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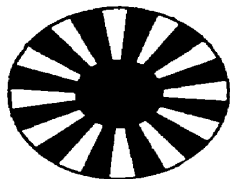
THE GOVERNMENT OF JAPAN

*LONDON HUMPHREY MILFORD  
OXFORD UNIVERSITY PRESS*

# THE GOVERNMENT OF JAPAN

BY  
NAOKICHI KITAZAWA, M.A.

EDITED WITH AN INTRODUCTION BY  
WILLIAM STARR MYERS, PH D.  
*Professor of Politics, Princeton University*



*PRINCETON*  
PRINCETON UNIVERSITY PRESS

1929

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**PRINTED AT THE PRINCETON UNIVERSITY PRESS  
PRINCETON, NEW JERSEY, U S A**

TO THE MEMBERS OF  
THE FACULTY OF THE POLITICS DEPARTMENT  
OF PRINCETON UNIVERSITY





## PREFACE

UNDERSTANDING is the primitive source of friendship. Without mutual understanding among nations, the true peace of the world can not be expected. Therefore, it is a primary necessity for nations to understand one another correctly. In order to reach this correct understanding of a nation we must study her from all aspects, materially or spiritually, but the study of her government and politics will certainly contribute a great deal to it. Inspired by this fact, I undertake to publish this little book on the Japanese government.

Of course, to deal with the Japanese government and politics in an exhaustive way is not the aim of this book. In it I merely attempt to provide their pen-picture in broad outline. But I hope from the bottom of my heart—if it should be possible—that this small book will make some contribution to the furtherance of a true understanding of the Japanese nation.

In writing this book I am greatly indebted to the books titled "Essentials of the Japanese Constitutional Law" and "Essentials of the Japanese Administrative Law," which are written in Japanese by Professor Tatsukichi Minobe of Tokyo Imperial University and are regarded by Japanese students everywhere as authoritative.

I avail myself of this occasion to express my sincere thanks to Professor William Starr Myers of Princeton University, who was kind enough to suggest the writing of this book, to go over the manuscript, and to give me many suggestions of great value. I am also obliged to Professor Edward Samuel Corwin, Professor Philip Marshall Brown, and other members of the Faculty of the Politics Department of the same University, who have given me highly valuable assistance during my stay at Princeton.

N. KITAZAWA

PRINCETON, N J  
AUGUST 10, 1928

## INTRODUCTION

A COMMON and popular statement among people of the Western world is that Japan is the "England of the East." Doubtless the major reason for this expression is the fact of its island situation off the coast of the Asiatic continent, just as England lies off the coast of Continental Europe. During past history, there likewise followed in both nations centuries of semi-isolation from continental affairs. It was broken by repeated invasions and immigration of new peoples in ancient times, but later was succeeded by racial amalgamation, with the result of national unity, homogeneity of population, and common loyalty and devotion to a single monarch who typified and embodied in his person the greatness of the people and the majesty of their government.

As is well known, the English government originally was despotic, as witnessed by the "absolutism" of the Norman and Tudor kings. Japan was opened to Western influence at a like comparative period of her historic development. But meanwhile England had moved forward literally hundreds of years in her march toward democracy and liberal government. Of necessity Japan was compelled, in her first efforts to establish constitutional government on the modern model, to pattern its new Constitution and

governmental institutions on those of a country or countries in a like stage of political development. As might have been anticipated, the Ito Commission used the Constitutions of Germany (or Prussia) and Austria as models, and the present political institutions of the Japanese Empire are of a somewhat Germanic type.

Germany stood still, so far as political institutions were concerned, and at the time of the outbreak of the World War in 1914 the people of Central Europe were politically at about the same relative stage of constitutional development as were the English, or British, prior to the Revolution of 1688 against the Stuarts. This had its own great influence in leading toward the crash of Hohenzollern interests in Germany and the Hapsburgs in Austria-Hungary. But already the Japanese Empire had begun its progress toward the changes needed to meet the needs of more modern times, and the rapid development of this great nation has been one of the miracles of recent history.

Two reasons stand out as explaining these changes. One of them is the realization of nationality and all the human interests for which it stands, just as in the like case of England, or Great Britain. Also, the contrast between the present conditions of the two great nations of the Far East is in large part to be attributed to it. China is rent with revolution, and at repeated intervals is almost on the verge of disintegration. Japan is one of the Great Powers of the world, of extreme stability, and taking its due

share in meeting the modern problems of peaceful international relations. In the second place, we find another likeness to English precedent, well stated by Mr. J. L. Garvin (in the London "Observer" of May 20, 1928) when he says, "in our political life our [British] race has combined a marvellous power of adaptation to changing circumstances with a great reverence for old use and wont."

This "power of adaptation" has been shown consistently by the Japanese people in all their later history, but particularly during the past fifteen or twenty years, until the Japanese Empire now shows signs of more nearly approaching British constitutional and political conditions. Some years ago the country attained constitutional imperialism, — its present status, — but the growth of political liberalism in more advanced form and the introduction of manhood suffrage are the most recent manifestations. In both the British and Japanese Empires is seen the same loyalty to the Crown and the Person of the Sovereign with a theoretical acceptance of supreme authority, but in a practical sense an ever more democratic participation in government.

Close observers of present political conditions in Japan have objected that the privilege of direct access to the Emperor accorded to the Ministers of the army and the navy, and that in practical independence of the Prime Minister or Cabinet then in power, is a serious check upon the real exercise of ministerial, and hence parliamentary, government. Furthermore, these Ministers might even remain in

office, although the Cabinet should resign, and thus give at least the superficial appearance of a "War Cabinet," with special independent powers. To this it may be replied that during the past ten years there has been a decided movement toward increase in Cabinet power in actual practice, and tact and sound statesmanship on the part of the Imperial advisers concerned have gone far toward removing causes of friction and attaining harmony of political administration along liberal lines. As an illustration, it may be stated that there is not a single instance on record of the late and revered Emperor Mutsuhito exercising his undoubted constitutional and hereditary right and taking the disposition of any great matters of state into his own Imperial hands.

It is a commonly accepted fact that, in spite of the enormous immigration of the last seventy-five years, the United States remains predominantly English, or British, in its institutions and instincts. These fundamental likenesses, as well as the historic friendship between the Japanese Empire and the United States, are especial reasons for American interest in, and sympathy with, the Japanese people. They also afford a possible explanation for the rapprochement between the two countries which happily has grown, especially during the past ten years and more particularly since the Washington Conference of 1922.

Ignorance is the great cause of suspicion, or lack of understanding in international relations, and these difficulties will exist in the same degree as

there is lack of mutual popular knowledge. There is no question of the ignorance of the Japanese constitution and government at present existing not only in America, but in all the Western world as well. This is especially due to the undoubted lack of an authoritative and clear statement in the English language of the underlying principles of Japanese politics in the higher sense, and my own experience as a student and teacher of comparative government has repeatedly impressed this fact upon me. During the academic year 1926-27 Mr Naoki-chi Kitazawa was a member of my graduate seminary course in comparative government in Princeton University and his reports upon the constitution and government of Japan were so excellent and simple in their treatment, and so scholarly and sound in their content, that at my suggestion he has reduced them to unified form, and this book is the result. It is hoped and anticipated that its publication may do much to add to the sympathy and understanding, and consequent friendship, that so happily exist to-day between the United States and our friendly neighbor across the Pacific Ocean.

WILLIAM STARR MYERS





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## CHAPTER ONE

### THE NATION AND ITS POLITICAL LIFE

**W**OODROW WILSON once said, "In politics nothing radically novel may safely be attempted. No result of value can even be reached in politics except through slow and gradual development, the careful adaptations and nice modifications of growth. Nothing may be done by leaps. More than that, each people, each nation must live upon the lines of its own experience. Nations are no more capable of borrowing experience than individuals are."<sup>1</sup> Indeed, no two men have the same quality, nor the same character. Every individual has his own quality, his own character. What is true of individuals can likewise and even with greater force be applied to nations. Certainly, every nation has its own national character clearly distinguished from that of others. Not only that, but what is true of character is equally true of tradition. Every nation has its own history, its own civilization, its own traditions.

Politics and  
national  
character

It is for this reason that the so-called "Historical School" in jurisprudence, economic science or other social sciences has strongly emphasized the historical specialties of nations and has denied the univer-

Social  
sciences and  
national  
peculiarities

<sup>1</sup> Woodrow Wilson, *State* [revised by Edward Elliott, 1918], p. 68.

sal validity of laws or rules of social sciences, in contradistinction with that of natural sciences, like axioms of geometry. We well know that Savigny, a famous German jurist and one of the founders of the Historical School, severely opposed the doctrine of universal law, such as the law of nature maintained by Grotius. We also well know that most of the German economists maintained that the theory of "*laissez-faire*" of Adam Smith is not always applicable to all countries. "There is no universal law," said Woodrow Wilson, "but for each nation a law of its own, which bears evident marks of having been developed along with the national character, which mirrors the special life of the particular people whose particular social judgment it embodies" <sup>2</sup> It is, therefore, absolutely true that in studying political and social sciences we must always keep in mind this historical specialty of a nation. But at the same time we must be careful not to neglect the idealistic side of human beings, because of this emphasis of the historical side. Human beings are certainly influenced by history and traditions, but it is true that they are also guided by ideals. In fact, the Historical School came as a reaction to the unreasonable emphasis of the idealistic side in former days. Anyway, there is no final truth in the extreme. Truth always lies in the middle.

National  
character of  
the Japanese  
nation

Thus, in dealing with the government and politics of Japan it is also necessary to clarify the view of the national character or the national spirit of the

<sup>2</sup> Woodrow Wilson, op cit, p 80

Japanese Empire. Still greater is this necessity because the Japanese people, secluded from the outside world for several centuries, have developed a greatly different history and formulated quite a different national character from other countries.

Widely divergent opinions are maintained in regard to the origin of the Japanese people, but it is not a matter of great importance in this study where the parent stock of the Japanese came from. An important thing is this: for more than twenty-five centuries since their national life began to develop under the leadership of the first Emperor, Jimmu, the Japanese "have always lived under one and the same government, and have scrupulously maintained their ethnic unity, with common language, common custom and tradition and a common mode of life throughout the country,"<sup>8</sup> and as a consequence they have formed a firm national unity to such an extent that they, as a whole, are almost like an organism. Of course, after the Middle Ages Japan witnessed many bloody conflicts among court nobles, among powerful feudal lords, which conflicts sometimes covered the whole country, but these conflicts were always a conflict among the governing classes for their political supremacy, and the nation as a whole maintained the same unity and cohesion as before. Even the Restoration of 1867, which marked the beginning of modern Japan, is a struggle of the ruling classes in which the common people took no part.

National  
unity of the  
Japanese

<sup>8</sup> Y Uchida, *The Political Development of Japan, 1867-1909*, p. 5.

## 4 THE GOVERNMENT OF JAPAN

Positive  
reason for  
the Japanese  
national  
unity

What is responsible for this national unity and cohesion of the Japanese nation? Positively, the Japanese lived their national life under the patriarchal, theocratic or feudalistic government for many centuries; and what is more significant, all religion which predominated the Japanese mind, especially Shintoism, Confucianism and Buddhism, all standards of public morals which had a strong hold in the hearts of the Japanese, especially the code of chivalry called "Bushido," which developed as the rules of conduct of warriors in the feudal ages—all these things preached and still are preaching self-sacrifice, subordination of the individual self to the larger whole, a family or a nation, subjugation of individual interests to general interests. "Comparatively speaking," says Dr. Uyehara, "Western people are, as a rule, subjective, while the Japanese, viewed as a nation, are extremely subjective, but individually, as a rule, objective. The basis of Japanese morality is self-sacrifice, while that of the Western people is self-realization" \* 4

Negative  
reasons for  
the Japanese  
national  
unity

On the other hand, the unity of the Japanese has been preserved, chiefly because they were free from foreign invasions, political or religious. All foreign invasions by force proved to be entirely unsuccessful. More than that, the general public in Japan was unfamiliar with Christianity, which is more individualistic, if my understanding is right, and in that sense more modern than Shintoism, Confucian-

\* Y Uyehara, op cit, pp 15-16

ism or Buddhism. Otherwise there might not exist such a national unity in Japan as we witness at present. If Germanic peoples who had lived their own national life without being in touch with other peoples until the Fourth Century, A.D., had not been influenced by the individualistic Roman civilization and Christianity, as a result of their invasions into the Roman Empire, their old cooperative and non-individualistic spirit could have been preserved to a greater extent. Captain Brinkley, who studied things Japanese, once said, "The current of her [Japan's] national life was never diverted from its normal channel by successful foreign invasions, or by any other overwhelming inflow of alien races."<sup>8</sup>

The economic conditions in old Japan also helped preserve a firm national unity of the people. In old Japan the distribution of wealth was not so unfair as to cause a race deterioration or a race disintegration. Even under the feudal régime there was no monopoly of land, which was the most important or the only wealth in those days, in the hands of a few nobles and barons as in feudal England. From very early times a system of small holdings was prevalent throughout the country, and consequently Japan never had serfs or slaves attached to the land as was the case in the Western world. This is the chief reason why the industrialization of Japanese agriculture is so difficult today. It is true that there were the poor, but the growth of extreme poverty

Economic  
reason for  
Japanese  
unity

<sup>8</sup> Brinkley, *China and Japan*, Vol I, Ch III, p 50.

## 6 THE GOVERNMENT OF JAPAN

or "pauperism" was fortunately prevented by the cooperative spirit among the people. Primarily, a family must take care of all its members. Secondly, local institutions, like the "company of five families," consisting of five neighboring families, must give all possible assistance to their members. This state of things was not greatly changed by the Restoration of 1867 which brought about a great transformation in the political life of the Japanese. It is only the industrial revolution which began towards the close of the last century that has greatly changed and still is changing this economic condition of Japan.

Strong  
power of the  
government

This submission of the individual to the larger whole naturally gave a great power to the government. In the feudal ages the Confucian maxim, "Let the people depend upon the government, but do not let them know the business of the government," was constantly held by the government, and this tradition still holds a considerable influence over the Japanese mind. Mr. Fukusawa, a great commoner of Japan, and a noted pioneer of Japanese liberalism once said, "Owing to the peculiar customs which have for so long existed we are not at all sensitive about our privileges and rights"<sup>6</sup> Dr. Ueyhara expressed his view on this point in the following way: "The Emperor of Japan can say without hesitation 'L'Etat c'est moi,' more effectively than Louis XIV, not because he can subject the peo-

<sup>6</sup> E. W. Clement, *Constitutional Imperialism in Japan* (Academy of Political Science Proceedings, Vol. 6), p. 324



ple to his will, but because he is morally so recognized.”<sup>7</sup>

As a matter of fact the Japanese people have been governed by an unbroken line of one dynasty from the beginning of the Empire about twenty-six centuries ago. The people regard the whole Japanese nation as one large family, with the Emperor as an hereditary patriarch. In fact, until the Seventh Century the government was really patriarchal. Kinship was the basis upon which the whole political structure was built. By traditions the Japanese believe that they descend from the same ancestors with the Emperor, and the Imperial Family is the most original line of the descendants, and accordingly they worship their common ancestors, with the Emperor as the highest priest. In the Japanese language the term “matsurigoto” (government) is derived from the term “matsuri” (religious rituals). Indeed, until the reign of the tenth Emperor there was no distinction between governmental affairs and ritualistic affairs. The officials who dealt with rituals were ranked highest in the government and they also supervised governmental affairs. The government of Japan in those days was purely theocratic. After the reign of the tenth Emperor the governmental and ritualistic affairs became gradually separated, but the Emperor continued to be the highest priest to carry on rituals. The late Dr. Hozumi, who was one of the outstanding jurists in Japan, the father of Japanese civil laws, and who

Its patriarchal and theocratic reason

<sup>7</sup> Y Uyehara, op cit, p 23

lately died while President of the Privy Council, said, "The Emperor holds the supreme power, not as his own inherent right, but as an inheritance from his Divine Ancestor. The government is, therefore, theocratical. The Emperor rules over the country as the supreme head of the vast family of the Japanese nation. The government is, therefore, patriarchal. The Emperor exercises the governing power according to the Constitution, which is based on the most advanced principles of modern constitutionalism. The government is, therefore, constitutional. In other words, the fundamental principle of the Japanese government is theocratico-patriarchal constitutionalism" <sup>8</sup>

Merits and  
demerits of  
the national  
character of  
the Japanese

It is clear that this national unity is necessary to achieve high efficiency in government. This explains why the army and navy are subject to strict discipline even in a most democratic country like the United States. The remarkable progress which Japan made within the last half century is undoubtedly due to this national unity. But this excessive dependence upon the government on the part of the people is not without great weakness. The Japanese, as a nation, are like "a well disciplined army," but as individuals are little better than "disbanded soldiers." Truly the Japanese national spirit is something like an army spirit and is well fitted to a time of war, but the popular dependence upon the government is a considerable drawback to peaceful development, especially to industrial and commercial

<sup>8</sup> N. Hozumi, *Ancestor Worship and Japanese Law*, pp. 87-88

development; and particularly in the days when industrial and commercial competition among nations becomes more and more severe, as at present. In Japan so-called "state-socialism" is put into force to a great extent, and industry is nationalized in a very wide field, i.e., the postal system, telephones and telegraph, public utilities, railways, tobacco, etc. More than that, all great industrial and commercial undertakings such as banking, shipbuilding, shipping, etc., were really started directly by the government or indirectly under governmental protection. The Japanese people are still habitually inclined to wait for or depend upon government initiation or subsidy for great industrial and commercial enterprises. They are handicapped from the start in their economic competition with Western peoples. It is in this sense that Viscount Kaneko, one of the framers of the Japanese Constitution and now a member of the Privy Council, expressed his somewhat pessimistic opinion that "the Constitution has been issued and laws and codes have been brought to a certain perfection, and we now possess a complete skeleton of a State. But in the point of muscle and blood, which I term the economic State, it is far from complete."<sup>9</sup>

Of course, history does not stand still. Everything in the universe is moving in some direction. All things in Japan are also changing very rapidly, even much more rapidly than in other countries. The

New develop-  
ment

<sup>9</sup> Viscount K. Kaneko, *Japan by the Japanese*, edited by Stead, p. 93

old cooperative and self-sacrificing spirit is more and more weakened, and the people are becoming more and more individualistic, following the general tendency of the world. The industrial revolution which started in Japan towards the end of the last century is changing all phases of the Japanese life. The distribution of wealth is becoming more uneven, and social problems are attracting more attention from the general public. The government is certainly becoming more democratic. The power of political parties is becoming more and more strong. How far these changes will go, how far the new idea of individualism and the old idea of self-sacrifice will conflict, how far these two, new and old, will be reconciled in Japan—all these are questions for the future.

## CHAPTER TWO

### THE POLITICAL HISTORY OF JAPAN

**W**ITH respect to the early history of the Japanese Empire until the reign of the tenth Emperor there is no authoritative or reliable material, but it is generally believed by traditions and myths that the Empire was founded by Emperor Jimmu, the first Emperor of Japan, in 660 B C. He is the founder of the present Japanese Dynasty, and since then Japan has been governed by the unbroken line of this Dynasty. His government was based on the so-called "patriarchal system," which was also the basis of the primitive government of those Aryan races who have dominated the European stage. What Woodrow Wilson once said about the origin of the government of those Aryan races is also true of the Japanese people. According to Wilson,<sup>1</sup> among those Aryan peoples there was first the family, ruled by the father as king and priest. There was no majority for the sons so long as their father lived. They might marry and have children, but they could have no entirely separate and independent authority during their father's life. Such a group natur-

Beginning  
of the Em-  
pire, 660 B C

<sup>1</sup> Woodrow Wilson, under the influence of the writings of Sir Henry Sumner Maine, at one time held these views, but later, as the result of further study, greatly modified or relinquished them [Ed]

ally broadened in time into the "house" or "gens" but this group was also ruled by a chief kinsman. As the social order widened, houses were in their turn absorbed into a tribe, but within a tribe kinship was still deemed the bond of union. At last tribes united to form a State, but the State ousted both the house and the tribe from their function as a political unit, and came itself to rest, not upon these for foundation, but upon the family, the original foundation of the social structure. Thus in a State kinship ceased to function as the bond of union.<sup>2</sup>

Restoration  
of Taika  
(A.D. 645-  
649)

In Japan this patriarchal government or the government based upon kinship continued to exist until the middle of the Seventh Century, when the great restoration called "The Restoration of Taika" (A.D. 645-649) took place and the government changed its form from a patriarchal to a real State, the Emperor governing the country not as a patriarch or a chief kinsman, but as a real monarch. After this time the Emperor continued to govern as a direct head of the State until the middle of the Twelfth Century. But this does not mean that the Emperor constantly had "personal rule." From the beginning of the Empire certain families served the Emperor as hereditary Ministers of State who carried out all duties of the government under the supervision of the Emperor. But in the Sixth Century Buddhism was introduced into Japan and it influenced political affairs a great deal, encouraging the practice of abdication of an Emperor so that the Emperor might

<sup>2</sup> Woodrow Wilson, *op cit*, p. 56

retire to a life of seclusion and meditation in a monastery. The Emperor on the throne was usually young. This state of things led gradually to great abuses. Energetic court nobles began to take the administration into their own hands.

At last, in the middle of the Seventh Century, the Fujiwara family commenced to monopolize all governmental civil offices and to retain actual political powers in their own hands. They successively sent Empresses to the Emperor's Court from their family, and constantly resorted to the encouragement of abdication on the part of the Emperor and to having the throne occupied by a very young royal prince, who would always need the supervision of the Fujiwaras. This kind of "supervisory statesmanship" they continued to practise with more or less success for four or five centuries. But the Fujiwaras were careful to maintain the center of political activity in the Court, and at least on the face of things the Emperor seemed to exercise the supreme authority.

In the Twelfth Century this Fujiwara aristocracy became, as the result of long hereditary office-holding, corrupt, and the military class gradually encroached upon the power of these civilians. At last, towards the close of the Twelfth Century Yoritomo Minamoto, a military leader, who emerged victorious out of the struggle, began to assume all political powers. In 1210 the Emperor conferred upon him the title of Shogun (Sentaishogun in full), or Generalissimo, the highest honor ever given to a military man. He established his headquarters,

Fujiwara  
aristocracyMinamoto  
Shogunate

known as Bakufu (Tent-Government or Military Government), at Kamakura, far away from the Imperial Court at Kyoto, and carried on all governmental affairs at Kamakura. Thus, even in form, to say nothing of substance, all powers were now exercised by the Shogun. Previously all provincial governors had been civilians sent from the Imperial Court at Kyoto, but the newly appointed Shogun was now authorized to appoint military men to assist the civilian governors. These military men, who became stronger than the civilians in the course of time, gradually took the administrative power into their hands, and finally displaced the civilians. Thus under the Yoritomo administration was laid the foundation of the Japanese feudalism.

Hojo  
Regency

Ashikaga  
Shogunate

But after the death of Yoritomo the power of the Shogun was usurped by the Hojo family under the pretext of a regency, with a puppet Shogun at the head. This Hojo régime had lasted almost one century and a half, when a new family called Ashikaga came to power in 1333, after a short period of the direct rule of the Emperor. This new family settled their military government in Kyoto, the place of the Imperial Court, but they exercised their power entirely independently of the Imperial Court. In spite of their unpopularity this family succeeded in holding the power for almost two centuries and a half; but in the Seventies of the Sixteenth Century general civil strife started among feudal lords and this Ashikaga régime was brought to an end. After a short period of the Toyotomi régime, which brought



domestic peace to the country, Iyeyasu Tokugawa, the founder of the Tokugawa Shogunate, secured the power and received the title of Shogun in 1603. By its skilful control of feudal lords this Tokugawa régime lasted until 1867, when the so-called "Restoration of Meiji" took place and the general power of government was actually restored to the Emperor.

Tokugawa  
Shogunate

Now, before proceeding to the political development of modern Japan after the Restoration of 1867, the writer calls the attention of the reader to the outstanding characteristics of the Shogunate government, as compared with the governmental system of modern Japan.

Outstanding  
characteris-  
tics of the  
Shogunate  
government

First, the power of the Emperor is exercised by the hereditary Shogun. It is absolutely true that the form of the Japanese government as an hereditary monarchy has never changed from the beginning of the Empire, and the supreme power always rests with the Emperor, but with the advent of the Shogunate government almost all governing powers were delegated to the Shogun, who was considered as exercising the power in the name of the Emperor, as the hereditary representative of the Emperor. This fact may be proved by the tradition that when a new Shogun assumes his duty, he is formally appointed by the Emperor; important political affairs are conducted by the Shogun, sometimes with the consent of the Emperor; and the power to confer orders or other marks of honor is retained by the

(1)  
Hereditary  
Regency of  
the Emperor

Emperor The Shogun never exercises the power as his own. His position is something like an hereditary Regent of the Emperor.

(2)  
Decentral-  
ized  
government

Second, the Shogunate government is an extremely decentralized government The whole country is divided into many feudal fiefs, which are governed by the respective feudal lords almost independently of the central government The power of the Shogun is exercised only over feudal lords, not over the people themselves, who are exclusively subject to the power of their respective feudal lords. Of course, the powers concerning foreign affairs, coinage, transportation, etc , are concentrated in the hands of the central government, but other powers regarding national defense, civil and criminal justice, police, taxation, and so forth, within a feudal fief are exclusively exercised by the feudal lord. On the exercise of these powers within a feudal fief the central government has only a very weak supervisory power, such as the power to deprive the feudal lord of his fief in the case of his extremely bad administration One of the important differences between this feudal fief and a member State of a modern federation is that a member State of a federation has the right to participate in the central government, i e , the right to sanction a constitutional amendment, the right to be represented in the Senate as in the United States, while this Japanese feudal district has no right to participate in the central government.

Third, the government is based on proprietorship of land and personal allegiance. The Shogun, as the highest owner of the land under the Emperor, gives land-ownership as a fief to local barons, in addition to his own vassals, and (local barons in their turn give land-ownership within their own fief to their respective vassals.) Each vassal must pledge his allegiance to his respective baron, and barons in their turn assume the duty of allegiance to the Shogun. On the other hand, ownership of land accompanies the right to govern the inhabitants thereon. Woodrow Wilson put this characteristic of feudalism in the following way. He said, "Union there was none, but only interdependence. Allegiance bowed, not to law, or to fatherhood, but to ownership. The functions of government under such a system were simply the functions of proprietorship, of command and obedience."<sup>3</sup>

(3)  
Proprietor-  
ship and  
obedience as  
the basis of  
the govern-  
ment

Fourth, class privileges are also the basis of the government. The people are divided into several classes, i.e., court nobles, feudal barons, warriors and common people. Court nobles assume the duty of allegiance to the Emperor, and are independent of the Shogun and feudal lords. Feudal lords assume that duty to the Shogun, and they are the heads of local government. Warriors are vassals of the Shogun or feudal lords, and have the privileges of participating in public affairs, civil administration or military services. They are forbidden to engage in

(4)  
Government  
on class  
privileges

<sup>3</sup> Woodrow Wilson, op cit, p 47

ordinary business / Common people are the lowest class, and they are exclusively confined to ordinary business, being excluded from public affairs

Restoration  
of 1867

It was the Restoration of 1867 which overthrew this form of feudal monarchy and established the beginning of the modern form of constitutional government. Then how was this Restoration brought about and accomplished? Of course, there are many

Causes of the  
Restoration

reasons which are responsible for the downfall of feudalism, but a reason which is peculiar to the downfall of Japanese feudalism is this. On the one hand, the study of the old history of Japan disclosed to the people the fact that in former days the Empire had been under the direct government of the Emperor and the power of the Shogun was nothing but a result of the usurpation of the Emperor's power. On the other hand, towards the end of the Tokugawa régime when the power of the Shogun was very much weakened, Japan, which had been secluded from the outside world, was faced with the strong demands of foreign countries to open the country to foreign commerce. The general public was strongly opposed to opening the country to foreigners, because it believed that to open the country to foreigners was to open the country to foreign aggressions. But the foreign demands were so strong that the Shogunate government was finally forced to open the country. As a matter of course, the general public became very much excited against the government, and the prestige of the Shogunate government was reduced to almost nothing. Move-

ments for the abolition of the Shogunate and for the restoration of the Emperor to power arose in many places. This occasion was taken by the four big clans in southwestern Japan, who had wanted to overthrow the Shogunate régime on account of their own absolute exclusion from the central government, to achieve their object by force, and they finally succeeded in restoring the power to the Emperor, under whose government they now actually exercised the power

The first step in the Restoration was the abolition of the Shogunate government. In October, 1867, the Shogun tendered his letter of resignation to the Emperor, and the Emperor approved it the following day. By this act the Shogunate government was legally abolished, and the governing power of the country was restored to the Emperor. The second step of the Restoration was the abolition of the feudal system. This was realized by the transfer of land and people from feudal lords to the Emperor in June, 1868, and finally completed by the reorganization of provincial government, which was now governed by a civilian governor, appointed by the Emperor. The third step was the abolition of all class privileges. In 1870 those who had belonged to the warrior class were newly permitted to engage in business, and common people were allowed to enter into public duty, civil or military. The principle that all the people are equal before the law was established. But in 1884 the five titles of nobility—Prince, Marquis, Count, Viscount and Baron

Steps of the  
Restoration

—were conferred upon former court nobles and feudal lords, and the Constitution of 1889 gave to these classes the right to sit in the Upper House, restoring class privileges in some measure.

Constitu-  
tional move-  
ment

The form of feudal monarchy was abandoned by the Restoration, but it was not before 1890 that the government was founded on a constitutional basis. The government which emerged out of the Restoration was a despotic, bureaucratic monarchy. This period of two decades, however, from the downfall of the Japanese feudalism to the establishment of the Japanese constitutionalism, is very short as compared with the period which European countries passed through from the downfall of feudalism to the introduction of modern constitutionalism. This fact must be borne in mind in studying Japanese politics. Now, the period from the Restoration of 1867 to the promulgation of the Constitution in 1889 is really a period of preparation for a constitutional government. The idea of constitutionalism in the Western world was introduced into Japan towards the end of the Tokugawa administration, and even those statesmen who took part in the Restoration realized that they must turn to the establishment of a constitutional government.

Charter Oath  
of 1868

The Charter Oath of the Emperor of 1868, which is sometimes called the Japanese Magna Carta, ran as follows

- 1 Deliberative assemblies shall be established and all measures of government decided in accordance with public opinion

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- 2 All classes, high and low, shall unite in vigorously carrying on the affairs of State.
- 3 All common people, no less than the civil and military officials, shall be allowed to fulfil their just desires, so that there may not be any discontent among them
- 4 All the absurd usages of old shall be broken through, and the equity and justice to be found in the workings of nature shall serve as the basis of action
- 5 Wisdom and knowledge shall be sought throughout the world for the purpose of promoting the welfare of the Empire <sup>4</sup>

Accordingly, even at the beginning, the new government adopted the principle of separation of powers in some measure, distinguishing between the executive and the legislative. The legislative consisted of two divisions, the upper division being composed of members appointed directly by the Emperor, the lower division of representatives of provincial governments. The organization of the legislative underwent many changes until the promulgation of the Constitution in 1889, but it was always a mere organ of the government, the people having no right to be represented in it.

Separation of  
the legisla-  
tive from the  
executive

Of course, the government acknowledged the necessity of adopting constitutionalism, and in fact it did send several outstanding statesmen abroad to study constitutional government in the Western

Policy of  
steady  
development

<sup>4</sup> R. Fujisawa, *The Recent Aims and Political Development of Japan*, pp. 50-51

world, but the policy was to avoid radical changes as much as possible and to proceed gradually to a constitutional basis

Clan govern-  
ment and the  
rise of  
political  
parties

Since the Restoration was brought about chiefly by the force of four big clans, as said above, it was very natural that the newly-established government of the Emperor should be controlled by these clans. Almost all high offices of the government were filled by them. The government was called "clan government." But as time went on, the unity among the clans was loosened by their struggle for supremacy in the government, and at last the two big clans (Choshu and Satsuma) came out victorious in the contest. The general public, especially those clans who were expelled from the government, aroused strong agitation to abolish despotism and petitioned the government for the establishment of a popular assembly. Many political associations were formed. Among them there were two outstanding groups; one is the Jiyu-To Party (literally, Liberal Party) of which the present Seiyu-Kai Party (literally, Political Fraternal Association) was formed, the other is the Kaishin-To Party (Progressive Party) which constitutes the main part of the present Minsei-To Party (Popular Government Party) which has recently been reorganized from the former Kensei-Kai Party (Constitutional Government Association). More than that, during the period from 1872 to 1877, there occurred many riots by mobs which aimed to overthrow the clan government by force,



but those riots were suppressed by the government after a hard struggle.

This state of things led the government to make haste in establishing a constitutional government. In 1878 the government issued an ordinance which provided for a prefectural popular assembly, and also in 1880 it issued an ordinance which provided for popular assemblies in cities, towns, and villages. These local assemblies were established chiefly to make preparation for a national popular assembly.

Establish-  
ment of local  
popular  
assembly

Finally, on October 12, 1881, the government issued a decree announcing the establishment of a national popular assembly in 1890, and in the following year it ordered Mr Ito, later Prince Ito, the chief framer of the Japanese Constitution, to visit Western countries in order to investigate the practice of constitutional government. Ito himself studied chiefly the German and Austrian systems because he believed that the system of England was too democratic and was not fitted for Japan. It is a matter of course, therefore, that the Japanese Constitution was influenced by the German and Austrian systems in great measure. On the eleventh of February, 1889, the Constitution was finally granted by the Emperor, with the result that the first election for the Diet was held in July 1890 and the first session of that body was convened in November of the same year.

Promulga-  
tion of the  
Constitution

## CHAPTER THREE

### THE JAPANESE CONSTITUTION

Salient features of the Japanese Constitution

**D**R HOZUMI said, "I can speak from personal knowledge, that the principal care of Prince Ito, in preparing the draft of the Constitution by the command of his Sovereign, was to reconcile and bring into harmony the traditional character of the government, based on the cult of the Imperial Ancestor, with the most advanced principles of modern constitutionalism."<sup>1</sup> Indeed, the Constitution of Japan is the result of a compromise between the old monarchical traditions and the new constitutional idea. How these two ideas are reconciled in the Japanese Constitution may be summarized in the following way

(1)  
Monarchism

First, nobody will deny that the Japanese government is a strong monarchy. Mr Clement calls this feature "constitutional imperialism." He said, "It is 'Imperialism' in origin, in essence, and in substance, in theory and in fact; but it has been, is being, and will be, greatly modified by 'constitutional' elements."<sup>2</sup> The strong monarchical features of the Japanese government are as follows:

I. The power to take initiative in a constitu-

<sup>1</sup> N Hozumi, op cit, p 93.

<sup>2</sup> Clement, op cit, p 53.

tional amendment is exclusively reserved to the Imperial Throne.<sup>3</sup> The Diet cannot initiate the project of a constitutional amendment, and even the people cannot petition for it.

II. The Succession to the Imperial Throne, the institution of a regency and other matters concerning the Imperial House are to be determined by the Imperial House itself, and the Diet cannot interfere with them.<sup>4</sup> Even the people cannot petition in regard to these matters. In monarchical countries of Europe the succession to the Crown or the institution of a regency is usually regulated by a statute which is passed by the parliament.

III. The Imperial Throne issues ordinances for the maintenance of the public peace and order, and for the promotion of the welfare of the people, provided that they shall in no way alter any of the existing laws.<sup>5</sup> Some countries recognize the ordinance power of the monarch for the maintenance of the public peace and order, but there are very few countries which recognize the ordinance power even for the promotion of the welfare of the people.

IV. The Imperial Throne issues emergency ordinances in place of laws in consequence of an urgent necessity to maintain public safety or avert public calamities, provided that the Diet is not sitting.<sup>6</sup> The government also may take all necessary financial measures by means of an Imperial ordi-

<sup>3</sup> The Constitution, Art. 73.

<sup>4</sup> The Constitution, Art. 2, 17, 74.

<sup>5</sup> The Constitution, Art. 9.

<sup>6</sup> The Constitution, Art. 8.

nance, in case of urgent need for the maintenance of public safety, provided that the Diet cannot be convoked owing to the external or internal condition of the country.<sup>7</sup> These powers were recognized in Germany and Austria before the World War, but at present they are very exceptional

V. The power to declare war, to make peace and to conclude treaties is unconditionally vested in the Imperial Throne.<sup>8</sup> In monarchical countries the monarch usually has the power to conclude treaties, but those treaties which affect the rights and duties of the people, or the national treasury, as a rule, require the consent of the parliament. Moreover, the war and peace power of the monarch is also limited by the will of the parliament

VI. The Constitution provides for the Privy Council which is the highest advisory body of the Imperial Throne.<sup>9</sup> Important matters of State must be referred to this body, even though they are also laid before the Diet. The organization of the Privy Council is regulated by Imperial ordinance, but an amendment to this ordinance requires the consent of the Privy Council, for fear that otherwise the ordinance may be freely amended by the Throne

VII. The second House of the Diet, the House of Peers, is composed of royal princes, peers, and persons who are nominated by the Throne, and what is more peculiar, the organization of this House is

<sup>7</sup> The Constitution, Art 70

<sup>8</sup> The Constitution, Art 13

<sup>9</sup> The Constitution, Art 56

reserved to an Imperial ordinance, and, therefore, is outside the power of the House of Representatives.<sup>10</sup> But this does not mean that the Imperial ordinance concerning this second House can be amended by the Throne at its own discretion. On the contrary, it is provided that the consent of the House of Peers is necessary to the amendment of this ordinance.<sup>11</sup>

Second, the Japanese government adopts the principles of modern constitutionalism. As the result of the large power of the Imperial Throne, the power of the Diet is more or less weak, as compared with that of other modern countries, but in other respects the Constitution adopts most of the principles of modern constitutionalism <sup>(2)</sup>Constitutionalism

I. The Constitution is a written one. The principle of a written constitution which results from the demand for a government of law, not of persons, which is one result of the doctrine of liberty and equality, was first adopted by the United States and France, and at present this principle is prevalent throughout all modern countries.

II. The Constitution provides the bicameral system of parliament, which is also adopted by most modern countries.<sup>12</sup> But the organization of the Houses of the Diet, especially that of the Upper House, is considerably different from that of other countries, and it must be changed a good deal in order to meet the true spirit of constitutionalism.

<sup>10</sup> The Constitution, Art. 34

<sup>11</sup> The Ordinance concerning the House of Peers, Art. 13

<sup>12</sup> The Constitution, Art. 33

The direct participation in the government of the people by means of referendum, which is found in a number of countries, i e , Switzerland, the United States, Germany, etc , is not permitted in the Japanese Constitution

III The principle of separation of powers is also followed in Japan to some extent But the strict separation of powers as we see it in the United States does not obtain in Japan The executive and the legislative are not entirely separated the Throne sanctions a law, the government can initiate projects of law, Cabinet Ministers can be members of the Diet and speak in both Houses at any time, the Diet can interpellate the government and the government can dissolve the House of Representatives <sup>13</sup> The extent to which the Japanese Constitution adopts the principle of separation of powers is that the three powers, the legislative, the executive, and the judicial, are not exercised by the same organ the legislative power is exercised by the Throne with the consent of the Diet,<sup>14</sup> the executive power by the Throne with the advice of the Cabinet Ministers,<sup>15</sup> and the judicial power by the courts of law in the name of the Throne <sup>16</sup>

IV The Constitution does not expressly provide that the Cabinet is responsible to the Diet <sup>17</sup> During a certain period after the promulgation of the Con-

<sup>13</sup> The Constitution, Ch III

<sup>14</sup> The Constitution, Art 5

<sup>15</sup> The Constitution, Art 55

<sup>16</sup> The Constitution, Art 57

<sup>17</sup> The Constitution, Art 55

stitution, the Cabinet was not responsible to the Diet, but the custom of parliamentary responsibility of the Cabinet has been practically established of late.

V In Japan there is no system of impeachment against Ministers of State or Cabinet Ministers. The Diet has no power to accuse a Minister of State for his political acts, or to constitute the Court of Impeachment in such a case. Of course, Ministers of State are subject to the jurisdiction of the courts of law for their violation of laws.

VI The Constitution does not provide for the independence of the commanding power over armed forces from the Cabinet and the Diet,<sup>18</sup> but this independence has been established in practice.

VII The guaranty of individual rights and liberty provided for in the Constitution is only a guaranty against the executive, not against the legislative. Individuals enjoy their rights and liberty only within the limits of laws.<sup>19</sup>

Third, Japan is a unitary State. In principle, all (3)  
rights of sovereignty reside with the central gov- Unitarianism  
ernment. To this principle of centralization only two exceptions may be cited. One is local self-government, though its extent is small. The other is the separation of colonial government from the central government, which means that in principle the power of the central government is confined to a general supervision over colonial government, ex-

<sup>18</sup> The Constitution, Art. 11

<sup>19</sup> The Constitution, Ch. II

cept the former has the power to enact laws and Imperial ordinances binding upon colonies.

Interpreta-  
tion of the  
Constitution

There is no express provision in the Constitution which stipulates the interpretation thereof. But as the Imperial Throne, the Diet, and the courts of law are independent of one another within their own functions, they also have the power to interpret the Constitution, so far as their own functions or powers are concerned, though the interpretation of any of them is not binding on the other two. Nevertheless, when the Throne and the Diet have fixed the interpretations by a statute passed by the Diet and sanctioned by the Throne, the interpretation becomes authoritative and even the courts of law must be subject to this interpretation, because in Japan a statute is the highest will expressed by the State under the Constitution and all things are bound by a statute.<sup>20</sup>

Amendment  
of the  
Constitution

The procedure of a constitutional amendment is more complicated than that of ordinary law-making. Therefore, the Japanese Constitution is among the so-called "rigid" or "inflexible" constitutions. First, the power to initiate a constitutional amendment is exclusively reserved to the Throne. In ordinary law-making both Houses of the Diet have the initiating power, but they have no initiative for amending the Constitution. From this it is also inferred that even when a projected amendment has been submitted by the Imperial order to the Diet, the Diet cannot take

<sup>20</sup> Dr. Tatsukichi Minobe, *Essentials of the Japanese Constitutional Law*, p. 104.



a vote on any matter other than what is contained in that project. Second, neither House can open the debate, unless not less than two-thirds of the whole members are present, and no amendment can be passed unless a majority of not less than two-thirds of the members present is obtained,<sup>21</sup> while the ordinary law-making procedure requires only the presence of one-third of the whole members, and the consent of the majority of the members present.<sup>22</sup> Third, during the time a regency is instituted, the Constitution can not be amended at all, even though there is urgent necessity for it.<sup>23</sup> Since its promulgation in 1889 the Constitution has never been amended, partly because the initiative for the amendment is exclusively reserved to the Throne, partly because the Constitution provides for only general principles, leaving details to statutes and Imperial ordinances. But since the courts of law can not annul unconstitutional statutes, as stated later, the Constitution is open to amendment by a statute in spite of the opinion of the framers that the Diet is not allowed to evade this restriction of the constitutional amendment "by voting a law that may directly or indirectly affect any of the principles of the present Constitution."<sup>24</sup>

<sup>21</sup> The Constitution, Art 73

<sup>22</sup> The Constitution, Art 46 & 47

<sup>23</sup> The Constitution, Art 75

<sup>24</sup> Ito, Commentaries on the Constitution of the Empire of Japan, p 155

## CHAPTER FOUR

### THE IMPERIAL THRONE

The Throne  
and the  
Emperor

**M**R GLADSTONE once remarked that there is no distinction more vital to the practice of the British Constitution than that which exists between the King and the Crown, between the monarch as an individual and monarchy as an institution.<sup>1</sup> Professor Munro also says that the whole development of the British Constitution, in fact, has been marked by a steady transfer of powers and prerogatives from the monarch as a person to the Crown as an institution.<sup>2</sup> This differentiation between the monarch and the monarchy may also be applied to Japan in some measure. As pointed out in the preceding chapters, the Emperor of Japan long ago ceased in reality to be an autocratic ruler, and the actual administrative power of the State passed almost entirely into the hands of the Ministers of State. Dr. Fujisawa says, "The Emperor of Japan reigns but does not rule, just as the King of England reigns but does not rule."<sup>3</sup> It is true that the Emperor of Japan has a far greater moral power than the British King by virtue of the particular traditions of Japan, but he never attempts to as-

<sup>1</sup> W. B. Munro, *Government of Europe*, p. 37

<sup>2</sup> *loc cit*

<sup>3</sup> R. Fujisawa, *op cit*, p. 55

sume the actual rulership<sup>4</sup> Dr. Uyehara says, "The Sovereign of Japan does not direct in person the policy of the State; he entrusts it to his Cabinet Ministers under the leadership of the Minister-President. He is not entangled in the practical politics of the country, but is independent of and stands aloof from them."<sup>5</sup> This state of things reached its climax when the Shogun, *de facto* ruler of the country, got almost all political powers in his hands After the Restoration of 1867 the powers were restored to the Emperor from the Shogun, but almost all State affairs were conducted by the Ministers of State Especially after the promulgation of the Constitution, the exercise of the powers of the Emperor became subject to many legal restrictions Thus there is quite a difference between the legal powers of the Throne and the actual powers of the Emperor

The Imperial Throne is succeeded to by Imperial male descendants in the male line of Imperial Ancestors according to the principle of primogeniture.<sup>6</sup> But there is one thing which is quite different from customs in other countries That is to say, the regulation concerning the order of succession is exclusively left to the Imperial House Law which was promulgated at the same time with the Constitution, and the people and the Diet are entirely prohibited from intervening in the amendment of this law.<sup>7</sup> Prince Ito says, "As regards the order of succession,

The succession to the Throne

<sup>4</sup> K K Kawakami, Japan and World Peace, pp 29-31

<sup>5</sup> Y Uyehara, *supra*, pp 200-201

<sup>6</sup> The Constitution, Art 2, Imperial House Law, Art 1

<sup>7</sup> The Constitution, Art 2, 74, Imperial House Law, Art 62

minute provisions have been already made in the Imperial House Law, lately determined by His Imperial Majesty. This law will be regarded as the family law of the Imperial House. That these provisions are not expressed in the Constitution, shows that no interference of the subject shall ever be tolerated regarding them.”<sup>8</sup> In Great Britain the rules of succession are regulated by an Act of Parliament, the existing rules being established by the Act of Parliament of 1701

Regency and  
temporary  
regency

When the Emperor is a minor or he is prevented by some permanent cause, such as a serious illness, from exercising his power, a regency is instituted with the advice of the Imperial Family Council and the Privy Council.<sup>9</sup> The institution of a regency is also reserved to the Imperial House Law, and the people and the Diet are not allowed to interfere with it. Prince Ito says that such a practice as to ask the parliament to vote upon the necessity of instituting a regency “is open to the objection that, as the decision of a matter of great importance to the Imperial Family is thus delegated to the will of the majority of the people, there would be a tending to bring about degradation of the Imperial dignity.”<sup>10</sup> When the Emperor cannot exercise his power on account of his temporary illness, his journey abroad or other temporary causes, a regent cannot be instituted, but it is a practical necessity for

<sup>8</sup> Ito, *op cit*, p 6

<sup>9</sup> The Constitution, Art 17, Imperial House Law, Art 19

<sup>10</sup> Ito, *op cit*, p 37

the Emperor to entrust some member of the Imperial Family as to the exercise of his power within certain limits, and most Japanese jurists are agreed upon this point.<sup>11</sup>

The Constitution provides, "The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal,"<sup>12</sup> and also provides, "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"<sup>13</sup> Prince Ito expounds these provisions as follows "The Sacred Throne of Japan is inherited from Imperial Ancestors, and is to be bequeathed to posterity, in it resides the power to reign over and govern the State That express provisions concerning the sovereign power are especially mentioned in the Articles of the Constitution, in no way implies that any newly-settled opinion thereon is set forth by the Constitution, on the contrary, the original national polity is by no means changed by it, but is more strongly confirmed"<sup>14</sup> "All the different legislative as well as executive powers of State by means of which he reigns over the country and governs the people, are united in this most Exalted Personage, who thus holds in his hands, as it were, all the ramifying threads of the political life of the country, just as the brain, in the human body, is the primitive source of all mental

The sovereignty and the Imperial Throne

<sup>11</sup> Dr T Minobe, *op cit*, p 262

<sup>12</sup> Constitution, Art 1

<sup>13</sup> Constitution, Art 4

<sup>14</sup> Ito, *op cit*, p 2

activity manifested through the four limbs and the different parts of the body.”<sup>15</sup> “The use of the Diet is to enable the Head of the State to perform his functions, and to keep the will of State in a well-disciplined, strong and healthy condition. The legislative power is ultimately under the control of the Emperor, while the duty of the Diet is to give advice and consent.”<sup>16</sup> This opinion of Prince Ito is much influenced by the German theories concerning the nature of the constitutional monarch. According to the recent German jurisprudence, the King of Prussia was the sole bearer and exerciser of the sovereignty of the State, notwithstanding the fact that by the grant of a written constitution he had prescribed for himself certain forms in conformity with which his powers were to be exercised. For instance, Von Ronne says, “As in constitutional monarchies in general, so in the Prussian State, the right of the supreme direction of the State belongs exclusively to the King as its head, and no act of government may be performed without his assent or against his will. All the prerogatives of the State are united in his person, and his will is supreme, the officials being only organs through which he acts.”<sup>17</sup>

Political  
sovereignty

What is meant by “sovereignty” anyway? No one will deny that sovereignty means the supreme will in the State. Then who formulates this supreme will? On the one hand, it is said that in all countries the

<sup>15</sup> Ito, *op. cit.*, p. 7

<sup>16</sup> *idem*, p. 11

<sup>17</sup> Willoughby and Rogers, *An Introduction to the Problem of Government*, p. 356

monarch is the only person who constitutes the supreme will, while on the other hand, it is maintained that in all countries the supreme will emanates from the people. But both seem to be wrong. This question entirely depends upon the history of a nation. It is certainly true that in unlimited monarchies the monarch exclusively formulates the sovereign will, while it is equally true that in republics the people or the parliament, the representative body of the people, exclusively formulates the supreme will. But in the case of limited monarchies, especially modern constitutional monarchies, neither the monarch nor the people can formulate the supreme will without the consent of the other. The Constitution of Japan also provides, "The Emperor exercises the legislative power with the consent of the Imperial Diet."<sup>18</sup>

The framers of the Constitution and some Japanese constitutional lawyers argue that the sovereignty resides with the Emperor, and the consent of the Diet in legislation is merely a limitation on the *exercise* of the sovereignty. But if the consent of the Diet is the necessary condition precedent to the formulation of the supreme will—the Constitution and ordinary statutes—it is a mistake to say that the Emperor is the sole bearer of the sovereignty, so far as the sovereignty in the political sense is concerned.<sup>19</sup> Moreover, the Emperor cannot exercise the power without the advice of the Cabinet Ministers,<sup>20</sup>

<sup>18</sup> Constitution, Art. 5

<sup>19</sup> Dr. T. Minobe, *op. cit.*, pp. 52-55

<sup>20</sup> Constitution, Art. 55

whose responsibility to the Diet has been almost established by custom. In that sense the Imperial Throne is greatly influenced by the Diet, but the Throne is not wholly under the control of the Diet as in England. In Japan there are several organs, legal or extra-legal, which check the power of the Cabinet. Among them are the so-called "Elder Statesmen,"<sup>21</sup> the Privy Council and the Lord Privy Seal. Not only that, but the power of the Cabinet does not extend to the command of the army and navy, most of the Imperial House affairs, and the conferment of honors. Nevertheless, it is true that the Cabinet, and therefore the Diet, holds the most influential part in Japanese politics.

Legal  
sovereignty

Of course, legally speaking, the sovereignty is vested in the Emperor. The consent of the Diet in legislation is only a condition precedent to the formulation of the supreme will by the Emperor, and therefore all laws in which the Diet has taken part are also promulgated as the will of the Emperor. This may be seen from a preamble attached to a statute. It says, "We [the Emperor] sanction and promulgate the following law with the consent of the Imperial Diet" or "We sanction and promulgate the following law with the consent of the Imperial Diet and with the advice of the Privy Council."

Powers of  
the Throne

The power of the Throne may be divided into the following five categories: (1) the power in the Imperial House affairs, (2) the power in the command

<sup>21</sup> The Genrō, nowhere mentioned in the Constitution or fundamental laws [Ed.]



of the army and navy, (3) the power in the conferment of honors, (4) the power in ritualistic affairs, and (5) the power in the general State affairs <sup>22</sup>

The power in regard to the Imperial House af-  
 (1)  
 Imperial  
 House power  
 fairs is clearly separated from the power concerning the general State affairs, and exercised by the Emperor as the patriarch of the Imperial Family, chiefly with the advice of the Minister of the Imperial Household, who is entirely independent of the Cabinet. Before the promulgation of the Constitution there was no distinction between ordinary State affairs and Imperial House affairs, and both were under the control of the Council of State, the predecessor of the Cabinet. The property of the Imperial House and that of the State were mixed. But just before the promulgation of the Constitution, Imperial House affairs were separated from general State affairs, and they came to be conducted by the independent Minister of the Imperial Household. This separation of Imperial House affairs from general State affairs was completed by the Constitution, which placed the former outside the power of the Diet <sup>23</sup>. But this category of Imperial House affairs contains matters which are not only royal family affairs, but also have a great deal to do with the people and the State itself, such as the succession to the Throne, the institution of a regency, legislation concerning the Imperial House affairs, <sup>24</sup> and the su-

<sup>22</sup> Dr. T. Minobe, *op. cit.*, pp. 207-208

<sup>23</sup> *ibid.*, p. 213

<sup>24</sup> Constitution, Art. 74

pervision over peers. In regard to these matters the Cabinet is also consulted. On the contrary, other matters which are exclusively Imperial House affairs are, in principle, left to the autonomy of the Imperial House, and the members of the Imperial House are, as a rule, not subject to ordinary laws of State, civil or criminal

Organs of  
the Imperial  
House power

In the exercise of this power the Minister of the Imperial Household chiefly advises the Emperor, as do Cabinet Ministers in general State affairs. Besides, there is the Lord Privy Seal, who always advises the Emperor in both State affairs and Imperial House affairs, though his post is not a responsible one. For this reason he countersigns the Imperial Order to appoint the Prime Minister and the Minister of the Imperial Household. As a deliberative body, there are the Privy Council and the Imperial Family Council, which deliberate upon the important matters of the Imperial House.

(2)  
Military  
command  
power

The power to command armed forces as the commander-in-chief is also separated from ordinary State affairs and therefore is placed outside the power of the Cabinet. There is no express provision in the Constitution to provide for this independence of military commanding power,<sup>25</sup> but it was established by custom, to meet the practical necessity of preserving military secrets and of increasing the fighting strength of armed forces.<sup>26</sup> But there is the one difficulty that the command of armed forces is so closely

<sup>25</sup> Constitution, Art. 11.

<sup>26</sup> Dr. T. Minobe, *op. cit.*, pp. 219-220, 552-553.

connected with the organization of armed forces, which is within the power of the Cabinet and the Diet,<sup>27</sup> that it is very hard to draw a line between these two powers. As a result the demarcation between them has been fixed by practice rather than theory, and in practice the power of command is somewhat large.

In exercising this power of military command, the Emperor is principally advised by the chief of the army and navy general staffs. The Minister of the Army and the Minister of the Navy, who are members of the Cabinet which is secluded from this power, also advise the Emperor in regard to this command of military forces, not as Cabinet Ministers, but as organs of the military command, because those Ministers are required by the Imperial Ordinance to be, respectively, generals or lieutenant-generals in the army or admirals or vice-admirals in the navy (inclusive of men on the reserve list), and they deal with matters of military organization which are closely related to the military command. When Cabinet Ministers advise the Emperor, they must advise through the Prime Minister, but the Minister of the Army and the Minister of the Navy can advise the Emperor directly, so far as the military command is concerned.<sup>28</sup>

Organs of  
military  
command

The power to confer titles of nobility, rank, orders and other marks of honor<sup>29</sup> is also distinguished

(3)  
Honor power

<sup>27</sup> Constitution, Art 12

<sup>28</sup> Dr T. Minobe, *op cit*, pp 556-557 K. K. Kawakami, *What Japan Thinks*, pp 86-87

<sup>29</sup> Constitution, Art 15

from ordinary State affairs by custom. Even under the Tokugawa régime this power of conferring honors was retained by the Emperor. The power to confer titles of nobility and rank is exercised with the advice of the Minister of the Imperial Household, while the power of conferring other honors is with the advice of the Cabinet.<sup>30</sup>

(4) Ritualistic power As said before, in olden times rituals constituted an important part of the government, but in the course of time ritualistic affairs and ordinary State affairs were gradually separated. This power is exercised by the Emperor personally or by a member of the Imperial Family or ritualistic official as a royal representative, and is placed outside the power of the Cabinet.<sup>31</sup>

(5) Power in ordinary State affairs The power of the Throne concerning ordinary State affairs includes the legislative, the executive and the judicial powers.<sup>32</sup> The legislative power is exercised with the consent of the Diet. The executive power is exercised with the advice of Cabinet Ministers. The judicial power is exercised by the courts of law in the name of the Emperor.

A Legislative power To what extent does the Throne participate in legislation? The Throne convokes, opens, closes and prorogues the Diet, and dissolves the House of Representatives.<sup>33</sup> The Japanese Diet has no power to meet or open the session of its own accord. It is only the order of the Throne which can convoke or open

<sup>30</sup> Dr. T. Minobe, op. cit., pp. 224-225

<sup>31</sup> *ibid.*, pp. 222-223

<sup>32</sup> Constitution, Art. 4

<sup>33</sup> Constitution, Art. 7

it. The Throne also closes the Diet, but this means nothing but a ceremonial act, because the Diet legally closes when the term of a session ends. The Throne's power to dissolve the popular House is very important. The Cabinet is responsible to the Diet. In other words, the Cabinet must resign when it loses the confidence of the Diet, especially of the popular House. Therefore, the Cabinet must have the power to dissolve the popular House and to appeal to the people in general. But when the Cabinet was independent of the Diet, this power of dissolution was abused from time to time. These powers of the Throne towards the Diet are not unlimited. For instance, the Throne must convoke the Diet every year, usually in December, the term of a session of the Diet must be three months, though in case of necessity the duration of a session may be prolonged by an Imperial order, when urgent necessity arises, an extra-session may be convoked.

The Throne orders the Cabinet to initiate bills,<sup>84</sup> sanctions bills passed by the Diet, and orders those laws to be promulgated and executed.<sup>85</sup> Almost all bills passed by the Diet are government bills, and the leadership in legislation is completely held by the government. The power of the Throne to sanction bills passed by the Diet is quite different from the so-called "suspensory veto" power of the President of the United States and other republics. The sanction of the Throne is an absolutely necessary

2) Power to  
initiate and  
sanction a  
law

<sup>84</sup> Constitution, Art 38

<sup>85</sup> Constitution, Art 6

condition precedent to law-making, and therefore, if the Throne refuses to sanction a bill, it becomes invalid forever.<sup>86</sup> But in practice, the Throne has never refused to sanction bills passed by the Diet since the promulgation of the Constitution. The reason for this may be as follows in the days when the government was not responsible to the House of Representatives, the government could prevent a bill, which it was not disposed to sanction, from being passed by the Diet, by making the House of Peers stop the bill, or by withdrawing the bill at any time if it was a government bill; while at present, when the government is responsible to the Diet and controls the majority of the House of Representatives, the government can interrupt the passing of such a bill on the floor of the House. The Throne also promulgates laws, but the Throne cannot refuse to promulgate a law if it sanctions it.

3) Power to  
issue ordi-  
nances

The Throne has the power to issue ordinances. This ordinance power is very large as compared with that of other countries. First, it issues Imperial Ordinances in place of laws, in consequence of an urgent necessity to maintain public safety or to avert public calamities, provided that the Diet is out of session.<sup>87</sup> In issuing this ordinance, the government must lay it before the Privy Council. This ordinance possesses the power of taking the place of a law and therefore it can repeal or amend the existing laws. Of course, the ordinance must be laid before the Diet

<sup>86</sup> Dr T Minobe, *op cit*, pp 402-403

<sup>87</sup> Constitution, Art 8

at its next session for its approbation, and if it is not approved, it must become invalid for the future.<sup>88</sup> Second, the government issues administrative ordinances for (a) the execution of laws,<sup>89</sup> (b) for the maintenance of public peace and order, and for the promotion of the welfare of the people,<sup>40</sup> and (c) for the regulation of matters left to its own executive power, i.e., the organization of various branches of the administration, the organization of the army and navy, the organization of the Privy Council with the consent of the Council, the organization of the House of Peers with the consent of the House, etc. This administrative ordinance power is limited to supplying the deficiency of law, and accordingly it cannot alter the existing laws. Not only that, but this ordinance power cannot regulate matters which are exclusively reserved to a law. Third, the Throne issues ordinances with regard to specific matters by virtue of the mandate of laws. This type of ordinance has the same effect as laws, and can even alter the existing laws.<sup>41</sup>

The Throne also has a large executive power. It determines the organization of different branches of the administration and the salaries of all civil and military officers and appoints and dismisses the same.<sup>42</sup> As for the appointment and dismissal of some particular officers, however, the Throne is lim-

B Executive  
power  
1) Appoint-  
ing power

<sup>88</sup> Constitution, Art 8

<sup>89</sup> Constitution, Art 9

<sup>40</sup> Constitution, Art 9

<sup>41</sup> Dr T Minobe, op cit, pp 419-451

<sup>42</sup> Constitution, Art 10

ited in some measure The judges of the courts of law,<sup>43</sup> the public procurators attached to the courts of law, the judges of the Court of Administrative Litigation, must be appointed from among those who possess proper qualifications for those posts according to law. These judges and procurators, in addition to the members of the Board of Audit, shall not be deprived of their position, unless by way of criminal sentence or disciplinary punishments, and the rules for disciplinary punishments must be determined by law <sup>44</sup>

2) Military  
organizing  
power

The Throne also determines the organization and peace standing of the army and navy <sup>45</sup> According to Prince Ito, this power embraces the organization of military divisions and of fleets, and all matters relating to military districts and sub-districts, to the storing up and distribution of arms, to the education of military and naval men, to inspection, to discipline, to modes of salutes, to styles of uniforms, to guards, to fortifications, to naval defenses, to naval ports and to preparations for military and naval expeditions, and the determining of the peace standing includes also the fixing of the number of men to be recruited each year <sup>46</sup> The difficulty involved in distinguishing between this military organizing power and the military commanding power I have already dwelt upon

3) War power  
and treaty-  
making  
power

The Throne declares war, makes peace and con-

<sup>43</sup> Constitution, Art 58

<sup>44</sup> loc cit

<sup>45</sup> Constitution, Art 12

<sup>46</sup> Ito, op cit, p 29



cludes treaties.<sup>47</sup> In most modern constitutional countries both the declaration of war and the conclusion of treaties which affect the rights and duties of the people require the consent of the legislature, as we see in France. In Great Britain war can be declared and peace concluded by the Crown without consulting Parliament, but those treaties which stipulate for the cession of territory or the payment of money, or for some other action which affects the rights and duties of the people, cannot be concluded without parliamentary concurrence. In the United States, the President has the power to make treaties, but he cannot ratify treaties without the consent of the Senate. Not only that, but the war power exclusively rests with the Congress. In Japan, however, this war power and treaty-making power is reserved to the Throne and the Throne can exercise these powers without consulting the Diet. Of course, treaties must be laid before the Privy Council before their ratification, but this does not necessarily mean that treaties which are concluded without the concurrence of the Privy Council are invalid.<sup>48</sup>

The Throne proclaims a state of siege<sup>49</sup> at the time of a foreign war or of a domestic insurrection, for the purpose of placing all ordinary laws in abeyance and of entrusting part of the administrative

4) Power to  
proclaim a  
state of  
siege

<sup>47</sup> Constitution, Art. 13

<sup>48</sup> Dr. T. Minobe, *op. cit.*, pp. 461-462. The opinion is held by some commentators that at times of great national crisis the Throne may, out of its reserved sovereign powers, conclude a treaty without consulting any other authority. [Ed.]

<sup>49</sup> Constitution, Art. 14

and judicial powers to military measures. But the conditions requisite for this declaration must be prescribed by law, and the declaration itself must be referred to the Privy Council.

5) Pardon-  
ing  
power

The Throne orders amnesty, pardon, commutation of punishment and rehabilitation.<sup>50</sup> The law is not comprehensive or precise enough to meet all the varied and complicated requirements of human life, and there may be some cases in which no ordinary process of the legislature or of the judicature is adequate to supply the deficiency of the law. This power to order amnesty, pardon and the like is recognized to meet this necessity.

Thus the Throne has a very large executive power, but this power is undoubtedly subject to the limitation that appropriations necessary for its exercise shall be consented to by the Diet.

C Judicial  
power

The Constitution provides, "The judicial power shall be exercised by the courts of law according to law, in the name of the Emperor."<sup>51</sup> This means that the Throne has the judicial power as the fountain of justice, but the exercise of this power is completely left to the courts of law, which shall be organized by law. This judicial power will be dealt with later.

<sup>50</sup> Constitution, Art. 16

<sup>51</sup> Constitution, Art. 57

## CHAPTER FIVE

### THE CABINET AND OTHER EXECUTIVE ORGANS

**T**HE Constitution says, "The respective Ministers of State shall give their advice to the Emperor, and be responsible for it. All the laws, Imperial ordinances and Imperial rescripts, of whatever kind, that relate to the affairs of State require the countersignature of a Minister of State."<sup>1</sup> The Cabinet, which is composed of these Ministers of State, is the real administrative as well as the real law-making organ of State. The word "cabinet" is not expressed anywhere in the Constitution, but the present Cabinet system was established by Imperial ordinance before the promulgation of the Constitution, and it was impliedly recognized by the Constitution. According to Walter Bagehot, all modern governments may be said to be composed of two parts,—a dignified and an efficient. The dignified part impresses the people, the efficient part in reality does the work of governing or of administration.<sup>2</sup> In Japan, the dignified part is the Emperor, and the efficient part is the Cabinet.

Political  
significance  
of the  
Cabinet

From early times the Japanese Emperors have

Historical  
background  
of the  
Japanese  
Cabinet

<sup>1</sup> Constitution, Art. 55

<sup>2</sup> The English Constitution, pp. 72-80

not dared to assume "personal rule" in politics. Almost all government affairs have been entrusted to the Ministers of State. As early as in the reign of Emperor Tenchi (A.D. 662-671) the Council of State was established, and the control over affairs of State was vested in the hands of the Chancellor of the Empire, the Minister of the Left, and the Minister of the Right, while there was also the First Adviser of State who advised the Emperor. Under the Council of State were placed eight departments of government. Immediately after the Restoration of 1867, the Council of State was revived and the offices of the Minister of the Left and the Minister of the Right (as Presidents of the Council) and of Councillors of State were created, and Councillors of State usually took the post of Ministers of State as chief of a Department under the Council of State. Shortly afterwards, the Ministers of the Left and of the Right were abolished and the office of the Chancellor of the Empire was newly established to advise the Emperor and to supervise all government affairs. The Council of State, therefore, looked like the present Cabinet, but the Chancellor of the Empire was the only official who advised the Emperor and assumed responsibility, as did the Chancellor in Imperial Germany, and Councillors were only his assistant or subordinate organs. In 1885 this system was abolished and the present Cabinet system was established.

Functions of  
the Cabinet

The Cabinet is a link which connects the Emperor and the Diet. Gladstone once remarked that the

Cabinet is "the threefold hinge that connects together for action the King, the Lords, and the Commons"<sup>8</sup> The functions of the Cabinet may be divided into three categories advisory, parliamentary and administrative. The advisory function is one of the most important functions of the Cabinet Ministers. They draft laws and ordinances in regard to their respective departmental affairs and ask the sanction of the Emperor after having laid them before the Cabinet meetings. As regards matters to be referred to the Privy Council, they ask the Emperor to consult the Council, explain the opinion of the Cabinet before that body, and advise the Emperor to adopt or not to adopt the opinion of the Privy Council. As a parliamentary organ of the Emperor, Cabinet Ministers submit projects of law and the annual budget to the Diet, explain the opinions of the government before the Diet personally or through government commissioners, and defend themselves against interpellations of the Diet. As the chief of an administrative department of the government, they supervise the business of their respective departments and their subordinate officials.

The head of the Cabinet is the Prime Minister. He maintains the unity of the Cabinet, advises the Emperor in regard to all affairs of State, supervises all branches of the Administration and represents the whole Cabinet in its public affairs. Other Ministers must advise the Emperor through the Prime

The Prime  
Minister

<sup>8</sup> Munro, *The Government of Europe*, p. 57

Minister, except the Minister of the Army and the Minister of the Navy in the case of military command. The Imperial Ordinance of the Cabinet organization says, "The Prime Minister 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."

Process of  
Cabinet  
formation

Thus the Cabinet is the center of national politics. Therefore, the formation of a new Cabinet is one of the most important questions in politics. Of course, the chief concern is who is to be appointed as the Prime Minister, because other Ministers are appointed on the advice of the Prime Minister himself. It is true that the Emperor has the legal power to appoint and dismiss the Prime Minister, and therefore he can appoint and dismiss the Prime Minister of his own will, but in practice this power is considerably limited by custom. Legally speaking, there is no organ to advise the Emperor authoritatively in this matter. Although the Lord Privy Seal advises the Emperor in all matters of State without assuming responsibility, yet this appointment of the Prime Minister is so important that in recent years there has been established a custom to require the opinion of the "Elder Statesmen" (Genro) on this matter.<sup>4</sup> Therefore it appears that the Elder Statesmen are the sole organ to recommend a new Premier to the Emperor. In Great Britain, the retiring Premier usually recommends a new Premier to the King. In

<sup>4</sup> Dr T Minobe, op cit, p 272

France the President of the Republic usually consults the Presidents of both Houses of the parliament. But in Japan parliamentary politics has been in the experimental stage and such a highly dignified organ as the Elder Statesmen has been asked to recommend a new Premier. Nevertheless, the Elder Statesmen cannot recommend a new Premier without regard to the will of the Diet.

It is true that during a certain period after the promulgation of the Constitution the Cabinet was formed independently of the will of the Diet. The framers of the Constitution themselves maintained that Ministers of State are only responsible to the Emperor, not to the Diet, and the Cabinets of those days also declared that the parliamentary Cabinet system is very dangerous, and the Cabinet should be absolutely independent of political parties. But it was gradually recognized that the Cabinet cannot be independent of the Diet or of political parties. Just after the Sino-Japanese War, the Ito Ministry endeavored to cooperate with the Jiyu-To Party (Liberal Party) and started the custom of cooperation between the Cabinet and political parties. Shortly afterwards the Kensei-To Party (Constitutional Government Party), which was formed in consequence of the amalgamation of the two biggest parties and controlled an absolute majority of the House, formed the first party Cabinet in Japan. This Cabinet was wholly composed of members of that party, except the Army and Navy Ministers. Since then many Cabinets have been formed and overthrown,

some Cabinets with a party-leader at the top, some Cabinets with a non-party statesman at the top, but it is true that all these Cabinets were maintained in office with the support of the Diet. The former principle of independence of the Cabinet was altogether abandoned and the will of the Diet became strong enough to dictate the fate of the Cabinet.<sup>5</sup>

Cabinet responsibility to the Diet

The Constitution provides that the Cabinet is responsible, but it does not expressly provide to whom. It says, "The respective Ministers of State shall give their advice to the Emperor, and be responsible for it."<sup>6</sup> But in practice, the responsibility of the Cabinet to the Diet has nearly been established as said above. Then is the Cabinet responsible to both Houses of the Diet? Legally speaking, the House of Peers has the same power as that of the House of Representatives, and it has far greater power than the House of Lords in England, but its influence upon the Cabinet is much weaker than that of the other House, so far as the present situation is concerned. This is chiefly due to the fact that the House of Representatives has the people behind it, while the House of Peers has not.

Collective responsibility of the Cabinet

The Constitution expressly provides for the individual responsibility of Cabinet Ministers, but in consequence of the establishment of a quasi-party Cabinet system or pure party Cabinet system, the collective responsibility of the Cabinet has been emphasized and at present it is almost established.

<sup>5</sup> Dr. T. Minobe, *supra*, pp. 273-275, K. K. Kawakami, *Japan and World Peace*, pp. 32-33.

<sup>6</sup> Constitution, Art. 55.



This responsibility, however, is merely of a political nature. The Japanese Constitution does not recognize any legal responsibility of Cabinet Ministers. The impeachment system against the Cabinet Ministers who have committed treason or other political crime is not adopted in Japan, though it is established in almost all other constitutional countries of the modern world.

No legal responsibility of the Cabinet

In Japan the leadership in politics is firmly held by the Cabinet and other executive organs. The Diet has never assumed the leadership. Even in legislation almost all laws passed by the Diet are government bills. The Diet is merely a general supervisory body in legislation as well as in administration. Of course, in those days when the Cabinet was independent of the Diet, especially of the House of Representatives, such an executive leadership of the Cabinet could not be easily maintained on account of its constant clash with that House. But at present the parliamentary responsibility of the Cabinet is nearly established and the Cabinet is in office usually with the support of the majority in the House of Representatives. Accordingly, all policies shaped by the Cabinet are accepted by the House without great changes. Particularly, as Japanese political parties have no definite party platforms which are distinguished from one another, they are inclined to accept almost unconditionally every policy which is formulated by the Cabinet which they support.

Executive leadership

Certainly the situation is different in the House of Peers. The House of Peers of Japan is perhaps one of the strongest second Houses in the modern world, except the Senate of the United States, and to control this House is one of the most difficult tasks of the Cabinet which chiefly depends upon the confidence of the other House. But nowadays the House of Peers is not disposed to make such a strong opposition against the Cabinet as to lead to its resignation, because the general public certainly does not admit the right to such an action by the House of Peers which is not elected by the people. This executive leadership is the most important principle of efficient government. Professor Willoughby says that one of the most important principles of efficient government is that "the legislature should not attempt the exercise or even the detailed control of executive or administrative action, a function for the efficient performance of which its size and composition disqualify it"<sup>7</sup>

Executive  
organs which  
check the  
Cabinet

But in Japan there are other executive organs which check the action of the Cabinet in some measure: that is, the Elder Statesmen, the Privy Council and the Lord Privy Seal.

(1)  
Elder  
Statesmen

The body of Elder Statesmen called "Genro" is an extra-legal one. There is no provision in the Constitution, nor in laws and ordinances, which provides for this body. But there gradually developed a custom that those statesmen, who have done great service to the State especially as a Prime

<sup>7</sup> Willoughby and Rogers, *op cit*, p. 301

Minister, who enjoy the highest honors and stand high above political parties, or have done some signal service to the State, especially on the occasion or near the time of the Restoration of 1867, are to be consulted by the Emperor with regard to matters of paramount importance, such as the formation of a new Cabinet, the declaration of war and the conclusion of the peace, or the negotiation of important treaties like treaties of alliance. In the case of Cabinet formation the Elder Statesmen are asked for their opinion on the recommendation of the Lord Privy Seal (usually cooperating with the Minister of the Imperial Household), because there is no Cabinet to advise the Emperor. But in other cases, the Cabinet makes recommendations to the Emperor. The chief reason why this custom developed may be this: on the one hand, these statesmen were the brilliant men of the land, who carried Japan from the status of an unknown small feudal State to that of one of the great Powers in the world, and the Emperor and the general public had full confidence in them; on the other hand, Cabinets of those days, which were formed by one of the Elder Statesmen or their protégés, naturally consulted the Elder Statesmen on serious occasions. Of course, this institution sometimes suffered from more or less severe attacks, but this was not because they participated in politics at times of great importance, but because sometimes they assumed active participation in the government, especially disregarding public opinion. "Whatever the future may have in store," says

Dr Fujisawa, "the Genro served, on the whole, successfully their days and purposes, they had the brain-power, moral purpose and physical capacity to overcome the obstacles of their day and generation. They were a great check to direct individualistic action, and at the same time, they worked as a wonderfully efficient lubricator that had a way of smoothing things in time of crisis"<sup>8</sup> At present, there is left only one Elder Statesman, Prince Saionji, who spent most of his youth in France and was deeply influenced by liberalism, who was once the President of the present Seiyu-Kai Party, and accordingly who is a liberal statesman to the bone He does his utmost to get every item of information about politics from all sources possible and to follow the desires of a healthy public opinion He never dares personally to assume an active participation in politics It may be only the formation of a new Cabinet that forces him to take action in politics In some circles it is insisted that this remaining Elder Statesman must be succeeded by some organ, which includes, for instance, the President of the Privy Council, the Presidents of both Houses of the Diet, the Lord Privy Seal, etc., but the general public seems not to favor this idea Even if a new organ is created to recommend a new Premier to the Emperor, its influence upon the Diet may be very small and the will of the Diet should prevail against it.

Another organ whose influence was somewhat similar to that of the Elder Statesmen is the "Advi-

<sup>8</sup> Fujisawa, op cit, p 112.

sory Council on Foreign Affairs," which was created in 1917 to advise the Emperor on important foreign affairs, in consideration of the complicated diplomatic relations during the World War. This body was intended to include all influential factors in politics, (as in the case of the British War Cabinet) under the leadership of Lloyd George which existed from December, 1916, to October, 1919. It succeeded in including in its membership influential members of the Privy Council and of the House of Peers, the leaders of the political parties in the House of Representatives (except the leader of the second largest party, the opposition party) and in addition the main Cabinet Ministers, such as the Prime Minister, the Minister of Foreign Affairs, and the Minister of Finance. Its function was broad and vague, and its power was great. But one great weakness of this body was its failure to include the leader of the opposition party in the Lower House. This weakness, coupled with a change in the situation after the War, caused the abolition of this body in 1922.

The Privy Council of Japan is quite different from the Privy Council of England, from which the modern English Cabinet has grown up. The Cabinet and the Privy Council are two separate and independent institutions, each having its own legal status prescribed by law, although Cabinet Ministers have their seats in the Privy Council by virtue of their office.

The Privy Council is composed of one President, one Vice-President, and twenty-four Councillors.

(2)  
Privy Council

Organization  
of the Privy  
Council

Cabinet Ministers (twelve) also have their seats *ex officio*. The members are all nominated by the Emperor, (with the advice of the Prime Minister, from among those who have distinguished themselves in national service as administrators, diplomats, judges, educators, generals or admirals. Party politicians are, in practice, excluded from this body.

Power of the  
Council

In regard to the powers of this body, the Constitution says, "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"<sup>9</sup> Its function is merely of a consultative nature, and it cannot advise the Emperor of its own accord. It cannot deliberate upon matters other than those with which it has been consulted by the Emperor, except in certain cases, such as in the case of the institution of a regency, when the Emperor cannot exercise his power. Not only that, but as the result of its consultative nature, it cannot amend measures or drafts submitted to it. It can only report to the Emperor whether the particular measure is acceptable or not. But in reality this body amends measures laid before it. Measures referred to this body by the Throne are first submitted to a committee of the Council and if the committee finds some unsatisfactory points in them, it requests the government to re-submit the measures after having amended these points. Whether the advice of this Council is acceptable or not is determined by the

<sup>9</sup> Constitution, Art. 56

Emperor on the advice of the Cabinet, so far as State affairs are concerned. Accordingly, even if some acts are performed by the Throne without regard to the advice of the Council, those acts are effective, while even if some acts are performed by the Throne following the advice of the Council, likewise the Cabinet is also held responsible for them. The Privy Council is not responsible to the Diet.

According to the Imperial Ordinance concerning the organization and the function of this Council, matters referred to the Council are as follows:

Matters  
within the  
jurisdiction  
of the  
Council

(1) certain matters concerning the Imperial House, (2) drafts and doubtful points relating to articles of the Constitution, and to laws and ordinances being accessory to the Constitution, such as the law of election of the members of the House of Representatives, the Law of the Houses, the Law of Finance, the Imperial Ordinance concerning the House of Peers, etc., (3) the proclamation of a state of siege, emergency ordinances issued pursuant to Article 8 of the Constitution and other Imperial Ordinances with the provisions of a penalty; (4) international treaties and pledges, and (5) matters relating to the amendment of the Imperial Ordinance concerning the organization and the function of the Council.

The provision relating to doubtful points in the Constitution or other laws and ordinances accessory to the Constitution means that when there is a difference of opinion between the Cabinet and the Diet

or between the two Houses of the Diet in regard to the interpretation of the instruments, and the opinion of the Emperor about this point is asked for, this question is referred to the Council. There has been only one case in which this question was referred to the Council. But the Emperor has no legal power to interpret the Constitution, as said before, and so his opinion has no legally binding force. The opinion of the Emperor is binding only morally.<sup>10</sup>

The act of Administrative Litigation provides that disputes of competence between ordinary courts of law and the Court of Administrative Litigation shall be determined by the Privy Council until the Court of Competence Dispute shall be established, but the court procedure concerning this dispute has not been provided for. Therefore, at present the Privy Council is not the Court of Competence Dispute. Besides, the Council is denied any executive power. It cannot officially have any connection with the people, nor can it receive petitions and representations from the Diet, from the people, or from any government office. Its official connection is with the Cabinet only.

Position of  
the Council

Prince Ito says, "Ministers of State have to be acute of mind, quick and active in the dispatch of internal and external affairs. But the task of planning far-sighted schemes of statecraft and of effectuating new enactments, after careful deliberation and calm reflection, by instituting thorough investi-

<sup>10</sup> Dr. T. Minobe, *op. cit.*, p. 291



gations into ancient and modern history, and by consulting scientific principles, must be entrusted to a special institution made up of men of wide experience and of profound erudition . . . If the Privy Council is competent to lend assistance to the wisdom of the Emperor, to be impartial, with no leanings to this or that party, and to solve all difficult problems, it will certainly prove an important piece of constitutional mechanism”<sup>11</sup> When the Cabinet was an independent one, and composed of non-party men, who were the same sort of men as the members of the Privy Council, cooperation was satisfactorily maintained between these two organs, and the Council could play a significant rôle in politics. But after the Cabinet became responsible to the Diet, and became a predominant organ, the Council gradually ceased to be a strong executive organ.

The Lord Privy Seal, who is an organ of the Imperial House, also advises the Emperor in State affairs. Those who have been appointed to this post were usually Elder Statesmen or a statesman of the highest standing. The most important function of this official is to advise the Emperor in the case of the formation of a new Cabinet, but in practice the Elder Statesman recommends a new Premier to the Emperor. Usually the Lord Privy Seal is forbidden to take active participation in State affairs, because the confusion of State affairs with Imperial House affairs is strongly opposed by the general public.

(3)  
Lord Privy  
Seal

<sup>11</sup> Ito, *op cit*, pp 108-109

## CHAPTER SIX

### THE HOUSE OF PEERS

Bicameral  
system of  
the Diet

THE Imperial Diet is composed of two Houses—a House of Representatives and a House of Peers<sup>1</sup> The bicameral system of parliament is thus adopted by Japan The House of Peers probably was created after the pattern of the Herrenhaus of Prussia and is not a growth like the English House of Lords As far as its form and organization are concerned, the House of Peers is more composite and more scientific, and represents different classes of society better In fact, about one-half of the entire membership are not peers at all A recent American work on politics remarks that the House of Peers of Japan “seems to have been very successful, although writers on the [Japanese] Constitution do not hesitate to call it reactionary”<sup>2</sup>

Organization  
of the House  
of Peers

The House of Peers consists of the following six classes of members

- 1 The members of the Imperial Family who have reached majority.

- 2 All princes and marquises over thirty years of age

- 3 Counts, viscounts and barons who are elected

<sup>1</sup> Constitution, Art 33

<sup>2</sup> Willoughby and Rogers, *op cit*, p 380

by their respective orders for a seven-year term. In this respect the House of Peers of Japan is greatly different from the British House of Lords. All lords of Great Britain have their seats in the House of Lords, although lords of Scotland and Ireland elect their representatives in this House.

The number of this class of members in the Japanese House of Peers has changed several times since the promulgation of the Constitution. According to the existing law, the House has eighteen counts, sixty-six viscounts and sixty-six barons as its members, while the old law which was in force before 1925 admitted twenty counts, seventy-three viscounts and seventy-three barons into the House. The candidates must be over thirty years of age, and the electors must be over twenty years of age. (The method of the election is very unreasonable.) Among other things, electors vote for all candidates who may be admitted to the House. That is to say, a count votes for eighteen candidates, a viscount and a baron vote for sixty-six, respectively, with the result that the group which controls the majority of one order monopolizes all the members of the House elected from that order. The election is made by signatory ballot, and the vote by proxy is also permitted. Detailed matters concerning this election are left to the regulations made by the peers. Disputes arising out of this election are within the jurisdiction of the House of Peers, not within the jurisdiction of the courts of law as in the case of the election for the House of Representatives.

4 Members nominated by the Emperor for life by virtue of their meritorious services to the State or on account of their erudition. They must be over thirty years of age. The number of this class of members cannot exceed one hundred and twenty-five. As they are nominated by the Emperor on the recommendation and advice of the Cabinet, the latter tends to choose those government officials or business men who are most subservient to it, without much regard to their erudition or meritorious services to the State. Therefore, after the party Cabinet system or the quasi-party Cabinet system was established, this class of members was gradually divided along the party lines in the Lower House. They are, in reality, the most influential members in the House of Peers.

5 Members of the Imperial Academy who are elected by the same body for a seven-year term and nominated by the Emperor. The number of this class of members is only four. The Imperial Academy is the group of scholars of the highest standing, usually senior professors of Imperial universities. The election is made by a secret and single non-transferable ballot. This class of members was also added to the House by the law of 1925.

6 Persons who are elected by and from among the taxpayers of the largest amount of direct national taxes on land, industry or trade in each prefecture and nominated by the Emperor. In prefectures of large population two members are elected by and from among the two hundred highest taxpayers in

the prefecture. In prefectures of smaller population one member is elected by and from among the one hundred highest taxpayers of the prefecture. The term of this class of members is seven years; and the number cannot exceed sixty-six. According to the old law, the number was much smaller. The method of the election is similar to that for elective peers. This class of members is also influenced by political parties in the Lower House.

At present the whole number of the members of the House is twenty members of the Imperial Family, fifteen princes, thirty-one marquises, eighteen counts, sixty-six viscounts, sixty-six barons, one hundred and twenty-five Imperial nominees, four members of the Imperial Academy and sixty-six representatives of high taxpayers of prefectures—four hundred and eleven altogether. The number of titled members is almost equal to that of non-titled members. The most important point in which the existing law of 1925 is different from the old law is the abolition of the provision that the number of the non-titled members, consisting of persons directly nominated by the Emperor or nominated to represent prefectures, shall not exceed the aggregate strength of the titled members. This abolition opened the way for non-titled members to control the majority of the House.

The most curious thing is this: the organization of the House of Peers is exclusively reserved to an Imperial Ordinance and the Lower House cannot

Number of titled members almost equal to that of non-titled members

Lower House cannot interfere with organization of Upper House

interfere with it.<sup>8</sup> Of course, the government cannot freely amend the Imperial Ordinance for the organization of the House of Peers, that is to say, it cannot amend the Ordinance without the consent of the House of Peers, because the House of Peers is an integral part of the Imperial Diet which should be independent of the government

Power of the  
Upper House  
compared  
with that of  
the Lower  
House

The power of the House of Peers is, in principle, equal to that of the other House, with the following exceptions

1 The organization of the House of Peers is left to an Imperial Ordinance and placed outside the power of the House of Representatives, while that of the latter is required to be prescribed by a statute passed by the Diet, and the House of Peers also participates in it.

2 The budget must be first laid before the House of Representatives. Consequently, the period in which the House of Peers deliberates upon the budget is sometimes shorter than that for the House of Representatives, but in other respects both Houses have equal power in regard to the budget. The Upper House can even restore the appropriations rejected by the House of Representatives

3 The House of Peers has the power to be consulted by the Emperor concerning the privileges of nobility. In this case the House has no power to amend projects of the Emperor, but merely reports to the Emperor whether the projects are acceptable or not

<sup>8</sup> Dr T Minobe, *op cit*, pp 316-317

4 The President and Vice-President (of the House of Representatives) are nominated by the Emperor, (respectively, from among each three candidates elected by the House,) while the President and Vice-President of the House of Peers are nominated by the Emperor directly from among the members thereof, the House itself having no power to recommend them

5 The House of Representatives has the power to permit the resignation of its members, and also to dismiss them, but in the House of Peers the Emperor has the final power to decide this matter

6 The House of Peers has jurisdiction over disputes concerning the election of its members, while the other House has no such power

7. The House of Representatives is subject to dissolution but the House of Peers is free from it

Thus, legally speaking, the House of Peers is more strongly constituted and more advantageously placed than the House of Representatives. Then what was the chief object of the framers of the Constitution in establishing such a strong second House? They wished to check and restrain the organized activities of political parties in the House of Representatives. They intended to make the government or the Cabinet free from "the influence of excited passions," "one-sided movements," or "the despotism of the majority" of the Lower House.<sup>4</sup> "If the House of Peers fulfils its functions," says Prince Ito, "it will serve in a remarkable degree

Position of  
the House  
of Peers

<sup>4</sup> Ito, *op cit*, p 71

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 . . . The object of having a House of Peers is not merely admittance of the higher classes to some share in the deliberations upon legislative matters, but also representation of the prudence, experience and perseverance of the people by assembling together men who have rendered signal service to the State, men of erudition and men of great wealth”<sup>5</sup> In fact, when the Cabinet was formed independently of political parties, the cooperation between the Cabinet and the House of Peers was completely maintained and they succeeded in subordinating the Lower House. If the government wants to prevent some unacceptable legislation of the Lower House, it could stop it altogether by asking the House of Peers to prevent it. In those days the position of the House of Peers was very strong as compared with that of the House of Representatives. Its position was similar to that of the “Bundesrath” of Imperial Germany.<sup>6</sup> But after the Cabinet became connected with political

<sup>5</sup> Ito, *op cit*, p. 72

<sup>6</sup> The Bundesrath, with all its dominant force in the Imperial German government, was abolished by the Weimar Constitution of 1919 and the much weaker Reichsrath has taken its place. The Japanese House of Peers and the United States Senate are the only two second chambers with great or dominant powers at present in existence in modern constitutional governments. The question is whether or not these two bodies are both likewise facing eclipse at the hands of the more “popular” lower chambers [Ed.]



parties, this cooperation between the Cabinet and the House of Peers was broken and the actual power of the House of Peers was gradually weakened. This was a matter of course, because this House is far removed from the people and the force which ultimately determines the course of political development resides in the people. Especially, the government as well as an individual cannot be subject to two masters at the same time. If the government is responsible to the Lower House, the representative body of the people, the House of Peers cannot influence the government in the same degree with the House of Representatives. "The responsible parliamentary or cabinet system of government works with complete satisfaction," says Dr Willoughby, "only when the responsibility of the executive is to a single chamber."<sup>7</sup> But in Japan there is no legal method by which to limit the power of the House of Peers such as is available in England. In England, even after the reform and consequent weakening of the House of Lords in 1911, the Cabinet retains the creation of peerages under its jurisdiction and can swamp the House by creating many lords who all have their seats in the House, if that House firmly sticks to its position as unfavorable to the Cabinet which of course represents the majority of the membership of the House of Commons. In Japan the conferring of a title of nobility is separated from State affairs and is dealt with by the Imperial Household Department, with the result

<sup>7</sup> Willoughby and Rogers, *op cit*, p 239

that the Cabinet cannot control it. Not only that, but peers, except princes and marquises, have not always seats in the House. Only those peers who are elected to that position have membership in the House. The number of Imperial nominees in the House is also limited. Accordingly, if the House of Peers should stand firmly for its position, the government must be subject to it <sup>8</sup>

<sup>8</sup> The House of Peers, as a matter of practice, does not remain indifferent to public opinion. It often recedes from its position when this results in opposition to the Cabinet. [Ed.]

## CHAPTER SEVEN

### THE HOUSE OF REPRESENTATIVES

**T**HE House of Representatives finally acquired an influential power over the government after a hard struggle with bureaucracy. Truly, the Japanese government is not free from bureaucratic influence, it is still affected by bureaucracy in some measure. But nobody can deny that the House of Representatives plays a predominant part in politics.

Supremacy  
of the House  
of Represen-  
tatives

The House of Representatives is composed of members elected by the people. The whole number of the members is now four hundred and forty-six. Their term of office is four years. According to the new law which was enacted in 1925, the whole country is divided into one hundred and twenty-two constituencies, each of which elects from three to five members, at the rate of one member for a population of one hundred and twenty thousand. Candidates must be male citizens over thirty years of age. There is no property qualification for them, though there are some disqualifying conditions, such as nobility, active military service, long imprisonment, disability, judicial and other similar occupations, etc. Electors must be male citizens over twenty-five years of age. Also, there is no property

Organization  
of the House  
of Represen-  
tatives

Electoral  
system

qualification for them. Universal manhood suffrage was for the first time adopted by the law of 1925, after a long-continued struggle, and it came into force in the general election which took place in the year 1928

Under the original Election Law of 1890, an elector must have paid a direct national tax of not less than fifteen yen (one yen is almost equal to half a dollar) for a period of not less than one year preceding the time fixed for the making of the roster of electors. The number of voters in that year was about four hundred and fifty thousand. In 1900, the law was revised and the number of voters was increased to about three times their number in 1890. The property qualification of electors was lowered from fifteen yen to ten yen. In 1920, the law was revised for the second time and the property qualification was at one jump lowered from ten yen to three yen. If we take into further consideration the considerable depreciation of money value due to the World War, it would be a safe estimation to say that three yen in 1920 is about equivalent to one yen in 1900. By the electoral reform of 1920 the number of voters increased to a little over three million, which is about seven times the number of 1890. At last, by the electoral reform of 1925, the universal manhood suffrage system was introduced.<sup>1</sup> Disqualifying conditions for an elector are similar to those for a candidate, except judicial and other

<sup>1</sup> The number of qualified voters under the new law is estimated at about thirteen millions [Ed.]

similar occupations. The election is directly carried on by the people. The vote is of the nature of a single non-transferable vote. Each elector votes for only one candidate in a constituency which returns from three to five members to the House. The proportional representation which prevails in a great many countries of the modern world is not adopted by Japan. The voting is voluntary. In 1912, ninety per cent of the electors voted, while in 1920, eighty-seven per cent voted.<sup>2</sup> The ballot is secret. Disputes arising out of the election are under the jurisdiction of the Supreme Court.<sup>3</sup>

<sup>2</sup> The number voting in the recent national election (1928) was nearly 81 per cent, about 9,711,000 votes being cast out of a total of 11,987,000 registered voters [Ed.]

<sup>3</sup> See also Ch. XI, on Political Parties

## CHAPTER EIGHT

### GENERAL POWERS OF THE IMPERIAL DIET

Parliamen-  
tary legisla-  
tion

**I**N PRINCIPLE, all legislation must be made with the consent of the Diet, except in the case of ordinances and treaties. Projects of law are initiated by the government or either House of the Diet.<sup>1</sup> But projects of constitutional amendment are exclusively initiated by the Emperor. The Constitution provides for another restriction concerning the initiation of projects of law, that is, a bill which has been rejected by either House cannot be brought in again during the same session.<sup>2</sup> The bills initiated by the government are distinguished from those initiated by either House of the Diet by the following points. (1) government bills precede private bills in the order of the day, except when the concurrence of the government has been obtained to the contrary, in consequence of urgent necessity for debates,<sup>3</sup> (2) government bills can never be voted upon, without having been first submitted to the examination of a committee, except when the government demands the contrary, in case of urgent necessity,<sup>4</sup> (3) government bills can be either

<sup>1</sup> Constitution, Art 38

<sup>2</sup> Constitution, Art 39

<sup>3</sup> Laws of Houses, Art 26

<sup>4</sup> Law of Houses, Art 28

amended or withdrawn by the government at any time it desires.<sup>5</sup>

(Almost all laws passed by the Diet are government bills. A private bill cannot pass through the Diet without the support of the government, because the leadership in legislation in the Diet is assumed by Cabinet Ministers or other government commissioners who can speak in the Houses at any time they want, and a bill initiated by a House is lacking in such leadership. The fate of bills is almost always decided in the committee-room. Other procedures of law-making are similar to those of other countries.

The Throne has the executive power, but the exercise of this power from the financial standpoint is limited by the Diet. All appropriations for the exercise of this power and the collection of all revenues needed for this purpose are subject to the will of the Diet. This is one of the fundamental principles of constitutional government, and it is chiefly for this purpose that the institution of parliament was introduced in old Europe. In early days, the parliament was nothing but an organ to give consent to the collection of taxes by the monarch. This idea is most clearly expressed by the phrase, "no taxation without representation"—the favorite phrase of the American Revolution.

Then to what extent does the Diet of Japan control the finances of the government? In regard to revenues, the imposition of a new tax or a modifica-

<sup>5</sup> Law of Houses, Art. 30

tion of the rate of an existing tax must be determined by law, not by the budget.<sup>6</sup> Therefore, both the government and the Diet have the power to initiate a revenue bill, and when a revenue bill is initiated by the government, the Diet can reject or amend it, not only to reduce it, but also to increase it. There is no difference between a revenue bill and an ordinary bill. Of course the budget contains all revenues as well as all expenditures, but revenues are collected by virtue of law, and therefore so far as revenues are concerned, the government is only restricted by law, not by budget. Revenues contained in the budget mean nothing more than the mere estimates of revenue. On this point revenues in the Japanese budget have a quite different meaning from that of revenues in the British budget, which are not only the estimates of annual revenues, but also the limits within which the government can lawfully collect revenues. But it is provided that administrative fees or other revenues having the nature of compensation do not always require the consent of the Diet.<sup>7</sup> National loans and other liabilities on the charge of the national treasury also depend upon the consent of the Diet, except those which are provided for in the budget.<sup>8</sup>

#### Expenditures

On the other hand, all expenditures of the government are laid before the Diet annually in the form of an annual budget,<sup>9</sup> and the government is

<sup>6</sup> Constitution, Art 62

<sup>7</sup> Constitution, Art 62

<sup>8</sup> Constitution, Art 62

<sup>9</sup> Constitution, Art 64



restricted by the budget passed by the Diet. If the government spends money in contradiction to the budget, it must assume the responsibility for thus violating the law. But the budget is initiated only by the government, and the Diet has no power to initiate it. The power of the Diet regarding the budget is limited to amending or rejecting the budget submitted by the government. Not only that, but the Diet can only reduce or reject the budget on account of its incapacity to initiate the budget. It is generally recognized that the Diet has no power to increase the budget as in England.<sup>10</sup> Even this power to reduce or reject the budget is not unlimited. The Diet cannot reduce or reject the appropriation for the Imperial Household, except in case of increasing the existing fixed amount.<sup>11</sup> The appropriations for certain purposes which continue for several fiscal years and which have been approved by the Diet at the beginning are also outside the amending or rejecting power of the Diet.<sup>12</sup>

The biggest limitation to this fiscal power of the Diet comes from the notion of the superiority of law to the budget. According to German jurists, the budget is a formal law or merely an ordinance, while a law is a substantial law; and a substantial law is superior to a formal law, to say nothing of an ordinance. Furthermore, a law is the common will of the executive and the legislative, and cannot be changed by the single will of the legislative.

<sup>10</sup> Dr. T. Minobe, *op. cit.*, p. 521.

<sup>11</sup> Constitution, Art. 66.

<sup>12</sup> Constitution, Art. 68.

Accordingly, expenditures necessary for the execution of laws are free from the amendment or the rejection of the legislative body. The Japanese Constitution is influenced by this notion. It provides for expenditures which the Diet cannot reduce or reject without the concurrence of the executive.<sup>13</sup> First, those expenditures which are caused by or result from the executive power of the Throne, such as Imperial Ordinances or treaties, cannot be amended or rejected by the Diet, provided that those expenditures have also been provided for in the preceding budgets and approved by the Diet. Ordinary expenditures necessary for the maintenance of different branches of the administration, expenditures needed for the maintenance of the army and the navy and salaries of civil and military officials, are among this kind of expenditures which are caused by the executive power of the Throne. Taking one example, when the government establishes a new branch of the administration or a new army division by an Imperial Ordinance, the Diet is free in reducing or rejecting the appropriations required by these new establishments, but once the Diet gives consent to those appropriations, it cannot reduce or reject them thereafter, without the consent of the executive. Second, such expenditures as may have arisen by the effect of law—(expenditures necessary for the execution of law)—are also outside the amending power of the Diet. (Pensions, annuities and the like, belong to this kind of expenditures. The framers

<sup>13</sup> Constitution, Art. 67

of the Constitution were of the opinion that once a law is enacted by the Throne with the consent of the Diet, it is binding upon the Diet and the Diet cannot prevent the execution of the law by reducing or rejecting the expenditures necessary for its execution. Third, expenditures due to the legal liabilities of the government, (such as interest on national loans, appropriations for the redemption of national loans, subsidies to companies, compensation of all kinds,) are likewise free from amendment or rejection by the Diet. This results from the fact that all liabilities on the charge of the national treasury, except compensation or indemnity, require the consent of the Diet. All these expenditures can be reduced or rejected by the Diet if the government agrees upon it, but as the government is also bound by a law, it is not free in agreeing upon the amendment or the rejection of those expenditures, except when it is going to repeal the laws to which those expenditures are due.

The government is under the obligation to carry out administration within the limits of the budget passed by the Diet, but the Constitution admits that in some cases the government can go beyond the limits of the budget, provided that such actions of the government must be approved by the Diet afterwards. In case of necessity the government may spend money even beyond budget amounts or for some purposes other than those which are provided for in the budget,<sup>14</sup> and these expenditures are paid out

Financial  
measures be-  
yond or out-  
side the  
budget

<sup>14</sup> Constitution, Art. 64

of reserve funds contained in the budget.<sup>15</sup> Not only that, but also in case of urgent need for the maintenance of public safety the government can enact emergency financial measures, such as modification of the budget, raising of national loans, by means of Imperial Ordinances, provided that the Diet cannot be convoked owing to the external or internal condition of the country.<sup>16</sup> Of course, these financial measures beyond or outside the budget must be laid before the Diet at the next session for the purpose of securing the approval of that body.

Enforcement  
of the pre-  
ceding  
budget

There is another grave restriction upon the financial power of the Diet. That is, when the Diet has not voted on the budget or when the budget has not been brought into actual existence, for example, on account of the dissolution of the House of Representatives, the government carries out the budget of the preceding year as the budget of the present year.<sup>17</sup>

Auditing  
power

The Diet also has the power to audit the final accounts of the expenditures and revenues of the government, and for this purpose there is an independent organ called the Board of Audit, which verifies and confirms the final accounts before they are submitted to the Diet and whose report is submitted to the Diet together with those final accounts. The position of this Board and the status of its members are almost the same as in the case of the courts of law.<sup>18</sup>

<sup>15</sup> Constitution, Art 69

<sup>16</sup> Constitution, Art 70

<sup>17</sup> Constitution, Art 71

<sup>18</sup> Constitution, Art 72

Thus the Diet has a somewhat large power in regard to the government finance, and this financial power was the chief weapon with which the Diet fought against independent Cabinets in the early days of Japanese constitutional government. But nowadays the Cabinet is in office usually with the confidence of the Diet and the budget goes through it without any considerable changes. The main object achieved by budget debates in the Diet is not a reduction of proposed expenditures but a general airing of grievances and a wide-ranging review of administrative policy, and in that sense the budget debates are very important in attacking the government or supervising general administration.

Real significance of the financial power of the Diet

As said before, both Houses of the Diet have almost the same power in regard to the government finance, with the one exception that the budget is laid before the House of Representatives first. The House of Peers can also amend or reject the budget, and can even restore the appropriations which the House of Representatives has reduced or rejected. On this point the Japanese Upper House is quite different from the British Upper House, which has no alternative but to pass the budget sent to it from the Lower House without amendment.

House of Peers and finance

Each House of the Diet has various means by which it supervises the executive. First, each House may present addresses to the Emperor directly in respect of all affairs of State.<sup>19</sup> In former days when the Cabinet was independent of the Diet this power

Formal powers of the Diet

<sup>19</sup> Constitution, Art. 49

was used to impeach the Cabinet, but after the parliamentary Cabinet was established this power came to be exercised only for ceremonial purposes. Second, each House may make representations to the government as to laws, or upon any other subject.<sup>20</sup> This power is not so important because these representations, being kept from containing an attack upon the government for its past policy, are limited to future government policy and the government is not bound by these. Third, both Houses may pass resolutions. The most important is the "non-confidence" resolution, which usually leads to the resignation of the Cabinet. This power is practically monopolized by the Lower House, inasmuch as the Upper House is never dissolved and it can not reflect the popular will to such an extent as the Lower House. Fourth, the Houses may make inquiry about the affairs of State, but the Houses of the Japanese Diet have no power to summon an individual as witness and therefore their power of inquiry is not so influential as in other countries like the United States. Fifth, members of the Diet may interpellate or question the government as to all matters within the responsibility of the government. Nowadays, government bills and budgets usually go through the Diet without considerable amendment, and accordingly in criticizing or attacking the governmental policy great importance is attached to these interpellations and questions.

<sup>20</sup> Constitution, Art. 40

## CHAPTER NINE

### THE JUDICIARY

JAMES BRYCE says, "There is no better test of the excellence of a government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen than his sense that he can rely on the certain and prompt administration of justice"<sup>1</sup> In fact, the judicial administration holds an important part in modern constitutional government

Significance  
of judicial  
administra-  
tion

In Japan the judicial power belongs to the Imperial Throne, but it is strictly provided that it shall be exercised by independent courts of law<sup>2</sup> Neither the Emperor nor the Cabinet can interfere with the judicial administration Then to what extent is the judiciary independent of the executive<sup>3</sup> First, the independence of judicial offices is guaranteed by the Constitution<sup>3</sup> In other words, the appointment and dismissal of judges and public procurators is provided for in laws and is free from arbitrary interference of the executive But this independence of judicial officers is weakened by the fact that the promotions of judicial officials are within the power

Independ-  
ence of the  
judiciary

(1)  
Independ-  
ence of judi-  
cial offices

<sup>1</sup> James Bryce, *Modern Democracies*, Vol II, p 384

<sup>2</sup> Constitution, Art 57

<sup>3</sup> Constitution, Art 58

(2)  
Independence of judicial judgment

(3)  
Judicial review of ordinances

of the executive and they are, in reality, liable to be influenced by the executive. Second, the exercise of the judicial power by the courts of law is completely independent of other organs, executive or legislative. No one can interfere with judicial judgment. But in the case of criminal justice public procurators who are under the direction of the executive have the power to determine whether the particular case is actionable or not, and this fact affects the independence of judicial judgment to some extent, though such a system results from the necessity of maintaining the unity of the penal policy of the country. Third, the judiciary can refuse to apply invalid ordinances. As for laws which have been passed by the Diet and sanctioned by the Emperor, the courts of law have no power of judicial review, even when they are unconstitutional. In Japan the legislative power is supreme and the executive and the judicial powers are under the legislative power. The legislative power has the supreme power to interpret the Constitution, and the judicial must be subject to the interpretation by the legislative power.<sup>4</sup> Of course, when a law is in contradiction with the Imperial House Law, the judiciary must refuse to apply it, because in this case the question is one of fact, not of interpretation. In respect of ordinances, however, the judicial has the power to determine the validity of ordinances, which are merely an expression of the will of the executive, and to refuse to apply such invalid ordinances, because the judicial

<sup>4</sup> Dr T Minobe, *op cit*, pp 494-495



is independent of the executive, and is not bound by the interpretation of the executive. Fourth, the effect of judicial decisions is independent. The only one exception to this principle is the pardoning power of the Emperor.

(4)  
Independence of the effect of judicial decisions

The courts of law are divided into four classes. The highest is the Supreme Court. There is only one Supreme Court throughout the country. The second highest is a Court of Appeal, and there are about seven Courts of Appeal. The third is a Prefectural Court, and the lowest is a District Court. Each prefecture has one Prefectural Court and a number of District Courts. The organization and the jurisdiction of these courts are similar to those of the French courts. Some words, however, must be said about the Japanese jury system, which was introduced by the law of 1923 and which will be enforced in the near future. The Japanese jury system is much restricted as compared with that of other countries. It is confined to criminal justice in a Prefectural Court. The accused may refuse the participation of a jury in judicial judgment. More than that, the power of a jury is limited to a question of fact, not extending to a question of interpretation of law; judges may refer to other juries, when the judgment of the particular jury is not acceptable; and appeals from judicial decisions which have adopted jury opinion are only allowed to the Supreme Court.

Organization of the courts of law

31

Japanese jury system

In addition to these ordinary courts, there are military courts and the Court of Administrative

Military courts

Litigation. Military courts are composed of civilian judges and military officers, and deal with only criminal actions against persons in military service. The Court of Administrative Litigation is quite independent of ordinary courts of law, and all administrative suits are entered in this court,<sup>5</sup> as in France.

There is ~~only~~ one Court of Administrative Litigation in the whole country. It corresponds to the Supreme Court in ordinary litigation, and gives final decisions in regard to administrative disputes. But the judicial procedures of administrative litigation are somewhat different from those of non-administrative litigation. Administrative disputes must be laid before certain executive organs by means of petition, before they are submitted to the Court of Administrative Litigation, except those disputes concerning acts of Ministers of State, prefectural governors and the like, which disputes may be directly laid before the Court of Administrative Litigation. The general principle of petition is that petitions against acts of officials are addressed to the officials who have direct supervision over them.<sup>6</sup> The Court is composed of a President and fourteen judges, who are over thirty years of age and have served as high officials in the executive branch of the government, or as judges in ordinary courts of law for more than five years. The inde-

<sup>5</sup> Constitution, Art. 61

<sup>6</sup> Dr. T. Minobe, *Essentials of the Japanese Administrative Law*, p. 324

pendence of their office is guaranteed by law and they exercise their power with perfect freedom. Of course, this court cannot annul a law on the ground of its unconstitutionality, but it can refuse to apply illegal ordinances, as ordinary courts of law do. The competence of this court is not unlimited. It has jurisdiction only over those disputes which laws or ordinances have placed within its competence. Disputes relating to the assessment of taxes, with the exception of customs duties, the punishment of defaulting taxpayers, the prohibition or withdrawal of permission to engage in business, and water rights and works, and disputes between the State and an individual concerning the ownership of land are, in general, within the jurisdiction of this court. Police measures, the requisition of land for public purposes, rights and duties of officials, elections to local Assemblies, supervisory measures over local government, etc.—these matters are partly within the jurisdiction of this court. An important limitation to the jurisdiction of this court is that it can not assume jurisdiction over suits demanding indemnity or reparation for illegal administrative measures, which suits are placed within the competence of ordinary courts of law.<sup>7</sup>

The dispute of competence between the Court of Administrative Litigation and ordinary courts of law is to be decided by the Court of Competence Dispute, but until the Court of Competence Dispute is instituted, it is to be decided by the Privy

Competence  
dispute be-  
tween ordi-  
nary courts  
and admin-  
istrative  
court

<sup>7</sup> Dr T Minobe, op cit, pp 310-316

Council.<sup>8</sup> Nevertheless, no law has been enacted for the organization of the Court of Competence Dispute, or even for the judicial procedures in the Privy Council as the Court of Competence Dispute. Accordingly, there is no court at present which can decide this dispute of competence. Each court, the Court of Administrative Litigation or the ordinary court of law, has the power to determine its own competence.

<sup>8</sup> The Act of the Court of Administrative Litigation, Articles 20, 45

## CHAPTER TEN

### LOCAL GOVERNMENT

**U**NDER the Tokugawa régime, which was based on the feudal system, the government was very much decentralized (Except the part of the country which was under the direct control of the Shogunate government,) the whole country was divided into many fiefs, which were given to local barons. Within a fief the local baron had almost an exclusive power of administration and the central government of the Shogun had a very weak power over those local governments of barons, just like in an extremely decentralized federal State. In the districts which were retained in the hands of the Shogun's government, the power was centralized in the central government and local government was carried on by local representatives of the central government. As for communal government, there were three kinds a village, a free town and a city. In villages, which constituted the most part of the country, the administration was carried on by the village-chief who was elected by the inhabitants or took his post hereditarily. His duty was chiefly to collect taxes, to administer justice, to encourage agricultural or industrial development, and so forth. He was under the control of the local baron in consider-

Local  
government  
under the  
Tokugawa  
régime

Communal  
government  
under the  
Tokugawa  
régime

able measure. On the contrary, in free towns, which were great centers of commercial and industrial activities, the inhabitants not only managed to control administrative and judicial affairs through the popular Assembly, but also they sometimes organized standing armies to protect their interests, as we see in the free cities of Germany in the Middle Ages. In cities—there were three cities throughout Japan—almost all powers were retained by the central government and there was no communal element. In addition to these forms of communal government, there was another form which is peculiar to Japan—that is, a company of five houses (“*goningumi*”). This small body politic was made up of masters of five neighboring houses, and was controlled by the company-chief, who was elected by the members from among themselves. Dr. Shimizu, a senior judge of the Court of Administrative Litigation of Japan and an authority on Japanese local government, says that this body “was a sort of commune having all the internal affairs relating to police, industry, engineering, and taxes, and evil and moral matters under its administration.”<sup>1</sup> The unity within this body was very strong and a vigorous communal or cooperative spirit was prevalent among its members. The origin of this system may be summarized as follows. In old Japan a large family which was composed of many small families of the same blood—something like the *familia* in the Roman Empire—was at once a

“Company  
of five  
houses”

<sup>1</sup> Marquis Okuma, *Fifty Years of New Japan*, Vol. I, p. 322

social and administrative unit. But the constant increase of population and the influence of Buddhism, which disregarded ancestor-worship upon which was founded the blood relationship of the family, gradually loosened the unity within the family, which at last ceased to be a social and administrative unit. But small families which emerged as independent social units out of the dissolution of that large family wanted to keep some system of mutual cooperation and assistance among themselves. Thus the system of a group of five families ("goho") was introduced from China. This group was a body politic consisting of five families and in this group self-government was realized so far as its own affairs were concerned, all the five families being held jointly responsible to the central government. But further increase of population, coupled with rapid progress of civilization, resulted in that small family ceasing to exist as a social unit and being superseded by a house which was a component part of the small family. In consequence, the group of five families changed itself into a company of five neighboring houses.

But after the Restoration of 1867 this decentralized form of government disappeared as a natural result of the downfall of feudalism and all powers formerly held by local barons were now centralized in the hands of the central government. Not only that, but the traditions and regulations of communal government, which is peculiar to Japan, and which would have developed further if things had been

Centraliza-  
tion of local  
government  
after the  
Restoration

left to their natural course at the Restoration, not only suffered but almost disappeared. It was not until later, when the necessity for a local government was felt anew, that the present system of communal government was introduced. All prefectures were now governed by the governor appointed by the central government and there was no local Assembly elected by the people. Towns and villages were amalgamated into a large administrative division, which was administered by a government official, and had no local self-government.

Present system of local government  
(1)  
Prefecture

At present, there are two kinds of local government (1) prefectures, and (2) cities, towns, and villages. Urban and rural prefectures which had been nothing but an administrative division up to 1878 became a communal body by virtue of the Prefectural Assembly regulation in the same year, which newly established a Prefectural Assembly elected by the people. This Prefectural Assembly regulation which had been an imitation of the French system was afterwards superseded by the Prefectural Assembly regulation of 1890, which adopted the German system. Since then the regulation has been revised several times, but the main principles have not been changed.

Japan proper is divided into forty-six prefectures. Besides, there is a territory known as Hokkaido which covers an extensive region not yet classified into prefectures, though for administrative purposes this territory does not much differ from a prefecture.



Formosa, Korea, Saghalien, and the Kwantung Province are, of course, omitted here

The government (of a prefecture) is composed of the executive and the legislative. The head of the executive is the governor (or prefect) who is an official of the central government. He has a double status. As an official of the central government he has the full charge of local administration which is not reserved exclusively to the Ministers of State on the one hand and which is not left to local self-government on the other hand, under the direction and supervision of the central government, especially of the Minister of Home Affairs. He is like the prefect of a French Department. For instance, election, education, poor relief, police, public health, the protection of industry, conscription affairs, supervision of subordinate officials, supervision of communal government—all are within the power of the governor as a government official. In the prefecture of Tokyo, which is the seat of the central government, there is a police-governor in addition to the governor and his duty is to take charge of police, public health and the like. Since he holds the police power in the capital, he plays an important rôle in politics. On the other hand, as the chief executive of a prefecture, the governor takes charge of the matters which are left to the self-government of a prefecture, sometimes with the consent of the prefectural legislature and sometimes at his own will. The power left to the free hand of the governor is very large as compared with that of the chief executive of a city, town, or

The executive of a prefecture

village In his status as the chief executive of a prefecture, the governor is under the exclusive supervision of the Minister of Home Affairs, who is the sole supervisor of local government.

The legislature of a prefecture

The legislature (of a prefecture) is composed of the Prefectural Assembly and the Prefectural Council. The former is a primary legislature, and the latter is a secondary one. The Prefectural Assembly consists of (at least) thirty members elected by popular vote. Every male Japanese subject of the age of over twenty-five years, residing over one year in the prefecture and enjoying citizenship, has the right to vote or to be elected. Other provisions of election are similar to those for the House of Representatives. The term of office of its members is four years. The Assembly is called once a year by the governor to deliberate and decide upon the annual budget of the prefecture, and to give its consent to the general policies of the governor. The Assembly has no initiative, and therefore its power is much smaller than that of a city, town or village Assembly, which is described later. Before 1926, in which year the present system was adopted, both voters and candidates were required to be payers of national direct taxes of any amount.

The Prefectural Council is composed of the governor, two high officials of the prefecture, and seven to ten members of the Prefectural Assembly elected by that body. The power of this Council is to deliberate upon matters delegated from the Assembly or matters of minor importance, to advise the gov-

error in regard to projects submitted to the Assembly, to inspect the treasury of the prefecture, to decide administrative disputes concerning matters left to local self-government, and so forth. Accordingly, this Council looks like a committee of the Prefectural Assembly.

The power of the central government over the prefectural government is very large, chiefly because the governor as a government official is under the direct control of the central government. A number of prefectural governors go into and out of office at the same time with the Cabinet. Indeed, this centralization has the merits that the whole local government is carried on from one unified policy, but it contains the great weakness that the chief executive of the prefecture and his high staff change at the same time with the Cabinet of the central government, with the result that the efficiency of the prefectural government is considerably reduced. Therefore, nowadays there is a strong movement towards an elective governor.

Centraliza-  
tion of the  
prefectural  
government

These forty-six prefectures are subdivided into six hundred and thirty-six counties, but at present these counties are nothing but geographical districts. Prior to 1878 a county was also a geographical district, but in the same year it was converted into an administrative district, and in 1890 it was organized as one unit of local government. Its chief executive was the county-chief appointed by the central government, and its legislature was composed of the County Assembly and the County Council which

Abolition of  
county gov-  
ernment  
system

were organized along the same line as the corresponding bodies in a prefecture. But this county government system was attacked very strongly and bills which provided for an elective county-chief or the total abolishment of the county government system appeared in the Diet several times, though they were always rejected by the bureaucratic Cabinets. At last, by a decision passed by the Diet in 1924, this county government system ceased to exist in July 1926. Only for administrative convenience twenty-five branch offices of prefectural governments were established throughout the country, and the duty hitherto undertaken by the county-magistrate has been divided and shifted to prefectural functionaries and town or village chiefs.

(2)  
Communal  
governments

These six hundred and thirty-six counties in turn are subdivided into ten thousand, four hundred ninety-four villages and one thousand four hundred eighty-five towns. Besides, there are one hundred and one cities throughout the country.<sup>2</sup> These cities, towns and villages have communal governments. In 1878 a law was enacted for the organization of city, town and village governments, but this law contained no provision for the communal assembly. Shortly afterwards, however, regulations concerning the communal assembly were promulgated. In 1884 another law was enacted which stipulated that the chief executive of a town or a village should be chosen by the central government, but this law was displaced by a law of 1888 which provided for an

<sup>2</sup> N. Takenobu, *Japan Year Book*, 1927, p. 102.

elective chief of a town and a village. Not only that, but this law further provided that in a city the City Assembly should nominate three candidates for the mayoralty, and the Throne should choose one as mayor from among those three candidates. As for the three large cities—Tokyo, Kyoto and Osaka—a special system was adopted and the governor exercised the function of the mayor, but this special system was abolished in 1898. Thus there was laid the foundation of the present communal government of a city, a town, and a village.

The chief executive of a city is the mayor who is chosen by the Throne from among three candidates nominated by the City Assembly. As the chief executive of a city he has charge of the whole municipal administration which is left to municipal self-government, sometimes with the consent of the city legislature. In this field of administration he is supervised primarily by the governor, and secondarily by the Minister of Home Affairs, on the ground of supervisory power of the central government over local communal governments. But the mayor is also entrusted with the administrative affairs which are reserved to the central government, such as the elections for the House of Representatives, education, public health and so forth. In this field, the mayor carries on business as an agent of the central government and therefore he is under the supervision and the direction of various government officials according to the nature of the business. Of course, the city legislature cannot interfere with

(a) City  
executive

matters of this nature. It must be borne in mind that no municipal government in Japan is given the power to control the police force within its geographical limits

**City  
legislature**

The legislature of a city is composed of the City Assembly and the City Council, the former being a primary legislature, with the latter being a secondary one, as in a prefecture. The City Assembly consists of members elected by the people. The electoral system is similar to that of a prefecture. Male citizens over twenty-five years of age residing in the city over two years are eligible as voters for or members of this Assembly. Before 1926, in which year the existing system was adopted, the voters were limited to those living by their own independent means and paying direct municipal taxes of any amount, and these voters were divided into two classes, according to the amount of their municipal tax. That is, those taxpayers, who pay over the average amount, which is measured by dividing the total amount of direct municipal taxes by the total number of voters, elected one-half of the Assembly members, while the rest of the voters elected the other half. But this tax qualification and class election system were abolished in 1926. The power of the City Assembly is very large as compared with the Prefectural Assembly. Almost all matters of municipal administration which are left to municipal self-government should, in principle, be carried on with the consent of this Assembly.

The City Council is composed of the mayor, high

officials of the city and from six to twelve councillors who are elected by and from among the members of the City Assembly. The power of this Council is almost the same as that of the Prefectural Council.

There is no difference between the town government and the village government, except in name. Their chief executive is elected by the town or village Assembly, with the approval of the prefectural governor. His position and function is almost the same as those of a mayor. The town or village Assemblies constitute, respectively, the legislature of a town or village. They consist of members elected by the people in accordance with almost the same system as that adopted by a city. There is neither a tax qualification nor a class election system. The class election system was abolished in 1924, and the tax qualification in 1926. But those villages which are under special conditions are permitted to have an Assembly of all voters, instead of the village Assembly, with the approval of the governor. This Assembly is somewhat similar to a "Landsgemeinde" in the small cantons of Switzerland.<sup>8</sup> The power of this village or town legislature is similar to that of the City Assembly, except it also has the power corresponding to that of the City Council, because there is no Council in a village or town.

(b) Town  
and village

From what I have explained above, it will be seen that what Professor W. B. Munro says about

<sup>8</sup> R. C. Brooks, *Government and Politics of Switzerland*, pp. 365-385 [Ed.]

the French local government is also true of the Japanese local government. He says, "Centralization is its essence, centralization raised to the  $n^{\text{th}}$  power. All authority converges inward and upward. It is a system that can be charted in the form of a perfect pyramid."<sup>4</sup> But, on the other hand, we notice a strong tendency towards decentralization. The abolition of the county government system is an illustration of this tendency.

<sup>4</sup> Munro, *The Governments of Europe*, p. 549



## CHAPTER ELEVEN

### POLITICAL PARTIES

JAMES BRYCE says, "Parties are inevitable. No free large country has been without them. No one has shown how representative government could be worked without them."<sup>1</sup> Truly, parties are a necessary part of democratic government, and without them the machinery of national administration can not function.<sup>2</sup>

Importance  
of political  
parties

Now, I propose to make a brief survey of the history of the Japanese political parties. The representative system of Japan dates from 1890, but the history of political parties goes back much farther. The Jiyu-To (Liberal Party) was the first political party in Japan and was organized by the late Count Itagaki and his followers in 1880, to be followed two years later by the Kaishin-To (Progressive Party), formed by the late Marquis, then Count, Okuma. Both upheld the cause of liberty and progress, the only difference being that the former was more radical. These parties waged a hard and bitter campaign against bureaucracy and militarism, but after the Imperial Proclamation of 1881 to establish

History of  
Japanese  
parties

Formation of  
two big  
parties

<sup>1</sup> James Bryce, *Modern Democracies*, Vol. I, p. 119

<sup>2</sup> W. S. Myers, *American Democracy Today*, p. 125; Woodrow Wilson, *Constitutional Government in the United States*, p. 218

Struggle between the Cabinet and political parties

Formation of the Kensei-To Party

constitutional government, this heated political agitation was diverted to the constructive work of preparation and training for the introduction of constitutional government. The first national election which took place in 1890 resulted in bringing about ten small political groups, but shortly afterwards these groups were transformed into four or five parties, of which the Liberals and the Progressives were the largest. But until after the Sino-Japanese War of 1895 every Cabinet was formed by bureaucratic clan statesmen and it was not responsible to the Diet. Although the parties invariably fought against the government, they did not succeed in acquiring power from the hands of clan statesmen. The result was frequent dissolution of the Lower House. But both sides, the clan government and the political parties, gradually tired of this struggle and after the Sino-Japanese War they began to cooperate with each other. Immediately after the war the Ito Cabinet started to cooperate with political parties in the Lower House for the purpose of realizing its post-war policy. In 1898, however, the two big parties in the House—the Liberals and the Progressives—united to organize a new party called the Kensei-To (Constitutional Government Party), in order to stand on a common front against the bureaucratic Cabinet then in office, and this new party was suddenly called upon to form a Cabinet. The Cabinet was formed under the premiership of Count Okuma, the leader of that party. This is the first party Cabinet that Japan has ever had, and

almost all Cabinet Members were members of that party. But, unfortunately, this ministry was soon faced with internal dissensions and forced to withdraw from office. The Kensei-To Party was also dissolved into its former component parts. This failure of the first party Cabinet is of considerable significance in considering the reasons why the administrative ability of party statesmen was doubted by the general public, and especially by the bureaucrats, for a considerable length of time after this, with the result that the healthy development of party government was interrupted in some measure.

Dissolution  
of the  
Kensei-To

The downfall of this party ministry naturally brought clan statesmen back to power, but the formation of a new party called the Seiyu-Kai (Political Fraternal Association) under the leadership of Marquis Ito (later Prince Ito) in 1900 again forced bureaucratic statesmen to hand over the power to a political party. In the same year this new party was called upon to form a ministry. This party was chiefly composed of old Liberals and it controlled an absolute majority in the Lower House, having one hundred and fifty-six seats out of the whole three hundred. This ministry was also short-lived, chiefly because of the strong opposition of the Upper House, as well as on account of its internal dissensions. Thus the second party Cabinet also resulted in a failure and bureaucrats came into power again. The two dominant parties—the Seiyu-Kai and the Kensei-Honto (Constitutional Government Party proper), which was composed of old Progressives—

Formation  
of the  
Seiyu-Kai  
Party

Supremacy  
of the  
Seiyu-Kai  
Party

Organization  
of the Doshi-  
Kai Party

Its transfor-  
mation into  
the Kensei-  
Kai Party

joined together once more to oppose the new bureaucratic Cabinet, though they did not succeed in throwing the Cabinet out of office. Of course, the declaration of war with Russia in 1904 brought a complete peace in domestic politics, but with the end of the war they resumed their natural course, and at last towards the end of 1905 the Cabinet resigned. A new ministry was formed under the premiership of Prince Saionji (then Marquis Saionji), the new leader of the Seiyu-Kai Party. After this time, Prince Katsura's bureaucratic ministry and Marquis Saionji's party ministry were in office in turn on the understanding that the Seiyu-Kai Party, which was the majority party in the House, would support the Katsura ministry. But the fourth Katsura Cabinet, which was formed towards the close of 1912, could not get the support of the party because it favored bureaucrats and militarists too much. The ministry, therefore, was forced to resign within fifty-three days of its formation. But this struggle between the bureaucratic Cabinet and political parties resulted in depriving the Seiyu-Kai Party of its leader, Marquis Saionji. No other member of that party was deemed to be qualified to form the Cabinet. In the meanwhile, Prince Katsura started to organize a new party called the Doshi-Kai (Fraternal Party) under his own leadership and this party was chiefly composed of old Progressives. Shortly afterwards this party was transformed into another new party called the Kensei-Kai (Constitutional Government Association) and with Viscount

Kato as the leader, on account of the death of Prince Katsura. But this party was not so strong as the Seiyu-Kai Party. Then Count Yamamoto's Cabinet, with the support of the latter party, came into office in February 1913. This Cabinet lasted only for one year when it was forced to resign in 1914 because of naval scandals. The situation was very complicated and Marquis Okuma, the real leader of the Kensei-Kai Party, seemed to be the only person who could form a Cabinet. He formed a Cabinet with the support of that party and dissolved the House to get the support of a majority there. The general election resulted in the victory of the government party. This Cabinet lasted for three years, a reasonable length of time for a Japanese Cabinet, but finally it was replaced by a strong bureaucratic ministry to meet the serious situation caused by the World War. The Seiyu-Kai Party which supported this new Cabinet in some measure increased its power a great deal under this ministry and became the largest party in the House.

Supremacy  
of the  
Kensei-Kai  
Party

Party  
supremacy  
back to the  
Seiyu-Kai  
Party

In 1918, this bureaucratic Cabinet was displaced by a Cabinet of the Seiyu-Kai Party with Mr. Hara, the leader of that party as the Premier. Having obtained the absolute majority in the House by the dissolution, this ministry held office for a considerable length of time, until Mr. Hara was assassinated in 1922. His ministry was succeeded by a Cabinet of the same party under the premiership of Viscount Takahashi, the new leader of the party, but shortly afterwards this Takahashi ministry resigned because

of its internal trouble. A new ministry was formed by Admiral Kato, who was famous as the chief of the Japanese Delegation to the Washington Disarmament Conference, with the support of the Seiyu-Kai Party. This Cabinet was replaced in September 1923, immediately after the great earthquake, by a non-party Cabinet of Count Yamamoto which resigned, however, within four months of its formation, chiefly because of the strong opposition of the majority party in the House. A new ministry was formed by another non-party statesman, with the support of the absolute majority of the Upper House. The Seiyu-Kai Party, which had controlled the absolute majority in the Lower House, was now divided into two parties. One party was called the Seiyu-Honto (Political Fraternal Party proper) and supported the government, while the other, the Seiyu-Kai Party, together with all other parties in the Lower House, was opposed to the government. Public opinion also turned against the Cabinet. The opposition parties emerged victorious out of a general election and Viscount Kato, the leader of the Kensei-Kai Party, which was now the largest party in the House, formed the Cabinet with the support of other friendly parties. Later the Seiyu-Kai Party withdrew its support from the Cabinet, but the Cabinet held office until last April (1927) with the support of the Seiyu-Honto Party, the former government party. Last April, this Cabinet was replaced by a Cabinet of the Seiyu-Kai Party, the second largest party in the House, under the premiership

Dissolution  
of the  
Seiyu-Kai  
Party

Formation of  
the Kensei-  
Kai Cabinet

of Baron Tanaka, the new leader of that party. Shortly afterwards disintegration took place within the Seiyu-Honto Party. One part joined the Seiyu-Kai Party, while the other, together with the Kensei-Kai Party, formed a new party called the Minsei-To (Popular Government Party). The party strength in the Lower House on June 1, 1927, before the last general election was as follows.

Formation of  
the Minsei-  
To Party

Minsei-To (Popular Government Party)	226
Seiyu-Kai (Political Fraternal Party)	180
Shinsei-Club (New Justice Party)	24
Jitsugyo-Doshi-Kai (Businessmen's Party)	9
Independent members	17
Vacant	8

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Total 464

The Imperial Diet met in January 1928. It was feared that the opposition party, being in the majority, might pass a vote of censure. Therefore, on January 21 the government dissolved the House of Representatives and the parliamentary election was held on February 20. This was the first election held under the universal manhood suffrage law of 1925. According to this law, Japan is divided into 122 constituencies, each of which returns from three to five members to the House, in the proportion of one member to every 120,000 of the population. Candidates must be male citizens over thirty years of age, while the franchise is given to every male citizen over twenty-five years of age and without property qualification.

The result of the election was as follows.

Seiyu-Kai	221
Minsei-To	214
Kakushin-To	4
Jitsugyo-Doshi-Kai	4
Shakai Minshiu-To (Social People's Party)	4
Nihon Rodo-Nomin-To (Japan Labor-Farmer Party)	1
Rodo-Nomin-To (Labor-Farmer Party)	1
Chiho Musan-To (Rural Proletariat Party)	1
Independents	16

Total 466

This result was a great surprise both to the government party and to the opposition. The strength of the two major parties was almost balanced, leaving the political situation somewhat unstable. The removal of the property qualification for electors had a far-reaching effect upon the general situation. In the first place, it enfranchised a large number of educated young people whose influence carried great weight in moulding public opinion. Fully awakened to the seriousness of politics, these people did their best, either individually or through the associations they had formed to encourage "clean voting." They made it possible for young educated men, without much financial means, to win in the election. In the second place, birth was given to four new parties which have much in common but, for some reason or other, are unable to pool their resources and strength for the attainment of their common ends.



These are the Japan Farmers' Party, the Japan Labor-Farmer Party, the Labor-Farmer Party, and the Social People's Party. They polled about 477,000 votes in all. The Social People's Party and the Japan Farmers' Party represent the "right wing" of the Japanese proletariat. Between the right and left wings a middle course is followed by the Japan Labor-Farmer Party. Of the four, the most influential is the Social People's Party, which is supported by most of the Japanese trade unions

Out of the 466 members of the new House of Representatives, 243 hold university degrees, 75 are college graduates in medicine, engineering science and commerce, and 22 are high-school graduates. The Japanese people are between 95 and 99 per cent literate. They have the necessary intellectual equipment to exercise the vote intelligently, for they are able to read and follow political questions of the day.

The increase of the strength of political parties may be partly due to the disappearance of the old bureaucratic clan statesmen, but it is more properly due to the increase of the strength of public opinion in politics. Briefly speaking, during the period following the promulgation of the Constitution (1890-1897), the size of the public which gave direction to political affairs was limited to the upper class. But after the Sino-Japanese War this state of things changed greatly and the organized public now began to include the middle class population. The Russo-Japanese War of 1905 was not so much due to the

The public  
opinion

minority opinion of the military class as it was to a strong public opinion. This war brought about a further change in this matter. The economic development caused by the war made even the lower class have some interest in politics and a political awakening of the masses was effected. After the World War this already growing idea of democracy was given a strong incentive. The fall of German militarism and the victory of the cause of democracy gave the people a vivid impression of what liberty and equality meant in both national and international politics, and a healthy democracy has finally found a strong foothold in Japan. Dr. K. Kawabe says, "Direction of political affairs in Japan today is no longer a monopoly of the privileged class, because the power of the people is more and more felt in internal and foreign affairs" <sup>3</sup>

Political  
groups in  
the House of  
Peers

Before closing this chapter, I desire to say a few words about the political groups in the House of Peers. There are no political parties, so to speak. Nevertheless, all its members are now politically divided into six groups: the Kenkyu-Kai, the Kosei-Kai, the Koyu-Club, the Chawa-Kai, the Dosei-Kai, the Mushozoku-Dan and independents. Of course, these groups are not formed on any definite political views or ideas, but it cannot be denied that there has al-

<sup>3</sup> K. Kawabe, *The Press and Politics in Japan*, p. 167. Political parties in Japan are based more upon principles and policies after the French, than the American model. Party platforms are professions of political faith rather than programs of governmental and political action. Personal loyalty to leaders counts for much. This probably is due to a survival of feudal influence. [Ed.]

ready appeared a strong tendency among the peers towards forming political parties. The Kenkyu-Kai controls an absolute majority in the House of Peers and no Cabinet can accomplish its purposes without asking for the favorable assistance of this group, which includes all viscount and count members, a large number of the Imperial nominees and the representatives of high-taxpayers. The Koyu-Club, which is perhaps the second largest party, is a group chiefly of pro-Seiyu-Kai Imperial nominees and high-taxpayers' representatives. The Kosei-Kai is the group chiefly of baron members. The Chawa-Kai is composed of Imperial nominees who are protégés of old bureaucratic Cabinets and usually are independent of political parties in the Lower House. The Dosei-Kai is the group of pro-Minsei-To Imperial nominees and high-taxpayers' representatives. The Mushozoku-Dan is also a group of Imperial nominees. On the whole, Imperial nominees are the most influential members in the House of Peers by virtue of their long experience in public affairs, and this kind of members tends to be divided into camps along the party lines in the House of Representatives, because a party Cabinet, towards which there is a general tendency, undoubtedly recommends its favorites.

## CHAPTER TWELVE

### CONCLUSION

**D**R. R. FUJISAWA remarks, "Democracy is that state of existence of a nation in which equal opportunity is given to each individual, and which is so organized as to urge the individual to do his best in conformity with the unqualified maintenance of order."<sup>1</sup> Dr. Nicholas Murray Butler, President of Columbia University, also says, "False democracy shouts, Every man down to the level of the average True democracy cries, All men up to the height of their fullest capacity for service and achievement"<sup>2</sup> Indeed, true democracy does not mean that all men are equal in spite of their greatly different capacities, but means that every man is given an equal chance to put forth his maximum effort or to make the best and most of himself. The political influence of an individual must be proportionate to his capacity.<sup>3</sup> The equality of individuals which is not based upon the equality of individual capacities is not a true equality It is true that in modern democratic countries individuals are theoretically equal before and in the law, but in reality

<sup>1</sup> R. Fujisawa, *The Recent Aims and Political Development of Japan*, p. 140

<sup>2</sup> N. M. Butler, *True and False Democracy*, p. 15

<sup>3</sup> W. W. Willoughby and L. Rogers, *op cit*, p. 120

they are not equal. The system of a second House of the legislature is certainly incompatible with a complete equality of individuals. Even in the first House, in which people are equally represented, the capacity or ability of a man plays a great rôle. This is also true of international politics. The law of nations solemnly declares that nations are equal, but in fact the so-called great Powers hold a more influential part than smaller States, as we see in the composition of the Council of the League.

Now, as for Japan, for centuries it had been under the feudal system, and it is only half a century ago that Japan was emancipated from this system. Consequently, even after the establishment of the constitutional government in 1889, the general public of Japan was not familiar with governmental affairs and their political capacity was poor. Therefore, it is very natural that in those days the actual power rested with bureaucratic statesmen, and the Diet and political parties were not strong enough to control the bureaucratic government. But as the political capacity of the general public was elevated higher and higher, the actual political power gradually shifted from bureaucrats to the Diet and political parties, and nowadays the people and the Diet certainly have the actual power to control national politics. The parliamentary Cabinet system has almost been established in practice, and the political leadership is assumed by the Diet and the people, instead of by bureaucrats. Of course, the Japanese have still a long way to go before they reach the

final goal of complete control of the government by the people, because there are factors which check the parliamentary control of the government in some measure, such as the Elder Statesmen, Privy Councillors, and bureaucrats in general. But it is quite certain that these checks will gradually disappear as the political capacity of the people is elevated further, and meantime the country must refrain from attempting a radical change without regard to the capacity of the people at large. Dr. Kiheiichi Onozuka of Tokyo Imperial University says, "We can not but feel that the adoption of democracy among us, who have for so many centuries been governed under an autocratic rule, is a pretty risky undertaking. But we are, so to speak, in the firm and unescapable grip of fate, and sooner or later we shall come to see democracy in this country [Japan]. . . . We should therefore rather try to preserve our older civilization, and construct a newer one of a democratic and international type on its foundation-stone."<sup>4</sup>

<sup>4</sup> R. Fujisawa, *op cit*, pp 148-149

## APPENDIX

### THE CONSTITUTION OF JAPAN

#### *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 Constitution.

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

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 2 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 ap-



pointed 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 officers and men of the Army and of the Navy.

*Chapter 3. 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 can not 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 absolute 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 offences 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 4 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 5. 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 6 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, 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 7 Supplementary Rules*

**ARTICLE LXXIII** When it has become necessary in future to amend the provisions of the present Constitution, a project to that 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 Article LXVII.



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