in itself sufficient in cases where the items are required to be expended by ordinances or statutes. The ordinances and statutes would require corresponding modification.

A fourth category of excepted items that neither the Diet nor the government may propose to reduce below the amount fixed at the time the constitution became operative is that which carries the imperial civil list or imperial house expenditures. Increases in this item require the consent of the Diet. No accounting or audit of these funds, now amounting to 4,500,000 yen a year, is made to the Diet. They are carried in the budget from year to year for purposes of completeness. According to Ito, the Diet's consent to an increase is asked because of its relation to taxation.[28] Reduction below the original amount would require a constitutional amendment.

Large expenditures are made in the form of continuing appropriations.[29] These are required for undertakings to be pursued over a period of years; and when once granted, they may not be withdrawn.[30] The quota for each year is included within that year's

[27] Constitution, Article 67. Ito, *Commentaries*, pp. 141–142. Kitazawa, *op. cit.*, p. 81. The various items of the three excepted categories are listed by R. Uchiike and Y. Sakamoto in their article "The Budget System of Japan," *Municipal Research*, No. 83 (New York, 1917).

[28] Constitution, Article 66. Ito, *Commentaries*, p. 140. On this reasoning the Diet's consent would be required for any change in this item.

[29] The total provided for at the end of March, 1930, was 9,408,238,000 yen, of which 6,029,007,000 yen had been disbursed (*Japan Year Book*, 1931, p. 333).

[30] Constitution, Article 68. Ito, *Commentaries*, pp. 144–145. Kitazawa, *op. cit.*, p. 79.

budget, and is effective even though the Diet is dissolved before the budget is passed.

Uchiike and Sakamoto state: "The total amount of the above funds [what are called here the excepted categories] is usually about two-thirds of the total expenditure of the budget, and if we add to this in addition the continuing appropriations, a very small amount is left for consideration in the Diet. It is only in case these permanent expenses are to be increased that the consent of the Diet is necessary. Thus the scope of the vote in the imperial Diet is very limited; but nevertheless there are sharp debates on the bill." [31]

The constitution provides (Article 64) that: "Any and all expenditures overpassing the appropriations set forth in the titles and paragraphs of the budget, or that are not provided for in the budget, shall subsequently require the approbation of the imperial Diet." This article is supplemented by another (Article 69) under which: "In order to supply deficiencies, which are unavoidable in the budget, and to meet requirements unprovided for in the same, a reserve fund shall be provided in the budget."

Thus the Diet endows the government with blanket power to employ the reserve fund at its discretion, but it is entitled to a report upon such expenditures at a subsequent session. At that time it may refuse to approve them; however, such refusal will not invalidate the acts of the government nor the obligations which it is under as a result of its acts. It will have only political effect, the importance of which will depend upon the prevailing relation between the government and the Diet. Not only may the government exhaust the reserve fund; it may also expend additional funds, basing its action upon necessity and the fact that the sum required was not large enough to justify the calling of an extraordinary session of the Diet. The government's attempt to justify expenditures beyond the reserve fund under Article 64 of the constitution was given up in 1896.[32]

The Diet may fail—frequently it has failed—to vote the budget. In that event the device of Bismarck, authorized by the constitution (Article 71) is called into play, and the government, theoretically, carries out the budget of the preceding year—theoretically only, however, since it employs deficiency appropriations to a continually increasing extent to increase the old budget. It may not, however,

[31] *Op. cit.*, p. 23.
[32] Furuya, *op. cit.*, pp. 146–149.

"apply an appropriation for any object other than that prescribed in the budget; nor are they [the ministers of state] permitted to interchange the amounts of the appropriation in each section one for the other." [33] Nor may the government reintroduce the defeated or otherwise uncompleted budget into an extraordinary session. It is apparent that when, as occurred in 1915–1916, the budget, due to dissolutions, is that originally prepared for the preceding year (in the case cited, the year 1913–1914), there will be need for many deficiency appropriations. The government formerly dreaded a dissolution before the budget was passed, but now "the modification of the previous budget by 'responsible expenditures' has been so perfected that the government is not at all dismayed at the prospect of its budget being thrown out." Such payments tend to become the usual mode of procedure, though supposed to be employed only in emergencies. Once an expenditure is made, the opposition is likely to be half-hearted, and in this way the control of the Diet is still further diminished.[34]

The Diet's Taxing Power.—Taxes are levied by imperial ordinance or by statute and not as a result of enumeration in the budget. "The revenue side of the budget is . . . nothing more than a mechanical compilation of incomes from various sources, so as to cover the amount of expenditures required." [35] Taxes existing prior to the constitutional era were continued specifically by the constitution (Article 63), which, however, authorized their modification by law. The constitution also laid down (Article 62) that "the imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law." The government is not dependent upon the Diet for an annual vote of revenues; on the other hand, new taxation may not be levied without the Diet's consent.[36] But "all such administrative fees or other revenue having the nature of compensation" are determined by the government without reference to the Diet.

The Diet's Borrowing Power.—The Diet also must be afforded an opportunity to give or refuse its consent to national loans and to the contracting of other liabilities against the national treasury.

[33] Law of Finance (1889), Article 12, sec. 1. Transfers may be made, however, between classes of items *within* sections.

[34] Editorials, *Japan Chronicle*, July 29,, 1915, p. 177; Mar. 31, 1921, p. 427.

[35] Uchiike and Sakamoto, *op. cit.*, p. 21.

[36] Kitazawa states that "both the government and the Diet have the power to initiate a revenue bill"; also that the Diet may vote to increase the income from a government revenue bill (*op. cit.*, p. 78).

The only exceptions to this rule (constitution, Article 62) are those budgetary obligations that arise from the excepted categories of expenditures.

The Diet and Emergency Financial Ordinances.—The government's ultimate recourse, authorized by Article 70 of the constitution, i. e., that of taking "all necessary financial measures by means of an imperial ordinance," may only be resorted to "in case of urgent need for the maintenance of public safety" and only "when the imperial Diet cannot be convoked, owing to the external or internal condition of the country." Should revenues or expenditures be secured in this way, the approval of the Diet would be required at the ensuing session. Such approval could not effectively be refused over money already spent or contracted to be spent, but disapproval might involve the government in political difficulties.

It is to be noted that whereas the condition upon the use of the power to issue emergency ordinances of a general legislative character is simply that the Diet be not in session, it is essential for the issuance of emergency financial ordinances that it be impossible to summon the Diet into an extraordinary session. Consequently the latter power has rarely been used. It is noteworthy that the Privy Council, to which all such ordinances must be submitted for approval, has consistently opposed the development of a practice which would have still further restricted the already very limited financial powers of the Diet.[37]

The Diet's Power of Audit.—The constitution (Article 72) requires the government to submit a final account of its financial activities, after they have been reviewed by the Board of Audit, together with the board's report upon them. The Diet is enabled in this way to check the accounts against the budget and to demand explanations of variances between them. As a rule, the accounts are submitted a year and ten months after a fiscal year expires. They go to the standing committees on final accounts in each house, and in each house members may ask the ministers for explanatory statements. Disapproval is not attended with legal consequences, but the Diet may vote lack of confidence or submit an address of criticism to the Emperor. "There is no doubt that this parliamentary supervision is instrumental in making the executive feel a great responsibility for the execution of the budget." [38]

[37] For the applications of this power, see foot-note 59, p. 123.
[38] Uchiike and Sakamoto, *op. cit.*, p. 33.

FOREIGN RELATIONS IN THE DIET

The Diet has no constitutional part in the conduct of foreign relations, although it may use its powers of interpellation, representation, and address to influence a government's foreign policy. An issue was raised in the House of Representatives in 1894 concerning the validity of a treaty having the force of domestic law. The house unanimously resolved that in order to be effective such a treaty must be placed in force by statute.[39] However, the house was dissolved, and the resolution, although supported by excellent authorities in the field of constitutional law, failed to affect the prevailing practice. No subsequent effort has been made in the Diet to establish the principle embodied in the resolution. Thus the treaty-making power of the executive operates to create numerous exceptions to the rule that the exercise of legislative power requires the consent of the Diet. The government even declines to bring the draft recommendations of the conferences of the International Labor Organization into the Diet, taking the position that the Privy Council is the proper body to entertain both the draft conventions and the draft recommendations of that organization. It would seem more in harmony with the government's attitude upon the distinction between treaty procedure and legislation for it to place draft conventions before the Privy Council and draft recommendations before the Diet.

Although the Diet has no legal control over foreign policy or the conduct of foreign relations, the Minister of Foreign Affairs annually delivers before each house a speech outlining the country's position relative to other states. Both houses interpellate upon and criticize freely the policies and activities of the foreign minister and of other officials whose functions impinge upon foreign relations. During the forty-sixth session of the Diet, between December 7, 1922, and March 27, 1923, diplomatic issues formed the topic of greatest interest and importance in both houses. The two leading parties in the House of Peers, the Kenkyukai and the Kosei-

[39] Resolution of June 1, 1894, *Teikoku Gikaishi* (*Parliamentary Record*), II, 1767. In 1920 the chief of the bureau of legislation stated in answer to an interpellation in the House of Peers: "If a treaty stipulates the enactment of legislation, the Government introduces bills in accordance with the stipulation; but if the treaty itself affects the rights and duties of subjects, the Government views the treaty provisions as treaty-law and deems it unnecessary to introduce in the Diet a bill having identical content with the said treaty." Cited by K. Colegrove, "The Treaty-making Power in Japan," *American Journal of International Law*, XXV (1931), 284–285. This article is an able discussion and includes references from Japanese legal authorities.

kai, united to frame a resolution which owes its significance not to its terms, which are general, but to the rarity of such action in that body. "It is deemed," the resolution read, "a matter of urgent necessity to establish a firm diplomatic policy and consolidate the foundations of the peace of the Far East." [40]

The struggle for control of the executive between the cabinet as a civilian organ and the military services, the Privy Council, etc., which is discussed in an earlier chapter,[41] tends to strengthen the claims of the Diet to a share in foreign policy, since the cabinet feels the need of popular support. In other words, the Diet's powers are growing in this as in other constitutionally executive fields by virtue of the transition from oligarchical to parliamentary government.

ADVISORY POWER OF THE HOUSE OF PEERS

The House of Peers is authorized by the imperial ordinance of 1889 concerning it (Article 8) to vote upon rules relating to the privileges of the nobility when consulted by the Emperor. The report of the house is advisory only. Members of the nobility enjoy civil and political privileges, concerning which regulations are declared from time to time through the Imperial Household Ministry. The ministry seeks the advice of the House of Peers respecting such regulations.[42]

CONTROL OF THE CABINET

Representations.—The constitution [43] authorizes what are known as "representations." These are resorted to frequently by the lower house in order to suggest desirable projects of law or amendments to the government, which may or may not draft legislation in accordance with the suggestions offered. At a single sitting of the lower house, 121 representations were explained by their proposers and referred to special committees.[44] If the government refuses to accept a representation, it may not be presented again in the same session.

Representations are also used to suggest administrative action in

[40] *Japan Chronicle*, Mar. 1, 1923, p. 292.
[41] See Ch. VII.
[42] Furuya, *op. cit.*, p. 170.
[43] Constitution, Article 40.
[44] *Japan Chronicle*, Mar. 17, 1927, p. 299. In the session of 1926–1927, 649 representations were introduced. An independent member raised the question of the advisability of creating a standing committee on representations in view of the increased number (*ibid.*, Mar. 17, 1927, p. 298).

the general interest or to call attention to failure on the government's part to perform a function effectively. They may be proposed in either house by thirty members. For whatever purpose made, they have no force beyond advice. But they are of considerable value as suggestions for legislation and in affording publicity for executive action.

This type of control over the cabinet is less highly developed in France, where it exists as a recognized procedure in the Chambers. There is no formalized procedure of this character in England, but there are various ways in which members can suggest matters, in the hope that the cabinet will incorporate them into official policy, e. g., questions, private members' bills and motions, amendments to government bills, and amendments to the address in reply to the speech from the Throne.

Addresses to the Emperor.—Each house has a lever against an unfriendly cabinet in the right to present addresses to the Emperor. An address may be sent in writing or presented, also in writing, at an audience granted by the Emperor to a delegation from the house concerned.[45] Such an action may have significance in that it conveys criticism of a government's failure to carry through desired legislation, though it is not used to suggest legislation *de novo*. The threat inherent in this right is more important than the actual exercise of the right, since a government is reluctant to be made the subject of an address.[46] Proposals for addresses to the throne may not be presented to a chamber unless endorsed by thirty members. Addresses may convey not only criticisms of the government but any other message, e. g., a reply to an imperial speech, congratulations or condolences, opinions, petitions, etc.

Interpellations.—A member may put a question to the government provided that thirty other members endorse this action. He presents the question in the form of a "concise memorandum" signed by himself and his supporters, through the president of the house. A minister may answer immediately or may specify a future date or may decline to answer, giving his reasons for declining.[47]

Interpellations are resorted to extensively in both houses. They are used by opponents of the government to elicit information and to embarrass the premier or members of his cabinet.[48] They may

[45] Constitution, Article 49. Law of the Houses, Ch. XI.

[46] Memorials to the number of 324 were adopted summarily by the lower house in the session of 1928–1929 (*Japan Chronicle*, May 4, 1929, p. 400).

[47] Law of the Houses, Ch. X.

[48] An editor of reliable if somewhat sarcastic propensities wrote in 1929:

appear as single questions, susceptible of a brief reply, or as a broadside that takes an hour to deliver and requires the combined efforts of the premier and other members of the cabinet to answer. Members are free to press for further information if unsatisfied with the replies first given. Member after member is observed putting identical, or practically identical, questions. The process is an important weapon in a minority's arsenal, but it is abused, and the consequence is that much valuable time is wasted.

A study of interpellations over a period of twelve years, 1918–1930, appears to justify a conclusion that they are found useful not only for legislative purposes but for bringing the government to make explanation of acts performed without participation by the Diet. In view of the range of executive power, it is logical to find an increasingly self-conscious legislature seeking to inform itself and to embarrass the government. Fully half the time, if not a larger percentage, during meetings is consumed by interpellations. Since it is customary for interpellators, many of whom are assigned general or particular subjects in advance,[49] to ask secondary questions, the process takes on the character of debate. A similar development has taken place respecting committee sessions. Requests for documents may be made in conjunction with interpellations. Japanese practice in this field has proceeded along French, rather than English lines, but differs from the French in that discussions provoked by interpellations in Japan are not concluded by a vote.

Resolutions of Censure.—No provision for resolutions of censure is to be found in the constitution or in the Law of the Houses. But practice has made such resolutions, which usually take the form either of motions of no confidence or of impeachment, common occurrences.[50] Although the ministers are not constitutionally

"The chief interest in this, as in every session of the Diet, is to see whether the Opposition can, without an actual majority, hurl enough stinkpots and bang enough brass to drive the Government out of office: for though the members are all correctly attired in frock coats, there is in their tactics some resemblance to ancient methods of Chinese warfare. . . . It has become the regular thing to spend most of the session's time in ineffective denunciations of an indifferent government, and then to pass without proper consideration a large number of important bills which the Government puts forward with an intimation that they are necessary" (*Japan Chronicle*, Feb. 7, 1929, p. 147).

[49] Osaka *Mainichi*, Jan. 21, 1931, p. 1; Jan. 23, 1931, p. 1.

[50] "If the spring or summer passes in China without a civil war or threat of it, it will be as unusual as if a winter session of the Diet in Japan passes without a resolution for a vote of non-confidence" (S. Washio, in *Trans-Pacific*, June 11, 1931, p. 5).

responsible to either house, so that a premier does not, as in England and France, seek a vote of confidence, a cabinet is reluctant to have motions expressive of criticism passed and will take every possible means of avoiding it. As the proponents of the motions in the lower house introduce them with but slight regard for the party situation, very few of them are passed. Private members are not required, as in England, to leave the introduction of such motions to the official leader of the opposition. Passage does not entail resignation of the cabinet, but it demonstrates a situation in which a government has lost control of legislation; in such circumstances the cabinet has, throughout the entire history of the Diet, resigned.

No clear distinction in principle between motions of no confidence and motions of impeachment is apparent in the practice of the houses. In the session of 1920–1921 one no-confidence motion and one motion of impeachment were leveled at the government. The former was on general grounds; the latter arose out of relations between the government and the South Manchuria Railway. In the same session there were five motions to impeach individual ministers, three of which were introduced in the House of Representatives and two in the House of Peers. In the session of 1921–1922, members brought in two no-confidence motions aimed at their own speaker. In 1922–1923 a motion was made to impeach the speaker, and an attempt was made to get action on a motion of no confidence. In 1925–1926 there were motions to impeach the premier and the vice-president of the lower house. In 1926–1927, it was proposed to impeach the Minister of Finance. Similar moves have characterized more recent sessions. Perhaps it may be said that impeachment motions more frequently are directed at individuals, motions of no confidence at the cabinet. But no uniform rule has been followed. Both types of motion are frequent in the lower house and rare in the House of Peers. Since no process exists for the trial of an impeached official, the motion for impeachment is, as such, an empty gesture, but it appears to be regarded as a somewhat more severe form of censure than a no-confidence motion.

SIGNIFICANCE OF THE DIET

It will not be necessary to recapitulate the respective powers of the executive and the Diet. The truth of the statement on page 45 that "the separation of powers strongly favors the executive" should now be clear. Not only does the executive act alone within

its own sphere; it is stronger in the legislative sphere than the legislative body itself. What then, is the significance of the Diet?

The powers of the Diet are extensive but not exclusive; they are secondary, not primary; the Diet is competent to apply checks but cannot initiate policy. It was asserted on page 124 that "while the Japanese cabinet's lack of responsibility to the Diet compels one to interpret the statement differently when applied to the British system, the steady growth of political parties appears to be bringing about a relationship between the Diet and the executive which resembles that of the British parliament to the cabinet." However, the resemblance is far from complete.

It is well understood that the British cabinet determines policy. The House of Commons votes as the whips direct. The House of Representatives in Japan votes in the same way. But the Japanese cabinet does not determine policy, if the conclusions reached in Chapter VII are tenable. When the House of Commons disagrees with the cabinet, it forces a resignation or a new election. The same thing happens in Japan. But in Great Britain a new cabinet means a new policy in harmony with the views of the House of Commons. In Japan a new cabinet is, like the old, primarily responsible to the Emperor, i. e., to the traditional agencies that act in his stead, and only secondarily to the Diet.

Thus it is that a Japanese cabinet, which in its composition is distinctly a committee of the majority political party, changes color like a chameleon upon taking office. It appears correct to say that Japanese cabinets—in spite of what is known concerning the bureaucratic leanings of individual ministers—are closer in mental outlook (in spirit, one might say) to the House of Representatives than to the Privy Council, the genro, and the other surviving feudal controls. The statement so frequently made—that the House, or rather the majority party, is the tool of the cabinet rather than the cabinet the spokesman of the party—is, essentially, beside the point. Neither cabinet nor House of Representatives can make important decisions; wherefore it is relatively unimportant which controls the other, but also relatively probable that they will act so far as possible in combination against the forces that dictate to both.

The House of Peers, on the other hand, being by nature an ally of the aristocratic executive forces, is contemptuous of the lower house and consistently hostile to party projects. It is likely even to foil proposals for which the approval of the genro has been ob-

tained. From it the democratic movement may expect nothing but opposition. If its present complexion is to remain unaltered, the struggle for parliamentary government can be won only by a reduction of its powers. This can be attained without formal amendment of the constitution through a modification of the interpretation of 1892 under which its equality with the lower house was recognized. Presumably, however, the process of democratizing the Diet will be gradual and will move in step with similar changes in the other departments of the government.

It is not to be concluded that the Diet is an unimportant institution. What renders it increasingly significant is the growing interest of the people in its deliberations, reflected in elections, in attendance at sessions, in the hundreds of petitions received, and in other ways. Japanese bureaucrats, like others of their ilk, fear to arouse popular resentment. Moreover, they may honestly doubt the readiness of the country for a more liberal régime. There is danger in moving too rapidly, but there is danger also in moving too slowly. Between Scylla and Charybdis, the course is uncharted.

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CHAPTER XII

POLITICAL PARTIES

PRE-DIET PARTIES

Political parties in the Western sense date from 1877 and originated naturally with the evolution of the conception of constitutional government. The break with the past occurred when the important clan leaders Itagaki Taisuke of Tosa and Okuma Shigenobu of Hizen became dissatisfied with the distribution of offices, a distribution too favorable in their view to the Satsuma and Choshu clans, and organized parties to agitate against clan control and to prepare for the new order which the establishment of a parliament was expected to inaugurate. They were supported by many landowners adversely affected by financial reforms and by petty samurai out of work and no longer socially important.

A large number of political societies appeared prior to the founding of the first parties, their members coming together to study political science and to voice demands for a national assembly. Examples were the Aikokusha (Patriotic Society), later called the Kokkai Kisei Domei-Kai (United Association for the Establishment of a National Assembly), the Risshisha (Advancement Society), and the Seikensha (Political Discussion Society). By 1879 these societies numbered more than a score, and others were formed later. In 1880, they held a joint conference at Osaka which was attended by more than 1,000 members. The Emperor's promise, given in 1881, that in 1890 the desired Diet would be set up, quieted agitation and led to the organization of the earliest parties.

The first party to be formed was the Jiyuto (Liberal party), organized by Itagaki Taisuke and Goto Shojiro on October 29, 1881, with the former as president. Its platform called for a one-house parliament, universal suffrage and, to please the samurai, a strong foreign policy. The party was somewhat inclined to methods of violence, and a number of members had republican tendencies. It was recruited largely from the Kokkai Kisei Domei-Kai, and was inclined to favor the French system of government as a model for Japan.

The Rikken Kaishinto, or more commonly the Kaishinto (Reform party), was the second to be founded, on April 1, 1882. Its principal founder was Okuma Shigenobu, who received the support of Fukuzawa Yukichi, founder of Keio University and of the newspaper *Jiji Shimpo,* and his followers when their patron, Goto, failed of election to the presidency of the Jiyuto. The Kaishinto platform was less radical than that of the Jiyuto, calling for a parliament of the English type, limited manhood suffrage, internal administrative reform, and the rejection of imperialism as a national policy. Okuma resigned his offices in order to inaugurate the party, and a considerable number of his colleagues followed his example. In the beginning there was cordial feeling between the two parties, but antagonism was not slow in developing.

A third party, the Rikken Teiseito, or Teiseito (Imperialist party), was formed on March 18, 1882, to maintain the principle of absolute monarchy and to support its embodiment in the anticipated constitution. Its founders were Fukuchi Genichiro, Mizuno Torajiro, and Maruyama Sakura (all editors) and others, and its members favored an actual restoration of imperial powers as opposed to the transfer of power from the Tokugawa clan to other clans, but under constitutional restrictions.

The programs of all three parties at their inception were highly theoretical, being concerned principally with the question of what type of government the constitution should provide. The Jiyuto thinkers wanted popular sovereignty, *à la* Rousseau. The Kaishinto men thought it sufficient to restrain the monarchy within constitutional limitations, emphasizing the importance of a Diet. Both of these groups were strongly opposed to the Prussian type of constitution, which was supported by the Teiseito leaders on historical grounds. Their arguments aroused much interest and discussion in educated circles, and even affected the thinking of tradesmen and farmers.

From the outset the government was opposed to parties and their activities, and for about twenty years it followed a policy of interference. Its first move was the promulgation in 1875 of a press law, a new feature in Japanese politics, which restricted the freedom of the press and of publication in general. This law was rendered more stringent by revision in 1883. So rigorously was it applied that "the suppressions and suspensions of newspapers and the arrests and imprisonment of the editors, proprietors, and man-

agers were of daily occurrence."[1] The prospects of party development without a free press were slight.

A second obstacle to party progress was the legislation of 1880 and subsequent years regulating meetings and associations. It required all party documents—constitutions, by-laws, lists of members, etc.—to be registered with the police. Police permission was necessary for any meeting, public or private. The law forbade advertisements of meetings and letters of invitation, also outdoor meetings. Policemen were authorized to attend all political meetings and to use their discretion as to the propriety of the discussion and of its continuance. Parties were forbidden to establish branches and to communicate with each other: hence the rise of numerous local parties sympathetic toward the larger organizations. These restrictions, which appear unnecessarily severe, were partially explained by the government's tendency to overrate the dangers involved in the radical speeches and writings of the time.

The official attitude declared in such ordinance as these intimidated the parties and caused them either to dissolve or to cease active agitation. Itagaki and Goto, Jiyuto leaders, took a trip abroad during the winter and spring of 1882–1883, it was said at government expense. The Jiyuto dissolved in 1884; the Kaishinto did not dissolve, but it lost its president, Okuma, and ceased to keep a register of members. A hiatus of seven years intervened before the establishment of the Diet revived an effective interest in party organization and activity.

This period was not, however, without significance in party history. In 1887, Count Goto organized the short-lived Daido Danketsu (General Agreement Association), which was composed of former liberals, progressives, and conservatives united in opposition to the government. Moreover, there occurred a series of incidents of a violent character which indicated the existence of a genuine disapproval of official methods of repression. In one such case a conspiracy was discovered against a prefectural governor who had acted contrary to the advice of the assembly in the prefecture. In another, known as the "Osaka Affair," a plot to assist the reform party in Korea with arms was frustrated. In a third case, the "Kabayama Affair," a group of discontented factionalists incited rebellion, asserting in a published manifesto that "Government is instituted for the protection of freedom and the natural

[1] G. E. Uyehara, *The Political Development of Japan* (London, 1910), p. 98.

rights of the people." Always the police were alert, and the plots were nipped in the bud. Their immediate effect was unfavorable to the liberal movement, as legal restrictions upon the press and public meetings were tightened.

The climax of repressive legislation for this period, which came in December, 1887, was a so-called peace preservation law. It prohibited, under severe penalties of imprisonment and fine, all secret societies and secret meetings, it authorized the confiscation of printing-presses used in publishing papers or books found to be dangerous to peace and order; and it threatened with banishment from the district for three years any resident of Tokyo and its environs who should fall under suspicion of an intent to disturb public tranquillity. For the application of such drastic provisions of law, no court action was required. On the day of its promulgation the law was enforced with appalling severity. The Minister for Home Affairs, Count Yamagata Aritomo, who was head of the Choshu clan and the most powerful individual in the cabinet, banished nearly 600 persons, including practically all the important party men and agitators in the capital. No reasons were given for the action; to ask the reason was to court arrest and imprisonment. However, Count Okuma, known as a tribune of the people, was appointed Minister of Foreign Affairs.

PARTIES IN THE DIET AND MINISTERIAL INDEPENDENCE

The first session of the Diet revealed the continued vitality of party politics, but also the dispersive effects of seven years in the wilderness. Nine parties or groups appeared, among them two which bore the old names, Jiyuto and Kaishinto. Itagaki resumed the presidency of the former, Okuma that of the latter. Although both leaders surrendered their posts as presidents when appointed to office, they continued to be the real leaders of the parties. The identity of these two parties was preserved through succeeding years under varying titles; the Jiyuto exists to-day as the Seiyukai, while one section of the Kaishinto may be traced into the Minseito. From them as parent trunks numerous shoots have sprung, and to them from time to time straying offspring have returned.

Party history necessarily is, in part, an aspect of constitutional history. The task of distinguishing party motives from more general and more altruistic interest in the furtherance of representa-

tive government is always difficult. In Japan, constitutionalism has been the constant slogan of minorities, and if the slogan most often has been in fact an excuse rather than a reason, the result of party struggles for selfish ends has nevertheless been the progress of liberalism.

Japanese constitutional theory allows for very limited popular participation in the determination of policy. The government, as we have already seen, is in theory an absolute monarchy, and the ministers are responsible to the Emperor. The theory, however, fails to represent the facts, since the Emperor neither determines nor administers policy. Hence it is clear that in their efforts, consistently exerted from the first session of the Diet, to control policy and to check upon administration, the parties have been no less inclined to ignore the letter of the constitution than the members of the older bureaucracy. Both sides in the long-sustained tug-of-war have been following a tradition of vicarious rule. But the parties have been at a disadvantage due to their inexperience, their apparent inconsistency with constitutional principles, and other weaknesses.

The first period of party history under the constitution, that from 1890 to 1900, is marked by the aloofness of government officials from party membership. The principle of ministerial independence was expressed by Count Ito as president of the Privy Council, immediately after the promulgation of the constitution:

"It cannot be helped if, as the people acquire advanced political ideas, political parties grow, and if there are political parties there will be conflicts in the Diet. But it is absolutely necessary to the government to have no connections whatever with any political party. The sovereign power of the State resides in the Emperor; its exercise, therefore, must be absolutely independent of and impartial to all parties; so, to every subject, there will be 'equal recognition and equal benevolence.' If the Ministers of State who assist the Emperor and conduct the government with all its responsibilities have any relation with political parties, it is impossible for them to maintain this impartiality." [2]

[2] Uyehara, *op. cit.*, p. 218. In another place ("Fifty Sessions of the Japanese Imperial Diet," by E. W. Clement and Uyehara Etsujiro, *Transactions of the Asiatic Society of Japan*, New Series, II, 5–35), the latter (p. 16), divides the history of the relations between governments and parties to 1924 into three periods: "(1) 1890–1898—covering the period from the first session to the twelfth, that I call the period of 'Clan Statesmen' or of 'Ministerial Independence'; (2) 1899–1911—extending from the thirteenth session to the thirtieth, which I call the period of 'compromise' of bureaucrats with party leaders, like Saionji and Katsura; (3) 1912–1924—covering the period from the thirty-first session to the forty-eighth, that I call the period of cabinets with the open support of a political party or parties."

The aloofness of the official hierarchy from party organizations did not prevent the officials from using any means, juridical or political, to defeat party candidates for seats in the *Shugi-in* (House of Representatives). The various ordinances restrictive of the press and of freedom of speech and association were enforced with rigor, and candidates favorable to the government received support. In the first election, held July 1, 1890, the candidates supporting the government were in general spoken of as belonging to an "official" party (*rito*), while those without government affiliations were classed together as the "peoples' " party (*minto*).[3] The same distinction was recognized in the eight subsequent elections, but was dropped in 1896 because of the beginning of temporary affiliations between the government and the parties.

The outstanding fact in the early years of Diet history is the strength shown in the elections by the democratic parties. In the first election, held on July 1, 1890, they won 170 out of the 300 seats in the lower house. Of the 170 members, 130 were adherents of or affiliated with the Liberal party (*Jiyuto*) and forty with the Reform party (Kaishinto). The parties were not, however, unified but were composites of factions. In spite of these divisions, there was excellent collaboration in the early sessions, resulting in defeats of government budget proposals and the passage of liberal legislation, which demonstrated to Ito and other clan statesmen the reality of the new political agencies and the necessity of finding methods of obtaining their coöperation. But for the conservative attitude of the House of Peers, the peace preservation law would have been repealed in the first session. The powerful Yamagata resigned from the premiership shortly after the first session was prorogued.

The men who led the fighting in the lower house were principally journalists—Ozaki Yukio, Inukai Ki and Hoshi Toru. Many of these men had gone through the fire of governmental reproof, imprisonment, and exile; they were experienced controversialists; and they were widely known. Ozaki and Shimada Saburo had been associates of Okuma in the left wing of the *genro-in,* or senate. They were not bothered by niceties of constitutional law; in fact, as one writer sees it, "the process of wrecking the Constitution and the institutions it created was deliberately entered upon" by them.[4]

[3] Uyehara, *ibid.*, p. 219.

[4] W. W. Mc Laren, *A Political History of Japan During the Meiji Era* (New York, 1916), p. 208. See also U. Iwasaki, *Working Forces in Japanese Politics* (New York, 1921), p. 89.

But a constitution is merely a document to begin with. What it is to become is for history to say.

Obstructionist tactics against the budget caused Premier Matsukata, a Satsuma oligarch who had succeeded Yamagata of Choshu, to dissolve the House of Representatives and hold a special election. This election, in February, 1892, is notable as the Waterloo of the clan effort to continue to rule independently of a majority in the lower house. Matsukata and his home minister, Count Shinagawa, ran official candidates and instructed the prefectural governors to see that they were elected. Bribery, bullying, police interference, and other unfair means were employed by the government. These tactics provoked bloody encounters with the opposition parties and resulted in the death of twenty-five persons and the wounding of 388 others. But the government was badly defeated, only ninety-five of its candidates being returned.

Mr. A. H. Lay, author of an authoritative essay on the period of party history ending in 1902, remarks that "the utterances of the various parties when they first came into existence present no features in the main of a distinctive nature. All put forth excellent doctrines, but they were strongly characterized by vagueness. . . . The secret appears to lie in the fact that sentiment, rather than fixed and definite principles leading to well-defined ends, has been the motive power." [5] This absence of concrete principles and programs rendered the parties susceptible to opportunities of sharing office and power with the bureaucracy when the latter should offer to share its prerogatives with the despised but troublesome politicians.

BEGINNINGS OF PARTY REPRESENTATION IN GOVERNMENT

From the beginning there were groups in the House of Representatives which consistently supported the government, apparently without any idea of obtaining ministerial portfolios for their members. Shortly after the first election (1890), the so-called independents formed a party of conservative tendencies—the Taiseikai, or Great Achievements party—which openly supported the government. This was succeeded, in 1891, by the Kokumin Kiokai (National Society). In 1899 the latter dissolved, only to reappear as the Teikokuto (Imperialist party). From the first election an

[5] "A Brief Sketch of the History of Political Parties in Japan," *Transactions of the Asiatic Society of Japan*, XXX, Pt. III, 363–462.

"independent" usually has been a candidate without party, not a person of independent views. "Independence" has been the flag of opportunism, and as parties have grown in strength the number of independents has decreased, until at present it is very small.

As already indicated, the clan statesmen were unable to control elections sufficiently to obtain a majority in the lower house. They were compelled, therefore, either to attempt to rule by ordinance, ignoring the recalcitrant representatives, or to find a *modus vivendi* that would admit political parties into the scheme of government. Apparently the former idea was not considered. The alternative—collaboration with the constitutionalist parties—was distasteful to the oligarchs and, naturally, was adopted only by degrees, as necessity dictated.

An ordinance of 1890 made it illegal for parties to amalgamate. To accomplish a fusion of membership, it was necessary for parties to dissolve and set up a new party. That this regulation militated against the formation of a single great opposition constituted mainly of the Jiyuto and the Kaishinto is undoubted, since each was jealous of its prestige and unwilling to lose its identity. Indeed, each party had its factions which quarreled over trifles and were likely to leave it at the call of a leader. The first decade of party history after the Diet was opened is filled with references to small and short-lived parties or groups.

The major parties presented a united front in the *Shugi-in* in the first four sessions. In the third session, they passed a representation to the government in the following terms: "The cabinet ministers should consider their position, and, accepting their responsibility, should decide upon suitable measures. Otherwise the fundamental principle of representative government will be destroyed."[6] In the fifth session (1893–1894), they were disunited. The Jiyuto showed inclinations favorable to the government, the premier, Ito, having made a prior arrangement with its leader, Itagaki, which was the first step toward Ito's entrance into the party. The tactics of Okuma, however, heading the Kaishinto and contriving deals with independents and previously pro-government groups, maintained an opposition majority in the fifth and sixth sessions, both of which resulted in dissolutions.

The seventh and eighth sessions (1894–1895), were war sessions in which party politics was taboo. In the ninth session, for the first time, the cabinet, still headed by Ito, controlled a peace-time

[6] Mc Laren, *op. cit.*, pp. 216–217.

majority, the premier having extended his arrangements with the Jiyuto to other groups between sessions. Count Itagaki was appointed Minister of Home Affairs in 1896, being required first to resign from the presidency of the Jiyuto. Another prominent Jiyuto leader, Hoshi Toru, was made minister to the United States. Itagaki's resignation from party office was of purely formal significance, since his leadership of the party continued. Thus the liaison of the Choshu clan, as represented by Ito, and the Jiyuto party was in working operation on a limited scale before the Diet was six years old. Extremes had met more quickly than might have been expected.

EXPANSION OF THE KAISHINTO INTO THE SHIMPOTO

The Shimpoto (Progressive party) was brought into existence on March 1, 1896, at the instance of Count Okuma, in order to strengthen his party, the Kaishinto. The latter was dissolved and its fifty-one members, together with those of four other Diet groups counting among them forty-seven members, and five independents —103 in all—organized the new party.[7] Its principles were those formerly advocated by the Kaishinto, while the recent apostasy of the Jiyuto afforded a basis for additional emphasis upon the responsibility of ministers to the Diet. That the collaboration of the Jiyuto with a clan cabinet was regarded as apostasy from party principles is undoubted, and the fact is sufficient evidence on the question that naturally arises: Was the compromise regarded by contemporaries as a concession to liberalism by the clans or as a concession to clan government by the politicians? It does not, however, close the door to a more important question: Was the compromise justified in view of the subsequent development of the influence of parties?

Apparently the Shimpoto insistence upon party cabinets was a mere gesture, since Okuma, first resigning the formal leadership of his party, accepted the portfolio of Minister of Foreign Affairs under the Satsuma genro Matsukata in September, 1896. The alliance was conditional, however, and was terminated the following year when the Shimpoto leaders found themselves ignored in the actual decisions of the administration. This break with Satsuma argues but does not prove that Shimpoto was more liberal than Jiyuto, since Matsukata's attitude toward parties was less con-

[7] Lay, *op. cit.*, p. 427.

ciliatory than Ito's, allowing less room for their participation in affairs.

THE KENSEITO CABINET

By 1898 the contest for power had reached a stalemate. Clan cabinets had found their traditional privileges unavailing. Parties had tried compromise and found it richer in promise than in fulfilment. It was essential that some way be found to carry on the government. At this juncture the Jiyuto and the Shimpoto dissolved, and their members combined in a new party, the Kenseito (Constitutional party), on June 22, 1898. The Kenseito had no president, but was headed by a committee of four and a group of five so-called managers. Neither Okuma nor Itagaki was one of the nine, but these two, together with Hoshi Toru (Jiyuto), were the actual leaders of the party. The avowed object of the combination was to compel the ministers to acknowledge responsibility to the lower house.

The genro were divided concerning the action to be taken. Ito favored the organization of a government party. Yamagata opposed, and he was supported by the others. No clan statesman was willing to face the Kenseito in the *Shugi-in*, where it would control five sixths of the votes. Hence Ito's resignation and recommendation that Okuma and Itagaki be summoned to take office. Before the ink on the new party's roster could dry, it was in power (June 30, 1898), its members occupying all ministries save those of War and the Navy. Ministers were not required to sever connections with their parties. But after four months in office, and before it had met the Diet, the cabinet resigned (October 31, 1898).

The Kenseito fell apart from the weight of its own incongruous elements. No real fusion occurred. The Shimpoto insisted upon five cabinet posts to the Jiyuto's three. A general election was as bitterly fought between the two factions as though they had remained openly opposed. In October, 1898, the Jiyuto members left the party, but took its name for themselves. Thereupon the Shimpoto members assumed the title Kenseihonto (Original or Real Constitutional party). Both branches retained the program of the first Kenseito.

The failure of the first attempt at responsible government was due, not to any unique deficiency in Japanese political capacity, but to the reality of party life. The fact that the Republican and

Democratic parties in the United States stand upon platforms and represent interests very difficult to differentiate leads no one to suppose that the two parties could fuse into one and expect to succeed in a joint cabinet. A political party exists primarily to obtain power through accession to office and only secondarily to effectuate idealistic notions of self-sacrifice for a great common good. The next step, had the clan statesmen been sentimentally inclined, would have been an imperial command to the Shimpoto leaders to take office alone. Instead, the chief militarist, Yamagata, reestablished the former order, which was destined to survive for another two decades.

THE SEIYUKAI FOUNDED

The restored system was that which had evolved by 1896—bureaucracy seasoned with party influence so far as required to secure the passage of necessary legislation. The parties were compensated with offices and with legislation of a liberal, but not a radical, character. Thus the experience and astuteness of the genro and their political descendants, the oligarchs who stood on the top rung of the bureaucratic ladder, continued to be utilized, while a very gradual liberalizing process operated concurrently. Too facile condemnation of party opportunism may mean overlooking the important fact that Japan's progress toward democratic politics has been accomplished in circumstances of peace and order that have promoted economic and social progress.

The Kenseito supported the Yamagata government in the sessions of 1898–1899 and 1899–1900. A single cabinet post, that of finance, was allotted to the party; a new election law of a much more liberal character than the first law was passed; and a large amount of money was distributed in bribes. With the small share in the conduct of affairs begrudged to them, the Kenseito people were dissatisfied, broke with Yamagata, and turned to Ito, inviting him to establish a new party under his leadership with the Kenseito as a nucleus. Ito and a Choshu colleague, also a genro, Count Inouye, carried out a project which they had previously come to believe inevitable, and the Rikken Seiyukai (Party of Friends of Constitutional Government), was founded on September 25, 1900. Twelve days previously the Kenseito was dissolved.

Thus the union of the newer political method with the old was dignified by being given public recognition. That it involved an

increase of party influence was proved by the allotment of four portfolios to old Jiyuto men and the remainder, excepting those of War and the Navy, to which only military and naval officers respectively were eligible, to other members of the Seiyukai. The latter, like Ito, were representatives of the bureaucracy. Itagaki did not join the Seiyukai.[8]

The Seiyukai platform was no whit less vague than those of its predecessors. It stood for the strict observance of the constitution; it aimed to advance the prosperity and promote the civilization of the country. Officials were to be appointed with "scrupulous vigilance" and be bound by "strict discipline." Good relations with foreign powers were to be cultivated and effective protection secured for national interests. The party would encourage and promote education and morals, agriculture, industry, transportation, and commerce. It would "direct . . . efforts toward the realization of the object of local self-government." It promised to "shape [its] actions in accordance with the requirements of public interest and always endeavor, in the spirit of self-admonition, to guard [itself] against falling into the old evils and abuses."

Ito's preamble to the above list of general ideals was quite specific and distinctly conservative. He laid down the bureaucratic interpretation of the Emperor's prerogative which, he affirmed, secured to the sovereign "absolute freedom to select his advisers from whatever quarters he deems proper, be it from among the members of the political parties or from circles outside of those parties." He made it pellucidly clear that excellence in administration was to be preferred above any tendencies to a system of spoils.[9] But Ito must have known that a clan-party alliance would involve a process of give and take that, in the course of years, would produce a system as yet unconceived.

Lay remarks that "the party accepted Marquis Ito on his own conditions and knowing that his views as to government by party did not coincide with their own." He records, however, the significant facts that the Kenseihonto was disinclined to coöperate or unite with the new party and that the Teikokuto passed a resolution expressive of the opinion that the attitude of the Seiyukai toward the constitution on the point of responsibility violated its

[8] U. Iwasaki, *Working Forces in Japanese Politics* (New York, 1921), p. 92, states that "The Jiyuto group . . . [had] found itself without a leader who could possibly guide it to power, since Itagaki's political prestige had been ruined by the failure of the Wai-Han [Okuma-Itagaki] cabinet."

[9] Mc Laren, *op. cit.*, pp. 263–267.

principles.[10] Even more significant was the action of Ozaki Yukio, one of the most liberal members of the Kenseihonto, in passing over to the Seiyukai. And it would appear that it was in part the strong insistence of the party men upon the resignation of Ito's appointee to the Ministry of Finance that caused Ito to resign the premiership after only six months of power. More influential upon his retirement was the opposition encountered in the House of Peers, previously his stronghold but now dominated by Yamagata. Perhaps it might be suggested that Ito, who never again entered the cabinet, had made, possibly inadvertently, a "sacrifice play" for the cause of constitutional progress. He had given the weight of his influence to the establishment of a party system. He was disappointed in his inability to contrive a balance between the party men and the oligarchs. Realizing that the predominance of the former was as yet inopportune, and himself a conservative, he could neither devote himself to the democratic cause nor repudiate his colleagues in the genro and the House of Peers. In July, 1903, Ito and Saionji changed places, the former becoming president of the Privy Council, the latter taking the presidency of the Seiyukai.[11]

THE CHOSHU-SEIYUKAI ALLIANCE

For fifteen and a half years—from October 31, 1898, to April 16, 1914—the leaders of the Shimpoto (the Kenseihonto reassumed this, its former title, early in 1902) failed to receive the imperial summons to take office. In December, 1900, Marquis Okuma accepted an invitation to become its president, and he retained that position until February, 1907, when he retired to make way for younger men. The Seiyukai was the largest party in the House of Representatives during the whole period and possessed an absolute majority from 1900 to 1903 and from 1908 to 1915. It was logical enough, therefore, for the governments to turn to the Seiyukai, and the Seiyukai naturally made the most of its opportunities. The Shimpoto men were not so impractical as to resist offers of alliance with the ministries, but their numbers were never sufficiently large to render advances to them worth while. Nevertheless

[10] Lay, *op. cit.*, pp. 449–451. For platform, see Appendix XI.

[11] Henry Satoh, in his *Evolution of Political Parties in Japan* (Tokyo, 1914), pp. 67–68, states that Hoshi Toru, Minister of Communications and a Jiyuto firebrand, was assassinated (June 21, 1901) because, while "there was no evidence of his direct connection with any form of political corruption . . . , he was looked upon as the boss of all the tricks resorted to by Constitutionalist politicians."

they held together in opposition, mustering about ninety seats at the several elections of the period.

Between 1901 and 1913 five cabinets held office. Two of these were headed by Saionji, the liberal bureaucrat who had succeeded Ito in the presidency of the Seiyukai, the other three by General Katsura Taro, a Choshu clansman, successor of Yamagata as representative of Choshu and the army in the leadership of cabinets. Katsura held office for nearly eight of the twelve years that compose the period. The interludes of Saionji leadership were not compelled by the failure of Katsura to control majorities in the Diet, since the Seiyukai supported him after two ineffectual efforts at opposition, both of which resulted in dissolutions. Katsura appointed no party men to his ministries, but managed to find other methods of propitiating them. Saionji appointed members of the Seiyukai to certain ministries, non-party men from the upper house to others. He refused, for financial reasons, to support the army's program of 1912 for two divisions in Chosen (Korea), and was forced out when unable to obtain a Minister of War.

The thread of historical continuity joining the imperialist groups reaching back to the Teiseito was knotted a fifth time in 1905 when Katsura instigated the formation of the Daido (Union) Club. It embraced the former Teikokuto and a number of Seiyukai and Shimpoto malcontents. In 1910 this group again renamed itself, becoming the Chuo (Central) Club. Its membership was small, averaging forty-five.

The Kokuminto (Nationalist party), was organized in March, 1910, replacing the Shimpoto (Progressive party). Inukai Ki was the principal founder of the new party, which attracted a sufficient number of outsiders to present a front of ninety-two members in its first session (the twenty-sixth). The party carried on the liberal traditions of the old Kaishinto.[12] But it was reduced to a group of forty when, in February, 1913, Katsura organized the Rikken Doshikai (Constitutional Fellow-Thinkers' Society), which absorbed a majority of the Kokuminto, beginning parliamentary life with ninety-three members. Thus at the first opportunity a large group of Progressives, contemned and ignored by Katsura for nearly twelve years, went over in a body at his nod. Oishi Masami, Shimada Saburo, and Taketomi Tokitoshi led the defection to Katsura.

[12] For platform see Appendix XII.

RISE OF THE KENSEIKAI

The change above described occurred suddenly; it recalls the action of the Jiyuto, which had prided itself upon its radicalism, in seeking the leadership of another Choshu clan statesman, Ito, in 1900. In the present instance, a residue of Okuma's old following, led by Inukai, remained stanch in the Kokuminto. Katsura's move was in obvious imitation of Ito, but it overrated his own influence and underrated that of the Seiyukai. Consequently he failed to attract enough non-Kokuminto men to provide a working majority in the lower house. The Chuo Club, a few Seiyukai men, and a handful of "independents" entered the Doshikai. From the beginning it exhibited a greater interest in urban affairs than any of the previous parties had shown.

More probable of success would have been an open alliance with the Seiyukai, which had submitted for years to Katsura's direction, and which was about to lose its president, Saionji, to the exalted ranks of the genro.[13] That advances were not made was due, apparently, to mutual resentment, the product of an arranged marriage which had not turned out happily. One writer quotes Katsura as calling the Seiyukai "a pack of blackmailers and thieves."[14] No doubt the Seiyukai would have retorted with the Japanese equivalent of the proverb of the pot that called the kettle black. There is general agreement among contemporary writers that Katsura was a genuine convert to party government. This is not to say that Katsura was a convert to democracy but only, like Ito, to a conviction that an open alliance with the party men had become essential to the operation of government.

An epochal event occurred during Katsura's last ministry, namely, the refusal of the Seiyukai to follow an informal suggestion of the Emperor, given verbally to Saionji, that it support Katsura. The Emperor Meiji had been succeeded in 1912 by the Emperor Yoshihito, whose personal influence was not comparable to his father's. This fact, however, was of slight importance beside the omnipotence of the throne, which the Seiyukai, well recognizing that the real source of the imperial suggestion was Katsura himself, appeared to be ignoring. The precedent thus set was not,

[13] Katsura approached very close to such a move in 1910 when he openly invited the Seiyukai to ally with him and the party acted favorably. P. S. Reinsch, *Intellectual and Political Currents in the Far East* (Boston, 1911), pp. 371–373.

[14] A. M. Pooley, *Japan at the Cross Roads* (New York, 1917), p. 138.

in fact, a rebuff to the throne but a courageous warning to officials, however highly placed, who would seek to accomplish personal ends through the prerogative.[15] The result of the party's stand was the downfall of Katsura's cabinet and the resignation of Saionji from the Seiyukai.

Ozaki Yukio, who had formed the Seiyu (Political Friends') Club, in 1913, thundered with extraordinary courage in the Diet on February 5, 1913, against ministers who abused their powers by acting arbitrarily under the protection of an imperial command. He excoriated people "who always mouth 'loyalty' and 'patriotism,' and who advertise themselves as the sole repositories of these qualities, but what they actually do is to hide themselves behind the throne and shoot at their political enemies from this secure ambush. The throne is their rampart. Rescripts are their missiles."[16] Ozaki was ably supported in the press, which showed unusual grasp of the constitutional issues involved in the controversy. The intensity of party feeling communicated itself to the people of Tokyo, who rioted in the streets, attacked pro-Katsura newspaper offices, and overwhelmed the police.[17]

The platform of the Doshikai contained thirteen planks, of which at least six were unusually definite.[18] Most interesting was the fourth item—"that all schemes for supplementing either the naval or military forces shall be determined by a defense committee." Other proposals were for retrenchment in expenditures and loans and for lower taxes. Revision of the civil service regulations was advocated "so that all able men may be eligible for appointment." No reference to the struggle for responsible government appeared in the platform. Yet the Kokuminto leaders who joined the new party based their action, in a published manifesto, upon the ministry's agreement with their views upon that subject.[19]

The Kenseikai (Constitutional party), was organized in March, 1915. At the death of Katsura in October, 1913, the Doshikai passed under the presidency of Baron Kato Taka-akira, previously its vice-president. Kato was well versed in the English party system and believed in it as a model for Japan. As a young man he served in the great business house of Mitsubishi and married the sister of Baron Iwasaki, head of the firm. He was outspokenly opposed to

[15] H. Satoh, *op. cit.*, pp. 89–91.
[16] A. Morgan Young, *Japan under Taisho Tenno* (London, 1928), p. 28.
[17] *Japan Chronicle*, Feb. 13, 1913, pp. 291–293.
[18] Mc Laren, *op. cit.*, p. 347, note. See also Appendix XIII in this book.
[19] Mc Laren, *op. cit.*, p. 348, note.

genro government. Kato was the bridge or go-between by which the Doshikai was metamorphosed into the Kenseikai.

The preliminary to the change was the return of Okuma to the political stage as premier on April 16, 1914. He had never lost his influence in his old party, and its members rallied to him, their leader, Kato, becoming Minister of Foreign Affairs. A general election in March, 1915, turned Okuma's minority into a majority, and the enlarged Doshikai threw off its connection with the deceased Katsura by adopting the title Kenseikai (Constitutional party). Okuma's cabinets, however, were not made up exclusively of party men. Paradoxically, the bill for the increase of the army, which had wrecked two cabinets, was put through the Diet by the popular Okuma ministry.

The election of 1915 was the first in which a government, defeated in the Diet, appealed to the people. Previous dissolutions had been punitive measures for the discipline of members who had disobeyed orders upon how to vote. Cabinets had taken no part openly in previous elections, though in secret they had used every device known to them. The Okuma government was the first to appear to acknowledge a responsibility to the people.[20]

The idea of merging the Doshikai with the Chuseikai, a group led by Ozaki Yukio which obtained thirty-five seats in the 1915 election, the Okuma Society, which won twenty-nine seats, and a group of friendly independents, was broached in March, 1915, and the practical benefits of a fusion were enjoyed by Okuma. It was not, however, until October 10, 1916, contemporaneously with Okuma's resignation, that the inaugural ceremony of the Kenseikai was held.[21] Prior thereto—on the same day—the Doshikai was dissolved. Viscount Kato, its president, was chosen to head the Kenseikai, and he was recommended by Okuma as his successor. The genro ignored the suggestion, although the Kenseikai was the majority party, and nominated a Choshu clansman favored by Prince Yamagata, Marshal Terauchi Seiki. Okuma's resignation was due to machinations of the Yamagata clique, and also to opposition within the Kenseikai. He had resigned once before, under the reproach of the corrupt tactics used by his Minister of Home Affairs, in July, 1915, but had withdrawn his resignation at the instance of the genro.[22]

[20] Editorial, *Japan Chronicle*, April 1, 1915, p. 466.
[21] *Japan Chronicle*, May 15, 1915, p. 551; Oct. 19, 1916, p. 615.
[22] *Ibid.*, Aug. 5, 1915, p. 225; April 3, 1930, p. 327.

Premier Terauchi invited the support of the Seiyukai, the minority party, but did not offer it ministerial posts. The party wavered at first, but soon decided to become the premier's men.[23] The Kenseikai sought an avenue by which it might appoach Terauchi, a paradox less difficult to interpret when it is recalled that the Doshikai was formed to support a similar figure, Katsura. Terauchi informed a conference of governors that Okuma had offered him the support of the Doshikai and other minority parties if he would carry on Okuma's policies, but that he had refused the offer.[24] In 1914 Saionji had resigned the presidency of the Seiyukai, and to it had succeeded the vice-president, Hara Takashi, who proved to be the ablest "boss" so far developed in Japanese party history.

A general election was held in 1917 in order to overcome, if possible, the Kenseikai majority. The speech of Baron Goto Shimpei, the home minister, to the governors prior to the election was a strong denunciation of the Kenseikai and amounted to an order to the prefectural heads to favor the Seiyukai candidates.[25] The Seiyukai won 168 seats, the Kenseikai 123. Forty-eight neutrals supported Terauchi in the extra session of 1917, thus giving him a majority. From the neutrals were created the Shinseikai and the Seiwa Club.

HARA SETS A NEW PRECEDENT

At the fall of Terauchi, unhorsed by the rice rioters, the genro designated Hara as premier. It was understood that Prince Yamagata had little stomach for Hara, but accepted him upon his promise to appoint General Baron Tanaka Giichi Minister of War.[26] Tanaka was able to engineer the expenditure of huge sums on the army and navy. Since Hara was the first commoner to hold the premiership, his appointment must be regarded as a stage in the development of parliamentary government, even though Hara was a bureaucrat of the first water and a swaggering patron of *soshi,* ruling his party with a high hand. His rise to power broke

[23] The announced attitude was that of neutrality and the support only of measures satisfactory to the party, a program called in Japanese *zeze-hihi-shugi* (*ibid.*, July 18, 1918, p. 108).

[24] *Ibid.*, Feb. 15, 1917, p. 255.

[25] *Ibid.*, Feb. 22, 1917, p. 302. The *Chronicle* (Mar. 1, 1917, p. 340) reported the offer of 10,000 yen to each of thirty candidates who should satisfy the president of a certain spinning company; also of 30,000 yen to the Kokuminto by the head of a shipping company.

[26] *Ibid.*, July 13, 1925, p. 206; the *Chronicle* quotes the *Yorodzu.*

the monopoly hitherto held by persons of high noble or military rank. Hara selected a cabinet from his own party, with the exception of the holders of the foreign, war, and navy portfolios.

Hara held office until assassinated on November 4, 1921, by a young railway employee, who claimed to have acted upon his own initiative in protest against corruption and degeneracy in politics. Hara possessed considerable force of character. He attached men to him by bonds of personal loyalty, did not pose nor act as a reformer, and was devoted to his party. He sought a clear majority and circumvented the bold tactics of the Kenseikai in introducing a manhood suffrage bill by dissolving the House. Ozaki Yukio and others were expelled at this time from the Kenseikai for speaking on the floor of the house contrary to the decision of the caucus on the manhood suffrage bill.[27] In the ensuing election the Seiyukai obtained 282 seats, thus attaining complete security so long as the party held together.

It was during Hara's ministry that the influence of business men in politics began to supplant that of the clan leaders. The governmental paternalism which had extended help through subsidies, tariffs, and the transfer of well-fledged industries from official to private hands was beginning to see its creatures turn upon it in an effort at control. Such editorials as the following are to be found:

"In Japan . . . many of those who claim to be the bulwark of the Imperial Household are content to be slaves of millionaires. . . . Statesmen can hardly do anything without allying themselves with monetary magnates. Every influential statesman is backed up by some monetary interest, and the connection between business men and statesmen is getting more intimate than ever. . . . The Mitsui Club, the Industrial Club and the like practically have power to control the foreign office and the police. . . . The recent Tokyo municipal scandal has been brought because some officials have eaten up the gravel which should have been laid on the roads. But the man who once supplied the imperial army with tinned pebbles is now a proud and fashionable baron. The late Marquis Inoue was intimately connected with Mitsui, Count Terauchi with Takada and Prince Katsura with certain millionaries. This objectionable connection between politicians and business men is increasing both in intensity and in scope, involving as it now does every small politician and small business man." [28]

[27] Young, *op. cit.*, p. 120. *Japan Chronicle*, Feb. 17, 1921, p. 211.

[28] Translation from the *Yorodzu*, in *Japan Chronicle*, Dec. 30, 1920, p. 896. Ministers and secretaries held offices in business firms in many instances (*ibid.*, March 24, 1931, p. 403). The Seiyukai government, in the capacity of the South Manchuria Railway, purchased the Talien coal mine from a com-

Another development of the time was the increase to perceptible proportions of division in the House of Peers along the lines of the major parties in the lower house. The Peers did not leave their own groups nor profess membership in the Seiyukai or Kenseikai, but lines of cleavage were apparent in the debates and votes. The change was ascribed to the decline of genro influence and to the desire of the Peers for "spoils," for which they had to look to the parties. Somewhat optimistically it was suggested that this development heralded the decline of the upper house to the position of a mere "annex" to the House of Representatives.[29]

BREAK-UP OF THE SEIYUKAI

The tragic death of Hara was followed by the accession of Viscount Takahashi Korekiyo, Hara's Minister of Finance, to the presidency of the Seiyukai and also to the premiership. He was a man of liberal principles, not the type of boss represented by Hara, and he found himself incapable of holding his party in line. When two members of his cabinet stood out against his plan to reorganize the cabinet, he resigned, after only seven months in office. Only then were the recalcitrant ministers expelled from the party.[30]

Yamagata died early in 1922, but the influence of his principles remained. Instead of recommending Viscount Kato Takaakira, leader of the opposition, as premier, the surviving genro, Saionji and Matsukata, turned to Admiral Kato Tomosaburo, who empaneled a cabinet of peers from the upper house groups Kenkyukai and Koyu Club, which were regarded as friendly to the Seiyukai. Before taking office, Admiral Kato received assurances of Seiyukai support.[31] The revival of non-party cabinets, spoken of as "transcendentalism," was effective for two years, during which Admiral Kato, after fifteen months of office, was relieved by Admiral Yamamoto Gombei and he, in turn, gave way in four months to the presi-

pany headed by one of its own party members, who was reported as having given a million yen to the party. Another "deal" of the same character was the purchase by the S.M.R. of a steamer belonging to a friend of a party leader at the rate of 325 yen ($162½) per ton (*Japan Chronicle*, Mar. 24, 1921, p. 404). The "crop of scandals" that marked these years is briefly discussed in Morgan Young's *Japan under Taisho Tenno*, Ch. XXVII. Mr. Young quotes a Kenseikai member's accusation of a number of Seiyukai members of receiving money from the opium monopoly in Dairen: "Bushido restrains me from naming them but it is unnecessary. Look at them; they are white with fear" (p. 279).

[29] *Japan Chronicle*, March 24, 1921, pp. 405–406.

[30] *Ibid.*, June 8, 1922, p. 836.

[31] *Ibid.*, June 22, 1922, pp. 886–887.

dent of the Privy Council, Viscount Kiyoura Keigo, who resigned in June, 1924. It may be said for Kiyoura that he made no effort to control the regular general election which occurred during his administration.[32]

The Kokuminto was dissolved upon its own motion on September 1, 1922, after thirty years of continuous existence. In the previous March a small group of Kenseikai men had left their party after failing to obtain support from Kensaikai leaders for a plan to amalgamate the Kenseikai, the Kokuminto, and the Koshin Club. Ozaki, Shimada, Tagawa, and other independents joined the seceders, but the Kokuminto took some time to make up its mind to a dissolution. Ultimately it did so with a view to an increased influence under a new name, declaring the purpose of working to reform party life. It had another object in view, namely, to preserve a group large enough (at least twenty-five members) to be recognized for committee appointments in the House of Representatives. The new group took the name Kakushin (Reform) Club and stated that it was not a party. Apparently the hope was entertained that members of the older parties might gradually be won over and the club thus built up to a size that would justify assumption of a party label.[33]

Another new political group, the Jitsugyo Doshikai (Business Men's Association) was inaugurated at Osaka on April 23, 1923, at a meeting called by the Business Men's Federation of Japan. The meeting was attended by 610 delegates from 124 business organizations. A manifesto was read criticizing the inclination of business men to depend upon the government and blaming them in part for the growth of professional political adventurers and corruption in politics. It expressed the importance of encouraging private enterprise. Mr. Muto Sanji, president of the Kanegafuchi Spinning Company, was elected president and allowed to choose the standing committee. The announced platform was strikingly liberal.[34]

[32] Young, *op. cit.*, p. 316.

[33] *Japan Chronicle*, Mar. 30, 1922, pp. 468, 469; Sept. 7, 1922, p. 327. The declaration of purpose is printed on the last cited page.

[34] The platform called for manhood suffrage, the decrease of legislation by ordinance and the increase of legislation by the Diet, abolition of taxes on business and land, reduction or abolition of customs duties, financial retrenchment, restriction of government enterprise, reform of official companies and banks, increased attention of diplomacy to commercial expansion, opening of the civil service to talent, reduction of military and naval appropriations, social legislation, and improved educational facilities (*Japan Chronicle*, May 3, 1923, pp. 605–606, 625). The editor of the *Chronicle* wrote: "The Business

The Seiyukai supported Admiral Kato faithfully and received in return his endorsement of desired projects. Admiral Yamamoto was opposed by the Seiyukai and received some support from the Kenseikai and the Kakushin Club. Reconstruction problems following the great earthquake raised political difficulties too great for Yamamoto to overcome, but his resignation was directly due to his assumption of responsibility for failing to prevent an attempt upon the life of the Prince Regent.

Viscount Kiyoura imitated Admiral Kato in setting up a cabinet wholly composed of members of the House of Peers. He failed, however, to secure the support of any party. Viscount Takahashi, president of the Kenseikai, resigned his peerage in order to enter the lower house and oppose Kiyoura. A split occurred in the Seiyukai, a large section, led by Mr. Tokonami Takejiro and calling itself the Seiyuhonto (Real Friends of the Constitution), being inaugurated on January 29, 1924. Mr. Tokonami's followers numbered 140 and were largely the younger men of the Seiyukai, men who called themselves reformers. The Seiyuhonto platform covered the wide field of possible political action with the customary trite generalities. In the general election of 1924, the Seiyuhonto espoused the cause of the government and was badly defeated by the combined forces of the other larger parties. Thereupon Kiyoura resigned and the régime of party cabinets was resumed.[35]

RETURN TO PARTY CABINETS

The division in the Seiyukai and the general election had given numerical superiority in the House of Representatives to the Kenseikai. The surviving genro, Prince Saionji, recognized the situation by recommending Viscount Kato, Kenseikai president, for the premiership. Kato had only 155 seats, and he found it expedient to set up a coalition cabinet. To his own party went three ministries, to the Seiyukai two, to the Kakushin Club one, to the Peers, one. The foreign, war, and navy ministers were not members of either house nor of any party.[36] The new cabinet took office on June 11, 1924. It managed to hold together for one session of the Diet and

Men's Party is the only political party in Japan which can be said to have a program" (*ibid.*, Feb. 21, 1924, pp. 247–248).

[35] *Japan Chronicle*, Jan. 17, 1924, pp. 80–81; Jan. 24, 1924, pp. 116, 126; Jan. 31, 1924, p. 152; Seiyuhonto platform printed in *Chronicle*, Feb. 7, 1924, pp. 157–158. See Appendix XIV in this book. Tokonami was backed by the Satsuma clan (*Trans-Pacific*, Mar. 5, 1927, p. 14).

[36] *Ibid.*, June 12, 1924, p. 818.

to pass the manhood suffrage bill (March 29, 1925). But the joining of forces was an act of convenience only and it persisted for but little more than a year.[37]

The Seiyukai strengthened its front during that period by securing the resignation of its president, Mr. Takahashi, whose forte was not party leadership, and the acceptance of the presidency by General Baron Tanaka Giichi, who retired from active military life to take the position and was influential because of his pleasant personality and his seniority in the Choshu clan. Rendering almost inexplicable what to Occidental observers may seem sufficiently paradoxical, the Seiyukai also sought and obtained the break-up of the Kakushin Club and the entrance into its ranks of Mr. Inukai Ki, stanchest of liberals in the days of greatest hardship for the parties, but of later years an opportunist with Seiyukai leanings, and a number of his followers. Thus in successive months, April and May, 1925, an outstanding militarist and an equally outstanding liberal joined forces to give new life to the party of Itagaki, Ito, Saionji, and Hara. The party wanted Tanaka because he was in favor with Saionji and a potential premier; it wanted Inukai to assist it in appealing to ten millions of new voters. Tanaka became president on April 10, 1925; the seceders from the Kakushin Club —and also a number from the Chusei Club, formed by thirty-nine independents in 1924—joined the Seiyukai on May 14, 1925. They raised the party's membership in the lower house to 139. The remnants of both disrupted clubs joined to form the Shinsei Club, which numbered thirty members.[38]

The rupture of the coalition at the end of July, 1925, was initiated by the Seiyukai, which favored a "positive" policy at home and abroad. Tax reform was the occasion of the split. Viscount Kato offered his resignation but was commanded to remain in office, whereupon he reorganized the cabinet on August 2, appointing Kenseikai men to all posts but the three customarily treated as nonpolitical—Foreign Affairs, War, and the Navy—and the Ministry of Education, which Mr. Okada of the House of Peers was allowed to retain.[39]

[37] Viscount Kato's cabinet was popularly called the "Mitsubishi government." Kato and his foreign minister, Baron Shidehara, had married into the Iwasaki family, controllers of the Mitsubishi firm, and Mr. Hamaguchi, finance minister, hailed from Tosa, native province of the Iwasakis.

[38] *Japan Chronicle*, April 16, 1925, p. 493; May 14, 1925, pp. 612–613; May 21, 1925, p. 653. A character sketch of Inukai by T. Baba is reprinted in *Japan Chronicle*, Feb. 27, 1930, pp. 193–195.

[39] *Ibid.*, July 2, 1925, p. 16; Aug. 6, 1925, pp. 174–175.

The Kenseikai, with 161 members to 139 for the Seiyukai, 111 for the Seiyuhonto, thirty for the Shinsei Club, nine for the Jitsugyo Doshikai, and thirteen independents, had only the slight comfort of a plurality. The Seiyuhonto held the controlling votes and was besought by both the Kenseikai and the Seiyukai to join their ranks. Premier Kato died on January 28, 1926, and was succeeded as premier and president by Wakatsuki Reijiro, who reconstructed the cabinet, but on exactly the lines adopted by Kato. A few days later a small group of twenty-one members, the Dokokai (Friendship Society), which had seceded from the Seiyuhonto in the previous December, joined the Seiyukai.[40]

FOUNDING OF THE MINSEITO

The remainder of the Seiyuhonto, ninety members, effected an affiliation with the Kenseikai on March 1, 1927, which resulted in the organization of a new party, the Minseito (Democratic party), on June 1 of the same year. By arrangement with the Seiyukai the Wakatsuki ministry weathered the regular session of 1926–1927 but resigned in April, 1927, when its emergency ordinance for relief of the Bank of Taiwan was rejected by the Privy Council. In May Hamaguchi Yuko succeeded Wakatsuki as president of the Kenseikai. Like his predecessors, Kato and Wakatsuki, Hamaguchi was a civil servant of career, a "bureaucrat." Prince Saionji disregarded the plurality of the Kenseikai-Seiyuhonto alliance, but probably expressed the general desire for a change in recommending Baron Tanaka for the premiership.[41] Tanaka's cabinet, aside from the war and navy ministers, was drawn entirely from the Seiyukai. He himself held the Ministries of Foreign and Overseas Affairs, in addition to the Prime Minister's portfolio.[42]

The Minseito counted 227 members in the House of Representatives, almost a majority. Its platform was short and vague, a composite of pious wishes for "more accurate reflection of public opinion in the parliament," removal of "the causes of social unrest by equalizing distribution," racial equality and the open door, equal-

[40] *Japan Chronicle*, Aug. 6, 1925, p. 173; Jan. 7, 1926; pp. 12–13; Jan. 21, 1926, p. 63; Feb. 18, 1926, p. 199; June 10, 1926, p. 682. A commission of inquiry in the House of Representatives established the fact that 5,000 yen each were offered to Seiyuhonto men to lure them back to the Seiyukai (*ibid.*, Mar. 11, 1926, p. 298; Mar. 25, 1926, p. 369).

[41] *Trans-Pacific*, Mar. 5, 1927, p. 14.

[42] Tanaka took office on April 20, 1927 (*Japan Chronicle*, April 28, 1927, p. 469).

ization of educational opportunities, and the reorganization of out-of-date institutions.[43]

MEISEIKAI AND KAKUSHINTO

During the session of 1926–1927 a small group of young men, led by Tsurumi Yusuke, son-in-law of Viscount Goto (who served as home minister under General Terauchi and also under Admiral Yamamoto), began to make speeches in the provinces, where radicalism had not developed but where dissatisfaction with current political ideals and methods existed. Apparently the inspiration of this activity was Goto, who had expressed disgust with politics and a determination, which he failed to attempt to execute, to clean house. The group took the provisional name Meiseikai (Liberal party) in April, 1928. The members expressed a belief in decentralization, amelioration of lower-class life, and international cooperation. Their slogan was "a universal square deal."[44]

A third product of this year of party reorganization was the Kakushinto (Reform party), a reconstituting of the Shinsei Club, which occurred on June 3, 1927, at Osaka. Its platform had a reformist ring, and Ozaki Yukio, accepted a post as adviser, though he declined to join the party, averring that his long experience had left him skeptical of all parties.[45]

Since the Tanaka cabinet was in a hopeless minority in the lower house, it was a foregone conclusion that its life during the Diet session would be stormy. To forestall a vote of no confidence, the premier obtained an imperial order of dissolution on January 21, 1928. In the ensuing general election, for the second time in the history of the Diet, a government failed to secure a majority, and this time failure was not due to high-mindedness concerning the use of campaign funds. Dr. Suzuki Kisaburo, the home minister, subsequently resigned under a fire of criticism for his interference in the election.[46]

[43] *Trans-Pacific*, June 14, 1927, p. 13.

[44] Other members were M. Ishii, K. Sawada, T. Toyota, and K. Shimizu, all writers; Professors K. Gorai of Waseda University and U. Kobayashi of Meiji University; and H. Nagao. *Trans-Pacific*, Feb. 19, 1927, p. 16. *Japan Chroniole*, April 26, 1928, p. 496.

[45] *Ibid.*, June 9, 1927, p. 631. A sketch of Ozaki's career appears *ibid.*, July 28, 1927, pp. 80–81.

[46] *Ibid.*, Jan. 26, 1928, p. 99. *Japan Year Book*, 1930, p. 75. This election, the first to be held under the new electoral law, gave the Seiyukai 219 seats, the Minseito 217, the Jitsugyo Doshikai four, and the remainder to neutrals and others.

The extraordinary session following the election lasted for seventeen days, and in that brief period the premier on two occasions suspended the session to evade a no-confidence vote. On the last day of the session a third escape was made possible by the failure of the Meiseikai—who had won a half-dozen seats—and other independents to support the Minseito. The Meiseikai insisted that certain points be embodied in the motion of no confidence which the Minseito considered unnecessary. Apparently the "Liberals" (Meiseikai) sought to play the major parties against each other to their own advantage.[47]

Mr. Tokonami, who had led the defection from the Seiyukai in 1924 and had created the Seiyuhonto, performed the same maneuver on August 1, 1928, at the expense of the Minseito. Taking the stand that the two major parties were too evenly balanced, he and six others formed the Shinto Club on August 11. Within a few days the club had grown to nineteen members and the Minseito had diminished proportionately.[48] Another small group, the Kensei Isshinkai, was formed of seven lower-house members who had left, or been dropped by, the Minseito.[49]

The session of 1928–1929 was highly tumultuous, and the government was unable to secure passage of its most favored projects. Premier Tanaka apologized to the House of Peers for failure to show discretion in connection with the resignation of the Minister of Education, but failed to escape a vote which condemned his

[47] The Meiseikai at first voted against a closure motion precedent to the vote of want of confidence. Upon a second closure motion, they voted for it. The way was then clear for the no-confidence motion, but the speaker refused to put the motion, stating that time was lacking before prorogation. *Japan Chronicle*, May 17, 1928, p. 616. Concerning the Meiseikai moves, the Osaka *Mainichi* said, "As to the attitude adopted by the Meiseikai towards the no-confidence motion, it was mean and crafty to a degree." Tokyo *Nichi Nichi* took a similar view: "No greater meanness is conceivable than this act of bad faith. The Meiseikai calls itself a group of 'new men,' but the general attitude of the party showed it utterly unworthy of the name" (reprinted in *Japan Chronicle*, May 17, 1928, pp. 616–617). Subsequently it was alleged that money had been paid to members to assure the failure of the no-confidence motion. The available evidence on this charge is conflicting. See *Japan Chronicle*, March 13, 1930, p. 257; April 3, 1930, pp. 342–343; April 17, 1930, p. 400; April 23, 1931, p. 458; June 25, 1931, p. 700. See also Osaka *Mainichi*, March 15, 1930, p. 2; March 17, 1930, p. 2; March 22, 1930, p. 1; May 7, 1930, p. 1; May 9, 1930, p. 2; Dec. 2, 1930, p. 1; April 15, 1931, p. 1; April 16, 1931, p. 3; June 23, 1931, p. 1. Shima Tokuzo, an Osaka financier, was convicted of bribing the party to the extent of 100,000 yen and was sentenced to prison for the act. Others convicted and sentenced were agents of Shima. Members of the Meiseikai were examined by the procurators but were not indicted.

[48] *Japan Chronicle*, Aug. 9, 1928, p. 181.

[49] *Ibid.*, Nov. 22, 1928, pp. 638–639. Professor Yoshino Sakuzo in the *Chuo Koron* charged that the Seiyukai had purchased such defections. See *Japan Chronicle*, Jan. 31, 1929, pp. 116–117.

procedure. However, a vote of no confidence was defeated in the lower house, thanks to the arrangements that had been made with "independents." The Meiseikai failed in an effort to unite the smaller groups in opposition to the government.[50] The premier and certain of his colleagues were harassed unmercifully over the clause "in the name of their respective peoples" in the Pact of Paris and in connection with the assassination of the Chinese dictator of Manchuria, Chang Tso-lin. On July 2, 1929, the cabinet resigned, probably at the suggestion of the genro, to the general satisfaction of the nation. The throne summoned President Hamaguchi Yuko of the Minseito to form a ministry.

ACCESS TO OFFICE OF THE MINSEITO

The cabinet selected by Hamaguchi contained five ministers who were not Minseito members—those of Foreign Affairs, War, the Navy, Finance, and Justice. Only one minister was of the House of Peers, Viscount C. Watanabe, Minister of Justice. Baron Shidehara was regarded as a party member in all but name, and General Ugaki was believed to be pro-Minseito. The cabinet was distinctly a party cabinet, and Premier Hamaguchi was the dominant spirit until a would-be assassin wounded him so badly that he was compelled, after a hard fight to recover sufficient strength to carry on, to resign the premiership and the leadership of the party. Former Premier Reijiro Wakatsuki was chosen president of the Minseito on April 13, 1931, was given the title of baron and, upon the genro's recommendation, was appointed premier on the following day. A partial reorganization of the cabinet took place.[51]

When the Minseito cabinet met the House of Representatives in the session of 1929–1930 (the fifty-seventh), it was found impossible to make headway against the riotous tactics of the opposition, which occupied 237 seats, a majority of the house, while the government party had only 173 seats. The house was dissolved, and a general election was held which resulted in a large majority for the government, which won 273 seats to the Seiyukai's 174. Mr. Adachi Kenzo, the Minister of Home Affairs, received great credit for the landslide, but he was aided greatly by the widespread dissatisfaction with the last Seiyukai administration.[52] Labor repre-

[50] *Japan Year Book*, 1930, p. 82. *Japan Chronicle*, Feb. 7, 1929, p. 163.

[51] *Japan Year Book*, 1930, appendix, pp. 1–6. New York *Times*, April 12, 1931, p. 31; April 14, 1931, p. 9.

[52] Mr. T. Baba in *Chuo Koron* recalled that Adachi, as a cub journalist, had

sentation was reduced from eight seats to five, and the Meiseikai disappeared altogether. The Kokumin Doshikai, the renamed Jitsugyo Doshikai (1929), increased its membership from three to six, and the Kakushinto membership rose from two to three, while the number of independents fell from nineteen to five.

Baron Tanaka died on September 29, 1929, and the Seiyukai elected Inukai Ki (or Tsuyoshi) to be its president. The party had been strengthened in July by the accession of twenty-two members of the Shinto Club—all but six of the club's roster. Inukai was seventy-four years old but was still an exceptionally vigorous and clever debater, and his unbroken parliamentary record made him a leader of great experience and prestige. He was an opposite, in his dramatic gesturing and agile parrying of an opponent's arguments, to the Minseito leader, Premier Hamaguchi, whose parliamentary utterances were given ponderously and without change of facial expression.

The platforms for which the major parties asked for support in the election of 1930 were far from being clear-cut statements of current issues. They were rather, as in the past, summaries of desirable legislation, expressed in general terms, mingling lesser with greater matters and touching upon a number of subjects. The Minseito promised to continue to retrench expenditures, the Seiyukai criticized the government's economy measures as excessive; but the platforms carried the same vague notions concerning methods of reviving industry and business and of improving the conditions of labor. The Seiyukai incorporated such items as administrative reorganization and economy in military expenditures—safe expressions for a party not in office. Both parties stood for election reforms. It is doubtful whether the platforms were of any importance in the minds of voters.[53]

The Hamaguchi government accomplished one great purpose, namely, ratification of the London Naval Treaty—and might have been successful with its legislative program in the Diet of 1930–1931 had not the stalwart premier been incapacitated by the bullet of a "patriot." Baron Shidehara became acting premier, contrary to his own desire, and this appointment became a cause of dissension within the Minseito and a target for the shafts of the op-

assisted in the murder of the Queen of Korea, stating that he had secured thirty *soshi* (thugs) for the job, twenty of them from his native city of Kumamoto and ten from his own newspaper office in Seoul (*Japan Chronicle*, Aug. 15, 1929, p. 177).

[53] *Japan Chronicle*, Feb. 6, 1930, pp. 122–123.

position, since Shidehara was not a member of the government party. Time was wasted prodigally in interpellations upon the negotiation of the London treaty. Save for the budget, in which a reduction of taxes and a further reduction of expenditures was accomplished by the devious method of misstating anticipated revenues, the session was barren. Bills to enfranchise women in city, town, and village elections and to legalize labor-unions were passed in the lower but failed in the upper house.

CHOICE OF WAKATSUKI FOR PREMIER

The Hamaguchi cabinet resigned on April 13, 1931, on account of the premier's continued illness. A large faction within the Minseito, following the resignation of Mr. Hamaguchi, desired to elect Mr. Adachi Kenzo, the Home Minister and campaign manager, to the presidency of the party. A smaller faction supported Dr. T. Egi, Minister of Railways and former Minister of Justice. The party elders fixed on Mr. Wakatsuki Reijiro, former president, as a compromise choice. He was given the title of baron for his work at the London conference and was appointed to succeed Hamaguchi as premier. His cabinet retained nine of Hamaguchi's ministers. New men appeared in the ministries of War, Commerce and Industry, and Overseas Affairs. General Ugaki, who resigned as Minister of War, accepted the governor-generalship of Chosen when Admiral Saito resigned. Count Uchida succeeded Mr. Sengoku as president of the South Manchuria Railway Company. These two appointments were generally regarded in Japan as steps toward more complete control in Manchuria.

The Wakatsuki cabinet sought to reduce governmental expenditures by cutting salaries and dropping or reorganizing certain ministries. It succeeded on the former point, but the saving was comparatively slight. The Ministry of Overseas Affairs was abolished (only to be reinstated within a few months by the Seiyukai), but the effort to amalgamate the Ministry of Agriculture and Forestry with that of Commerce and Industry was unsuccessful. The several ministers, particularly those of War and the Navy, opposed the lower appropriations desired by the Finance Minister, Mr. Inouye. The plan of the military authorities for increasing the size of the forces in Chosen and Manchuria, and for a larger air force, was embarrassing to the retrenchment scheme. With the opening of hostilities in Manchuria in September, the scheme was not aban-

doned, but new expenditures compelled plans to be made for increasing tax rates and raising loans.

Elections were held in thirty-nine prefectures in October. The Minseito secured a majority of the seats in twenty-three assemblies, which compares with preëlection majorities in eight such bodies. The Seiyukai entered the elections with majorities in fourteen assemblies and emerged with but seven assemblies in its control. A total of 7,078,000 votes were polled, as compared with 6,104,000 in the previous prefectural election. Both the major parties showed an increased poll, while that of the labor parties and the independents dropped appreciably. The latter, however, increased their representation from sixty-three to seventy members.[54]

ATTACKS UPON THE CABINET

The Manchurian crisis weakened the Minseito cabinet, since it afforded the Seiyukai an opportunity to attack its foreign policy, which was denounced as weak, compromising to Japan's prestige, and an inevitable prelude to the present necessity for vigorous military action. The cabinet was known to be divided, certain members favoring methods of diplomacy and conciliation, others desirous of "positive" steps to "clean house" on all Manchurian questions. Other objects of criticism were the government's failure to accomplish administrative reforms and the injury it was alleged to have done to industry and business by removing the embargo on the export of gold.

PROPOSALS FOR A COALITION

The cabinet was further weakened by suggestions of the advisability of a coalition government. The most insistent exponent of this idea was Mr. Adachi Kenzo, the home minister, who apparently hoped to succeed to the premiership or to enhance his own influence in other ways, if the plan were adopted. Mr. Tokonami Takejiro, an adviser of the Seiyukai, was another influential supporter of the scheme. Party men desired a party coalition, while members of the House of Peers and the Privy Council favored a "transcendental" cabinet of "strong" men. Mr. Adachi failed to find coalitionists among his colleagues in the ministry and he turned to other means of advancing his personal advantage. Mr. Inukai Tsuyoshi, president of

[54] *Japan Chronicle*, Oct. 22, 1931, p. 501.

the Seiyukai, pointed out quite frankly that coalitions were a logical device in the British government because British parties were based upon policies, and changed conditions naturally were attended by divisions or amalgamations; in Japan, on the contrary, parties being mere associations of politicians for securing accession to power, suggestions of resort to coalitions were still premature.[55]

RESIGNATION COMPELLED BY ADACHI

The ambition of Mr. Adachi compelled the cabinet to resign on December 11, 1931. When his ministerial colleagues declined to enter into his plan for a coalition government, he refused to attend cabinet meetings, at the same time refusing to resign alone. His influence within the party prohibited removal by the premier, and as the cabinet could not function without a home minister, it resigned. Its resignation, at a time when it was in possession of a large majority in the House of Representatives, emphasized the importance of personal and traditional factors and the continued inferiority of the Diet in Japanese politics.

Adachi's strength lay in his long experience, in his success as a campaign manager, and in his affiliations with the military authorities (who desired a more bellicose cabinet) and with the great Mitsui trust, which, in company with other banking houses and business concerns, desired to reëstablish the embargo on gold. His ambition caused him to observe the rising leadership of Mr. Inouye Junnosuke, Minister of Finance and son-in-law of Baron Iwasaki, head of Mitsui's chief rival, the Mitsubishi company, with apprehension. Adachi was by nature an imperialist, to whom the cautious Shidehara and the economically minded Inouye appeared to be out of step with Japan's movements in China.

APPOINTMENT OF A SEIYUKAI CABINET

Mr. Inukai Tsuyoshi, president of the Seiyukai, was appointed premier, and he selected his cabinet almost entirely from his own party. The Minister of Foreign Affairs and the Ministers of War and the Navy were, as usual, non-party men. Mr. Adachi, therefore, was not included, though he had resigned from the Minseito, carrying nine other members with him. The cabinet's first acts were to reimpose the embargo on the export of gold and to restrict

[55] *Japan Chronicle*, Nov. 19, 1931, p. 635; Nov. 26, 1931, p. 685; Dec. 3, 1931, pp. 701, 706–707.

domestic conversion of notes into gold coin by establishing the requirement of permission from the Minister of Finance for such conversion. The cabinet accepted the Minseito budget as drafted but declared that there would be no increases in taxes or tariff duties and that the anticipated deficit would be met by borrowing. The military program in Manchuria was stiffened, and the intervention was extended to Shanghai, with the announced purpose of terminating a boycott which was having serious effects upon Sino-Japanese trade, shipping, and other economic relations.

The cabinet resigned on January 8 to show its feeling of responsibility for the attempt of a Korean to bomb the escort of the Emperor, who was returning from a military review to the palace in Tokyo. But when ordered to remain in office, the ministers withdrew their resignations. This departure from precedent was explained as justified by the grave situation, but the explanation did not save the cabinet from severe criticism.

GENERAL ELECTION OF 1932

Faced as it was by a Minseito majority, desirous of preventing interpellations upon current developments, and anxious to capitalize upon the war fever, the cabinet repeated the Minseito tactics of 1930 by dissolving the House of Representatives on January 21, 1932, immediately upon reassembly after the New Year recess. The ensuing general election, held on February 20, reversed the positions of the two major parties, the Seiyukai winning 304 seats, the Minseito 147, and the laborites five. The Adachi group won five seats, the Kakushin Club two and independents three.[56]

OBSERVATIONS ON THE OLDER PARTIES

Before dealing with the labor parties, it may be advisable briefly to attempt an appraisal of the older parties. The former are not wholly or even largely different from the latter, but it is difficult to generalize upon both at once. Although there is as yet too little evidence for satisfactory conclusions upon the labor parties, such inferences as appear justifiable are noted in connection with the treatment of the proletarian bloc.

First-hand observation of the functioning of the Seiyukai and the Minseito, Japan's major political parties, supports this primary

[56] New York *Times*, Feb. 22, 1932.

conclusion drawn from the brief survey of their history that is possible here: they are effective organizations for the accomplishment of the purposes to which the existing constitutional system limits the instrumentalities of a democratic order. They have overwhelmed the theory of a government independent of the Diet by deadlocking legislation and by winning the good-will of the people. "Transcendentalism" may still be destined to enjoy brief interludes of power, but party cabinets may fairly be assumed to have become the established rule. Party cabinets and party government are not as yet, however, synonymous terms in Japan. Far-reaching constitutional changes which will permit the Diet to assume the rôle of lawgiver, and which await the fuller awakening of the people to the implications of their political rights, must precede the realization of party government. These changes will come as the advances already made have come—out of the abrasive action of party politics upon the hard flint of the oligarchy that was and is Japan.

Japanese parties are products of absentee ancestry and an unfriendly environment. They were imitations of Western parties and were inaugurated by the clan leaders Okuma and Itagaki in the period of transition from feudalism to constitutionalism. Thus it is but natural that they should exhibit the marks of their birth and breeding. The readiness of the Jiyuto to accept the leadership of Ito in 1900, and of a large section of the Kokuminto to enroll in the Doshikai under Katsura in 1913, was consistent with Japanese, if not with Occidental, conceptions of political procedure. As recently as 1926, the Seiyukai found it convenient to elect the head of the Choshu clan to the presidency of the party. It is more than probable that both the major parties will be headed by important clansmen in the future.

This relationship not only prolongs the influence of an ultra-conservative aristocracy beyond the epoch of history to which it belonged; it sets the mode for the attitude to be observed between party leaders outside the aristocracy and in the rank and file of party membership. Hara and Inukai, Kato and Hamaguchi were as dominant over their parties as were Ito and Okuma. Political bosses—sometimes as party presidents, sometimes as advisers—exert an influence even greater than that of the men behind the scenes in American party life. This is an unhealthy state of things, however able and liberal the leaders may be. It frustrates the growth of popular participation in party life and in government,

the very purposes for which political parties were established. It gives the aspect of military combat to party relations, intensifying rivalry and encouraging the use of reprehensible tactics inside and outside the Diet. It postpones the realization of cabinet responsibility to the popular chamber by exalting the leaders of the parties, who take advantage of their position to "railroad" legislation and to accomplish by ordinance objects properly within the statutory field. Undoubtedly the rise of commoners to the seats of power monopolized until 1918 by the nobility was a noteworthy step toward popular government.

Japanese parties profess to be devoted to liberal principles, but, like their prototypes in the West, they cannot exist without funds, and this unhappy circumstance forces them into alliances, similar to those familiar in America and Europe, with great business and industrial corporations. Thus to one type of master, the clan, is added a second, the economic group representing accumulated capital. These masters sometimes exhibit interests that clash, and a cabinet elected by the Mitsubishi trust may fall before the attack of the Privy Council. Certainly, between serving two such impatient masters and serving the people by whose suffrages they were elected, members of the House of Representatives are likely to find the former obligation the more pressing. For this situation, as for its parallel (minus the aristocracy) in the United States, there is no apparent remedy that is peculiar to Japan.

A third characteristic in the party life of Japan is the peculiar combination of a high degree of loyalty to a leader with a low degree of loyalty to the party itself. Members pass readily from one party to another; there are frequent breaches between factions within a party, followed by splits and the formation of new groups which may later merge with the opposition. Old parties assume new names in order to attract members. These changes are at times the result of bribery, at times due to anticipated official preferment, rarely to agreements or disagreements on points of principle. The ever-present possibility of such moves is a retarding influence in the uphill struggle of the parties with the antagonistic traditions and agencies of oligarchical rule.

The parties reveal the scars of this half-century struggle. The continuous interference of the government with freedom of speech, the press, and assemblage has frightened liberals and hindered the upbuilding of a larger popular membership. It has intensified rancor between the "ins" and the "outs" and stimulated rowdyism

and bribery during elections. Cabinets of a partisan composition are glad to make use of oligarchical tactics against the opposition, tactics for which they can assert warrant in imperial prerogatives. This tendency is maintained, it would seem, principally because of the dependence of the cabinet upon surviving oligarchical controls like the Privy Council, the genro, the Imperial Household Ministry, and the supreme command, but also because party men in cabinet offices are dominated by the permanent civil service, which is highly bureaucratic. Many of them are ex-bureaucrats themselves, imbued with traditional ideals.

It is an encouraging fact that the conservative and imperialist Seiyukai, which dominated the House of Representatives and was allied with the Choshu clan from 1900 to 1914 and from 1916 to 1924, now faces a vigorous equal in the more liberal and internationalist Minseito. The latter party is responsible for the enactment of manhood suffrage, for partial reform of the House of Peers, and for ratification of the London Naval Treaty. It is intent upon extending the suffrage to women, enacting proportional representation for the lower house of the Diet, and granting a favorable legal status to labor-unions. The remarkable popular support of the Minseito is evidence of the growth of democratic consciousness, which the Seiyukai cannot afford to ignore. These facts render less significant the debacle that overtook the so-called liberal group, the Meiseikai.

Perhaps the most frequently read criticism of Japanese parties is that their platforms are vague to the point of vacuity. General principles rather than specific items of programs of action have indeed composed the platforms. Dependent as they have been while in office upon forces which they cannot control, party leaders have been opposed to platforms pledging them to actions which they may find themselves unable to perform. Thus the policies of a party are discoverable in the proposals for legislation that are made during its tenure of the government and, to a smaller degree, in its attitude while in opposition toward the government's proposals. The continued conservatism of the Japanese people is reflected in all the non-proletarian parties; nevertheless it is not difficult, as above noted, to discern a relative liberalism in the Minseito; and certain of the smaller groups, such as the Kokumin Doshikai and the Kakushinto, profess even more liberal doctrines.

It is the favorite cry of liberals in Japan to-day that the parties are effete, corrupt, quarrelsome, selfish—in general disreputable

and deserving of reproach. Granted the truth of these criticisms, what was to be expected from the materials with which the parties have had to build and in the presence of the obstacles, constitutional and administrative, with which they have had to contend? *Politician* has not been a savory term in Japan; it has suggested all the unpleasant attributes of the parvenu in addition to those of the spoils-man. The parties have no roots in the past, whereas their opponents in the bureaucratic hierarchy have a rootage of many centuries' growth. However, no agencies other than the parties exist to fight the people's battles. Without them, bad as they are, return to feudalism would be inevitable. It is, therefore, the part of reformers not to seek to destroy party life but to bring about such a modification of the old order of things that there may be room for party activity to expand, for greater responsibilities to induce a higher sense of responsibility, for popular influence to find fearless expression—in short for democratic government to replace the present reign of privilege. What parties are to-day is not a gauge of what they may become, either in Japan or in the United States, from which, regrettably, some of the less desirable features of Japanese party politics have been borrowed.

THE RISE OF PROLETARIAN PARTIES

A Social Democratic party which avowed its object to be the application of socialism was founded as early as May, 1901. Its leaders—intellectuals—included Abe Isoo, Katayama Sen, and Kotoku Denjiro. This party was dissolved by the government on the day of its appearance.[57] Socialism made some progress prior to the Russo-Japanese War but was stringently repressed by the authorities thereafter.

The Laborers' Friendly Society (Yuaikai), the first labor organization to become significant, was formed in 1912 by Suzuki Bunji. This organization, assisted by the improved position of labor resulting from the World War, became in 1920 the General Federation of Labor (Rodo Sodomei), comprising a number of trade and industrial unions.[58] In the same year the Socialist League was or-

[57] J. Asari, *The Development of the Social Movement and Social Legislation in Japan* (Tokyo, 1929), p. 6.

[58] "An American Sociologist," *The Socialist and Labour Movement in Japan* (Kobe, 1921), p. 51. This monograph was also published serially in *Japan Chronicle*, Nov. 11, 1920–Feb. 24, 1921. An equally useful summary supplementing this material is that of E. H. Anstice, "Labour in Japan," published

ganized. Its leaders were not labor men, but the league received much support from labor, while labor organizations received ideas and members from the ranks of socialism. The Socialist League was a small organization, but the Home Ministry considered it a menace and compelled it to dissolve. The General Federation of Labor at the same time won favor by moving toward the "right."

The Japan Farmers' Union (Nomin Kumiai) was inaugurated in April, 1922, under the leadership of Sugiyama Motojiro and Kagawa Toyohiko. This union, under the stimulus of agrarian distress and unrest, outstripped the General Federation of Labor in its growth. From the beginning the Farmers' Union showed an interest in political action. The success of communism in Russia led to division within the General Federation of Labor and the Farmers' Union, and both organizations split into factional groups.[59]

Passage of the manhood suffrage act in 1925 prompted the labor organizations to form political parties.[60] First to take action was the Farmers' Union. In the spring of 1925 it called a conference of trade-unions, which met in August and was attended by 1,000 delegates. A labor party was inaugurated on December 1, 1925, and it appeared that the whole force of organized labor would support such a party. Unfortunately, the General Federation of Labor became suspicious of communist influence in the preparatory committee and caused the withdrawal of its delegates on the eve of the inauguration.

Nevertheless, the new party, named the Nomin-Rodoto (Farmer-Labor party), proceeded to organize and elected an executive committee. Within three hours, however, the Home Ministry had ordered it to dissolve, acting under the police act (section 8, clause 2), which authorized prohibition of any association if necessary to preserve order.[61]

serially in the *Japan Chronicle*, July 17–Aug. 28, 1930. See also K. Colegrove, "Labor Parties in Japan," *American Political Science Review*, XXIII (1929), 329–363, and Y. Tsurumi, "Origin and Growth of the Labor Movement in Japan," in *The Reawakening of the Orient* (New Haven, Connecticut, 1925), pp. 90–111.

[59] J. Asari, *The Development of the Social Movement and Social Legislation in Japan* (Tokyo, 1929), pp. 13–16.

[60] Before the parties appeared, the laborers and farmers had entered politics. In the local elections of 1925, thirty-two out of 1,326 newly elected assemblymen in thirty-six cities were endorsed by these classes and 3,493 out of 118,198 town and village assemblymen were similarly supported. Y. Takenobu, "Tenantry Disputes," *Japan Year Book*, 1927, supplement, p. 45.

[61] I. F. Ayusawa, *Industrial Conditions and Labor Legislation in Japan* (Geneva, 1926), pp. 95–96.

ESTABLISHMENT OF RODO-NOMINTO

This check resulted in the formation of a second party, the Rodo-Nominto (Labor-Farmer party), on March 3, 1926. It was headed by a council of twenty-six members with Sugiyama Motojiro of the Farmers' Union as chairman. Its nucleus was the two main labor bodies, the Farmers' Union and the Federation of Labor. The National Council of Labor Unions (Rodo-Kumiai-Hyogi-Kai), regarded by the government as communistic, did not join either the first or the second party. This body was the former minority element in the Federation of Labor which had been driven out early in 1925.

FOUNDING OF THE SHAKAI-MINSHUTO

The Rodo-Nominto was rent by differences between conservatives and radicals. The former soon withdrew, leaving it under radical control.[62] It then admitted the *eta* organization, Suiheisha, which was radical in tone. The leaders of the party were two distinguished ex-professors, Oyama Ikuo and Kawakami Hajime. The conservative farmers in October, 1926, formed the Nominto (Farmers' party), while the Federationists on December 5, 1926, organized the Shakai Minshuto (Social Democratic party), which included such able socialists as Suzuki Bunji, Abe Isoo, and Yoshino Sakuzo. A fourth party appeared on December 9, 1926, the Ronoto (Labor-Farmer party), constituted of dissident Federationists and Farmers' Unionists and spoken of as the "centerists" since its views placed it somewhere between the Rodo-Nominto on the left and the Shakai Minshuto and Nominto on the right.[63] It was led by Aso Hisashi, journalist and labor leader.

The Rodo-Nominto (Labor-Farmer party), was dissolved in April, 1928, following the first general election under the manhood suffrage act, on charges of having exhibited communistic leanings. Thereupon its former right wing started a new party, Rono-Taishuto (Labor-Farmer Masses party). This merged with the Ronoto and the Nominto under the title Taishuto (Masses party), but difficulties were experienced in keeping the three sections united.

[62] Asari (*op. cit.*) says: "Thus the Labour and Farmers' Party was dominated by the communists' organizations" (p. 18). This statement appears overdrawn.

[63] Anonymous article in *Present-Day Japan, Asahi* English supplement (1927), p. 31.

Within a year it had dwindled to the members of the former Ronoto, but it retained the name Taishuto. Sakai Toshihiko and Aso Hisashi remained its leaders.[64] Leftist members of the dissolved Rodo-Nominto sought to rehabilitate themselves in a new party, but found their footsteps dogged by the Home Office, which rated them as communists. Ultimately, in November, 1929, Oyama and his supporters organized the Shin-Ronoto (New Labor-Farmer party), announcing that no communists would be admitted.

LABOR PARTIES IN ELECTIONS

The four national proletarian parties existing in 1928, and also a number of local parties, presented candidates first for election to the prefectural councils, subsequently for election to the House of Representatives in that year. Of 216 candidates in the prefectural elections, twenty-eight were elected. The total vote cast for proletarian candidates was 257,832. In the election for the lower house of the Diet there were eighty-eight proletarian candidates, divided as follows:

Party	*Candidates*	*Seats Won*	*Poll*
Rodo-Nominto	40	2	193,047
Shakai-Minshuto	17	4	120,039
Ronoto	13	1	85,698
Nominto	12	0	44,203
Local parties	6	1	46,756
Total	88	8	489,743[65]

In the following year, proletarian candidates were successful in many city, town, and village elections. Six were elected in Tokyo, thirteen in Osaka, and fourteen in Yawata. Thus the first test of manhood suffrage demonstrated the interest of the workers in political representation.

In the general election of 1930, four national proletarian parties entered candidates, and in addition local parties were represented. A total of ninety-six candidates appeared. A new party, the Zenkoku-Minshuto (National Democrats), formed on January 15, 1930, by seceders from the General Federation of Labor and from

[64] *Ibid.*, *Asahi* English Supplement (1929), p. 50.

[65] Asari, *op. cit.*, pp. 20–22. Dr. R. Fujisawa records the total proletarian vote as 480,124 in his article "Statistical Investigations of the Results of the First Manhood General Election of 1928," *Proceedings of the Imperial Academy*, IV (1928), No. 8, #446. In the *Japan Year Book*, 1930, p. 86, the total given is 471,131.

the Shakai-Minshuto, presented a number of candidates.[66] The results were as follows:

Party	*Candidates*	*Seats*	*Poll*
Shakai-Minshuto	33	2	170,386
Taishuto	23	2	165,298
Ronoto (Shin-Ronoto)	13	1	78,548
Zenkoku-Minshuto	4	0	19,695
Local parties	23	0	68,386
Total	96	5	502,313[67]

The major proletarian parties appealed to the voters upon platforms of but slightly varying tenor. The Social Democrats (Shakai-Minshuto), called for readjustment of the tax burden; reduction of rents, farm tenancy stipends, and interest on loans; guarantee of the right to till the soil for the farmers who work on it; jobs for the unemployed; legal protection for salaried persons; official recognition of birth-control for proletarians; and the abolition of government by bribery. It opposed rationalization of industry for the sole benefit of capitalists.

The Masses party (Taishuto), stood upon four planks: (1) guarantee of the right of the masses to live, (2) enactment of a law for the capital punishment of corrupt officials, (3) abolition of bad taxes by means of a treasury surplus resulting from a retrenchment policy, and (4) relief of the unemployed by means of the same surplus.

The Labor-Farmer party (Shin-Ronoto) presented six desiderata: (1) absolute opposition to dismissals and to the lowering of wages, (2) food and work for the unemployed, (3) land for the farmers at work, (4) political liberty for laborers and farmers, (5) the bearing of taxes by the capitalists and landowners, and (6) absolute opposition to imperialistic wars.

The National Democrats (Zenkoku-Minshuto), demanded (1) the guarantee of a livelihood to the workers, (2) the stabilization of residence for house-renters, and (3) lightening of the tax burden upon the masses.[68]

The impression of vagueness and impracticality conveyed by these platforms is not greatly relieved by the preëlection statements of party leaders. Mr. Abe was quoted to this effect: "The

[66] *Japan Chronicle*, Jan. 2, 1930, p. 14; Jan. 23, 1930, p. 79.
[67] *Ibid.*, Mar. 6, 1930, p. 226.
[68] Tokyo *Nichi Nichi*, Jan. 29, 1930, p. 1.

Shakai-Minshuto is devoting its efforts to the solution of the problems of living for the working classes. How can we better the living conditions of the working masses—that is our chief concern." Mr. Aso, of the Taishuto, said, "Unlike the Shakai-Minshuto we stand definitely for those groups of the working masses that are opposed to the capitalists—the true proletarians: the small landowners, independent farmers, low-salaried officials and clerks, small merchants, etc." Mr. Oyama, of the Shin-Ronoto, stressed the point that his party alone was fighting the bourgeoisie, the capitalist class, in the interests of the oppressed people of town and country.

EFFORTS TOWARD UNIFICATION

After the lesson taught by the election of 1930, efforts were devoted to the amalgamation of factions. The chief difficulty encountered was the reconciliation of the radical wing. Leftist members of the Shakai-Minshuto severely criticized Suzuki Bunji and other leaders, calling them reactionaries and urging them to leave the party.[69] The radicals contended that a program of compromise amounted to the nullification of the function of protest which it was the obligation of the labor movement to perform. The Osaka branch of the Ronoto voted to dissolve on the ground that the party was an obstacle to the progress of the farmers' and workers' interests. The national officers of the party declined to follow Osaka's suggestion and instead expelled Dr. Kawakami and others for advocating dissolution.[70]

Representatives of the four principal labor parties met on several occasions in an effort to find a basis for amalgamation. The Ronoto, although it issued a statement condemning the selfish attitude of leaders in other labor groups, declared its desire for amalgamation and sent a written proposal to that effect to its three rivals. The Shakai-Minshuto rejected the proposal as insincere and voted itself willing to amalgamate with the Taishuto only, since with it alone could a common ground be found. The latter was more friendly to the Ronoto and sought to modify the Shakai-Minshuto's attitude. The Taishuto replied to the proposal, laying down three conditions for acceptance: (1) withdrawal by the Ronoto of its previous declaration that it reserved the right to criti-

[69] *Japan Chronicle*, Jan. 2, 1930, p. 414.
[70] *Ibid.*, Sept. 4, 1930, p. 292; Oct. 30, 1930, p. 509.

cize the policy of the other groups in case of amalgamation; (2) withdrawal of the Ronoto's notification to its own members that it was proposing amalgamation in order to disturb the ranks of the other parties; and (3) apologies from Mr. Oyama, president of the Ronoto, for aspersing the other labor parties as spurious.[71]

The three labor parties represented in the House of Representatives, namely, Shakai-Minshuto, Taishuto, and Ronoto, organized a committee for joint action in the Diet. It was composed of nine members, three from each party. Other labor groups were permitted to send one representative each to express their views at committee meetings. Through this committee the parties collaborated during the fifty-ninth session (1930–1931) in support of the bill to legalize labor-unions.[72]

On July 20, 1930, the Taishuto, the Zenkoku-Minshuto, and a smaller party, the Zenkoku-Kyogikai, effected a fusion, following the amalgamation of the labor-unions supporting them. The name Zenkoku-Taishuto (National Masses party) was adopted, and Aso Hisashi was chosen chairman of the executive committee. Thus the center of labor politics was consolidated. The new party announced a platform of three planks as well as a long list of "policies." The platform was brief and may be quoted:

"1. Our party represents the interests of laborers, farmers, proletarian citizens, and all other oppressed people.
"2. Our party aims at the reform of the political, economic, social, and and cultural systems monopolized by the bourgeois class and also at the emancipation of the proletariat.
"3. Our party fights for the attainment of its objects by dint of the legitimately organized power of the proletarian masses." [73]

The Zenkoku-Taishuto adopted at its annual meeting (December 3, 1930) a resolution for amalgamation with the Shakai-Minshuto and the Ronoto and sent delegations to the parties with the resolution. The Ronoto voted to accept these overtures, but the Shakai-Minshuto, while declaring its willingness to combine with the Zenkoku-Taishuto, continued to oppose inclusion of the Ronoto. Six months later, on June 5, 1931, there was organized a merger of the Zenkoku-Taishuto, the Ronoto, and a section comprising about one-half the membership of the Shakai-Minshuto, to which

[71] *Japan Chronicle*, Mar. 6, 1930, p. 228; Mar. 13, 1930, p. 251; April 10, 1930, pp. 370–371; April 24, 1930, p. 424.
[72] *Ibid.*, April 24, 1930, p. 418. The same procedure was observed in 1928.
[73] *Ibid.*, July 31, 1930, pp. 142–143.

was given the composite name of Zenkoku-Ronotaishuto, meaning "All Japan Labor, Farmer, and Masses party." Aso Hisashi was elected chief secretary, with presidential powers. The faction of the Shakai-Minshuto supporting Abe Isoo refused to enter the new party. Three principles, eight "general policies," and a host of "special policies" were enunciated by the latter. The three principles were (1) protection and extension of the rights of oppressed laborers, farmers, and proletarians; (2) reform of the capitalist system leading to improvement in the condition of the proletariat; and (3) strengthening and enlargement of labor and farmers' unions.[74]

Following the prefectural election in October, 1931, a section known as the Rodo-Kumiai-Sorengo (Federation of Labor-Unions), which claimed 20,000 members, seceded from the new party, on the ground that candidates from its membership had not been properly supported in the election.[75] In this election the Shakai-Minshuto lost fourteen of its seventeen seats in prefectural assemblies. The Zenkoku-Ronotaishuto obtained thirteen seats, and one seat went to a local labor party. Thus, of the 1,524 seats filled at the election, only seventeen—as in the previous election—went to the labor parties.[76]

The laborites were embarrassed by the intervention in Manchuria, since their principles were opposed to war, while their members tended to believe that the government's actions were justified. The Shakai-Minshuto, though somewhat divided in sentiment, issued a declaration in favor of protecting Japan's rights and interests in Manchuria. The Zenkoku-Ronotaishuto appointed a committee to formulate the party's attitude. The committee drew up a resolution urging cessation of military action and the withdrawal of troops, but the government confiscated the committee's documents before they could be placed before the party for its approval. A section of the party supported the government, and a number of members seceded when the party failed to adopt their views.[77] Nevertheless, a general meeting of the party, though prevented by the police from passing a resolution, exhibited clearly enough that the general opinion of members was opposed to the government's procedure. So zealously was the opposition mani-

[74] *Ibid.*, Dec. 11, 1930, p. 659; Jan. 1, 1931, pp. 9–10. *Trans-Pacific*, July 9, 1931, p. 9; July 23, 1931, p. 5.
[75] *Ibid.*, Oct. 15, 1931, p. 466.
[76] *Ibid.*, Oct. 22, 1931, p. 501.
[77] *Ibid.*, Dec. 10, 1931, p. 743.

fested that the police broke up the meeting.[78] Shortly after this occurrence a gang of "patriots" belonging to a society known as the Seisanto attacked the home of a lawyer who was retained by the party, but they met with stout resistance and failed to obtain a renunciation of the party's slogan: "Absolute opposition to imperialism and war."[79]

GOVERNMENTAL ATTITUDE TOWARD LABOR PARTIES

The government's tactics in the treatment of the labor parties consist in an effort to conciliate the moderates by the enactment of a labor-union law and in repression of radicalism, even of a mild type. When, in November, 1930, the Zenkoku-Taishuto held a general meeting in Osaka, which 1,000 persons attended, it was prevented by the police from discussing the government's economic program. A like fate was experienced by a meeting of the party in Tokyo. A month later the party sought to hold its annual meeting in Tokyo. The police seized all documents, stopped the opening speech of the chief secretary and the reading of all branch reports, arrested several delegates, dragged a number of speakers from the platform, and finally broke up the meeting. In the same month the police broke up the annual meeting of the Ronoto after bloodshed and the arrest of fifty people.[80]

The right of forming labor-unions and federations was tacitly recognized by the government in 1918, and in 1926 a bill to afford them legal status was drawn up by the bureau of social affairs in the Home Ministry, modified to meet the opposition of employers, and introduced into the Diet, where it failed of approval in the lower house. Again the bill was introduced in 1927, somewhat altered in favor of labor, and again it failed to pass. In 1926 an arbitration act was passed in which the existence of unions was taken for granted. Since 1924 the workers' delegates to the annual conference of the International Labor Organization have been elected by labor federations.[81]

A third labor-union bill was placed before the fifty-ninth session (1930–1931) and was passed by the lower house, although, to their intense chagrin, labor members were prevented from discussing

[78] *Japan Chronicle*, Dec. 17, 1931, pp. 782, 790.
[79] *Ibid.*, Dec. 31, 1931, p. 853.
[80] *Ibid.*, Nov. 6, 1930, p. 545; Dec. 11, 1930, p. 658; Jan. 1, 1931, pp. 9–10.
[81] E. H. Anstice, "Labour in Japan," *Japan Chronicle*, July 31, 1930, p. 146.

the bill on the floor. It defined labor-unions as organizations of laborers in the same or kindred trades or industries, or federations of such organizations, having the objects of improving or maintaining labor conditions, mutual aid, character building and, in general, protecting and promoting the common interests of members. Unions were to be registered with the government, and the scope of their by-laws and of their powers of self-regulation was prescribed. They were to have the privilege of incorporating. The only classes prohibited from joining a union were officers and men of the army and navy.

Unions were to be required to report to an administrative officer, on demand, upon their affairs and membership. Their resolutions might be canceled and their by-laws ordered modified by such an officer if deemed contrary to law or detrimental to the public welfare. They might be dissolved by a cabinet minister charged with their supervision when their acts violated peace and order. Recourse to the Court of Administrative Litigation was provided for unions considering themselves illegally dealt with by administrative officers.

Employers were to be forbidden to dismiss an employee on the ground of membership in a union or to make it a condition of employment that an employee should not join a union; and labor contracts containing such a condition were to be invalid. No penalty was provided against threats or the setting of such conditions by employers. Unions were forbidden to employ their funds in support of candidates in national, prefectural, or local elections.[82]

The failure of the bill in the House of Peers, where it died in committee, reflected the apprehension of the employers, who lobbied vigorously against it. They opposed the combination of workers from different trades or industries, federations of unions, and the collaboration of outsiders in union activities, insisting that employers should be free to engage and dismiss workers without restriction and that unions should be prevented from engaging in political activities.

OBSERVATIONS ON LABOR PARTIES

The causes of disunion among the labor parties are many. One notable consideration is the fact that there are differences of opinion upon methods of political action which do not appear in the

[82] Osaka *Mainichi*, Feb. 22, 1931, p. 1.

statements of platforms because of the attitude of the government and the extreme penalties provided in the peace preservation law against anything savoring of radicalism. This explains the mutual suspicion that is manifested between the Ronoto and the other parties. Between and within the parties which accept parliamentarism, disunity is promoted by the type of their leadership, which is principally that of theorists rather than of men of actual experience in the world of labor. This factor is strengthened by the continued weakness of the Diet, which renders a mutual abnegation of pet ideas in favor of a pragmatic program unlikely to be fruitful.

Other obstacles to labor coöperation are the jealousy that exists between the leaders, who allow personal feelings to affect their decisions on matters of policy; the ambitions which prompt leaders to prefer dominance over a small faction to a lesser place in a larger organization; and lack of funds and of political experience under a régime of increased individualism in which feudal authority should be replaced by agreement. As in the older parties, there is a marked inclination to perpetuate the feudal relationship of lord and vassal between the leaders and the rank and file of the labor groups.[83]

POSITION OF COMMUNISTS

The extremely harsh treatment meted out by the authorities to communists and to others suspected of communistic sympathies has not prevented the creation and maintenance of a communist party. The first such party was organized in February, 1922, by Tokuda Yuichi. For several years the Marxian ideas of Yamakawa Hitoshi dominated the party. Governmental antagonism caused a section of the party to propose dissolution, but the opposition was too strong, and in August, 1925, the party was reorganized. Still led by Tokuda, who spent several months of that year in Russia, the reorganized party was inaugurated in December, 1925, under the ægis of the Third International. During the following year it attained a membership of more than 1,000. It was this development that enabled the government to secure the passage of the peace preservation law in 1925 and its amendment by emergency ordinance in 1928. In that and the following year, and again in 1930, several hundred alleged communists were arrested in sweep-

[83] E. H. Anstice, "Labour in Japan," *Japan Chronicle*, Aug. 28, 1930, pp. 259–260.

ing police raids and were held for trial. The arrests in 1930 resulted in 173 indictments.[84] Tanaka Seigen, a communist organizer since his university days, became leader of the organization in 1929 at the age of thirty-three. He was arrested on July 14, 1930.

To-day the communist party is composed largely of students. They lack experience and show a keener interest in theories of class war and proletarian dictatorship than in practical programs of social legislation. Their investigations of socialistic thought are consistently interfered with by the home office, radical professors are compelled to resign, and constant police surveillance drives the movement underground.[85]

PARTIES IN THE HOUSE OF PEERS

The members of the House of Peers are divided among parties which have no existence outside the house. The largest party is the Kenkyukai (Investigation Society); others are the Doseikai (Mutual Attainment Society), the Koseikai (Impartiality and Justice Society), the Koyu Club (Friends' Club), the Dowakai (Friends' Society), and the Kayokai (Tuesday Society). The Kenkyukai tends to collaborate with the Seiyukai, the Doseikai with the Minseito.

The Kenkyukai is composed principally of counts and viscounts; the Doseikai, the Koyu Club, and the Dowakai, of imperial nominees and large taxpayers, the Koseikai, of barons; and the Kayokai, of princes and marquises. A considerable number (thirty to fifty) of members of the upper house fail to affiliate with any party. The leaders of the parties caucus, as do the parties in the lower house, to designate to the sections the proper persons for the committees.[86]

ORGANIZATION OF THE MAJOR PARTIES

Party organization and procedure in Japan should be painted with the brush of the impressionist rather than with that of the

[84] *Trans-Pacific*, May 28, 1931, p. 10.

[85] E. H. Anstice, "Labour in Japan," *Japan Chronicle*, Aug. 21, 1930, p. 228. Of those indicted in 1930–1931, thirty-one were graduates of Tokyo Imperial University and sixty-two others were graduates of other institutions of higher learning. For a somewhat optimistic estimate of the influence of communism in contemporary Japan, see "The Communist Movement in Japan" by Hugh Byas, in *Contemporary Review*, Feb., 1932, pp. 190–197.

[86] Information given by the chief secretary of the House of Peers, March, 1930.

true-to-nature school.[87] Certain agencies exist, and they possess recognizable functions. But at any given moment the actual locus of influence, and also the actual aspect of organization, may differ considerably from those of other moments. The experience and force of individuals count more importantly than routine agencies and rules.

A president or director, an executive council or directorate, a secretariat headed by a chief secretary, two treasurers, and a group of advisers of varying number comprise the central officiary of each of the two principal parties. In theory, the president of a party is elected by the annual conference. The action of the conference, however, is rather the confirmation of a nominee than the choice of a leader. The real choice is likely to be left to some trusted party elder. The term of the president is seven years, that of other officers one year. Only the secretaries and clerks are paid salaries, the higher officers serving without salary. The president appoints the councilors, advisers, and secretaries.

The annual conference, usually held in May, is the constituent organ of each of the major parties. This is attended by the party's members and ex-members in both houses of the Diet and by delegations from each prefecture chosen at prefectural conferences. The conference is brief, lasting only a day or two. It receives reports of the officers, elects the president if the incumbent's term has expired, and passes resolutions. The latter deal with the work and accomplishment of the party officers and with the platform or program of legislation for the future.

The parties employ standing committees for special purposes. One of these is the "political research" committee (or department). Although all members and ex-members of the party in either house of the Diet are *ex officio* members of this agency in their respective parties, the work, so far as work is done, is carried on by some fifteen or twenty members specially designated to act for a one-year period. The committee investigates issues of the day, using subcommittees. It meets weekly and frequently invites the attendance of government officials. It drafts the platforms. The principal deficiency, surely a notable one for "research" committees, is the absence of scientific members. Occasional reports are published. Other committees are those on organization, for the

[87] The author is indebted for the information in this section to officers of the Minseito and the Seiyukai. The parties publish their constitutions, by-laws, lists of members, etc. Campaign managers are chosen on the eve of national and local elections.

assistance of local branches in organizing, on propaganda, in charge of publicity, and on information, the last-named to obtain the views of officials, editors, political leaders outside the parties, etc.

The advisers of each party occupy a relation to its active administrators that resembles that of the genro to the cabinet. A few men, distinguished by age, experience, political astuteness, and lengthy service, are recognized by their younger colleagues as permanent advisers to whom all major issues should be referred for final decision.

The principal local areas of party activity are the prefectures, in each of which a branch of the party is in operation. The branch officers are a president, who may be a member of the Diet, councilors, and secretaries; the latter are likely to be members of the prefectural assembly. An annual prefectural conference, usually held in the autumn, chooses the president for a term of one year. All members of the party in the prefecture are eligible for the conference. The conference performs local functions of a supervisory character and is free to address criticisms to the national officers. Each local branch is autonomous and obtains its own funds. Such financial aid as the central agencies provide is offered not to the branches but to candidates whom they have suggested. Organizations similar to that of the prefecture and similarly autonomous exist in cities, towns, and villages. Frequently the local party organization has its roots in a clan or similar traditional group leadership. In some centers the feeling of antagonism between parties extends to the children; Minseito families will not buy in Seiyukai shops; Seiyukai women will not marry Minseito men. On the other hand, it may divide families, the father voting Seiyukai, the sons Minseito.

Each of the two principal parties has its headquarters in Tokyo. Here the national officers, drawn principally from the membership of the House of Representatives, have their offices; here party conferences are held; here the committees find rooms for their consultations. In each prefecture is a local headquarters, while many cities and towns support their own centers of operations. The Seiyukai, as the oldest and wealthiest of the parties, has the best physical equipment.

Seiyukai officers have stated the membership of the party (March, 1930), as roughly 3,000,000; Minseito men give their membership as 2,600,000. Applicants for membership require the

endorsement of two members. No fee is charged. Members of the Diet contribute one hundred yen annually to their respective parties. Certificates of membership are sent to persons accepted, and copies are kept at the central headquarters. Decisions upon the acceptance of candidates for membership rest with the head of the branch office to which application is made.

ORGANIZATION OF THE SHAKAI-MINSHUTO [88]

The Shakai-Minshuto (Social Democratic party) is managed by an executive committee of twenty chosen annually by a conference which meets in December. The conference designates the chairman of the committee, who is the dominating figure of the organization. The central committee, of fifty members, also is chosen by the conference. It is more widely representative of the country and meets only once or twice a year to deal with highly important issues. The executive committee meets frequently. A chief secretary is chosen by this committee from its own membership. He is assisted by four clerks, the only paid employees of the central office. Five advisers are recognized by the executive committee and approved by the central committee.

The party as yet owns no headquarters, but occupies a few rented rooms in Tokyo. No restrictions are placed upon membership in the annual conference, but the members' financial circumstances prevent overflow meetings. The conference approves the platforms and programs laid before it by the executive committee and discusses party finances and Diet strategy. A research committee and a finance committee are appointed annually by the executive committee.

Local branches exist,[89] and all branches within a prefecture are united under a prefectural council or committee. Candidates for election to the House of Representatives are recommended by the local branches to the executive committee. No qualifications are laid down for membership. Members pay an admission fee of fifty sen (twenty-five cents), and a similar amount as annual dues. These fees are collected by the local branch, which is expected to contribute at least twenty-five yen ($12.50) a year to the central fund of the party. Members of the party in the Diet contribute one-tenth of their salaries to the fund. The party numbers 64,000 (1930), but

[88] Information kindly given by Chairman Abe Isoo.
[89] Local branches numbered about 100 in March, 1930.

had a voting following of 170,000 in the election of 1930, an increase of 40 per cent since 1928. Trade-unionists, a majority of whom vote for the party's candidates, are required to pay union dues and cannot, as a rule, afford the party dues in addition.

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CHAPTER XIII

ELECTIONS

THE SUFFRAGE

The right of suffrage for members of the House of Representatives is determined by the electoral act of 1925, which was applied for the first time in the general election of 1928. Earlier provisions were those of the electoral laws of 1889, 1900, and 1919, all of which required the payment of taxes as a qualification for the suffrage. The act of 1889 established the tax qualification at fifteen yen (approximately $7.50) in "direct national taxes"; that of 1900 reduced it to ten yen, while the act of 1919 made it three yen. The law of 1925 abolished the tax qualification, but denied the vote to persons in receipt of public or private relief or help for a living on account of poverty, and to persons without a definite domicile. Principally by reason of the decrease and ultimate abolition of the financial qualification, the national electorate rose from 450,000 to 983,000 in 1900, to 2,860,000 in 1919, and to 12,500,000 in 1925.[1]

From the beginning, the voting privilege has been confined to males at least twenty-five years old. Other requirements have been, and continue to be, that voters be Japanese subjects who have resided for at least one year in their respective electoral districts. Disqualified persons include the heads of noble houses, members of the army and navy on active service, incompetent or quasi-incompetent persons, bankrupts, convicts, and former convicts for a period following release from confinement.

MOVEMENT FOR WIDER SUFFRAGE

From the date of the first electoral law, discontent was expressed with the tax qualification and efforts were made to secure its abolition. Many samurai were poor and could not meet the tax requirement of fifteen yen. Men of a high degree of education often had

[1] These figures are for the electorate at the date when the respective laws were passed. In 1898 the electorate numbered 500,000; in 1919, 1,460,000; in 1925, about 3,000,000.

little or no property. As early as 1895, an electoral reform bill was introduced by private members into the lower house of the Diet. This bill, which sought to reduce the tax qualification to five yen —or three yen in case it was met by income tax—and to lower the age limit from twenty-five to twenty years, passed easily in the House of Representatives but was thrown out by the Peers. A second bill, sponsored by Premier Ito and very liberal in its terms, passed the lower house in 1898, but was defeated in the House of Peers. Strangely enough, the reform bill of 1900, which became law, was introduced by the ministry headed by the reactionary militarist Yamagata, who thereby won the support of the liberal elements.

The reform movement remained a politicians' rather than a people's movement for the next two decades. In 1903, a Seiyukai member introduced a bill for universal manhood suffrage. In 1911, a manhood suffrage bill passed the Representatives by a large majority but was unanimously rejected by the Peers. Apparently the government was alarmed at the effort to stimulate popular support which attended the bill's consideration. Measures were taken to check propaganda, and the popular movement did not gain appreciable strength until after the legislation of 1919 reducing the tax qualification to three yen.

The act of 1919 was passed amidst the beginnings of the democratic effort to secure manhood suffrage. The National Students' League presented a petition to the Emperor, recalling the imperial promise of 1868 "to consult widely and to transact state affairs in accordance with public opinion" and denouncing those politicians who had prevented the people "from obtaining full rights of participating in politics." The petitioners boldly asserted that "Due to the great changes which have taken place in the political and social situation at home and abroad, the time has come when the country should adopt universal manhood suffrage as the basis of the nation's political activity." The veteran liberal, Ozaki Yukio, delivered telling blows at the prevailing system, which, he said, gave the power to large taxpayers and denied it to their tenants who actually paid the tax, which compelled men known in their student days for their superior ability to bow to the sons of the rich, and which feared to give the vote to the men whom it conscripted into its armies. Thousands of newspaper articles and popular resolutions attested the genuineness of the people's interest in manhood suffrage.

The effect of the 1919 law was to enfranchise the small land-

owners, leaving the laborers and peasants, as well as nearly 200,000 well-educated men, still outside the political order. Dissatisfaction was widespread, and the reform effort was greatly intensified. Two of the larger parties introduced manhood suffrage bills in the 1919–1920 session of the lower house, and on February 26, 1920, a notable debate occurred upon the question. The government so greatly feared the results of a vote that it dissolved the house.[2]

"MANHOOD SUFFRAGE" ACT OF 1925

The "drive" which culminated in the manhood suffrage law of 1925 may be regarded as having been stimulated by the belated attempt of Viscount Kiyoura, appointed premier in January, 1924, to conduct the government without regard to the attitude of political parties and in close touch with the House of Peers. The law was introduced on January 22, 1925, by the coalition ministry of Viscount Kato, composed of ministers representing the Kenseikai, the Seiyukai, and the Kakushin Club. It was brought forward, not because the cabinet thought that the time was opportune for so great an expansion of the electorate, but because popular sentiment for it had become too strong to resist. Differences of opinion existed within the ranks of the government parties, but these were reconciled, as were those which at first divided the cabinet and the Privy Council, and subsequently those that appeared between the views of the two houses. No considerable discussion was devoted to the main feature of the bill, but both the Privy Council and the Peers were insistent upon the exclusion of nobles from the political rights conferred; the Seiyukai was equally determined to break down the exclusive character of the nobility by bringing its members to share the privileges of commoners. Another source of lengthy debate was the question of excluding from the franchise persons unable to support themselves on account of poverty. Members of the parties in the lower house agreed that poverty is no criterion of intelligence, but the Peers and the Privy Council declined to go the full limit involved in the liberal principle upon which the bill was founded. Both issues were ultimately threshed

[2] G. E. Uyehara, *The Political Development of Japan* (London, 1910), pp. 168–179. H. Sato, *Democracy and the Japanese Government* (New York, 1920), Chs. III, IV. E. W. Clement and G. E. Uyehara, "Fifty Sessions of the Japanese Imperial Diet," in *Transactions of the Asiatic Society of Japan*, New Series, II, 5–35. See also the four electoral laws, the last of which is a printed *postea* as Appendix X; the laws of 1889 and 1900 may be found as appendices in Ito's *Commentaries*, pp. 215–298; the law of 1919 is not available in translation.

out in conference committee, and the views of the conservative forces prevailed. An interesting plea made in both houses by opponents of the bill was that of protecting the family system by confining the parliamentary franchise to heads of families, whether male or female. In both the Diet and the press, references were made to the imperial oath of 1869. The bill was passed by the House of Representatives on March 2; by the Peers, with amendments, on March 26; and by both houses, after conference, on March 29, 1925.[3]

POLITICAL STATUS OF WOMEN

Women remain unenfranchised. Not until 1922 were they so much as permitted to attend political meetings. In 1928, however, and again in 1930, they took an important part in campaigns. In the former year 250 speeches were made in Tokyo prefecture by members of the Women's Suffrage League. Since 1885, sporadic movements to improve the legal and political position of women have been made, but organizations of real influence did not appear until after 1925, in the wake of the passage of the manhood suffrage act. In most instances these organizations were affiliated with one or another of the proletarian parties. In the special (forty-eighth) session of the Diet in 1930, several bills for the grant of suffrage to women in elections to local assemblies were introduced.[4] None was a government bill, but a Minseito member's bill passed by acclamation after a very brief debate.[5] An act to enfranchise women in cities, towns, and villages, introduced by the government, was passed in the House of Representatives in 1931, but, as in the case of the 1930 bill, it failed of serious consideration in the House of Peers.[6] Nevertheless in 1930 the legalization of woman suffrage within ten years was freely predicted in Japan.

ELIGIBILITY

Eligibility to office is a right which continues to be somewhat restricted. Candidates for seats in the House of Representatives

[3] The debate in the Diet upon the act of 1925 is well covered in the *Japan Chronicle*, Sept., 1924–May, 1925, and is summarized in a brief article by the author: "The New Japanese Electoral Law," in *American Political Science Review*, XX (1926), 392–395.

[4] For the present local franchise and other aspects of local elections, see Ch. xv.

[5] *Japan Chronicle*, May 1, 1930, p. 453; May 15, 1930, p. 515; May 22, 1930, p. 538.

[6] H. S. Quigley "The Far East," *Current History*, XXXIV (May, 1931), 320.

are, however, no longer required to meet any sort of property qualification. Not since the repeal of the first electoral law (that of 1889), which prescribed a direct tax qualification of fifteen yen, has eligibility turned upon the possession of property or taxable income. The lower age limit for representatives has been, and continues to be, thirty years. Except for the addition of certain classes of officials to the list of those ineligible for the lower house, the list is identical with that of those classes of persons who are disqualified for the suffrage. Priests and teachers were made eligible to the house by the law of 1925.

CANDIDATES AND NOMINATIONS

Any person may become a candidate for a seat in the House of Representatives by notifying the chairman of election of the district in which he proposes to run and depositing 2,000 yen (approximately $1,000) in cash or government bonds. The deposit is forfeited to the government if the candidate receives fewer than one tenth of the total vote of his district divided by the number of seats to which the district is entitled. The high penalty upon failure is a lucrative source of revenue, producing 748,000 yen in the general election of 1930 and 996,000 yen in the 1928 election. For the 466 seats there were 964 candidates in 1928, but only 840 in 1930. In the latter year seventy candidates withdrew from the contest before the polling date. The penalty worked severely against the proletarian candidates, of whom but five out of ninety-six were successful in 1930, eight out of eighty-eight in 1928. The larger parties provide deposits for recognized candidates.[7]

There are no primary elections and no nominating conventions. Each party leaves to its campaign manager the decision as to which candidates it shall recognize as "official" candidates of the party. Party members who persist in running for election against the wishes of the manager are liable to expulsion from the party. Such candidates are unlikely to be elected. In the 1928 election, 70.6 per cent of the official Seiyukai candidates were elected, while but 15 per cent of the unofficial candidates were successful; the corresponding Minseito percentages were 72.5 and 24.6.

[7] The maximum penalty for bribery is 2,000 yen. By the deposit of that amount, a candidate secures the government against non-payment of fines. In Great Britain, an electoral deposit of £150 ($750 at par) is required. The deposit is forefeited if the candidate fails to receive more than one eighth of the votes cast in the constituency.

Candidates who obtain the highest pluralities within the district are declared elected, provided each has received at least one fourth of the quotient obtained by dividing the total vote of the district by the number of seats to be filled. The law is meticulous in providing methods of filling vacancies due to declined or invalidated election or death, without the necessity of new elections. In such circumstances, the vacancies go to unsuccessful candidates in the order of their pluralities. If, however, a vacancy occurs after a member has taken his seat, a new election is required but is not held until at least two vacancies occur in the district. Persons elected to fill vacancies hold only for the unexpired term.

ELECTORAL DISTRICTS

Three types of electoral districts have been experimented with under the four electoral laws. The law of 1889 provided for single-member districts, that of 1900 for large districts corresponding to prefectures and incorporated cities. The law of 1919 provided for return to the single-member plan; and the present law establishes multi-member districts of smaller size than those used under the law of 1900. None of these types has proved satisfactory. The number of members per district under the law of 1925 varies between three and five. Japanese experimentation with electoral districts recalls the several alternations in France between the *scrutin d'arrondissement* and the *scrutin de liste.*[8]

The multi-member district in which a voter casts one vote (the type of the 1925 law), is criticized by one authoritative Japanese writer as giving an election the character of a lottery. He says:

"The average impartial voter, in casting his vote for a candidate of the party he favors, can't be sure whether he is helping it or not. More candidates of that party are running than his electoral district has room for, and if votes are equally divided among them, none may be elected; but if votes are concentrated on one popular candidate, another one or two of the same party who might have had a chance otherwise would be sacrificed." [9]

THE ELECTORAL PROCESS

Voting takes place on a date announced by imperial ordinance.

[8] Fifty-three districts return three, thirty-eight return four, and thirty-one return five members each. It should be noted that a few districts elected two members under the law of 1890 and a few elected two to three members under the law of 1919. The number per district under the law of 1900 varied from four to twelve. For French experience, see E. M. Sait, *Government and Politics of France* (New York, 1920), Ch. VI.

[9] S. Washio, "The Election Outlook," *Japan Advertiser*, Feb. 12, 1930, p. 4.

Regular elections must, under ordinary circumstances, be held within five days of the close of the concluding session of the previous Diet; in extraordinary circumstances, within thirty days of the close. Special elections must be held within thirty days of dissolution. Electoral lists of the names of persons qualified to vote are prepared by local officials and posted in public places. After objections are heard, definitive lists for regular elections are posted on December 20 of the year previous to the election.

Polling booths are located in city, town, and village halls and in school buildings. The polls open at 7:00 A. M., and close at 6:00 P. M. Each voter presents the election notice which has been sent to him, receiving a certificate entitling him to a blank ballot upon which he writes a single candidate's name, after entering a private compartment. He may use Japanese, Korean, or Chinese characters, Japanese phonetic symbols, Korean phonetic symbols making Japanese sounds, Romaji (Roman letters), or braille, but must be careful to exclude unnecessary words, e. g., his own name or strokes of the brush, dots, dashes, or remarks of any sort. After voting, the ballot is folded and placed in the ballot-box. Persons unable to be present in their voting precincts on election day may deposit sealed ballots with designated officials. Those incapacitated by illness or other recognized circumstances may fill out ballots at their places of abode and send them to the polling booths.

Mayors and head-men are legally entrusted with supervision of the polls within their respective cities, towns, and villages, and in this capacity are called "voting overseers." This practice, as in France, is a measure of economy in contrast with the British and American systems, in which paid election officers are drawn from private life. Each candidate is entitled to nominate one watcher or "voting witness" in each voting precinct, who assists the overseer in identifying eligible voters. The overseer must keep minutes of election day, which are signed by him and by the witnesses.

Ballots are counted by the mayors and the heads of prefectural branch offices, who act as "counting overseers" on behalf of the prefectural government for cities and for towns and villages respectively. To their offices are sent the sealed ballot-boxes, the minutes of election, and the electoral lists. Each candidate is entitled to have his "voting witnesses" act also as "counting witnesses." The witnesses not only observe the counting but advise concerning the acceptance of doubtful ballots. A seemingly impractical provision (Article 50) of the 1925 act states that "the

electors are entitled to request to be permitted to inspect the counting at the respective offices." Minutes are kept of the counting process, and they and the voting minutes are preserved during the tenure of members affected by the election therein recorded. Reports of the ballot count are forwarded to the proper "chairman of election," appointed from among the mayors and prefectural branch heads of each district by the prefectural governor. The function of this official is to hold an "election meeting" and to examine the reports of the counting overseers in the presence of the election witnesses and such electors as may request to be admitted. Minutes are kept, are signed by the chairman and witnesses, and are preserved with the reports received from the counting overseers.

ELECTION FINANCE

The election law prescribes that the expense of the election campaign for each candidate shall not exceed the sum obtained by multiplying by forty sen (twenty cents) the quotient resulting from dividing the total number of registered electors in his district by the number of seats to be filled from that district. Thus the average amount allowable throughout the whole country in the election campaign of 1928 was 40 sen $\times \frac{12{,}406{,}311}{466}$, or approximately 10,650 yen ($5,325). Candidates are not required to include transportation expenses within this amount, nor post-election expenses and certain other items incurred in connection with the activities of election officials. Candidates are permitted to send one letter, postage-free, to each elector in their respective districts.[10]

As noted hereafter, the law provides that each candidate shall appoint an election or campaign manager. It requires that no expense money shall be paid except by the manager, who must keep an account of expenses and report it to the prefectural governor or (in Tokyo) to the superintendent of metropolitan police, by whom it is made public. Article 110 of the law of election is somewhat ambiguous concerning the penalty for infringement of these provisions, but it appears to mean that whereas a failure to observe the legal restrictions upon expenditure operates to invalidate a

[10] The government allotted 4,190,000 yen to cover the cost of administering the 1930 election (Tokyo *Nichi Nichi*, Jan. 26, 1930, p. 1).

member's election, it has not that effect if the candidate can show that he was not negligent in the choice or supervision of his election manager. Except for this last item, these limitations and the procedure for their enforcement appear to be modeled after the corresponding provisions of the English election law.

It is an open secret that candidates rarely keep within prescribed limits, and that many candidates expend sums rivaling the expense accounts of senatorial candidates in the United States. The average per candidate in the campaign of 1928 was estimated at 50,000 yen ($25,000). In 1930, the estimated average was somewhat lower. Proletarian candidates must needs keep within the limits of small party funds, but the Minseito and the Seiyukai expend approximately 5,000,000 yen each during a campaign. The larger part of this money is contributed by the great business establishments—Mitsui, Mitsubishi, Yasuda, Okura, and others. The first-named contributes most generously to the Seiyukai war-chest, Mitsubishi to the Minseito; but the exigencies of politics demand that contributors who desire favorable legislation and other consideration contribute to both parties.[11] While the parties assist their candidates, they do not attempt to finance their campaigns completely. Consequently, a candidate of limited personal resources —and a large majority of the candidates are poor—must borrow or beg. Small wonder that men of wealth make an effort to be absent from their homes or places of business during the fund-hunting season that inaugurates a campaign.[12]

CAMPAIGN METHODS

A candidate is required by law either to employ an "election manager" or to act in that capacity himself, notifying the police authority in his district of his decision. The manager appoints his candidate's "election committee" and clerks. A maximum of fifty

[11] Mr. Obama Ritoku, financial editor of an important newspaper, *Chugai Shogyo*, says, in the February, 1930, number of the magazine *Chuo Koron* that at least 30,000,000 yen is required for an election, of which 80 per cent is expended secretly. He expresses the opinion that if the handling of this fund were exposed, 99 per cent of the members of the House of Representatives would be disqualified.

[12] Mr. S. Nakano gives a clear-cut classification of candidates: "Like the *geisha*, they are divided among independent, entirely supported, and partly supported candidates. Independent candidates run at their own risk. Those entirely supported have to seek all their campaign fund from their party headquarters. Those partly supported bear it partly themselves. The so-called independent candidates include some who can raise funds from non-party sources." *Japan Advertiser*, Jan. 15, 1930, p. 4.

committeemen and clerks, working in a maximum of seven "election offices," is prescribed by law. Manager, committeemen, and clerks must be qualified electors. If a candidate has been registered as such by a second person, the latter may designate his election manager without consulting the candidate. Public officials may not serve as campaign managers in a district within their jurisdiction. Only the clerks may be paid for their services, but the manager and committeemen are entitled to expense money.

"No election campaign shall be conducted except by a candidate, his election manager, election committee or clerks; it is permitted to conduct a campaign by letters of recommendation or by speeches." So runs Article 96 of the electoral law of 1925. Campaign speakers and writers of commendatory letters are entitled only to expense money.

Campaigns are brief and distinguished principally by speechmaking and the sending of circular letters. Ministers of state are the principal campaign speakers, while candidates and others discuss the issues or resort to personal appeals. The amount of campaign mail matter is enormous. Posters other than those of uniform size containing merely the names of candidates are forbidden, as is the use of the radio for campaign speeches. Voters may not be entertained with food, liquor, or amusement, and the use of parades, bonfires, bells, etc., is penalized. House to house canvassing and telephoning or interviewing individuals are prohibited. Official election posters in attractive colors, showing a ballot-box and a hand depositing a ballot, are displayed in railway stations, shops and other places frequented by the public.

ROUGH TACTICS AT ELECTIONS

The police are extremely alert to prevent rowdyism, and campaigns to-day have but few incidents of the character described by Premier Inukai Ki, president of the Seiyukai at seventy-five years of age, continuously a member of the lower house from its first session:

"I suffered a terrible experience in the election of 1892, when the Government made the severest interference with the election known to date. My house was on the bank of a river, and the house was surrounded by policemen and so-called *soshi* carrying drawn swords. These men were Government agents attempting to interfere with my election.

"I was not to be defeated in the campaign. I myself hired a noted *soshi,*

named Ichiki Saitaro, who had under him 30 strong men. The two opposing groups had fist fights and even fought with swords. My opposing candidate was Mr. Magoshi Kyohei, president of the Japan Beer Brewery Company. He was reported to have spent Y50,000 and yet polled only 1,000 votes, whereas I polled 6,000 votes for the Y1,000 spent. I felt very happy when I won that sweeping victory."

"GENERALS" OF ELECTION

The real "generals" of election are the men chosen by the party organizations to direct their respective campaigns. For the government party, this highly important function is likely to be performed by the Minister of Home Affairs, and for the major opposition party by some former occupant of that post.[18] This ministry is the obvious point of vantage, in part because experience there assures a wide knowledge of conditions in the local political areas, but principally because the home minister holds supreme authority in the conduct of elections. The anomaly involved in the concurrent exercise of the functions of a theoretically impartial election official and a party campaign manager is obvious.

DIFFICULTIES OF THE PREVAILING SYSTEM

Under the conditions resulting from the establishment of medium-sized, multi-member districts, the generalissimo's most urgent task is to secure an even distribution of his party's votes within a district. Unless this is accomplished, a popular candidate may attract an unnecessary surplus of votes, or may lose through the diversion of votes to less popular men in the belief that the popular man is safe. There is a possibility that a majority party in a district will fail to win a single seat if it presents too many candidates. Thus a candidate's colleagues may be more dangerous to him than his opponents.

The election of 1930 revealed that, under the proper generalship, it is possible to obtain a remarkably even distribution of votes. In Akita prefecture, first district, three of the four seats were won by Minseito candidates with votes as follows: 20,990; 20,426; and 20,134. In the first district of Hiroshima, one of two successful

[18] Dr. Suzuki Kisaburo, who conducted the Seiyukai campaign in 1930, conducted the campaigns of 1924 and 1932 for the pro-government party while holding the post of Minister of Justice and for the same party in 1928 as Minister of Home Affairs. Mr. Adachi Kenzo, Minister of Home Affairs, was in command of the government party's campaign in 1930.

Seiyukai candidates received 13,727 votes, the other 13,702. In the first district of Iwate, one Seiyukai member received 16,954 votes, the other 16,160 votes. In the second district of Fukuoka, electing five members, the two successful Minseito candidates received, respectively, 19,291 and 19,197 votes. In Tottori prefecture, three out of four seats went to Minseito candidates by the following votes: 20,412; 20,131; and 19,984.

The explanation for such evenness in numbers of votes is found by some observers in the cleverness of the campaign managers, by others in the practice of vote-buying through brokers. Neither of these explanations is satisfactory, in view of the fact that in the majority of districts the variations are very much wider than in those cited, and that the urban districts, in which the voting population is shifting, and therefore extremely difficult to control for one party or another, showed the same evenness in selected instances that was revealed in the rural districts, where a bribed voter who voted contrary to his promise could be more readily identified.

A better explanation is offered by Dr. Washio:

"If each election district is viewed as one constituency, it would, indeed, be surprising that a popular and influential candidate should not out-distance other candidates of his party by an overwhelming margin. But in fact each district comprises several constituencies and the nuclei of such constituencies exist fairly well separated geographically, socially and by many other relations. And each candidate puts his main effort for [i.e., into] the cultivation of a particular constituency he is depending on. He does not distribute his campaign activities evenly throughout his electoral district." [14]

If this be accepted, it is clear that the campaign manager's task is to choose as candidates men who are favorably known in the *constituencies within the constituencies,* the "nuclei" within which the election contests actually take place and in which the electorates are roughly equal in voting population. Bribery may be resorted to in the nuclei, but it is not, in general, explanatory of the evenly distributed vote within a minority of the districts.

A terse characterization of the "nuclei" is given by Dr. Washio in an earlier article:

"These are historical facts. These constituencies are clusters of definite interest, tied together by tradition, blood relation, social affiliation and cash nexus of a thousand sorts. Such a constituency has a recognized boss or

[14] S. Washio, "The Recent Election," *Japan Advertiser,* Mar. 5, 1930, p. 4.

group of bosses, to whom politics is the daily business and almost a religion. They are virtually campaigning their constituency every day of the year, binding it faster by threads of personal relationship, working for the cause of the community, making contributions on public occasions, boycotting heresies, etc. In most cases an M. P. is simply their protégé. It is these bosses and not the M. P.'s who control constituencies." [15]

POPULAR INTEREST IN ELECTIONS

The deep and widespread interest of the people in elections is demonstrated by the attendance at campaign meetings and by the size of the national vote, though the latter is to some extent affected by the practice of petty bribery.[16] In the campaign of 1930, open-air meetings were held which drew 20,000 to 50,000 people in the chilly atmosphere of February. Men walked five to ten miles in the early morning hours to hear Hamaguchi or Inukai, respective banner-bearers of the government and opposition parties. Public halls in which ministers were to speak were besieged by crowds numbering many times the capacity of the auditoriums, the people standing patiently in long queues for several hours before the doors were opened. Extremely popular members of the Diet were able to charge a small admission fee for their meetings. The auditors were anxious to hear the issues discussed seriously by competent speakers, forcing "space-fillers" and hesitant orators off the platforms by booing and coughing and disparaging remarks.[17]

PERSONAL PRESTIGE A CANDIDATE'S CHIEF ASSET

Personal prestige appears to be the essential quality in a candidate. A connection with a formerly powerful clan, relationship to a locally respected family, reputation for cleverness as a journalist or speaker—these attributes are highly regarded by the voters. Party platforms are too indefinite and the speeches of politicians too vague to afford even the well-educated voter a hold on reality. The respect felt for officials contributes to the success of candidates

[15] S. Washio, "In the Constituencies," *Japan Advertiser*, Jan. 28, 1930, p. 4.

[16] Dr. R. Fujisawa wrote: "In justice to truth, I have to record to my great regret that this low percentage of absentees is due more to corruption in the form of naked buying of votes than to anything like the healthy growth of political conscience [consciousness?] among the mass of the people." "Statistical Investigations of the Results of the First Manhood General Election of 1928," *Proceedings of the Imperial Academy*, IV (1928), No. 8, pp. 446–447.

[17] In that election, 5,654 campaign meetings were held in Tokyo with an aggregate attendance of 2,150,370, as compared with 3,780 meetings with an attendance of 1,140,273 in 1928 (*Japan Advertiser*, Feb. 26, 1930, p. 4).

who hold, or have held, prefectural or municipal offices. An interesting example of voting based upon family or prestige is that in the conservative Mie prefecture, seat of the Grand Shrine of Ise, which has elected Ozaki Yukio, foremost liberal in the Diet, to represent it in the lower house from the first session.[18]

The interest of the masses in election results is shown in the gathering of crowds in the streets wherever election results are being posted. This service, undertaken by newspapers, is observable at numerous points in the larger cities. The Tokyo broadcasting station, J. O. A. K., announced results during three days following the election of 1930.

The high percentage of the electorate that voted both in 1928 and in 1930 has been explained by reliable Japanese observers as in part due to bribery. It is believed, however, that the appeal of the struggle and of novelty revealed in the attitude of voters during campaigns awakened an enthusiasm that was somewhat significant in bringing out the voters on election day. The vote in 1930 was larger than that of 1928: 10,436,690 in comparison with 9,960,230. The percentage of the total electorate voting in 1928 was 80.3; in 1930, 81.1.[19]

GOVERNMENT INFLUENCE IN ELECTIONS

"The government always wins" is a commonplace aphorism in Japanese discussions of their own elections. There are exceptions, but not more than are needed to prove the rule. Before condemning individuals, however, or accepting the accusations of the defeated that officials acted illegally, it is important to take account once more of the anomaly pointed to in dealing with campaign methods, viz., that the Minister of Home Affairs, the official in charge of election, may be and frequently is chosen by his party as its cam-

[18] Mr. Inukai, Seiyukai leader, recently recalled his "start" as a member of parliament in the election of 1890: "I was a young man 33 years old," he said. "I was on a newspaper at that time. When I ran for a seat in the Diet, my elder brother helped me in the campaign, and I believed it was because of his sole assistance that I was elected. The voters in my constituency did not know who and what I was. They had never heard a single political talk in public.

"My elder brother was well known in the community, and it was because the voters had sympathy with my brother that they elected me. Many voters went to their physicians or temple priests to seek information about the advisability of voting for me."

[19] Dr. Fujisawa's corrected figures state the 1928 vote as 9,866,198 (*loc. cit.*, p. 446). The use of this figure leaves the percentage of voters above 80 per cent. The percentage for 1930 is taken from an article by T. Saghara in the *Japan Advertiser*, Feb. 26, 1930, p. 4.

paign manager. Through the absolute power he wields over prefectural governors and police, a minister-manager may, if he chooses, interfere with opponents' meetings, arrest their helpers, and wink at his own party's bribery while checking similar tactics by the other parties, and publish official estimates favorable to the government side.[20] The Minister of Justice has it in his power to prosecute the law-breakers of the opposition while permitting his own party's henchmen to campaign unmolested. It would seem axiomatic that the system should be altered so as to deprive the government party of such sweeping means of control over elections. But the changes required go to the roots of Japan's bureaucracy and must wait upon the further evolution of local self-government, since it is the government's control of appointments and police that is essentially involved. Merely to prohibit a minister of state from acting as campaign manager would be to affect but slightly the present anomalous situation. In all fairness, it must be acknowledged that the government enjoys advantages in elections in many countries which have had much longer experience with democracy than Japan. In the United States, federal patronage is a powerful factor; in England the government can, within limits, choose the election date, and it enjoys a preference in the allotment of radio time.

USE OF GOVERNORS IN ELECTIONS

In another chapter, the political character of the prefectural governors is dwelt upon.[21] It is an invariable custom for a new

[20] Mr. (now Baron) R. Wakatsuki, then home minister, addressing the governors' conference on Aug. 6, 1924, said: "In fact, cases such as I am going to enumerate have frequently happened in connection with past elections. Police and other officials inquired of voters as to whom they were going to vote for, suggesting to vacillating voters the advisability of casting their votes for pro-government candidates. Police officials sometimes went further and gave voters to understand that their support of opposition candidates easily laid them open to police suspicion of corruption. Cases of violation of the election law, in which pro-government candidates were involved, were deliberately handled with gloved hands while those against opposition candidates were most strictly dealt with. The authorities often refused to take up cases against pro-government candidates despite the fact that they were supported by strong evidence. Voters working for the interests of opposition candidates were threatened with prosecution by the police. On the eve of elections opposition candidates and their canvassers were purposely summoned to police stations and subjected to a prolonged examination, thereby depriving them of the opportunity to carry on their election campaign in the most fateful period. Voting or election witnesses were chosen from among the pro-government elements exclusively or in such a predominant proportion as to injure the interests of the opposition." *Japan Chronicle*, Aug. 14, 1924, p. 230.

[21] See Ch. xv; also Ch. ix.

ministry to replace governors and the superintendent of Tokyo-fu police with its own followers. Prior to an election, the premier and the home minister address a gubernatorial conference in the capital. Premier Hamaguchi at the 1930 conference said to the governors:

"Strict fairness must be the first motto in controlling the general election. The last election . . . gave rise to many criticisms at the way in which it was conducted, leading to the resignation of a responsible cabinet minister. The present government should be careful not to repeat the same mistake. The government intends to pursue the policy of conducting the election in an honest and fair way and for this purpose the attitude of the government officials in charge should be fair and unselfish to all candidates, irrespective of their party affiliations." [22]

INTERFERENCE WITH ELECTION MEETINGS

Nevertheless, the Seiyukai found a number of occasions for protest. It reported that during the last days of the campaign the purchase of votes for government candidates was conducted openly, while the Seiyukai candidates and canvassers were gagged. While acknowledging that speakers were allowed greater freedom from police interference than in 1928, the opposition charged the government with discriminating against its speakers in discussion of the business depression and with forbidding mention of scandals in which Minseito officials had been involved. Police, it was stated, watched opposition campaigners very closely and made arrests on slight grounds. Permits for meetings were obtainable by the opposition only by consent of all police stations in a constituency, whereas Minseito meetings were held without permits. President Inukai of the Seiyukai denied that the premier's injunctions for fairness had been carried out: "Interference and pressure were everywhere to be felt and in some prefectures local officials were seen directing vote-buying." [23]

The following news paragraph expresses a general opinion current during the campaign:

"A welcome departure from the pressure which hitherto has been brought to bear upon any and every candidate slanting on radicalism has been brought about by the administration in fulfilment of its previous pledge to

[22] *Japan Advertiser*, Jan. 26, 1930, p. 1. This speech is uniform with precedent.

[23] *Ibid.*, Feb. 23, 1930, p. 1.

the public. Beyond a few sporadic cases of police interference with the labor candidates, the authorities are behaving handsomely toward their campaigns. It is reported that the about-face from the repressive measures came so unexpectedly to some of the radical candidates that they find it rather tends to take off the edge of the dramatic effect of their manner of waging the election fight. It is remembered that the rigorous police ban on any remarks savouring of radicalism on similar occasions in the past used to bring results contrary to what was intended by the authorities concerned by placing a kind of halo on the head of a labor politician." [24]

ILLEGAL AND CORRUPT PRACTICES

"The practice of buying votes is undoubtedly a perfected scheme. It is not desultorily conducted. Buyers know where is the balance that will swing the score and how to get at it. In earlier elections a public advertisement like '100 votes wanted for 50 yen' is said not to have been an isolated exception. Nowadays a buyer knows what broker he should approach to get the hundred he wants and the broker knows what door he should open to put in 'solid shots.'" [25]

That vote-buying amounts to a trade is generally admitted in Japan:

"But 50,000 to 60,000 yen are often entirely devoted to buying votes. Such buying of votes is frequently made for one village or town as a whole, or for parcels of 500 or 1,000 votes. . . . Voters in a fishing village near Mito in Ibaragi prefecture offered their votes to two opposing candidates but would not cast their votes. Candidates began to shun these voters and the voters eventually dumped their votes at 50 sen each. . . . Okayama prefecture is also noted for collective bargaining. Voters there pass a resolution to vote for candidates who offer to build schools or make roads." [26]

The title "election brokers" is applied to the middlemen who buy votes from electors and sell them to candidates or their managers:

"Election brokers usually extort 3,000 to 20,000 yen from every candidate. When they can assure the local partisans that the trunk is heavy he is recommended by prefectural headquarters to the Tokyo headquarters as the recognized candidate. It was rather difficult before to import or introduce stranger candidates to constituencies but it can be done easily at present. When the local partisans find their representatives not up to their

[24] *Japan Times*, Feb. 14, 1930, p. 1.
[25] S. Washio, "The Recent Election," *Japan Advertiser*, Mar. 5, 1930, p. 4.
[26] S. Nakano, "The Wholesale Vote Trade," *Japan Advertiser*, Jan. 15, 1930, p. 4.

requirements they begin to seek new candidates with better resources to be nominated by the party headquarters." [27]

One-yen notes are in urgent demand during campaigns, suggesting that to many voters the sale of a vote is akin to accepting payment for a day's work or other routine service and carries with it no flavor of dishonor. Familiar passwords are a "spade," meaning money in advance; a *setta* (a sandal with a leather sole having a piece of metal on the heel), meaning money afterwards; a "fly-hook," meaning to catch a voter without bait; and a "pair of trousers," a voter suspected of pretending to support opposing candidates.

Bribery is more common in the rural than in the urban districts. The country voter, unlike his city cousin, is not stirred by discussions of the issues or urgings to idealism. No proletarian candidate has been elected in a rural constituency, largely because such candidates have lacked the funds to establish themselves in the confidence of the villagers. The local bosses of the wealthier parties, like American bosses, maintain their financial contact with voters between elections, making gifts to individuals, assisting with loans and benefactions, and exercising influence to obtain local improvements at state expense.[28]

LEGAL PROVISIONS UPON ELECTION OFFENSES

Election offenses dealt with at law were classified in 1925 as follows: (1) gifts of money, (2) gifts in kind, (3) entertainments, (4) intimidation, (5) violence, (6) carrying deadly weapons, (7) exchange of benefits, (8) miscellaneous.[29] Noteworthy is the absence of reference to repeating, ballot-box stuffing, misrepresentation, and other illegalities formerly practised in American elections. Statistics of election offenses before the courts are available,[30] as follows:

[27] *Ibid.* S. Nakano states that from 1,000 to 3,000 yen are offered in certain prefectures by candidates for the high-taxpayer seats in the House of Peers.

[28] Nakano points to public and private secret service funds as a source of campaign strength. For the fiscal year 1929–1930, the national government fund was 3,386,281 yen. The Bank of Japan maintains a secret fund of 540,000 yen, the South Manchuria Railway over a million yen, one Mitsui concern 450,000 yen, etc. *Japan Advertiser*, Jan. 28, 1930, p. 4.

[29] *Japan Year Book*, 1924–1925, pp. 84–85. See Appendix X, Ch. XII in this book.

[30] *Japan Year Book*, 1931, p. 92. Certain entries in the fourth column of this table appear to be inaccurate.

Election	*No. imprisoned*	*No. penalized*	*No. unseated*	*Total*
1 (1890)	26	211	0	237
2 (1892)	65	183	4	252
3–4 (1894)	217	504	24	745
5–6 (1898)	249	611	15	876
7 (1902)	173	1,348	5	1,526
8 (1903)	140	1,642	2	1,784
9 (1904)	25	230	1	256
10 (1908)	128	1,419	0	1,547
11 (1912)	325	3,437	0	3,762
12 (1915)	448	7,194	19	7,661
13 (1917)	1,283	21,245	530	23,058
14 (1920)	148	5,166	37	5,351
15 (1924)	56	9,434	1,825	11,315
16 (1928)	241	7,559	69	7,869
17 (1930)	221	12,690	59	12,970

The election law of 1925 is detailed in the enumeration of offenses and corresponding penalties. Invalidation of a candidate's election, prohibition to vote or to be a candidate, fines ranging up to 10,000 yen, and imprisonment up to seven years are the principal penalties provided. Prohibited actions are numerous, including gifts or promises of gifts of money, goods, employment, or influence; the use of violence, intimidation, or obstruction; failure or wilful neglect of election or campaign officials in performance of duties; violation or attempted violation of the secrecy of the ballot; tampering with ballot-boxes or manipulation of votes; carrying deadly weapons; conduct of parades or other forms of display; instigation of others to illegal practices; publication of falsehoods concerning a candidate; and illegal voting.

DISPUTED ELECTIONS

An elector or a candidate who questions the validity of an election may sue the chairman of election of the electoral district in the Supreme Court within thirty days after the date of the election. An elector or a defeated candidate, under the same circumstances, may sue a successful candidate in the same court and within the same period. The court is empowered to adjudge the election invalid in part or in whole.[31] The House of Representatives is without power to investigate disputed elections.

[31] Electoral law of 1925, Ch. IX. See Appendix X in this book.

ELECTORAL REFORM

Consideration of changes in the election law for the lower house is continuous, indicating general dissatisfaction with its working. The prevalence of bribery, in spite of the detailed provisions to check corruption, is one source of discontent. There is a widespread interest in proportional representation. Under the present law, the distribution of seats is roughly proportionate to the strength of party votes so long as a party restricts the number of its candidates. This is due, however, not to the system, but in some cases to the existence of inner constituencies, in others to astute management.[32] Other proposals for change are concerned with the reduction of the voting age to twenty, the enfranchisement of women, decrease of abstentions, substitution of printed for blank ballots, and reduction of the residence requirement from one year to three months.

Most far-reaching of all proposals is that to bring elections under rigid governmental control, practically doing away with party and individual campaigning and restricting the propagandist work of candidates to the preparation of a brief statement for inclusion in an election pamphlet to be sent to voters by the government and to the delivery of a single speech. The theory of this plan is that a campaign will cost private persons nothing, hence corruption will disappear. It is not difficult to find features to criticize in such a scheme.

During the 1930 campaign, Premier Hamaguchi appointed a "commission on electoral reform" with himself as chairman and including some twenty-five ministers, members of the Diet, and university heads. This body held its first plenary meeting in April of that year and set itself first to consider three items of major importance: (1) measures to put an end to bribery of voters; (2) restriction of election expense; and (3) elimination of official in-

[32] Dr. Fujisawa, in his paper already cited, p. 446, has tabulated the results of the 1928 election in comparison with the results that would have followed from the use of the d'Hondt system of proportional representation: A, when reckoned by constituencies; B, when reckoned by aggregate votes.

	Actual no. of seats	*A*	*B*
Seiyukai	218	201	223
Minseito	216	202	216
Independents	17	29	20
Kakushin Club	3	4	1
Business Men's party	4	8	1
Social-Democratic party	4	6	3
Labour, excluding S.-D. p.	4	16	2

terference. The report of this commission was still awaited when this book was published.

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CHAPTER XIV

THE COURTS

CONSTITUTIONAL STATUS

The courts are established under Chapter V of the constitution. The first of the five articles of that chapter varies somewhat the expression of the imperial prerogative from that used in the articles relating to the executive and legislative agencies. In the latter, "the Emperor exercises" the powers provided for; in the former, the judicature is "exercised by the courts of law according to law *in the name of the* Emperor." The difference in wording is significant, not of any actual difference between the political and the judicial departments in their relation to the Emperor, but of a juridical difference arising from the desire of Ito and his collaborators to emphasize the importance of the judicial branch of the new system of government. The judicial power, like the executive and legislative powers, was recognized as within the imperial prerogative. Article 4 settled this by affirming that "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."[1] But the Emperor was not, even in theory, to "exercise" the judicial power, i. e., to administer that portion of the sovereign power. Its exercise was entrusted to the courts. The full import of the provision was expressed by Ito in his *Commentaries* (page 114): "Though it is in the power of the Sovereign to appoint judges, and though the courts of law have to pronounce judgment in the name of the Sovereign, yet the Sovereign does not take it upon himself to conduct trials, but causes independent courts to do so, in accordance to law and regardless of the influence of the administrative. Such is what is meant by the independence of the judicature."

The same article provides that: "The organization of the courts of law shall be determined by law," i. e., by statute, thus estab-

[1] Ito wrote on this point: "The judicature is combined in the sovereign power of the Emperor as part of His executive power" (*Commentaries*, p. 104).

lishing a second and more real distinction between the courts and the non-judicial agencies of administration. Although the pre-constitution system of courts, created by ordinance, was maintained in 1889, subsequent modifications could be introduced only by statute. Special courts, including a Court of Administrative Litigation, were to be created by law. When, in 1931, a general reduction of official salaries was accomplished by imperial ordinance, the judges of Tokyo protested against inclusion of the judiciary. Upon further consideration, the government excepted the judges from the application of the ordinance.

INFLUENCE OF WESTERN JUDICIAL SYSTEMS IN JAPAN

The Japanese judicial system was modeled chiefly upon the French. The codes of law were in part modeled upon French, in part upon German, law. Adopted in haste, under a double urge of admiration for Western progress and desire to be rid of extraterritoriality, Occidental legal agencies and principles have been difficult of operation and application. Modification has been necessary to give greater weight to the social and moral heritage of the Japanese people. On the other hand, Japan's increasing industrialism has called for Occidental methods in its regulation. For example, the commercial code is essentially German, as is the civil code—with exceptions in the latter case of such purely Japanese principles as those expressing the relationships peculiar to Japan between Emperor and subject, husband and wife, members of a family, and claimants to property. The criminal code and code of criminal procedure are based largely upon French law. The law of trusts is a restatement of the principles of English law governing fiduciary relationships. Many other special laws are borrowed from Western legal systems, but contain modifications necessary to bring them into harmony with Japanese conditions.[2]

Professor Takayanagi Kenzo has pointed out how, during the World War (1914–1918), discredit was thrown upon German legal science, and how a subsequent "free law" movement developed among Japanese jurists in which emphasis was placed upon the socialization of law. He regards this period as "having prepared the way for the building-up of a new Japanese legal science along

[2] J. L. Kauffman, "Some Unique Aspects of Japanese Law," *Report of the Thirty-sixth Annual Meeting of the Pennsylvania Bar Association* (1930), pp. 296–297.

independent lines, freed from the shackles of the jurisprudence of concepts imposed by the German exegetical school."[3] He instances the effectuation in 1916 of the factory law of 1911 and the passage between 1914 and 1918 of laws of postal life insurance and of state subsidy for compulsory education. He holds that "a legal system having a strong national flavour in its contents will be created in the future through the endeavors of our jurists; but despite this fact legal progress in Japan and legal progress in the Occident will, on the whole, follow similar lines."[4]

THE JUDICIAL SYSTEM

Japan followed the Continental system in dividing her judiciary into ordinary courts and an administrative court—the Court of Administrative Litigation. The former exist in four grades: (1) *ku-saibansho,* or local courts; (2) *chiho-saibansho,* or district courts; (3) *koso-in,* or appellate courts; and (4) *Daishin-in,* or Supreme Court.[5]

At the end of 1927, there were in Japan proper 340 courts. Of these, 281 were local courts, fifty-one were district courts, seven were courts of appeal, and the last was the Supreme Court.[6] In local courts, a single judge presides. The district and higher courts are collegiate and carry on their work in divisions. Three judges compose a division in the district and appellate courts, five judges in the Supreme Court.

All judges are appointive, holding office during good behavior until they reach the age limit, which is sixty-three years except for the president of the Supreme Court, who must retire at sixty-five. The president of the Supreme Court and the presidents of the courts of appeal are appointed nominally by the Emperor, the remaining judges in the ordinary courts by the Minister of Justice. Five years' experience is required for appointment to a court of appeal, ten years' experience for appointment to the Supreme Court. By permission of the supreme bench or a court of appeals, a judge may sit for three years beyond the normal age limit.

[3] *Reception and Influence of Occidental Legal Ideas in Japan* (Tokyo, 1929), pp. 14–15.

[4] *Ibid.*, p. 21. See also T. Okamura, "The Progress of the Judicial System of Japan," *Transactions and Proceedings of the Japan Society,* III, 103–118.

[5] The basic law of the constitution of the courts of justice (1890) is printed in translation in Mc Laren's "Documents," pp. 625–655. For a brief description of the courts, see E. Hioki, "A General Survey of the Judicial System of Japan," *Chinese Social and Political Science Review,* X, 568–581.

[6] *Japan Year Book,* 1930, p. 207.

The constitution (Article 58) requires that judges shall possess the proper qualifications as by law prescribed, and provides that "no judge shall be deprived of his position unless by way of criminal sentence or disciplinary punishment." It further stipulates that rules for disciplinary punishment shall be determined by law.

Judges are legally forbidden to take a public interest in politics, to become members of a political party or of a prefectural or local assembly, to occupy any public office from which financial gain may accrue, or to carry on certain types of business. They are, in practice, free from suspicion of political ambition or subjection to political influence.

For administrative purposes, the collegiate courts have presidents in each rank who possess limited powers of supervision, while all courts and procurators are supervised by the Minister of Justice. The president of each rank supervises that rank and the ranks below it. A similar method is applied in the procuratorate. Supervision includes the power to draw attention to improper or insufficient conduct of business and to warn subordinates for unbecoming actions, public or private, after listening to their explanations. It does not enable the Minister of Justice to exercise control over judicial opinions. Each court is jealous of its autonomy in that respect.

CHARACTER OF JUDICIAL PERSONNEL

The personnel of the judicial branch is notable as a whole for its knowledge of the law. Judges and procurators are men of university training, and they are appointed under civil service regulations upon examination. Before appointment they serve for eighteen months as probationers in courts and procuratorates, after which they must pass a second examination. Lawyers who have practised more than three years and professors of law in the imperial universities who have held their posts for three years may, however, be appointed judge or procurator without examination.

The judiciary nevertheless suffers from lack of experience at the bar and from insufficient acquaintance with social and economic conditions such as naturally comes to practising lawyers. The proportion of judges who have been practising lawyers is remarkably small. In 1928, among 2,043 judges and procurators, only 133 had practised law. One reason for this is the fact that lawyers who

enjoy a good practice have a larger income than judges, who are paid comparatively poorly in a civil service in which all salaries are low. Another reason is the comparatively slight development of the legal profession and the consequent dearth of good men to choose from. There is also the fact that, once appointed, a judge or procurator enjoys life tenure. A lawyer is an outsider and the official esprit de corps tends to keep him so. The results of this fact are obvious in any court-room, lawyers as a class demonstrating abilities inferior to those of judges and procurators. This situation, in turn, reacts at times upon clients, who fail to receive the aggressive and capable service to which they are entitled.

PROCURATORS

Procurators are attached to all ordinary courts and are closely integrated with the judicial system. Officers of the police or the gendarmerie may act as procurators in local courts, and in cases of necessity judges are designated to serve as procurators by the presidents of courts of all grades. The functions of procurators are in part judicial, but principally those of prosecuting attorneys. They conduct preliminary investigations, prosecute or defend criminal cases on behalf of the state, and supervise the execution of judgments in such cases. They represent the public interest in civil cases of public concern. They have no concern with civil actions against the state, since such cases are heard in the Court of Administrative Litigation.[7] Procurators may not arrest, but it is upon their findings that a judge's order to arrest usually is based.

The ranks of procurators are recruited in the same way as those of judges, and men pass easily from one group to the other. The Minister of Justice appoints procurators as well as judges, and the procurators enjoy life tenure and the same protections against removal as the judges. They are, however, subject to the orders of the Minister of Justice and may not undertake prosecutions without his approval. Their functioning is, consequently, somewhat subject to political influence.

JURISDICTION

The local courts, like all other Japanese courts, have both civil and criminal jurisdiction. They have jurisdiction in civil actions involv-

[7] For exceptions to this rule, see p. 288.

ing amounts not exceeding 1,000 yen ($500) and in other minor cases, and they also handle cases of bankruptcy and personal status. A special procedure exists for the settlement of disputes concerning rent, whether urban or rural, and concerning petty commercial issues, and this procedure is carried out in the local courts. They also handle criminal cases which are not felony or which do not require a preliminary investigation. Felony is defined as an offense punishable with death or with imprisonment for a term of not less than one year.

The district courts conduct the trial in first instance of all civil and criminal actions beyond the jurisdiction of the local courts. They also conduct preliminary examinations of criminal cases of complicated character. Such examinations are conducted in secret and by a single judge. These courts also entertain appeals from judgments of the local courts and complaints against their rulings and orders.

The courts of appeal are located at Tokyo, Osaka, Nagasaki, Sapporo, Nagoya, Hiroshima, and Sendai. They try appeals from actions heard in the first instance by the district courts and complaints against the rulings and orders of the district courts in such actions. Civil actions in the first and second instance against members of the imperial family come within the competency of the Tokyo court of appeal. They may be brought without prior notice to, and receipt of consent from, the Emperor. The courts of appeal try cases on the facts as well as the law. They sit in divisions of three judges which vary in number with the extent of litigation.

The Supreme Court, sitting in nine sections of five justices each, has exclusive jurisdiction over cases of treason and serious offenses against the imperial family; also over offenses committed by members of the imperial family such as are punishable with imprisonment or a heavier penalty.[8] These actions may not be brought without the Emperor's consent. The court also conducts preliminary examinations in cases over which it exercises original jurisdiction. It hears appeals from judgments of the courts of appeals and from cases heard on appeal in the district courts; also complaints against rulings and orders of the courts of appeal and against those of district courts when hearing matters on appeal. The Supreme Court is not bound by the decisions of the appellate courts

[8] From January 1, 1931, the number of civil divisions was increased from four to five, while the number of criminal divisions was decreased from five to four, due to changes in the pressure of business (Osaka *Mainichi*, Dec. 17, 1930, p. 1).

on issues of fact, though it may accept them. Jury cases are appealed directly from the district courts to the Supreme Court, and in such cases the Supreme Court does not review the facts.

The ordinary courts exercise a limited jurisdiction over cases of an administrative character. These include damage suits brought by private persons against the government or its officers, which are handled like private damage suits; appeals from the decisions of administrative authorities concerning patents, heard by the Court of Accounts; election disputes; and certain other cases provided for by statute.[9]

ADVISORY OPINIONS

"The courts and public procurators' offices shall," according to the law of judicial organization, "when required by the Minister of Justice, or by the judge or public procurator having the power of supervision over them, give their opinion on any matter of a legal nature or which concerns judicial administration." This article, numbered 161, appears in Part IV of the law, which is entitled "Judicial Administrative Duties and Power of Supervision." The first article of Part IV reads: "The presidents of the collegiate courts, judges of local courts, and the public procurator-general, chief public procurators, and head procurators, shall be the officials through whom the Minister of Justice shall perform the judicial administrative duties."[10] No provision is made for the procuring of opinions by the Diet, or by executive officers who are not members of the Ministry of Justice. Article 161, above quoted, is somewhat similar to Article 47 of the law of judicial organization in Bulgaria.[11] Reference has already been made to the convention under which the Privy Council may give its opinion to the Emperor upon constitutional questions.[12]

COURT REPORTS

All courts, even police courts, are courts of record, but there are no official court reporters, and no official reports are published. A

[9] Nakano Tomio, *The Ordinance Power of the Japanese Emperor* (Baltimore, 1923), pp. 233–234.

[10] Law printed in Mc Laren's "Documents," pp. 625–655.

[11] M. O. Hudson, "The Advisory Opinions of the Permanent Court of International Justice," *International Conciliation*, No. 214, p. 364.

[12] Ch. III, pp. 45–46; Ch. XI, p. 183.

quasi-official volume of Supreme Court reports is published each month by the *Hosakai* (Jurists' Society), an incorporated body of judges and procurators.[13] Certain law journals, notably the *Horitsu Shimbun*, publish reports of the Supreme Court and other courts, which, though brief, present an understandable summary of the facts, issues, and opinions. A beginning has been made in case-study at some of the law schools, particularly at Tokyo Imperial University.

POLICE COURTS

Police courts, i. e., police officers, have summary jurisdiction over offenses classified as police offenses, involving not more than twenty days' detention or fines not exceeding twenty yen. Efforts in the Diet to transfer police jurisdiction to the local courts have been unsuccessful. However, any person brought before a police officer may obtain a hearing in a local court by entering a protest against the officer's decision. The offenses listed as cognizable by the police are many, among them vagrancy, prostitution, intimidation, mendicancy, obstruction of traffic, indecent display, and maltreatment of animals.

SPECIAL COURTS

Juvenile courts are in operation at Tokyo and Osaka, and the creation of courts of domestic relations is under consideration. The juvenile courts were inaugurated by law in 1922. Two reformatories were established at the same time. In new, unofficial-looking buildings, distant from the ordinary courts, boys and girls under eighteen years of age are tried. Probation officers recruited from the ranks of schoolmasters seek to prevent the development of criminal tendencies in the youth, and they conduct the preliminary investigations. Mental and physical laboratories are employed. In the reformatories many handicrafts are taught, and opportunities for recreation are provided.[14] Other special courts include courts-martial, prize courts, consular courts, and courts under the governors-general of Chosen, Taiwan, and Kwantung Province.

[13] The collection is entitled *Daishin-in Hanketsu Roku* and is published by the Hosakai, Hibiya Park, Tokyo.

[14] K. Suzuki, *History of the Treatment of Juvenile Offenders and the Present Status of the Juvenile Court of Japan* (Tokyo, 1931), *passim.*

PROCEDURE

Trials are public unless a court decides, for reasons which it must make public, to conduct the hearing *in camera*. Proceedings in the local courts are conducted in small rooms and tend to be quite informal. All judges, procurators, and counsel wear black gowns and caps. The gowns of judges and procurators are embroidered in purple, those of counsel in white. Informality is left behind when a case reaches the district courts. In this rank and those above it, the judges occupy chairs on a platform fronted by a semicircular desk and flanked on one side by the procurator, on the other by the clerk.[15] On the floor in front of the presiding judge are tables and chairs for counsel; to one side is the witness-box, to the other the prisoner's box. Benches for spectators occupy about half the room, and half a dozen policemen are posted at various points. Such quiet is maintained that the most soft-voiced witness is plainly heard.

CIVIL PROCEDURE

A civil action is inaugurated by means of a complaint to which revenue stamps to the amount of the court costs must be affixed. If the plaintiff wins the case, the costs thus paid in advance are added to the judgment against the defendant. This practice tends to eliminate frivolous suits and to limit claims to amounts which plaintiffs may expect to substantiate. Following the filing of the complaint, the defendant is allowed two weeks from the service of papers upon him in which to file an answer. The trial may begin twenty days after service of papers, and it is likely to be held within three or four months after a complaint is filed. In the revised (1926) code of civil procedure, which became effective on October 1, 1929, provision was made for a preliminary examination similar to that employed under criminal procedure. In the local courts the parties may appear without previous service of papers.

Civil actions are likely to continue for unduly long periods. "A hearing is set for a certain day at which time perhaps one witness only will be called. Upon the completion of this examination the hearing is adjourned for a month or six weeks, at which time an-

[15] The Imperial Bar Association of Tokyo, on October 20, 1926, adopted a resolution urging that the seats of procurators in court-rooms be placed on the same level as those of private counsel. Procurators, however, remain on the judicial level.

other witness is called. This goes on indefinitely, and perhaps at the end of six months to a year the case is completed and a decision is rendered."[16] It may here be noted that the revised code of 1926 prohibits postponement of trials by mutual agreement of the parties concerned.

Witnesses are furnished in advance with an outline of questions to be asked of them. Examination and cross-examination are conducted by the judge, to whom counsel may submit questions. The judge may put the questions as submitted or as modified by himself or may decline to put them at all. All persons must testify unless the law otherwise provides. Relatives and certain other classes of witnesses may evade testifying except in certain specified cases.

Judgment must be given within seven days after the last oral proceedings and must be pronounced in open court, the judge stating his reasons if he so desires. The rule permitting judgments by default was repealed in 1926.

Summary civil procedure exists under which a claimant for a fixed sum of money, securities, or other goods may apply to a local court for an "order of payment." The debtor may object within two weeks after the order is served upon him. If he fails to do so, an order is issued for execution.

CONCILIATION PROCEDURE

A method of procedure by arbitration or conciliation is employed in the local courts in cases involving disputes over rent or commercial obligations. Each party is assisted by a layman, designated by the court, the two laymen and the judge being regarded as forming a conciliation committee. This procedure is very widely employed, though it was not inaugurated until 1921, when a law was passed for its use in disputes between landlords and tenants in large cities. In 1924 it was extended to disputes between landlords and farm tenants, and in 1926 to commercial disputes. Its adoption was prompted by dissatisfaction with the Occidental judicial procedure in certain types of actions, and the procedure

[16] J. L. Kauffman, *op. cit.*, p. 309. The above outline of civil procedure is largely derived from Mr. Kauffman's article and from Dr. J. E. de Becker's *Pointers on Japanese Law* (Yokohama, 1916), *passim*. The revised code of 1926 has not yet appeared in translation. It is referred to briefly in *Japan Year Book*, 1931, p. 215, and a résumé appeared in the *Japan Chronicle* of August 1, 1929, p. 136. The older code is obtainable under the title *Code of Civil Procedure of Japan* (Yokohama, 1904), by J. E. de Becker.

by conciliation resembles the judicial procedure of the Tokugawa epoch.[17]

CRIMINAL PROCEDURE

Criminal cases begin with the filing of a complaint, followed by inquiries by the procurator of the court having jurisdiction over the suspected offense. The procurator, taking into consideration the age, character, and behavior of the offender and the circumstances under which the offense was committed may, at his own discretion, dispense with prosecution even if the accused confesses his crime. Customarily about a third of the procurators' investigations end in this way, the offender being allowed to expiate his crime in some agreed manner and thereby to avoid disgrace. The Minister of Justice may intervene to quash a case.

If the offense alleged is found to be within the jurisdiction of the local court, it is tried there without further preliminaries. If the offense is more serious, a hearing is conducted by a "preliminary" judge from the district bench. This takes the place of investigation by a grand jury, and it may consume months or even years if the accused is obdurate in maintaining his innocence of the offense charged, since it is the object of the state, represented by the procurator, to obtain a confession before the case is tried. In the absence of *habeas corpus* procedure, the accused is helpless and frequently is kept in jail for a lengthy period, being subjected to questioning from time to time. Prior to indictment, the persons under examination may not employ counsel. Preliminary examinations are conducted *in camera*. No invidious discrimination is shown, the most highly placed officials and business men being compelled to cool their heels and their heads along with professors and proletarians. Release in bail of 100 yen ($50) may follow six months of such treatment.[18] An alternative for bail is the in-

[17] Takayanagi, *op. cit.* pp. 16–17. He further writes: "This conciliation system has many advantages over a judicial settlement system, but it also has its dangers if carried to excess."

[18] Dr. Satake Sango, ex-Vice-Minister of Railways, was detained for seventy-eight days in Ichigaya prison, Tokyo, while undergoing examination by the procurator upon his suspected connection with improper dealings with private railways. Released on February 6, 1930, he was reported as saying, "Although I have been in custody for seventy-eight days only, I experienced indescribable inconvenience. . . . The cell was only 6 x 9 feet and there was no other way of taking exercise than to walk around and round on the cold mats in the cell, counting my footsteps. What delighted me most was the time when I was taken out of my small cell to be examined by the procurators in charge." Tokyo *Nichi Nichi*, Feb. 7, 1930.

digenous institution known as *sekifu,* under which an examining judge may entrust an accused person to the care of his friends or relatives. A person under arrest must be examined within forty-eight hours of the arrest, but there is no legal limit upon the length of the preliminary examination. The revised code of 1922, Article 113, provides that a "warrant of detention" may not be issued for a longer period than two months, but contains the proviso that, if special circumstances require it, the period of detention may be renewed.[19]

The preliminary hearing may terminate in the release of the accused, his transfer to a local court, a declaration of absence of jurisdiction, or the reporting of the case for "public trial." The last-named alternative constitutes indictment. The trial proper, though entitled the "public trial," need not be, but usually is, kept open to the public.

The public trial is marked by the prominent part taken by the presiding judge. He has the evidence previously obtained before him, and it is he who conducts the examination of the defendant and the witnesses. The hearing begins with a statement by the procurator, who, from his position and costume, is scarcely distinguishable from the judges. The defendant is not placed under oath and is not amenable for perjury. Witnesses related to the defendant or believed to be parties in interest with him also are not sworn. Other witnesses sign and seal an affirmation to the following effect: "I affirm that, according to my conscience, I will speak the truth, adding nothing and concealing nothing."

The defendant is examined first, very minutely. None of the witnesses is permitted to be in the court-room except when giving testimony. There are few rules of evidence, and an accused person has no right to refuse to testify, though he may in fact refuse. The presiding judge in criminal trials appears to become in effect a prosecutor, since upon him falls the responsibility of eliciting every item of evidence unfavorable to the defendant. The defendant's counsel may cross-examine only through the judge, and in practice the amount of questioning by counsel is almost negligible.[20] The judges associated with the presiding judge are younger

[19] *Japan Chronicle,* April 12, 1923, pp. 497–499. The revised code was published in translation in 1923. See J. E. de Becker, *Code of Criminal Procedure in Japan* (London, 1923); also, by the same author, "Elements of Japanese Law," *Transactions of the Asiatic Society of Japan,* Vol. XLIV (1916).

[20] The revised code (1922) appears to make direct examination possible. It provides that "The public procurator or counsel may, subject to the permission

men, and they seldom participate in the examination. Defendant and witnesses are required to stand while giving testimony. The atmosphere of the court-room is unfavorable to the defendant, his own counsel appearing to be awed by the forces arrayed against him and to accept in a rather apologetic way any opportunities extended to him for cross-examination. The latter is entitled to use twice the time taken by the procurator in his concluding argument.

THE JURY SYSTEM

The use of a jury dates from October 1, 1928, although the jury law was passed in 1923. Article 1 of that act provides that "In criminal cases the court may, in accordance with provisions of this law, adjudicate on facts by referring the case to the deliberation of a jury." Subsequent provisions define the actions triable by jury, all of which are within the jurisdiction of the district courts. Jury trial is mandatory unless waived by the accused in "all cases in which the accused is liable to the death penalty, perpetual penal servitude, or life imprisonment." Persons accused of crimes involving liability to limited penal servitude or a prison term not exceeding three years are entitled to jury trial upon demand.

Juries are composed of twelve male citizens thirty years old or over who have been domiciled in one place for at least two years, who can read and write, and who pay at least three yen in direct taxes. They are selected in secret by the court, procurator, and counsel for the defense from a panel of eligible persons. Although both state and defense have an unlimited right of challenge, the selection of a jury usually is accomplished within an hour. Two emergency jurors are selected also to replace any who may fall ill. Five yen a day, food, and dormitory accommodation are provided for jurymen. Jurymen may and do ask questions of witnesses and accused persons. A simple majority vote is sufficient to decide a jury's verdict. Jurymen act under oath.

The verdict, which is confined to questions of fact, is not binding upon the court, which may throw it out and empanel another jury, may reject the second jury's verdict and empanel a third, etc. Experience during the first seven months of the application of the jury system indicated a marked tendency to agreement between juries and judges. Of eighty-one cases tried, only four were sub-

of the presiding judge, examine the accused, witnesses," etc. (*Japan Chronicle*, April 12, 1923, p. 499). Practice, however, continues as before.

mitted to a second jury because of dissatisfaction of the court with the first jury's verdict.

Jury cases may be appealed on points of law to the Supreme Court. There is no appeal on the facts. In practice, very few appeals are taken, and these few are taken by the state. Resort to jury trial has been far less extensive than was anticipated, jury cases totaling only 10 per cent of the expected number during the first fifteen months of the law's operation. Dormitories constructed for the use of juries at Matsuye, Aomori, Otsu, Toyama, and Takamatsu were not used at all during that period.[21]

The principal reasons given by legal authorities in Japan for the unpopularity of trial by jury are three: (1) the objection to losing an opportunity for a second trial of the facts; (2) the greater confidence in judges than in juries; and (3) the increased cost. As to the last point, it is within the court's discretion whether to divide the cost of a jury between the defendant and the state, place it all on the defendant, or place it all on the state. Usually the state pays the cost because the accused lacks means. It has been found by experience that only in cases extremely difficult of proof by eye-witnesses, notably arson cases, is a jury trial likely to be desired. Between October 1, 1928, and September 30, 1929, 135 jury trials were held in Japan. All but seventeen of the accused persons were found guilty. Of seventy-seven cases of homicide only three resulted in verdicts of not guilty. On the other hand, fourteen out of twenty-three cases of arson were decided against the state.[22]

JUDGMENTS

Judgments are reached by majority vote. The preparation of the opinion is delegated to one of the judges, who presents it to the others for their approval. While the rule of *stare decisis* is not recognized in Japan, in practice the courts follow precedent rather closely, and a departure from it is taken only after consideration by the full criminal or civil bench of the Supreme Court. No dissenting opinions are recorded.

[21] *Japan Times*, Feb. 20, 1930, p. 1.

[22] For these statistics I am indebted to an unpublished manuscript written by Judge M. Miyake of the Supreme Court. The manuscript later was published in the *Japan Advertiser* (Tokyo), which also issued reprints of it, and in the *Trans-Pacific*. The figures here given occur in the section published in the *Trans-Pacific* on June 26, 1930, pp. 5, 22.

THE COURT OF ADMINISTRATIVE LITIGATION

The Court of Administrative Litigation is modeled after the *cours administratives* found in Germany and Austria, existing as an entity distinct from the ordinary courts and also from the Councils of State.[23] It is a single bench, consisting of a president and a varying number of "counselors" (at present seventeen), as may be determined by ordinance, created by statute in 1890. It sits in Tokyo, in its own building. The act establishing the court was envisaged by Article 61 of the constitution as follows: "No suit at law which relates to rights alleged to have been infringed by the legal measures of the executive authorities and which shall come within the competency of the Court of Administrative Litigation specially established by law shall be taken cognizance of by a court of law."

Members of the court are appointed in theory by the Emperor, actually by the premier, from persons thirty years old or over who have had at least five years' experience as judges or administrative officers. Very few judges of the ordinary courts are appointed to this court. Former governors, Home Office officials, and others of administrative experience are preferred. A few counselors are drawn from the professorial ranks. They hold their seats for life, i. e., until they reach the retiring age. Protected by statute, they may be removed only for cause by resolution of the whole administrative bench. The court sits in three sections, which act independently of one another. Each consists of five judges as a rule and comes to a decision by majority vote.

Ito explained the motive for establishing an administrative court: "Were administrative measures placed under the control of the judicature and were courts of justice charged with the duty of deciding whether a particular administrative measure was or was not proper, administrative authorities would be in a state of subordination to judicial functionaries. The consequence would be that the administrative would be deprived of freedom of action" [24] Ito's idea is the same as that which distinguishs the French *droit administratif,* by which the rights and privileges of the government and its servants are determined upon different principles from those that fix the legal relations of citizens, and are exercised, to a great extent, independently of the jurisdiction of the ordinary

[23] Nakano, *op. cit.,* p. 227.
[24] Ito, *Commentaries,* p. 109.

courts. Professor Sait refers to the French interpretation of the doctrine of separation of powers, "that the courts must under no pretext interfere with the liberty of administrative action." He believes, however, that "the system is arbitrary only from a theoretical standpoint," and that, due to "the creation of administrative courts with a settled procedure and a coherent body of case law," Frenchmen are "no more exposed to official oppression" than Englishmen or Americans; indeed their "situation," in some respects, "affords larger guarantees." [25] Professor Allen, on the other hand, has recently expressed the growing resentment in England, which finds a parallel sentiment in the United States, at the delegation of law-making functions to administrative departments, and the attempts to insulate them from judicial review.[26]

The court's jurisdiction is defined by statute. Stated generally, it includes every action in which the question to be decided is the validity or invalidity of an administrative act. It consists in the following types of actions: (1) cases arising out of the levying of taxes and administrative fees (exclusive of cases arising out of the tariff); (2) cases arising out of the recovery of taxes; (3) cases arising out of the refusal of a license or the revocation of a license already issued; (4) cases arising out of public works; (5) disputes concerning boundaries between public and private lands; (6) cases arising out of local police administration; and (7) miscellaneous cases provided for in a large number of statutes and ordinances, e. g., the law regulating the organization of prefectures, which authorizes a prefectural assembly to sue a governor if he revokes one of its resolutions; another act enables a voter to sue electoral officials in cases of disputed election.

Nakano puts succinctly the limit of the court's jurisdiction:

"The jurisdiction of the administrative court stops exactly where administrative discretion begins. The question, however, as to whether the administrative authorities have exceeded the limits of their discretionary powers or not is a question not of discretion but of law, and hence is subject to judicial examination. Even within the limits of administrative discretion, questions relating to the rights or duties of individuals are subject to examination by the administrative court. The administrative discretion which is excepted from judicial examination is that relating to the public interests. But even this sort of administrative discretion has some limitations." [27]

[25] E. M. Sait, *Government and Politics of France* (New York, 1920), pp. 381–384.

[26] C. K. Allen, *Bureaucracy Triumphant* (New York, 1931), *passim.*

[27] Nakano, *op. cit.*, p. 230.

The Court of Administrative Litigation has no jurisdiction over civil or criminal actions, all of which go into the ordinary courts. The same is true of suits for damages save in circumstances for which the law especially provides. Criminal actions against officers are tried in the ordinary courts. No procurators are attached to the Administrative Court. The court takes cognizance of both fact and law. Though in a sense a court of appeal, since all cases come to it after prior consideration by administrative agencies, its jurisdiction is to be regarded as original, the prior administrative consideration not being viewed as judicial. Its judgment is final, and may be far-reaching. Not only may it declare administrative acts invalid, but it may annul such acts, substitute its own judgment for an administrative decision, and issue a writ of mandamus to compel the authorities to perform specific acts. Its power to review ordinances has already been discussed (page 45).

ESTIMATE OF THE ADMINISTRATIVE COURT

Japanese legal scholars regard the Court of Administrative Litigation as a desirable agency, and its decisions are believed to be as considerate of private rights as those of the ordinary courts. Such criticism as is passed upon it is concerned with the delays which customarily attend matters brought to it. There appears to be a need of more than the one bench. Hitherto, however, it has been found difficult to obtain appropriations for this tribunal, due in part to the lack of a ministerial voice to urge the court's claims to additional funds.

Dr. Kubota Seitaro, president of the court, and other members of a commission appointed to revise the court's organization and procedure, prepared in 1931 a draft of a law of revision to be laid before the Diet, contemplating the substitution of a system of original and appellate courts, extension of the scope of choice of counselors, and a broadening of jurisdiction.[28]

LEGAL EVOLUTION

The evolution of the law in Japan is affected to a considerable degree by the judgments of the courts. Their interpretations clarify and define the law declared in statutes and ordinances. The respect for precedent already referred to, as well as the strong esprit

[28] *Japan Chronicle*, July 30, 1931, p. 144.

de corps of the judicial hierarchy, operates to unify opinion and thus to develop a common law. Judicial opinions assist the governmental authorities responsible for drafting laws and ordinances. The courts, on their part, are influenced to a marked degree by the opinions of legal scholars. Thus the written law, although it forms the solid core of the rules by which the courts are guided, is applied with a greater deference to judicial and scholarly opinion than sometimes has been recognized.

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CHAPTER XV

LOCAL GOVERNMENT *

LEGAL BASIS

The development of local government during the Restoration period has been sketched in an earlier chapter.[1] A number of the ordinances there referred to, including those of 1888–1890, are regarded as approaching a code of local government; and though, since the establishment of the Diet, local government has been a subject of legislation by statute, the fundamentals of the system remain as established in those earlier ordinances.[2] Prefectures, cities, towns, and villages are defined by law as legal persons, and under the supervision of the central government they conduct their own affairs and perform functions delegated to them by laws, ordinances, and custom. Changes in number or boundaries may be made for prefectures by the Diet, for cities by the home minister, and for towns and villages by the governors of the prefectures concerned, with the home minister's approval. In all such cases, however, the localities affected are to be consulted.

GENERAL CHARACTER

Professor S. Shimizu has written:

"There is little doubt that at the Restoration, had things been left to take their natural course, a system of communal government peculiar to Japan would have been developed. Unfortunately, however, the Restoration swept away everything old, and the traditions and regulations of communal government handed down from ancient times not only suffered but disappeared altogether. It was not until later, when the necessity of a communal government was felt anew, that the system now in force came into being." [3]

* The author is indebted to Japanese officials and friends for much of the material used in the writing of this chapter. He has been aided also by translations of laws made by Dr. Sterling Takeuchi. The older ordinances are given in translation by Dr. Mc Laren in his "Documents"; the newer legislation was translated by Dr. Takeuchi from *Compilation of Local Government Laws and Ordinances: Chiho Seido Shuran*, Ryosho-Fukyukai Edition (Tokyo, 1929). The most useful summary of the law is given by Judge Oda Yorodzu in his *Principes de droit administratif du Japon*, pp. 176–228. A brief sketch is given in G. Montagu Harris, *Local Government in Many Lands* (London, 1926), pp. 296–306. Other references are cited in foot-notes.

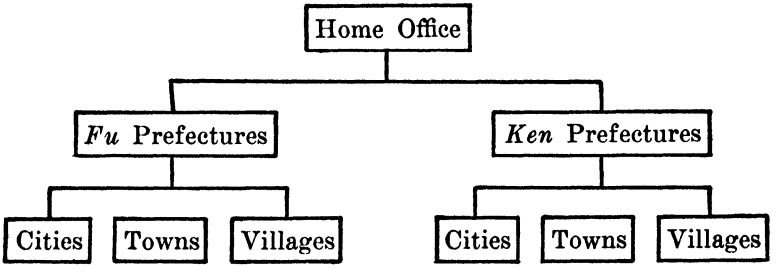
[1] See Ch. II, pp. 34–36.

[2] Amending statutes were passed in 1898, 1911, 1922, 1926, and 1929.

[3] S. Okuma, *Fifty Years of New Japan* (London, 1909), I, 327.

This statement is designed to explain the partial establishment of self-government in the local units. The system was modeled upon that of Prussia, and the process of devolution has been very gradual. Local administration, like that of the nation, is intensely bureaucratic, resembling the French system in the degree of control exercised by the central government. In the larger cities, local autonomy is greater than in the small cities, the towns, and the villages, and the latter have broader powers than the prefectures. Even the last-named areas, however, now exercise some authority. It is, perhaps, questionable whether the word *autonomy* is used appropriately in relation to Japan's local units, since all are subject, within the spheres of authority delegated to them, to supervision by the central authorities.[4]

The hierarchy of local government may be diagrammed thus:



Until 1926, another local unit, the *gun,* or "county," intervened between the prefectures and the towns and villages, but it ceased to exist for administrative purposes in that year. The term *gun* to-day retains administrative significance only in areas poorly provided with communications, in which the office of the *gun* remains as a branch of the prefectural office.

HOME OFFICE CONTROL

The home office (Ministery of Home Affairs) was created in 1874 and was given the supervision and control of local government. From that date the regulations of the central government for the guidance of local officials became more and more detailed.

[4] On the meaning of local autonomy, Oda has this to say: "In order that the autonomy of public groups may be perfect, all the organs should be elected by the groups in such a way that all these organs, without exception, are their actual representatives; the communes [i. e., the cities, towns, and villages] form, from this point of view, groups whose autonomy is perfect." *Op. cit.*, p. 185.

Whereas previously the power to tax had been granted in general terms, the rules issued in 1875 prescribed sixty-two distinct tax regulations. The reference of all important matters to the ministry was made compulsory. For several decades home office control grew stronger rather than weaker, but since 1920 the trend has been in the opposite direction, a manifestation of the general movement for a larger popular share in government. The home office remains, however, the final authority in all matters not delegated to other central agencies, such local autonomy as exists being exercised subject either to its supervision or to that of other ministries. Moreover, it would appear that whatever slack the law has created in the bonds that join the prefectural capitals to Tokyo has been taken up through the growth of political parties and their anxiety over local patronage and finance.

THE PREFECTURES (FU AND KEN)

The prefectures number forty-six, three of them urban and entitled *fu* (Tokyo, Osaka, and Kyoto) and forty-three rural, called *ken*. One of the islands of Japan proper, Hokkaido, is thinly populated and has not been divided into *ken,* but its administration is similar to that of the *ken*. The Luchu (Riukiu) Islands constitute a *ken*. The Kurile Islands are administered as part of Hokkaido. The Bonin Islands form part of Tokyo-fu. All of the smaller islands, some of which have distinct organs of administration, are administered as portions of one prefecture or another. Prefectures vary in area from 700 to 6,000 square miles, in population from 600,000 to 5,000,000. Constituted by combinations of the feudal *han* ("fiefs"), they show in their boundaries the influence of the medieval daimiate. They are difficult to alter, due to the preference of the large political parties for the retention of unified constituencies. The *ken* and *fu* are legally identical in administrative organization.

PREFECTURAL EXECUTIVE ORGANS

The prefecture is presided over by a governor, appointed by the premier upon the recommendation of the home minister. Governors hold *chokunin* (second) rank in the civil service and are selected largely upon political grounds, though in some instances a prefectural chief of police is made governor in recognition of distinguished service. Political exigencies, particularly the large

influence which governors are able to exert over elections, frequently entail abrupt dismissals, rendering the post of doubtful desirability to well-placed men in the merit ranks of the service.[5] It is becoming the exception rather than the rule for a governor to be allowed to retain his position after a change of cabinet. The governor has a secretariat divided into four sections: home affairs, foreign affairs (i. e., matters involving foreigners), correspondence, and statistics.

ADMINISTRATIVE DEPARTMENTS IN PREFECTURES

Departments of administration are uniformly three: home, police, and education. The larger prefectures have a fourth department, that of engineering. It is not customary for the governor to treat his department heads as a cabinet.

The police administration of Tokyo-fu is managed differently from that of other prefectures. It is in the hands of the Metropolitan Police Board, which controls the police in the city of Tokyo as well as in the *fu* of which the capital city forms a part. The board comprises a superintendent-general; five directors of departments, i. e., those of police affairs, criminal affairs, peace preservation, sanitation, and fire; and two chiefs of section, those of building inspection and factory inspection.

An educational department is general, but where it does not exist its work is done by a section of the home affairs department. The latter has charge of finance. Within the departments exist "sections" or bureaus, which vary in number and function with the extent and character of the work to be done.

PREFECTURAL CIVIL SERVICE

All prefectural officials are members of the national civil service, whereas city, town, and village officials are outside of it. The department heads are appointed by the home minister, usually without prior consultation with the governor. Officials of minor (*hannin*), rank are appointed by the governor. Like the governor, the department heads must be confidants of the home minister, and

[5] Dr. S. Washio wrote recently: "The Home Ministry, being the administrative center of the government, is its political department par excellence, and the prefectural governors are its political agents. Officially they are the head of local administration, but their most important practical function is to serve their master, who has the control over their life and death. . . . They can do so in two ways: by favoring local development works that are promoted by party men and by using the local police control at the time of election to discriminate against the opposition campaign." *Trans-Pacific*, June 4, 1927, p. 5.

their tenure is correspondingly subject to political changes at Tokyo. The lower ranks of the prefectural service are less affected by party politics, and officials there are relatively permanent. It cannot, however, be overlooked that the spoils system is deeply entrenched in the *ken* and *fu* as well as in the local units outside of the national civil service.

PREFECTURAL ASSEMBLIES AND COUNCILS

An assembly of thirty or more members according to population, principally advisory in character but with greater influence than when first created (1878), is associated with the governor. Members are elected by and from among male citizens twenty-five years of age and above, who have resided at least one year in the prefecture. Election districts coincide with those of cities in urban centers with the *gun* or counties in the rural areas, and with islands. Members sit for four years unless the assembly is dissolved. They do not receive salaries.

Annual regular sessions of the assembly are called by the governor at the end of November and continue for one month. At the demand of one third of the assembly or of one half of its standing committee, the governor is required to call a special session. A standing committee of ten members (and the governor), the name of which is usually translated "council," is elected by the assembly and holds monthly meetings upon the call of the governor. The council is authorized to exercise the powers of the assembly in financial matters up to a limit of 200,000 yen ($100,000). Half of its members are from rural, half from urban, constituencies. The governor acts as chairman of the council. This quasi-bicameral form of local councils is typical of England but is not found in France. British councils, however, differ from those of Japan in their closer relation to administration, which they may supervise, or actually conduct, through standing committees.

The assembly elects its own chairman and makes its own rules. It recesses for one week upon reception of the budget. It makes use of select committees on finance, education, and home affairs. In six prefectures, due to striking inequalities between the great cities and the country districts therein, the assembly sits, on occasion, in urban and rural divisions, and revenues and expenditures are prorated between the urban and rural portions of the prefecture.

PREFECTURAL ELECTIONS

Prefectural assembly elections tend to be decided along national political lines. Candidates announce themselves as belonging to the Seiyukai, the Minseito, this or that proletarian party, etc., as in the campaigns for the Diet. A comparison of figures of votes cast in the prefectural and the national elections of 1928 is enlightening:

	Prefectural	*National*
Seiyukai	4,359,633	4,250,848
Minseito	4,262,580	4,270,497
Proletarian parties	471,131	480,124
Others	866,886	864,729
Total	9,960,230	9,866,198
Eligible voters	12,406,311	12,534,360

Since the assembly has nothing to do with the choice of the governor, it frequently happens that a majority of the assembly are on the opposite side of the political fence from the governor. While some governors are sufficiently diplomatic or sufficiently influential as the result of their ability or records to be able easily to win the support of an opposition majority, more frequently the contrary is true and the governor experiences very great difficulty in securing the acceptance of his program. In 1929 approximately 50 per cent of the prefectural budgets were enforced without the approval of the assemblies.

PREFECTURAL FUNCTIONS

The functions of the prefecture include the issuance of supplementary regulations and rules affecting the rights and obligations of its inhabitants. The most important function is the conduct of administration, since the political function of legislation is largely absorbed by the Diet and the home ministry. The prefectures are the distribution centers of the central authority. Through their officials the cities and lesser localities are supervised and the people are, in most matters, directly ruled. The determination of its annual budget and of local taxes and fees is within the powers of the prefecture, subject to the approval of Tokyo.

SUPERIOR POSITION OF THE GOVERNOR

The governor or prefect is empowered to conduct the greater part of the prefectural functions, always with the express or tacit approval of the home minister, and of other ministers in situations involving their departments, e. g., the ministers of Finance, Education, or Railways. He exercises full authority over administration, enforcing laws and ordinances and supervising prefectural officials. The only exception to this general rule is found in Tokyo-fu, where, as previously indicated, the Metropolitan Police Board is independent of all other prefectural and local authorities. The governor's appointing power, extending over *hannin* officers, includes the power to dismiss, promote, or discipline. In uprisings or other emergencies, the governor is authorized to act in concert with the commanding officer of the nearest military post.

POWERS OF PREFECTURAL ASSEMBLIES

The assembly may "deliberate and vote upon" a limited number of subjects: the budget, accounts, prefectural taxes and fees, public property and public works, and others. It takes action through the passage of regulations and resolutions. Members may suggest but may not initiate regulations. Discussion of policy occurs in connection with the debates on the budget. Such discussion is limited in scope by the principle of centralization under which the central authorities decide policy, while the local officials carry it into execution. Unlike the city, town, and village assemblies in their relations with mayors, the prefectural assembly may exercise no control over the governor or his staff.

RELATIONS BETWEEN GOVERNOR AND ASSEMBLY

The law is detailed upon the relations of governor and assembly. The governor submits all proposals for legislative action. If he deems any action taken by the assembly (or by the council) to be *ultra vires* or illegal, he may either resubmit the matter to the assembly or annul it. The assembly (or the council), in the latter circumstance, may bring an action in the Court of Administrative Litigation. The governor may resubmit also assembly (or council) decisions deemed contrary to the public interest or incapable of performance, or may request the home minister's judgment upon

the action to be taken. There is no provision under which the assembly or council can overcome the governor's opposition by a second decision with a larger majority.

If the assembly fails to meet, or if the governor considers that time does not permit the calling of the assembly, the governor may convene the council and submit his proposals to it. The council's actions in such circumstances have the same effect as though taken by the assembly. If the council fails to meet, the governor, with the home minister's approval, may act alone. Furthermore, the governor may put into effect proposals submitted to the assembly or to the council and not acted upon. In all cases of this character the assembly or the council has the right to sue the governor in the administrative court, but the law confers the governor's power in terms sufficiently general to discourage such actions. Given the approval of the home minister, the governor can administer the prefecture without regard to the assembly. The home minister may dissolve an assembly, in which case an election must be held within three months.

THE GOVERNORS' CONFERENCE

The annual gubernatorial conference (*Chihokwankwaigi*) continues to be held in Tokyo at the call of the home minister after the Diet is prorogued or dissolved. The governors receive instruction upon the government's policy and program. Instructions become more specific when a general election is in prospect. On such important occasions the premier also addresses the conference. The prefectural heads of police are likewise summoned into conference.

PROPOSAL FOR ELECTIVE GOVERNORS

A proposal that governors be elected by assemblies like mayors, has been given some consideration. The assemblies resent their present position of impotence. The change would be of far-reaching significance if the governor continued to exercise his present functions. Political influences would come into play to dilute the governor's administrative authority. Undoubtedly there would be an increase of popular interest in the assembly and a consequent gradual growth of a sense of local pride and responsibility.

It would appear, however, that the change would only lead to

added friction unless accompanied by a transfer of political authority from the central government to the prefectures. Disadvantages would result from interference by the assembly in the exercise of distinctly administrative functions. Whether there should be devolution of power as well as of functions is a question of opinion, particularly in view of the apparent trend in the United States and Great Britain in the direction of more and more centralization. It may be that the prefectural assemblies can have a greater usefulness as advisory than as legislative bodies. Certainly it is essential that their prestige increase, for the sake not only of local but of parliamentary government.

THE CITY (SHI)

A town (*cho or machi*) may be designated a city (*shi*) by the home office if it has at least 30,000 inhabitants. Historical considerations enter into the classification, and many towns which are large enough for promotion to the rank of city prefer to remain towns. In 1928 there were 103 cities in Japan proper. Six, distinguished as the "premier cities" of the country, enjoy somewhat broader powers than the smaller ones. These are Osaka, with 2,250,000 people; Tokyo, with more than 2,000,000; Nagoya, with nearly 900,000; Kyoto, with 700,000; Kobe, with 650,000; and Yokohama, with 600,000.

THE MAYORALTY

City government is in the hands of a mayor, a council, and an assembly. The mayor, as in French cities, "exercises general control over the city and represents the city." He is assisted by one or more deputy mayors and a considerable body of officials. The mayor and deputies are elected by the assembly and usually receive salaries. The assemblies determine salaries and may set a comparatively high figure.[6] Often a correspondingly capable man is obtained, usually from the higher ranks of the national civil service. Assemblies rarely elevate one of their own members to the mayoralty. Nor do they show interest in municipal "experts," since they feel a special need of experienced bureaucrats in their dealings with the prefectural and national authorities. The term

[6] The mayor of Yokohama in 1930 received 15,000 yen ($7,500) a year, 3,000 yen more than the Prime Minister of Japan.

of office is four years, and reëlection is rather the exception than the rule.

OTHER CITY OFFICERS

Officers of city administration include a treasurer and a varying number of bureau and section chiefs. The treasurer is elected by the city assembly for a four-year term. The assembly of Tokyo also elects an official investigator and examiner. Offices subordinate to that of treasurer are created by the assembly and mayor, and their occupants are appointed and removed by the mayor. Their supervision and control is in his hands. The number of bureaus and sections naturally varies as between larger and smaller municipalities. Tokyo has twenty-two such agencies under the following names: electricity, roads, social work, almshouse, secretariat, documentary and legal, research and city planning, general superintendence of administration and accounts, bill-drafting and budget-making, purchasing, finance, general education, social education, industrial affairs, health and sanitation, water-works, water-works extension, sewers, parks, rivers and harbors, municipal lands, and construction of public buildings.[7]

The appointment of all subordinate municipal officers is within the power of the mayor. However, the heads of the various divisions of the administration are usually permitted to choose their subordinates. There are no merit systems in the municipal civil services, although they are divided into grades of varying number, in Tokyo running to twenty-five. In Tokyo the assistant mayors may be removed only for cause. Considerable influence is exerted by assemblymen for the appointment of friends to city offices.

CITY ELECTIONS

City assemblies are elected by male citizens at least twenty years old who have resided for one year in their voting districts. Wards or boroughs constitute the election districts in Tokyo, Kyoto, and Osaka; in other cities, the districts are determined by the mayor and assembly.[8] Qualifications are identical for electors and candidates. Municipal employees, procurators, police officers, and reve-

[7] C. A. Beard, *Administration and Politics of Tokyo* (New York, 1923), pp. 55-56.

[8] Yokohama in 1930 had two election districts, one choosing eighteen members, the other thirty-eight.

nue officers are ineligible for the assembly. Candidates declare themselves on national party lines and are assisted in their campaigns out of party funds. In theory, however, local elections are to be decided without reference to national politics. Electors have but one vote and write the favored candidate's name upon a blank ballot. Voting is secret.

The present electoral regulations date from 1926. Prior to 1922, city assemblies were elected upon a three-class system similar to that formerly employed in Prussia. In 1920, only 51,134 men were eligible to vote in Tokyo.[9] After 1922, for several years all male citizens aged twenty-five or over who paid taxes and who had resided for two years in a given electoral district, might vote there. But the voters were divided into two classes, those who paid at least the average tax and those who paid less than the average. Each class elected one-half the assembly. The manhood suffrage movement forced a rapid pace in local electoral reform, since it was thought desirable to give political democracy its first test in the localities.

Interest in city elections is keen, bringing out 70 to 80 per cent of the voters. In the Yokohama election in January, 1930, 112 candidates took the field for the fifty-six council seats. A dozen parties were represented. Labor groups put seventeen candidates in nomination. The campaign went on for three weeks. Several meetings were held each night, and also during the day. The attracting powers of moving-picture stars varied the arduous efforts of the candidates and their friends and other helpers. Women were found to be useful speakers.[10]

MUNICIPAL ASSEMBLIES

Assemblies in cities vary in size. In cities of 50,000 people or less, they have thirty members; in larger places the assemblies may be twice or three times that size. The assemblymen sit for four years and receive a small sum in the form of allowances. Meetings are convened by the mayor, acting independently or upon request of more than one third of the members. They occur about once a month, and the agenda are sent to members three days prior to any meeting. Select committees are used, but there are no standing committees. The mayor opens and closes meetings and may bring up

[9] Beard, *op. cit.*, p. 140.
[10] *Japan Advertiser*, Jan. 29, 1930, p. 2.

matters not included in the original agenda. He does not act as chairman, but he and the deputy mayor or mayors are provided with seats on either side of the chairman in the assembly-room. The members sit without regard to party, and the assembly chambers are provided with comfortable chairs and desks. Seats are provided also for the public and the press.

MUNICIPAL COUNCILS

A council composed of from ten to fifteen assemblymen elected by the assembly exists in every city. It meets *in camera* at the call of the mayor, which must be issued if half the members so request. Weekly or fortnightly meetings are called. When the assembly is not in session, the council may perform its functions, and it also deliberates upon matters delegated to it by the assembly. The mayor directs and supervises the council in its work. Committees may also be elected by the assembly from the membership of the council upon the mayor's recommendation.

MUNICIPAL FUNCTIONS

The city exercises a wide variety of functions. It prepares and passes a budget; borrows money; levies and collects taxes and fees; owns and manages tram lines, water-works, and other utilities; builds and conducts primary schools; carries on activities in the field of public health; provides care for dependents, delinquents, and defectives; participates in the control and advancement of labor; and builds roads, bridges, and canals.

On the other hand, the city has no police power—"no jurisdiction over fire-fighting, fire prevention, building regulations, police control, and many other matters connected with public safety."[11] Police and public safety belong to the prefectural authorities. The city, moreover, has no power to grant franchises to public utility corporations; these are granted by prefectural and national officials. Within the sphere of city powers, no important action can be taken without the consent of the prefectural or national authorities. The governor may disallow any action of the city and may appoint a temporary mayor. The Minister of Home Affairs may dissolve a city assembly.[12] Often the city must obtain the approval of several agencies, each of which acts with deliberation,

[11] Beard, *op. cit.*, p. 44.
[12] Oda, *op. cit.*, p. 213.

before it can proceed with necessary undertakings. Its taxing power is very limited, and it must obtain higher approval for loans, large or small. What Beard says of Tokyo applies to all cities in Japan: "the city government of Tokyo has very limited municipal powers—powers more restricted in number and scope than those granted to cities in America. This means that the Tokyo government is deprived of many of the important powers necessary to the efficient management of municipal affairs."[13]

What a city may spend is not specified by law but is limited by the tax rates, fixed by the home ministry, and the control of the latter office over municipal borrowing. Tax revenue is derived mainly from surtaxes on national taxes, while, in cases of necessity, special local taxes also may be levied. Cities derive the larger proportion of their revenues from local undertakings, fees, etc., and a comparatively small amount from subsidies of the national treasury.[14]

POWER OF THE ASSEMBLY IN CITY AND PREFECTURE

City government differs from prefectural in the larger degree of influence exerted by the assembly. Whereas the governor is the repository of power in the prefecture and is *advised* by the assembly, in the city the powers, other than those of a purely administrative character, are *exercised jointly* by mayor and assembly. The assembly may demand all executive records and accounts. The mayor may refer back to the assembly a decision taken by it which he considers illegal or inopportune; if the assembly persists in its view, the mayor may refer the issue to the prefectural council. He has no authority to act alone in legislative matters. Moreover, since he is elected by the assembly and desirous of reëlection, being a municipal rather than a prefectural or national officer, the mayor's lot is cast with the assembly. The result is a more unified and more democratic atmosphere in municipal than in prefectural administration.[15]

[13] Beard, *op. cit.*, p. 45.

[14] Harris, *op. cit.*, p. 302.

[15] Oda (*op. cit.*, pp. 198–200) expresses the status of the assembly succinctly: "The municipal assembly, in addition to its rôle as a deliberative organ, performs that of an agency of control and consultation; moreover it is invested with power to decide certain disputes and to elect certain officials." He points out that all matters relating to the collective interest of the locality fall within its power of decision, whether specifically enumerated in the laws or not. It may act as a first resort in cases involving political rights of the citizen; to it the mayor is accountable for his administration; it may offer advice and respond to requests therefor from administrative authorities.

OVERLAPPING AND CONFLICT OF FUNCTIONS

While it might be expected that in a highly centralized system of government such as the Japanese the sphere of each administrative division would be so definitely marked as to avoid overlapping and conflict of functions and consequent waste, conditions do not measure up to that expectation. To quote Professor Beard, "There are at least seven different governmental organs which carry on operations of major importance within the territorial limits of the present municipality [Tokyo]. They are the city government proper, the prefectural government, the police commissioner, the Minister of Railways, the Minister of Home Affairs, the Minister of Communications, the Minister of Education, and, it seems, any minister of the Imperial Government who desires to erect any kind of a physical structure or building within the city limits."[16] Omitting the police commissioner, the same comment applies to a less degree in all the localities.

Beard presents facts that reveal conflicts due to clashes of jurisdiction, e. g., between the Minister of Railways, who may locate a terminal in a city without the city's prior knowledge or consent, and the city government, which is concerned with a well-planned community.[17] He also shows that conflicts are caused by a failure to divide local functions between the different local governments operating within the same area. Public health, education, the care of defectives, dependents and delinquents, the control and promotion of labor interests, the collection, custody, and disbursement of money, markets, pawnshops, streets, roads, bridges and canals, and the preservation of historic spots, monuments, and relics are listed by Beard as matters which are subject to a confusion of jurisdiction.[18]

WARD (KU) ADMINISTRATION

Cities are divided into *ku* ("sections," "boroughs," or "wards"). Each *ku* maintains an office, presided over by a "chief." In all the cities but three, the sections are mere administrative areas, branches of the city government; in Tokyo, Kyoto, and Osaka, for historical reasons, the sections are distinct legal persons, having

[16] Beard, *op. cit.*, p. 48.
[17] *Ibid.*, p. 49.
[18] *Ibid.*, pp. 50–55.

councils as well as chief administrators and their staffs, and possessed of minor powers over sectional affairs. In all cities, these sections have the function of collecting taxes, national and local. A third type of subdivision may exist—proprietary sections—in which there exists a piece of property, either public or private which by custom has been regarded as under the administration of a part of the city. These commonly do not have separate agencies of government, the actual administration of the property being in the city assembly and the mayor. One form of proprietary section is that which is created in case a city is divided for the purpose of establishing and maintaining primary schools. For such areas sectional councils may be created to deal with the schools.[19]

THE SIX-CITY AUTONOMY MOVEMENT

Although the laws endow the cities of Tokyo, Kyoto, Osaka, Kobe, Yokohama, and Nagoya, because of their size, with minor advantages over cities as a class, these so-called "big cities" are not satisfied with their powers and are seeking to increase their range of self-government. A draft of their desires, worked out in collaboration, shows that their purpose is that the existing system of double supervision by the home ministry and the prefectural governments shall be abolished, the home ministry becoming the sole supervisor and, in minor matters, leaving the cities entirely to their own discretion. Cities would then rank with prefectures in the administrative hierarchy.

According to the drafted plan, this change would involve the transfer of all police powers now exercised by prefectural officials to the six great cities, with the exception of the work of the judicial police and special detective services. It further contemplates giving these cities independent powers of taxation, increased borrowing power, increased power for the conduct of public enterprises, taxing power over properties now exempt, and power to assess the beneficiaries of municipal improvements. [20]

The project has encountered opposition from the prefectural governors and from the home ministry. The former feared that it would involve a loss of revenue, the latter that to destroy the unity of the police system would threaten peace and order. It is to be noted that the governor of Osaka prefecture supported the plan.[21]

[19] Oda, *op. cit.*, pp. 213–215.
[20] Osaka *Mainichi*, Aug. 27, 1930, p. 1.
[21] *Ibid.*, Jan. 4, 1931, p. 1; Jan. 16, 1931, p. 1; Jan. 18, 1931, p. 1.

It was found inadvisable to attempt to obtain legislation immediately, the prospect being that municipal powers would increase gradually.

TOWNS AND VILLAGES

Towns and villages are governed by agencies and methods closely resembling those employed in cities, and they enjoy similar but somewhat lesser powers. There is no legal distinction between towns and villages, the differences being mainly historical, but as a general rule towns are of larger population.

The executive of these smaller local areas, known as the mayor or head-man, is elected by the assembly for a four-year term, and he serves without salary unless the locality itself provides differently, which it usually does. In all but the smallest places, the mayor is entitled to a deputy or deputies. These officers as well as the treasurer are chosen by the assembly. The offices usually are honorary, i. e., there is no salary attached to them by law. Town and village officers frequently are reëlected time after time.[22]

Towns and villages may set up subordinate administrative agencies, and are required by law to have at least four departments, namely, public health, statistics, finance and education. The heads of these and other agencies are appointed by the mayor for an indefinite term, and are subject to his supervision and discipline.

Assemblies, elected by male citizens aged twenty or above, qualified by one year's residence in the electoral district and not disqualified under the law, exercise the powers already discussed as belonging to city assemblies. They vary in size, assemblies in towns and villages of less than 5,000 people having twelve members, while in those of between 5,000 and 10,000 people they have eighteen members; in the next group those of more than 10,000 and less than 20,000 people, they have twenty-four members and in all larger towns they have thirty members. The position of assemblyman is honorary, the term four years. The mayor acts as chairman, and there is no town or village council.

In villages, under peculiar circumstances, it is permissible for the voters to dispense with an elected assembly and to meet in its stead, if so authorized by the governor.[23] The town and village halls

[22] Nine mayors elected in 1888 were still in office in 1928; forty had held office for thirty years, and 224 for over twenty years.

[23] Oda, *op. cit.*, p. 197.

are centers of civic life in which the regular routine is sometimes interrupted by groups of citizens with interests to gratify. On one occasion a village assembly meeting was invaded by 150 villagers protesting against the establishment of a new school. Until police dispersed the mob, the meeting could not proceed.[24] Interest in local government has increased notably with the passage of manhood suffrage laws. In many village assemblies the tenant farmers control, while in the towns the representatives of labor have become important. There is evidence of a growing consciousness of common interests throughout the localities, and of the development of methods of joint action in bringing pressure to bear upon the central government.[25]

LOCAL SYNDICATES

With the approval of the governor, cities, towns, and villages may, upon their own initiative, combine for common purposes, such as public health, road and bridge building, irrigation, and education. A governor may create such a syndicate if he considers that the public interest demands it. In some cases villages of small resources have joined their forces for all administrative purposes. Such a syndicate, as Oda remarks, is practically the equivalent of a single village. Each member gives up its own mayor, assembly, and official body and joins in creating a common organization. It retains its moral personality, however, and regains its legal capacity when the syndicate is dissolved.[26]

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[24] *Japan Chronicle*, Mar. 15, 1917, p. 434.
[25] Osaka *Mainichi*, Dec. 27, 1930, p. 1.
[26] Oda, *op. cit.*, pp. 215–216.

CHAPTER XVI

THE GOVERNMENT OF OVERSEAS TERRITORIES

TYPES OF JAPAN'S COLONIES

In creating the Ministry for Overseas Affairs, the Japanese government signified its appreciation of conditions that rendered the terms for *colony* and *colonial* inappropriate. Korea (Chosen) and Formosa (Taiwan) were inhabited by peoples of high civilization, Kwantung was a leased territory, the South Sea Islands constituted a mandate, and southern Saghalien (Karafuto) was so located as to be susceptible of easy assimilation with the government of Hokkaido. If, however, the criterion of colonial character be administration from the imperial capital by imperial officials under laws more or less distinct from those of the mother state, the overseas territories of Japan have the character of colonies, their administration closely resembling that of British crown colonies. Karafuto is practically assimilated, Formosa is more nearly assimilated than Korea, and in Korea assimilation is under way. The trend of development is evidently not toward autonomy, but toward the incorporation of Korea and Formosa into the prefectural and local system of Japan proper. However, in view of the intense opposition to this program in those territories, there appears to be warrant for anticipating a possible change to a plane permitting the evolution of self-government. The future of Kwantung and the South Seas mandate is conditioned by treaties.

CHOSEN (KOREA)

Korea, a vassal state of China but practically independent, was annexed by Japan in 1910. Following the Peace of Portsmouth (1905), the government of Japan had continued a program begun in 1895 by which Korean sovereignty had been steadily whittled down until the treaty of annexation was little more than the formal culmination of the establishment of Japanese rule. The treaty signed August 22, 1910, provided that the royal house of Korea should be

accorded appropriate titles, dignity, and honor, and that annual grants would be made to its members. It promised peerages and monetary grants for Koreans deemed worthy on account of meritorious services. And the seventh article of the treaty declared that "The Government of Japan will, as far as circumstances permit, employ in the public service of Japan in Korea those Koreans who accept the new régime loyally and in good faith and who are duly qualified for such service." [1]

The area of Chosen is 85,228.68 square miles, slightly larger than that of Minnesota. Its population is approximately 19,000,000, and half a million of the inhabitants are Japanese. Rice is the principal agricultural product. Other products of the peninsula include silk, cattle, lumber, and gold and other minerals.

ORGANS OF GOVERNMENT IN CHOSEN

The present Chosen government consists of a governor-general, who enjoys *shinnin* rank, an administrative superintendent, also of *shinnin* rank, and two groups of officers, one group occupying posts entitled government-general offices, the other holding affiliated offices of the government-general. The post of Governor-General, one of the most important in the empire, is open to civilians, but has never been held by other than an active or retired general or admiral.[2] The administrative superintendent and the bureau directors are appointed from civil life. These positions are subject to political influence, and in a continuously increasing degree their incumbents change when the cabinet at Tokyo changes.

Included in the government-general offices are a secretariat, bureaus of home affairs, finance, industry, justice, education, and police, and a forestry department. The affiliated offices include bureaus of communication, railways, and monopolies, as well as a number of separated agencies of divers sorts, among them the provincial administrations and the courts. Koreans are eligible to offices of *sonin* and *hannin* rank at the same salaries as Japanese, but are not admitted to more important positions.[3] In this aspect,

[1] *Annual Report on Reforms and Progress in Chosen, 1918–1921* (Keijo, 1921), pp. 199–200.

[2] The office was opened to civilians by the reform measures introduced in 1919. See Y. Oda, *Principes de droit administratif du Japon* (Paris, 1928), pp. 138–139.

[3] *Annual Report on Chosen, 1927–1928* (Keijo, 1929), pp. 28–29. This means that there is no Korean official who can attend a conference of chiefs of bureaus or departments.

the administration of Chosen is in marked contrast with that of the Philippines, which is almost wholly in the hands of the people of the Islands. It is also less liberal in principle than the administration of Hongkong, where, as in other British crown colonies, any subject who is able to pass the difficult civil service examinations is eligible to appointment. In practice, however, Chinese in Hongkong are found, with very few exceptions, to be restricted to clerical and general establishments. The Chosenese civil service is part of that of Japan proper, and the regulations concerning it are similar to those in force there. Salaries are one-fourth higher than those paid in Japan, and as pensions and allowances are provided, the Chosenese service is financially attractive.[4]

BUREAU FUNCTIONS IN CHOSEN

The division of functions among the various bureaus, etc., may be indicated briefly. The Governor-General's secretariat embraces a number of private secretaries and councilors, also sections dealing with matters affecting foreigners, archives, and accounts. In the bureau of home affairs are sections on local administration, social work, public works, and buildings. The finance bureau has three sections: internal revenue, budget, and finance. The industrial bureau contains sections for agriculture, fisheries, commerce and industry, mining, land-improvement, and irrigation, a geological investigation service, a fuel laboratory office, and a commercial museum.

The judicial bureau works through a section on judicial affairs and a prison section. In the educational bureau exist sections on school affairs, compilation, and religious affairs, also a museum and a meteorological observatory. The police bureau, most important of all, employs sections on police affairs, censorship, peace preservation, sanitation, and export cattle inspection. The forestry department has three sections, namely, management, forest products, and afforestation.

The bureau of communications has the following sections: general affairs, supervision, accounts, engineering, electric installations, marine affairs, and water-power investigation; it also includes a postal money-order and savings office and an employees' training institute. This bureau administers the postal and telephone offices. In the railway bureau are to be found sections for general affairs,

[4] A. Ireland, *The New Korea* (New York, 1926), pp. 104–107.

supervision, traffic, operation, construction, mechanics, and accounts, and an employees' training school, a library, and a hospital.[5]

KOREAN CENTRAL COUNCIL

No central legislature exists in Chosen. A central council of sixty to seventy members has advisory powers and is convened irregularly at Keijo (Seoul), the capital, to discuss measures laid before it by the Governor-General. It is appointed by the premier of Japan, upon the nomination of the Governor-General. The administrative superintendent is *ex officio* president of the council, but the vice-president and other members are Koreans. Fifteen of the members are designated as advisers, and they alone have the right to vote.[6] The members of the central council receive a salary. The council may be contrasted with the legislative council of Hongkong, which is appointed by the crown, is almost wholly British in composition, and exercises legislative power, subject to the governor's right of veto; and with the Philippine legislature, which is almost entirely elected by the people, is wholly Filipino in membership, and enjoys a large degree of law-making power, with the right of appeal to Congress over the veto of the governor-general.

KOREA'S COURTS

The judicial system of Chosen consists of eleven local courts with a considerable number of branches and sub-branches, three courts of appeal, and a supreme court. Judges and procurators are appointed upon a merit basis, and since 1921 ordinary judges are guaranteed their positions until they reach the age of sixty (the president of the supreme court, until sixty-three), unless condemned to imprisonment or subjected to disciplinary punishment by their colleagues. The supreme court may extend the period of service five years in the case of men of exceptional merit. In striking contrast with the Filipinos, who monopolize all judicial posts in the Philippines except the five (constituting a majority) reserved for Americans in the supreme court, Koreans have, as yet, been appointed only as local judges or procurators; but they are eligible to higher posts. Prior to 1920 the competency of Korean judges and procurators, in civil cases, extended only to cases between Koreans, and in criminal

[5] *Annual Report on Chosen, 1927–1928*, pp. 28–29.
[6] N. Asami, *Japanese Colonial Government* (New York, 1924), pp. 53–54.

cases only to those in which Koreans were defendants, but in that year the restrictions were removed.

Local courts are courts of first instance for both civil and criminal actions. The courts of appeal deal with appeals; the supreme court has final jurisdiction on appeal and also in such cases as are heard, for Japan proper, in the supreme court of Japan. A single judge is the rule in local cases, but three judges sit in more important cases. The courts of appeal are collegiate courts, three judges sitting, while five judges sit on cases before the supreme court. There is no administrative court in Chosen.[7]

POWERS OF THE GOVERNOR-GENERAL OF CHOSEN

The powers of government in Chosen reside in the Governor-General, except in matters by nature within the purview of the central government at Tokyo.[8] His office ranks with that of the premier. He is, in consequence, legally responsible only to the Emperor and legally subject to the Emperor's orders only. In practice he must be in accord with the premier, through whom imperial assent is obtained for his decrees and appointments. The development of party control of the cabinet necessarily involves the existence of working relations between the government and colonial administrators.[9] Such relations, however, are political rather than legal.

His Relation to the Ministry of Overseas Affairs.—With the creation of the Ministry of Overseas Affairs, an issue was raised of the relationship between the Ministry and the Governor-General. Should the latter report to the former, or was the former simply the channel of communication between the premier and the Governor-General? The susceptibilities of the Koreans were involved, rendering the question a political as well as a constitutional issue. As noted in an earlier chapter, the settlement of this point was left somewhat indefinite.[10]

Bases of His Authority.—The concluding paragraph of the imperial rescript on the annexation of Korea runs as follows: "We

[7] *Ibid.*, pp. 58–59. Prior to 1921 the Governor-General had authority to retire judges.

[8] Oda lists as illustrative of such matters "the organic regulation of various authorities, the appointment and removal of officials, the organization of the army, the grant of titles, the exercise of the pardoning power, the issuance of currency, the determination of the calendar, diplomacy, and military administration" (*op. cit.*, p. 139). Concerning them he may act under specific authorization of law or ordinance.

[9] Asami, *op. cit.*, p. 15, n. 16.

[10] See Ch. VIII, p. 141.

order the establishment of the office of Governor-General of Korea. The Governor-General will, under our direction, exercise the command of the army and navy, and a general control over all administrative functions in Korea." [11]

Passages from the "Organic Regulations of the Government-General of Chosen" may be quoted:

"Art. I. . . .

"The Governor-General shall govern Chosen.

"Art. III. The Governor-General shall be directly responsible to the Emperor. Within the limits of his delegated authority he shall command the military and naval forces and direct affairs concerning the defense of Chosen.

"The Governor-General shall control general political affairs. He shall address the Throne and obtain sanction through the Minister President of State." [12]

His Appointing Power.—Respecting appointments, the regulations authorize the Governor-General to appoint and remove *hannin* (fourth-rank) officials. He must obtain the premier's approval of *sonin* (third-rank) appointments and removals. Officials of *shinnin* (first) and *chokunin* (second) rank are appointed for Chosen as for Japan proper.

His Ordinance Power.—The Governor-General has a wide ordinance power, limited by the imperial ordinance power and by the requirement that the approval of the Emperor be obtained through the premier for decrees having the character of statutes. The Diet may legislate directly for Chosen, and general acts passed by it may be applied to Chosen by imperial ordinances. The ordinance power of the Governor-General is, in general, coextensive with the legislative power in Japan proper. His decrees may be issued without approval in cases of urgency, but if approval subsequently is refused they must be withdrawn.[13] For less important matters the Governor-General may issue ordinances without the necessity of seeking approval. That the latter may be of considerable significance is evi-

[11] *Annual Report on Administration of Chosen, 1922–1923* (Keijo, 1924), p. 225. This rescript is printed in all annual reports on Chosen.

[12] *Annual Report on Reforms and Progress in Chosen* (Keijo, 1911), p. 248. In 1919 the military competency of the Governor-General was limited to applications to the military commander in Chosen for forces deemed necessary to preserve order. *Annual Report on Chosen, 1927–1928* (Keijo, 1929), p. 27.

[13] "Imperial Ordinance No. 324 Relating to Laws and Ordinances to Be Enforced in Chosen," printed as Appendix H in *Annual Report on Reforms . . .* (1911), p. 251. Also printed in Oda, *op. cit.*, pp. 13–14; and in Asami, *op. cit.*, p. 39.

denced by a provision of the organic regulations of 1910 prescribing penalties of imprisonment or penal servitude for one year or a fine of 200 yen for their violation.[14] The Governor-General may not use his ordinance power to alter or repeal an imperial ordinance.

Effectiveness of Korean Law.—The "Instructions to Residents by the Resident-General" issued on August 29, 1910, stated that ". . . except those laws and regulations of the empire which can be immediately adapted to Chosen, the Japanese and Korean laws and regulations actually in force in Korea, which become void as a result of the annexation, will remain in force as orders of the governor-general, until they are gradually amended in accordance with the progress of the time."[15] Thus the local law was applicable in the courts save as it was modified by legislation, imperial ordinances, or the ordinances of the Governor-General. Koreans were declared to be subjects of the empire.[16]

Limits of Governor-General's Authority.—Oda emphasizes the point that "in Chosen the separation of powers is not yet perfectly established. The governor-general is clothed in principle with the legislative power; matters which are reserved by the constitution to the legislative power may be determined . . . by a special ordinance which he issues under the title of *seirei.* He is invested equally with the judicial power; the organization of the courts is incorporated in the ensemble of the organization of the government-general of Chosen. The power of supervision which the governor-general exercises over the inferior authorities and their subordinates is similar to that exercised by other supreme authorities."[17]

A recent incident will illuminate the situation and afford evidence that the problem of conflicting authority over Chosen still remains. Governor-General Saito, without consulting the central council, decided to move the provincial capital of the province of South Chusei from Koshu to Taiden. The government accepted his decision and

[14] "Organic Regulations," Article 4. Appendix G, *Annual Report on Reforms . . .* (1911), p. 248.

[15] Appendix F, *Annual Report on Reforms . . .* (1911), p. 246.

[16] "Proclamation of Annexation," Appendix E, *Annual Report on Reforms . . .* (1911), p. 242.

[17] Oda, *op. cit.*, p. 140. In a recent article, Count M. Soyeshima asserts: "The governor-general of Korea also is, in theory, the representative of his sovereign, the Emperor, but he is not in fact. He is a mere business official, this being especially so after the organization of the Department of Overseas Affairs, under whose jurisdiction and control he is, whereas under the English system even the governor of a tiny colony like Hongkong meets the British and Chinese in his domain as representative of the King" (*Japan Chronicle,* Aug. 20, 1931, p. 236). Count Soyeshima accounts for the difference by contrasting the probity of British officials with the prevalent corruption of the representatives of Japan.

incorporated an item in the budget to cover it. Due to protests from the residents of Koshu, the item was opposed in the House of Representatives, and the government withdrew it. In the House of Peers the item was restored. The vote in the Peers showed that a large majority held it to be incumbent upon the Diet to sustain the imperial prestige by providing the funds required under an action which the Governor-General was constitutionally qualified to take. The House of Representatives raised no further objection to the item, and it was included in the appropriations.[18] The incident revealed that the upper house continues to regard the Governor-General as the final authority, subject only to the Emperor, who refrains from political decisions, while the government and the lower house view his status as subordinated to the actual governing authorities. The Peers were standing for the letter of the imperial ordinances that provide for the control of Chosen. The government and the Representatives were prepared to interpret the ordinances in accordance with the requirements of parliamentary government.

FUNCTIONS OF KOREAN ADMINISTRATIVE SUPERINTENDENT

The functions of the administrative superintendent, or Vice-Governor-General, are those of general supervision over the entire administrative staff. He is the close confidant, the right-hand man, of the Governor-General. His functions are thus outlined in the "Organic Regulations" of 1910, Article 8: "The civil governor shall assist the governor-general, direct the general affairs of the government-general and supervise the business of the different departments and bureaus." He may act as a delegate to the Diet on behalf of the Governor-General, and is not restricted from expressing views in the Diet which are different from those of the Minister of Overseas Affairs.[19]

LOCAL GOVERNMENT AREAS IN CHOSEN

Local government in Chosen is conducted in thirteen provinces, twelve cities, and about 2,500 towns and villages. There are two island districts, Saishu and Utsuryo, in which the respective governors are authorized to make all needed rules and conduct the police.[20] Towns and villages are not distinguished from one another

[18] *Japan Chronicle*, Feb. 26, 1931, p. 223; Mar. 5, 1931, pp. 245–246; Mar. 12, 1931, pp. 266–267; Mar. 19, 1931, pp. 299–300.
[19] *Ibid.*, Mar. 12, 1931, p. 267.
[20] *Annual Report on Reforms . . . , 1918–1921*, p. 181.

by law, but are known as such by historical derivation. The thirteen provinces replace the eight older Korean provinces, and villages have been amalgamated in some instances and cities reduced by the separation from them of outlying villages. Districts or counties continue to be recognized, their boundaries altered to produce areas averaging forty square *ri* (240 square miles) and a population of 10,000. These units to-day are of slight administrative significance.

THE KOREAN PROVINCIAL EXECUTIVE

The provinces are subject to the rule of governors who hold *chokunin* rank, identical with that of prefectural governors in Japan proper. Like the latter, their positions are political and changes are frequent. The administrative staff in each provincial capital performs its functions in three "departments," namely, internal affairs, finance, and police.

PROVINCIAL COUNCILORS IN KOREA

Provincial councilors, three in each province, chosen by the governor with the approval of the Governor-General, from among influential Koreans, but with nothing more than nominal advisory functions, existed from annexation until 1920. In 1920, provincial advisory councils were set up, still without power but actually intended to assist the governors with advice. These varied in size from eighteen to thirty-seven members. They are partly Japanese, partly Korean; partly appointive by the governor, partly elective. The so-called elective councilors prior to the reforms of 1931 were in fact selected by the governor from nominees presented by the town and village councilors. Payment of an annual land tax of five yen ($2.50) was required of electors. The governors acted as *ex officio* chairmen of the councils.

The first group of these councils contained a total membership of 362, of whom 87 were Japanese and 275 Koreans. Of the Japanese members, 63 were appointed and 24 elected; of the Koreans, 56 were appointed and 219 elected.[21] Elections occur every third year. Following the election of March, 1927, the total membership remained 362, of whom 89 were Japanese—68 appointed, 21 elected, while 273 were Koreans—51 appointed and 222 elected.[22]

[21] *Annual Report on Reforms . . . , 1918–1921*, p. 186.
[22] *Annual Report on Chosen, 1927–1928*, p. 142.

PROVINCIAL POWERS IN KOREA

Provincial powers rest in the governors. They include the issuance of ordinances, the making of minor appointments, and the conduct of police administration. The latter was turned over to the governors in 1919 when the gendarmerie was abolished. It comprises the functions of sanitation and quarantine regulation as well as the police function. A governor may suspend or annul the orders or decisions of mayors and head-men within his province. In emergencies, he may request assistance from the commander of a near-by garrison. It may be said that the provincial administration in Chosen is conducted on principles similar to those prevailing in Japan proper. The differences are largely due to the comparative newness of the former. The councils are much less influential, but the reforms in prospect, destined to follow upon the results of experience with local assemblies of enlarged powers, are calculated to increase their importance. Conferences of governors are held at the call of the Governor-General.

KOREAN CITY GOVERNMENT

Korean cities are recognized by law as juristic corporations. They are administered by "prefects" or mayors appointed by the Governor-General and are closely subject to his control. From the date of annexation until 1920, two honorary Korean councilors, appointed by the provincial governor with the Governor-General's approval, were associated with the mayor of each city. In 1920, councils or assemblies of an advisory type were created, their members elected for three-year terms by adult male residents who were qualified by the payment of at least five yen ($2.50) annually in municipal taxes. These bodies developed considerably in importance, and their advisory relationship to the mayor became an actual participation in the determination of local policy and in the conduct of local administration.[28]

[28] Results of the election of November, 1926, in the twelve cities and forty-three "designated towns" to which the system applies are given in *Annual Report on Chosen, 1927–1928* (1929), p. 142, as follows:

		Voters	*Votes cast*	*Percentage*	*Members elected*
Cities	Japanese	12,060	9,808	81	146
	Korean	8,576	6,704	78	84
Towns	Japanese	4,694	4,069	86	159
	Korean	4,538	3,459	76	139

REFORMS OF 1931 FOR KOREAN CITIES

Under the reform plan of Governor-General Saito, which became effective for the localities subordinate to the province on April 1, 1931, the municipal councils were given a limited legislative power, and educational functions previously exercised by two distinct juridical bodies, the school guild for Japanese and the school expenditure guild for Koreans, were transferred to committees of the councils, one constituted of Japanese, the other of Koreans, the guilds being abolished. In the same year the term of councilmen was increased to four years. Electoral qualifications remained unchanged, and the mayors continued to act as chairmen of the councils. Councilmen serve without compensation.[24]

KOREAN TOWNS AND VILLAGES

Town and village government is conducted by head-men appointed by the provincial governor with the approval of the Governor-General. Elective councils with four-year terms exist in all towns and villages, those in some forty designated localities possessing the legislative powers of city councils, while the councils in the smaller villages are consultative. Prior to 1931, the latter were appointed by the district magistrates, who were required to take account of the views of important local residents.[25]

The powers of the localities, subject to the governor's supervision, include the maintenance and management of public institutions and public works, the provision of a budget, the levying of surtaxes and local taxes, the raising of loans, and the issuance of ordinances concerning the rights and duties of local residents. They manage local utilities, sanitation, markets, the improvement of streets, hospitals, cemeteries, libraries, and other public works. The smaller villages are denied the power of raising loans.[26]

TAIWAN (FORMOSA)

The large island most commonly known as Formosa was acquired by Japan by the Treaty of Shimonoseki, at the end of the war with

[24] *Japan Chronicle*, Mar. 20, 1930, pp. 280–281. Also see Osaka *Mainichi*, Mar. 12, 1930, p. 1; *Japan Advertiser*, Mar. 12, 1930, p. 1; Seoul *Press*, Mar. 13, 1930, p. 2.

[25] *Annual Report on Chosen, 1927–1928*, pp. 148–150. *Japan Chronicle*, Mar. 20, 1930, p. 281.

[26] *Annual Report on Chosen, 1927–1928*, pp. 145–147. For a brief but pointed exposition of certain aspects of administration in Chosen, particularly the courts and the civil rights of Koreans, see M. Moncharville, *Le Japan d'outre mer* (Paris, 1931), pp. 104–134.

China in 1894–1895. At that date it was governed as a part of the Chinese province of Fukien. Formosa had been Chinese territory since its conquest from the Dutch by Koxinga in 1662. It has, with the Pescadores, an area of 13,471 square miles and a population of 4,500,000 of whom over 4,000,000 are Chinese, 85,000 Malays, and about 200,000 Japanese. It produces camphor, rice, sugar, tobacco, tea, lumber, and minerals.

GOVERNMENTAL ORGANS IN TAIWAN

The present régime in Taiwan consists of a Governor-General, holding *shinnin* rank; an administrative superintendent, of *chokunin* rank; and six bureau directors who head, respectively, bureaus of home affairs, finance, communications and transport, commerce and industry, police, and monopolies. A section for control of judicial administration is located in the Governor-General's secretariat. "Home affairs" includes education. The police bureau contains sections for supervision of the savage tribes who inhabit the mountains on the eastern side of the island, and a bureau of sanitation and hygiene. Sections to deal with salt and camphor, alcoholic liquors, and tobacco are found in the bureau of monopolies. Japanese only are appointed to positions of responsibility. Since 1919 all officials from the Governor-General down have been civilians. Police replaced the gendarmerie in 1902. An advisory council of twenty-five officials and private citizens, the latter including nine Formosans, has been used as a consultative body since 1920.

Taiwan's judiciary consists of a high or supreme court, existing in two coördinate divisions, one of final appeal, the other of revision; three local or district courts; and three branch local courts. To each court procurators are attached as in Japan proper.

LOCAL GOVERNMENT IN TAIWAN

For purposes of local administration the island is divided into five provinces and two prefectures, the latter comprising the eastern section in which the assimilated natives, formerly head-hunters, form a large percentage of the population. The island group called the Pescadores is governed as a third prefecture of Taiwan. About half of Taiwan is in possession of unassimilated natives, "savages," and is not divided into administrative areas. The natives of this area live in some 700 villages, and their number is estimated to be

85,000. It is separated from the subjugated region by a fortified zone in which 142 police stations, each with from three to twenty men, are connected by electrically charged barbed wire. From time to time this region is slightly reduced by the absorption of frontier into the regularly governed prefectures, but the process is extremely slow.

Governors and prefects appointed by the governor-general administer the provinces and prefectures respectively. Under them are sub-prefects to control the districts into which these larger areas are divided. The local units are cities, towns, and villages, each ruled by a Japanese mayor or head-man. The three principal cities are administered independently of any district, their mayors reporting directly to provincial governors. To each provincial, municipal, town, and village government an advisory council is attached. There are no councils in the prefectures. The governor-general appoints the provincial and prefectural councils, the governors appoint the municipal and village councils. The councils are of mixed Japanese and Formosan, i. e., Chinese, membership, and members serve for two years without compensation. They appear to be of some effect in giving the people a voice in local government.

POWERS OF TAIWAN'S GOVERNOR-GENERAL

The powers of the governor-general are in general identical with those already discussed in connection with Chosen. He is, however, subject not only to the control of the premier but, in financial matters, to that of the Minister of Finance and, in the administration of posts and telegraphs, to that of the Minister of Communications.[27] General statutes passed by the Diet do not apply in Taiwan unless and in so far as it is specifically so provided by imperial ordinance. The ordinance power of the governor-general is extensive but less inclusive than that of the Governor-General of Chosen. Since 1921 the bulk of legislation for Taiwan has taken the form of imperial ordinances.[28]

KARAFUTO (SOUTHERN SAGHALIEN)

Karafuto became a Japanese possession in 1905 by the Treaty of Portsmouth. Russia had taken the island of Saghalien (of which

[27] Oda, *op. cit.*, p. 141.

[28] Asami, *op. cit.*, p. 60. See for brief paragraphs on administration the *Japan Year Book*, 1931, pp. 490–492, and Moncharville, *op. cit.*, pp. 47–77. The *Japan Chronicle* contains valuable materials on the autonomy movement, including extensive accounts of the trials of leaders arrested for agitating.

this colony forms the southern two-fifths) from China at the end of the eighteenth century. In 1875 she had obtained Japan's recognition of her ownership at the price of the Kuriles. Karafuto covers an area of 13,101 square miles and has a population of 250,000, of whom all but a few thousands are Japanese. Koreans (about 4,000), native remnants (2,000), and a few hundred foreigners make up the remainder. The chief products of the colony are fish, lumber, and coal.

Karafuto was placed under a civilian régime upon annexation. This consists of a governor, of *chokunin* rank, and directors of the three bureaus of interior, police, and agriculture and forestry. The governor has a limited ordinance power, but he does not exercise the legislative ordinance power still enjoyed by the Governor-General of Chosen and possessed by the governor-general of Taiwan until 1921. The scope of his authority is considerably wider than that of a perfectural governor in the main islands. The laws and ordinances promulgated for Japan proper have been extended by ordinance to Karafuto so generally as to assimilate its régime very closely to that in Hokkaido.[29] The courts of this colony are integrated with the judicial system of Japan proper. The towns and villages are administered by mayors appointed by the governor and possess advisory assemblies.

THE MANDATE OVER THE SOUTH SEA ISLANDS [30]

Japan acquired a mandate (C class), over the former German island possessions lying in the Pacific Ocean, north of the equator, by the Treaty of Versailles. It is composed of three groups—the Mariana, Marshall, and Caroline islands—1,400 islets, 800 square miles in area and possessing 61,000 inhabitants. The population is composed of 48,500 natives, principally Kanakas and Chamorros, 12,500 Japanese, and a handful of foreigners. The principal products are phosphate—a government monopoly, sugar, and alcohol.[31]

From 1914, when a Japanese naval squadron occupied the islands, until 1918, a provisional naval garrison, assisted by civilian officials,

[29] Oda, *op. cit.*, pp. 14–15, 222. Asami, *op. cit.*, pp. 66–67.

[30] Acknowledgment for assistance upon this topic is due to Mr. Harlow Heneman, whose unpublished master's thesis on "The Administration of Japan's Mandate" (University of California, 1930) was placed at the author's disposal. See Mr. Heneman's article, "The Administration of Japan's Pacific Mandate," *American Political Science Review*, XXV (Nov., 1931), 1029–1043.

[31] The phosphate mines are estimated to contain approximately 3,500,000,000 tons (*Report to League of Nations*, 1927, p. 91).

administered the area. The naval régime took account of local customs and the position of native rulers. In July, 1918, the naval staff was replaced by civilians, but the commander of the naval garrison remained at the head of the administration. The naval force was reduced to the number required as police.[32]

A full-fledged civilian administration was set up in March, 1922. An imperial decree created the "South Seas Bureau," composed of a director and a staff, reporting to the premier on general matters and to the Ministers of Finance, Communications, and Commerce and Agriculture on matters within their respective spheres of authority. To the director was given power to issue ordinances of minor, or, with higher approval, of major consequence. Penalties up to 200 yen or a year's imprisonment might be incorporated in these ordinances. The director was made general superintendent of six branch bureaus, with power to suspend their regulations, and was authorized, in cases of urgent necessity, to call upon the naval forces for the maintenance of peace and order.[33]

The main office of the bureau is at Korror in the Caroline group. The six branch bureaus are located at different villages throughout the islands. The central bureau is composed of three vice-directors; a secretariat containing sections of general affairs, finance, police, economic development, and communications, and an office of harbor works; and a number of affiliated offices administering the branch bureaus, the schools, the courts and procurators, the industrial experiment station, the mining station, hospitals, post-offices, and the meteorological laboratory. The heads of the branch bureaus exercise a degree of ordinance power, administer the appurtenant areas, and act as arbitrators in certain types of civil controversy.[34]

There are no popular assemblies in the mandate. A higher court and three local (really district) courts compose the formal judiciary. The Japanese procuratorial system extends to the islands. Many cases are disposed of without resort to the courts, either by the branch bureau heads or the head-men of the villages. Within his allotted jurisdiction, the judgment of a head-man is final. Litigants may take cases into court if dissatisfied with the judgment of a branch bureau head. The higher court, of three judges, hears appeals from the local courts. Judges are men duly qualified

[32] *Second Report to the League of Nations*, p. 1.
[33] *Report to the League of Nations*, 1927, pp. 10, 12.
[34] *Report to the League of Nations*, 1928, p. 11.

under the regulations of the judicial division of the Japanese civil service.[35]

Since 1923, the Japanese codes of civil, criminal, and commercial law and of civil and criminal procedure have been enforced in the mandate. In civil cases between natives, local practice may be substituted for that of the codes. The criminal codes are applied without exceptions. The police force is wholly civilian, composed of approximately 100 Japanese and native officers and men under a superintendent.

Village government is largely in the hands of native chiefs or head-men, who are appointed and removed by the branch bureau heads with the approval of the director of the South Seas Bureau. They submit reports to the bureau offices and disseminate information and instructions to the people. Salaries up to thirty-five yen a month are paid to the chiefs.[36]

KWANTUNG LEASED TERRITORY

Kwantung Leased Territory (or Kwantung Province), was acquired by transfer from Russia under the Treaty of Portsmouth (1905).[37] Subsequently, China acknowledged the validity of the transfer in the Komura treaty (1905). In 1915 the original term of the lease (twenty-five years from 1898), was extended to ninety-nine years by one of the treaties growing out of the "Twenty-one Demands"—a treaty, be it noted, which the Chinese government has not recognized as valid. The leased territory is 1,300 square miles in area and has a population of 800,000, seven eighths of which is Chinese. The police jurisdiction of the Kwantung government extends over the right of way of the South Manchuria Railway—also under lease to Japan—as well as over certain appurtenant areas which add approximately 100 square miles to the area of South Manchuria under Japanese jurisdiction by lease. More than 300,000

[35] *Reports to the League of Nations*, 1927, pp. 22, 23, 33; 1928, p. 22. *Minutes of the Permanent Mandates Commission*, session 5, p. 12.

[36] *Report to the League of Nations*, 1928, pp. 12–13.

[37] See *Outline of the Kwantung Government*, issued by that government (Ryojun, Sept., 1926). Also the articles by M. Royama, "The South Manchuria Railway Zone," *Pacific Affairs*, Nov., 1930, pp. 1018–1034, and "Japan's Position in Manchuria," in *Problems of the Pacific*, edited by J. B. Condliffe (Chicago, 1929), pp. 524–593. Imperial ordinance 196 (1906), and amending ordinances, and imperial ordinance 94 (1919), in which the organization of the leased territory is provided for, are printed in Mac Murray, *Treaties and Agreements*, I, 566, 569–570. See also *The International Legal Status of the Kwantung Leased Territory* (Baltimore, 1931), by C. Walter Young.

people, two thirds of them Chinese, inhabit the railway zone. The chief products of South Manchuria are soy-beans and their by-products, coal, iron, and lumber.

The original treaty granting the lease to Russia reserved the sovereignty of China while granting complete powers of administration. The treaty provided (Article 4): "The entire military command of the land and naval forces and equally the supreme civil administration will be entirely given over to the Russian authorities." [38] Kwantung was governed by army officers from its acquisition until 1919, although they had acted as civilian administrators since 1906. By an imperial ordinance of 1919, dated April 12, the administration was made more definitely civilian by transfer from military to civilian officials.

The administration is constituted of a governor, who may be a military man but who has, in practice, been a civilian and who holds *shinnin* rank; a chief secretary; and directors of sections of civil affairs and foreign affairs. The Japanese consul-general at Mukden is *ex officio* chief secretary and director of the sections of civil affairs and foreign affairs. All Japanese consuls in Manchuria are *ex officio* secretaries of the Kwantung government.[39] The governorship is a political office, its occupant changing with the members of the cabinet, and no legislative or advisory council exists. The governor is assisted by a secretariat, a finance department, and bureaus of home affairs and police. There exist a number of experiment stations, a technical college and other schools, museums, and other agencies under the government.

The judicial system comprises a district court, at Dairen, and a supreme court, at Ryojun (Port Arthur). The latter is composed of two coördinate courts, one of appeal, the other of final revision. A civilian police system replaced the gendarmerie in 1914. Policing of the South Manchuria Railway as well as Kwantung territory is in the hands of the police bureau, which directs a staff of from 2,500 to 3,000 men in the conduct of from twenty-five to thirty police offices and 400 police boxes. Thus the consular, or extra-territorial, police function is performed by the Kwantung government police.

The powers of the Kwantung government reside in the governor,

[38] J. V. A. Mac Murray, *Treaties and Agreements* (New York, 1921), I, 119.

[39] M. Royama, "The South Manchuria Railway Zone," *Pacific Affairs*, Nov., 1930, pp. 1018–1034. See also the *Manchuria Year Book*, 1931, pp. 37–41, 45–46, 48–51.

who is responsible to the Minister of Overseas Affairs.[40] There is no special imperial ordinance determining the general source of the legislation applicable in Kwantung; consequently Japanese laws and ordinances apply whenever relevant to existing conditions.[41] The governor issues minor ordinances, makes minor appointments, and supervises his subordinates. The courts of law are under his control. He supervises the business of the South Manchuria Railway, which operates nearly 700 miles of line and conducts a variety of highly important public and private enterprises. He is responsible for the conduct of diplomatic relations with the Chinese authorities of South Manchuria, and in this field he is subject to the Minister for Foreign Affairs.[42] He has no control over the commander of the Kwantung garrison, who is, in matters of military administration and personnel, subject to the orders of the Ministry of War, the Chief of the General Staff, and the Inspector-General of Military Education.

For purposes of local government, the leased territory is divided into two civil administrative districts, governed by appointed chiefs, with whom are associated advisory councils. Dairen is the seat of government for one district, Ryojun (Port Arthur) for the other. In the Dairen district there are three branch offices. The two districts embrace two cities and nine villages. Dairen, the principal city, most modern in plan of all Asiatic cities, and Port Arthur, seat of the Kwantung government, have the most democratic form of government in the Japanese overseas empire. Not only is the city assembly in part an elective body, but the mayor is appointed by the governor from three candidates elected by the assembly. However, Chinese, who constitute the majority of the population, are not eligible for election; the few of that nationality who are assembly members are appointed by the governor. The assembly's powers, subject to the mayoral veto, do not cover finance, but are concerned with education, health, public welfare works, parks, markets and slaughter-houses, cemeteries, and crematories. There is also a city council, composed of the mayor, deputy mayor, and six councilors chosen by the assembly from its own membership. The villages, as elsewhere in China, enjoy a considerable degree of local

[40] Governor Sengoku was reminded of this relationship early in 1930. He had relied upon his experience and standing in taking action without consulting the ministry.

[41] Oda, *op. cit.*, p. 15.

[42] *Ibid.*, p. 142.

autonomy under head-men and elders. This position is recognized in ordinances.

SOUTH MANCHURIA RAILWAY ADMINISTRATION

Administration of the South Manchuria Railway and appurtenant areas is conducted by a semi-private, semi-official corporation —the South Manchuria Railway Company—which is an agency of the Japanese government, as well as a business concern of widely ramifying interests. The government owns one-half of the capital stock of the company and is always able to control large blocks of privately owned stock in the hands of directors, which it appoints, as it does the president and vice-president. The president is responsible to the foreign minister, and exercises an influence in Manchurian administration that equals or exceeds that of the governor of Kwantung province. The Ministry of Communications controls the fixing of rates on the railway.

As an instrument of government the company administers the area occupied by the railway, and those areas, often incorrectly spoken of as composing a "railway zone," which were transferred to Japan on lease after the Russo-Japanese War. A "local administration department," at Dairen, assisted by offices along the line, performs educational, sanitary, civil engineering, and other public functions, and levies charges upon the inhabitants of the areas. A department of foreign affairs, with five local officers at important centers, is empowered to negotiate with the Chinese authorities, and to make railway agreements with them.

The administrative activities of the company are a subject of dispute among Japanese legal authorities, and between them and both Chinese and foreign commentators. The dispute is principally concerned with the proper interpretation of the words, "the absolute and exclusive right of administration" over the "lands actually necessary for the construction, operation and protection of the line" in the sixth article of the Sino-Russian railway contract of September 8, 1896. Both the Russian and its successor, the Japanese, government have interpreted this clause as conferring broad rights of a political nature, such as the appointment of police and railway guards, creation of municipalities, taxation, etc., tantamount in their entirety to the complete jurisdiction exercised within the various leased territories. Professor M. Royama recently has written, "Whatever may have been the Japanese Government's in-

tention on the occasion of the conclusion of the treaty, the actual administration since then unmistakably reveals Japan's attitude, which considers the Railway Zone as nothing but an extension of the lease of Kwantung province." [43]

The Chinese interpretation restricts the "right of administration" to a connotation descriptive of the functions of a private business corporation. The Chinese version of Article 6 does not employ the word *administration* but runs: "The land belonging to the said company will all be exempt from land tax and will be *managed* exclusively by the said Company, which will be permitted to construct thereon buildings and works of various kinds, as well as to set up telegraphs, under its own operation, for the exclusive use of the railway" [italics by author]. This view was supported by Secretary of State Knox in 1909. In a note of November 6 to the Russian government, he said, "The administration by the railway company of its leased lands provided for in Article VI of the contract can refer only to such business administration as may be necessary to the 'construction, exploitation and protection' of the railway, these being the objects expressly mentioned in the article for which the lands were granted to China. . . . A reading of the whole contract deprives the second paragraph of Article VI of all semblance of referring to a political administration." This interpretation was reaffirmed by Senator Lodge at the Washington Conference.[44]

THE NEW STATE OF "MANCHUKUO"

The occupation of southern and central Manchuria by Japanese armed forces in September, 1931, and the following months, accomplished without meeting serious opposition, was the prelude to a reorganization of the Chinese government in the entire area. Marshal Chang Hsiao-liang, who, although formally an appointee of the recognized government of China, with the titles of Chairman of the Northeastern Political Committee and Commander-in-Chief of the Northeastern Frontier, was practically a dictator in the region under his control, was declared by the Japanese military authorities ineligible to return to Manchuria. Chinese governors amenable to Japanese advice were set up in the four provincial capitals

[43] *Pacific Affairs*, III (Nov., 1930), p. 1032.

[44] Hsü Shuhsi, "The Status of the Railway Settlements in South Manchuria," *Chinese Social and Political Science Review*, XV (April, 1931), 29-47. See *Japanese Jurisdiction in the South Manchuria Railway Areas* (Baltimore, 1931), by C. Walter Young.

—Mukden, Kirin, Tsitsihar, and Jehol. Manchuria was declared a republic and the former "Little Emperor," who had been deposed at the time of the republican revolution in 1911 and was living in Tientsin as Mr. Henry Pu Yi, was set up as *genshu* ("sovereign"). The new state was called "Manchukuo" (Manchuland), and its flag was not the national flag of China but the former flag of the Republic upon which was emblazoned the rising sun of Japan.[45]

The *deus ex machina* in this act of partition was General Minami Jiro, who resigned as Minister of War when the Seiyukai took over administration, and went to Manchuria to complete the job he had begun three months before. As the first step, there was created an administrative department of the Japanese garrison, containing sections for legislation, communications, industry, and foreign affairs.[46] It was anticipated that a "resident-general"—which recalls the office created under that title for the supervision of Korean administration prior to annexation—would be established to "assist" the Manchurian government. Should such an office be created, it appeared probable that an amalgamation of the functions of the several agencies of Japanese administration would occur. The coexistence of the authority of the foreign office, the war office, and the overseas ministry had caused considerable friction, and efforts had been made previously to develop a plan of unification.

PROBLEMS AND TENDENCIES IN COLONIAL GOVERNMENT

Japan's colonial experience has been comparatively short, and it is impossible to pronounce a judgment of success or failure upon it. At the moment when Indian and Filipino agitation against continuance of the rule of Great Britain and the United States respectively is at its height, to assume a scornful attitude toward Japan's

[45] H. S. Quigley, "Manchuria in the Grip of Japan," *Current History*, XXXVI (1932), 62–63. On January 7, 1932, Mr. Henry L. Stimson, American Secretary of State, in a note of protest addressed to Japan and China, concerning the Japanese occupation of Manchuria, had declared that "the American government . . . cannot admit the legality of any situation *de facto*, nor does it intend to recognize any treaty or agreement entered into between those governments [China and Japan] or agents thereof which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of the Republic of China, or to the international policy relative to China, commonly known as the open door policy; which may be brought about by means contrary to the covenants and obligations of the pact of Paris of August 27, 1928, to which treaty both China and Japan, as well as the United States, are parties." *Senate Document*, No. 55, 72d Congress, 1st Session, 1932, p. 54.

[46] *Japan Chronicle*, Jan. 21, 1932, p. 76.

difficulties with Korea and Formosa would be unscientific and unjust. One is better advised in confining himself to facts.

The government admitted, by its reforms of 1919, that its political program or lack of program, in the two principal dominions, had so far failed. It set itself to recover lost ground by installing civilian administrations and permitting the inhabitants to offer advice on problems that might arise. Fearing, apparently, to give too large scope for popular expression, it did not establish dominion legislatures nor grant powers of autonomy to the localities nor open the more important official posts to the subject peoples. It maintained a severe censorship over newspapers and other outlets for public opinion and, in the minds of Koreans and Formosans, these evidences of continued distrust quite outweighed the reform measures.

Naturally enough, the most intense feeling of opposition has prevailed in Korea or Chosen. There the attitude is, save in exceptional individuals, one of non-coöperation, on the theory that Japanese rule must be overthrown, and that to accept mitigations of absolutism is to pave the way for popular acceptance of a position in the Japanese empire. On the Japanese side, there is the belief —at least it is officially declared—that the Koreans are unprepared for self-government, which may be extended to them only by degrees. During both of his administrations, Governor-General Saito demonstrated the sincerity of his desire to push on the process more rapidly, but he met with opposition in the Privy Council and the House of Peers.

Governor-General Saito, however, is credited by Professor Hayden with a very definite statement in favor of placing "economic development" (which the Koreans decline to view as other than exploitation), first, education second, and political development a possible third.[47] And the same writer states that "No country has ever created such a complete, well-organized, abundantly capitalized, and ably directed organization for the economic penetration and conquest of other lands." Korea's reaction to Japan's measures is graphically expressed: "Thus far the masses of the Korean population have appreciated the ministrations of their foreign rulers about as heartily as our early activities in the West were relished by the Crees and the Sioux."

[47] Ralston Hayden, "Japan's New Policy in Korea and Formosa," *Foreign Affairs*, II (1924), 474–487. Hayden says: "He was discussing the problems of Korea, but his words describe perfectly the course which his country is following in every colony over which floats the banner of the rising sun."

A revolutionary organization, styling itself the "Provisional Government of the Republic of Korea," was set up in Shanghai in 1919. It no longer exists, but in its stead a "Korean Congress" continues the agitation for independence. It sends emissaries to Chosen to obtain information and to encourage an attitude of recalcitrance. It issues propagandist pamphlets, and its members, in the guise of students and merchants, voice its criticisms and aspirations in Western countries. Other revolutionary commissions and national associations exist in America and Europe.

Recently a sympathizer with both Japan and the Koreans has written:

"Japan found Korea in a state of apathetic exhaustion due partly at least, and many will declare entirely, to the misrule of the native Korean Court, and from this apathetic exhaustion Japan is striving, with all her resources of ingenuity and power, to lift the country to the level of a modern nation. She has created roads, railways, postal and telegraph services, universal electric lighting, sanitation. . . . She has distributed wholesale, and free, the best breeds of fowls, so that the Korean egg is no longer a meagre thing hardly worth the shelling for the meat within, but has both quality and size. She has planted fruit trees on the hill-sides where rice cannot grow. She has set aside spaces for experimental farms. She has irrigated waste land, is rapidly damming the rivers and building cisterns to obviate both flood and drought. She is afforesting the hills, which, left to themselves, the Koreans completely denuded except in the grounds of palaces and temples and royal tombs." [48]

The same writer has put in plain terms his view of the reason for Japan's failure to win Korean appreciation of her efforts: "With the best will in the world no one can help the Koreans; and with the best will in the world the Japanese will never learn how to help. Their arrogance, their officiousness, their bursts of injustice, their subtlety, are so much more conspicuous than their superhuman and heart-breaking endeavors to uplift a people incapable of uplift." [49]

The policy of home rule for Chosen was ably supported by Count M. Soyeshima, a statesman of thorough knowledge of the problem

[48] H. B. Drake, *Korea of the Japanese* (London and New York, 1930), pp. 146–147.

[49] *Ibid.*, p. 11. Another writer, Mr. H. J. Noble, sees in the alienation of Korean land-holdings to absentee Japanese—which he blames upon the short-sighted financial methods of both the Korean farmer and the Japanese government—the reason why "Korea is sinking into an economic morass from which it is going to be impossible to extricate herself for generations to come" (*Current History*, Oct., 1930, pp. 78–81).

and sympathetic discernment into human motives. He wrote in 1928:

"The question of whether a united and uniform administration is to be applied to Korea and Japan alike or self-government is to be granted to Korea should be decided simply with reference to which is best suited for the attainment of the object with which Korea was annexed. Some people may contend that there is no occasion to change the present policy of administration. But seeing that all the benevolent measures adopted by the successive governors-general have failed to prevent the worsening of the Korean sentiment, it is easy to see that it is inadvisable that the Koreans should remain under the present system of government much longer. . . . The Korean budget . . . now . . . exceeds Yen 200,000,000, which, with the exception of Yen 15,000,000 supplied by the Japanese Government, all falls to the charge of the Korean people. Can a people supporting an annual burden of nearly Yen 200,000,000 be reasonably expected long to submit to the autocratic rule of another people?" [50]

In Taiwan the Japanese program has been, as in Chosen, one of economic development first, and results have been remarkable in that field. Apparently there exists in that colony no counterpart to the deep-seated insistence upon independence that distinguishes the Korean problem. Rather have the Formosans sought for home rule, for a colonial legislature to regulate colonial matters. Annually since 1921 a Formosan delegation has petitioned the Japanese Diet for this reform, but with no apparent result. Baron Den Kenjiro, first civilian governor-general of Taiwan, was reported as expressing the view that Formosans would make better progress if they worked to prepare their own people to send representatives to the Japanese Diet.[51] Opposition to assimilation, however, continues strong in Taiwan, and it may be said that twenty-five years of Japanese experience in that island support the advisability of a home-rule program.

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[50] M. Soyeshima, "Home Rule for Korea," *Japan Chronicle* (daily ed.), April 22, 24, 1928.

[51] *Ibid.*, May 19, 1923, p. 551. If the report was true, Baron Den might be charged with a temporary lapse of memory regarding the Irish delegation's record in the House of Commons.

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APPENDIX I

IMPERIAL OATH OF 1868 [1]

A. OLDER FORM

The practice of discussion and debate shall be universally adopted, and all measures shall be decided by public argument.

High and low shall be of one mind, and social order shall thereby be perfectly maintained. It is necessary that the civil and military powers be concentrated in a single whole, the rights of all classes be assured, and the national mind be completely satisfied.

The uncivilized customs of former times shall be broken through, and the impartiality and justice displayed in the workings of nature be adopted as a basis of action. Intellect and learning shall be sought for throughout the world, in order to establish the foundations of the Empire.

The faithful execution of these different articles of the Oath has been made the object of the constitution.

B. MODERN FORM

I.—An Assembly widely convoked shall be established, and thus great stress shall be laid upon public opinion.

II.—The welfare of the whole nation shall be promoted by the everlasting efforts of both the governing and the governed classes.

III.—All subjects, civil and military officers, as well as other people shall do their best, and never grow weary in accomplishing their legitimate purposes.

IV.—All absurd usages shall be abandoned; justice and righteousness shall regulate all actions.

V.—Knowledge shall be sought for all over the world, and thus shall be strengthened the foundations of the Imperial Polity.

[1] Texts as printed in Mc Laren, "Documents," p. 8.

APPENDIX II

IMPERIAL OATH AT THE SANCTUARY OF THE IMPERIAL PALACE (1889) [1]

We, the Successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy co-extensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of government.

In consideration of the progressive tendency of the course of human affairs and in parallel with the advance of civilization, We deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, to establish fundamental laws formulated into express provisions of law, so that, on the one hand, Our Imperial posterity may possess an express guide for the course they are to follow, and that, on the other, Our subjects shall thereby be enabled to enjoy a wider range of action in giving Us their support, and that the observance of Our laws shall continue to the remotest ages of time. We will thereby to give greater firmness to the stability of Our country and to promote the welfare of all the people within the boundaries of Our dominions; and We now establish the Imperial House Law and the Constitution. These Laws come to only an exposition of grand precepts for the conduct of the government, bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors. That we have been so fortunate in Our reign, in keeping with the tendency of the times, as to accomplish this work, We owe to the glorious Spirits of the Imperial Founder of Our House and of Our other Imperial Ancestors.

We now reverently make Our prayer to Them and to Our Illustrious Father, and implore the help of Their Sacred Spirits, and make to Them solemn oath never at this time nor in the future to fail to be an example to Our subjects in the observance of the Laws hereby established.

May the Heavenly Spirits witness this Our Solemn Oath.

[1] Text as in Ito, *Commentaries.*

APPENDIX III

PREAMBLE TO THE CONSTITUTION OF THE EMPIRE OF JAPAN [1]

Having, by virtue of the glories of Our Ancestors, ascended the Throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favoured with the benevolent care and affectionate vigilance of Our Ancestors; and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, a fundamental law of State, to exhibit the principles, by which We are to be guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

The rights of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in future fail to wield them, in accordance with the provisions of the Constitution hereby granted.

We now declare to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law.

The Imperial Diet shall first be convoked for the 23rd year of Meiji and the time of its opening shall be the date when the present Constitution comes into force.

When in the future it may become necessary to amend any of the provisions of the present Constitution, We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it, according to the conditions imposed by the present Constitution, and in no otherwise shall Our descendants or Our subjects be permitted to attempt any alteration thereof.

Our Ministers of State, on Our behalf, shall be held responsible for the carrying out of the present Constitution, and Our present and future subjects shall forever assume the duty of allegiance to the present Constitution.

[1] Text as in Ito, *Commentaries.*

APPENDIX IV

THE CONSTITUTION OF THE EMPIRE OF JAPAN [1]

Chapter I

The Emperor

Article I.—The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.

Article II.—The Imperial Throne shall be succeeded to by Imperial male descendants, according to the provisions of the Imperial House Law.

Article III.—The Emperor is sacred and inviolable.

Article IV.—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 Constitutions.

Article V.—The Emperor exercises the legislative power with the consent of the Imperial Diet.

Article VI.—The Emperor gives sanction to laws and orders them to be promulgated and executed.

Article VII.—The Emperor convokes the Imperial Diet, opens, closes and prorogues it, and dissolves the House of Representatives.

Article VIII.—The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law.

Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said Ordinances, the Government shall declare them to be invalid for the future.

Article IX.—The Emperor issues or causes to be issued, the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no Ordinance shall in any way alter any of the existing laws.

[1] Text as in Ito, *Commentaries.*

Article X.—The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon).

Article XI.—The Emperor has the supreme command of the Army and Navy.

Article XII.—The Emperor determines the organization and peace standing of the Army and Navy.

Article XIII.—The Emperor declares war, makes peace, and concludes treaties.

Article XIV.—The Emperor declares a state of siege.

The conditions and effects of a state of siege shall be determined by law.

Article XV.—The Emperor confers titles of nobility, rank, orders and other marks of honor.

Article XVI.—The Emperor orders amnesty, pardon, commutation of punishments and rehabilitation.

Article XVII.—A Regency shall be instituted in conformity with the provisions of the Imperial House Law.

The Regent shall exercise the powers appertaining to the Emperor in His name.

Chapter II

Rights and Duties of Subjects

Article XVIII.—The conditions necessary for being a Japanese subject shall be determined by law.

Article XIX.—Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any other public offices equally.

Article XX.—Japanese subjects are amenable to service in the Army or Navy, according to the provisions of law.

Article XXI.—Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

Article XXII.—Japanese subjects shall have the liberty of abode and of changing the same within the limits of law.

Article XXIII.—No Japanese subject shall be arrested, detained, tried or punished, unless according to law.

Article XXIV.—No Japanese subject shall be deprived of his right of being tried by the judges determined by law.

Article XXV.—Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent.

Article XXVI.—Except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolate.

Article XXVII.—The right of property of every Japanese subject shall remain inviolate.

Measures necessary to be taken for the public benefit shall be provided for by law.

Article XXVIII.—Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

Article XXIX.—Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meetings and associations.

Article XXX.—Japanese subjects may present petitions, by observing the proper forms of respect, and by complying with the rules specially provided for the same.

Article XXXI.—The provisions contained in the present Chapter shall not affect the exercise of the powers appertaining to the Emperor, in times of war or in cases of a national emergency.

Article XXXII.—Each and every one of the provisions contained in the preceding Articles of the present Chapter, that are not in conflict with the laws or the rules and discipline of the Army and Navy, shall apply to the offices and men of the Army and of the Navy.

Chapter III

The Imperial Diet

Article XXXIII.—The Imperial Diet shall consist of two Houses, a House of Peers and a House of Representatives.

Article XXXIV.—The House of Peers shall, in accordance with

the Ordinance concerning the House of Peers, be composed of the members of the Imperial Family, of the orders of nobility, and of those persons who have been nominated thereto by the Emperor.

Article XXXV.—The House of Representatives shall be composed of Members elected by the people, according to the provisions of the Law of Election.

Article XXXVI.—No one can at one and the same time be a Member of both Houses.

Article XXXVII.—Every law requires the consent of the Imperial Diet.

Article XXXVIII.—Both Houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law.

Article XXXIX.—A Bill, which has been rejected by either the one or the other of the two Houses, shall not be again brought in during the same session.

Article XL.—Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

Article XLI.—The Imperial Diet shall be convoked every year.

Article XLII.—A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by Imperial Order.

Article XLIII.—When urgent necessity arises, an extraordinary session may be convoked, in addition to the ordinary one.

The duration of an extraordinary session shall be determined by Imperial Order.

Article XLIV.—The opening, closing, prolongation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses.

In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.

Article XLV.—When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution.

Article XLVI.—No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one third of the whole number of the Members thereof is present.

Article XLVII.—Votes shall be taken in both Houses by ab-

solute majority. In the case of a tie vote, the President shall have the casting vote.

Article XLVIII.—The deliberations of both Houses shall be held in public. The deliberations may, however, upon demand of the Government or by resolution of the House, be held in secret sitting.

Article XLIX.—Both Houses of the Imperial Diet may respectively present addresses to the Emperor.

Article L.—Both Houses may receive petitions presented by subjects.

Article LI.—Both Houses may enact, besides what is provided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.

Article LII.—No Member of either House shall be held responsible outside the respective Houses, for any opinion uttered or for any vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any other similar means, he shall, in the matter, be amenable to the general law.

Article LIII.—The Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, except in cases of flagrant delicts, or of offenses connected with a state of internal commotion or with a foreign trouble.

Article LIV.—The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

Chapter IV

The Ministers of State and the Privy Council

Article LV.—The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.

All Laws, Imperial Ordinances and Imperial Rescripts of whatever kind, that relate to the affairs of the State, require the countersignature of a Minister of State.

Article LVI.—The Privy Councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of State, when they have been consulted by the Emperor.

Chapter V

The Judicature

Article LVII.—The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.

The organization of the Courts of Law shall be determined by law.

Article LVIII.—The judges shall be appointed from among those who possess proper qualifications according to law.

No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment.

Rules for disciplinary punishment shall be determined by law.

Article LIX.—Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provision of law or by the decision of the Court of Law.

Article LX.—All matters that fall within the competency of a special Court shall be specially provided for by law.

Article LXI.—No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the administrative authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by a Court of Law.

Chapter VI

Finance

Article LXII.—The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law.

However, all such administrative fees or other revenue having the nature of compensation shall not fall within the category of the above clause.

The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are

provided in the Budget, shall require the consent of the Imperial Diet.

Article LXIII.—The taxes levied at present shall, in so far as they are not remodelled by a new law, be collected according to the old system.

Article LXIV.—The expenditure and revenue of the State require the consent of the Imperial Diet by means of an annual Budget.

Any and all expenditures overpassing the appropriations set forth in the Titles and Paragraphs of the Budget, or that are not provided for in the Budget, shall subsequently require the approbation of the Imperial Diet.

Article LXV.—The Budget shall be first laid before the House of Representatives.

Article LXVI.—The expenditures of the Imperial House shall be defrayed every year out of the National Treasury, according to the present fixed amount for the same, and shall not require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.

Article LXVII.—Those already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.

Article LXVIII.—In order to meet special requirements, the Government may ask the consent of the Imperial Diet to a certain amount as a Continuing Expenditure Fund, for a previously fixed number of years.

Article LXIX.—In order to supply deficiencies, which are unavoidable, in the Budget, and to meet requirements unprovided for in the same, a Reserve Fund shall be provided in the Budget.

Article LXX.—When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures, by means of an Imperial Ordinance.

In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto.

Article LXXI.—When the Imperial Diet has not voted on the

Budget, or when the Budget has not been brought into actual existence, the Government shall carry out the Budget of the preceding year.

Article LXXII.—The final account of the expenditures and revenue of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board.

The organization and competency of the Board of Audit shall be determined by law separately.

Chapter VII

Supplementary Rules

Article LXXIII.—When it has become necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order.

In the above case, neither House can open the debate, unless not less than two-thirds of the whole number of Members are present, and no amendment can be passed, unless a majority of not less than two-thirds of the Members present is obtained.

Article LXXIV.—No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

No provision of the present Constitution can be modified by the Imperial House Law.

Article LXXV.—No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article LXXVI.—Existing legal enactments, such as laws, regulations, Ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Art. LXVII.

APPENDIX V

THE IMPERIAL HOUSE LAW [1]

Chapter I

Succession to the Imperial Throne

Article I.—The Imperial Throne of Japan shall be succeeded to by male descendants in the male line of Imperial Ancestors.

Article II.—The Imperial Throne shall be succeeded to by the Imperial eldest son.

Article III.—When there is no Imperial eldest son, the Imperial Throne shall be succeeded to by the Imperial eldest grandson. When there is neither Imperial eldest son nor any male descendant of his, it shall be succeeded to by the Imperial son next in age, and so on in every successive case.

Article IV.—For succession to the Imperial Throne by an Imperial descendant, the one of full blood shall have precedence over descendants of half blood. The succession to the Imperial Throne by the latter shall be limited to those cases only in which there is no Imperial descendant of full blood.

Article V.—When there is no Imperial descendant, the Imperial Throne shall be succeeded to by an Imperial brother and by his descendants.

Article VI.—When there is no such Imperial brother or descendant of his, the Imperial Throne shall be succeeded to by an Imperial uncle and his descendants.

Article VII.—When there is neither such Imperial uncle nor descendant of his, the Imperial Throne shall be succeeded to by the next nearest member among the rest of the Imperial Family.

Article VIII.—Among the Imperial brothers and the remoter Imperial relations, precedence shall be given, in the same degree, to the descendants of full blood, and to the elder over the younger.

Article IX.—When the Imperial heir is suffering from an incur-

[1] Text as in *Japan Year Book*, 1930, pp. 51–55.

able disease of mind or body, or when any other weighty cause exists, the order of succession may be changed in accordance with the foregoing provisions, with the advice of the Imperial Family Council and with that of the Privy Council.

Chapter II

Ascension and Coronation

Article X.—Upon the demise of the Emperor, the Imperial heir shall ascend the Throne and shall acquire the Divine Treasures of the Imperial Ancestors.

Article XI.—The ceremonies of Coronation shall be performed and a Grand Coronation Banquet (Daijosai) shall be held at Kyoto.

Article XII.—Upon an ascension to the Throne, a new era shall be inaugurated, and the name of it shall remain unchanged during the whole reign in agreement with the established rule of the 1st year of Meiji.

Chapter III

Majority, Institution of Empress and of Heir-apparent

Article XIII.—The Emperor, the Kotaishi, and the Kotaison shall attain their majority at eighteen full years of age.

Article XIV.—Members of the Imperial Family, other than those mentioned in the preceding article, shall attain their majority at twenty full years of age.

Article XV.—The son of the Emperor who is Heir-apparent, shall be called "Kotaishi." In case there is no Kotaishi, the Imperial grandson who is Heir-apparent shall be called "Kotaison."

Article XVI.—The Institution of Empress and that of Kotaishi or of Kotaison shall be proclaimed by an Imperial Rescript.

Chapter IV

Styles of Address

Article XVII.—The style of address for the Emperor, the Grand Empress Dowager, the Empress Dowager, and of the Empress shall be "His," or "Her," or "Your Majesty."

Article XVIII.—The Kotaishi and his consort, the Kotaison and his consort, the Imperial Princes and their consorts, and the princesses shall be styled "His," "Her," "Their," or "Your Highness" or "Highnesses."

Chapter V

Regency

Article XIX.—When the Emperor is a minor a Regency shall be instituted. When he is prevented by some permanent cause from personally governing, a Regency shall be instituted, with the advice of the Imperial Family Council and with that of the Privy Council.

Article XX.—The Regency shall be assumed by the Kotaishi or the Kotaison, being of full age of majority.

Article XXI.—When there is neither Kotaishi nor Kotaison, or when the Kotaishi or Kotaison has not yet arrived at his majority, the Regency shall be assumed in the following order:

1. An Imperial Prince or a Prince.
2. The Empress.
3. The Empress Dowager.
4. The Grand Empress Dowager.
5. An Imperial Princess or a Princess.

Article XXII.—In case the Regency shall be assumed from among the male members of the Imperial Family, it shall be done in agreement with the order of succession to the Imperial Throne. The same shall apply to the case of female members of the Imperial Family.

Article XXIII.—A female member of the Imperial Family chosen to assume the Regency shall be exclusively one who has no consort.

Article XXIV.—When, on account of the minority of the nearest related member of the Imperial Family, or for some other cause, another member has to assume the Regency, the latter shall not, upon the arrival at majority of the above mentioned nearest related member, or upon the disappearance of the aforesaid cause, resign his or her post in favour of any person other than of the Kotaishi or of the Kotaison.

Article XXV.—When a Regent or one who should become such, is suffering from an incurable disease of mind or body, or when any other weighty cause exists therefor, the order of the Regency may

be changed, with the advice of the Imperial Family Council and with that of the Privy Council.

Chapter VI

The Imperial Governor

Article XXVI.—When the Emperor is a minor, an Imperial Governor shall be appointed to take charge of his bringing up and of his education.

Article XXVII.—In case no Imperial Governor has been nominated in the will of the preceding Emperor, the Regent shall appoint one, with the advice of the Imperial Family Council and with that of the Privy Council.

Article XXVIII.—Neither the Regent nor any of his descendants can be appointed Imperial Governor.

Article XXIX.—The Imperial Governor cannot be removed from his post by the Regent, unless upon the advice of the Imperial Family Council and upon that of the Privy Council.

Chapter VII

The Imperial Family

Article XXX.—The term "Imperial Family" shall include the Grand Empress Dowager, the Empress Dowager, the Empress, the Kotaishi and his consort, the Kotaison and his consort, the Imperial Princes and their consorts, the Imperial Princesses, the Princesses and their consorts, and the Princesses.

Article XXXI.—From Imperial sons to Imperial great-great-grand-sons, Imperial male descendants shall be called Imperial Princes; and from Imperial daughters to Imperial great-great-grand-daughters Imperial female descendants shall be called Imperial Princesses. From the fifth generation downwards, male descendants shall be called Prince and females Princesses.

Article XXXII.—When the Imperial Throne is succeeded to by a member of a branch line, the title of Imperial Prince or Imperial Princess shall be specially granted to the Imperial brothers and sisters, being already Princes or Princesses.

Article XXXIII.—The births, namings, marriages, and deaths in the Imperial Family shall be announced by the Minister of the Imperial Household.

Article XXXIV.—Genealogical and other records relating to the matters mentioned in the preceding Article shall be kept in the Imperial archives.

Article XXXV.—The members of the Imperial Family shall be under the control of the Emperor.

Article XXXVI.—When a Regency is instituted, the Regent shall exercise the power of control referred to in the preceding Article.

Article XXXVII.—When a member, male or female, of the Imperial Family is a minor and has been bereft of his or her father, the officials of the Imperial Court shall be ordered to take charge of his or her bringing up and education. In certain circumstances, the Emperor may either approve the guardian chosen by his or her parent, or may nominate one.

Article XXXVIII.—The guardian of a member of the Imperial Family must be himself a member thereof and of age.

Article XXXIX.—Marriages of members of the Imperial Family shall be restricted to the circle of the Family, or to certain noble families specially approved by Imperial Order.

Article XL.—Marriages of the members of the Imperial Family shall be subject to the sanction of the Emperor.

Article XLI.—The Imperial writs sanctioning the marriages of the members of the Imperial Family shall bear the countersignature of the Minister of the Imperial Household.

Article XLII.—No member of the Imperial Family can adopt any one as his son.

Article XLIII.—When a member of the Imperial Family wishes to travel beyond the boundaries of the Empire, he shall first obtain the sanction of the Emperor.

Article XLIV.—A female member of the Imperial Family, who has married a subject, shall be excluded from membership of the Imperial Family. However, she may be allowed, by the special grace of the Emperor, to retain her title of Imperial Princess or Princess, as the case may be.

Chapter VIII

Imperial Hereditary Estates

Article XLV.—No landed or other property, that has been fixed as the Imperial Hereditary Estates, shall be divided up and alienated.

Article XLVI.—The landed or other property to be included in the Imperial Hereditary Estates shall be settled by Imperial writ with the advice of the Privy Council, and shall be announced by the Minister of the Imperial Household.

Chapter IX

Expenditures of the Imperial House

Article XLVII.—The expenditures of the Imperial House of all kinds shall be defrayed out of the National Treasury at a certain fixed amount.

Article XLVIII.—The estimates and audit of accounts of the expenditures of the Imperial House and all other rules of the kind, shall be regulated by the Finance Regulations of the Imperial House.

Chapter X

Litigations, Disciplinary Rules for the Members of the Imperial Family

Article XLIX.—Litigation between members of the Imperial Family shall be decided by judicial functionaries specially designated by the Emperor to the Department of the Imperial Household, and execution issued after Imperial sanction thereto has been obtained.

Article L.—Civil actions brought by private individuals against members of the Imperial Family shall be decided in the Court of Appeal in Tokyo. Members of the Imperial Family shall, however,

be represented by attorneys, and no personal attendance in the Court shall be required of them.

Article LI.—No members of the Imperial Family can be arrested, or summoned before a Court of Law, unless the sanction of the Emperor has been first obtained thereto.

Article LII.—When a member of the Imperial Family has committed an act derogatory to his (or her) dignity, or when he has exhibited disloyalty to the Imperial House, he shall, by way of disciplinary punishment and by order of the Emperor, be deprived of the whole or a part of the privileges belonging to him as a member of the Imperial Family, or shall be suspended therefrom.

Article LIII.—When a member of the Imperial Family acts in a way tending to the squandering of his (or her) property, he shall be pronounced incapable by the Emperor, prohibited from administering his property, and a manager shall be appointed therefor.

Article LIV.—The two foregoing Articles shall be enforced upon the advice of the Imperial Family Council.

Chapter XI

The Imperial Family Council

Article LV.—The Imperial Family Council shall be composed of the male members of the Imperial Family who have reached the age of majority. The Lord Keeper of the Privy Seal, the President of the Privy Council, the Minister of the Imperial Household, the Minister of State for Justice, and the President of the Court of Cassation shall be ordered to take part in the deliberations of the Council.

Article LVI.—The Emperor personally presides over the meetings of the Imperial Family Council, or directs one of the members of the Imperial Family to do so.

Chapter XII

Supplementary Rules

Article LVII.—Those of the present members of the Imperial Family of the fifth generation and downwards, who have already

been invested with the title of Imperial Prince, shall retain the same as heretofore.

Article LVIII.—The order of succession to the Imperial Throne shall in every case relate to the descendants of direct lineage. There shall be no admission to this line of succession to any one, as a consequence of his now being an adopted Imperial son, Koyushi or heir to a princely house.

Article LIX.—The grades of rank among the Imperial Princes and Princesses shall be abolished.

Article LX.—The family rank of Imperial Princes and all usages conflicting with the present law shall be abolished.

Article LXI.—The property, annual expenses, and all other rules concerning the members of the Imperial Family shall be specially determined.

Article LXII.—When in the future it shall become necessary either to amend or make addition to the present law, the matter shall be decided by the Emperor, with the advice of the Imperial Family Council and with that of the Privy Council.

Additional Rules

(Promulgated February 11, 1907)

Article I.—The Princes may be created peers, either by order of the Emperor or at their own wishes, with family names to be granted by the Emperor.

Article II.—The Princes may, with the sanction of the Emperor, become heirs of peers or be adopted as their sons with a view to becoming their heirs.

Article III.—The consorts, lineal descendants and their wives, of the Princes who have been excluded from membership of the Imperial Family for the reason stated in the two foregoing Articles are also excluded from membership in the Imperial Family as members of the families of the Princes who have become subjects. The rule does not, however, apply to those female members of the Imperial Family who have married other members of the Imperial Family or their lineal descendants.

Article IV.—A member of the Imperial Family who has been deprived of the privileges belonging to him as a member of the Imperial Family may be excluded from membership of the Imperial

Family and placed in the rank of subjects by order of the Emperor. The consort of a member of the Imperial Family who has been excluded from membership of the Imperial Family and placed in the rank of subjects in accordance with the foregoing Article is also excluded from membership of the Imperial Family and placed in the rank of subjects.

Article V.—In the cases mentioned in Arts. I, II and IV (of the present additional rules), the matter shall be decided with the advice of the Imperial Family Council and that of the Privy Council.

Article VI.—Those members of the Imperial Family who have been excluded from membership of the Imperial Family cannot be reinstated as members of the Imperial Family.

Article VII.—Regulations pertaining to the legal status of the members of the Imperial Family and the limits of their competence, other than those provided for elsewhere in the present law, shall be defined separately. Regarding the affairs in which are involved the interests of a member of the Imperial Family and a subject or subjects and in which different regulations apply to the respective parties, such regulations shall apply.

Article VIII.—Those provisions of laws and ordinances designated as applicable to the members of the Imperial Family shall apply to them only in cases where no particular regulations are specifically provided for in the present law or such regulations as are issued in accordance with the present law.

Additional Rule

(Promulgated November 28, 1908)

A female member of the Imperial Family can marry a male member of Ozoku or Kozoku (former Royal Family of Korea).

APPENDIX VI

ORDINANCE CREATING AND REGULATING THE PRIVY COUNCIL [1]

Whereas We deem it expedient to consult personages who have rendered signal services to the State, and to avail Ourselves of their valuable advice on matters of State, We hereby establish Our Privy Council, which shall henceforth be an institution of Our supreme counsel; and We hereby also give Our Sanction to the present Ordinance relating to the organization of the said Privy Council and to the Regulations of the business thereof, and order it to be promulgated.

(The Imperial Sign-Manual)

ORGANIZATION OF THE PRIVY COUNCIL

Chapter I

Constitution

I. The Privy Council shall be the place at which it will be the Emperor's pleasure to attend and there hold consultation on important matters of State.

II. The Privy Council shall be composed of a President, a Vice-President, twelve or more Councillors, a Secretary-General, and several Secretaries.

III. The President, Vice-President, and Councillors of the Privy Council shall be personally appointed by the Emperor. The Secretary-General shall be of *chokunin* rank and the Secretaries of *sonin* rank.

IV. No one who has not reached the fortieth year of his age shall be eligible to be appointed President, Vice-President or a Councillor of the Privy Council.

[1] Text as printed in Mc Laren, "Documents," pp. 127–132.

V. The President may cause some of the Secretaries to serve as his confidential Secretaries, in addition to their duties of ordinary Secretaryship.

Chapter II

Functions

VI. The Privy Council shall hold deliberations, and present its opinions to the Emperor for his decision on the under-mentioned matters:—

1. Differences of opinion as to the interpretation of the Constitution, or of the laws appertaining thereto, and questions relating to the budget or other financial matters.
2. Drafts of amendments of the Constituton or of laws appertaining thereto.
3. Important Imperial Ordinances.
4. Drafts of new laws, and drafts for the abolition or amendment of existing laws; treaties with foreign countries, and the planning of administrative organizations.
5. Any other matters whatever, besides those mentioned above, touching important administrative or financial measures, upon which the opinion of the Privy Council has been specially required by order of the Emperor; and matters upon which the opinion of the Privy Council has to be taken, by reason of some special provision of law or ordinance.

VII. In Imperial Ordinances referred to in Section 3 of the preceding Article, a statement shall be made to the effect that the opinion of the Privy Council has been taken with regard to them.

VIII. Though the Privy Council is the Emperor's highest resort of counsel it shall not interfere with the executive.

Chapter III

Deliberations and Business

IX. The deliberations of the Privy Council cannot be opened unless ten or more Privy Councillors are present at the time.

X. The deliberations of the Privy Council shall be presided over

by the President. When the President is prevented from doing so by unavoidable circumstances, the Vice-President shall preside over the deliberations; and in case the Vice-President is also prevented they shall be presided over by one of the Privy Councillors according to the order of their precedence.

XI. The Ministers of State shall be entitled by virtue of their office to sit in the Privy Council as Councillors, and shall have the right to vote. The Ministers of State may send their representatives to the deliberations of the Privy Council, who shall have the right to there make speeches and explanations, but such representatives shall not have the right to vote.

XII. Debates in the Privy Council shall be decided by a majority of the members present. In case of an equal division of votes the presiding official shall have the deciding vote.

XIII. The President shall have the supreme control of all the business of the Privy Council and shall sign every official document proceeding from the Council.

The Vice-President shall assist the President in the discharge of his duties.

XIV. The Secretary-General shall manage all ordinary business of the Privy Council, under the direction of the President, shall countersign every public document issuing from the Privy Council, shall investigate matters to be submitted to deliberation, shall prepare reports, and shall have a seat in the assembly during deliberations that he may offer needed explanations, but he shall not have the power to vote.

The Secretaries shall take minutes of the proceedings, and shall assist the Secretary-General in the discharge of his duties. When the Secretary-General is prevented from discharging his duties, one of the Secretaries shall represent him therein.

In the minutes referred to in the preceding section, there shall be mentioned the names of those present at the proceedings, the essential points of the matters that have been under discussion, of questions that have been propounded and of replies that have been made thereto, and of decisions arrived at.

XV. Except in special cases, no deliberation can be opened unless reports of any investigation that may have been ordered have been prepared and forwarded to each member of the Privy Council together with the documents necessary for due deliberation.

The order of the day and reports are to be previously forwarded to the Ministers of State.

REGULATIONS FOR THE CONDUCT OF BUSINESS OF THE PRIVY COUNCIL

I. The Privy Council shall formulate its opinions on matters submitted to its deliberation by order of the Emperor.

II. The Privy Council cannot receive petitions, representations, or other communications from the Imperial Diet, from either House of the same, from any Government Office, or from any of His Majesty's private subjects whatever.

III. The Privy Council shall have official connection with the Cabinet and with the Ministers of State only, and officially shall not communicate or have any connection whatever with any of His Majesty's private subjects.

IV. The President of the Privy Council shall cause the Secretary-General thereof to investigate matters submitted to the Privy Council, and also to prepare reports on matters to be submitted to its deliberation.

In case the President deems it necessary he may undertake himself to prepare the above-mentioned reports, or he may appoint one or more of the Privy Councillors for the purpose.

V. Reports of investigations shall be forwarded to the President by the person charged with the preparation thereof.

In cases requiring expedition such reports may be made orally. In these cases the essential points of the matter reported upon shall be briefly stated in the record herein referred to in Article VIII.

VI. The President may fix the period within which reports of investigation shall be made. The reports shall be prepared with as much despatch as possible, and no procrastination is allowable.

The Cabinet may, in regard to matters of urgent importance, address communications of that nature to the Privy Council and may also fix the time of deliberation thereon.

VII. Copies of reports of investigations, together with copies of accompanying papers, shall be forwarded to each one of the members of the Privy Council, at least three days previous to the opening of the deliberations on the matters in question.

VIII. A record shall be kept in chronological order of the deliberations to be held. The matters to be inserted in the said record are:—

1. The nature of the matters to be deliberated upon.
2. The date of the forwarding of papers previous to the opening of the deliberations.

3. The date of actual deliberation, and so forth.

An order of the day, similar in form to the records mentioned in the preceding section, shall be prepared concerning each and every matter to be submitted to deliberation. The said order of the day shall be forwarded to each member of the Privy Council three days previous to the opening of the deliberations thereon. The forwarding of the said order of the day shall also be regarded as an order to personally attend at the deliberations in question.

IX. The days and hours of the deliberations of the Privy Council shall be fixed by the President. The Ministers of State may, however, request that the day and hour be changed.

X. The deliberations of the Privy Council shall be conducted by the President or the Vice-President in conformity with the following rules:—

The Secretary-General or the Secretaries shall briefly state the nature of the matter in hand, and shall explain the essential points upon which decisions are to be arrived at. Upon this members present shall be free to engage in debate on the subject, but none of them shall be allowed to speak without having first obtained the permission of the President. When the debate has concluded the President shall state the question and take the votes thereon, in the following order of members—first the Ministers of State present, second the Privy Councillors in their order of precedence.

The President shall also be free to take part in the debate.

The President shall declare the result of the vote.

XI. When a debate on any matter mentioned in the order of the day has not been concluded in one day it may be continued at another meeting. But in that case the formality mentioned above need not be repeated.

XII. Decisions arrived at in the Privy Council, by result of the vote cast, shall be reduced to writing by the Secretary-General or the Secretaries, and that statement shall be submitted to the President. The said written decision shall have appended to it the reasons that conduced to it; and, in the case of highly important matters, a memorandum stating the essential points of the debate shall accompany it.

Members present who entertain an opinion opposed to the decision arrived at may request the recording of their votes, and of the reasons for their opinion, in the reports of the debates, in the documents stating the reasons for the opinion of the Privy Council, or in the memorandum stating the essential points of the debate.

XIII. The decision mentioned in the preceding article shall be presented to the Emperor, and at the same time a copy thereof shall be forwarded to the Minister President of State.

XIV. The reports of the debates of the Privy Council shall be signed by the President and the Secretary-General or the Secretaries present, in order to secure their accuracy and trustworthiness.

Japan Weekly Mail, May 12, 1888, pp. 444–445.

APPENDIX VII

I

IMPERIAL RESCRIPT ON FUNCTIONS OF THE CABINET [1]

I. The Cabinet is composed of the various Ministers of State.

II. The Minister President of State stands at the head of the Ministers of State, reports affairs of State to the Sovereign, and in compliance with Imperial instructions, has general control over the various branches of the Administration.

III. The Minister President of State, should an occasion seem sufficiently important to demand such a course, has competence to give instructions to any branch of the Administration or to suspend its notifications, pending an expression of the Sovereign's will on the subject.

IV. All laws and all Imperial ordinances affecting the Administration as a whole, shall bear the countersignature of the Minister President as well as that of the Minister from whose Department they directly emanate. All Imperial ordinances affecting a special Department only shall be countersigned by the Minister of the Department alone.

V. The following matters shall be submitted for deliberation by the Cabinet:—

1. Drafts of laws, financial estimates, and settled accounts.
2. Treaties with foreign countries and all national questions of importance.
3. Ordinances relating to Administration, or to the carrying out of regulations and laws.
4. Disputes connected with the relative competence of Ministers of Departments.
5. Petitions from the people, handed down from the Throne or submitted by the Imperial Diet.
6. Expenditures apart from the ordinary estimates.
7. Appointments of *chokunin* officials and of Prefects and Governors, as well as their promotions and removals.

[1] Text as printed in Mc Laren, "Documents," pp. 232–233.

In addition to the above, any important matters connected with the duties of Ministers of Departments, and having relation to the higher branches of the Administration, shall also be submitted for deliberation by the Cabinet.

VI. Every Minister of a Department is competent to submit any matter whatsoever bearing on his functions for the consideration of the Cabinet through the Minister President.

VII. With the exception of military or naval affairs of grave importance which, having been reported directly to the Sovereign by the Chief of Staff, may have been submitted by His Majesty for the consideration of the Cabinet, the Ministers of State for War and the Navy shall report to the Minister President.

VIII. Should the Minister President be prevented from discharging his functions, they may be temporarily delegated to another Minister of State in conjunction with the latter's own duties.

IX. Should any Minister of State be prevented from discharging his functions, they may be delegated temporarily to another Minister of State in conjunction with the latter's own duties, or another Minister may be appointed to discharge them.

X. In addition to the various Ministers of State, a Minister may be specially authorized to sit in the Cabinet.

Japan Weekly Mail, December 28, 1889, pp. 595–596.

APPENDIX VIII

IMPERIAL ORDINANCE CONCERNING THE HOUSE OF PEERS [1]

We, in accordance with the express provision of the Constitution of the Empire of Japan, hereby promulgate, with the advice of Our Privy Council, the present Ordinance concerning the House of Peers; as to the date of its being carried out, We shall issue a special order.

[His Imperial Majesty's Sign-Manual]
[Privy Seal]

Article I.—The House of Peers shall be composed of the following Members:

1. The Members of the Imperial Family.
2. Princes and Marquises.
3. Counts, Viscounts and Barons who have been elected thereto by the members of their respective orders.
4. Persons who have been specially nominated by the Emperor, on account of meritorious services to the State, or of erudition.
5. Persons who have been elected, one Member for each Fu (City) and Ken (Prefecture), by and from among the taxpayers of the highest amount of direct national taxes on land, industry or trade therein, and who have afterwards been nominated thereto by the Emperor.

Article II.—The male members of the Imperial Family shall take seats in the House on reaching their majority.

Article III.—The members of the orders of Princes and of Marquises shall become members on reaching the age of full twenty-five years.[2]

Article IV.—The members of the orders of Counts, Viscounts, and Barons, who after reaching the age of full twenty-five years, have been elected by the members of their respective orders, shall become Members for a term of seven years. Rules for their election shall be specially determined by Imperial Ordinance.

[1] Text as printed in Ito, *Commentaries*. Notes added by the author.
[2] Raised to thirty years in 1925.

The number of Members mentioned in the preceding clause shall not exceed one-fifth of the entire number of the respective orders of Counts, Viscounts, and Barons.[3]

Article V.—Any man above the age of full thirty years, who has been nominated by the Emperor as a Member on account of meritorious services to the State, or for erudition, shall be a life Member.

Article VI.—One Member shall be elected in each Fu and Ken from among and by the fifteen male inhabitants thereof of above the age of full thirty years, paying therein the highest amount of direct national taxes on land, industry or trade.[4] When the person thus elected receives his nomination from the Emperor, he shall become Member for a term of seven years. Rules for such election shall be specially determined by Imperial Ordinance.

Article VII.—The number of Members that have been nominated by the Emperor, for meritorious services to the State, or for erudition, or from among men paying the highest amount of direct national taxes on land, industry or trade in each Fu or Ken, shall not exceed the number of the Members having the title of nobility.[5]

Article VIII.—The House of Peers shall, when consulted by the Emperor, pass vote upon rules concerning the privileges of the nobility.

Article IX.—The House of Peers decides upon the qualification of its Members and upon disputes concerning elections thereto. The rules for these decisions shall be resolved upon by the House of Peers and submitted to the Emperor for His Sanction.

Article X.—When a Member has been sentenced to confinement, or to any severe punishment, or has been declared bankrupt, he shall be expelled by Imperial Order.

With respect to the expulsion of a Member, as a disciplinary punishment in the House of Peers, the President shall report the facts to the Emperor for His decision.

Any Member that has been expelled shall be incapable of again becoming a Member, unless permission so to do has been granted by the Emperor.

Article XI.—The President and Vice-President shall be nominated by the Emperor, from among the Members, for a term of seven years.

[3] Numbers fixed in 1925; eighteen counts, sixty-six viscounts, sixty-six barons.

[4] Age limit raised to forty years in 1925; tax qualification placed at 300 yen in direct national taxes on land, industry, or commerce; total number limited to sixty-six, one or two to each prefecture according to population.

[5] Article VII repealed in 1925.

If an elected Member is nominated President or Vice-President, he shall serve in that capacity for the term of his membership.

Article XII.—Every matter, other than what has been provided for in the present Imperial Ordinance, shall be dealt with according to the provisions of the Law of the Houses.

Article XIII.—When in the future any amendment or addition is to be made in the provisions of the present Imperial Ordinance, the matter shall be submitted to the vote of the House of Peers.[6]

[6] Ordinance was further amended in 1925 to provide for four representatives from the Imperial Academy, elected by its members; also to make applicable to elections of representatives of high taxpayers the penal clauses of the election law.

APPENDIX IX

LAW OF THE HOUSES OF THE DIET [1]

Chapter I

Convocation, Organization and Opening of the Imperial Diet

Article I.—An Imperial Proclamation for the convocation of the Imperial Diet, fixing the date of its assembling, shall be issued at least forty days beforehand.

Article II.—The Members shall assemble in the Hall of their respective Houses, upon the day specified in the Imperial Proclamation of convocation.

Article III.—The President and Vice-President of the House of Representatives shall both of them be nominated by the Emperor, from among three candidates respectively elected by the House for each of those offices.

Until the nomination of the President and Vice-President, the functions of President shall be discharged by the Chief Secretary.

Article IV.—Each House shall divide the whole number of its Members into several Sections by lot, and in each Section a Chief shall be elected by and from among the Members belonging thereto.

Article V.—Upon the organization of both Houses, the day for the opening of the Imperial Diet shall be fixed by Imperial Order, and the ceremony of opening shall be celebrated by the assembling of the Members of both Houses in the House of Peers.

Article VI.—On the occasion referred to in the preceding Article, the functions of President shall be exercised by the President of the House of Peers.

Chapter II

President, Secretaries and Expenses

Article VII.—There shall be in each House a President and a Vice-President.

[1] Text as in Ito, *Commentaries.*

Article VIII.—The term of office of the President and of the Vice-President of the House of Representatives, shall be the same as that of the membership thereof.

Article IX.—When the office of President or of Vice-President of the House of Representatives, has become vacant by the resignation of the occupant thereof or for any other reason, the term of office of the successor shall be in correspondence with that of his predecessor.

Article X.—The President of each House shall maintain order therein, regulate the debates and represent the House outside thereof.

Article XI.—The President of each House shall continue to assume the direction of the business of the House, during the interval that the Diet is not in session.

Article XII.—The President shall be entitled to attend and take part in the debates of both the Standing and of the Special Committees, but he shall have no vote therein.

Article XIII.—In each House, in the event of the disability of the President, he shall be represented in his functions by the Vice-President.

Article XIV.—In each House, in the event of the disability of both the President and of the Vice-President at the same time, a temporary President shall be elected to exercise the functions of President.

Article XV.—The President and the Vice-President of each House shall, upon the expiration of their term of office, continue to exercise their functions, until their successors have been nominated by the Emperor.

Article XVI.—In each House there shall be appointed a Chief Secretary and several Secretaries.

The Chief Secretary shall be of the *Chokunin* rank, and the Secretaries, of the *Sonin* rank.

Article XVII.—The Chief Secretary shall, under the direction of the President, supervise the business of the Secretaries and append his signature to official documents.

The Secretaries shall compile the records of debates, make drafts of other documents and manage business generally.

Required functionaries other than Secretaries shall be appointed by the Chief Secretary.

Article XVIII.—The expenses of both Houses shall be defrayed out of the National Treasury.

CHAPTER III

The Annual Allowances to the President, Vice-President and Members

Article XIX.—The Presidents of the respective Houses shall receive each an annual allowance of five thousand *yen* and the Vice-Presidents, that of three thousand *yen* each; while such Members of the House of Peers as have been elected thereto, and such as have been nominated thereto by the Emperor, and the Members of the House of Representatives, shall each receive an annual allowance of two thousand *yen*.[2] They shall also receive travelling expenses in accordance with regulations to be specially provided. Members, however, who do not comply with the summons of convocation, shall receive no annual allowance.

The Presidents, Vice-Presidents and Members shall be allowed to decline their respective annual allowance.[3]

Members who are in the service of the Government shall receive no such annual allowances.

In the case mentioned in Article XXV, the Members concerned shall receive, in addition to the annual allowance mentioned in the first clause of the present Article, an allowance of not more than five *yen per diem,* in accordance with the schedule determined by the respective Houses.

Chapter IV

Committees

Article XX.—Committees shall be of three kinds, a Committee of the Whole House, and Standing and Special Committees.

The Committee of the Whole House is composed of the whole number of the Members of the House.

The Standing Committee shall be divided into several branches

[2] Originally the annual allowances provided for in this article were as follows: —presidents, 4,000 yen each; vice-presidents, 2,000 yen each; members, 800 yen each. The amendment was effected by law in 1899. At present (1931), the salaries are 7,500 yen, 4,500 yen and 3,000 yen, respectively.

[3] Originally they were not allowed to decline their annual allowances. The amendment was effected by law in 1899,

according to the requirements of business; and in order to engage in the examination of matters falling within its province, the several Sections shall, from among the Members of the House, respectively elect an equal number of members to the Standing Committeeship. The term of the Standing Committeeship shall last during a single session only.

The Special Committees shall be chosen by the House and specially entrusted with the examination of a certain particular matter.

Article XXI.—The Chairman of the Committee of the Whole House shall be elected for each session at the beginning of the same.

The Chairmen of both the Standing and Special Committees shall be respectively elected at the meetings of the Committees, by and from among the Members thereof.

Article XXII.—No debate can be opened nor can any resolution be passed by the Committee of the Whole House, unless more than one third of the entire number of the Members of the House is present, or by either the Standing or by the Special Committee, unless more than one-half of the Members of the same is present.

Article XXIII.—No stranger, other than Members of the House, shall be admitted to the meetings of either the Standing or of the Special Committees. Members may also be excluded from such meetings by resolution of the respective Committees.

Article XXIV.—The Chairman of each Committee shall report to the House concerning the proceedings and results of the meetings of the Committee he presides.

Article XXV.—Each House may, at the request, or with the concurrence of the Government, cause a Committee to continue the examination of Bills during the interval when the Diet is not sitting.

Chapter V

Sittings

Article XXVI.—The President of each House shall determine the orders of the day and report the same to the House he presides.

In the orders of the day, the Bills brought in by the Government

shall have precedence, except when the concurrence of the Government has been obtained to the contrary, in case of urgent necessity for debates.

Article XXVII.—A project of law shall be voted upon, after it has passed through three readings. But the process of three readings may be omitted, when such a course is demanded by the Government or by not less than ten Members, and agreed to by a majority of not less than two-thirds of the Members present in the House.

Article XXVIII.—Bills brought in by the Government shall never be voted upon, without having been first submitted to the examination of a Committee. But it may happen otherwise, when it is so demanded by the Government, in cases of urgent necessity.

Article XXIX.—When a Member moves to introduce a Bill or to make an amendment of a Bill, such motion shall not be made the subject of debate, unless it is supported by not less than twenty Members.

Article XXX.—The Government shall be at liberty at any time to either amend or withdraw any Bill which it has already brought in.

Article XXXI.—All Bills shall, through the medium of a Minister of State, be presented to the Emperor by the President of that House, in which the Bill has been last voted upon.

When, however, a Bill originating in either one of the Houses has been rejected in the other, the rule set forth in the second clause of Article LIV shall be followed.

Article XXXII.—Bills which, after having been passed by both Houses of the Diet and presented to the Emperor, may receive His Sanction, shall be promulgated before the next session of the Diet.

Chapter VI

Prorogation and Closing

Article XXXIII.—The Government may at any time order the prorogation of either House for a period of not more than fifteen days.

When either House again meets after the termination of the prorogation, the debates of the last meeting shall be continued.

Article XXXIV.—In case the House of Peers is ordered to

prorogue on account of the dissolution of the House of Representatives, the rule set forth in the second clause of the preceding Article shall not apply.

Article XXXV.—Bills, representations and petitions, that have not been voted upon at the time of the closing of the Imperial Diet, shall not be continued at the next session. It is, however, otherwise in the case mentioned in Article XXV.

Article XXXVI.—The closing of the Diet shall be effected in a joint meeting of both Houses, in accordance with Imperial Order.

CHAPTER VII

Secret Meetings

Article XXXVII.—In the following cases, the sittings of either House may be held with closed doors:—

1. Upon motion of either the President or of not less than ten Members and agreed to by the House.
2. Upon the demand of the Government.

Article XXXVIII.—When a motion to go into secret sitting is made either by the President or by not less than ten Members, the President shall cause the strangers to withdraw from the House, and shall then proceed, without debate, to take votes upon the motion.

Article XXXIX.—The proceedings of a secret sitting shall not be made public.

Chapter VIII

The Passing of the Budget

Article XL.—When the Budget is brought into the House of Representatives by the Government, the Committee on the Budget shall finish the examination of the same, within fifteen days from the day on which it received it, and report thereon to the House.[4]

Article XLI.—No motion for an amendment to the Budget can be made the subject of debate at a sitting of the House, unless it is supported by not less than thirty Members.

[4] At present the period allowed is twenty-one days.

Chapter IX

The Ministers of State and the Delegates of the Government

Article XLII.—The Ministers of State and the Delegates of the Government shall be allowed at any time to speak. But the speech of no Member shall be interrupted thereby.

Article XLIII.—When a Bill has been referred in either House to a Committee, the Ministers of State and the Delegates of the Government may attend the meetings of the Committee and there express their opinions.

Article XLIV.—A Committee in meeting may, through the President, demand explanations from the Delegates of the Government.

Article XLV.—The Ministers of State and the Delegates of the Government, except such of them as are Members of the House, shall have no vote in the House.

Article XLVI.—When a meeting of either a Standing or of a Special Committee is to be held, the Chairman thereof shall every time report the fact to the Ministers of State and to the Delegates of the Government concerned in the matter to be considered.

Article XLVII.—The orders of the day and the notices relating to debates shall, simultaneously with the distribution thereof among the Members, be transmitted to the Ministers of State and to the Delegates of the Government.

Chapter X

Questions

Article XLVIII.—When a Member in either House desires to put a question to the Government, he shall be required to obtain the support of not less than thirty Members.

In putting such question, the Member proposing it shall draw up a concise memorandum and present it to the President, duly signed by himself and his supporters.

Article XLIX.—The President shall transmit to the Government the memorandum on questions. A Minister of State shall then either immediately answer the questions, or fix the date for making

such answer, and when he does not do so, he shall explicitly state his reasons therefor.

Article L.—When an answer has been or has not been obtained from a Minister of State, any Member may move a representation concerning the affairs of the questions.

Chapter XI

Addresses to the Throne and Representations

Article LI.—When either House desires to present an address to the Emperor, it shall be presented by it in writing; or the President may be directed, as the representative of the House, to ask an audience of the Emperor, and present the same to Him.

The representations of either House to the Government shall be presented in writing.

Article LII.—No motion for such address and representation shall in either House be made the subject of debate, unless not less than thirty Members support it.

Chapter XII

The Relations of the Two Houses of the Diet to Each Other

Article LIII.—With the exception of the Budget, the Bills of the Government may be brought in either one of the Houses first, according to the convenience of the case.

Article LIV.—When a Government Bill has been passed in either House with or without amendment, it shall then be carried into the other House. When the second House either concurs in or dissents from the vote of the first House, it shall, simultaneously with addressing the Emperor, report to the first House.

In case a Bill introduced by either House is rejected by the other House, the second House shall report the fact to the first House.

Article LV.—When either House makes amendments to a Bill carried into it from the other House, the Bill as amended shall be returned to the first House. When the first House agrees to the amendments, it shall, simultaneously with addressing the Emperor, report to the Second House. When, on the other hand, the first

House does not agree to such amendments, it may demand a conference of the two Houses.

When either House demands a conference, the other House cannot refuse it.

Article LVI.—Both Houses shall elect an equal number, not more than ten, of Managers to meet in conference. When the Bill in question has been adjusted in the conference, the adjusted Bill shall be discussed first in that House, which has either received it from the Government or had initiated it, and the Bill is then carried to the other House.

No motion for amendments can be made to a Bill that has been adjusted in a conference.

Article LVII.—The Ministers of State, the Delegates of the Government and the Presidents of both Houses, are at liberty to attend a conference of the two Houses and to express their opinions thereat.

Article LVIII.—No strangers are allowed to be present at a conference of the two Houses.

Article LIX.—At a conference of the two Houses, vote shall be taken by secret ballot. In the event of a tie vote, the Chairman shall have the casting vote.

Article LX.—The Managers from the two Houses shall separately elect one of themselves Chairman of the conference. The Chairman thus elected shall occupy the chair at alternate meetings of the conference. The Chairmanship of the first meeting shall be settled by the drawing of lots.

Article LXI.—All other regulations besides what is provided for in the present Chapter, as to any business in which both Houses are concerned, shall be determined by a conference of the two Houses.

Chapter XIII

Petitions

Article LXII.—All petitions addressed to either House by people shall be received through the medium of a Member.

Article LXIII.—Petitions shall be submitted, in either House, to the examination of the Committee on Petitions.

When the Committee on Petitions considers that a petition is not

in conformity with the established rules, the President shall return it through the Member, through whose medium it was originally presented.

Article LXIV.—The Committee on Petitions shall compile a list, in which shall be noted the essential points of each petition, and shall report once a week to the House.

When a debate of the House on the contents of a petition is demanded either by a special report of the Committee on Petitions, or by more than thirty Members of the House, either House shall proceed so to do.

Article LXV.—When either House passes a vote to entertain a petition, the petition shall then be sent to the Government, together with a memorial of the House thereon, and the House may, according to circumstances, demand a report thereon of the Government.

Article LXVI.—Neither House can receive a petition presented by a proxy, excepting when presented by a party recognized by law as a juridical person.

Article LXVII.—Neither House can receive petitions for amending the Constitution.

Article LXVIII.—Petitions shall be in the form and style of a prayer. No petition that is not entitled as such, or does not conform with the proper form and style, shall be received by either House.

Article LXIX.—Neither House can receive a petition that contains words of disrespect towards the Imperial Family or those of insult to the Government or the House.

Article LXX.—Neither House can receive petitions interfering with the administration of justice or with administrative litigation.

Article LXXI.—Both Houses shall separately receive petitions and shall not interfere each with the other in such matters.

Chapter XIV

The Relations between the Houses and the People, the Government Offices and the Local Assemblies

Article LXXII.—Neither House is allowed to issue notifications to the people.

Article LXXIII.—Neither House is allowed, for the prosecution of examinations, to summon persons or to despatch a Member for that purpose.

Article LXXIV.—When either House, for the purposes of examination, asks the Government for necessary reports or documents, the Government shall comply, provided such reports or documents do not relate to any secret matter.

Article LXXV.—Other than with the Ministers of State and the Delegates of the Government, neither House can hold any correspondence with any Government Office or with any Local Assembly.

Chapter XV

Retirement, and Objections to the Qualification of Members

Article LXXVI.—When a Member of the House of Representatives has been appointed a Member of the House of Peers, or has received an official appointment which by law disables him from being a Member, he shall be considered as retired.

Article LXXVII.—When a Member of the House of Representatives has lost any of the qualifications of eligibility mentioned in the Law of Election, he shall be considered as retired.

Article LXXVIII.—When an objection is raised in the House of Representatives as to the qualifications of any of its Members, a Special Committee shall be appointed to examine into the matter, on a specified day, and the resolution of the House shall be taken upon the receipt of the report of the said Committee.

Article LXXIX.—Whenever, in a Court of Law, legal proceedings pertaining to an election suit have been commenced, the House of Representatives cannot institute enquiries on the same matter.

Article LXXX.—Until the disqualification of a Member has been proved, he shall not lose either his seat or his vote in the House. In debates relating to enquiries into his own qualifications, a Member, though at liberty to offer explanations, cannot take part in voting thereon.

Chapter XVI

Leave of Absence, Resignation and Substitutional Elections

Article LXXXI.—The President of either House shall have the power to grant to Members a leave of absence for a period not ex-

ceeding a week. As to leave of absence for a period of more than a week, permission may be given by the House. No permission shall be given for a leave of absence for an unlimited period of time.

Article LXXXII.—No Member of either House can absent himself from the meetings of the House or of a Committee, without forwarding to the President a notice setting forth proper reasons therefor.

Article LXXXIII.—The House of Representatives shall have power to accept the resignation of a Member.

Article LXXXIV.—When, from any cause whatever, a vacancy occurs among the Members of the House of Representatives, the President shall report the fact to the Minister of State for Home Affairs, demanding a substitutional election.

Chapter XVII

Discipline and Police

Article LXXXV.—For the maintenance of discipline in either House during its session, the power of internal police shall be exercised by the President, in accordance with the present Law and such regulations as may be determined in the respective Houses.

Article LXXXVI.—Police officials required by either House shall be provided by the Government and put under the direction of the President.

Article LXXXVII.—When, during a meeting of the House, any Member infringes the present Law or the rules of debate, or in any way disturbs the order of the House, the President shall either warn him, stop him, or order him to retract his remarks. When he fails to obey the order of the President, the latter shall have the power either to prohibit him from speaking during the remainder of the meeting, or to order him to leave the Hall.

Article LXXXVIII.—When the House is in a state of excitement and it is found difficult to maintain order, the President shall have power either to suspend the meeting or close it for the day.

Article LXXXIX.—When any stranger disturbs the debate, the President may order him to leave the House, and in case of necessity, may cause him to be handed over to a police authority.

When the strangers' gallery is in a state of commotion, the President may order all strangers to leave the House.

Article XC.—When any person disturbs the order of the House, the Ministers of State, the Delegates of the Government and the Members may call the attention of the President thereto.

Article XCI.—In neither House shall the utterance of expressions or the making of speeches, implying disrespect to the Imperial House, be allowed.

Article XCII.—In neither House shall the use of coarse language or personalities be allowed.

Article XCIII.—When any Member has been vilified or insulted either in the House or at a meeting of a Committee, he shall appeal to the House and demand that proper measures be taken. There shall be no retaliation among Members.

Chapter XVIII

Disciplinary Punishments

Article XCIV.—Both Houses shall have the power to mete out disciplinary punishment to the respective Members.

Article XCV.—In each House there shall be instituted a Committee on Disciplinary Punishment for making enquiries into cases inviting disciplinary measures.

When a case for disciplinary punishment occurs, the President shall, in the first place, instruct the Committee to enquire into the matter, and shall deliver sentence after having submitted the case to the consideration of the House.

When a case for disciplinary punishment occurs at a meeting of a Committee or in a Section, the Chairman of the Committee or the Chief of the Section shall report the matter to the President and demand measures to be taken thereon.

Article XCVI.—Disciplinary punishments shall be as follows:—

1. Reprimands at an open meeting of the House.
2. Expression by the offender of a proper apology at an open meeting of the House.
3. Suspension of the offender from presence in the House for a certain length of time.
4. Expulsion.

In the House of Representatives, expulsion shall be decided upon by a majority vote of more than two-thirds of the Members present.

Article XCVII.—The House of Representatives shall have no

power to deny a seat to a Member that has been expelled, when he shall have been re-elected.

Article XCVIII.—Any Member shall, with the support of not less than twenty Members, have the right to make a motion for the infliction of a disciplinary punishment.

A motion for a disciplinary punishment shall be made within three days from the commission of the offense.

Article XCIX.—When, for non-compliance, without substantial reasons, with the Imperial Proclamation of convocation within one week from the date specified therein, or for absence without good reasons from the meetings of the House or of a Committee, or for having exceeded the period of his leave of absence, a Member has received a summons from the President and still persists in delaying his appearance without good grounds for so doing for one week after the receipt of the said summons, he shall, in the House of Peers, be suspended from taking his seat, and the matter shall be submitted to the Emperor for His decision. In the House of Representatives, such a Member shall be expelled therefrom.

APPENDIX X

THE LAW OF ELECTION OF 1925 [1]

Chapter I

The Election Districts

Article I.—The members of the House of Representatives shall be elected in each of the election districts. The election districts and the number of members to be elected in each district are set forth in the appendix to the present law.

Article II.—The election districts shall be subject to the limits of cities, towns, and villages.

When the governor of a prefecture deems that a city, town, or village possesses peculiar circumstances there may be established several voting districts for one city, town, or village or one voting district for several towns or villages.

In case voting districts are established according to the preceding clause, the governor of the prefecture must immediately announce the fact.

In case any provisions of the present law are not applicable to districts established according to the second clause of this article, special provisions may be enacted by imperial ordinance.

Article III.—The polling districts shall be subject to the limits of [counties and] [2] cities.

When the governor deems that there are peculiar circumstances, he may divide the city or county into several polling districts.

When the polling districts are established according to the preceding clause, the local governor must announce the fact immediately.

[1] The author acknowledges the assistance of Dr. E. W. Clement and Dr. G. E. Uyehara in obtaining and aiding in the translation of this law. The author has modified the terminology and arrangement of sentences to some extent.

[2] County offices, with a few exceptions, were abolished by a statute which became operative in 1926. The law of election was amended in 1926 to provide the necessary changes in procedure. In general, the town and village officers succeeded to the functions previously allotted to the county. Brackets are used to indicate omissions provided for in 1926.

In case any provisions of the present law are not applicable to polling districts established according to the second clause of this article, special provisions may be enacted by imperial ordinance.

Article IV.—When an alteration takes place in an election district in consequence of a change in administrative organization, the member or members actually sitting for such district shall retain his or their seats respectively.

Chapter II

Rights of Electors and Candidates

Article V.—Any male Japanese subject who is over twenty-five years of age shall have the right to vote.

Any male Japanese subject who is over thirty years of age shall be eligible for election.

Article VI.—The following persons shall not enjoy the franchise or be eligible for election:

1. Those who have been declared incompetent or quasi-incompetent.
2. Those who have been declared bankrupt and have not yet liquidated their obligations.
3. Those who are poor and receive public or private aid or relief for their living.
4. Those who have no definite domiciles.
5. Those who have been condemned to confinement or penal servitude for more than six years.
6. Those who have been condemned to confinement or penal servitude for less than six years for offenses against the provisions of Chapters I, III, IX, XVI–XXI, XXV, or XXXVI–XXXIX of Part II of the criminal code until a period twice the length of the penal term has passed subsequent to completion of or release from the prescribed penal sentence. This period shall be five years for all when the penal term is less than five years.
7. Those who have been condemned to confinement or penal servitude for less than six years for offenses against provisions not mentioned in the preceding item and have not completed or been released from the execution of the penalty.

Article VII.—The heads of noble families shall not possess the franchise or be eligible for election.

The same rule is applied to men in the army or navy who are on active service (except those who have not yet entered, or who are released non-commissioned officers or men) or who have been summoned in time of war or emergency; also to students who are enlisted in the military service (except those otherwise provided for by imperial ordinance) and those who are enrolled in the militia upon their own application.

Article VIII.—The officers and officials engaged in the management of an election shall not be eligible for election within the limits of the jurisdiction of their respective offices.

Article IX.—Officials in the Imperial Household Ministry, judicial officials, judicial officials in the Governments of Chosen, Taiwan, Kwantung Province, and the South Sea Islands, judicial officials of the army and navy, the president and councilors of the Court of Administrative Litigation, auditors, revenue officials and police officials shall not be eligible for election.

Article X.—Officials and those treated as officials with the exceptions hereafter listed may not combine their offices with membership in the House of Representatives:

1. Cabinet ministers.
2. The Chief Secretary of the cabinet.
3. The President of the bureau of legislation.
4. Parliamentary undersecretaries of all ministries.
5. Councilors of all ministries.
6. Private secretaries of the premier.
7. Private secretaries of all ministries.

Article XI.—Members of the Hokkaido, or of a prefectural assembly may not hold concurrent membership in the House of Representatives.

Chapter III

Electoral Lists

Article XII.—The heads of all towns and villages shall prepare annually, according to the existing state of things on the fifteenth of September, a list of all qualified persons who have been domi-

ciled for more than one year without interruption in their respective localities [and shall send two copies of the electoral list to the proper county office before the fifteenth of October.

The head of each county shall inspect the lists forwarded to him by the town and village heads and shall return one copy to the respective heads of localities before the 31st of October after making any necessary correction.]

All mayors shall prepare annually, according to the existing state of things on the 15th of September, a list of all qualified persons who have been domiciled in the city for more than one year without interruption and shall make out an electoral list before the 31st of October.

The persons disqualified under the residence requirement provided in the first and the preceding clauses of this article may not be registered in the electoral list. In the electoral list shall be entered the name, residence, and date of birth of each elector.

The terms of residence provided in the first and third clauses of this article shall not be affected by alterations of the administrative areas.

Article XIII.—[County], city, town, and village heads shall, at their respective offices or at places appointed, exhibit the electoral lists for public inspection for a period of ten days commencing on the fifth of November.

They shall announce the place of exhibition at least three days before inspection takes place.

Article XIV.—When an elector discovers an omission or wrong registration in the electoral list, he may demand that a correction be made by giving to the [county head or the] mayor of the city written notice and his reasons therefor, together with corroborative evidence.

Such a demand may not be made after expiration of the period of exhibition.

Article XV.—Upon the receipt of a notice set forth in the preceding article, the [county head or the] mayor shall examine the reasons alleged and evidence adduced and shall give his decision within twenty days from the receipt of such notice. If he finds that the notice is correct he shall immediately correct the electoral list, notifying the person who has given the notice and other persons concerned and at the same time publishing the main points of the case in the election district. When the notice is found to be in-

correct a communication to that effect shall be made to the person who has given the notice.

When the electoral list has been corrected, [the county head] shall communicate the circumstances to the head of the town or village in which the person concerned is domiciled.

Upon the receipt of such communication the town or village head shall correct the electoral list and publish it immediately.

Article XVI.—When either the person who has given the notice or other persons concerned are not satisfied with the decision of the [county head or] mayor made according to the foregoing article, they may, within seven days from the day on which the said decision was given, institute against the [county head or] mayor a suit in a local court.

No appeal is allowed to appellate courts against the judgment of the local court mentioned in the preceding clause but it is permissible to bring an appeal to the supreme court for revision.

Article XVII.—The electoral list shall be considered final on the 20th of December and the list shall be kept until the 19th of December of the following year. When, however, any correction is to be made in the list in pursuance of the judgment of a court of law, [the county head or] the mayor shall at once make the said correction and shall publish the fact.

When the list has been corrected in conformity with the preceding clause, the [county head] shall communicate the circumstances to the town or village head of the place where the person concerned is residing and shall cause the duplicate copy to be corrected accordingly.

A new electoral list shall be compiled whenever a natural calamity or any other unavoidable circumstance may require it.

The compilation of the electoral list according to the foregoing clause and the date and duration of exhibition for public inspection and for final determination of the list shall be determined by imperial ordinance.

Article XVIII.—The date of a general election shall be the day following the expiration of a term of the House of Representatives. However, when there are peculiar circumstances an election may be held five days after a term has expired.

When a term expires while the Diet is in session or within twenty-five days before the closing of the session, the general election shall take place not less than twenty-six nor more than thirty days after the close of the session.

In case the Diet is dissolved, the general election shall take place within thirty days after dissolution.

The date of a general election shall be determined by imperial ordinance and shall be proclaimed at least twenty-five days beforehand.

Article XIX.—Election shall be by ballot.

Each elector shall cast one ballot only.

Article XX.—The mayor of a city or the head of a town or village shall take charge of the voting in the capacity of voting overseer.

Article XXI.—The polling-place shall be the city, town, or village offices or another place designated by the voting overseer with the approval of the perfectural governor.

Article XXII.—The voting overseer shall announce the polling-place at least five days previous to the date of the election.

Article XXIII.—The polls shall be opened at 7 o'clock A. M. and be closed at 6 o'clock P. M.

Article XXIV.—Each candidate may appoint one voting witness with his consent from among those registered in the electoral list of each voting district and report his choices to the voting overseers at least one day before the date of election. However, the death or retirement of the candidate operates to discharge his voting witnesses.

In case the voting witnesses appointed according to the preceding clause are fewer than three in number or there are fewer than three witnesses present at the time of the opening of the polls, the voting overseer shall fill the vacancies from among the persons registered in the electoral list of the voting district, notifying the persons so appointed.

A voting witness shall not vacate his office without valid reason.

Article XXV.—On the day of election electors shall come in person to the polling-place and vote, after identifying themselves as the persons whose names are on the electoral list and after affixing their seals to the list.

In case the voting overseer cannot identify a person who is about to vote, he shall require him to declare on oath his proper identity. Unless this declaration is made, such a person shall not be permitted to vote.

Article XXVI.—The ballot shall be given to each elector at the polling place on the day of voting.

Article XXVII.—Every elector shall at the polling-place himself

inscribe upon the ballot the name of the candidate for whom he wishes to vote and shall put the ballot into the ballot-box.

An elector shall not write his own name on the ballot.

Article XXVIII.—Writing upon the ballots with braille as specified by imperial ordinance is permitted.

Article XXIX.—No person other than those entered on the electoral list shall be capable of voting.

Should, however, any one come to the voting-place on the day of election bringing with him a writ of decision entitling him to have his name entered on the electoral list, the voting overseer shall allow him to vote.

Article XXX.—Whenever a person registered on the electoral list does not possess the qualifications for registration or the right to vote on the day of the election, such person may not vote.

The foregoing provision applies to those persons who cannot themselves write the names of the candidates they wish to vote for.

Article XXXI.—The voting overseer after consulting the voting witnesses decides whether or not to allow a vote to be cast.

In case an elector is dissatisfied with a decision, the voting overseer shall allow him to vote provisionally.

An elector shall place his ballot in an envelope and seal it and deposit it in the ballot-box after writing his name on the envelope.

The provisions of the foregoing two clauses shall apply to an elector objected to by any of the election witnesses.

Article XXXII.—When the time for closing the polls arrives, the voting overseer shall declare the fact and close the entrance of the polling-place; he shall close the ballot-box as soon as electors present in the polling-place have finished voting. After the closing of the ballot-box no voting shall be allowed.

Article XXXIII.—For electors who certify the impossibility of personal attendance at a polling-place on the day of election owing to circumstances recognized by imperial ordinance, special provisions may be enacted by imperial ordinance, notwithstanding the provisions of Articles XXV, XXVI, the first clause of Article XXVII, the proviso of Article XXIX and Article XXXI.

Article XXXIV.—The voting overseer shall keep minutes in which all matters relating to the voting shall be entered and which he and the witnesses shall sign.

Article XXXV.—The voting overseer shall, in company with one

or more witnesses, send, in the case of a town or village not later than the day following that of the election and in the case of a city on the day of election, the ballot-box, the minutes of the voting, and the electoral lists to the counting overseer.

Article XXXVI.—In the case of an island or other place where means of communication do not permit sending the ballot-box within the time mentioned in the preceding article, the local governor may fix a convenient date for voting and cause the ballot-box, minutes of the voting and the electoral lists to be sent by the time of counting the votes.

Article XXXVII.—When, owing to natural calamity or other unavoidable circumstances, it is found to be impossible to carry out the voting or it is necessary to take a fresh vote, the voting overseer shall give notice to that effect to the governor through the chairman of election.

In such a case the governor shall cause the voting to be carried out by fixing a new date which shall be proclaimed in the polling district at least five days beforehand.

Article XXXVIII.—In case elections are held according to Articles LXXV and LXXIX simultaneously, one election shall take place.

Article XXXIX.—No elector is under obligation to state to any person the name of the candidate for whom he voted.

Article XL.—The voting overseer shall maintain order at the polling-place and may, in case of necessity, ask the assistance of the police.

Article XLI.—With the exception of electors, persons attending to the business of the polling-place, officials who are authorized to oversee the polling-place, and police officials, no person is allowed to enter the polling-place.

Article XLII.—When, at the polling-place, any person makes a speech, engages in discussion, causes an uproar, holds a conference, uses persuasion as to voting, or otherwise disturbs the order of the polling-place, the voting overseer shall caution him and if the caution is disregarded, shall cause him to leave the polling-place.

Article XLIII.—A person who has been compelled to leave a polling-place in accordance with the foregoing article, may be allowed to vote either at the end of the voting or earlier if it is deemed by the voting overseer that there is no danger of the polling-place being disturbed thereby.

Chapter V

Counting of Ballots and Counting-Office

Article XLIV.—The [county head or] mayor shall take charge of the counting of ballots as counting overseer.[3]

Article XLV.—The counting-office shall be established in the [county or] city office or at the place appointed by the counting overseer.

Article XLVI.—The counting overseer shall announce the date of the counting beforehand.

Article XLVII.—The provisions of Article XXIV shall be applied to the counting witnesses of the counting-office.

Article XLVIII.—The counting overseer shall open the ballot-box in the presence of the counting witnesses on the day following that on which all the ballot-boxes have been received and shall count the total number of ballots and of voters.

Article XLIX.—When the counting mentioned in the preceding article has been completed, the counting overseer shall next examine the votes coming under sections 2 and 4 of Article XXXI and shall decide as to their acceptability after consulting the counting witnesses.

The counting overseer, with the counting witnesses, shall examine the ballots for each polling district.

As soon as the examination of the ballots has been finished, the counting overseer shall report the result immediately to the chairman of election.

Article L.—The electors are entitled to request permission to inspect the counting at the respective offices.

Article LI.—The validity of ballots shall be decided by the counting overseer after consulting the counting witnesses.

Article LII.—The following ballots shall be void:

1. Those for which a regular ballot has not been used.
2. Those on which the name of a person other than a candidate is inscribed.
3. Those on which the names of two or more candidates are inscribed.

[3] Amended in 1926 to read: "The head of the prefectural branch office, the mayor or an official designated by the governor shall take charge of the counting of ballots as the counting overseer."

4. Those on which the name of a person disqualified for election is inscribed.
5. Those on which matters other than the name of a candidate are inscribed. But this rule does not apply to those on which the official rank, profession, class, residence, or honorifics are entered.
6. Those on which the name of the candidate is not written by the voter himself.
7. Those on which the name of the candidate is illegible.
8. Those on which the name of a person who is a member of the House of Representatives is inscribed.

The preceding 8th item is applicable only to an election held in accordance with the provisions of Articles LXXV and LXXIX of the present law.

Article LIII.—Ballots shall be sorted into lots that are valid and those that are void and shall be preserved by the respective counting overseers during the tenure of office of the members elected.[4]

Article LIV.—The counting overseer shall keep minutes of the counting in which shall be recorded all matters relating thereto and he shall, after his signature and those of the counting witnesses are affixed, preserve them together with the voting minutes during the tenure of office of the members elected.[5]

Article LV.—In the counting of ballots of a new election held in case a part of an election is declared invalid, the validity of ballots shall be ascertained.

Article LVI.—The provisions of Article XXXVII shall, with the exception of the proviso, be applied correspondingly in the counting.

Article LVII.—For the control of counting-offices the provisions of Articles XL to XLII shall be applied correspondingly.

Chapter VI

Election Meeting

Article LVIII.—The governor shall appoint a chairman of election from among the [county heads or] the mayors in each election district.

[4] Proviso added in 1926: "However, when the counting overseer is appointed by the governor according to the provisions of Article XLIV, the governor shall preserve the ballots."

[5] Section added in 1926: "The proviso attached to the preceding article shall apply to the preservation of the minutes of the voting and the counting."

In case there is but one election district for the prefecture, the governor of the prefecture, and when there is but one election district for the city, the mayor of the city, shall be the chairmen of election.[6]

The chairman of election shall take charge of the election meeting.

Article LIX.—The election meeting shall be held at the prefectural office to which the chairman of the election belongs, or at a [county or] city office or a place appointed by the chairman of election.

Article LX.—The chairman of election shall announce the place and date of the election meeting beforehand.

Article LXI.—The provisions of Article XXIV shall be applied to the election witnesses.

Article LXII.—The chairman of election shall hold the election meeting in the presence of the election witnesses on the day when or the next day after the reports provided for in the third section of Article XLIX are received from all counting overseers and shall examine the reports.

In case a part of an election was invalid and a new election has been held, the chairman of election, on receipt of the report under the third section of Article XLIX, shall hold an election meeting and examine it together with other reports.

Article LXIII.—The electors are entitled to request admission to the election meeting of their respective districts.

Article LXIV.—The chairman of election shall keep minutes of the election in which shall be recorded all matters relating to the election meeting and shall, after his signature and those of the election witnesses have been affixed, preserve them together with the documents relating to the reports made under the third section of Article XLIX during the tenure of office of the members elected.[7]

[6] Article LVIII was altered in 1926 to read:
"Article LVIII.—The chairman of election shall be appointed as follows:
"1. In case there is but one election district for the prefecture or the city, the governor or the mayor respectively shall be chairman of election.
"2. In case there is one election district for several cities or for a city and the area administered by a branch office of the prefecture, the chairman of election, designated by the governor, shall be the head of the branch office or one of the mayors concerned.
"3. In an election district not provided for in the preceding sections, the chairman of elections shall be appointed by the governor from among the officials and the mayors concerned."

[7] Proviso added in 1926: "However, in case the chairman of election has been appointed by the governor from among the officials (except when he is the head

Article LXV.—The provisions of Article XXXVII shall, with the exception of the proviso, be applied correspondingly to the election meeting.

Article LXVI.—For the control of the election meeting the provisions of Articles XL to XLII shall be applied correspondingly.

Chapter VII

Candidates and Persons Elected

Article LXVII.—A person who desires to be a candidate shall so notify the chairman of election between the date when the election notice is published and the seventh day before the date of election. When a person whose name is registered in the electoral list desires to name a candidate other than himself, he may make the recommendation during the period set forth in the preceding section.

In case the number of candidates named during the period stated in the two preceding clauses exceeds the number of members to be elected, or candidates die after the period stated or withdraw as candidates, notice or recommendation of candidates may be made according to the two preceding clauses. A candidate may not withdraw his candidacy without notification to the chairman of election.

On receipt of notice under the fourth section of this article or on the death of a candidate the chairman of election must immediately publish the facts.

Article LXVIII.—The person who notifies the chairman or who recommends a candidate shall deposit 2,000 yen in cash for each candidate or national bonds of the same face value.

The deposit made in accordance with the preceding section shall belong to the government in case the total votes for the candidate are less than one-tenth of the number of the total valid votes

of the branch office) under the third clause of the first section of Article LVIII, the governor shall preserve the minutes of the election and the reports made under the third section of Article XLIX."

divided by the number of members to be elected in that election district.

The provision of the preceding section shall be applied to candidates who withdraw within ten days of the date of election, unless such withdrawal is due to loss of eligibility.

Article LXIX.—The candidate who has obtained a relative majority of the total number of valid votes shall be declared elected. However, the number of valid votes obtained shall not be less than one-fourth of the total valid votes divided by the number of members to be elected from the district.

In determining the person elected, the elder shall be preferred in case the number of ballots obtained by the candidates is the same; and when their ages are also the same, the choice is determined by lot, the chairman of election holding a drawing at the election meeting. In case the person elected may be determined without holding a new election in consequence of a suit instituted under Articles LXXXI and LXXXIII, the person elected shall be determined at an election meeting.

When a person elected either declines the election or dies or when his election has been invalidated according to the provisions of Article LXX, the person elected shall be determined immediately at an election meeting from among those persons who have obtained the quota in accordance with the proviso of the first section of this article but have not been elected.

When an election has been invalidated in consequence of a suit instituted in accordance with Article LXXXIV or in accordance with Article CXXXVI, an election meeting shall be held and persons to be elected shall be determined as provided in the preceding section in case it is prior to the end of the period within which acceptance of election is declarable as set forth in Article LXXVI; and if it is after such period, from among the persons voted for who come under the second section of this article but were not elected.

In applying the foregoing third section, a person who is voted for in accordance with the first clause and is not elected shall not be declared elected in case he has been disqualified for election after the date of the election.

Article LXX.—An election shall be invalidated when the person elected is disqualified for election after the date thereof.

Article LXXI.—In case the number of candidates notified according to the provisions of sections one to three of Article LXVII

does not exceed the number of members to be elected from a district, no election shall be held.

When it is unnecessary to hold an election according to the provisions of the preceding section, the chairman of election shall so notify the voting overseer, the governor and the electors.

On receipt of such notice the voting overseer shall publish the fact immediately.

In the circumstances indicated in section one, the chairman of election shall hold an election meeting within five days before the date of election and determine the candidates elected.

In such cases the chairman of election shall determine the validity of the qualifications of the candidates after consulting the election witnesses.

Article LXXII.—When a candidate's election has been determined, the chairman of election shall at once inform the person elected and at the same time shall publish the names of the persons elected and also shall report the minutes of the election, such as the names of the persons elected, the number of votes for each person, the total number of valid votes, etc., to the governor.

The chairman of election shall publish and give immediate notice of the fact to the governor when there is no person elected or the number of persons elected is less than the number to be elected.

Article LXXIII.—Upon receipt of notice of election, every person elected shall notify the chairman of election whether or not he accepts.

One and the same person may not accept election in several election districts.

On receipt of notification under the first section of this article the chairman of election shall immediately report it to the governor.

Article LXXIV.—Those persons elected who have failed to give notice of acceptance within twenty days from the day on which they received notice of election shall be considered to have declined election.

Article LXXV.—In any of the following circumstances the governor shall fix a date and hold a new election, announcing the date thereof at least fourteen days before the date of election except when the persons elected can be determined without carrying out a new election.

This provision is not applicable when the date of election is an-

nounced owing to circumstances other than the following or in accordance with the provisions of the sixth section of Article LXXIX concerning one and the same person:

1. In case there is no person elected or the number of persons elected is less than the number to be elected.
2. When the person elected declines the election or is dead.
3. When the person elected loses the election according to the provisions of Article LXX.
4. When there is no person elected or the number of persons elected does not come up to the required number in consequence of a suit instituted according to the provisions of Articles LXXXI or LXXXIII.
5. When an election is invalidated as the result of a suit instituted according to Article LXXXIV.
6. When an election is invalidated according to the provisions of Article CXXXVI.

An election mentioned in the preceding section may not be held during the period allowed for filing a suit under Chapter IX or until the settlement of judgment in a case in which a suit has been filed.

The date of election to be held in accordance with the first section of this article shall be the final day of the period allowed for filing a suit under Chapter IX or, in case a suit has been brought, it shall be within twenty days after the day on which the governor has received the communication from the president of the superior court to the effect that the suit is not to be tried or the communication made in conformity with Article CXLIII.

When any one of the circumstances mentioned in the first section of this article has arisen within six months of the end of the term of a representative, no election is held under the first section of this article.

Article LXXVI.—When a person elected has accepted election, the governor shall at once give him a certificate of election and publish his name throughout the extent of his jurisdiction, at the same time reporting thereon to the Minister of Home Affairs.

Article LXXVII.—When an election has been invalidated owing to a suit instituted under Chapter IX or to the application of Article CXXXVI, the governor shall publish the fact immediately.

Chapter VIII

Term of Membership and Substitutional Election

Article LXXVIII.—The term of membership shall be four years from the date of a general election.

When a term expires during a sitting of the Imperial Diet, the members shall remain on duty until the close of the session.

Article LXXIX.—A substitutional election shall not be held even when a vacancy occurs among members until two or more vacancies occur in the same election district.

In case a vacancy occurs among members the Minister of Home Affairs shall notify the governor concerned within five days from the date of his receipt of notification under Article LXXXIV of the Law of the Houses from the chairman of the House of Representatives. On receipt of such notification the governor shall communicate it immediately to the chairman of election when a vacancy occurs before the end of the period within which notice of acceptance must be sent under Article LXXIV and when a candidate who obtained the quota required under the proviso of the first section of Article LXIX but was not elected is available; or when it occurs after the period of acceptance when there is a candidate to whom the second section of Article LXIX has been applied but who was not elected.

The chairman of election shall determine the person elected, applying the provisions of sections four to six of Article LXIX, within twenty days from the date of the notification under the preceding section.

On receipt of notification under section two of this article, the governor, unless section three of this article is applied or the date of the election has been published according to the provisions of Article LXXV concerning one and the same person, shall wait until two vacancies occur in the same election district; he shall hold a substitutional election within twenty days of receipt of the final notification under section two of this article.

The date of a substitutional election shall be announced at least fourteen days before the election by the governor.

The provisions of sections two to four of Article LXXV shall be applied to a substitutional election.

Article LXXX.—A member elected by substitutional election shall serve out the term of his predecessor.

Chapter IX

Law-Suits Arising Out of Elections

Article LXXXI.—An elector or a candidate who entertains an objection to the validity of an election may institute a suit against a chairman of election in the Supreme Court within thirty days after the date of election.

Article LXXXII.—When the legal provisions governing elections are violated, the court shall declare the election void either in whole or in part if such violation is judged likely to affect the returns.

In a suit instituted under Article LXXXIII, when the election is adjudged to fall under the preceding section, the court shall declare the election void either in whole or in part.

Article LXXXIII.—When a candidate who has failed of election questions the validity of the election of a person elected in the same election district, he may institute a suit in the Supreme Court against the person elected within thirty days from the date of publication of the name of the person elected under sections one and two of Article LXXII. But a suit instituted against a chairman of election on the ground that the requirement imposed in the proviso of section one of Article LXIX has been obtained or on the ground that the election does not abide by section six of Article LXIX or by Article LXX, or on the ground of the decision made under section five of Article LXXI, is illegal.

When a suit is instituted according to the preceding section and the person elected dies before the decision is made, such suit shall be reinstituted against the procurator.

Article LXXXIV.—An elector or a candidate who claims that an election is invalid under Article CX may institute a suit against the person elected in the Supreme Court within thirty days after notification under section one of Article LXXII. An elector or a candidate may institute a suit against the person elected in the Supreme Court within thirty days after the decision is rendered in the case when he believes the election to be invalid under Article

CXXXVI, on the ground that the election manager has been punished for violating Articles CXII and CXIII.

Article LXXXV.—In the trial of election cases instituted under the provisions of this chapter the court shall require the public procurator to attend the proceedings.

Article LXXXVI.—When a suit is instituted under the provisions of this chapter, the president of the Supreme Court shall inform the Minister for Home Affairs and the governor concerned as well as when the suit is terminated.

When a suit instituted under this chapter has been decided, the president of the Supreme Court shall send a copy of the judgment to the Minister of Home Affairs; and when the Imperial Diet is in session another copy shall be sent to the president of the House of Representatives.

Article LXXXVII.—The plaintiff who institutes a suit under this chapter shall deposit as security in the court 300 yen in cash or national bonds of equal face value.

In case the judgment is given against the plaintiff and should he fail to pay the whole amount of the legal costs within seven days from the day on which the judgment was settled, the security money shall be appropriated for the purpose and should there still remain any deficiency the required amount shall be charged to the plaintiff.

Chapter X

The Election Campaign

Article LXXXVIII.—Each candidate shall appoint an election manager. However, a candidate may act as his own election manager or a person who makes the recommendation of the candidate (or a representative when there are more than one making the recommendation) may be or appoint the election manager with the consent of the candidate. A person who has made a recommendation without consent of the candidate is not required to obtain the consent of the candidate as provided in the foregoing clause.

A candidate or the person who has made the recommendation

of the candidate and has appointed the election manager with the consent of the candidate may dismiss the election manager by a written notice.

The election manager may resign from his office by giving written notice to the candidate and to the person who appointed him.

The person who appointed the election manager (this applies in case the candidate himself is the election manager) shall immediately notify the police station in his election district as to the holder of the office.

In case any change of election manager has taken place, a report must be sent immediately in accordance with the preceding section to the police station to which the notice was given.

A person who takes the place of the election manager in accordance with the provisions of Article XCV shall so report in accordance with the preceding section and shall do likewise when he resigns.

Article LXXXIX.—No election office may be established and no election committee or clerks appointed by others than the election manager.

The election manager may dismiss an election committee or a clerk upon written notice.

An election committee or a clerk may resign upon written notice to the election manager.

In case the election manager has established election offices or appointed an election committee or clerks, he shall at once notify the police station to which notice was given under section five of the preceding article.

Any change in election offices or election committees or clerks shall be similarly notified.

Article XC.—Election offices shall not exceed seven for each candidate. In case a part of the election has been declared invalid and a new election is held or in case the voting is conducted in accordance with Article XXXVII, the election offices shall not exceed the number determined by the governor (by the Superintendent-General of the Metropolitan Police in Tokyo prefecture), to the limit of the maximum number as provided in the preceding section.

When the governor (Superintendent-General of the Metropolitan Police in Tokyo prefecture) has determined the number of the election offices under the preceding section, he shall give notice thereof as soon as the date of election is published.

Article XCI.—The election offices shall not be established within three *cho*[8] from voting-places.

Article XCII.—Resting-places or places of like character shall not be established for the purpose of an election campaign.

Article XCIII.—The number of election committees or election clerks shall not exceed fifty for one candidate.

The provisions of sections two and three of Article XC shall be applied to election committees and election clerks.

Article XCIV.—In case an election manager is not qualified as an elector or cannot carry on an election campaign under section two of Article XCIX, the governor (Superintendent-General of the Metropolitan Police in Tokyo prefecture) shall order him to resign immediately. When election offices are found to be established contrary to the provisions of section one of Article LXXXIX, the governor (Superintendent-General of the Metropolitan Police in Tokyo prefecture) shall immediately order such offices to close; this regulation is applicable similarly when election offices are found to be established in excess of the number authorized under sections one and two of Article XC.

The governor (Superintendent-General of the Metropolitan Police in Tokyo prefecture) shall order the resignation of election committees or election clerks when they are found to be appointed in excess of the number authorized in the preceding section or when the election committees or clerks are found to be disqualified as electors or to carry on an election campaign under section two of Article XCIX.

Article XCV.—In case the election manager is prevented from functioning, his duties shall be assumed by the person who appointed him.

If an elector who appointed the manager is prevented from functioning in his place, the candidate himself shall assume the duties unless the appointment was made without consent of the candidate.

Article XCVI.—No election campaign shall be conducted except by the candidate, the election manager, the election committee, or the clerk; however, it is permitted to conduct a campaign by letters of recommendation or by speeches.

Article XCVII.—The election manager, election committees or the clerks may receive compensation for the actual expenses they undergo in the campaign for food and drink, travel, hotel fees, etc.

[8] About 360 yards.

The same regulation is applicable to campaigns conducted by letters of recommendation and speeches.

Election clerks may be paid for their services in the campaign.

Article XCVIII.—No person shall carry on house-to-house visiting for the purpose of obtaining votes or of aiding or preventing the obtaining of votes.

No person shall carry on an election campaign by interviewing or telephoning to each elector individually for the purposes enumerated in the preceding section.

Article XCIX.—Persons who are not qualified as electors shall not serve as election manager, upon election committees or as clerks.

No public officer or official engaged in the conduct of an election shall carry on an election campaign in the district in which his office is located.

Article C.—The Minister of Home Affairs may establish limitations upon letters and pictures to be distributed or posted in an election campaign.

Chapter XI

Election Expenses

Article CI.—No expenses of an election campaign shall be paid out by any person other than the election manager except the expenses involved in the preparation of the candidate; however, the candidate, election committees, or clerks may expend funds with the written approval of the election manager. No persons other than a candidate, election manager, election committee or clerk shall pay out any expenses of the election campaign except the expenses involved in letters of recommendation and speeches.

Article CII.—The expenses of the election campaign for each candidate shall not exceed the amounts specified in the following sections:

1. The amount obtained when the total number of electors registered on the final electoral list, divided by the number of members to be elected in the election district, is multiplied by forty sen or 40/100 yen.[9]

[9] About twenty cents.

2. In case a part of an election is declared invalid and a new election is held, the amount obtained when the number of the electors registered on the final electoral list of the district concerned, divided by the number of members to be elected in the election district, is multiplied by forty sen.
3. In case an election is held under Article XXXVII, the amount shall be calculated in accordance with the preceding section; however, this amount may be reduced by the governor (Superintendent-General of the Metropolitan Police in Tokyo prefecture) when he deems it necessary. The governor (Superintendent-General of the Metropolitan Police in Tokyo prefecture) shall publish the amount determined upon under the preceding section as soon as the date of election is published or notified.

Article CIII.—In case material obligations for an election campaign have been recognized or material benefits from the use of buildings, ships, horses and vehicles, printed matter, food and drink, etc., other than cash, have been received, the obligations or benefits shall be considered expenses of election at their market values.

Article CIV.—Amounts paid out for any of the following purposes shall not be considered expenses of election:

1. For ships, horses, and vehicles used by a candidate.
2. For the adjustment of the remaining business of an election campaign after the date of election.
3. By the election committees or clerks without any understanding with the candidate or the election manager, except those which have been paid out under section one of Article CI.
4. After notice has been given under sections one to three of Article LXVII by persons other than the candidate, the election manager, election committees, or clerks without any understanding with the candidate or the election manager, except those which have been paid under section one of Article CI.
5. For the preparation of the candidate other than those paid out by or with the understanding of the person who has become the candidate or election manager.

Article CV.—The election manager, according to imperial ordinance, shall provide an account-book and shall keep a record of the expenses of the election campaign.

Article CVI.—The election manager, according to imperial ordinance, shall prepare an account of the expenses of the election campaign and shall report it within fourteen days from the date of election to the governor (Superintendent-General of the Metropolitan Police in Tokyo prefecture) through the police station to which the notice was given under section five of Article LXXXVIII.

The governor (Superintendent-General of the Metropolitan Police in Tokyo prefecture) shall publish the expenses of the election reported to him under the preceding section.

Article CVII.—The election manager shall preserve the books and documents relating to the expense of the election for a period of one year from the date the report was made under section one of the preceding article.

The nature of the books and documents to be kept under the preceding section shall be fixed by imperial ordinance.

Article CVIII.—Police officers may order the presentation for examination of the books and documents recording the expenses of the election campaign and may demand explanations concerning them from the election manager at any time after the date of election.

Article CIX.—In case the election manager resigns or is dismissed, he must prepare an account of the expenses of the election campaign without delay for a new election manager or for the person who takes over the duties of the election manager when there is no new election manager appointed under Article XCV, and he shall transfer it to him together with his functions in connection with the election offices, the committees, the clerks, etc. This is applicable in case a new election manager is elected after the duties have been transferred to a person who has taken charge thereof under Article XCV.

Article CX.—In case the expenses of the election paid out for a candidate exceed the amount specified in section two of Article CII, the election of the candidate shall be invalid except when the candidate and the person who has made the recommendation have paid due attention to the appointment and supervision of the election manager or the person who takes over the duties of the election manager and there can be found no fault in the expenditure of campaign funds on the part of the election manager or the person who takes over his duties.

Chapter XII

Punitive Rules

Article CXI.—Any person who has effected by fraudulent process the insertion of his name in the electoral list or who has made a false declaration under the second clause of Article XXV shall be liable to a fine of not more than 100 yen.

Article CXII.—Any person who has committed an act falling under any of the following heads shall be liable to minor confinement or penal servitude for not more than two years or to pay a fine of not more than 1,000 yen:

1. When, in connection with an election, money, goods, or other presents or public or private employment has been given to an elector or to a canvasser or when such gifts have been proposed or promised or when entertainment with liquors, food, or amusements has been provided.
2. When, in connection with an election, irrigation, tenancy, credit, contributions, or other matters of interest to an elector or canvasser or to a shrine, temple, school, company, guild, or civic corporation in which an elector or canvasser is interested have been taken advantage of in persuading an elector or canvasser.
3. When, in connection with an election, anything mentioned in the first clause of this article has been carried to an elector or a canvasser for the purpose of compensation for voting or carrying on an election campaign or for declining to do either or for canvassing or persuading others.
4. When, in connection with an election, a voter has received offers or accepted proposals of presents or entertainments mentioned in the first or the preceding clause of this article or yielded to persuasion or asked for such forms of assistance as are mentioned in the second item.
5. When, in connection with an election, a person has acted to persuade or mediate between others concerning the acts mentioned in the preceding clauses.

Article CXIII.—Those who come under any of the following heads shall be liable to minor confinement or penal servitude for

not more than three years or to pay a fine of not more than 2,000 yen:

1. Those who have offered the advantages mentioned in the first and second sections of the preceding article to a candidate or to a person who contemplates becoming a candidate for the purpose of dissuading him from candidacy; or to an elected person for the purpose of persuading him to decline the election.
2. Those who have acted as contemplated in the preceding section for the purpose of compensating a candidate for withdrawing his candidacy or becoming a candidate or declining election; or for the purpose of mediating or persuading with the same objects.
3. Those who have received or demanded offers or the entertainments under the two preceding sections or have accepted a proposal under the second section or have agreed to or sought persuasion under the first section.
4. Those who have acted to mediate between or persuade others in relation to the acts mentioned in the preceding sections.

Article CXIV.—Any articles received in consequence of actions enumerated in the two preceding articles shall be confiscated; if confiscation in whole or in part is impossible, supplementary compensation shall be collected.

Article CXV.—Those who fall under any of the following heads shall be liable to minor confinement or penal servitude for not more than three years or to pay a fine of not more than 2,000 yen:

1. Those who, in connection with an election, subject to an act of violence or to intimidation or abduct an elector, a candidate, a would-be candidate, a canvasser, or an elected person.
2. Those who obstruct freedom of movement, meetings or speeches or who by fraudulent or other unfair means obstruct the exercise of the right of election.
3. Those who, in connection with an election, take advantage of irrigation, tenancy, credit, contributions or other interests of an elector, candidate, would-be candidate, canvasser, or elected person; or of a shrine, temple, school, company, guild, or civic corporation in which such persons are interested; or who threaten an elector, candidate, would-be candidate, canvasser, or elected person.

Article CXVI.—When, in connection with an election, a government official or employee has wilfully neglected to discharge his

duty or has obstructed the exercise of the right of election by the abuse of his authority, he shall be liable to minor confinement for not more than three years.

A government official or employee who requests an elector to reveal the name of the candidate for whom he intends to vote or has voted shall be sentenced to minor confinement for not more than three months or to pay a fine of not more than 100 yen.

Article CXVII.—When a government official, employee, witness, or overseer connected with the election has revealed the names of candidates voted for by electors, he shall be liable to minor confinement for not more than two years or to pay a fine of not more than 1,000 yen. The same penalties shall apply in cases of false representation of votes cast.

Article CXVIII.—When, without any justifiable cause, any person has either at a polling-place or a counting-place, interfered with the voting of an elector or has put into practice any device to discover the name of a person voted for, he shall be liable to minor confinement for not more than one year, or to pay a fine of not more than 500 yen.

Any person who, contrary to law and regulations, has opened a ballot-box or has removed ballots therefrom shall be liable to minor confinement or penal servitude for not more than three years or to pay a fine of not more than 2,000 yen.

Article CXIX.—Whoever has committed violence against or threatened a voting overseer, counting overseer, chairman of election, witness, or election overseer, or has disturbed an election meeting, counting-place or voting-place, or has detained, damaged, or plundered ballots or ballot-boxes or election documents shall be liable to minor confinement or penal servitude for not more than four years.

Article CXX.—Whoever has committed an offense mentioned in the first section of Article CXV or in the preceding article by assembling a crowd shall be liable to be penalized as follows:

1. The principal leaders shall be liable to minor confinement or penal servitude for not less than one year and not more than seven years.
2. The leaders shall be liable to minor confinement or penal servitude for not less than six months and not more than five years.
3. Whoever has knowingly joined such a crowd to add to its influence shall be liable to pay a fine of not more than 100 yen.

Whoever has knowingly formed a crowd or joined it in

offense against any provision of the first section of Article CXV or against the preceding article and has disobeyed more than three times the orders of the officers or officials of the election dispersing the crowd, shall be liable to pay a fine of not more than 100 yen and the leader shall be liable to minor confinement for not more than two years.

Article CXXI.—When, in connection with an election, a candidate uses a firearm, sword, dagger, pointed bamboo, bludgeon, or other weapon capable of causing death or injury, he shall be liable to minor confinement for not more than two years or to pay a fine of not more than 1,000 yen. A police official or gendarme may, whenever it is judged necessary, seize any of the weapons mentioned in the preceding clause.

Article CXXII.—Whoever enters a place of election meeting, counting-place, or polling-place carrying any of the weapons mentioned in the preceding article shall be liable to minor confinement for not more than three years or to a fine of not more than 2,000 yen.

Article CXXIII.—In case any person has offended against the provisions mentioned in the two preceding articles, the weapons carried by him shall be confiscated.

Article CXXIV.—Whoever, in connection with an election, makes a display, such as assembling a crowd, conducting a procession or parade, making use of fireworks, bonfires or torch-lights, beating bells or drums or sounding conches or bugles or raising flags, etc., with the object of display, and disregards the warning of police officials to stop, shall be liable to minor confinement for not more than six months or to a fine of not more than 300 yen.

Article CXXV.—Whoever, with the object of inducing other persons to commit any of the acts mentioned in Articles CXII, CXIII, CXV, CXVIII–CXXII, or the preceding article, incites them by means of speeches, newspapers, magazines, circulars, placards, etc., shall be liable to minor confinement for not more than one year or to a fine of not more than 500 yen.

Provided that in case a newspaper or magazine is found guilty of such acts, the person registered as the editor or who takes the place of an editor shall be liable to the foresaid punishment.

Article CXXVI.—Whoever commits an offense under the following sections by means of speeches, newspapers, magazines, circulars, placards, etc., shall be liable to minor confinement for not more than two years or to a fine of not more than 1,000 yen. In

cases involving newspapers or magazines the proviso of the preceding article shall apply:

1. Whoever, with the object of electing a candidate has published false information about his rank, position, occupation, or career.
2. Whoever has published false information about a candidate with the object of preventing his election.

Article CXXVII.—Any person, not an elector, who has voted shall be liable to minor confinement for not more than one year or to a fine of not more than 500 yen.

Any person who has voted by fraudulently assuming the name of another person or by other unfair means shall be liable to minor confinement for not more than two years or to a fine of not more than 1,000 yen.

Any person who has forced votes or manipulated votes to affect their number shall be liable to minor confinement or penal servitude for not more than three years or to a fine of not more than 1,000 yen.

In case an officer, official, witness, or scrutineer has offended against the preceding section, he shall be liable to minor confinement or penal servitude for not more than five years or to a fine of not more than 2,000 yen.

Article CXXVIII.—Should a witness fail to discharge any of the duties provided in the present law without any justifiable reason, he shall be liable to a fine of not more than 100 yen.

Article CXXIX.—Any person who has offended against the provisions of Article XCVI or XCVIII or has disobeyed the orders made in accordance with the provisions of Article XCIV is liable to minor confinement for not more than one year or to a fine of not more than 500 yen.

Article CXXX.—Any person who has established election offices in excess of the number authorized in the first and second sections of Article XC, or who has offended against the provisions of Article XCI or has established resting-places or places of like character, as described in Article XCII, shall be liable to a fine of not more than 300 yen.

This penalty shall be applied in case election committees or election clerks have been appointed in excess of the number authorized in Article XCIII.

Article CXXXI.—A person who has offended against the provisions of the first clause of Article LXXXIX, Article XCIX, or

Article CIX shall be liable to minor confinement for not more than six months or to a fine of not more than 300 yen.

Article CXXXII.—A person who has neglected to make reports or to give notices in accordance with sections five to seven of Article LXXXVIII or the fourth clause of Article LXXXIX shall be liable to a fine of not more than 100 yen. Similar punishment shall be applied to a person who has offended against orders issued in accordance with the provisions of Article C.

Article CXXXIII.—An election manager or a person who substitutes for him who has paid out expenses of election in excess of the sum authorized in the second clause of Article CII or has given his approval to payments as provided in the proviso of the first section of Article CI shall be liable to minor confinement for not more than one year or to a fine of not more than 500 yen.

Article CXXXIV.—A person who has paid out expenses of election contrary to Article CI shall be liable to minor confinement for not more than one year.

Article CXXXV.—Any person who commits an offense under any of the following heads shall be liable to minor confinement for not more than six months:

1. One who has neglected to prepare or keep the books provided for in Article CV or has entered a false statement or false accounts in the books.
2. One who has neglected to make a report, or made a false report under the first section of Article CVI.
3. One who, contrary to the first section of Article CVII, has failed to preserve account-books or documents.
4. One who has entered a false statement in the books or documents to be preserved under the first clause of Article CVII.
5. One who has objected to presenting or has obstructed presentation or inspection or has disregarded a request for explanation of account-books or documents to be kept under Article LVIII.

Article CXXXVI.—An election shall be invalid when, in connection therewith, a candidate has offended against the provisions of this chapter and been punished, or the election manager has been punished for offending against the provisions of Articles CXII or CXIII except when proper care has been taken in the selection and supervision of the election manager.

Article CXXXVII.—Any person who in connection with an election has been punished for offending against any of the provisions

of this chapter, shall be forbidden to exercise the right to vote and the right to be elected a member of the House of Representatives in the election to which the provisions of the present chapter apply for a period of five years after the decision of the court in case he was sentenced to pay a fine, and for a period, in case he was sentenced to confinement or more severe punishment, of five years after his term of punishment has expired or he has been released from execution of sentence, except in a case extinguished by prescription before the decision of the court was given.

Even in the case of those persons who are mentioned in the preceding section the courts of law, in extenuating circumstances, may give sentence not to apply the provisions of the preceding section, or to reduce the penalty.

The provisions of the two preceding sections shall not be applied to a person whose offense falls under the provisions of the fifth section of Article VI.

Article CXXXVIII.—For an offense punishable according to the third and fourth sections of Article CXXVII one year shall be considered as the term of prescription.

For an offense punishable according to the provisions of this chapter, other than those mentioned in the preceding section, six months shall be considered as the term of prescription, except when the offender has absconded, in which case one year shall be considered as the term.

Chapter XIII

Supplementary Rules

Article CXXXIX.—Election expenditures shall be fixed by imperial ordinance.

Article CXL.—A candidate or the person who has recommended a candidate may send one piece of mail matter to each elector in his election district in the election campaign free of charge as provided by imperial ordinance.

In accordance with imperial ordinance, public schools or other buildings which are designated by imperial ordinance may be used for campaign speeches.

Article CXLI.—In lawsuits connected with an election, the ex-

ample of civil cases shall be followed with the exceptions provided in this present law.

In suits connected with an election, the courts of law shall hear cases promptly irrespective of the order of filing of other suits.

Article CLXII.—In respect of criminal cases enumerated in Chapter XII of the present law, the court of revision shall not be bound by the term provided in the first clause of Article 422 of the code of criminal procedure.

Article CXLIII.—When, in connection with an election, an elected person has been punished for offenses enumerated in Chapter XII or his election manager has been punished for offending against the provisions of Articles CXII or CXIII, the president of the court of law shall notify the Minister of Home Affairs and the prefectural governor concerned.

Article CXLIV.—In the application of the present law, a corporation of a town or village which takes charge of the entire office of a town or village or conducts affairs jointly with the town or village shall be considered as one town or village, the manager of the corporation as town head or village head and the corporation office as the town or village office.[10]

Article CXLV.—In case there is no county head established, the provisions of the present law relating to the county shall be applied to the jurisdiction of the governors of islands or to the heads of branch offices of the Hokkaido government; provisions relating to the county head shall be applied to the governors of islands or to the heads of the branch offices of the Hokkaido government; those relating to the county office shall be applied to the island offices or to the branch offices of the Hokkaido government.

For the cities enumerated in Article VI of the law on municipali-

[10] Article CXLIV was amended in 1926 as follows: "The jurisdiction of counties or islands referred to in the present law shall be understood as their former jurisdictions. In case a city has been established in the former jurisdiction of a county or an island, or the limits of towns or cities have been altered upon the limits of a county or an island, the latter shall be considered as correspondingly altered. In case a new town or village has been established upon the limits of the former jurisdiction of a county or an island, the election district to which the town or village shall belong shall be determined by the Minister of Home Affairs.

"Even when there has been an alteration of a county in the jurisdiction of the Hokkaido or of the branch office of a local government, election districts shall remain unaltered except when an alteration has been made in the limits of a town or village.

"When, in connection with an election held according to the preceding section, it is impossible to apply the provisions of the present law, special arrangement may be made by imperial ordinance."

ties, the cities mentioned in the present law correspond to wards, mayors correspond to heads of wards, and city offices correspond to ward offices.

In a place where there is no town or village system, the provisions of the present law relating to towns or villages, town or village heads, and town or village offices are applicable to the corresponding organizations, persons, and offices respectively.[11]

Article CXLVI.—When, in an island or other place where communications are very difficult, the provisions of the present law are hardly applicable, special provisions may be enacted by imperial ordinance.

Article CXLVII.—When the voting is conducted in accordance with Article XXXIII, a person who takes charge of the voting is recognized as a voting overseer, the place where the votes are recorded as a polling-place and witnesses present at the voting as voting witnesses, and the provisions of Chapter XII shall be applied.

Article CXLVIII.—In the application of the present law a person who has undergone severe punishment under criminal law No. 36 of 1880 shall be regarded as a person who has suffered minor confinement or penal servitude or more severe punishment for six years and a person who has undergone minor confinement shall be regarded as having suffered minor confinement or penal servitude for less than six years.

Article CXLIX.—The provisions of Section 9, Chapter IV, Part II of criminal law No. 36 of 1880 shall not be applied to the election of members of the House of Representatives.

Article CL.—The present law shall not be carried out for the time being in the islands of Ogasawara in Tokyo prefecture or in the counties of Shumushu, Niichi, Emu, and Shikitan under the Nemuro branch office in the Hokkaido.

Appended Rules

The present law shall be enforced beginning with the next general election. In the election of members of the House of Representatives according to the present law, when it is impossible to comply with Article XVIII the date of the general election may

[11] Article CXLV was amended in 1926 as follows: "The provisions of the present law relating to counties shall be applied to the jurisdiction of mayors and of town and village head-men."

be determined specially by imperial ordinance. When, in the compilation of the electoral lists necessary for a general election held according to the preceding clause, it is impossible to comply in respect to the dates or the period, with the provisions of Articles XII, XIII, XV, or XVII, the dates or the period may be specially determined by imperial ordinance. Said lists shall remain valid till the day on which the electoral list for the next year is finally determined.

(NOTE.—The list of electoral districts included in the text of the law has been omitted.)

APPENDIX XI

PLATFORM FOR 1900 OF THE RIKKEN SEIYUKAI[1] (CONSTITUTIONAL POLITICAL FRIENDS' ASSOCIATION OR CONSTITUTIONALIST PARTY)

The Party has been organized for the purpose of serving the Imperial Family with sincere loyalty, and of discharging the duties of the citizen as expected by the State. The aims and purpose of the party may be epitomized as follows:

(1) Strictly to obey the Imperial Constitution, to perfect the working of the Ruling Power by carefully following the provisions of the Constitution, and thereby to effect realization of important State affairs, together with preservation of individual rights and freedom.

(2) To follow out the great principle underlying the new Régime inaugurated by the Restoration and Revival (opening with the Meiji Era) and to help to promote the realization of the said principle, whereby national progress could be achieved, and civilization and enlightenment implanted.

(3) To perfect the working of the different organs of administration by strictly following the principle of impartiality: with this purpose in view, to place official appointments on the most prudent and careful basis, to discard unnecessary routines, to place official responsibility on a clearly defined standard, to maintain discipline, to manage business with promptitude, and thus to be kept in consonance with the progressive tendencies of the times.

(4) To attach importance to foreign policy for advancing amicable relations with friendly Powers, to inspire foreigners coming to this country with confidence by following the principles of a civilized government, so that both the name and reality of a country governed by laws may be secured.

(5) To complete national defense for the purpose of adjusting the same to the requirements of the times prevailing both at home and abroad, and to ensure protection of our na-

[1] Text as printed in H. Sato, *Evolution of Political Parties in Japan*, pp. 133–135.

tional prestige and interests by corresponding development of national resources.

(6) To promote education, to build up national character, to develop personal qualities and capacities fitted for bearing the obligations to the State and thus to place the country on a solid foundation.

(7) To encourage all the branches of productive industries, to promote navigation and oversea trade, to increase facilities of communications, and thus to place the economic life of the country on a firm basis.

(8) To realize the principle of fraternal union and combination in Local administrations and to perfect their coöperation on social and economic affairs.

(9) To be alive to the sense of responsibility a political party bears to the State, to act with an eye single to the public benefit and constantly to place oneself on a strict guard in order not to fall into the prevailing errors.

APPENDIX XII

PLATFORM FOR 1910 OF THE RIKKEN KOKUMINTO [1]

(CONSTITUTIONAL NATIONALIST PARTY)

(1) To establish a responsible cabinet and to consummate the perfection of Constitutional Government.
(Note: By a responsible cabinet here mentioned is to be understood a cabinet responsible to the people.)
(2) To maintain balance of power between the civil and the military, and to realize correct proportion of the share of national expense.
(3) To study carefully the extent of requirements for national defense and to maintain the efficiency of national armaments.
(4) To emphasize the importance of international peace and to develop and promote national interests.
(5) To improve internal administration, and to extend and develop the system of local self-administration.
(6) To readjust the system of taxation and to place national finance on a sound and firm basis.
(7) To encourage agriculture, commerce, and manufacturing industries and to realize full development of national power.
(8) To complete the means of communications and thereby contribute to the development of the sources of national wealth.
(9) To reform and renew the system of education and to effect realization of a substantial and solid national spirit.

[1] Text as printed in H. Sato, *Evolution of Political Parties in Japan*, pp. 136–137.

APPENDIX XIII

PLATFORM OF THE RIKKEN DOSHIKAI [1] (CONSTITUTIONAL ASSOCIATES' PARTY)

(1) To develop and enhance the great spirit of loyalty centered in the Imperial House.
(2) To approve and carry further the great policy adopted at the time of the national Restoration, and support the Imperial policy of progress and open international intercourse.
(3) To conform to the provisions of the Constitution, respect the Imperial prerogatives, clearly define the responsibility of the Ministers of State and preserve the people's rights.
(4) To disseminate education, elevate the people's public morality and develop their constitutional intelligence.
(5) To extend the sense of racial fraternity and apply it to the establishment of measures for social reforms and mutual aid.
(6) To work for the development of agriculture, industry and commerce, and develop the national resources to their fullest capacity.
(7) To establish perfect control over the colonial territories and thus strengthen the basis of national existence.
(8) To establish thoroughly the national prestige in the world and contribute to the peace of the world.
(9) To extend the scope of the administrative business and to maintain purity of local self-government.

[1] Text as printed in H. Sato, *Evolution of Political Parties in Japan*, pp. 138–139.

APPENDIX XIV

PLATFORM FOR 1924 OF THE SEIYUHONTO[1]

Upwards of thirty years have already elapsed since the system of constitutional government was adopted in this country, but it has not been perfected yet. Struggles for power, which are carried on with extreme bitterness, beget many evils. What is particularly deplorable is that when the country was suffering from the effects of the recent unprecedented natural calamity, a maniac committed a horrible deed with the result that the people have been thrown into a very disturbed frame of mind. Confronted by increasing national difficulties, the people are yearning for reform in all directions.

The crying need of the moment is to reform the political world by purging it of all corrupt elements, to settle popular ideas and to give peace to the public mind. All attempts to pander to current opinion in utter disregard of the true aims of a public party must be condemned. A halt must also be called to the irregularities of the parties, which, in their desire to turn everything to account, make no scruple about playing fast and loose with the discipline of the State. All underhand measures and extreme speech and demeanour must be denounced. The mission of a public party lies in upholding independent views free from all sordid influences, and in acting up to its promises at all costs. The tendency to attach too much importance to material gains tends to demoralize the minds of the people, thereby opening the way for party evils. It also fosters laxity in official discipline. Reform must essentially begin with the cultivation of a sound national spirit by elevating the moral standards of the people. In view of the provisions of the Japanese Constitution, and also in consideration of the actual state of Japanese politics, it is essential that all classes should be brought into closer contact and that all needless antagonism should be eschewed so as to ensure a smooth operation of constitutional government. Agitations started on the specious ground of defending the cause of constitutional politics must be emphatically deprecated

[1] Text as printed in *Japan Chronicle*, Feb. 7, 1924, pp. 197–198.

because they can have no other effect than to aggravate the situation and to engender mutual antipathy between classes. We seek fellow-thinkers throughout the country, irrespective of class, and desire to work together for the promotion of State administration. This, we believe, is the way to attain the goal of party politics in pursuance of the spirit of the Imperial Constitution.

We have hitherto identified ourselves with a political party and have constantly striven to bring party politics to a successful consummation and to put constitutional politics on a secure basis. Our efforts, however, have sometimes been hindered by some elements whose actions have produced estrangement between the two Houses of the Diet, increased the public distrust of political parties and disturbed the political situation. Being desirous of political reform in this and other directions, we have decided to organize the present political party. We open the doors of the party widely for young talented politicians in the country, so that our ideals may be realized with their help. The fact must not be lost sight of, at the same time, that political reform depends upon the awakening of the people, and that the popular awakening must begin with the awakening of their leaders. At home we desire to advance the happiness of the people by bringing about harmony and co-operation between all classes of people, and abroad we strive to ensure the world's peace based on international justice. We will make endeavours to see that all classes, high and low, co-operate in protecting the Imperial Household to make its influence felt at home and abroad. It will also be our constant endeavour to settle the troubled minds of the people and to enhance the national wealth, so that the foundations of the country may be put on an unshakable basis. This is, indeed, the spirit which inspires us, fellow-thinkers, to form the present party. We lay our views before the public and hope that all those who share our views will come and join our party:

1.—The national polity shall be protected, and the provisions of the national Constitution be strictly observed so that the system of constitutional government may be firmly established and smoothly operated.

2.—All branches of administration shall be reformed and the national spirit be invigorated in consonance with the plans laid down by the Emperor Meiji with a view to realizing what is called the Taisho Restoration.

3.—In all international dealings full regard shall be had for

justice and humanity, and international good faith shall never be violated. By acting in co-operation with the Powers in this way the happiness of mankind shall be promoted. Japan shall make special endeavours in upholding the peace of the East.

4.—A national defense programme compatible with self-defense shall be maintained and replenished.

5.—Education shall be promoted. It is especially important that national and social education should be perfected for the moulding of good national character.

6.—A social policy shall be enforced so that all classes may be put in a harmonious relationship to help forward the progress of the State and the community.

7.—Industry shall be developed, agricultural interests be promoted and foreign trade be advanced so as to consolidate the nation's economics.

8.—All means of communication shall be developed and spread. Particularly in view of the geographical condition of the country, increasing endeavour shall be made to promote the shipping industry, thereby contributing to the development of culture and industry.

9.—Official discipline shall be enforced and red-tape shall be discarded, so that all Government business may be transacted with despatch and equity.

10.—All offices shall be thrown open to talent, and care shall be used to give all men of probity and intelligence opportunities to give full play to their ability.

11.—Evils attending the centralization of power shall be removed and local undertakings shall be launched and pushed forward together with those for urban districts, thereby helping forward the development of towns and villages as well as cities.

12.—Earnest efforts shall be made to remove party evils in the light of the true spirit of a public party, in an endeavour to bring about a successful consummation of constitutional government.

APPENDIX XV

DRAFT OF THE PLATFORM FOR 1930 OF THE MINSEITO [1]

1.—Fair politics and the elevation of public morals.

2.—Reform of elections.

3.—Measures for the improvement of the situation consequent upon the lifting of the gold embargo.

a) Financial retrenchment and reduction of public loans.

b) Enhancement of business efficiency and the rationalization of industry.

c) Promotion of the export trade and improvement of international accounts.

d) Protection of the gold standard.

4.—Reduction of the burdens on the nation and security of the national life.

a) Reduction of national and local taxes.

b) Adjustment and reduction of excises on necessaries of life.

c) Increase of the State subsidy for compulsory education.

5.—Social policy.

a) Elevation of the standards of living for labourers and the rationalization of the relations of capital and labour.

b) Prevention of unemployment, improvement of dwelling houses, protection of children, relief of the poor and the prevention of poverty, and perfection of social insurance.

6.—Improvement of monetary organs and increase of facilities for smaller merchants, industrialists and farmers.

7.—Provision of better methods of supply of fertilizers and encouragement and maintenance of yeoman farmers, settlement of the farm tenancy problem, and development of agriculture.

8.—Educational reform.

a) To give a more practical education.

b) To develop originality and individuality in the educated.

c) To encourage moral culture.

[1] Text as printed in *Japan Chronicle*, Feb. 6, 1930, p. 123.

APPENDIX XVI

DRAFT OF THE PLATFORM FOR 1930 OF THE SEIYUKAI [1]

1. Measures to be taken to remove the business depression accentuated by the lifting of the gold embargo.

(a) Modification of the propaganda of economy which is being carried to excess by the Government. The excessive economy propaganda of the Government has depressed private undertakings and caused a stringency in the money market. While devising means to alleviate this propaganda, steps must be taken to develop home industry.

(b) Improvement of monetary facilities for small merchants and industrialists.

(c) Improvement of international balance of accounts.

(d) Efficient management of all industries.

(e) Relief of the unemployed by the launching of productive enterprises.

(f) Reform of the taxation system with industrial development in view.

(g) Issue of public loans for financing harbour, road, communications and other works necessary for industrial development, thereby promoting the relief of the unemployed.

2. Economization of national defense.

(a) Adjustment of the standing army.

(b) Shortening of the conscription period.

(c) Abolition or amalgamation of Government military schools.

(d) Improvement and reform of arms other than infantry.

3. Administrative readjustment.

(a) Decentralization of power.

(b) Abolition or amalgamation of Departments, Bureaus and Sections.

(c) Adjustment of the control and distribution of Government business.

[1] Text as printed in *Japan Chronicle*, Feb. 6, 1930, pp. 122–123.

(d) Better security for the position of Vice-Ministers downwards and the enhancement of business efficiency.

4. Readjustment of Government works.

With regard to the works for the public benefit, their methods of management to be improved, and those productive industries which may more advantageously be run by private interests to be transferred to private management. The funds accruing from this transfer to be strictly set aside and employed for the promotion of social policy with the approval of a Commission to be set up for the purpose.

5. Reduction of taxes.

Transfer to the local treasuries or reduction of the land tax, the business-profit tax and excises.

6. Rice policy.

(a) To export the surplus rice in case the price of rice falls, despite the application of the Rice Law, the resulting loss to be borne by the national treasury.

(b) To frame a policy for the reduction of the price of fertilizer in order to lower the cost of producing rice.

7. Election reform.

(a) To study the reform of elections free from party sentiment, as the purification of politics depends upon it.

(b) Prevention of purchase of votes.

(c) Adoption of the system of elections at public expense with a view to reducing the election expenses of candidates.

(d) Extension of the franchise.

(e) Adoption of proportional representation.

APPENDIX XVII

PLATFORM FOR 1927 OF THE SHAKAI-MINSHUTO [1]

1. Revision of the Election Law.
   (a) Lowering of the age-limit for voters.
   (b) Establishment of woman suffrage.
   (c) Creation of a public holiday to enable employees to vote freely.
   (d) Modification of the residential qualifications.
   (e) Abolition of the security money system.
2. Withdrawal of privileges from the House of Peers.
3. Acquisition of freedom of speech and the Press, of meetings and organizing societies.
4. Official guarantee of livelihood for families whose members are serving in the army.
5. Total abolition of the duties on necessaries of life.
6. Reform of education.
   (a) More effectual enforcement of the system of common education at public expense.
   (b) Removal of the difficulties attending entry into schools.
   (c) Official recognition of night middle schools.
7. Promulgation of a perfect Labour Union Law.
8. Promulgation of a perfect Farm Tenancy Law.
9. Promulgation of a Law for the protection of salaried men.
10. Democratization of medical relief organs.
11. Promulgation of an Unemployment Allowance Law.

[1] Text as printed in *Japan Chronicle*, Jan. 20, 1927, p. 57.

APPENDIX XVIII

STATEMENT AND PLATFORM FOR 1931 OF THE ZENKOKURONOTAISHUTO [1]

A. STATEMENT

The economic depression is menacing the livelihood of labourers, farmers and proletarians. The desperate efforts being made by an Imperialist bourgeoisie to tide over the panic tends to put increasing burden on the proletarian masses. On one hand, the establishment of mergers and combines is expanding unemployment, causing a decline in wages and constituting a callous encroachment on the interests of small farmers who are being deprived of their land. The nation is also facing increased taxes and higher house rents, tramcar fares and gas charges. On the other hand, the mad repression of proletarian movements, unwarranted arrests, detention, imprisonment, insults and torture, is exacting a "blood" tax from the proletarian masses. The non-propertied masses are driven to the brink of starvation and their attempts to avert the threatened contingency met with harsh repression.

The fight for the proletarian cause has often been accompanied by bloodshed. In such circumstances, the unity of the proletarian front has become the desperate desire of the masses. Organized power must be resisted with organized power. The only proper course for those in the proletarian movement to pursue in existing circumstances is to build a fortress by bringing all the proletarians together. We take the occasion of the amalgamation of the Labour parties to promise the proletarians to protect the livelihood of the masses by a courageous pursuit of their cause, to resist all repression, to try to bring all labour unions and farmers' unions into the combine for more vigorous activity, and to help the still unorganized masses to organize.

The amalgamated Labour party is a strong castle. We are determined to defend it. Let all petty feelings excited in the process

[1] Texts as printed in *Japan Chronicle*, July 16, 1931, pp. 83–84.

of amalgamation be sunk. Let the whole weight of amalgamation be put into the scale, for the future fight for the masses. Let all members of the new party make redoubled efforts for their cause!

B. Platform

I. POLITICS

1.—Radical revision of the Election Law (enfranchisement of men and women over 18 years).

2.—Abolition of the Peace Preservation Law, the Police Peace Law, the Law for the punishment of acts of violence, and all other laws designed for the repression of the proletariat.

3.—Abolition of political police and secret service funds.

4.—Radical reform of the central administrative organization.

5.—Election of local Governors, Mayors and headmen of towns and villages by popular vote.

6.—Abolition of the practice for local Governors, mayors and headmen to enforce the budgets of their own compilation, if they are overthrown by the assemblies concerned.

II. DIPLOMACY

1.—Repudiation of secret diplomacy.

2.—Absolute opposition to any aggressive Imperialist policy.

3.—Freedom of entry into the countries of the world for labourers and farmers.

4.—Freedom of co-operation with proletarians abroad.

III. MILITARY AFFAIRS

1.—Drastic reduction of armaments.

2.—Shortening of conscription period.

3.—Better treatment of soldiers, and respect for their personal rights.

4.—Prohibition of discharge from employment because of service in the army, and security of living for families of conscripts.

5.—Legislation for the relief of families of soldiers killed or disabled.

IV. ADMINISTRATION OF JUSTICE

1.—Establishment of a perfect State compensation system for miscarriage of justice and unwarranted detention.

2.—Heavy penalties on Government and other public officials guilty of an abuse of powers.

3.—Public trials, the election of jurymen by public vote, and extension of jurymen's powers.

4.—Defrayal out of the national treasury of cost of litigation for poor people.

5.—Better treatment of persons detained in police stations and prisons, such as freedom of reading, seeing visitors and taking exercises, and revision of the detention regulations.

V. FINANCE

1.—Drastic reduction of war expenditure.

2.—Abolition of the Pension Law and establishment of an old age pension system.

3.—Use of the whole of the Deposit Department Fund for financing social welfare work.

4.—Abolition of the "unauthorized disbursement" system.

5.—Lowering of Government monopoly charges, railways, postal, telephone and telegraph service, and tobacco.

6.—Abolition of subsidies to capitalists.

7.—Creation of a property tax and tax on the increased value of land.

8.—Imposition of high progressive rates on capital, inheritance, incomes, land, and business profits.

9.—Abolition of excises and import duties on the necessaries of life.

10.—Abolition of prefectural business and special land taxes, house tax and household rate.

11.—Abolition of taxes on vehicles, small boats and cows and horses, and other miscellaneous taxes.

12.—Creation of a surtax on death duties.

VI. SOCIAL AFFAIRS

1.—Abolition of legal, economic and social discrimination against women.

2.—Prohibition of the traffic in women and children.

3.—Repudiation of class discrimination, a relic of feudal days.

4.—Adoption of a 10-year compulsory education system, and defrayal of the entire cost of compulsory education and supplies to school children out of the national treasury.

5.—Abolition of officially constituted young men's and young women's associations, ex-soldiers' associations, institutes for the military training of youths and the military training of students.

6.—Freedom of the study of sociology in schools.

7.—Abolition of the peerage.

8.—Abolition of the apprentice system.

9.—State compensation for illness caused by industrial and mining operations.

10.—Establishment of the right of residence, radical revision of the laws governing the lease of land and houses, and building of residences at public expense.

11.—Establishment of free hospitals, maternity and otherwise, and public ownership of organs of medical treatment.

12.—Reduction of monopoly prices in regard to tramcars, electric light and gas.

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