

THE GOVERNMENT OF JAPAN

CHAPTER I

The Constitution of Japan (1946)

Japan's Political Tradition

The Japanese archipelago, situated off the east of the Asian Continent consists of the four principal islands of Honshu, Hokkaido, Shikoku, and Kyushu plus thousands of small islands. In area Japan is 369,622 square kilometers or 147,727 square miles (only for the area under actual administration of Japan) and it stretches 2,000 kilometers or 1,500 square miles in a north, south-west direction, between 27 and 45 degree north. Japan is roughly one-twentieth the size of the United States of America, one-eighth of the size of India, but is slightly larger than that of the United Kingdom or Italy.

Japan is an island empire characterised by complex features and this fact has profoundly affected the political character of the country during the past two thousand years and more. In the first place, the island and the mountains made land communications pretty difficult and, consequently, have produced regional outlook and psychology of the people. Each region has its own distinct history and traditions and possessed in the past some sort of political identity too. This sort of localism and fragmentation disappeared after the Restoration in 1868, when Japan was unified for the first time in her history. Yet this outlook did not disappear altogether from the minds of the people. Their political behaviour and, as such, the practical politics of the country are still prominently influenced by the historical legacy of the political decentralization and localism.

Secondly, Japan's insularity provided for her a well defined frontier which created amongst her people a sense of group identity and strong nationalist feelings. Japan's nationalism is proverbial. Then, unlike Korea, which is physically

contiguous to China, the Japanese have developed their own culture by selecting only those elements of civilisation which suited their genius and served their needs. In due course such elements were assimilated into Japanese culture completely and "in such a manner as to lose their original identity, frequently giving rise to products far different from and even superior to original." The cultural homogeneity of the Japanese has produced such a sense of social solidarity amongst them that at no stage of Japan's history there has been development of any kind of racial antagonism. Racism, therefore, has been unknown throughout her history and racial problems have never arisen in Japanese politics for racial groups have never existed to form a minority. Japan had a population of 121,050,000 as of October 1, 1985 of which only 0.7 per cent belonged to registered minority group.¹ There is no other major nation with so small an admixture of identifiable minority elements. This also helps to explain the strong nationalism frequently displayed by the Japanese in modern times.

Their geographical isolation, common language and long history combined with racial identity to facilitate the development of very strong 'in-group' feeling against foreigners. The result is a nation which although subject to a number of domestic cleavages, has in the past usually presented a strong and united front to the rest of the world. Nature has also endowed Japan with a degree of national security. Prior to 1945 no one had ever successfully invaded Japan since the pre-historic times. Her national development was, therefore, achieved without the disruptive effects of foreign invasions and in accordance with the expression of the native genius. "This fact", according to Robert Ward "has had two

1. Only one million *burakumanis* (untouchables) and 600,000 Korean residents remain unassimilated.

prime consequences for the Japanese. First, it has enabled them to turn on and off almost at will the stream of intercourse with the Asian countries or the rest of the world. It made possible, for example, the effective adoption of deliberate policy of national seclusion for almost 250 years prior to 1854. Second, it has enabled the Japanese to concentrate exclusively and almost fiercely on domestic political issues, domestic power struggles and internecine strife with little or no concern for the effect that might have on the external safety of the nation. National security carried to this extent is unparalleled among the other great states of modern history.²

There are three stages which cover the development of the Japan's constitutional history—from the dawn of history to 1185 A.D., from 1185 to 1868; and the third from 1868 onwards. Chitoshi Yanaga describes the three stages as pre-feudal period, the feudal period, and the post-feudal period. For our purposes we are primarily concerned with the post-feudal period.

The end of the eighteenth century witnessed vital changes in the social and political life of Japan. The country was being put to an increasing pressure for opening her ports to foreign ships and there appeared to be no alternative left to the Government but to revise the previous decision. There were also quite visible signs everywhere indicating decay of the feudalistic social and political structure. Historic clan enmities against the Tokugawa became significantly prominent. All these factors coupled with the dissatisfaction of the Samurai on their deteriorating economic and social status gave birth to a movement for the restoration of the power to the Emperor. The movement was strengthened when in 1854, Japan abandoned the policy of isolation and concluded a treaty of amity with the United States to be soon followed by similar treaties with other European countries. The enemies of the Shogun found a favourable climate to impress upon the Japanese people that such treaties posed a serious threat to the integrity of Japan and would lead to Western imperialistic exploitation. The movement gained momentum and its leaders rallied round the Emperor by proclaiming: "Revere the Emperor, expel the barbarians." The Tokugawa regime ultimately collapsed. In 1867, Shogun Tokugawa declared the end of the military government *bakufu* and in 1868, the sixteen-year-old Em-

peror Mutshito ascended the throne.

The period intervening the Restoration and promulgation of the Meiji Constitution (1868-89) is described as pre-parliamentary. This period, according to Chitoshi Yanaga, "was an interlude, a transition stage, between feudalism and constitutionalism which was dominated by a small oligarchy under an interim system of absolute monarchy."³ Every effort was made to stabilize monarchy and to make the Emperor's writ run throughout the length and breadth of the country. To mark the transfer of political authority, Edo was renamed Tokyo, and the Shogun's palace was taken over by the Emperor.

But it was not a smoother switchover at least in the first decade after the Restoration. Opposition was intense on all sides. The sweeping changes from feudalism to oligarchically-run absolute monarchy headed by a minor Emperor, were subjects of bitter dispute. In 1877, discontented Samurai rebelled. Conditions, however, settled down when the Satsuma Rebellion was put down. The time was, accordingly, opportune to determine finally the form of government which should mould and shape the destinies of the nation.

There was, however, a fundamental difference on this issue. The opposition was pretty vocal on demanding an early establishment of a representative parliament and organised political parties. The government was reluctant to accede to this demand in the beginning but ultimately yielded to the irresistible pressure and ceaseless agitation of the opposition. In 1881, the government declared that constitution providing for elective parliament would be promulgated in 1890. Immediately after this announcement political parties came into existence.

Prince Ito Hirobumi was entrusted with the task of formulating the Constitution. The Drafting Committee consisting of three members, including Ito Hirobumi completed their labour in 1888, and the Draft Constitution was submitted to the Privy Council for its approval. After receiving its approval the Constitution was bestowed on the Japanese nation as a gracious gift from the Emperor on 11 February, 1889. The Meiji Constitution, as it was officially known, remained in force until Japan's surrender to the Allied Powers on 2 September, 1945.

The Constitution remained in existence for

2. Ward, Robert E. and Macridis, Roy C. (Eds.), *Modern Political Systems : Asia*, pp. 39-40.

3. Japanese People and Politics, p. 18.

58 years, but it was never amended. The achievements of the Restoration and Meiji Constitution can best be summed up in the words of a publication, issued by the Bureau of Statistics, Office of the Prime Minister. It stated: "The Meiji Restoration was like the bursting of a dam behind which had accumulated the energies and forces of centuries. Japan set out to achieve in only a few decades what had taken centuries to develop in the West—the creation of a modern nation, with modern industries, modern political institutions and a modern pattern of society. The surge and ferment caused by the sudden release of energies made themselves felt overseas. Japan emerged victorious from the Sino-Japanese War of 1894-95 and the Russo-Japanese War of 1904-05. By the end of World War I, which she entered under the provision of the Anglo-Japanese Alliance of 1902, Japan was recognised as one of the world's greatest powers."⁴

While Japan's progress as a modern industrial nation and of the world's greatest powers was spectacular and speedy, there were problems which confronted the nation's social, economic and political life in the mid-twenties. The World Economic Depression of 1929 intensified all these problems. Elements, particularly in the army, who advocated that overseas expansion was the only solution of difficulties facing Japan, eventually dominated and controlled the national policy. The militarists and ultranationalists predicted the destiny of Japan to become an empire that would ultimately dominate all Eastern Asia. They, accordingly preached the doctrines of racist mythology, national superiority and divinely sanctioned imperialism. They engineered the establishment of Japan's domination over Manchuria and attempted other military ventures in China, and finally drove the nation into the Pacific War and disastrous defeat. After the War, Japan was placed under Allied Occupation, and a new Constitution, based on the ideals of democracy and peace, as conceived by the Occupation Authorities, was promulgated in 1947. Japan regained her independence in 1952, and a few years later was admitted into the United Nations.

The Potsdam Declaration and Occupation

On July 26, 1945 in Potsdam, Germany,

President Truman and Prime Minister Clement Attlee (who had just succeeded Winston Churchill), with the concurrence of Chiang Kai-shek, issued a declaration incorporating the terms for the surrender of Japan. It was essentially the handiwork of America, for it was drafted by the United States and was based on a paper originally prepared by two officials of the State Department. Russia was not a signatory to the Potsdam Declaration as she was then not at war with Japan. Two weeks later when Russia entered the War, she signified her approval to the principles contained in the Potsdam Declaration. Since the Potsdam terms of surrender have important bearing on the Constitution of 1946, these are quoted here in full :

"There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until, irresponsible militarism is driven from the world.

Until such a new order is established and until there is convincing proof that Japan's war-making power is destroyed, points in Japanese territory to be designated by the Allies shall be occupied to secure the achievement of basic objective we are here setting forth.

The terms of the Cairo Declaration⁵ shall be carried out and Japanese territory shall be limited to the island of Honshu, Hokkaido, Kyushu, Shikoku, and such minor islands as we determine.

The Japanese military forces, after being completely disarmed, shall be permitted to return to their homes with the opportunity to lead peaceful and productive lives.

We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. The Japanese Government shall remove all obstacles to the survival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion and of thought, as well as respect for the fundamental human rights, shall be established.

4. p. 4.

5. The Cairo Declaration of Roosevelt, Chiang Kai-shek and Churchill of December 1, 1943, had provided that Japan would be deprived of all the islands in the Pacific which she had seized and occupied since the beginning of World War I and all that Japan had stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores would be restored to the Republic of China. Japan would be expelled from "all other territories which she had taken by violence and greed." Korea "in due course" would become free and independent.

Japan shall be permitted to maintain such industries as will sustain her economy and permit the execution of just reparations in kind, but not those which would enable her to rearm for war. To this end, access to, as distinguished from control of, raw materials shall be permitted. Eventual Japanese participation in world trade relations shall be permitted.

The occupying forces of the Allies shall be withdrawn from Japan as soon as those objectives have been accomplished and there has been established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government.

The first offer of the Japanese Government to accept the terms of the Potsdam Declaration was delivered through the Swiss Government on August 10, 1945, "with the understanding that the said declaration does not comprise any demand which prejudices the prerogative of His Majesty as a Sovereign Ruler." The Allies in their reply referred to the position of the Emperor somewhat indirectly in the following terms: "From the moment of surrender the Authority of the Emperor and the Japanese Government to rule the State shall be subject to the Supreme Commander of the Allied Powers who will take such steps as he deems proper to effectuate the surrender terms. The ultimate form of government of Japan shall, in accordance with the Potsdam Declaration, be established by the freely expressed will of the Japanese people." This clearly implied that the Allied Powers would like to continue with the monarchy in Japan after Occupation subject to two conditions. Firstly, the Emperor would be subject to the authority of the Supreme Commander of the Allied Powers, and secondly, the future form of government, as also the role the Emperor would play therein, would be determined by the Japanese people themselves.

The assurances that the Emperor would continue to reign, and that the Japanese Government would continue in existence after the surrender were accepted by Japan. On September 2, 1945, Allied and Japanese representatives signed the Instrument of Surrender aboard the U.S.S. Missouri in Tokyo Bay. General Douglas MacArthur was appointed Supreme Commander for the Allied Powers to direct the Occupation and to effectuate the surrender terms which for brev-

ity could be reduced to demilitarization, disarmament and democratization.

Although the Occupation was complete and the authority of the Supreme Commander for the Allied Powers was absolute, the Japanese Government continued as before with the Emperor at the head of the nation. The Allied Powers and for that matter the Supreme Commander never ruled Japan directly. This was unlike Germany. The relationship between the Supreme Commander and the Japanese Government was clearly stated in "United States' Initial Postsurrender Policy for Japan."⁶ It was determined that:

"The authority of the Emperor and the Japanese Government will be subject to the Supreme Commander, who will possess all powers to effectuate the surrender terms and to carry out the policies established for the conduct of the occupation and the control of Japan."

"In view of the present character of the Japanese society and the desire of the United States to attain its objects with a minimum commitment of its forces and resources, the Supreme Commander will exercise his authority through Japanese Government machinery and agencies, including the Emperor, to the extent that this satisfactorily furthers United States' objectives. The Japanese Government will be permitted, under his instructions to exercise the normal powers of government in matters of domestic administration. The policy, however, will be subject to the right and duty of the Supreme Commander to require changes in government machinery or personnel or to act directly if the Emperor or other Japanese authority does not satisfactorily meet the requirements of the Supreme Commander in effectuating the surrender terms. This policy, moreover, does not commit the Supreme Commander to support the Emperor or any other Japanese Governmental authority in opposition to evolutionary change looking toward the attainment of the United States' objectives. The policy is to use the existing form of Government in Japan, not to support it. Changes in the form of Government initiated by the Japanese people or government in the direction of modifying its feudal and authoritarian tendencies are to be permitted and favoured. In the event that the effectuation of such changes involves the use of force by the Japanese people or government against

6. While the Potsdam conference was still going on, a highly important development in the area of policy formulation for a defeated Japan was taking place inside the U.S. Government. The State, War and Navy Co-ordinating Committee (SWNCO) produced a policy paper entitled "United States' Initial Post-surrender Policy for Japan." It was approved by the President and became the basis of policy that General MacArthur was to execute.

persons thereto, the Supreme Commander should intervene only where necessary to ensure the security of his forces and the attainment of all other objectives of the occupation."

The Japanese Government was, therefore, an instrument by which the United States' objectives were to be realized. The authority of the Supreme Commander was complete in all respects and it was his "right and duty" to see that the changes which he deemed necessary and consistent with and in pursuance of those objectives were properly and expeditiously implemented. If the Emperor or any other Japanese authority did not meet the requirements of the Supreme Commander in effectuating the surrender terms, he could order changes in the governmental machinery or personnel as he deemed necessary or to act directly. The procedure actually adopted was that directions were issued under the authority of the Supreme Commander and the Japanese Government was required to act thereupon. The Occupation Authorities kept a close watch on the actions of the Japanese Government to ensure that the directions issued were faithfully observed. "Of almost equal significance were the informal aspects of the relationship between the government and the occupation, ranging from 'suggestions' from General MacArthur to Japan's Prime Minister, through conferences between occupation authorities and Japanese bureaucrats, to private after-hour conversation between Japanese and Americans who found a common interest in solving the problems created by the peaceful evolution."⁷

Demilitarization was relatively a simple problem and it was speedily and efficiently accomplished by the Occupation Authorities. By the end of 1948, Japan had been completely demilitarized. Democratization, however, was rather a complicated problem and it raised enormous difficulties. Any programme of democratization was deemed impracticable and futile unless a sizable Japanese population, especially its critical elements, were convinced of its value and supported its implementation. To enable the people to adequately appreciate the implications of a democratic set-up, the first attempt was made on October 4, 1945 by issuing a series of fundamental directives titled the "Removal of Restrictions on Political, Civil and Religious Liberties." It was also enjoined upon the Japanese Govern-

ment to forthwith release all political prisoners, to abolish all governmental agencies responsible for maintaining restrictions and discriminations, to remove all such officers from office and to bar their future appointments in any important capacity. The object was to abolish all privileges and vested interests and to create a climate of liberty in which the Japanese should be in a position to demand and safeguard the basic human rights hitherto denied to the people of Japan, and to provide them with an opportunity to determine their political fortune.

Closely in its wake, General MacArthur informed the Prime Minister of Japan on October 11, 1945 that "in the achievement of the Potsdam Declaration the traditional social order under which the Japanese people for centuries have been subjugated will be corrected." Accordingly, the Supreme Commander required the Government to institute the following reforms: the emancipation of women by their enfranchisement, the encouragement of the labour unions, the opening of the schools to more liberal education, the abolition of "systems which through secret inquisition and abuse have held the people in constant fear," and the democratization of economic institutions by curbing monopolies in order to widen the distribution and trade. The Shidehara Government in consultation with the Occupation Authorities immediately took measures to enact necessary laws relating to the social and political reforms in implementation of the policy of the Allied Powers.

Another directive from the Supreme Commander issued on December 15, 1945 demanded the abolition of Shinto, the State religion. The aim was to convert the Emperor from an absolute ruler with allegedly divine attributes to a mere mortal who serves as the symbol of the nation and of the people's unity. Two weeks after this directive which demanded abolition of Shinto, the Emperor declared in his 1946 New Year Message that the ties between the Throne and the people: "do not depend upon mere legends and myths. They are not predicated on the false conception that the Emperor is divine and that the Japanese people are superior to other races and fated to rule the world."⁸ Thus, the ideological basis of ultranationalism and militarism which had for centuries been the cult of the Throne was effaced from Japan. This was followed by a great purge.

7. Maki, John, M, *Government and Politics in Japan*, p. 50.

8. As cited in Theodore McNelly's *Contemporary Government of Japan*, p. 31.

On January 4, 1946, the Supreme Commander directed the Japanese Government to plan for the removal and exclusion from office of those persons arrested as suspected war criminals, commissioned officers in the Imperial Japanese Armed Forces and others who had served in the military police and secret intelligence and high ranking civilians in the Ministry of War and Navy, influential members of ultranationalistic, terroristic or secret patriotic organisations, persons influential in the activities of the Imperial Rule Assistance Association and other allied organisations, officials of financial and development organisations involved in Japanese expansion, Governors of occupied territories, and additional militarists and ultranationalists.

First Effort to Revise the Japanese Constitution

The declared object of the Potsdam Declaration was to establish in Japan a peacefully inclined and responsible government in accordance with the freely expressed will of the Japanese people and it was made a condition precedent for the withdrawal of the Occupation Forces of the Allies. On October 4, 1945, General MacArthur urged upon Prince Konoye Fumimaro, Vice-Premier in the Higashi Kumi Cabinet, to take the initiative in revising the Meiji Constitution. Prince Konoye was not taken in the succeeding Shidehara Cabinet, but he managed to obtain a commission from the Emperor to investigate whether the Constitution required any revision and if so to what extent. Konoye held a number of private conferences with George C. Atcheson Jr., SCAP's⁹ Political Adviser, and three U.S. State Department Officials who happened to be in Tokyo then. Various parts of the Meiji Constitution, which these officials felt required revision, were pointed out to Konoye, but no reference was made for the abolition of the institution of the Emperor.¹⁰ There was, however, widespread feeling among the Allies that Konoye should have nothing to do with any scheme of constitutional reforms because of his alleged war guilt. It had been stated that the conference held between U.S. State Department officials and Konoye angered the Supreme Commander and he directed the former to have no more parleys with Konoye.

On November 1, SCAP Headquarters announced that MacArthur "had not chosen

Konoye to reform the Japanese Constitution."

But Konoye continued on his job and late in November submitted his report on constitutional reforms to the Emperor. He recommended that the Meiji Constitution required revision with a view to strengthening the Diet, but such revisions should not destroy the basic principle of the Constitution that sovereignty resided in the Emperor. In December Konoye was indicted as a war criminal, but before he could be arrested, he committed suicide.

In October, just when Prince Konoye had obtained his commission from the Emperor authorizing him to investigate whether the Constitution needed revision, General MacArthur summoned Prime Minister Shidehara and pointedly advised him that the Government of Japan must immediately be reformed and, accordingly, the Constitution required to be liberalised. The Prime Minister pleaded that the legislation enacted by the Diet to enlarge the franchise and other reforms connected thereto adequately served the purpose and, consequently, there was no need to revise the Constitution. But MacArthur did not agree. He rather pulled up the Prime Minister and forced him to set up a committee to recommend proposals for reforms and revision of the Constitution.

The Committee on the Constitution, headed by Matsumoto Togi, was not in the beginning inclined to propose substantial alterations in the Constitution. But toward the end of December, when pressed hard, it was made to suggest some concrete proposals for revision. By that time the political parties, too, had presented their proposals for reforms. The Liberal and Progressive Parties proposed that the power of the Diet should be increased, but without impairing the principle that sovereignty resided in the Emperor. The Social Democratic Party recommended that while sovereignty resided in the State the political authority should vest in the Diet and the Emperor, the Diet sharing the most important part of it. The Communists, on the other hand, pleaded for the establishment of a Republic, and the trial of Emperor as a war criminal.

MacArthur Constitution

The Matsumoto Committee submitted its draft of the revised Constitution on February 1, 1946, which was rejected by the Supreme Commander. He characterised it as reactionary. Mac-

9. Supreme Commander Allied Powers.

10. Theodore McNelly, *Contemporary Government of Japan*, pp. 37-38.

Arthur thereupon directed the SCAP Government Section to prepare the draft which should serve as a "guide" for the Japanese Government. In his directive to the SCAP Government Section, MacArthur's instruction was that "guide should provide for the institution of the Emperor, but the powers of the Emperor should be exercised according to the will of the people." The Government Section worked with utmost speed to prepare the draft Constitution and within a week's time it completed the job. The draft Constitution was presented to the Japanese Government on February 13. It is reported that General Courtney Whitely, Chief of Government Section, while presenting the draft Constitution which was intended to serve as a "guide" to the Cabinet, made its members clearly understand that if they did not accept the general principles contained therein, General MacArthur would present the Constitution straightway to the people of Japan and in that case "The person of the Emperor" could not be guaranteed.

The Shidehara Government was left with no option but to accept the draft. When it was shown to the Emperor he also observed that there was no other alternative. The Prime Minister, then, reported to his Cabinet that "we are making an extremely grave commitment in accepting such a Constitution as this. Perhaps this commitment will also bind our posterity. When this draft is made public, some will applaud and others will keep silence. The latter will undoubtedly be highly indignant at bottom towards us. However, I believe that we are following the only possible course in view of the situation confronting us." There was a deep sense of shock and it was known to all that almost all Ministers wiped tears from their eyes.

The adoption of the draft constitution was, thus, an accomplished fact. Still to observe the formality the draft was sent to the Matsumoto Committee to serve as a "guide." The Committee made some minor revisions in it in close consultation with the Government Section, SCAP. It was then sent back to the Cabinet. The draft was made public on March 6, as if it was actually Shidehara Government's own revision of the Constitution. To make it still reassuring an Imperial Rescript announced the adoption of the draft and explained the democratic principles on which it was based. General MacArthur, too, kept with the track and issued his approval of the draft

constitution to authenticate that it was the handiwork of the Japanese themselves and not an American made constitution.

The Draft Constitution was, then, finally submitted to the Diet for its approval in accordance with the provisions of the Meiji Constitution. But the Houses of the Diet took pains to fully debate it "always honouring the fiction that it was of Japanese origin." The Diet made some minor alterations too. But all this was done with the final approval of the Occupation Authorities. The Diet gave its approval on October 7, 1946, and the Constitution was promulgated on November 3, 1946 to synchronize with the birthday of Emperor Meiji. The new Constitution became operative six months later on May 3, 1947. "It was the occupation," succinctly remarks Maki, "that originated, directed, and obviously controlled the drafting, the content, and the process of approval of the new Constitution."¹¹ It may aptly be called the MacArthur Constitution.

BASIC FEATURES OF THE CONSTITUTION, 1946

The Constitution as a Document

Although the Constitution was adopted as an amendment of the Meiji Constitution, 1889, but actually it was a total revision which drastically transformed the nature and structure of the Government in Japan. It consisted of 103 Articles grouped in XI Chapters (Chapter XI contains Supplementary Provisions, Articles 100 to 103) written in a simple style and easily comprehensible language. Both in broad principle and in specific details the Constitution of 1946 differs completely from the Constitution of 1889, which it replaced. Its three basic principles are: sovereignty of the people, the guarantee of the Fundamental Rights, and the renunciation of war, the last being a most peculiar feature of the Constitution and an object of the country's greatest Constitutional controversy. Japan's Constitution is the only instance which constitutionally renounces war.

The structure of the government which the Constitution sets up completely supplants the institutions Japan had proudly inherited since the "ages eternal." It was the avowed policy of the Allied Powers to obliterate the image of divinity which the Japanese people believed surrounded the Throne and to eliminate completely from their minds the concept of national policy. Shidehara

11. Maki, John M., *Government and Politics in Japan*, p. 80.

Cabinet had hoped that the process of democratization, which the Supreme Commander had urged as the most important element of the Potsdam declaration, would not entail demolishing the past entirely. They had, in fact, expected that the proposals of the Matsumoto Committee would form the basis of discussion and compromise in order that a part of the old system might be retained. The Supreme Commander, however, had left no alternative for the Shidehara Government but to accept the draft Constitution as prepared, under his instructions, by the SCAP Government Section. Although the draft constitution was claimed to serve as a "guide" for the Japanese Government, but in reality it was the Constitution they were required to accept and a few minor changes which the Matsumoto Committee and the Diet made therein had the full approval of the SCAP. This "American-inspired Constitution" is replete with the fundamentals of American political philosophy. "The Preamble to the Constitution," says Chitoshi Yanaga, "reminds the reader of the ideas and language of such historic documents as the Declaration of Independence, the Federalist Papers, the Preamble to the Constitution (of U.S.A.), the Gettysburg Address and even the Atlantic Charter."¹²

Sovereignty of the People

Sovereignty of the people which runs through the entire Constitution is its basic feature. It is a revolutionary change as it destroys the old principle of Imperial Sovereignty. The Meiji Constitution was a gift of the Emperor to the nation and its Preamble declared that "the right of sovereignty of State, We (the Emperor) have inherited from our Ancestors, and we shall bequeath to our descendants." It further provided, "the Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal." Article IV provided that "The Emperor is the head of the Empire, combining in himself the rights of sovereignty and exercises them according to the provisions of the Constitution."

Under the Constitution of 1946 sovereignty belonged to the people and that the Emperor was only the symbol of the State and unity of the people," and he derived his position from the will of the people with whom "resides sovereign power."¹³ The transfer of sovereignty from the Emperor to the people finds full expression in the Preamble to the Constitution which states: "we

the Japanese people, acting through our duly elected representatives in the National Diet...do proclaim that sovereign power resides with the people and do firmly establish this Constitution." It affirms that "Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people." Sovereignty of the people, the Preamble asserts, "is a universal principle of mankind" upon which the new Constitution of Japan is founded and the people of Japan through this Constitution "reject and revoke all Constitutions, laws, ordinances and rescripts" which are in conflict with this principle. Accordingly the Constitution established a representative and responsible government manifesting the will of the people at the national as well as the local levels. The institutions of referendum, initiative and recall also prevail in one way or the other. The appointment of the Judges of the Supreme Court is subject to review at a national referendum, first at the time of the General Election following their appointment and then at the first General Election after a lapse of ten years. The Supreme Court is the guardian of the rights of the citizens. Article 97 declares that Fundamental Rights as enshrined in the Constitution are for all time inviolate.

In his first address from the Throne Emperor Akihito pledged "anew that I shall observe the Constitution of Japan and discharge my duties as the symbol of the State and of the unity of the people." This made the position of the Emperor clear on the controversy that the Government decided Shintoistic enthronement ceremony might create "an atmosphere conducive to any revival of militarism." Prime Minister Kaifu conveyed people's thanks for the Emperor's pledge. He observed, "We, the people of Japan, revere Your Majesty as symbol of the State and of the unity of the people and pledge, with new resolve, to devote our utmost efforts to building a Japan open to the world, vigorously culturally rich, and practising world peace and the well-being of mankind." The Emperor's address was drafted by the Government.

Fundamental Rights and Duties

The Constitution bestows on the people a truly imposing list of Rights which itself is an expression of the sovereignty of the people.

12. Japanese People and Politics, p. 125.

13. Article 1.

Chapter III of the Constitution is exclusively devoted to the enumeration of these Rights. Out of a total of 103 Articles which comprise the Constitution, 31 are contained in Chapter III and embrace civil and political Rights as also Duties, though the latter are not many. The Rights are fully guaranteed and the Constitution declares them "eternal and inviolate" and include political, social and economic equality as well as suffrage, welfare and liberty for the people. All told, the emphasis throughout is on respect for the dignity of the individual. A section of the Japanese people feels that the constitutional emphasis on the role of the individual is rather excessive and suggests some modification thereto. But this suggestion has not been favourably accepted and the majority of the people believe that it is not desirable to effect any change.

Renunciation of War

A peculiar, rather unprecedented, feature of the Constitution is that it unequivocally renounces war for ever. Article 9, which constitutes a single Article in Chapter II and is titled "Renunciation of War," reads: "Aspiring sincerely an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes." It is provided that "in order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the State will not be recognised." The Preamble enshrines the ideals of liberty and "desire for peace for all time" and the Japanese people pledged by their "national honour to accomplish these high ideals and purposes" by resolving that never again "shall we be visited with the horrors of war through the action of government" and expressed their determination to "secure for ourselves and our posterity the fruits of peaceful co-operation with all nations and the blessings of liberty throughout the land."

The constitutional provision of renunciation of war should, indeed, be the most cherished goal of State policy if all other States provided for the same in their Constitutions and their governments pursued the path of international amity by renouncing war and settling their disputes by and through peaceful means. But none has done it so far, not even the United States of America which was at pains to specifically enshrine it in

the Constitution of Japan. The Occupation Authorities in their bid to militarily cripple Japan made this provision in the Constitution and also ordained that Japan would never maintain land, sea and air forces, as well as other war potential. The right of belligerency of the State is also not recognised by the Constitution. The provisions of Article 9 are, however, now interpreted by the Government to mean that defensive armament is permissible and the Constitution outlaws only war and threat or use of force as means of settling international disputes. "It has been very plausibly argued," remarks Theodore McNelly, "that war and threat or use of force as means of self-defence are permissible."¹⁴

Prime Minister Kaifu's Government reinterpreted, early in November 1990, Article 9 of the Constitution relating to the renunciation of war in Chapter II. It was maintained that the Constitution does not debar the Government to send Japanese forces—regular military or specially raised corps—to help enforce peace in the world. Elaborating the point the Prime Minister asserted that since Japan was now an economic super power it must accept certain responsibility in the matter of a new world order and in pursuance of that role Japan would be justified in sending her defence forces to join a United Nations approved multinational force to enforce peace. Such an interpretation was unthinkable even a year before and it made some Japanese weary.

Supremacy of the Constitution

Article 98 specifically provides that "this Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions thereof, shall have legal force or validity." It means that all laws, ordinances, imperial rescripts and Cabinet orders prevailing at the time when the Constitution became operative in 1947, and were inconsistent with the provisions of this Constitution became *ipso facto* invalid and consequently, inoperative. And after the Constitution became operative nothing shall be enacted by the Diet which is not consistent to and in accordance with the fundamental law of the country. Similarly, no act of government will be valid which is contrary to the provisions of the Constitution. Article 99 explicitly holds responsible all those engaged in public acts, the Emperor or the Regent as well as Ministers of State, mem-

14. Contemporary Government in Japan, p. 202.

bers of the Diet, judges and all other public officials, to uphold and respect the Constitution. It is their constitutional duty and any deviation therefrom makes them liable to punishment as prescribed by the Constitution or the laws made thereunder. Nothing in Japan, therefore, can be enacted or done by any agency of the Government which is not permitted by the Constitution. To safeguard against invasion on the liberties and freedoms of the people, Article 97 reiterates that the Fundamental Human Rights guaranteed by the Constitution "are fruits of the age-old struggle of man to be free; they have survived the many enacting tests for durability and are conferred upon this and future generations in trust, to be held for all times inviolate."

Rigid Constitution

The supremacy of the Constitution is ensured if it is not alterable under the ordinary law-making procedure. The Constitution of Japan prescribes the procedure for amending the Constitution and it is distinct from that of an ordinary law. It means that the Constitutional law is not at par with the statutory law and the former has precedence in status over the latter, that is, the constitutional law is fundamental and supreme. Article 96 provides that proposals for amending the Constitution may be initiated either in the House of Councillors or in the House of Representatives. Such a proposal must separately pass in each House by a majority of two-thirds or more of its membership. After the amendment has been passed by the Diet, it is submitted to the people at a referendum for their ratification. If majority of the people voting at the referendum approves it, it becomes an amendment of the Constitution and is immediately promulgated by the Emperor "in the name of the people."

The Constitution has not so far been amended even once. In spite of the strong pressure of the Conservatives for its revision and the setting up of a Commission on the Constitution under the law of the Diet,¹⁵ the Constitution reads today as it did in 1947. The Commission on the Constitution has not yet finalised its deliberations.¹⁶ Moreover, it is difficult to obtain a concurring vote of two-thirds or more of all the members of each House plus an affirmative vote of a majority of the votes cast at a referendum. Because of the relative difficulty of the amending

process, the Constitution of Japan can reasonably be characterised as an example of a rigid Constitution.

If the Constitution has seen no amendment, it does not mean that the Constitution has not expanded. The laws enacted by the Diet, interpretation of the Constitution and elaboration of its provision by the courts have considerably helped the Constitution to grow, though the latter make a minor contribution. But a number of basic laws passed by the Diet have sufficiently supplemented the provisions of the Constitution as, for example, the Imperial House Law, the National Diet Law, the Finance Law, the Cabinet Law, the Public Autonomy Law. Since changes in the basic law can be made under the ordinary process of legislation, it renders the Constitution to some extent flexible.

Judicial Review

The Constitution explicitly vests in the Supreme Court the power of judicial review, though it establishes a unitary system of government. Article 81 provides that the Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation, or official Act. Here Japan introduces an American element of institutions. But whereas in the United States the Supreme Court does not derive its power of judicial review from the Constitution, the Japanese Supreme Court has the constitutional power to interpret the Constitution and to maintain its sanctity and supremacy.

The Supreme Court in Japan has not so far held, with the exception of certain laws passed to implement Occupation Directives, any law, order, regulation or official Act void and unconstitutional, but has upheld a few as constitutional. In the Sunakawa case (1959) the Supreme Court declared that the stationing of American forces in Japan did not violate Article 9 of the Constitution. It also set the principle that unless a treaty is "obviously unconstitutional and void, it falls outside the purview of the power of judicial review granted to the Court."

Emperor the Symbol of the State

The Constitution preserves the institution of the Emperor, but deprives His Majesty of all powers, privileges and prerogatives he formerly enjoyed and exercised. The Constitution now declares him to be the symbol of the State and of

15. The legally stipulated duties of the Commission are: "to study the Constitution, to investigate and deliberate on problems relating to it, and to report the results to the cabinet and through the cabinet to the Diet."

16. It was not until almost fifteen months after the law was passed that the Commission held its first meeting.

the unity of the people.¹⁷ He has no powers and authority related to the Government. He performs only those "acts" which are enumerated in the Constitution¹⁸ subject to the provision that the "advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of State and the Cabinet shall be responsible thereof."¹⁹ As the Emperor derives "his position from the will of the people,"²⁰ and he performs acts in matters of State as specified in the Constitution, he must do so on the advice and approval of the Cabinet.²¹ The Constitution also prescribes that no property can be given to, or received by, the imperial Houses, nor can any gifts be made therefrom without the authorization of the Diet.²²

Parliamentary system of government

The Government of the United States had decided to establish in Japan a Parliamentary system of government in preference to the Presidential system and the Secretary of State, Byrnes, had accordingly advised George Acheson, Jr., SCAP's Political Adviser. But a peculiar feature of Parliamentary government, which the Constitution established in Japan, is that the Emperor does not perform even those acts and functions which are associated with the constitutional Head of the State, for example, appointment of the Prime Minister and dissolution of the legislature. The Emperor is the symbol of the State and of the unity of the people who derives his position from the will of the people. The Executive power is vested in the Cabinet and it is made collectively responsible to the Diet. The Prime Minister heads the Cabinet and a majority of the number of Ministers, including the Prime Minister, must be members of the Diet. The Diet designates the Prime Minister and on his resignation the Cabinet resigns *en masse*.²³ If the House of Representatives passes a no-confidence resolution or rejects a confidence resolution, the Cabinet resigns *en masse*.²⁴ All these are the attributes of a Parliamentary system of government and ensure the smooth working of the Cabinet. In the United Kingdom these well-recognised principles of the Cabinet government are the result of deep-rooted

conventions. In Japan, they have been specifically incorporated in the Constitution and, thus, constitutionalised.

A Unitary Constitution

The 1946 Constitution of Japan is unitary and all authority flows from the Government at Tokyo, though there is much of devolution. The Provinces derive their authority in exercise of their jurisdiction and powers from the Acts of the Diet. The Diet may expand or diminish that authority and jurisdiction as and when it may deem necessary and proper. The provinces are, thus, subordinate units of Government and they do not possess plenary powers as in a federal polity.

Diet is Bicameral

The Diet is bicameral in structure and consists of two chambers: the House of Councillors and the House of Representatives. The House of Councillors consists of 250 members, out of which 150 are elected on a geographical basis whereas the remaining 100 are elected by the nation at large; a voter, thus, exercises two votes, one for the candidate in a local constituency and the other for the candidate in the national constituency. The term of office is six years with one-half of the Councillors retiring after every three years. The Chamber is not subject to dissolution. The House of Representatives consists of 511 members elected for a term of four years and the House is subject to dissolution. Both the Houses of the Diet possess identical legislative powers, but in case the House of Councillors makes a decision different from the House of Representatives and such a difference cannot be resolved in the Joint Committee of the two Houses, it becomes a law of the Diet when the House of Representatives passes the Bill for the second time by a majority of two-thirds of members present. The Constitution unequivocally establishes the supremacy of the House of Representatives over the House of Councillors in financial matters.

Adult Suffrage

Under the Meiji Constitution the House of

17. Article 1.

18. Article 7.

19. Article 4.

20. Article 1.

21. Article 7.

22. Article 8.

23. Article 70.

24. Article 13.

Peers—the Upper House—consisted of representative Peers, representatives of the highest taxpayers, and Imperial appointees whereas originally the House of Representatives was elected by a small electorate which met a high payment of tax. Women had no votes. With the enactment of universal suffrage in 1925, all males over 25 years of age were given the right to vote. The Constitution of 1946 made both the Houses representative in character and abolished the discrimination between sexes. Now all citizens of Japan, who are otherwise not disqualified by law, and have reached the age of 20 years, are given the right to elect their representatives for both the Houses of the Diet.

Local Autonomy

Finally, the Constitution prominently introduces the principle of local autonomy. Local Governments, prefectures and city, town and village municipalities have been granted by the Constitution extensive rights of self-government. Article 93 provides that the "local public entities shall establish assemblies as their deliberative organs" and that "the Chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities." The Local Autonomy Law, 1947, which supplements Article 92 of the Constitution, provides for the exercise of initiative and recall by the voters of local entities. Such a democratic potential was hitherto unknown in Japan.

RIGHTS AND DUTIES OF THE PEOPLE

Fundamental Rights

The Constitution bestows on the citizen of Japan an imposing list of civil and political rights and thirty-one Articles out of a total of 103 are contained in Chapter III under the caption "Rights and Duties of the people." It is probably one of the world's most detailed and ambitious constitutional statements which guarantees that these human rights "conferred upon the people of this and future generations of the people" are "eternal and inviolate."²⁵ The Constitution further provides that the freedoms and rights guaranteed to the people shall be maintained by the constant endeavor of the people, and enjoins upon

them that they "shall refrain from any abuse of these freedoms and rights and shall be responsible for utilising them for the public welfare."²⁶ It means that the Constitution explicitly impresses upon citizens that vigilance is the price of democracy and since they have the inalienable right of determining their political destiny, they must not abuse any of these freedoms and rights and utilize them for their own good and the public welfare. Accordingly, the Constitution emphasises respect for the individual, without any kind of discrimination,²⁷ and guarantees to him the right to life, liberty and the pursuit of happiness, provided it does not interfere with the public welfare which would "be the supreme consideration in legislation and other government affairs."²⁸

The provision in Article 11 that "the people shall not be prevented from enjoying any of the fundamental human rights....conferred....as eternal and inviolate rights" is an unconditional guarantee of rights and the Government is debarred from imposing any restriction or curtailment on their rights. But Articles 12 and 13 impose restrictions. Article 12 prescribes certain responsibilities for the people. The first is that they should maintain their rights through their constant endeavour and refrain from any abuse of them. Secondly, the people should be responsible for utilising their rights for the public welfare. Article 13 while declaring that all the people shall be respected as individuals, conditions their right of life, liberty, and the pursuit of happiness to the extent that none of them does interfere with the public welfare. Some fears have been expressed in Japan that incorporation of public welfare provision and making enjoyment of rights subject to public welfare is likely to be misinterpreted and the liberties of the people might be infringed or curtailed in the name of public welfare. It is argued that public welfare has ever remained a misleading concept. There is no activity of the State and no action of Government, down to the most ruthless and tyrannical, which has not been defended on the ground of public welfare. And Japan has a legacy of the long authoritarian tradition.

But this issue, as Maki observes, "is an important one in every democracy, because it involves the balance between the enjoyment of

25. Article 69.

26. Article 11.

27. Article 2.

28. Article 13.

freedom by the individual and the good of the entire community."²⁹ Rights cannot be divorced from obligations and human rights cannot subsist without limitations. While imposing responsibilities on the people of Japan, the Constitution also makes the Government responsible for serving the people's right to life, liberty and pursuit of happiness.³⁰ No representatives and responsible Government, which is accountable to the people, can afford to infringe, abrogate or abuse Fundamental Rights on the plea of public welfare which it cannot adequately defend. The Government is ever under scrutiny and it cannot forget that tomorrow is the day of election and it shall have to account for its public activities which it cannot adequately defend. The Supreme Court of Japan has upheld that public welfare is a valid justification to restrict freedom. But it has also equally insisted that the doctrine of public welfare "cannot be used by any governing authority as an abstract justification for the limitation of freedom, it can be applied only under duly enacted legislation and under clearly defined circumstance."³¹ It is creditable that during the past four decades, since constitution became operative, there has been "no erosion of any constitutionally guaranteed freedom through legislative, executive or judicial action."³²

Specific Rights

Here is a summary of rights the Constitution guarantees to citizens: freedoms of thought, conscience, religion, assembly, association, speech, press and all other forms of expression, choice of residence and occupation, choice to move to a foreign country and to give up nationality, academic freedom,³³ freedom from discrimination in political, economic or social relations because of race, creed, sex, social status, or family origin,³⁴ equality before law and under the law, the inalienable right to choose public officials and to dismiss them, the right of petition for the redress of grievances, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations, or for other matters, the right to sue the State or public entity for damage resulting from an illegal act of any public official,³⁵ freedom to marriage

based on mutual consent, equal rights of husband and wife, the right to maintain the minimum standards of wholesome and cultured living, the right to receive equal education correspondent to their ability, the right to work, the right of the workers to organise and bargain and act collectively, the right to own or hold property, and the right to due process of law.

From the rights and freedoms enumerated above, it should be noted that the concept of equality has received a prominent and practical place in the Constitution. Social equality is guaranteed by abolishing special privileges by not recognising peer and peerage and excluding any privilege from any award of honour or any distinction which is not limited to the lifetime of the recipient. No person can be held in bondage and involuntary servitude, except as punishment for crime. Equality of the sexes, the right to equal education and equality of rights of husband and wife enhance the dignity of the individual and his social stature. The equality before the law finds even more emphasis. Ten Articles out of a total of thirty-one in the Chapter on Rights and Duties are devoted to what may be characterised as the due process of law. It includes: freedom from deprivation of life or liberty or the imposition of other criminal penalty except according to procedure established by law, freedom of access to courts, no arrest or detention without immediate notification of the nature of the charges, privilege of counsel, security of home, papers and effects except under warrant, security against torture or cruel punishments, the right of speedy and public trial by an impartial tribunal, right of examination of witnesses and of compulsory process for obtaining witnesses in his behalf at a public expense, freedom from compulsion to testify against himself, freedom from being criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, and from double jeopardy, and the right to sue the State for redress after acquittal following arrest or detention.

Political equality finds expression in guaranteeing universal adult suffrage with regard to the election of public officials, giving the people the inalienable right to choose public officials and

29. Maki, John H., *Government and Politics of Japan*, p. 87.

30. Article 13.

31. Maki, John M., *Government and Politics of Japan*, pp. 37-38

32. *Ibid.*

33. Article 19 to 23.

34. Article 14.

35. Article 26.

to dismiss them, declaring all public officials as servants of the whole community, ensuring secrecy of ballot in all elections and not making a voter answerable, publicly or privately, for the choice he has made, and granting to every person the right of petition of the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters. The Constitution guarantees that no person shall be in any way discriminated against for sponsoring such a petition.

The Constitution significantly guarantees the right to work and the right to decent living. The right to work is also an obligation and, thus, a duty of every citizen. Article 25 gives the right to decent living and guarantees that in all spheres, the State shall do its best to promote social welfare and security and public health. Article 29 concedes the right to property and it has been made inviolable, but private property may be acquired by the Government on payment of just compensation. The Constitution prescribes (Article 27) that standards for wages, hours of work, rest and other working conditions shall be fixed by law. But the right of the workers to organise and form union, bargain for their service prospects and to act collectively is guaranteed by Article 28. The Constitution, thus, gives to the workers the right to strike. The Constitution also ordains that children shall not be exploited.

Duties

The Constitution also places emphasis on

the duties of the individual, though they are not many. Chitoshi Yanaga says that the "traditional attitude has for centuries been to emphasize duties practically to the exclusion of rights, this was especially the case under feudalism. For the purpose of encouraging democratic development it was imperative that individual rights be stressed to effectively counteract the altogether too powerful influence of the authoritarian tradition and its legacies in Japanese society. The result has been the inclusion of only a few basic obligations of citizenship....."³⁶ The duties and responsibilities of the citizen include : refraining from the abuse of any freedom or right, the responsibility for preserving and maintaining by constant endeavour the freedom and rights guaranteed by the Constitution,³⁷ the obligation to work which is also a right,³⁸ liability to taxation,³⁹ and the obligation of all people to have all boys and girls under their protection receive ordinary education as provided by law.⁴⁰

Japan is the sole political example where a constitution imposed on the defeated nation by a Victorious Country has successfully worked for almost six decades. It has embraced the spirit of western liberalism and tried to reshape its conceptual assumptions in accordance with its own national ethos. A conservative political party has remained in power in Japan for long without interruption. Nationalism is still a strong political tendency.

36. *Japanese People and Politics*, p. 353.

37. Article 12.

38. Article 27.

39. Article 30.

40. Article 26.

CHAPTER II

The Executive

The Emperor in History

Chitoshi Yanaga gives a matter of fact description of the Emperor. He says, "The Emperor has been and still is the living symbol of the nation's history, heritage, and achievements, of all that is glorious in the nation's past and present, of its continuity and durability. He is the incarnation of history and religion. In his person are epitomised the nation's hopes, aspirations and promise. He is the spiritual anchor, the moral rudder, and the political gyroscope that insure the safety and steadiness of the course of the ship of state. As a symbol he is enshrined in the hearts of the people who attribute everything good to his virtue."¹ He was and still is the nation's rallying point descending in direct and unbroken line from Amaterasu-Omikami, the Goddess of the Sun. The Emperor, pictured as a *Kami* or heaven-descended divine, sacred, virtuous and all-wise, became the accepted ideology of the State and these attributes of the monarch were taught in the schools. Near the entrance to every schoolyard there was a small shrine in which were installed the pictures of the Emperor and the Empress. Every schoolchild had to uncover and bow before this shrine each time he entered or left the school. "On national holidays, usually at 10 A.M. all Japanese inside or outside the country were supposed to bow respectfully in the direction of the Imperial Palace in Tokyo. It was a custom, not rigidly enforced, for Japanese to bow each time they passed the main entrance to the Palace ground."² It was sacrilege to discuss any aspect concerning the person of the Emperor.

The Emperor was, thus, for the Japanese State, the repository of sovereignty which was eternal and unalterable, that is, "co-extensive with the Heavens and with the Earth." His authority was supreme and inalienable to which

all religiously bowed. In interpreting the Peace Preservation Law of 1925, which forbade *inter alia* advocating the alteration *Kokutai* or national polity, the Supreme Court declared that the Emperor, of a line unbroken for ages eternal, reigned and exercised sovereignty in Japan.

Despite this fact of political loyalty and unbounding reverence and devotion of the people, the Emperor actually possessed very little political power and His Majesty usually had never made any important political decision. At least during the past near about 800 years, he had always followed the advice of the effective government of the time that was in the saddle and was in no way responsible for the formulation and execution of public policy. The Emperor was the ceremonial head of the State and performed only the ceremonial functions. The Constitution of 1889 gave him absolute power. Article IV stated: "The Emperor is the head of the empire combining in Himself the rights of sovereignty, and exercises them, according to the provisions of this constitution." But even then, he had always acted on the advice of his Ministers. He did no wrong and performed no public act on his own initiative and responsibility. He could, thus, be described as the constitutional monarch even under the Meiji Constitution, the most powerful symbol of the unity and solidarity of the Japanese nation. The Japanese adored their nation by adoring the Throne and the Royal Family provided a useful focus for patriotism and patriotic devotion. Here the Emperor of Japan resembled the British monarch. "The reverence of the Emperor," writes Chitoshi Yanaga, "is almost unbelievable especially to those who have not witnessed its manifestation. Perhaps the British alone of the Western people today can come closest to understanding attitude toward the sovereign."

1. Chitoshi Yanaga, *Japanese People and Politics*, p. 129.

2. Maki, John M., *Government and Politics in Japan*, p. 113.

The Emperor as He is Today

In their bid to effect the doctrine *Kokutai* or national polity, which vested the power to rule ultimately in the Emperor, the Occupation Authorities strove to "humanize" the Emperor. They contrived a Constitution which reduced the Emperor to a mere symbol of the State and of the unity of the people. The Emperor derived his "position from the will of the people with whom sovereignty resides." With a view to vindicate the sovereignty of the people the ultimate authority of amending the Constitution is vested in the people themselves and the Constitution so amended, the Emperor proclaims it in the name of the people. It means that if the majority of the people acting through their representatives and ratified at a referendum so desire, the institution of the Emperor can be abolished. This is a revolutionary change and perhaps the Japanese will never venture to abolish it, yet it is a legal truth that they can do it if they so desire. It is an irony that the Emperor, who had advised his Cabinet on August 14, 1945, to accept the allied Surrender Terms in order to save national polity from destruction and the nation from annihilation, was left with no option but to accept the Constitution which ordained his own political demise. The mind of the Occupation Authorities and the shape of the things to come was fully reflected in the Emperor's New Year Day Rescript of January 7, 1946. He declared that the ties between him and his people "have always stood upon mutual trust and affection" and not "upon legends and myths," not are they "predicated on the false conception that the Emperor is divine and that the Japanese people are superior to other races and destined to rule the world."³ It is reported that the day the new Constitution was made operative, Shimizu Cho, the Constitutional Adviser to the Emperor and Chairman of the Privy Council which approved the Constitution, drowned himself at Atami. The note, which Shimizu Cho left, read: "I have decided to die so that I from the spiritual world may help to protect our national polity and with the safe-being of His Majesty."⁴

There was almost the entire nation which thought likewise. In a survey conducted by the United Nations Educational and Cultural Organization, it was found out that "74 per cent of the

Youth of postwar Japan strongly believe the Emperor remains as the very best, the symbol of the nation, not only on paper, but in the hearts and minds of the people."⁵ This was really a shock for the Western nations especially Americans who had deliberately engineered the Constitution of 1946. Since the time Japan regained her independence determined efforts are afoot, restoring the universal reverence for monarchy as it prevailed before the defeat of Japan in 1945. The Conservatives are the most active and their advocacy is more enthusiastic. They hold that the Emperor's position as a mere symbol of the State and of the unity of the people "does violence to the historical tradition and sentiment of the people." Some of the critics of the Constitution maintain that Japan is not a constitutional monarchy, as it is claimed, but a Republic. They assert that the symbolic role of Emperor, derivation of his position from the people and their possessing the ultimate power of abolishing monarchy, and denial of even nominal powers to the Emperor are the characteristics of a republic although the Imperial Throne is dynastic. This is, however, a wrong interpretation of a republican form of government so long as the Imperial Throne remains dynastic. But the Conservatives cannot be induced to reconcile themselves to the position which the Constitution assigns to the Emperor. Accordingly, the Liberal and Progressive parties set up in 1954 their separate committees for a thorough study of the problem of constitutional revision with special reference to the powers and position of the Emperor. Both the committees came to the conclusion that the Constitution need be immediately revised and the position of the Emperor elevated to the constitutional head of the State as the British King is. The Government also appointed a Commission on the Constitution. Nothing tangible has yet come about, but there is a strong feeling among the Japanese people that the Emperor be restored to his former position. In some parts of Japan a movement called *Kigensetsu* (National Foundation Day) is strengthening its activities. *Kigensetsu*, February 11, is the traditional anniversary of the founding of the Japanese State by the first Emperor Jimmu Tennno in 600 B.C. It reveals the reverence and affection of the people of Japan towards the Imperial family

3. As cited in Chitoshi Yanaga's *Japanese People and Politics*, pp. 137-38.

4. As cited in Theodore McNeley's *Contemporary Government of Japan*, p. 56.

5. UNESCO, *Courier*, August-Sept., 1954, pp. 12-35. Also refer to "Japanese Popular Attitude Towards the Emperor," *Pacific Affairs*, Dec., 1952, pp. 235-44.

of which the present ruler, Emperor Akihito, son of Emperor Hirohito, is the 125th in the line of succession. There has been only one dynasty which has ruled Japan in lineal succession unbroken for ages eternal.

Succession to the Throne

Article 2 of the Constitution provides that the Imperial Throne is dynastic and shall be succeeded to in accordance with the Imperial House Law enacted by the Diet. According to the Meiji Constitution the Imperial Diet could not amend or repeal the Imperial House Law which determined succession to the Throne. The Emperor alone, with the advice of the Imperial Family Council and the Privy Council, could amend it. But under the 1946 Constitution, it is the Diet alone which makes, amends or repeals the existing Imperial House Law enacted in 1947, and which came into effect simultaneously with the inauguration of the Constitution on 3 May, 1947.

The Imperial House Law of 1947 provides that the "Imperial Throne shall be succeeded by a male offspring in the main line belonging to the Imperial lineage." Primogeniture is the rule with succession running through the main line and the law rigidly defines the composition of the Imperial Family. No adoption is permitted. If there is no member of the Imperial Family in the main line of succession, the Throne is passed to members of the Imperial Family next nearest in lineage precedence being given to the senior member of the senior line. The Imperial House Council, which consists of ten members⁶ at a meeting presided over by the Prime Minister, may change the order of succession in the case the heir to the Throne suffers from an incurable and serious disease. A regency is established in case the Emperor has not come of age (18 years) or when the Emperor suffers from a serious disease, or there is a serious hindrance in the performance of his public acts. The regent performs his acts in the name of the Emperor. The Japanese Crown Prince Akihito on 22 September 1988, assumed all Imperial State duties as his father, 87 years old, Emperor Hirohito lay critically ill but stable. The Emperor had requested that all affairs of State be transferred to Akihito, his eldest son. Prince Akihito, however, was not named regent. The Cabinet meeting presided by Prime Minister Noboru Takeshita approved the Emperor's deci-

sion.

Imperial Household Finances

The Imperial Household affairs are now completely under the jurisdiction and authority of the Diet. Before 1945, the Imperial Family was extremely wealthy and possessed extensive property holdings both in the land and big industries. The Emperor was "the greatest of the Zaibatsu (cartels) and exercised a powerful influence on the economy of the country." But now the greater part of that extensive property has been transferred to the State and the needs of the Imperial Household are provided by appropriations subject to the approval of the Diet. Article 8 of the Constitution specifically provides that "No property can be given to, or received by the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet."

The Imperial Family was reduced in size in 1947, when eleven princely families, consisting of fifty-one Princes and Princesses, renounced their status and privileges and became commoners. The Imperial Family now includes the families of the present Emperor Akihito and his brothers. The Constitution of 1946 has abolished the titles and, accordingly, the former eleven princely families are not even titled.

The Emperor and His Functions

Articles 1, 3 and 4 determine the position of the Emperor under the Constitution and Articles 6 and 7 list his functions. Article 1 makes the Emperor "the symbol of the State and the unity of the people, deriving his position from the will of the people with whom resides sovereign power." The effect of this Article is adequately expressed in Articles 3 and 4. Article 3 ordains that "The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of State, and the Cabinet shall be responsible therefor." Article 4 prescribes that the "Emperor shall perform only such acts in matters of state as are provided for in the Constitution and he shall not have powers related to government." The combined effect of all these provisions may, thus, be summed up:—

- (1) that the emperor no longer exercises any power or authority relating to government;
- (2) that he only performs certain acts in

6. The composition is: two members of the Imperial family, the Presidents and Vice-Presidents of both Houses of the Diet, the Prime Minister, the Head of the Imperial House Agency, the Chief Judge and one other Judge of the Supreme Court. Two members of the Imperial Family are chosen by election within the Imperial Family, and a Judge by other Judges of the Supreme Court.

matters of State and such acts are as specified in the Constitution. There is no prerogative which he enjoys and no privilege or authority he can exercise;

- (3) that the advice and approval of the Cabinet is required for all acts of the Emperor and there is ministerial responsibility for all such acts;
- (4) that the Emperor is only the symbol of the State and the unity of the people; and
- (5) that the Emperor derives his position from the will of the people in whom resides sovereign power. If the people so will they can abolish monarchy and the Emperor deprived of his position.

Articles 6 and 7 specify the following acts in matters of State which the Emperor performs:—

- (1) the appointment of the Prime Minister as designated by the Diet;
- (2) the appointment of the Chief Judge of the Supreme Court as designated by the Cabinet;

The Emperor, with the advice and approval of the Cabinet, performs the following acts in matters of State on behalf of the people:—

- (3) promulgation of amendments of the Constitution, laws, Cabinet orders and treaties;
- (4) proclamation of General Election of members of the Diet;
- (5) convocation of the Diet;
- (6) dissolution of the House of Representatives;
- (7) receiving of foreign ambassadors and ministers;
- (8) attestation of instruments of ratification and other diplomatic documents as provided for by law;
- (9) attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and ministers;
- (10) awarding of honours;
- (11) attestation of general and social amnesty, commutation of general punishment, reprieve, restoration of rights; and

- (12) performance of ceremonial functions.

Role of the Emperor

The functions enumerated above are a part of the overall functions which generally belong

to the head of the State. But all such functions the Emperor performs on behalf of the people and on ministerial advice and approval. Neither of them involves any initiative, discretion or influence on his part. The Constitution does not only debar him from performing any personal act relating to Government, but also so incapacitates him politically that the Emperor cannot even claim to be the chief of the State or the representative of the nation. "It appears," writes Theodore McNelly, "that the term symbol of the State" may have been suggested by the British Statute of Westminster (1931) which provides that British monarch is the symbol of the British Commonwealth."⁷ But such a use of the term is not happy in the case of the head of a sovereign State as Japan is.

The Emperor is, thus, relegated to the position of mere cypher and he stands no comparison with the constitutional monarch of England who plays a definite role in the governmental process. The Emperor of Japan performs only ceremonial functions and nothing beyond. He has absolutely no discretion in the appointment of the Prime Minister as he must appoint one designated by the Diet. In keeping with the constitutional provision that the Emperor is merely the "Symbol of State" but not the head of State Japanese cabinets are never sworn in by the Emperor. They merely attend a formal ceremony at the Imperial Palace attesting to their appointment. Nor can he influence the dissolution of the Diet. It is the constitutional right of the Cabinet alone; the Emperor must accept the advice tendered and promulgate dissolution. Treaties are not negotiated and concluded in the name of the Emperor. He simply promulgates them on behalf of the people and as concluded by the Government and approved by the Diet. The assent of the Emperor is not needed to validate laws passed by the Diet. In England a Bill becomes a law after it is passed by Parliament and on receiving the royal assent. The King has the power to veto a Bill duly passed by Parliament, although it has never been done since 1707. The Emperor of Japan has no power to withhold assent. A Bill, *ipso facto* becomes law when passed by the Diet. The Emperor simply promulgates it. Finally, he does not enjoy the prerogative of mercy. The Emperor only attests general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

The Emperor is, no doubt, provided with

7. Theodore McNelly, *Contemporary Government of Japan*, p. 59.

requisite information about the affairs of the State and political policies of the Cabinet, but he possesses none of those rights—the right to be consulted, the right to encourage, and the right to warn, which Bagehot assigned to the British King. And a King of great sense and sagacity, he further said, “would want no other.”⁸ The Emperor of Japan is never consulted and his opinion is not solicited on any matter related to Government by the Ministers. He performs only those functions which are specifically enumerated in the Constitution and that, too, on behalf of the people from whom he derives his position. The Ministers are responsible to the Diet for all such acts of the Emperor. He has neither a legal nor a theoretical right to intervene and influence important decisions. Asquith, in a Memorandum on the rights and obligations of the British King, wrote, “He (King) is entitled and bound to give his ministers all relevant information which comes to him, to point out objections which seem to him valid against the course which they advise, to suggest (if he thinks fit) an alternative policy. Such intimations are always received by ministers with the utmost respect and considered with more respect and defence than if they proceeded from any other quarter.”⁹ The moral influence of the Emperor of Japan is still considerable and he may exert it in exceptional circumstances, but it will be a purely personal function carrying with it the weight of his institutional prestige. Constitutionally, he has no *locus standi* to do so. Nor can the Emperor act as a mediator and use his prestige to settle conflicts as the British monarch has done on many occasions. The Constitution insists that he should not take interest in politics and express only shading of public opinion. In sum, Emperor Hirohito, and the present Emperor Akihito too, essentially symbolised continuity, but as far as can be seen, did not exert even limited political influence wielded by modern monarchs. When on 22 December 1985, Japan celebrated one hundred years of Cabinet government, the celebration was accompanied by the first ever visit by a Japanese Emperor to the residence and the main office of the Japanese Prime Minister to attend a gathering of past and present cabinet ministers. With the Emperor in attendance, nothing controversial was said. When Emperor Hirohito spoke briefly, all those attending stood, many

with their heads bowed. The Emperor said that he expected the Japanese people, from top to bottom, to contribute to the peace of the world and the welfare of mankind as well as the development of the nation.

It cannot, however, be denied that in spite of the political incapacitation of the Emperor, the popular attitude towards the throne remains unabated. The Emperor of Japan was and is still the most powerful symbol of the unity and solidarity of the Japanese nation. The Japanese adore nation by giving ardent adoration to the Throne. The Emperor symbolizes more than two thousand years of “Japaneseness” of the unity and stability of the nation and, thus, provides a strong focus for patriotism and patriotic devotion. “The reverence of the Emperor,” observes Chitoshi Yanaga, “is almost unbelievable especially to those who have not witnessed its manifestation at first hand. Furthermore, it is unfathomable since it is an emotional and practically a religious manifestation. Perhaps the British alone of the Western people can come closest to understand the Japanese attitude toward the sovereignty.”¹⁰ The role of the Emperor, therefore, cannot be discounted. He is the rallying point of the nation and majority of the Japanese people wish and strive to elevate him to the position and status of a constitutional head of the State. Parliamentary democracy requires the presence of some dignified and detached person who should play a definite role in the governmental process as the British Monarch does.

THE CABINET

The Cabinet System in Retrospect

The beginning of the Cabinet system in Japan goes back to the Imperial Ordinance of 1885, which set up the Cabinet. But it did not establish the Cabinet system of government as obtainable in Britain. In fact, it was unlike the evolution of Cabinet Government in Britain where the Cabinet was the last element to evolve. In Japan “the cabinet antedated the promulgation of the Constitution by four years and the opening of Parliament that is the Diet, by full half decade.”¹¹

But the beginning had been made, though in the Constitution of 1889, itself the terms “Cabinet” and the “Prime Minister” occurred

8. Bagehot, W., *The British Constitution* (The world classics ed.), p. 67.

9. Spender, J. A., *Life of Lord Oxford and Asquith*, Vol. II, pp. 29-30.

10. Chitoshi Yanaga, *Japanese People and Politics*, p.130.

11. *Ibid.*, p. 144.

nowhere. Article 55 simply stated that there would be "ministers of state" who were "to give advice to the Emperor and be responsible to it." From this provision it could be implied that the Meiji Constitution established a sort of Cabinet to advise the Emperor and be responsible to him for that advice.

Since the "ministers of state"¹² did not constitute a Council of Ministers and they were individually responsible to the Emperor alone, it was not necessary that they should have been members of the Diet and belonged to its majority party or a combination of parliamentary groups agreeing to form a Coalition Government. In the beginning, the Emperor selected his own Prime Minister on the recommendation of his advisers who included the Elder statesmen, the Lord Keeper of the Privy Seal and the Minister of the Imperial Household. The Prime Minister would, then, select the ministers in consultation with the Emperor. By the second decade of the present century, the Emperor began summoning, but not invariably, the leader of the majority party in the Diet and would command him to recommend other ministers. But the Prime Minister did not make a team by selecting ministers from his own political party. Besides the multiplicity of political parties, there were other considerations which weighed heavily with the Prime Minister in making his choice. He had always to give premium to the wishes of the oligarchy and the views of the armed forces. The obvious result was a weak Cabinet which had to work under various pressures and influences. Nobutaka Ike correctly remarks that "the power of the prewar Cabinet, therefore, was greatly circumscribed both in theory and practice. Nevertheless, of all the organs of government the Cabinet was perhaps most consistently in the public eye, and almost all political figures came to consider appointment as Prime Minister, or even as a Cabinet Minister, the crowning achievements of their careers."

Cabinet System under the 1946 Constitution

The terms "Cabinet" and the "Prime Min-

ister" are now constitutionalized and the Constitution of 1946 incorporates all the basic principles which govern the system of cabinet government. The executive power vests in the Cabinet¹³ and the Emperor is only the symbol of the State and of the unity of the people.¹⁴ The Cabinet consists of the Prime Minister as its head and other Ministers of State who are appointed by the Prime Minister.¹⁵ The Prime Minister is designated from among the members of the Diet¹⁶ by a resolution of the Diet, and the post goes invariably to the leader of the majority party or majority coalition in the House of Representatives, as in 1983 when the New Liberal Club threw its 8 seats in coalition with the Liberal Democratic Party with 250 seats in a 512 House. The Prime Minister and other members of the Cabinet must be civilians¹⁷ and a majority of them should be chosen from among the members of the Diet.¹⁸ The Cabinet in the exercise of its executive powers is collectively responsible to the Diet¹⁹ and the Prime Minister may remove the Ministers of the State as he chooses.²⁰ The Cabinet must resign when the House of Representatives either passes a no-confidence resolution or rejects a confidence resolution.²¹ The Cabinet, thus, remains in office as long as it can retain the confidence of the House of Representatives. While the collective responsibility of the Cabinet is to the House of Representatives, individual Ministers are responsible to the Prime Minister and they can be removed from office at his will. A hand which had made them can also unmake them.

Composition and Organization of the Cabinet

The size of the Cabinet varies from time to time, but usually 16 Ministers of State are appointed. All Ministers are technically of equal rank and status. In practice, however, only twelve hold Portfolios and head the various Ministries. Ministers without Portfolios do not hold charge of Ministries and are as a matter of distinction designated State Ministers.

Cabinet meetings are held twice a week, on

12. Kahin, George McT. (Ed.), *Major Governments of Asia*, p. 193.

13. Article 65.

14. Article 1.

15. Article 66.

16. Article 67.

17. Article 66.

18. Article 68.

19. Article 66.

20. Article 68.

21. Article 69.

Tuesday and Friday, at the Prime Minister's official residence. The Prime Minister presides over meetings of the Cabinet and in his absence the Vice-Premier presides. It is an established practice now that Cabinet decisions must be unanimous. If a Minister does not agree to the decision or policy of the Cabinet, he should resign from office. The Cabinet proceedings are strictly secret and no minutes are maintained. The Ministers have explicit instructions not to divulge what transpires in the Cabinet meetings. The Cabinet Secretariat, headed by a Director and two Deputy Directors, assists in the work of the Cabinet, arranges the agenda, prepares documents and handles other matters. It is customary that the Director of the Cabinet Secretariat, and the Director and Deputy Directors of the Bureau of Legislation attend the meetings of the Cabinet, participate in its deliberations but they cannot vote.

Eighteen Ministries or Departments have been established in addition to the Prime Minister's Office. The Prime Minister himself heads his office and it is the nerve centre and operational matrix of the Government. The Cabinet Secretariat and the Legislative Bureau are the auxiliary organs of the Cabinet. The former is charged with the function of preparing the agenda of Cabinet meetings and other miscellaneous affairs of the Cabinet. The Legislative Bureau examines and drafts Government Bills and Cabinet orders as well as drafts of treaties and other matters of equal importance. There are three extra-ministerial agencies: the National Personnel Agency; the Commission on Constitution, and the Economic Planning Agency. The Board of Audit is independent of the Cabinet and it is constitutionally charged with the duty of finally auditing every year the accounts of the expenditure and revenues of the State.

The two principal committees of the Cabinet are the Ministerial Defence Council and the National Defence Council. The Ministerial Defence Council consists of the Prime Minister, Foreign Minister, Finance Minister, Agriculture and Forest Minister, International Trade and Industry Minister, the Transport Minister, and the State Minister who serves as Director of the Economic Planning Agency. The National De-

fence Council consists of the Prime Minister, Foreign Minister, Finance Minister and the State Minister serving as Director of the Defence Agency and Director of the Economic Planning Agency. The Prime Minister is the Chairman of both these Committees.

The average life of the Cabinet is a little more than ten months. Paradoxical as it may seem, Prime Ministers have been more durable than Cabinets. The average life of the Prime Minister is twenty-five months. Intra-party and intra-factional differences on policy or personnel of the Cabinet are the two main reasons for short Cabinet tenures. "And there is constant factional and intra-party pressure on all Cabinets to step aside in favour of other deserving colleagues. The pressure is so strong on any Prime Minister that frequent Cabinet changes are almost the necessary political price for his own continuance in power."²² The factional feuds within the Liberal Democratic Party led to the desertion of seventy members and, consequently, defeat of the Government headed by Masayoshi Ohira on a no-confidence motion tabled by the Opposition in March 1980.

Functions of the Cabinet

According to the Meiji Constitution of 1889, the Executive power was vested in the Emperor. The Ministers of the State advised His Majesty. It was for the Emperor to make decisions and the Ministers exercised only those functions which the Emperor was pleased to delegate to them, though in practice the Emperor acted as a constitutional monarch. The Constitution of 1946 vested the Executive power in the Cabinet²³ and the Emperor possesses no powers related to the Government²⁴. In regard to acts specified in the Constitution which the Emperor performs the advice and approval of the Cabinet is necessary.²⁵ There is no act which the Emperor can perform in his discretion. The Cabinet, thus, formulates and decides policy and co-ordinates and controls the Ministers and other agencies of administration.

But for the implementation of policy necessary legislation must be available. If the existing framework of law does not provide for it, old laws may be amended, or new laws enacted. Administration and legislation go together. It is

22. Robert E. Ward and Jy Macridis (Editors), *Modern Political Systems: Asia*, p. 97.

23. Article 65.

24. Article 4.

25. Article 7.

for the Cabinet to decide what laws need be amended and the new laws which are required and their priority. The Cabinet is, thus, the magnet of policy and it integrates and guides the work of the Legislature. It is the instrument through which the Executive branch of Government is linked with the Legislature. To express it in the words of Bagehot, in the context of the British Constitution, Cabinet is a "hyphen that joins, the buckle that binds the executive and legislative departments together".

But administration cannot be divided rigidly into eighteen or so Ministries. The action of one Ministry affects another and, indeed, every important problem cuts across departmental boundaries. It is the function of the Cabinet to coordinate the functions of several Ministries or Departments of Government. Finally, the Cabinet is responsible for the whole expenditure of the State and to raise necessary revenues to meet such expenditure.²⁶

The functions stated above are the general functions inherent in a cabinet government and are of universal application. The Constitution of Japan, as a measure of abundant caution, specifies various functions with which Cabinet is charged. The most important of such functions are enumerated in Chapter V. Article 72 states: the Prime Minister representing the Cabinet :

- (1) submits Bills to the Diet;
- (2) reports on the general national and foreign affairs to the Diet; and
- (3) exercises control and supervision over various administrative branches.

Article 73 prescribes that the Cabinet in addition to other general administrative functions, shall perform the following functions:—

- (i) administer the law faithfully and conduct affairs of the State;
- (ii) manage foreign affairs and conclude treaties, subject to the prior or subsequent, depending upon circumstances, approval of the Diet;

- (iii) administer the civil service in accordance with standards established by law;
- (iv) prepare the Budget, and present it to the Diet;
- (v) enact Cabinet orders in order to execute the provisions of the Constitution and of law. However, it cannot contain penal provisions in such Cabinet orders unless authorized by law;
- (vi) decide on general amnesty, special amnesty, commutation of punishment, reprieve and restoration of rights;
- (vii) all laws and Cabinet orders are to be signed by the competent Minister of the State and countersigned by the Prime Minister.²⁷

The Cabinet also performs functions connected with other organs of Government:

- (a) advises the Emperor on acts in matters of State;²⁸
- (b) designates the Chief Judge of the Supreme Court;²⁹
- (c) appoints Judges of the Supreme Court, excepting the Chief Judge³⁰ and Judges of the inferior courts from the list of persons nominated by the Supreme Court.³¹ The Chief Justice of the Supreme Court is designated by the Cabinet and appointed by the Emperor;
- (d) determines the convocation of extraordinary session of the Diet;³²
- (e) convenes, in time of national emergency, the House of Councillors in emergency session when the House of Representatives has been dissolved;³³
- (f) advises the dissolution of the House of Representatives to the Emperor;³⁴
- (g) advises promulgation of general election of the members of the Diet;³⁵
- (h) advises the convocation of the Diet;³⁶
- (i) expends monies from the Reserve Fund to meet unforeseen deficiencies in the Budget and get subsequent approval of Diet;³⁷

26. Article 86 also states: "The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year."

27. Article 74.

28. Article 3.

29. Article 6.

30. Article 79.

31. Article 80.

32. Article 53.

33. Article 54.

34. Article 7.

35. *Ibid.*

36. *Ibid.*

37. Article 87.

- (j) submits final accounts of expenditures and revenues of the State and the statement of audited report prepared by the Board of Audit of the Diet every year,³⁸ and
- (k) submits reports at regular intervals and at least annually to the Diet and the people on the State of national finances.³⁹

On December 22, 1985, Japan celebrated one hundred years of Cabinet Government. On that date in 1885 the Emperor Meiji inducted the Cabinet. Japan's fast-paced effort to catch up with the West was already under way. The Japanese wanted to modernise politically as well as economically and they saw that the two processes were inextricably linked. But the record of Cabinet development over the last more than one hundred years is ambiguous. It has been continuous but not continually meaningful. The fact that a Cabinet has been always in place has not meant that it was always in command. The institution became decreasingly relevant in the nineteen twenties and thirties as the military increasingly dominated the political process. The Cabinet was not able to clearly assert itself again when the crucial decision to surrender at the end of World War II was required.

The Japanese Cabinet has not even been in the ascendancy since democracy was restored after War. Often the politicians have spent so much time and energy competing for cabinet office that the net result has been domination of the decision-making process by the bureaucracy. Factionalism within the ruling Liberal Democratic Party over the last 35 years has made frequent cabinet reshuffles mandatory. The bureaucracy has supplied the continuity, which the decision-making process required, and which ministers had not always been able to supply.

THE PRIME MINISTER

Designation and Appointment

There is no Act of British Parliament which establishes the office of the Prime Minister in the United Kingdom.⁴⁰ But the Constitution of Japan specially provides for it, and determines his status. Article 6 of the Constitution provides that the Emperor shall appoint the Prime Minister as

designated by the Diet. This is repeated in Article 67 with a further addition that the Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. At the same time, the Constitution requires that the Prime Minister and other Ministers must be civilians.⁴¹ It, however, does not provide that the Prime Minister must always belong to the Lower House (House of Representatives) of the Diet. Legally, therefore, if the Prime Minister belonged to the Upper House (House of Councillors) there is no constitutional bar to it. But it has never happened since the Constitution became operative in 1947, and it is now a well established practice that the Prime Minister must come from the House of Representatives. That the Prime Minister should belong to the House of Representatives is implied in proviso to Article 67. It provides that if the House of Representatives and the House of Councillors disagree, and if no agreement is reached in a Joint Committee of both Houses, or if the House of Councillors fails to make designation within ten days after the House of Representatives has made designation, the decision of the House of Representatives is the decision of the Diet. Added to it is the constitutionally ordained responsibility of the Cabinet to the House of Representatives. Since the Prime Minister leads the Cabinet, it is logical to infer that he belongs to that House to which the Cabinet is constitutionally responsible.

The procedure actually followed in designating the Prime Minister is the same in both the Houses of the Diet. For clarity it may be divided into two stages. The first stage consists in nominating the candidates. If one single Party commands a majority, its leader will be automatically designated as a majority of the members present and voting is required to designate the Prime Minister. If one single Party does not command a majority and a few of the political parties combine to form the majority coalition, its leader is again an obvious choice. If this is not possible, parties nominate their candidates for the office of the Prime Minister. Since voting is on strict party lines, none can command a majority vote. In that case the first two candidates securing maximum votes run the final nomination and one securing the majority of votes stands designated. In the

38. Article 90.

39. Article 91.

40. The Ministers of the Crown Act, 1937, recognized for the first time the office of the Prime Minister and First Lord of the Treasury.

41. Article 66.

event of a tie, decision is made by lot. This completes the first stage or step in the designation of the Prime Minister. Then, a resolution of formal designation is presented and voted upon in both the Houses of the Diet. In the event of disagreement between the two Houses, a Joint Committee is appointed to resolve the difference. If the Joint Committee does not come to a decision and the disagreement continues, the decision of the House of Representatives finally prevails and that decision is deemed as the decision of the Diet. This actually occurred in 1948, when Prime Minister Ashida won over his rival, Yoshida. Toshiki Kaifu, who was elected President of the ruling Liberal Democratic Party was designated Prime Minister on August 1989 over-riding the House of Councillors' choice of the Socialist Leader, Miss Takako Doi, a former Professor of constitutional affairs. The person so designated by the Diet becomes the Prime Minister on appointment by the Emperor. The appointment by the Emperor is a sheer ceremonial function as he is not legally competent to refuse such an appointment.

An unprecedented display of factional infighting within the Liberal Democratic Party created a piquant situation. The Party had secured 259 seats in the 511 member House of Representatives in October 1979 General Election. It should have been a routine procedural formality for the Lower House, voting automatically the leader of the largest Party to the office of the Prime Minister. The normal practice in the Liberal Democratic Party has been that its Parliamentary leadership goes to its Party President. As such, Masayoshi Ohira should have been the sole choice. But Takeo Fukuda, of the same party and the former Prime Minister, staked his claim in an open defiant manner and contested the election. Ohira was designated Prime Minister by 138 votes against 121 for his rival in the second ballot with 250 abstentions. All Opposition parties refused to participate in the election and cast blank votes. It was for the first time in Japan's parliamentary history that two men from the same party were pitted against each other for the Premiership

and it was only the third time that a parliamentary election for government head went to the second round.

Powers of the Prime Minister

The extent of the powers of the Prime Minister can well be appreciated from his constitutional position as the chief executive, and the head of the administration. Article 66 of the Constitution declares the Prime Minister as the head of the Cabinet. He appoints Ministers and possesses the undisputed right to keeping them in office at his pleasure.⁴² He represents the Cabinet in submitting Bills, reporting on general national affairs and foreign relations to the Diet, and exercising control and supervision over various administrative branches.⁴³ All laws and Cabinet orders are signed by the competent Ministers and countersigned by the Prime Minister.⁴⁴ The Prime Minister presides at the Cabinet meetings⁴⁵ and decides disputes of jurisdiction among Ministers of Cabinet.⁴⁶ The Prime Minister may suspend the official act or order of any administrative office pending action by the Cabinet.⁴⁷ The identity of Ministers is unknown to law without the Prime Minister. Article 70 of the Constitution declares that the entire Cabinet must resign in case there is a vacancy in the post of the Prime Minister. It falls within the special competence of the Prime Minister to fix the date of the Diet elections, to convene the Diet, and to conclude and ratify international agreements.⁴⁸ With a constitutionalised office as the head of the Cabinet and the enormous powers which the Constitution conferred on the Prime Minister, his position is not a whit less than his prototype in Britain. Under the Meiji Constitution, the Prime Minister was not more than *primus inter pares*, first among equals. His appointment was a matter of imperial prerogative and all officers of the State, civil and military including the Ministers of States, were appointed and dismissed by the Emperor.⁴⁹ Now the Prime Minister is a member of the Diet and a leader of the Party in majority. He is vested with the power to appoint his Ministers and they retain office at his pleasure, though the Cabinet as a whole is collectively responsible to the Diet. In

42. Article 68.

43. Article 72.

44. Article 74.

45. Cabinet Law, Article 4.

46. Cabinet Law, Article 7.

47. Cabinet Law, Article 8.

48. *Statistical Handbook of Japan*, 196, *op. cit.* p. 104.

49. Article 10, *Constitution of Japan*, p. 1889.

the appointment of Ministers, he has the right to select his own team which in his opinion would be able to ensure the solidarity and stability of the Government. There may be certain political exigencies which may influence his choice, but the last word rests with him. It is his decision, choice and preference which the Emperor must accept. The Emperor simply performs a ceremonial function and attests the appointment and dismissal of ministers.

It is, thus, the constitutional authority of the Prime Minister to ask a colleague to resign and if he does not, to dismiss him from office as Prime Minister Katayama and Yoshida did. The Prime Minister can also reshuffle his Cabinet as and when he likes and this happens frequently in Japan. Prime Minister Yoshida is famous for the number of Ministers he had appointed. "Twice Mr. Kishi and twice Mr. Ikeda made wholesale changes in the personnel of their cabinets in such a way that the 'reconstructed' cabinet (Kaizo naikaku) were virtually new ones."⁵⁰ There is another important power which the Constitution vests in the Prime Minister. No legal action can be taken against Ministers, during their tenure of office, without the consent of the Prime Minister.⁵¹ As head of the Cabinet, the Prime Minister calls the meetings of the Cabinet and presides over its proceedings, thereby holding a tight rein over the members.

There are no rules, customs and precedents governing the transaction of business in the Cabinet meetings. Nor is there a quorum fixed for the meeting and votes are never taken. Decisions must always be unanimous. The members express their views on the issues before the Cabinet, discuss pros and cons and strive to arrive at an agreement. The Prime Minister sums up the results of discussion and determines the consensus of opinion. Being head of the Cabinet and leader of the party in office, the Prime Minister enjoys a position of pre-eminence which enables him to impose his decision. He enjoys great power especially in emergency. The Prime Minister is empowered to proclaim national or local emergencies. He is also competent to issue direct orders to the public authorities in the areas in-

volved in emergency proclamations.

The Prime Minister is the voice of the Cabinet in the Diet. He alone is authorized by the Constitution to submit Bills and reports on general national affairs and foreign relations to the Diet. He also exercises control and supervision over various administrative branches. The Prime Minister is, thus, the Manager-in-Chief of the Government's business. The Cabinet law empowers him to decide disputes of jurisdiction between one Minister and the other,⁵² and may even suspend the official act or order of any administrative office pending action by the Cabinet.⁵³ These powers of the Prime Minister together with the constitutional provision that all laws and Cabinet orders require counter-signatures of the Prime Minister eclipse the position of the Ministers.⁵⁴ The Prime Minister is really the master of the Government, for he makes and unmakes the government and determines the policies at the meeting of the Cabinet of which he is the head. And for the members of the Cabinet, he appoints them and can dismiss them. An apt description of the position of the Prime Minister of Japan is, therefore, in essence similar to the one Jennings gives to the British Prime Minister, "He is, rather, a sun, around which planets revolve."

Position of the Prime Minister

In spite of that much of similarity between the position and role of the Prime Minister of Japan and that of the Prime Minister of Britain, the former enjoys more powers and he has stronger hold over his colleagues in the Cabinet as well as on the Diet. There are two important provisions in the Constitution which make his position unrivalled and his authority supreme. He appoints his Ministers of State and removes them from office "as he chooses."⁵⁵ In terms of law, Ministers in Britain are responsible to the sovereign whereas in Japan they are legally responsible to the Prime Minister. Secondly, the Prime Minister, "representing the cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative

50. Theodore McNelly, *Contemporary Government of Japan*, p. 85.

51. Article 75.

52. Article 4, Cabinet Law.

53. Article 7, Cabinet Law.

54. Article 72, *Constitution of Japan*, 1947.

55. Article 68, *Constitution of Japan*, 1947.

branches."⁵⁶ This provision in Article 72 has the impact of American Constitution which establishes the Presidential system of government and is akin to the annual and other periodical messages of the President to Congress.

In Britain a Minister introduces and pilots a public Bill. In Japan a legislative measure is submitted in the name of the Prime Minister to the Presiding Officer of the House in which the Bill is desired to be introduced. This simple provision, though in practice innocuous, gives to the Prime Minister a position of legal precedence and official prestige and status over his colleagues in the Cabinet. Moreover, the Constitution further sanctifies the position of the Prime Minister when it prescribes (Article 70) that when there is a vacancy in "in the post of the Prime Minister.... the Cabinet shall resign *en masse*." It means that the identity of the Ministers is not known in law without the Prime Minister. In Britain, too, the position is precisely the same, though it is the result of a well-recognised convention. But to give it a constitutional sanction is to establish legally that the Prime Minister is the kingpin of the Executive power of the State.

There is yet another provision in the Constitution which significantly enhances both the authority and influence of the Prime Minister in the context of the government machinery. Article 75, which has generally remained obscure, provides that the Ministers of the State "during their tenure of office shall not be subject to legal action without the consent of the Prime Minister. However, the right to take action is not impaired thereby." It means that no legal proceedings of any kind or nature can be instituted against a Minister without the prior consent of the Prime Minister, and that in the eyes of law the Prime Minister has the constitutional right to prevent the legal action intended to be taken. When the consent of the Prime Minister is the *sine qua non* of a legal action to be taken against a Minister, his authority becomes peerless in relation to other Ministers. It also implies that so long as a Minister continues his unflinching loyalty and allegiance to the Prime Minister, he remains immune from any legal proceedings against him for his official acts. The pith of this provision is that so long as the Prime Minister commands a comfortable majority in the Diet there is no possibility of manoeuvring with the legislative majority with a view of ousting the Ministry from office. But

factional infighting in the Party and revolt of members within the Party may cause the defeat of the ruling party as it happened in March 1980 when 70 members of the Liberal Democratic Party deserted and Ohira's Government fell on a motion of no-confidence tabled by the Opposition.

There is nothing like the individual responsibility of a Minister in Japan as it is in Britain. The Constitution empowers the Prime Minister to remove a Minister from office as and when he chooses to do so. A breath which has made Ministers can also unmake them, though the position is not exactly the same as it is with the President's cabinet in the United States. The Prime Minister in a Cabinet system of government must ensure his majority in the legislature and should be able to lead and control the body to which the Cabinet is responsible as a whole. But the constitutional authority of the Japanese Prime Minister makes his position pre-eminent.

So vast is the extent and effect of the authority of the Prime Minister over his colleagues and, consequently, on the Cabinet that very often a question is posed "Whether the cabinet rather than the cabinet to it." The Constitution makes the Diet the sole law-making organ of the State and it controls the Executive through various devices of a Parliamentary system of government which have been constitutionalised. But in actual practice, the Prime Minister leads and controls the Diet. He has the constitutional power to dissolve the House of Representatives and with the dissolution of that House, the House of the Councillors "is closed at the same time." This means the demise of the Diet as a whole save that the Cabinet may in time of national emergency convoke the House of Councillors in an emergency session. The threat of dissolution, therefore, is like a big stick that keeps the House of Representatives together. It really makes the members of the House amenable to the wishes of the Prime Minister. Two examples will illustrate the point at issue. In 1948, Ashida Hitoshi resigned. Yoshida, one of the candidates for the Premiership, persuaded Yanazaki Takeshi not only to resign his seat in the House of Representatives in order to facilitate his election, but also managed to be designated by the Diet as a Prime Minister. Yanazaki Takeshi, it may be noted, was the likely choice of the Diet. In 1953, Prime Minister Yoshida insulted

the Diet by calling a member of the House of Representatives a stupid fool during the course of a debate. The House took umbrage over his indignity and a motion of no-confidence was initiated against the Government. The Prime Minister immediately obtained an imperial Rescript dissolving the House of Representatives. In the following General election Yoshida's Party again came into power, though with a reduced majority, and he was designated Prime Minister by the Diet.

These Constitutional provisions, notwithstanding the position of the Japanese Prime Minister is not on the same pedestal as those of the Prime Minister of Britain and India. Parliamentary system envisages alteration in government which is not possible in Japan. The Liberal Democratic Party has been in command of the government during the past more than thirty years and there seems no possibility of the parties in Opposition to oust it. General elections in Japan do not determine the leadership of the government and the nation, to the same extent, as they usually do elsewhere. No Prime Minister can be certain that the inevitable Liberal Democratic Party's electoral victory will assure his continued prime ministership. As things stand, Prime Minister Yasuhiro Nakasone ended his second and final term as Liberal Democratic Party President and, as such, Prime Minister in October 1987. He managed an extension in his term for another year as a result of the Party's electoral victory in the 1986 elections and his other national and international achievements in the political sphere. But before the proposal for his extension could mature, other leaders in the Party, such as Foreign Minister Shintaro Abe, Finance Minister Noburo Takeshita and Party's Executive Council chairman Kiichi Miyazawa sought to succeed Nakasone. In Japan, there is nothing as party allegiance and personal loyalty which are the hallmark of the British Parliamentary system.

The rule is that Japanese Prime Ministers are much more chairmen of the Board, rather than pilots at the helm, or, as Takeshita himself put it to a reporter: "I am not a leader who says follow me." Takeshita was a very much traditional style Japanese politician, who preferred to pursue consensus before taking action, in contrast to Naka-

sone who gave the Prime Ministership a much higher profile, especially abroad, often by promising action before consensus had been agreed. Takeshita returned the Japanese premiership to the self-effacing low-posture image which it has enjoyed for most of the 32 years of the Liberal Democratic Party rule.

Another important fact that has undermined the position and prestige of the Prime Minister is the fact that choosing a Prime Minister has become a difficult task in these days. It is not as though candidates are scarce, only that many are reluctant to take over the responsibility under the circumstances that had discredited the ruling Party, which alone is the Liberal Democratic Party. Prime Minister Noboru Takeshita acknowledged on April 12, 1989 of collecting 200 million Yen in political funds and donations. In announcing his decision to resign on April 25, he apologised. "The Recruit question has caused a grave crisis for nation's parliamentary democracy," he said in the statement. To make matters worse, there came up the issue of Sousuke Uno's involvement with a geisha. The Liberal Democratic Party desperately looked for a person who would be able to stem the rot and put the Party back where it was a year or so ago. It was with this hope that the Liberal Democratic parliamentarians had gone along with Toshiki Kaifu the present incumbent Prime Minister. One of the campaign issues of the February 1990 General Election was the call for clean policies in the wake of the Recruit scandal.⁵⁷

The Civil Service

The Civil Service in a modern State is the core of government. The Cabinet formulates policies, but the real work of administration is done by thousands of civil servants who staff the various Ministries or Departments of Government. It is not the business of a Minister, who heads the Department, to work the Department. His business is to see that the Department pursues a determined policy and it functions efficiently in that particular direction. Those who actually run the Department and implement the policies of the Government constitute the civil service of the country. They have a permanent status and tenure and are selected for their administrative capacity alone and are graded accordingly. They have no

⁵⁷. Recruit Conglomerate, one of the fastest growing firms in Tokyo, sold in 1986, unlisted stocks in a subsidiary at a basement price and also surreptitiously financed "sells" to about 160 politicians and influential people, mostly LDP and its allies. The share known in over the counter market, OTC as "political stocks" apparently because of the insides information, soared soon after 1986. The fortunate owners unloaded them as the stock issue skyrocketed, yielding them huge profits.

interest in party politics and remain rigidly neutral and rigorously impartial in economic and political issues. Permanency of tenure gives them security of service and furnish to Ministers, who are amateurs in administration, and the legislature all necessary information for shaping and enacting policies on a multitude of subjects. Laski has aptly said that "every State is enormously dependent upon the quality of its public officials." The welfare of the people, therefore, normally depends upon the honest performance of the duties assigned to the civil servants, high and low. Their duties have become tremendously complex and onerous with expansion in the scope of governmental activities. The responsibilities devolving on the civil servants demand greater expertise knowledge, promptness in the performance of their duties, efficient diagnosis of the social ills and suggestion of appropriate remedies, and consequently tendering service with equal fidelity whatever government may come and go.

The Civil Service Before 1946

Japan had nothing like the civil service until the seventh century. The patriarchal clan system had seriously undermined the authority of the Emperor and in their bid to strengthen the political structure, the Japanese looked to China for inspiration, which was then at the height of her glory. They found that the most important factor that contributed to China's greatness and power was her highly developed administrative system. Japan, accordingly, imported from China a highly centralised administrative system with the Confucian tradition that conferred high prestige upon the government officials. But there was one major difference. Whereas in "China the civil service had been instituted to destroy the old power structure based on the aristocracy," in Japan, "it was used to strengthen the political structure dominated by the aristocracy." For a little over five centuries the administration of national affairs was concentrated in the hands of civilian aristocracy which operated out of the Imperial court at the national capital.

Feudalism lasted for nearly seven centuries. The administrative system that developed during this period was dominated by the military and hierarchical organization and it was based upon the strong bond of fidelity between the lord and the vassal. It was precisely not a civil service system "but a feudal bureaucracy based on status,

and official posts were hereditary." In the early years of the Meiji era, the officials of the State were largely drawn from the old Samurai-class, but soon there spread a strong feeling of discontentment against the government personnel and the method of entry into the service. It was complained that appointments went generally to friends of those already in the service and the able and talented youngmen were eliminated from entering public service. The agitation had the desired effect and in 1885 the foundation of a modern civil service was laid by adopting the principle that appointments to government posts should be based on competitive examination. The first examination for recruitment to second and third rank services was held in 1887. There was no competitive examination for recruitment to first rank service and it embraced Cabinet Ministers, ambassadors and highest judicial officers, accounting for less than five per cent of the total number of civil servants.

Civil Service under 1946 Constitution

Under the Meiji Constitution all government officials were appointed by the Emperor and they remained in service at the pleasure of His Majesty. Imperial Ordinances rather than laws enacted by the Imperial Diet determined the conditions of the Imperial Civil Service. Since it was an Imperial Civil Service, in "its dealings with the public the Japanese bureaucracy acquired the reputation of being arrogant and over-bearing. Officials were, in theory responsible to the Emperor, and, therefore, each official was vested with a segment of imperial authority."⁵⁸ At functions of the Imperial Court the officers of the first rank were placed in precedence with the President of the House of Peers and the Speaker of the House of Representatives. And as the officials were responsible to the Emperor "and not to the public, officialdom was never very much concerned with the matter of public relations."⁵⁹

The Constitution of 1946 changed the entire concept of public service. Article 15 provides : (1) the people have the inalienable right to choose their officials and to dismiss them, (2) all public officials are servants of the whole community and not of any group thereof. If any public official does any wrong to a person and the person concerned suffers damage through an illegal act of such officials, he can sue for redress as provided by law. The National Service Law enacted

58. Kahin George McT. (ed.) *Major Governments of Asia*, p. 197.

59. *Ibid.*

in 1947, provides "for servicewise standards of personnel administration." The National Personnel Authority, which was set up in 1949 and administers the National Public Service Law, is "charged with the responsibility of introducing democratic methods, providing scientific personnel management, and creating a job classification system."⁶⁰

All public officials are now divided into two categories, Special Government Service, and the Regular Government Service. In the Special Government Service are included members of the Cabinet, all such positions the appointment of which requires approval of the Diet, high officials in the Imperial Court, Judges, Ambassadors and Ministers, Diet employees, common labourers, and employees of State Corporations. The Regular Government Service includes the personnel of the National Government, administrative and clerical, except those classified belonging to the Special Government Service.

The National Public Service Law is essentially concerned with the Regular Government Service. The National Personnel Authority, modelled after the Civil Service Commission of the United States of America, administers the National Public Service Law. It functions independently of the Diet and the Cabinet and consists of three Commissioners, one of whom is the Chairman. The Chairman is appointed by the Cabinet with the approval of the Diet. The functions of the National Personnel Authority, *inter alia*, are : to conduct the civil service examinations, classify position, promote employee training and welfare, deal with employee grievances, fix hours of work, leave of absence, temporary retirement, discipline compensation for illness and injury while on duty, issue directives within the law, which are binding on all Departments, and to recommend administrative and salary reforms to the Cabinet and Ministries.

Consistent with the demands of expanding governmental activities there has been an enormous increase in the size of the national government employees. Just before the War in 1940, the National Government had, excluding the military and certain temporary employees, a total of 231,898 persons on its pay roll. In 1960, the figure was 1,428,049, a more than five-fold increase.

In 1963, it touched a total of 1,851,777 and this figure has since substantially increased. Out of this huge total of national employees a little more than five thousand belonged to the higher civil service comprising the first, second and third grades in the administrative service. Access to these positions is usually restricted to persons who pass the Higher Civil Service Examination, and the training and preparation of this Service are rigorous.

Despite the institutional changes referred to above, "the Japanese bureaucracy continues to be officious and given to feeling of self-importance."⁶¹ Summing up the nature of the Japanese civil service, Robert E. Ward says,⁶² "Displays of individual initiative on the part of junior employees are not highly valued. Loyalty and obedience to superiors, tact, anonymity, patience, and a capacity for the endless details and rituals of administration are the normal virtues. Personal and job security is complete, accountability to the public is practically nil." Confucianism had normally exalted the role of the government officials and this idea continues to prevail during the present time too. The public at large also stresses the superiority of the officials and obedience to their authority. And then the civil service is a step up the social ladder. Thus, it "hardly needs to be emphasised," remarks, Chitoshi Yanaga, "that, while under the new Constitution it has "been made very clear, that Government officials are public servants, it will be some time before the new legal status is accepted socially and psychologically by the officials themselves as well as the general public."⁶³

Another feature of higher bureaucracy in Japan is that it is deeply involved in politics. Ever since the War such an involvement has become notable. It is now believed that one of the best ways to begin a political career is to enter the civil service. After retirement, which is comparatively at an early age and the pension is inadequate, an aspiring civil servant is apt seriously to consider a political career as the crowning of his ambitions. He has "already proved his administrative competence, and he enjoys a measure of prestige in his home community where people regard him as a home-town boy who made good, and they take a personal interest in his political career."⁶⁴ Ac-

60. *Statistical Hand-Book of Japan*, 1964, p. 107.

61. Kahin George McT (Ed.), *Major Governments of Asia*, p. 198.

62. Ward and Macridis (Eds.), *Modern Political Systems : Asia*, p. 101.

63. Chitoshi Yanaga, *Japanese People and Politics*, p. 311.

64. Theodore McNell, *Government of Japan*, p. 93.

ording to the analysis given by Robert E. Ward, in 1959, 84 members of the Lower House (18 per cent of the total membership) and 81 members of the Upper House (32 per cent) were former career civil servants. Some 35 per cent of the Cabinet members holding office between 1954 and 1961 were civil servants⁶⁵ and most of the post-War Prime Ministers have had long careers in the civil service—Shidehara, Yoshida, Kishi, Ikeda,

Fakuda and Ohira. "Bureaucrats naturally regard their own opinion," concludes Theodore McNelly, "as more informed than that of the laymen, and Cabinet Ministers, with bureaucratic origins often take a scornful attitude towards legislators, the press and the general public. Ikeda Hayato was notorious for his lack of fact before he became Prime Minister."⁶⁶

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65. Ward and Macridis (Eds.), *Modern Political Systems: Asia*, p. 102.

66. Theodore McNelly, *Contemporary Government of Japan*, pp. 49-95.

CHAPTER III

The Diet

The Diet

The Constitution describes the Diet or Parliament of Japan as the highest organ of State power and the sole law-making organ of the State.¹ It further states that the Diet consists of two Houses, the House of Representatives and the House of Councillors.² These two provisions are sharply distinguishable from the corresponding provisions of the Meiji Constitution. The Emperor, according to that Constitution, had alone the right of sovereignty and the sole ultimate repository of State power and he exercised "the legislative power with the consent of the Imperial Diet." Moreover, the Emperor and the Cabinet both had the power to issue decrees which had the force of law. The Constitution of 1946, which became operative in 1947, vests sovereignty in the people and the Diet, which is the expression of the will of the people and is the sole law-making organ of the State. "The Government has thus been transformed from an Emperor-centred to a Parliament-centred mechanism,"³ and the elected representatives of the people are charged with the task of deliberating on national policies, formulated by the Cabinet, which body is collectively responsible to the Diet,⁴ approving them finally, and enacting them into laws to make them valid for implementation and obedience.

Although the Diet reflects the opinion of the people, it also guides and leads public opinion. It is here that the representatives of the people ventilate grievances and seek redress. The Opposition opposes and criticises the policies and actions of the Government while the Party in office explains and clarifies in order to make issues

intelligible to the people. It is a government by publicity and is subject to daily and periodic assessment. In other words, Diet is the national forum where all kinds of matters are debated and discussed and it equips the people with sufficient political knowledge to determine what policies and politics they will like to own. Since the powers of the Diet extend to all aspects of government activity, its authority is all-embracing. It deliberates and legislates, sanctions and controls the finances of the State, designates the Prime Minister who forms the Government and controls it through many processes. The government is ever under scrutiny of the Diet and the Constitution now vests it with investigative power,⁵ which the Imperial Diet did not possess under the Meiji Constitution.

A Bicameral Legislature

Japan has a bicameral legislature since 1890. Under the Meiji Constitution the Upper House was named as the House of Peers and it consisted of 416 members made of Peers, representative Peers, representatives of the highest taxpayers, and Imperial appointees. "It was natural, given its make up, that House of Peers was highly conservative, and since its powers were equal to that of the House of Representatives, it served for decades as a bulwark against popular control of the government."⁶ The Lower House, the House of Representatives, was elected by a small electorate which met a high payment of tax. Originally, it consisted of 300 members. Women had no votes. In 1902 tax qualification was reduced and the membership increased. With the enactment of universal suffrage in 1925, which entitled all males over 25 years of age to vote, the

1. Article 41.

2. Article 42.

3. Ward and Macridis (Editors), *Modern Political Systems : Asia*, p. 92.

4. Article 65.

5. Article 62.

6. Kahin, George McT. (Ed.), *Major Governments of Asia*, p. 189.

number was set at 466. The term of office of the members was four years. But there were serious limitations on the powers of the House of Representatives, particularly relating to finances.

The Occupation Authorities, especially General MacArthur, favoured a unicameral legislature by doing away with the House of Peers as nothing resembling with it was desired to be put in its place. There was also a strong objection to an Upper House constituted on the basis of vocations or economic groups. But the Japanese did not favour tampering with bicameralism. They felt that an Upper Chamber in any democratic set-up was necessary as a check against hasty and ill-considered legislation. It was, accordingly proposed that a House of Councillors be established consisting of "members elected for the various districts or professions and members appointed by the cabinet upon resolution of a committee consisting of members of both Houses."⁷ The Occupation Authorities eventually agreed to retain bicameralism, but the Upper House consisting of only elected members, representing all the people and not of groups or any section of society.

THE HOUSE OF COUNCILLORS

Composition

The House of Councillors, which replaced the House of Peers, consists of 252 members. The Constitution does not fix the number of the Councillors. It simply says: "The number of the members of each House shall be fixed by law."⁸ The Law has now fixed the number at 252 out of which 152 are elected on a geographical basis, that is, from forty-six electoral districts in which the country is divided and correspond with the prefectures, and the remaining 100 are elected by the nation at large. The former are known as local constituencies and the latter national constituency. The number of seats going to a prefecture is roughly in proportion to its population and they vary from two to eight seats. For example, Tokyo and Hokkaido return eight Councillors each, while Osaka returns six. As the elections from the prefectures and the nation at large are held simul-

taneously, a voter exercises two votes, one for the candidate in the prefectural or local constituency, and the other for a candidate in the national constituency.

The members of the House of Councillors are elected for six-year term with one-half elected every three years.⁹ There is no dissolution of the House. Since the terms are staggered, after the expiry of every three years, 76 members are chosen from the prefectural or local constituencies and 50 from the national constituencies. The idea of introducing two categories of constituency was to have a dissimilar composition as compared with the House of Representatives, and to attract eminent candidates of national stature who do not get themselves involved in the rough-and-tumble of partisan policies.

Qualifications for membership of the Diet (House of Councillors and the House of Representatives) are fixed by law. But the Constitution itself emphasises that there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income. The idea is to stress that privileges of any kind, as were found in the composition of the House of Peers under the Meiji Constitution, have been abolished altogether, and that women enjoyed the same rights as men.¹⁰ The minimum age fixed for a Councillor is 30 years and he must fulfil all other qualifications which are prescribed for a voter. But the Constitution prohibits anyone to remain a member of both Houses simultaneously.¹¹ The House itself decides disputes relating to qualifications of members and there is no appeal in this respect to any other authority.¹² In order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds of the members present in the House.¹³

Members enjoy complete freedom of speech and they are not liable outside the House for speeches, debates or votes cast inside the House.¹⁴ Moreover, except for cases provided by law, they are exempt from apprehension while the House is in session. Any member apprehended before the opening of the session shall be freed during the terms of the session upon demand

7. As cited in Theodore McNelly's *Contemporary Government of Japan*, p. 102.

8. Article 43.

9. Article 46.

10. Article 43, *The Constitution of Japan*, 1946.

11. Article 48.

12. Article 55.

13. *Ibid.*

14. Article 51.

of the House.¹⁵ The members receive annual payment as determined by law in addition to the daily allowance when the House is in session and free railway passes. They are also entitled to a special allowance to defray the expenses of mailing documents and carrying on correspondence when the House is in session. There is provision for retirement pension too. The Chairmen of the Standing Committees are provided with official automobiles.

The Session

The House must meet once a year in a regular session.¹⁶ It is usually opened in December by the Emperor who delivers a brief message to a joint session of both the Houses. Extraordinary Sessions are called by the Cabinet whenever deemed necessary. If one-fourth or more of the total members of the House demand for convening an Extraordinary Session, it becomes the duty of the Cabinet to do so.¹⁷ When the House of Representatives is dissolved, the House of Councillors "is closed at the same time." The Cabinet may, however, convoke the House of Councillors in emergency session if the conditions of national emergency prevail in the country.¹⁸

The quorum for the transaction of business is fixed at one-third of the total membership of the House.¹⁹ Deliberations of the House are open to public²⁰ unless it is a secret meeting on the demand of two-thirds of the members present.²¹ The House is required to keep a record of its proceedings which must be published and made available to the general public, except such parts of the proceedings of the closed session as require secrecy. Upon demand of one-fifth of the members present, votes of the members on any matter be recorded in Minutes.²² All decisions are taken by a majority vote of the members present, except otherwise provided by the Constitution. In case of a tie, the Presiding officer exercises a casting vote.²³

The Presiding Officer

The House of Councillors elects its own

President and Vice-President. The President presides over the sittings of the House and controls its proceedings. In the absence of the President, the Vice-President presides. The House establishes its rules for the conduct of meetings, proceedings and internal discipline and may punish members for disorderly conduct. In order to expel a member from the House, a majority of two-thirds of members present must pass a resolution to that effect.²⁴ In case of a tie, the Presiding Officer is entitled to a casting vote.²⁵

Committees of the House

The House has two types of Committees—standing and special—to deal with different matters. Previously, the House had twenty-two Standing Committees. Now their number stands at sixteen: Cabinet, Local Administration, Judicial, Foreign Affairs, Finance, Education, Social and Labour, Agriculture and Forestry, Commerce and Industry, Transportation, Postal Services, Construction, Budget, Audit, House Management and Discipline. A Councillor must be a member of at least one Standing Committee, but he must not serve on more than three committees.

Functions of the House of Councillors

Functions of the House of Councillors are:

Legislative Functions

The Constitution confers identical legislative functions on the House of Councillors and the House of Representatives. Article 41 says that the Diet is the highest legislative organ of State power and the sole law-making organ of the State. Article 59 further says that a Bill becomes a law on passage by both the Houses. It means that a legislative measure may be introduced in either of the Houses and when passed by them separately, it becomes a law and must be promulgated accordingly. But after having conceded that much to the House of Councillors, the Constitution establishes the supremacy of the House of Representatives. It is provided that in case the House of Councillors makes a decision different

15. Article 50.

16. Article 52.

17. Article 53.

18. Article 54.

19. Article 56.

20. Article 57.

21. *Ibid.*

22. Article 57.

23. Article 56.

24. Article 58.

25. Article 56.

from the House of Representatives, it becomes law of the Diet when the House of Representatives passes the Bill for the second time by a majority of two-thirds of members present and voting. But this provision does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law. If such a difference cannot be resolved in the joint meeting, it becomes a law of the Diet when the House of Representatives repasses the Bill by a majority of two-thirds or more of the members present and voting. The Constitution also provides that if the House of Councillors fails to take final action within 60 days excluding the recess period after receipt of the Bill from the House of Representatives, it may be taken by the House of Representatives to constitute a rejection of the Bill by the House of Councillors.²⁶ The final word, therefore, rests with the House of Representatives.

Financial Functions

Consistent with the democratic theory and the practice of Parliamentary system of government, Money Bills do not originate in the House of Councillors. The Constitution specifies that the Budget must be submitted first to the House of Representatives and when it passes therefrom it goes to the House of Councillors. If the House of Councillors makes a decision different from that of the House of Representatives and when no agreement can be reached even in a joint committee of both the Houses, provided for by law, or when it fails to take final action within 30 days after receipt of the Budget approved by the Lower House, the decision of the House of Representatives becomes the approval of the Diet.²⁷ In matters of budget, therefore, the function of the House of Councillors is significant.

Articles 83 to 91 contained in Chapter VII of the Constitution enumerate the powers of the House of Councillors which it exercises together with the House of Representatives. It is provided in clear terms that the power to administer national finances shall be exercised by the Diet. Both the Houses modify the existing taxes or impose new ones, authorise the expenditure of money and assume obligations by the State, approve the Budget for each fiscal year as prepared and submitted by the Cabinet, authorise and ap-

prove expenditure from a reserve fund to provide for unforeseen deficiencies in the Budget and approve the appropriation of expenses for the Imperial Household. Final accounts of the expenditure or revenues of the State are required to be audited annually by a Board of Audit and submitted by the Cabinet to each House of the Diet for its acceptance. The House of Councillors, like the House of Representatives, is also responsible for approving the Government's settled accounts. At regular intervals and at least annually the Cabinet is required to report to both the Houses of the Diet and the people on the state of national finances.²⁸

Administrative Functions

The Cabinet is the creation of the Diet and is headed by the Prime Minister. The Constitution requires that all members of the Cabinet be civilians and that a majority of their number, including the Prime Minister, be members of the Diet. Custom has, however, established that the Prime Minister invariably belongs to the House of Representatives and an overwhelming majority of the Ministers are chosen from the same House. Not more than three or four Ministers are taken from the House of Councillors. The Prime Minister is designated by a resolution of the House of Representatives and the House of Councillors. If, however, the House of Representatives and the House of Councillors disagree and if no agreement can be reached in the joint committee of both the Houses, or if the House of Councillors fails to make designation within 10 days after the House of Representatives has made its designation, the decision of the House of Representatives is the decision of the Diet.²⁹ The final determination in the designation of the Prime Minister is, therefore, that of the House of Representatives and to its choice the House of Councillors must submit.

The House of Councillors does not control the Government and can bring no crisis by passing an adverse vote. According to Article 66 the "Cabinet is collectively responsible to the Diet," which in terms of law means both the House of Councillors and the House of Representatives. But when read with Article 69 responsibility really means to the House of Representatives. It specifies, that when the House of Representatives passes a resolution of no confidence in

26. Article 59.

27. Article 60.

28. Article 90.

29. Article 67.

the Cabinet, or rejects a confidence resolution, "the Cabinet, shall resign *en masse*, unless the House of Representatives is dissolved within 10 days." Thus, when the House of Representatives passes a no confidence motion against the Government or rejects a vote of confidence in the Government, it must either resign or advise dissolution of the House of Representatives within ten days of the passing of resolution to seek the verdict of the electorate. The House of Councillors is not dissolved. The new election of the House of Representatives will, then, determine the party to form the Government.

It does not, however, mean that the Councillors have no hand in influencing administration. The members of the House of Councillors can seek information from the Government on any aspect of administration through the medium of questions. "Question hour" in the life of the Parliamentary government plays a significant role and it tends to keep the Government within bounds. The members may also seek redress of grievances or bring to the notice of the Government a matter of public importance of which the Government has not taken any cognisance by passing a resolution to that effect. The Constitution enjoins on the Cabinet to report at regular intervals and at least annually to both the Houses of the Diet on the state of national finances, and the Prime Minister, representing the Cabinet, on general national affairs and foreign relations.³⁰ Finally, the House of Councillors together with the House of Representatives has been given investigative functions. According to Article 62, each House of the Diet "may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records." The House of Councillors in this way exercises a continuous supervision over the administration, particularly relating to efficiency and honesty of Government.

Judicial Functions

The House of Councillors, together with the House of Representatives, constitutes the court of impeachment for the trial of Judges of the Supreme Court. Article 64 of the Constitution provides that "the Diet shall set up an impeachment court from among the members of both

Houses for the purpose of trying Judges against whom removal proceedings have been instituted." Matters relating to impeachment are provided by law. The Court of Impeachment, as now constituted, consists of 14 members equally drawn from the House of Councillors and the House of Representatives. The members of the Court elect one from among themselves to be a presiding officer. The law also sets up an Indictment Committee, consisting of an equal number of members of both the Houses of the Diet, which prefers charges for removal against a judge or judges to be impeached. A member of the Indictment Committee cannot simultaneously be a member of the Court of Impeachment.

Constituent Functions

The House of Councillors and the House of Representatives both exercise equal powers of amending the Constitution. Amendment to the Constitution can be initiated by either House of the Diet and it must pass separately by a majority of two-thirds of the total membership of the House of Councillors and the House of Representatives, and then it is submitted to the people for their approval at a referendum.

Electoral Functions

The House of Councillors together with the House of Representatives performs many electoral functions. The procedure adopted for the selection of the Prime Minister has already been described. The Constitution definitely prescribes the participation of both the Houses in the designation of the Prime Minister.³¹ The qualifications of the members of both the Houses and their electors are fixed by law of the Diet. The only limitation that the Constitution places is that there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.³² The Diet is also competent to enact laws regarding the formation of electoral districts, method of voting, and other matters pertaining to the method of election of members of both the Houses.³³ Each House is competent to judge disputes relating to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.³⁴ The House of Councillors elects its

30. Article 72.

31. Article 67.

32. Article 44.

33. Article 47.

34. Article 57.

own President and Vice-President, and other officials of the House.³⁵

House of Councillors at Work

As said earlier, General MacArthur had desired a unicameral legislature and the first draft of the Constitution was accordingly formulated. But the Japanese leadership was strongly opposed to this proposal and the Constitution of 1946 established a bicameral legislature. Since the Constitution had set up a Parliamentary system of government, it was, natural that the popular chamber should remain the focus of authority and the Upper Chamber was to exercise only a restraining, moderating and dignifying influence, and to provide continuity and stability to the Diet. The members of the House of Councillors are elected for a term of six years, one-half retiring after every three years. As the House is not subject to dissolution, there is continuity in its life and the members usually serve for their full term of six years. The law of the Diet prescribes that members of the House of Councillors must at least be thirty years of age and they should be chosen from two different kinds of constituencies: 100 from the national constituency and 152 from the local or prefectural constituencies. The intention was to combine the advantages of informed local representation with those of a panel of nationally eminent candidates. But after more than four decades of the working of the Constitution, the House of Councillors is not greatly different from the House of Representatives either in terms of age or politics.³⁶ It has become practically a partisan body as the House of Representatives is. There are, however, some eminent statesmen who are chosen from the national constituency, the bulk of those so chosen probably represent organizations having branches or influence in several heavily populated areas of Japan e.g., labour unions, big business and nationally organized interest groups.³⁷ There are just a few independent candidates and the rest are the nominees of the political parties and subject to their rigid control. The party composition of the House of Councillors closely resembles to that of the House of Representatives.

The House of the Councillors has in practice not fulfilled the purpose of exercising a restraining influence against hasty and ill-considered legislation. When the same Party controls

both the Houses and the Party composition therein remains more or less the same at every election, there is no possibility of any disagreement between the two Houses and the Bills pass through *ipso facto*. Rigidity of party discipline does not permit opposition of any kind to the Government's policy with the result that the House of Councillors has become a recording Chamber. There is a growing feeling among the Japanese that the House of Councillors as constituted at present makes little contribution to the role it is expected to play and, accordingly, some kind of reform is urgently needed in its composition. It has been suggested that the House should be made a Chamber representing professions and other elements of the electorate; the original point of view expressed by the Japanese in 1946, but not accepted by the Occupation Authorities.

THE HOUSE OF REPRESENTATIVES

Composition and Tenure

The House of Representatives is the Lower Chamber of the Diet and consists of 512 members elected for a four-year term. Originally, the total membership of the House was fixed at 466. On restoration of Amami Island to Japan by the United States of America in 1953, its strength was raised to 467. Since the House is subject to dissolution, it does not run a full term. General Elections have taken place at intervals ranging from six and half months to three years and eight months. Candidates are returned from a total of 118 so-called "medium sized" constituencies, each constituency returning from three to six members, on population basis, except the constituency of Amami Islands which is represented by one member. Despite that each constituency returns several members, each elector casts only one vote. The Japanese system is a form of "limited voting," that is, the voter is permitted to vote for fewer candidates than the number of seats to be filled from a constituency.

The Public Offices Election Law of April 1950, guarantees the right of vote to practically all Japanese citizens, male or female, who have reached the age of twenty years. A candidate for membership to the House of Representatives should be twenty-five years of age and he must have been resident of the locality from which he seeks election continuously for a period of three months. But locality rule in Japan does not mean

35. Article 58.

36. Theodore McNelly, *Contemporary Government of Japan*, p. 103.

37. Ward and Macridis (Eds.), *Modern Political System : Asia*, 92.

actual residence in the constituency as the rigid practice in the United States is. It simply means having a legal domicile and being registered there. A candidate for the House of Representatives must meet all other qualifications as those prescribed for voters. No one can be a member of both the Houses at the same time. Nor can he hold any other office under the Government. Disputes relating to qualifications of the members are judged by the House of Representatives itself. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Members of both Houses enjoy complete freedom of speech and they are not held liable outside the House for speeches made or votes cast inside the House. Members of both the Houses are exempt from apprehension, except in criminal cases, while the Diet is in session. Any member apprehended before the opening of the session is freed during the term of the session upon demand of the House. The Constitution provides that members of both Houses shall receive appropriate annual payment from the national treasury in accordance with the law. The law provides for a handsome annual salary in addition to the daily allowance when the House is in session, free railway passes between Tokyo and homes of the members and some special allowances and other facilities. There is also a provision for retirement pension for members.

Sessions

The Constitution specifically mentions two types of sessions of the Diet: the regular or ordinary session, and an extraordinary session. An ordinary session of the Diet is convoked once a year,³⁸ but Cabinet may convoke an extraordinary session, whenever necessary, to take up emergency matters which cannot wait until the next regular session. If one-fourth of the total number of members of either House make a demand that the Diet should be convoked in an extraordinary session, the Cabinet must summon it.³⁹ There is also a provision for a special session. According to Article 54, when the House of

Representatives is dissolved there must be a General Election of members of the House of Representatives within 40 days from the date of dissolution, and the Diet must be convoked within 30 days from the date of the Election. The purpose of such a special session of the Diet is to elect a Prime Minister who should form the government, and to dispose of the unfinished business left over because of dissolution. When the House of Representatives is dissolved, the House of Councillors must immediately go into adjournment. But in times of national emergency, the Cabinet may convoke it in emergency session to take action on urgent measures. Measures adopted by the House of Councillors in emergency session are provisional and they become null and void unless assented to by the House of Representatives within a period of 10 days after the opening of the next session,⁴⁰ which is usually a special session.

Business cannot be transacted in the House unless one-third or more of total number of members of the House are present,⁴¹ that is, 171 members out of a total membership of 512 must at least be present for the valid transaction of business. All matters are decided by a majority vote of those present, except as provided for in the Constitution.⁴² In case of a tie, the Presiding Officer, the Speaker, and in his absence the Deputy Speaker, exercises a casting vote and decides the issue.⁴³

There is a constitutional sanction that deliberations in each House of the Diet should be public.⁴⁴ It means that the sessions of each House of the Diet are open to public unless a majority of two-thirds of the members present in a House pass a resolution that a secret meeting of the House be held.⁴⁵ Under the Meiji Constitution the Cabinet could alone demand a secret meeting of the House. But under the Constitution of 1946, it is the House itself which decides by a two-thirds majority that there should be a secret meeting. The Cabinet has absolutely no say in the matter. Each House of the Diet is required to keep a record of its proceedings. Such a record is required to be published and made available to

38. Article 52.

39. Article 53, *Constitution of Japan*, 1946.

40. Article 54.

41. Article 56.

42. *Ibid.*

43. *Ibid.*

44. Article 57.

45. *Ibid.*

public, except such parts of the proceedings of a secret session as may be deemed to require secrecy.⁴⁶

Organisation of the House

The organisation of the House of Representatives is quite simple. The first business of the House when it assembles immediately after the General Election is to elect a Speaker and a Deputy Speaker or Vice-Speaker. The Speaker presides over the meetings of the House and in his absence the Vice-Speaker presides. It is, therefore, the first step in the organization of the House that the Presiding Officer may be elected, for it is only after his election that the business of the House can be transacted. The House makes its own rules pertaining to meetings, proceedings and internal discipline.⁴⁷ For deliberative purposes the House functions either in plenary session or in committees. There are 16 Standing Committees of the House and most of these Committees correspond to Ministries or Departments of the Government. The House may also appoint special Committees for the study of particular problems or proposals. Each party is represented in the Committees on the basis of party strength in the House. Each member must serve on at least one Standing Committee and on not more than three Committees.

The Speaker

Under the Meiji Constitution the members of the House of Representatives did not elect their Speaker. The House would nominate three members and the Emperor selected one out of them to act as the Speaker. The Constitution of 1946 specifically provides that each House shall select its own presiding officer, and empowers him in case of a tie to decide the issue by his casting vote. So important is the office of the Speaker that no business of the House can be transacted without him. Even the designation of the Prime Minister, urgent as it is, has to wait until after the Speaker and his Deputy are chosen.

Normally, the Speaker is the nominee of the Party in majority in the House of Representatives and he is elected for the life of the House, that is, for 4 years, provided it is not dissolved earlier. If the Party in office does not command an absolute majority, but only a working majority with the support of some other party or parties, the Speakership can go to a party other

than the Government Party as it happened in the Fifth Yoshida Government. The Speaker of the House of Representatives is, accordingly, a party man and he does not renounce his party affiliations after his election to that office. Nor does it apply to him, as it does to the Speaker of the British House of Commons, once a Speaker always a Speaker, so long one wishes to be. A Speaker of the last House may not be elected to the House after the fresh elections by the new House even if the same Party is returned in majority and forms the government. He may not be elected to the House at the General Election. To ensure his re-election to the House, the Speaker must remain a partisan to further the interests of his Party and aid the government Party, of which he is the nominee, in pushing through its legislative programme. The Speaker in Japan, therefore, is not the impartial umpire in the House and custodian of the rights of its members whether they belong to the Treasury Benches or the Opposition. His role is very much akin to that of his counterpart in the United States of America.

The Speaker presides over the meetings of the House of Representatives. It is his foremost function to maintain order and decorum in the House so that the proceedings are conducted smoothly and efficiently, and there is expeditious disposal of the business before the House. In case of disobedience to his orders or disorderly conduct or use of unparliamentary language, the Speaker may deny to such a member the right to speak. If the unruly behaviour still continues, he may adjourn the House. But in order to expel a member from the House for his disorderly conduct, the Constitution demands that the House should pass a resolution to that effect supported by a majority of two-thirds or more of the members present. If the visitors to the House exhibit disorderly conduct, the Speaker is empowered to order expulsion of such visitors or order that the visitors' gallery be cleared in entirety.

The Speaker determines the order of business, fixes the time limit on debates and interpellations, gives floor to the members who wish to participate in debates, applies closure, and, thus, brings the debate to an end. He puts the motion to vote and announces the results. In case of a tie, he exercises his casting vote and decides the issue. Immediately after the Bill is introduced in the House, the Speaker, as a rule, refers it to the

^{46.} *Ibid.*

^{47.} Article 58.

appropriate Standing Committee or a Special Committee of the House. He formally appoints the members and chairmen of the Standing Committees. The Speaker functions as the official representative of the House with all other agencies outside it. He proposes executive sessions and approves the appointment of government members for the purpose of assisting Cabinet Ministers in the Diet. He may appear before any Committee of the House, including the Joint Conference Committee, and tender his views and opinion on the matter before the Committee for investigation. The Speaker is empowered to accept the resignation of a member of the House when it is not in session.

The Speaker receives a salary equivalent to that of the Prime Minister and the Chief Justice. He also ranks high in precedence.

Supremacy of the House of Representatives

The Constitution definitely establishes the supremacy of the House of Representatives and it is in accordance with the theory and practice of the Parliamentary system of government. In the creation of the Cabinet and in its retention in office the House of Representatives is the dominant Chamber. In the process of law-making it has the final say. The House of Representatives can override the House of Councillors in the event of irreconcilable disagreement between the two Houses or delay or inaction on the part of the House of Councillors in legislative or financial matters. The exact role of the House of Councillors is to delay the enactment for a specified period of time (60 days in the case of legislative measures and 30 days in respect of the Budget) and not to be a rival Chamber.

Legislative Functions

As said earlier, a legislative measure must pass through both the Houses in order to become a law. But if one House disagrees with the other and if the disagreement cannot be resolved even in a Joint Committee of both the Houses the Constitution vests the House of Representatives with an overriding power over the House of Councillors. Article 59 specifies that a legislative bill which is passed by the House of Representatives and upon which the House of Councillors makes a decision different from the House of Representatives and the difference persists in

spite of the efforts of the Joint Committee of both the Houses to resolve it, it becomes a law on its being passed a second time by the House of Representatives by a two-thirds majority of the members present. The Constitution empowers only the House of Representatives to call a meeting of the Joint Committee.⁴⁸

The Constitution also provides that if the House of Councillors fails to take final action on a bill passed by the House of Representatives within a period of sixty days (excluding the recess period) after its receipt from the House, the House of Representatives may take such an inaction on the part of the House of Councillors as a rejection of the measure by it. If the House of Representatives again passes the bill by a majority of two-thirds or more members present, it becomes a law of the Diet and is promulgated accordingly.⁴⁹ But a legislative measure which the House of Representatives rejects cannot be recognised or revived by the House of Councillors. The final authority of law-making, therefore, rests with the House of Representatives.

Financial Functions

The House of Representatives has control over the purse along with the House of Councillors. But, here too, the Constitution unequivocally establishes the supremacy of the House of Representatives over the House of Councillors. This is, indeed, the prerequisite of the system of responsible government. According to Article 60 the budget must first be submitted to the House of Representatives. It is further provided that the approval of the budget by the House of Representatives becomes the approval of both the House of the Diet, if the House of Councillors makes a decision different from that of the House of Representatives and when no agreement can be reached through a Joint Committee of both Houses, or when, it fails to take action within 30 days after the receipt of the budget approved by the House of Representatives. The same provision applies to ratification of treaties.⁵⁰

Chapter VII of the Constitution, covering Articles 83 to 91, contains powers which the House of Representatives together with the House of Councillors exercise with respect to national finances: the Diet determines the manner in which the finances are to be administered, modifies the existing taxes or imposes new ones,

48. Article 589.

49. *Ibid.*

50. Article 61.

authorizes the expenditure of money and assumes obligations by the State, considers and approves the budget for each fiscal year prepared and submitted by the Cabinet, authorises and approves expenditure from a reserve fund to provide for unforeseen deficiencies in the budget, approves the appropriation of expenses for the Imperial Household, receives from the Board of Audit, through the Cabinet, the audited accounts of the expenditure and revenues of the State, and receives reports at regular intervals, but at least once a year, from the Cabinet on the state of the national finances.

Executive Functions

A third great function of the House of Representatives is controlling the executive. It creates the Cabinet and the Cabinet is collectively responsible to the House of Representatives. This is the basic feature of the Cabinet system of government as established in Japan. The Prime Minister heads the Cabinet. Legally, he is designated by the Diet, but in actual practice he is the choice of the House of Representatives. The Constitution provides that if the House of Representatives and the House of Councillors disagree and no agreement is reached even in the meeting of the Joint Committee of both the Houses, or, if the House of Councillors fails to make designation within ten days after the House of Representatives has made its choice, the decision of the House of Representatives is final and is deemed the decision of the Diet.⁵¹ The Emperor "appoints" the Prime Minister as designated by the Diet.⁵²

With the appointment of the Prime Minister formation of the Cabinet begins. The Constitution simply says that a majority of the number of Ministers must be chosen from among the members of the Diet,⁵³ and all of them must be civilians.⁵⁴ In practice, however, except for three or four Ministers who belong to the House of Councillors, the remaining twelve or thirteen invariably have been chosen from the House of Representatives. And with the stability of the party system in Japan, they are taken from the majority party in the House of Representatives of which

the Prime Minister is the head. The Cabinet advises and approves all acts of the Emperor in matters of State and is responsible thereof.⁵⁵ Whereas the individual Ministers can be removed from office by the Prime Minister,⁵⁶ the Cabinet as a whole can only be dismissed by the House of Representatives. Article 69 provides that if the House of Representatives passes a no-confidence resolution, or rejects a confidence resolution, the Cabinet resigns *en masse* unless the House of Representatives is dissolved within ten days.

It means that the Cabinet remains in office as long as it can retain the confidence of the House of Representatives. As soon as its confidence is lost, it must resign as a whole thereby providing an opportunity to the Opposition to form the government. If the Government does not resign, it advises dissolution of the House of Representatives. The House of Councillors is never dissolved. There must be a General Election of members of the House of Representatives within forty days from the date of dissolution.⁵⁷ The principle of collective responsibility of the Cabinet can best be ensured if a Cabinet has the power to dissolve the Chamber to which it is responsible. Collective responsibility of the Cabinet is further emphasised by Article 70. It says that when there is a vacancy in the post of the Prime Minister, the Cabinet shall resign *en masse*. The identity of the Cabinet, of which the Prime Minister is the head, is unknown to law without the Prime Minister and in his absence it does not exist. And the Prime Minister is the leader of the majority party or parties in the House of Representatives.

Responsibility and control go together. There are two important methods by which the House of Representatives maintains its control over the Executive. The first is through the medium of questions and interpellations. It provides an opportunity to the members of the House to seek information on various matters of administration and seek redress in case of abuse of authority. The late Professor Laski succinctly said that parliamentary government "lives and dies by publicity it can secure not only on government operations, but on all the knowledge it can obtain on the working of social processes."

51. Article 67.

52. Article 6.

53. Article 68.

54. Article 66.

55. Article 3.

56. Article 68.

57. Article 54.

The Constitution of Japan requires the Prime Minister to report on general national affairs and foreign relations to the Diet.⁵⁸ The Cabinet also reports at regular intervals, and at least annually, to the Diet and the people on the state of national finances.⁵⁹ Report on national finances embraces all the aspects and problems of administration. All kinds of treaties must also be ratified by the Diet⁶⁰ though concluded by the Cabinet.

The second instrument of controlling the Executive is the criticism which is constantly aimed at the Government in the House of Representatives. The House of Representatives is also a debating society and this is done when Bills before the House are being discussed and debated. In fact, the entire policy of the Government is under review on all such occasions. Since the defeat of a Bill means the defeat of the Government, the Opposition makes a bid to expose the Government and if possible to depose it. The Government on its part makes all-out efforts to defend its policies and actions. Another opportunity for criticism is provided when the national finances are discussed by the House, more especially the proposals for expenditure.

In addition to these, the most extreme form of Opposition attack on the policy of the Government is the vote of no-confidence in the Ministry. The Constitution accords to the vote of no-confidence a constitutional sanctity. Article 69 provides: "If the House of Representatives passes a no-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign *en masse*, unless the House of Representatives is dissolved within ten (10) days." This provision is vindication of the principle of collective ministerial responsibility (Article 66) and is the *sine qua non* of a responsible government. A resolution of no-confidence is of crucial importance, because it decides the fate of the Ministry. So long as the Ministry commands a comfortable majority in the House of Representatives such a motion is of no consequence. But still it creates a stir in the Ministry and shakes its prestige. All the same, it ensures accountability of the Government to the Diet and keeps the Government vigilant not to attract such an eventuality.

The House of Representatives spearheaded by the Opposition, accordingly, provides ample

opportunities for controlling the Cabinet which is vested with the Executive power. The Constitution also provides for setting up committees of investigation by each House of the Diet. These committees may conduct investigation in any matter relating to Government and demand the presence and testimony of witnesses, and the production of records.⁶¹ Investigation by committees is an effective method of supervising and controlling administration, though it seems incongruous in a system of government in which ministerial responsibility is its basic element and is constitutionally provided. However, investigation by committees, as in the United States, has not much to commend.

Judicial Functions

Article 64 provides that the Diet "shall set up an Impeachment Court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted." Article 78 further provides that "Judges shall not be removed except by public impeachment...." The Court of Impeachment so set up consists of fourteen members, seven from each House of the Diet, and tries those judges against whom removal proceedings have been instituted by an Indictment Committee. The Indictment Committee, too, consists of an equal number of members from each House of the Diet. No one can be a member of the Court of Impeachment and the Indictment Committee simultaneously.

Constituent Functions

Amendments to the Constitution can be initiated in either House of the Diet and when the motion passes by a two-thirds majority of all the members of each House separately, it is submitted to the people for their approval at a referendum where it is required to have an affirmative vote of a majority of all votes cast. The House of Representatives and the House of Councillors can, thus, initiate constitutional amendments by a concurring vote of two-thirds or more members of each House.

Electoral Functions

The House of Representatives together with the House of Councillors designates the Prime Minister. If both the Houses disagree and

58. Article 72.

59. Article 91.

60. Article 73.

61. Article 62.

no agreement can be reached even through a Joint Committee, or the House of Councillors fails to make designation within ten days after the Lower Chamber has made designation, the decision of the House of Representatives is accepted the decision of the Diet. Both the Houses determine by law the qualifications of the members and their electors with the proviso that there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income. Each House is the judge of disputes relating to qualifications of its members. But in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses are determined by law of the Diet.

LEGISLATIVE PROCEDURE

Peculiarities of the Legislative Procedure

The legislative procedure in Japan is sharply distinguishable from the one prevailing in other countries with a Parliamentary system. It is simple and matter of fact. There are just three stages which cover the career of a Bill: Introduction; Committee stage; and consideration in the plenary session of the House. The same procedure is followed in both the Houses. When both the Houses pass a Bill, it becomes an enactment of the Diet. The Emperor simply promulgates it. He has no power to veto it.

Normally, the aims and objects of the bill are not explained in the plenary session of the House on introduction. However, if the Committee on Ways and Means deems such an explanation necessary in respect of a particular Bill, the explanation is made before it is referred to a Committee. Another important feature of the legislative procedure is the Opposition's resort to obstructionist tactics, which take various forms and some of them are unprecedented in the legislative history. The never-decreasing majority commanded by the Liberal Democratic Party since 1955, has relegated the Socialists and their allies in a permanent minority. Since voting in the House of Representatives runs strictly on party lines, the Opposition puts determined obstruction to at least delay the enactment of Government Bills. They not only resort to filibustering, but even climax the obstruction by riots and use of violence on the floor of the House and the streets. There is another device of obstruction. The frustrated Opposition would block the corri-

dors of the Diet in order to prevent the Speaker of the House of Representatives in calling the House to order. On various occasions the Speaker had been compelled to call in the police to physically remove the members preventing him from convening the House. There is still another tactic of boycotting the plenary sessions of both the Houses and the Committee meetings.

Kinds of Bill

Bills are of two kinds: Government Bill and Member's Bills. A Government Bill and a Member's Bill may not differ in their content and both may relate to public matters. But a Government Bill is introduced in either House of the Diet by the Prime Minister himself or by one of the Ministers on his behalf. A Member's Bill originates from a Member of the Diet. If a Government Bill is defeated, it brings crisis in the Government which may result into either resignation of the cabinet or dissolution of the House of Representatives. But it is not so in the case of a Member's Bill.

Introduction of the Bill

A Government Bill is always in pursuance of the policy determined by the Cabinet and it may aim at either amending the existing law or bringing on the statute a new law. The proposal for either of it originates from one of the Ministries, where it undergoes through various stages and thorough grooming in the departmental channels. When finally approved by the Minister concerned, the draft Bill goes to the Bureau of Legislation where it is subjected to expert examination. From here it goes to the Cabinet Secretariat. Finally, it is submitted to the Cabinet for its approval.

If the Cabinet approves the draft Bill, it is ready for introduction in either House of the Diet. It is submitted in the name of the Prime Minister to the Presiding Officer of the House in which the Bill is desired to be introduced, except for Money Bills which must be introduced in the House of Representatives. When a legislative Bill is introduced in the House of Councillors, its copy is required to be submitted to the House of Representatives within five days of its introduction. The same procedure is followed if it is introduced in the House of Representatives.

The Speaker of the House of Representatives or the President of the House of Councillors, as the case may be, refers the Bill to the proper Committee of the House on the recommendation of the Way and Means Committee. If

a Bill is considered urgent, its examination by the Committee may be omitted by the decision of the Steering Committee. "This procedure is employed especially in the case of a Member's Bill on which the understanding of the Committee that would have deliberated on it has been obtained in advance." Normally, a Bill is not considered in the plenary session of the House. If, however, the Ways and Means Committee considers it necessary the explanation is made in the plenary session before it is referred to a Committee of the House.

Committee Stage

Committee stage is the most important stage in the career of a Bill. The Bill may be referred to either a Standing Committee or a Special Committee of the House and it has the power to pigeonhole it, if the Bill is deemed, "not worthy necessary or desirable." It is, thus, tantamount to killing the Bill. The Committee holds public meetings and may require the attendance of the Prime Minister, Ministers, and Government officials. They are required to answer to questions directed to them and make explanation on the Bill. The Committee may also summon publicmen to express their opinions on the Bill. It may make "investigating trips including travels abroad," if considered necessary. The Committee has always at its disposal the services of the Diet staff, including experts and researchers, for advice and guidance. It may also use the services of the National Diet Library for a thorough study and scrutiny of the Bill and may demand, as often as necessary, opinion of the Bureau of Legislation on matters legal, constitutional and administrative. If the Bill involves consideration by more than one Committee, it is jointly considered.

Consideration by the House

After the Bill has been thoroughly examined, scrutinized and approved by the Committee, it is reported to the House for deliberation and a vote. The Chairman of the Committee presents the report together with the minority report, if any. The House then discusses and deliberates upon the report. Amendments can also be moved by the members. After all the clauses have been read and voted, the Bill as a whole is voted upon. In the event of a tie, the Presiding Officer casts a deciding vote.

A Bill Becomes a Law

After the bill has passed through one House

it is immediately sent to the other where it undergoes the same procedure. If the second House approves it, it becomes an enactment of the Diet and is transmitted to the Emperor for 'promulgation'. It becomes a law. If the House of Councillors rejects the Bill passed the House of Representatives and no agreement could be reached in a Joint Committee of both the Houses, or the House of Councillors fails to take action within 60 days of its receipt, it becomes an enactment of the Diet when passed for the second time by the House of Representatives by a majority of two-thirds or more of the members present.

The Budget

A different procedure is followed in the enactment of the budget. According to Article 60, the budget must be submitted to the House of Representatives. It cannot originate in the House of Councillors. When the budget passes through the House of Representatives, it is transmitted to the House of Councillors. If the House of Councillors makes a decision different from the House of Representatives and when the Joint Committee of both the Houses fails to reach an agreement, or when the House of Councillors fails to take action on it within 30 days of its receipt, the decision of the House of Representatives is the decision of the Diet, that is, as if both the Houses of the Diet have approved the budget.

It is the constitutional duty of the Cabinet to prepare and submit to the Diet for its consideration and decision a budget for each fiscal year. The process of formation of budget starts sometimes in September when the Finance Ministry examines the estimates submitted by the various Ministries. This is an arduous task as it requires close examination of all such estimates which are very often exaggerated and consequently require drastic trimming. The draft budget is ready by January for the consideration of the Cabinet and its discussion may extend to quite a number of meetings. When full agreement has been reached in the Cabinet, the budget proposals are referred back to the Ministries for overhauling their estimates. The Finance Ministry then receives the final estimates from each Ministry. The Finance Minister in the light of such estimates prepares the budget which incorporates the statement of revenues and expenditure for the ensuing financial year commencing from April. The draft budget is again submitted to the Cabinet for its final approval.

The Budget Bill is introduced in the House

of Representatives in the later part of January. Its introduction is followed by the speeches of the Prime Minister, the Foreign Minister, the Finance Minister and the Director of Economic Policy Board. The House of Councillors usually receives the Budget Bill the next day after its introduction in the House of Representatives. However, according to rules its submission may not be delayed beyond five days. The Prime Minister, the Foreign Minister, the Finance Minister and the Director of the Economic Policy Board also address the House of Councillors and they explain the various aspects of the policy involved and implications of the Budget.

After the explanation of the Prime Minister and other Ministers, the Speaker refers the Budget Bill to the Standing Committee on the Budget which consists of 51 members. The Committee thoroughly examines all proposals relating to revenue and expenditure and probes into each item. The Prime Minister, Ministers and officials of the Finance Ministry appear before the Committee to answer to questions, make explanations, elaborate and remove ambiguities and doubts. The Committee meets as a whole, except for a day or two when it divides into sub-committees. The sittings of the Committee are open to public.

After the completion of its deliberations, the Chairman of the Budget Committee submits the report to the House of Representatives. The House discusses the Budget Bill for a period of three to four weeks. It may accept the recommendations of the Budget Committee in toto or accept them with amendments. The decision of the plenary session may or may not be the same as that of the Budget Committee. But rejection of the Budget Bill by the House of Representatives brings the downfall of the Government or the Cabinet may decide the dissolution of the House.

The Budget Bill as passed by the House of Representatives is transmitted to the House of Councillors for its consideration. As pointed out earlier, if the House of Councillors does not agree with the decision of the House of Representatives and if the disagreement is not resolved even in the Joint Committee of both the Houses, or the House of Councillors fails to consider the Budget Bill within 30 days of its receipt, the decision of the House of Representatives is final and in terms of the Constitution, it is the decision of the Diet. The Budget becomes operative on April 1. If, for certain reasons, the Budget Bill is not passed before April 1, then, it is necessary for the Diet

to pass provisional Budget on a monthly basis until such time as it is finally passed.

Committees of the Diet

The Committees of the Diet are the core of the legislative process in Japan. Their origin goes back to the Meiji Constitution when five Standing Committees were set up in each House of the Imperial Diet. But these Committees did not play a vital role then as they do now since most of the legislative business was transacted in the plenary session of the two Houses. Under the Constitution of 1946, originally, the House of Councillors and the House of Representatives each had 22 Standing Committees. Their number was subsequently reduced to 16 and it stands now. There are in each House Standing Committees on : Cabinet, Local Administration, Judicial Affairs, Foreign affairs, Finance, Education, Welfare and Labour, Agriculture, Forestry and Fisheries, Commerce and Industry, Transport, Communications, Construction, Budget, Accounts, Steering and Discipline. Most of these Committees correspond to the Ministries of the Government.

A Standing Committee may consist of thirty, forty or fifty members except for Discipline, and Steering and Accounts Committees, which have a membership of 20 and 25 each respectively. Soon after both the Houses of the Diet have elected their Presiding Officers, the next step is the selection of the Committees. Members of each Committee are appointed by the Presiding officer of the House concerned on the basis of the party strength in the House. According to the law of the Diet, each member must serve on at least one Standing Committee but not on more than three Committees. Chairmanships of the Committees are allocated to the parties roughly in proportion to the number of seats each party commands in the House. Since the Liberal Democratic Party commands nearly two-thirds of total membership in each House, the Government Party monopolises the Chairmanships of almost all the Standing Committees. Committee Chairmanship is the most coveted since it carries with it great prestige. "Not only is a chairman able to influence the legislative programme of the government but is able to enjoy the prerequisites and compliments of his office which are considerable. As presiding officer, the Chairman not only opens and closes the meetings of the Committee but works out the agenda, determines the order of business and regulates the speed of deliberations. He is in control of the

various stages of the Committee's work, questioning, debate, and decision. In his capacity as the spokesman and representative of the Committee in all its external relations and negotiations, he becomes a key figure."⁶²

The Standing Committees are highly important organs of law-making and they have the power to kill legislative proposals or to enable them to succeed. Upon them devolves the primary responsibility of selecting those legislative proposals submitted by the Government and recommending them for approval and enactment. All proposals for legislation undergo an onerous process of examination and scrutiny and in order to hammer them through the Committees hold public meetings, in which witnesses representing different shades of opinion and interests are summoned to tender evidence and to make available all kinds of material, exhibits and documents to authenticate their point of view. Refusal to appear before a Committee is subject to a contempt charge.

The Standing Committees have been subjected to a severe criticism, particularly with regard to their numbers and the manner in which they function. The Committees are, it is said, too numerous in each House and, consequently, the affairs of the nation are divided into rigid watertight compartments. The government is a single whole and it requires an integrated action to solve the national problems. As the real work of examination, investigation and determination is done in the Committees, many of the details of facts and other relevant information remain unknown to the legislators who are not Committee members. Even the aims and objects of a Bill, according to the rules of legislative procedure, are not explained in the plenary session of the House. There is, accordingly, lack of interest among the members of the Diet. "This makes it difficult if not impossible to effectively dramatize the general debates on the floor of the House. In fact, it can often lead to the minimizing of the usefulness as well as the effectiveness of the general floor debate. It has also contributed to extremely poor attendance at plenary session except for very special occasions."⁶³ Moreover, the Standing Committees more or less correspond to the Ministries and there is a close link between both. Many Japanese believe that this system of close

linkage between the Legislative and Executive branches has tended to strengthen the role of the Executive. "Typical of the system has been the appointment to the appropriate Committee of Diet members with backgrounds, if not careers, in the matching ministry or executive agency. This creates a situation in which the bureaucratic loyalties of the committee members may outweigh their legislative responsibilities and their constitutional position as members of the highest organ of state power."⁶⁴

According to Chitoshi Yanaga the Japanese Committee system is a great obstacle to development of integrated and broad view of national problems. Seikai Orai calls it the "cancer of the Diet" which seriously hampers its activities and functions nullifying the constitutional provision that the Diet is the highest organ of State power. Prof. Ardath Burks would say that the Japanese Committee system is much suited to the Presidential system of government rather than to a Parliamentary democracy. Analysing the demerits flowing therefrom, he *inter alia*, remarks that special interests dominate and influence the discussions and decisions of the committees and the Diet, as such, becomes "a notorious tool for promotion of narrow committee interests."

Each House may establish Special Committees, too, by a special resolution of the House. They are *ad hoc* Committees set up to study particular problems or proposals and as soon as they complete their work, they become non-existent. The Standing Committees, on the other hand, are appointed for the duration of the session and a Bill appropriate to the subject-matter of the Committee is referred to it. The life of a Special Committee may extend beyond the session of the House in which it was created. The Chairman of a Special Committee is appointed by the members of the Committee itself and all matters before it are decided by a majority vote. The Chairman exercises a casting vote in case of a tie. Like the Standing Committees, the Special Committees, too, hold public hearings and can summon witnesses and demand production of any record or material. After the investigation is over the Committee reports to the House. If the report is not unanimous, both the majority and minority reports are submitted. Commenting upon the im-

62. Chitoshi Yanaga, *Japanese People and Politics*, p. 197.

63. *Ibid.*

64. Maki, John M., *Government and Politics in Japan*, p. 96.

portance of the Special Committees, Chitoshi Yanaga writes: "Actually, so far as the general public is concerned, it is the work of the Special Committees which attracts widespread attention and interest because of the emergency or sensational nature of most of the subject-matter handled."⁶⁵

The Constitution establishes two other kinds of Committees, the Joint Committee of both the Houses, and the Committees of Investigation. Article 59 provides that in case the House of Councillors and the House of Representatives make different decisions on a legislative Bill the House of Representatives may call a meeting of a Joint Committee of both Houses for resolving the disagreement. Similarly, a Joint Committee may be set up for resolving differences between the House of Councillors and the House of Representatives with regard to the budget, treaties, designation of the Prime Minister and constitutional questions. A Joint Committee consists of 20 members, equally drawn from the Houses, and elected by the members of each House from amongst themselves. The members elected from each House select their own Chairman and each Chairman alternatively presides over the meeting of a Joint Committee.

Article 62 of the Constitution provides for setting up the Committees of Investigation by

each House of the Diet. These Committees are empowered to conduct investigations of affairs relating to Government and may demand the presence and testimony of witnesses, and the production of records. Since the Constitution became operative a few such Committees, such as a Committee on Illegal Disposal of Government Property, and a Committee to examine the revision proposals of Japan-United States Security Treaty, had been set up. In most cases the Committees investigating Government operation assemble facts and submit reports on their findings and are content to stop there. However, in some cases they go a step further and pass judgment or make recommendations.

The Legislative Committee is yet another Committee. It is a Joint Committee of both the Houses and consists of 18 members, 10 from the House of Representatives and 8 from the House of Councillors, elected by each House from amongst its own members. This Committee has nothing to do with legislation. Its function is to ensure effective operation of the Diet and to maintain a smooth working relationship between the House of the Councillors and the House of Representatives. The Committee submits its reports to the Speaker of the House of Representatives and the President of the House of Councillors at every session of the Diet.

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65. *Japanese People and Politics*, p. 184.

CHAPTER IV

The Judiciary

Judiciary under The Meiji Constitution

There was a complete transformation of the Judicial system in Japan during the Meiji period. The old antiquated concepts of legal system developed during feudalism were abandoned and new codes patterned on the Continental jurisprudence were enacted with the advice of German and French Jurists. Anglo-Saxon jurisprudence had no place therein. Judiciary was, accordingly, not an independent branch of the Government, but an arm of the Executive administered by the Ministry of Justice. Although judges were required to administer law impartially, but their dependence on the Ministry hardly guaranteed independence for them. There did not exist the rule of law and *salus populi suprema lex*, the welfare of the people is the supreme law, constituted the basis of the legal system. It was not within the competence of the courts to hold any law or executive order invalid. Nor could the courts safeguard the liberties and rights of the people. In case of disputes between the government and citizens the ordinary courts had no jurisdiction. Administrative adjudication was the concern of the Court of Administrative Litigation.

There were three kinds of courts: Ordinary Civil and Criminal Courts; Courts of Administrative Litigation; and Military Court. At the apex of the ordinary civil and criminal courts was the Supreme Court consisting of 45 Judges divided into 9 divisions of 5 Judges each. The Supreme Court exercised original and appellate jurisdiction. In case of treason and serious offences against the Imperial Family, its jurisdiction was original. On the appellate side, it heard appeals both in civil and criminal cases from the lower courts.

Next to the Supreme Court were seven High Courts, one for each Province. The High Courts heard appeals from the lower courts. Then, there were 50 District Courts, at least one in each Prefecture. The District Courts tried more serious criminal and civil cases. At the bottom were Local Courts, a little more than 300 in number, which had the jurisdiction in minor cases.

The Court of Administrative Litigation was patterned after its French counterpart and was based on the Prince Ito's belief that "if administrative activities were placed under the scrutiny and control of judicature, and if courts of law were given the power to review and invalidate administrative acts, the Executive would be subordinated to the Judiciary thereby impairing the integrity and effectiveness of the executive branch."¹

Judicial System under the 1946 Constitution

Like various other institutions in Japan, the judicial system too was greatly changed under the impact of the Occupation Authorities. The changes effected related to the structure of the courts and judicial procedure and were in conformity with the democratic philosophy of law and jurisprudence as cherished by the Americans. "It is perhaps not surprising," wrote Nobutaka Ike, "given the nature of the occupation, that many ideas and practices of Anglo-Saxon origin were incorporated into the judicial system thereby changing its orientation which was formerly predominantly Continental."² Even the oath of office "has been introduced in both form and language very much like that which obtains in the United States"³. Here is a summary of the changes which constitute the features of the Japanese Judicial system now.

The Constitution separates the Judiciary

1. Chitoshi Yanaga, *Japanese People and Politics*, p. 355 f.n.
2. Kahin, George McT. (Ed.), *Major Governments of Asia*, p. 199.
3. Chitoshi Yanaga, *Japanese People and Politics* p. 348.

from the Executive and makes it an independent branch of Government. Article 76 vests "the whole judicial power" in a Supreme Court and in such inferior courts as may be established by law. It further provides that no extraordinary tribunal shall be established "nor shall any organ or agency of the Executive be given final judicial power." In order to emphasise the independent status of the Judiciary the Supreme Court actually controls all judicial affairs of the country. According to Article 77 the Supreme Court is vested with the rule-making power under which it determines the Rules of Procedure and of Practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of Judicial affairs.

The Constitution guarantees the independence of Judges and ensures the dignity of the Judiciary. It ordains that all Judges shall be independent in the exercise of their conscience and bound only by the Constitution and the laws.⁴ The Chief Justice of the Supreme Court is designated by the Cabinet and appointed by the Emperor.⁵ This procedure is designed to place the Chief Justice on the same level of rank and dignity as the Prime Minister. Judges of the Supreme Court are appointed by the Cabinet⁶ whereas judges of the inferior courts are appointed by the Cabinet from a list of persons nominated by the Supreme Court.⁷ Judges are liable to removal only by impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against Judges can be taken by any Executive organ or agency.⁸ Judges of the Supreme Court and inferior courts receive, at regular stated intervals, adequate compensation which cannot be decreased during their terms of office.

The Constitution applies the principle of popular sovereignty on the Judges of the Supreme Court too. Their appointment is reviewed by the people at the first general election of the members of the House of Representatives following their appointment and every ten years thereafter. If the majority of the voters disapprove the appointment, the Judge is dismissed.⁹ Judges of the inferior courts are appointed for a term of ten years subject to reappointment. No judge of the

Supreme Court has so far been voted out of office and the judges of the inferior courts are invariably re-appointed. Yet it is a constitutional fact that their tenure at both levels is subject to review.

There is a complete separation of judicial administration from criminal investigation by placing the Procurator's (Prosecutor's) office under the control of the Ministry of Justice. The Judges and the procurators consequently work independently of each other; both are separate and distinct functionaries. The procurators are civil servants working under the supervision and control of the Minister of Justice whereas the Judiciary is a separate and independent branch of the Government.

The principle of the Rule of Law has for the first time been introduced in Japan. There is now only one system of courts throughout the country and only one system of law to which all people are amenable. The whole judicial power is vested in the Supreme Court and other inferior courts and no extraordinary tribunal exists to administer justice. Nor is any organ or agency of the Executive given final judicial authority. Accordingly, the Court of Administrative Litigation was abolished and administrative litigation is now placed within the jurisdiction of regular courts. Trials are conducted in open court and judgment is declared publicly. If the court unanimously determines that publicity of the trial proceedings is dangerous to public order or morals, the trial may be conducted privately. But trials relating to political offences, offences involving the press or cases wherein the rights of people as guaranteed by the Constitution are in question must always be held publicly.¹⁰

The Code of Criminal Procedure and the Code of Civil Procedure assign to the courts a far greater role to play than was the case previously. Warrants for arrest and detention can now be issued only by the judges, the courts are to start with the presumption of innocence of the accused in criminal cases, and the legal validity of confession has been greatly limited. Judicial decisions are now rendered in a simple colloquial language and, above all, the Constitution itself is couched in a simple and matter of fact language intelligible to the average Japanese.

4. Article 76.

5. Article 6.

6. Article 79.

7. Article 80.

8. Article 78.

9. Article 79.

10. Article 82.

The Supreme court is the court of last resort with the power to determine the constitutionality of any law, order, regulation, or official act.¹¹ The Constitution is, therefore, supreme and the Supreme Court has been explicitly given the right of judicial review.

The Constitution guarantees to citizens fundamental Rights and the courts are the custodian of all such rights. Article 11 unequivocally declares: "These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generation as eternal and inviolate rights." Article 97 repeats this assurance by emphasizing that the Fundamental human rights "by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate." Article 98 establishes the supremacy of the Constitution by asserting: "This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity." It is for the Supreme Court to determine the constitutionality or otherwise of any law, order, regulation or official act.

Another feature of the judicial system in Japan is the system of courts of Domestic Relations. These courts are half arbitral and half judicial tribunals composed of judges and laymen and they decide cases involving domestic relations and juvenile delinquency.

Finally, the Supreme Court, as Maki remarked, "has adhered strictly to the principle of the separation of powers but has honoured equally the doctrine of legislative supremacy."¹² The Court has insistently safeguarded its sole right to exercise the whole judicial power and resolutely resisted any interference on the independence of the courts. On the other hand, the Supreme Court has also consistently refused to declare legislative and executive acts unconstitutional. The Court has argued that to declare such acts as unconstitutional would be the violation of the principle of separation of powers as well as the doctrine of legislative supremacy. The proper "remedy for legislation not clearly constitutional

is a political one, that is, the sovereign people can pass judgment on the Diet and on the Cabinet by means of the ballot."¹³

Organization and Functions of the Courts

The Judiciary consists of the Supreme Court, 8 High Courts, 6 High Court Benches, 49 District Courts (with 235 branches) and 570 Summary Courts. There are also 49 Courts of Domestic Relations or Family Courts (with 235 branches).

The Supreme Court

At the apex of the judicial structure is the Supreme Court located at Tokyo. It consists of a Chief Judge and fourteen other Judges; fifteen in all. The Chief Judge is appointed by the Emperor upon designation by the Cabinet, while all other Judges are appointed by the Cabinet and "attested" by the Emperor. The law provides that ten Judges, out of a total of 15 including the Chief Judge, must be legal experts of not less than 20 years' professional standing and the remaining five Judges may be learned persons of experience but necessarily in the field of law. This is designed to permit a more democratic and varied representation of expertise on the highest tribunal of the nation. The appointment of Judges, of the Supreme Court is subject to review at a national referendum, first at the time of the General Election following their appointment and then at the first General Election after a lapse of ten years. There has been no case of dismissal as such so far. But the system of popular review "could conceivably result in drawing the court into the rough and tumble of partisan politics."

Judges of the Supreme Court are required to retire at an age fixed by law, which is 70 years. The minimum age of a Supreme Court Judge is fixed at 40 years. Judges cannot be removed from office except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against Judges can be administered by any Executive organ or agency. The Constitution demands that all Judges shall be independent in the exercise of their conscience and in order to ensure their independence adequate compensations are guaranteed, which cannot be decreased during their terms of office.¹⁴

The Supreme Court is the Court of the last

11. Article 81.

12. Maki John M., *Government and Politics in Japan*, p. 107.

13. *Ibid.*

14. Article 79.

resort with powers to determine the constitutionality of any law, order, regulation or official act. The power of judicial review is, thus, explicitly vested in the Supreme Court. In all cases involving questions of constitutionality the Grand Bench of the court of all 15 Judges, 9 constituting a quorum, hears the appeals. In other cases in which issues of law are involved appeals are heard by a petty Bench consisting of five Judges, three constituting a quorum. The Supreme Court is the highest court of the land and its decisions are subject to no further review. Its jurisdiction is exclusively appellate. The Court limits itself to the points of law while hearing appeals and its decision are rendered by the majority opinion of the court. Except on special occasion, the decisions are always written.

The Supreme Court is vested with the rule-making power under which it determines the Rules of Procedure and of Practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs. Public Procurators are subject to the rule-making power of the Supreme Court. This is, indeed, a sweeping power. The Supreme Court may delegate some of its rule-making authority to lower courts. This is how the Supreme Court exercises supervision and control on the entire judicial system in the country. A key organization through which the court exercises its broad powers of judicial control is the Legal Research and Training Institute, established by law under the jurisdiction of the Supreme Court. Among other things, the Institute is responsible for the training of every person interested in a legal career. No one can, thus, become a judge, a lawyer, or a public prosecutor unless he graduates from the Institute or has undergone a course of in-service training there. The Supreme Court also operates similar institutes for training of the clerks of the court and family court probationers. Judges of the inferior courts are appointed by the Cabinet out of the list of nomination made by the Supreme Court, and it supervises the inferior courts in matters of administration.

Position and Role of the Supreme Court

The Occupation Authorities had intended that the Japanese Supreme Court should play the

same role and acquire the same position in the body politic of the country as the United States Supreme Court, though Japan does not make a federation. The Constitution vests the Supreme Court with the whole judicial power and it is explicitly stated that no "extraordinary tribunal shall be established, nor can any organ or agency of the Executive be given final judicial power."¹⁵ It is the final court of appeal and its jurisdiction is appellate alone. It exercises powers of supervision and rule-making and, these powers are, indeed sweeping. The Constitution ensures the independence of the Judges and ordains that they would dispense justice according to their conscience and "shall be bound only by this Constitution and the laws."¹⁶ The method of appointment of the Chief Justice places him at par with the Prime Minister in dignity and prestige. The Judges are subject to impeachment, but no Judge has been impeached so far. They are themselves extremely conscious of maintaining high standard of impartiality, efficiency and morality. Though, their appointment is subject to the review of the people, but their appointment is invariably approved by securing 90 per cent and more approved votes. In the General Election of 1949 all the fourteen Judges were "enthusiastically" approved.

The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.¹⁷ The power of judicial review, which the Constitution vests in the Supreme Court, makes it the guardian of the Constitution. It has admirably protected the rights of the citizens and has withstood all inroads made by any authority on the Constitution and independence of the Judiciary. The Judicial Committee of the House of Councillors passed a Resolution in 1949 that under Article 62¹⁸ of the Constitution the Diet be empowered to investigate Court decisions and thereby determine on the nature of the decisions rendered by the Court and discuss the attitude of the Judges. The Supreme Court held the resolution unconstitutional and declared that the Diet had no such authority and it was in contravention of the provisions of the Constitution guaranteeing the independence of the Judiciary. In another case the Court decided that capital punishment did not

15. Article 76.

16. *Ibid.*

17. Article 81.

18. Article 62 says: "Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records."

infringe the provisions of Article 36¹⁹ so long as the due process clause embodied in Article 32²⁰ was duly observed. In 1952, Suzuki Mosaburo, Chairman of the Left Socialist Party, challenged in the Supreme Court the organisation of the National Police Reserve as it violated Article 9 of the Constitution which renounces war and the threat to or use of force. The Supreme Court refused to comment on the abstract problem of the constitutionality. In 1959, the court reversed the decision of the Tokyo District Court in the Sunakawa case and held that the Court should not involve itself in political and inter-State conflicts and controversies. The Court held that the stationing of American forces in Japan did not violate Article 9 of the Constitution. It also set the principle that unless a treaty is "obviously unconstitutional and void, it falls outside the purview of the power of judicial review granted to the Court."

The Sunakawa case decision provoked the former Socialist Prime Minister, Katayama Tetsu, who characterised it as a "betrayal of the people's trust in the Supreme Court as a watchdog of the Constitution." The Court relying upon the doctrine of Separation of Powers recognised supremacy of the Diet and held that the proper remedy for legislation not clearly constitutional is a political one, that is, the sovereign people can pass judgment on the Diet and on the Cabinet by means of the ballot. In a landmark decision the Supreme Court ruled that the 1983 election for the House of Representatives was a clear violation of the constitutional promise of equality before the law, given the enormous discrepancy in the value of one vote in many constituencies. The Court did not declare the 1983 election to be invalid, but it hinted strongly that it might so rule if another election was held based upon the current maldistribution of parliamentary seats. Since then, there has been a great deal of talk about electoral reform but no action has been taken so far and the Japanese gerrymander continues.

High Court

In the second rank below the Supreme Court, are the 8 High Courts. The jurisdiction of a High Court extends to the region to which it is assigned and, accordingly, it has a regional jurisdiction. The number of Judges differs from one High Court to the other. Tokyo has 64 Judges

whereas Sapporo has only 7. The Court operates through a Bench of three Judges, but in case of trial for crimes to overthrow the Government the Bench consists of five Judges. Judges are appointed for ten years, although there is no restriction on their being re-appointed, provided that they shall be retired at the age of 65. They are nominated by the Supreme Court. Judges must have at least ten years' experience in a judicial capacity, or as a Procurator or as a practising lawyer.

District Courts

Beneath the High Courts are 49 District Courts (with attached courts of Domestic Relations), one in each of Prefectures, except for Hokkaido which has four. The Judges of the District Courts are similarly appointed as Judges of the High Courts and they must possess similar qualifications. District Courts are the principal trial courts and exercise a general jurisdiction over all civil actions not specially given to other courts. A single judge presides over the courts, except for more serious cases when a panel of three judges conducts the trial.

The District Courts have attached courts of Domestic Relations, 49 in number with 235 branches. These courts are peculiar to Japan and are designed to promote harmonious relationship within the family and among relations. A Court of Domestic Relations or a Family Court, as it is now popularly designated, is composed of one judge and two intelligent and experienced laymen. These courts provide facilities for the out-of-door settlement of disputes relating to probate and domestic disputes, such as, divorce, alimony, breach of promise, inheritance, property division, adoption, guardianship, and other similar matters. Normally, judicial procedure is not followed in every case as there are chances of settlement outside the court. To the best, Family Courts may be characterised half arbitral, half judicial.

Summary Courts

The last are 570 Summary courts which are at the base of the judicial pyramid in Japan. These courts handle minor civil and criminal cases. In civil cases the amount involved should be less than 5,000 Yens and in criminal cases the sentence awarded to an accused should be less than a month. The presiding officer has a broad

19. Article 36 provides: "The infliction of torture by any public officer and cruel punishments are absolutely forbidden."

20. Article 32 reads: "No person shall be denied the right of access to the courts," Also refer to Article 31.

latitude in the conduct of trials. Judges of the inferior courts, like High Court and District Judges, are appointed by the Cabinet from a list of persons nominated by the Supreme Court, and

their appointment is for ten years, although there is no restriction on their being reappointed. They retire at the age of 65.

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CHAPTER V

Political Parties

Historical Background

Political parties did not emerge in Japan as a result of the establishment of Parliamentary system of government in 1947. Their origin goes back to 1874, though there were no political parties then in the real sense of the term. They were political clubs and societies. Early in January 1874, Itagaki organized a political association called the Patriotic Public Party to carry on a movement for the realization of liberty and attainment of popular rights. Immediately afterwards a "Memorial for the establishment of popular Representative Assembly was presented to the Emperor. It caused a stir in the country and had a magnetic effect on the people. But the Emperor's Government undertook measures to suppress the movement and the Patriotic Public Party went out of existence after only two months of its establishment. In 1878, the party was revived with the avowed object of pressing forward its original demand for the establishment of a representative assembly. It had somewhat an inflammatory effect. The Government first used suppressive measures to crush the agitation, but soon realized the futility of the oppressive policy and ultimately bowed to the popular demand. An Imperial Rescript issued on October 18, 1881 declared that the national assembly would be established in 1890.

Six days after the issuance of the Imperial Rescript the Liberal Party was established and it became the vanguard of the movement for popular government. Closely in its wake came the Progressive Party, popularly known as the Reform Party, which advocated liberalism of the British type and freely preached the philosophy of Bentham and John Stuart Mill. The Government was alarmed by the activities and programmes of both the Liberal and Progressive Parties and in order to counteract their influence on the people, it backed the founding of the

Imperial Party. The Imperial Party was for all intents and purposes a Government supported party. Its membership comprised Government officials, Buddhist and Shinto priests, and nationalist scholars who were the product of government schools.

All the three parties disbanded in 1885, partly as a result of Government's repressive policy directed against the Liberal and Progressive Parties and partly as a consequence of their internal dissensions. Ito, who had by then come back from Germany, was strongly opposed to political parties and he caused the liquidation of the Imperial Party. Ito became Prime Minister in 1885. He pushed ahead, with the support of Inoue, the Foreign Minister, his programme of Westernization, which stongly aroused the champions of civil rights, "as well as the nationalists and the chauvinists." Inoue's attempt in 1887 to make concessions in the negotiations for treaty revisions was denounced by Agriculture and Commerce Minister Tani and it was followed by a scathing criticism of the Government by the various segments of the Japanese society. Goto strongly appealed to the sentiments of the people and exhorted them to join the forces against the Government. Members of the disbanded Liberal Party, the nationalists and the conservatives all joined together and formed a "Greater Coalition of Parties."

The Government accepted the challenge and issued on December 19, 1887, a Peace Preservation Ordinance which authorized the expulsion of all those engaged in anti-government activities from an area within a radius of seven and a half miles from the capital. Near about 600 people were expelled as a result of this ordinance. The movement then spread to the outlying areas. In the meanwhile Ito was successful in bringing Okuma, his old colleague with whom he had parted political company in 1881, in Government as Foreign Minister. "In the succeeding govern-

ment headed by Kurado, Okuma became the mainstay of the Cabinet and actually came to lead if not dominate it."

Immediately after the Meiji Constitution became operative in 1889, Prime Minister Kurado declared his faith in the supra-party government and he was supported by Ito, who was the President of the Privy Council. The Prime Minister succeeded in winning over Inoue, Goto and Itagaki and they were taken in the Cabinet. "All these political leaders," observed Chitoshi Yanaga, "fought against the ruling oligarchy espousing the cause of liberalism and popular rights. Yet, when lured with government posts of sufficient prestige, they gave up their fight and gladly joined the ranks of those in power. Their devotion to the ideals of responsible government or even to political parties was not only weak and expeditious but easily purchasable.¹ That was the nature of political parties in Japan till 1890.

When Sino-Japanese War came in 1894, opposition against the Government ceased altogether. But soon after the cessation of hostilities the two leading Opposition parties realised "that for years they had been duped, bought and exploited by the government and it was imperative they abandon their useless and harmful struggle with each other and join forces in the fight against their common political enemy, the Satsuma-Choshu clique that was in control of the government."² They founded a party in 1898, a merger of the defunct Liberals and Progressives.

Roundabout the century another dramatic development took place in the growth of political parties. Prince Ito, who had all through these years, bitterly opposed political parties, became their supporter. He declared that for good and efficient government political parties were essentially necessary and, accordingly, in 1900, he founded a party known as the Association of Political Parties. Till 1913, those who had been affiliated with the Progressive Party did not re-group to form another party. They were content to form coalitions. It was only between 1913 and 1925 that Constitutional Association, which had the support of elder statesmen and business leaders and advocated the establishment of constitutional government, was organised. World War too had created an impact on the Japanese people in favour of democratic institutions and it appeared by 1920 that a full-fledged parliamentary government would soon be established. Begin-

ning from Kato Takakira, the President of the Constitutional Association, till the assassination of Inuki Tsuyoshi in 1932, party leaders, except once for General Tanaka Giichi, headed the Government.

One important feature of this period was that the political parties depended heavily on the big industrial combines, *Zaibatsu*, which supplied them with funds to fight elections. Some of the business magnates supported the opposing parties at the same time in order to win the support of the government, no matter which party came into power. This "alliance between the parties and the *Zaibatsu* naturally caused the public to be suspicious that the government was partial to the interests of the big business, and these suspicions seemed to be confirmed by the frequent charges of bribery and corruption that were aired in the Diet, principally by the party which happened to be in Opposition at the moment."

There were some other reasons, like the growth of big cities and localisation of industries, formation of labour unions, spread of education, the growth of white-collar class, etc., which created a political awakening amongst the Japanese people and they demanded enlargement of the suffrage and consequently the right to vote. But paradoxical as it was, most of the Japanese leaders were reluctant to enlarge the electorate. The bureaucrats, too, considered it ominous. They thought that enlargement of the electorate would bring social instability which would prove highly injurious to the growth and development of the country and its people. But the popular demand could no longer be resisted and in 1923, all male Japanese people of 25 years of age and more were given the right to vote.

But with the extension of suffrage, the Diet passed the Peace Preservation Law which provided punishment extending to ten years for persons guilty of joining societies and organizations advocating a change in the Constitution, the Emperor institution and in the ownership of private property. This punitive legislation, however, did not deter the growth of radical parties. The Farmer-Labour Party was established in 1925 to achieve equality and the greatest good of the masses as its goal. Back in 1892, Socialism had found its way in Japan when the radical faction in the Liberal Party separated and established the Oriental Liberal Party. After quite an upheaval in the career of the socialist parties with different

1. *Japanese People and Politics*, p. 221.

2. *Ibid.*

labels, in 1922 the Japan Communist Party found its way. It was banned in 1923, but was again revived in 1927 followed by severe suppression in 1928, and by 1932 its central leadership was completely destroyed.

In spite of the fact that various socialist parties including the Anarchist and Syndicalist groups had come and gone during this period, they had created an indelible impression on the working class. They, however, failed to carry the voters along with them primarily due to their internal strife and government's repression. In the 1928 elections, the first on the basis of universal manhood suffrage, the four socialist parties ran 88 candidates but could capture only 8 seats in the House of Representatives. After that they failed to enlist even this meagre support of the electorate and by 1930 suffered a great setback.

The conservative parties, too, suffered from deep factionalism. Accordingly, they commanded neither reasonable respect nor a continuous support from the electorate. None of them had a clear and definite programme. Lack of responsibility to the Diet made the government irresponsible and the members had no effective means to control it. The militarists seized the opportunity. They attributed the distress caused by the economic crisis, political, distress prevailing in the country, and diplomatic failures in the international field to the scandalous behaviour of the political parties and the politicians. People, too, had lost faith in the ability and integrity of the political parties to solve the national and international problems which confronted the country. The party government came to an end in 1932. The militarists who had come into power exercised such a pressure that ultimately in 1940, the political parties found their complete exit. From 1940 to 1945, there existed only one body in the country, the Imperial Rule Assistance Association, "a mild version of a totalitarian party."

POST-WAR POLITICAL PARTIES

Re-appearance of Political Parties

After the exit of political parties from the national scene for about a decade and a half they re-appeared in 1945, when as a prelude to the setting up a democratic setup of government the Occupation Authorities issued a directive to the Japanese Government on October 4, 1945 for removal of restrictions on political, civil and religious liberties. The Japanese Government

was directed to immediately abrogate the operation of all provisions of laws, decrees, orders, ordinances and regulations which restricted freedom of thought, of religion, of assembly, of speech and press. The Directive also ordered the Japanese Government to release all political prisoners. A week later, General MacArthur desired that the Government should adopt, as rapidly as possible, the emancipation of women by granting them the right to vote, to encourage formation of labour unions, and endeavour to democratize economic institutions.

The Directive proved a green light for the resumption of political activities and consequently reappearance of political parties. In the first General Election held in April 1946, there were as many as 260 "parties" excluding scores of organizations which could not be counted as political parties. After the first mushroom growth, four political parties—the Liberal Party, the Progressive Party, both conservatives in spite of their attractive labels, the Social Democratic Party, and the Japan Communist Party—finally stabilized themselves. In 1955, the Liberal and Progressive Parties merged into one and the new Party was named the Liberal Democratic Party. The reunification of the Socialists, who had hitherto been engaged in stormy conflict among themselves, alerted the conservatives to take stock of their future. Thus, in 1955 there emerged what could be described as a formal two-party system. But the unification among the Socialists was only a temporary phase. There were again factional splits and in 1959, the Socialist Democratic Party was divided into two separate parties, the Socialist Party (the old left-wing) and the Democratic Socialist Party.

Characteristics of the Party System

Here are some of the important characteristics of the Japanese party system:—

The Meiji Constitution established a bicameral legislature. Though the House of Representatives was directly elected and was subject to dissolution, yet it did not establish a cabinet system of government. It only envisaged it. In 1900, when Prince Ito felt the political expediency of forming a party government and declared that the Constitution nowhere prohibited a party government that political parties took a firm root in the administration of the country. From 1924 to 1932, party leaders headed the government.

The Constitution of 1946 clearly established the Parliamentary system of government. The Emperor is the symbol of the State and the Cabinet is vested with the Executive power. The Constitution requires that the Prime Minister, who heads the Cabinet, should be designated from among the members of the Diet and a majority of the Ministers constituting the Cabinet must be chosen from among the members of the Diet. The Constitution also provides for the collective responsibility of the Cabinet to the Diet, and the Diet is subject to dissolution. All these are the characteristics of a party government which should come into office as a unit and go out of office as a unit. The Cabinet makes a team, the members of which play the game of politics under the captaincy of the Prime Minister. In order to put a united front they swim and sink together. Homogeneity is, therefore, the essence of their existence and solidarity ensures their stability in office. Party system is, as such, the basis of the cabinet government. Yet, the Constitution does nowhere mention the party system. It is an extra-constitutional growth in Japan as it is in other democratic countries having parliamentary system of government.

For the smooth working of such a system of government, it is desirable that there should be a two-party system, one in office and the other in Opposition. But the bane of Japanese politics is the multiplicity of political parties. In the pre-war era there were as many as 260 parties at one time and when the Constitution of 1946 became operative the number was more than 260. They could not really be characterised as political parties. They were just various groups and associations and the result of various traits of Japanese character. Habits of nations, like that of individuals, seldom die and the multiple party system continues as before causing considerable complexity in the political life of the country.

Splits and merger of the parties is a regular feature in Japan. Fondness of variety and newness have an admirable appeal to the Japanese and both these factors constantly account for the growth of splits and the multiplicity in the number of the parties. Most, if not all, these mergers have been effected by incompatible groups for expediency and have been marriages of convenience. Even members who bolted the party, as well as splinter parties, have been re-admitted without much ado into the parties. Political parties change their

labels with the greatest of ease and without changing their policies. More often than not names are changed merely to accommodate the newly won members or simply to give the psychological effect and illusion that the party is making a fresh start.³

The process of merger was highlighted in 1955, when the Conservatives and the Socialists both closed their ranks and formed two distinct political parties. Some optimists fervently predicted that the two party system had finally been established in Japan. But factionalism soon plagued the unity of the Socialists and after a truce of only four years they again divided and formed two separate parties. The Liberal Democratic Party remained united since then and it had been the ruling party since 1955. But internal strife had ever remained rampant among the conservatives as ever before. The socialists and the conservatives are "congeries of factions" and if the latter had remained united it was political expediency. If they had separated, their ruling position disappeared and it is precisely this condition that prevails now. Remember that there have been years of unexampled prosperity and freedom from national crisis in Japan."

None of the parties in Japan are mass organization. They are largely associations of professional politicians who centre their activities in Tokyo. They operate among a coterie of professional politicians and administrators and their prime focus of attention is the House of Representatives which actually designates the Prime Minister and provides a majority of ministers. Seldom do they go in their constituencies to nurse them and lead the people. There may be scattered prefectural and local party offices, but their contribution in the basic party offices is negligible. All important work is done at the party headquarters. The Diet-centred nature of the political parties makes them essentially parliamentary parties. Here Japan is akin to France.

Another important feature of the party system in Japan is the steady influx of the officials, serving and retired, into the parties and the Diet. A well recognised political axiom in Japan is to enter the civil service with a view to begin a political career. A civil servant who has ambition of becoming a minister must at some point run for a seat in the Diet. "Since about 1949, the number of ex-bureaucrats in the conservative parties have increased appreciably until in recent

3. Chitoshi Yanaga, *Japanese People and Politics*, p. 239.

years they represent about one fourth of the members of the House of Representatives belonging to the Liberal Democratic Party.⁴ In four Cabinets between 1957 and 1960 the ex-officials had held about one-half of the Cabinet posts. Most of the post-war Prime Ministers have had long careers in civil service as Shidehara, Yoshida, Ashida, Kishi, Ikeda, Fakuda and Ohira. The result is that the "Japanese politics has undergone a kind of bureaucratization," and as such, there has come into being concentration of party activities in the Diet oblivious of the importance and role of the extra-parliamentary segment of the party.

Localities are still a strong factor in the Japanese politics. The electors generally prefer to vote for a candidate who belongs to them rather than to a party and the programme it stands for. The theory of "friends and neighbours" determines the choice and it is an important aspect of the electoral behaviour in Japan. It is believed that the candidate who lives in the immediate vicinity is most likely to best represent the local interests.

Till recently, religion had not provided a basis of organization of political parties. There were no religious blocs and no religious dominated parties. It was complete secularization of politics and politicians did not use religion for political purposes. But in the sixties there emerged a neo-religious political party, the Komeito Party, which is the political arm of the Sooka Gakkai, a militant Buddhist organization. The Komeito Party set up its candidates in the 1967 mid-term elections and secured 25 seats. In the elections of 1969 the strength of the Party went up to 47. In 1972, it secured 30 seats, and since then it constitutes a vital political force in Japan.

PARTIES AND POLICIES

Liberal Democratic Party

The Liberal Democratic Party, which is now in power, was established in 1955 as a result of the merger of conservative groups. The Liberal Party and the Democratic Party (previously the Progressive Party) unified to counteract the unity of the Socialists. The Liberal Democratic Party stands for the preservation of the principle of popular sovereignty, respect for and protection

of the worth and dignity of the individual, his rights and freedoms, clean government, revision of the Constitution with a view to elevate the position and status of the Emperor as Head of the State in place of the symbol of the State, restoration of the right to defence of the country, limited rearmament for self-defence, educational and technological development, expansion in foreign trade and planned industrial growth, industrial peace and workers' welfare and application of social security on a broader national base, a diplomacy closely associated with the United Nations which will bring Asia closer to the rest of the world, co-operation with the free world and especially with the United States, a cautious approach to the normalization of relations with the People's Republic of China and Soviet Russia.

The Liberal Democratic Party considers itself a national party and seeks support from all strata of the population. But the Party is backed most heavily by rural communities, owners of commercial and industrial establishments in the towns and cities, and high level administrative personnel in Government agencies and of corporation executives. The Party is headed by the president, who is chosen by a party conference consisting of Party members of the two Houses of the Diet, and delegates chosen by the prefectural branches of the Party. The Party President is elected for a period of two years at a time and Party rules prescribe his election for two consecutive terms. By virtue of his position as President of the Party, he is the presumptive Prime Minister when the Party forms the Government. Other important officials are the Secretary-General, the Chairman of the Executive Council, Chairman of the Political Research Committee and the Party Discipline Committee. The Headquarters of the Party are at Tokyo and it is there that vast majority of the Party's work is transacted. In fact, for purposes of most policy decisions and day-to-day business, the Party is almost exclusively controlled by its higher membership normally resident in Tokyo, although ultimate authority rests with the Party Conference or Congress. The Party claims a total registered membership⁵ of more than 2,500,000, and American commentators hold that it is in the neighbourhood of 400,000.⁶

The Liberal Democratic Party came into

4. Kahin, George McT, *Major Governments of Asia*, p. 232.

5. Ward and Macridis (Editors), *Modern Political Systems: Asia*, p. 72.

6. Also refer to Robert A. Scalapino and Junosuke Masumi, *Parties and Politics in Contemporary Japan*, pp. 83-85.

power in 1955 together with the Socialists. Since Socialists were sharply divided amongst themselves there was possibility to oust them from office. But the Liberal Democratic Party itself is torn into factions and it is estimated there are now 13 factions,⁷ each having its own following in the House of Representatives. It is, therefore, difficult, as Ward and Macridis observe, "to describe accurately, the leadership of the Liberal Democratic Party. Superficially, the party is led by its President who, since this is normally the majority party, is also apt to be the Prime Minister of Japan. But when we look more closely, we soon see that the Liberal Democratic Party really has no single leader. In fact, it is in some ways more accurate to view it as a loose coalition of factions united for purposes of campaign and legislative strategy rather than as a unified national party."⁸ This came true in December 1966, when as a result of a revolt within the Party, headed by Fujiyama the Diet was dissolved and General Election held in January 1967. The ruling Liberal Democratic Party again came into majority, with Eisaku Sato as the Prime Minister, but the dissidents posed a threat to the leadership of Sato.

In March 1980 seventy dissidents deserted the ruling party and together with the Opposition ousted Ohira's Government from office on a vote of no-confidence. The House of Representatives was dissolved and the Party surged back to power with a comfortable majority. The only answer to the Liberal Democratic Party's victory is that the Japanese voter does not see a practical alternative to the ruling Liberal Democratic Party and conforming to the conservative habit of voting he "votes for the devil he knows." The second factor that helped the Liberal Democratic Party to bag a comfortable majority is, what the Japanese political scientists describe, "the sympathy vote." The death of the incumbent Prime Minister, Masayoshi Ohira, ten days before the poll helped the Party. As the Chairman of the Buddhist-oriented Komeito Party said, "We really had a difficult battle because we lost a clear target of attack" in Ohira's death. Ohira was vehemently criticised both within the Party and outside it because of his close connection with the former Prime Minister Kakeui Tanka (1972-74) who was on trial for his alleged involvement in a Lockheed bribery scandal. Ohira was also accused within his own Party of having won its

presidency in the 1978 biennial election through massive enrolment of bogus members with the funds coming from Tanka.

In the 1983 elections to the House of Representatives, the Liberal Democratic Party won 250 seats whereas its strength was 131 in the House of Councillors. The Prime Minister, Yasuhiro Nakasone, who was also the President of the Liberal Democratic Party, gambled in calling an election to the House of Representatives well 18 months ahead of schedule and it paid off more than handsomely. The Party tightened up its grip on both the Houses by winning in July 1986, 300 seats, giving it an absolute majority and increased its tally from 131 to 142 seats in the House of Councillors. Japan's Prime Minister Toshiki Kaifu led the party to a victory in one of the most crucial elections for the House of Representatives in February 1990 General Election. The Party won 275 seats in the election for 512 seats.

Japan Socialist Party

In October 1955, the Japan Socialist Party was established under the Chairmanship of Mosaburo Suzuki. The Party emerged as a result of the reunification of left and right-wing Socialists who had been split for years. But they again separated in 1959, and the Democratic Socialist Party was established on January 24, 1960 by dissident right-wing members of the Socialist Party. The Japan Socialist Party is now the second largest Party in the Diet. It commanded 118 seats in the House of Representatives in 1972, and it held at its peak in 1976 with 123 seats. It came down to 107 in October 1979. Its hold in terms of the percentage of votes gained has steadily declined from 29 per cent in 1969 to 19.7 per cent in 1979. The chances for the Socialist Party to come to power are remote. In July 1986 elections the Japan Socialist party conceded to the Liberal Democratic Party 27 seats in the House of Representatives. It was for the first time that the Socialists got a less than three-digit total. It came down to 85 as compared with 112 in 1983. In the February 1990 General Election the Party won 136 seats increasing its strength by 51 seats. The Party had a majority in the House of the Councillors. The Socialist Party, under the leadership of Miss Takako Doi, could not succeed in its bid to dislodge Japan's long one-Party rule, apparently because of Opposition disunity.

7. Theodore McNelly, *Contemporary Government of Japan*, p. 122.

8. Ward and Macridis (Editors), *Modern Political Systems: Asia*, p. 73.

The platform of the Japan Socialist Party may be described as follows: re-adjustment of Japan's foreign relations with emphasis being put on the establishment of a collective non-aggression and mutual security system including Japan, United States and the Soviet Union (now defunct) demobilization of the present defence forces and creation of a democratic national policy; establishment of democracy and the socialization of major industrial and financial institutions to create a welfare and cultural State; attainment of a self-sustaining economy and the development of land to absorb the unemployed. The Party aims to achieve its objective through peaceful revolution, that is, by obtaining an absolute majority in the Diet in accordance with democratic forms. A socialist administration would first be established and stabilised and the capitalist society would then steadily be converted into a socialist society.

The Party claims to be class-mass party, with its nucleus the working class, and a union of toiling classes made up of farmers, fishermen, small and medium commercial and industrial enterprises, intellectuals and others constituting the great majority of the people. Japan Socialist Party too is highly centralised in Tokyo, where an elaborate Party Headquarters is maintained. At the top is the national convention, which meets every year, and is made up of delegates of local Party units and affiliated organizations. The convention elects a Central Executive Committee, its Chairman and Secretary-General. The convention is the ultimate source of policy and adopts the party platform.

The Democratic Socialist Party

The reunification of the Socialists in 1955 did not eliminate the ideological and the personal feuds which had ever plagued the Socialist movement in Japan. They remained together for four years and the eventual split came in October 1959, when a group within the Japan Socialist Party led by Nishio Suehiro, issued a statement that "there is an urgent desire in Japan for a democratic socialist party which, while abiding by parliamentarianism, will fight for extreme leftists and rightists and promote the general welfare of all sections of the working people, without special favour or partiality to labour union." The members of the "Socialist Reconstruction League" led by Nishio formally selected from the Socialist Party to organise a "genuine" Socialist Party. It actually came into

being on January 24, 1960 and was named the Democratic Socialist Party.

At the time of their separation the dissidents had the support of some 35 Socialist members in the House of Representatives and their number increased to 40 before the General Election in December 1960. They fared poorly in this election securing only 17 seats. In the General Election in December 1963, the Party captured 23 seats and in December 1969, it won 31 seats. In December 1972 elections the strength of the Party was reduced to 20. In 1979 the Party increased its strength to 41. But in 1986, it could win 26 seats only whereas in 1983 the Party had won 38 seats. The organisation of the Democratic Socialist Party resembles that of the Japan Socialist Party. At the head of the Party is the Chairman of the Executive Committee with the Secretary-General who is in charge of administration. The ultimate authority is vested in the Party Congress.

The policy of the Democratic Socialist Party may be summarised as follows:

- (1) opposition to capitalism and totalitarianism of both the right and the left;
- (2) respect for the dignity of the individual;
- (3) pursuit of an independent foreign policy; and
- (4) establishment of a Welfare State through planned economy and socialist means.

The Communist Party

The Communist Party was formally organised in 1922, but it remained outlawed until after World War II. The Party has run candidates in all the General Elections since 1946, but its electoral and parliamentary successes have been modest. The Party reached the peak of its strength in the 1949 General Election, when it polled 5.6 per cent of the total votes and won 35 seats in the House of Representatives. In 1960 election it had 3 seats each into the House of Representatives and the House of Councillors. In the election of 1963, the Communist Party won 5 seats in the House of Representatives. In 1969 election it secured 14 seats but in the 1972 elections the Party could capture 40 seats and in 1979, 42 seats. In the 1986 elections the Party barely managed to hold its own; remaining static at 26 seats. In 1990 too there was not much appreciable improvement.

According to recent survey, membership of the Communist Party is about 370,000.⁹ All Japan Congress constitutes the supreme authority

9. *Facts about Japan*, Public Information and Cultural Affairs Bureau, Ministry of Foreign Affairs, Japan.

within the Japan Communist Party. The Congress is now convened after every two years. Delegates to the Congress are elected by Party members through their local organizations. The Congress formulates the Party platform, discusses governing regulations, lays down the principles of political action. Since the Congress does not meet regularly, it does not actually initiate policy. The principle of democratic centralism rigidly operates. The Party Congress elects the members and candidates of the Central Committee. There is a Central Committee Directorate of eight members. The Central Committee meets at least once every three months. The Secretariat of the Central Committee consists of ten members and is headed by the Secretary-General. The Party Congress also elects a Central Control and Supervision Committee.

Communists only Principled Lot in Japan

The Japanese political system with its six major parties launched on October 8, 1996, a 12 day period of campaigning for the October 20 elections. Every party has either imported or exported defectors except the Japanese Communist Party. In the eyes of every commentator, it is like Caesar's wife, beyond suspicion.

The head of the Japanese Communist Party, Tetsuo Puwa (66) still retaining the title Presidium chairperson can draw crowds on a rainy Tokyo day that are larger than what the Japanese Communist Party did in the cold war days. In August, 1996 Yutaka Vano was elected as Mayor of Konae, a suburb of Tokyo. This surprise was followed by a victory for the Communist-backed independent candidate in the Adachi ward mayoral election. Adachi became the only Communist supported mayor in Tokyo's 23 wards. What this suggests, together with the large crowds is that even in the post-cold war era, despite relations with Russia not yet normalised, people are unwilling to reject a candidate merely because he

is backed by the JCP.

Until the 1978 mobilisation campaign of the Liberal Democratic Party, the Japanese Communist Party had the largest membership of any party in post war Japan at 370,000 with a third of them women. Rather than go after votes by changing its principles, the JCP is a rarity in that it is saying its principles have stood the test of time, therefore the people should come after them.

The Komeito Party

The political aims of the Komeito Party include creating a Welfare State based upon respect for humanity and human socialism and establishing a clean parliamentary and democratic system of government. It calls for an independent foreign policy and advocates for a step-by-step dissolution of the U.S.-Japan Security Treaty in line with a strengthening of the United Nations' security functions. The Komeito Party is a Buddhist-oriented party and is steadily making its impact on the Japanese politics. In 1974, it had 30 members in the House of Representatives and eleven in the House of Councillors and in 1979 it further improved its strength in both the Houses. But in the July 1986 elections, the Komeito, which is a centrist Party won 57 seats and lost only one seat, as compared with its total of 58 in 1983.

New Liberal Club

Since 1976, some Liberal Democratic Party supporters have switched to a splinter, the New Liberal Club. The Club was set up in that year by dissidents claiming to be disgusted with corruption among top Liberal Democratic Party leaders. But the Club dropped from 17 seats in the House of Representatives in 1976 at the height of the storm touched off by a Lockheed bribery scandal, involving former Prime Minister Takeo Miki, to only 4 in the October 1979 round.

SUGGESTED READINGS

Chitoshi Yanaga - *Japanese People and Politics*

Scalapino and Masumi, *Parties and Politics in Contempo-*

rary Japan.

Thayer, Nathaniel B, *How the Conservatives Rule Japan?*

CHAPTER VI

The Japanese Political System

Strategy of Modernisation

Western Europe's large leap forward in the direction of modernity and industrial growth need not necessarily have prevented modernisation and economic development in other countries but for the decisive intervention by imperialist powers. This can be clearly seen in the history of the only Asian nation that succeeded in escaping imperialist domination and in attaining a relatively high degree of economic advancement. Had India been permitted the Japanese option by escaping British rule, she "might have found in the course of time a shorter and surely less tortuous road towards a better and richer society. That, on that road she would have had to pass through the purgatory of a bourgeois revolution, that a long phase of capitalist development would have been the inevitable price that she would have had to pay for progress, can hardly be doubted. It would have been, however, an entirely different India (and an entirely different world), had she been allowed as some more fortunate countries were—to realize her destiny in her own way, to employ her resources for her energies and abilities for the advancement of her own people."¹

Japan's modernisation and industrialisation at a rapid rate after the Meiji Restoration of 1868 shows that the above scenario for India and other underdeveloped countries is by no means purely hypothetical. Japan's unprecedented development as a free nation took place when Western capitalism was destroying India, conquering Africa, partitioning China into spheres of influence, and subjugating Latin America. Social conditions in Japan were as favourable, or as unfavourable, to economic development as anywhere else in Asia. In fact, Japan, with its purely feudal organisation of landed property and its developed small peasant economy, was torn by all the internal tensions and conflicts of a feudal society and consequently, it "was perhaps even more tightly

locked in the strait jacket of feudal constraints and restrictions than any other pre-capitalist country."²

For two centuries, before the bourgeois revolution from above, efforts were made by feudal rulers of Japan to suppress growth and change. "Society was frozen into a legally immutable class mould... Maintenance of the warrior class continued to take the surplus of society, learning little for investment... the closed class system smothered creative energies and tended to freeze labour and talent in traditional occupations."³ Yet under this rigid crust of feudal rule, there also took place a rapid accumulation of capital in the hands of the mercantile class. A measure of the wealth amassed by this class is the amount of 1,781,000 ryo which the members of the trading guilds paid to the government, technically as a loan but actually as a gift, a sum equivalent to one year's expenditure of the the state of that time.

There is no doubt that the pressures coming from the rising bourgeoisie brought about the Meiji Restoration because the rapidly growing capitalist relations were rupturing the fetters of the feudal order, though political significance of the mounting opposition of the lower *samurai* class and of peasant uprisings too should be recognised. Paul Baran says: "As in all revolutions, it was a combination of heterogeneous social groups that accomplished the overturn of the *ancien regime*. But while the most active and most conspicuous among them were the *declassé* warriors and the frustrated intellectuals, the embittered feudal lords and the disgruntled courtiers.... yet it was the rising bourgeoisie that determined both the direction and the outcome of the movement, and it was the capitalist class that reaped the political and economic fruits of the Revolution,"⁴

1. Paul Baram, *Political Economy of Growth*, pp. 284-285

2. *Ibid.*, p.286

3. Thomas C. Smith, *Political Change and Industrial Development in Japan.*, Chapter II.

4. Paul Baran, *The Political Economy of Growth*, pp.287-288

The Meiji Revolution succeeded in creating the political and economic framework necessary for capitalist development. The new regime drastically shifted the nation's gears and provided a great impetus to primary accumulation of capital as well as to its transfer from purely commercial to industrial pursuits. The economy being predominantly agrarian with about three-fourth of the population engaged in agriculture, the bulk of the economic surplus was extracted from the peasants. The strategy of Japan's development was the curious blending of continued feudal relations in agriculture with a strong, centralised, capitalist-dominated state promoting energetically the growth of capitalist enterprise.

For Japanese capitalism, the rural districts and villages played the role of an internal colony. The policy of ruthless direct extraction from peasants was supplemented by keeping the wages of non-agricultural workers down to rock-bottom in order to maximise the aggregate economic surplus. The feudal lord ceased to be a territorial magnate investing his freshly capitalised wealth in banks, stocks, industries or landed estates, and so joined the small financial oligarchy.⁵ Although the utmost was being done to fill the coffers of the bourgeois class, it failed to induce a spurt of investment in industrial development. Some merchants like the Mitsui did shift their capital to industry but others stuck to trade, moneylending and commodity speculation. Japan was still going through the mercantile phase of capitalism. It was the modernised, capitalist state created by the Meiji Revolution that launched Japan on the road of industrial capitalism.

The Meiji state went much further. It invested heavily in construction of railways, in shipbuilding, in basic industries, in a communications system, in production of machinery etc. The state enterprises, when they became profitable, were sold to private buyers for 15 to 30 per cent of the amounts which they cost the government. The profits earned by the Mitsui, Mitsubishi, Sumitomo, Okura and other future 'Zaibatsu', through government contracts earlier and from 're-privatized' enterprises later,

were truly fabulous. The so-called daring and innovating entrepreneur of the bourgeois mythology was nowhere present in this scenario of Japan's industrial progress. In fact, from its inception, "a bourgeois-dominated regime" served "as a vigorous and relentless engine of capitalism."

This became possible because "Japan had very little to offer either as a market for foreign manufacturers or as a granary of raw materials for foreign industry."⁶

By this time, Western penetration of Asia had reached a point of exhaustion and no European power was interested in the conquest of Japan. The growing rivalry among the imperialist powers also prevented them from invading Japan. However, the threat of Western intervention acted as a great stimulant to Japan's economic development. "The exceptional Japanese receptiveness to Western knowledge... was largely due the fortunate circumstance that Western civilization was not brought to Japan at the point of a gun, that Western thought and Western technology were in Japan not directly associated with plunder, arson, and murder as they were in India, China and other now underdeveloped countries."⁷

From Militarism to Fascism

The advent of capitalism neither revolutionized nor disintegrated Japanese agriculture. The evidence shows that an initial shock of some severity caused by the Meiji Revolution was followed by a lasting equilibrium. "The landlord", as Barrington Moore puts it, "was the key to the new system."⁸ Morris has estimated "that the landlord took from three-fifths to two-thirds of the physical product of the land between 1873 and 1885.... under the system prevailing between the World Wars, the tenant turned over half his crop to the landlord."⁹

The Japanese landlords were able to block all attempt aimed at serious land reforms. As was expected, they would appeal to nationalist traditions in order to deny the realities of conflicting economic interest. This is one of the main features of fascism. The example of fascist demagoguery can be found in the following statement issued by the Japanese Landowners'

5. Norman, E. Herbert, *Japan's Emergence as a Modern State*, op. cit., p.94

6. *Ibid.*, op. cit. p.46

7. Paul Baram, *The Political Economy of Growth*, p.296

8. Moore, Barrington, Jr., *Social Origins of Dictatorship and Democracy*, p. 282

9. *Ibid.*, p. 285

Association in 1926: "Remembering the splendid tradition of our nation, with sovereign and subjects forming one whole, and reflecting on the glorious history of our national development in the past, let us emphasize the harmonious relations between capital and labour, and especially cultivate peace between landowners and tenant farmers and thus contribute to the development of our agricultural villages. What sort of devils are they who furiously strike fire bells when there are no fires and incite to a class struggle, provoking animosity against landowners by exciting tenant farmers? If these malicious designs go unrestricted, what will become of our national existence?... we are determined, therefore, to cooperate with those who hold the same ideas, to arouse public opinion, and to establish a more suitable policy."¹⁰

The peasants were ruthlessly exploited by this landowning class, which offered to Japanese society neither artistic culture nor the security of earlier rulers in the countryside. It contributed "scarcely more than pious protofascist sentiments. A class that talks a great deal about its contributions to society is often well along the road to becoming a menace to civilization." A landlord class of this type relies on a substantial dose of repression to maintain its dominant social position and temperamentally likes the ascendancy of militarists and fascists in the state system. In practice, this also means that "capitalist elements are not strong enough to introduce new forms of repression on their own."¹¹

Thus from the beginning of the modern period, commercial and agrarian elites had combined in order to keep the populace in its place at home and enable Japan to seek military glory abroad. Brown in *Nationalism in Japan* points out that conquest of colonies was in the minds of Japanese rulers from the beginning. "Rich Country-Strong Army" was their favourite slogan. In 1871, Yamagata Aritomo said, "Our army is in the midst of reorganisation ... in a year or so, foundations of the military system will be established and there probably will not be any obstacles to prevent the sending of an

army to the continent."¹² Repression at home and aggression abroad were the main features of the Japanese variant of developing totalitarianism.

The correspondence of the vital interests of Japanese capitalism with the military requirements for national survival, even national glory, was of tremendous significance in determining the rapid speed of Japan's economic and political development during the late nineteenth and early twentieth centuries. Huge investments were made in basic industries, shipbuilding and armament production. The bourgeois rulers harnessed the patriotic and martial fervor of the *declassé* military castes for building a strong, modern economy. Within fifty years "the concentrated monopolistically controlled industry provided a firm basis for an impressive military potential which, combined with the purposefully nurtured chauvinism of the *samurai* and their descendants, turned Japan from an object of imperialist intrigues into one of Western imperialism's most successful junior partners."¹³ As Lenin put it, "by their colonial looting of Asian countries the Europeans managed to harden one of them — Japan for great military exploits that assured it of an independent national development."¹⁴

The Nature of Japanese Fascism

According to Barrington Moore, the rise of Japanese militarism and fascism may be divided into three phases. The first one, characterised by the failure of agrarian liberalism, ended with the adoption of a formal constitution and superficial elements of a parliamentary regime in 1889. The second phase closed with the failure of democratic forces to break through the barriers imposed by this system, clearly visible with the onset of the great depression in 1929. The failure of the 1930s leads to the third phase of a war economy and the Japanese version of a militarist-fascist dictatorship.

By the early thirties, the weak parliamentary democracy was perishing under the final blow of the Great Depression. However, it did not happen in a dramatic fashion *a la* Hitler's usurpation of the Weimar Republic. In the case

10. Quoted by Ladizinsky, W., in "Farm Tenancy and Japanese Agriculture", *Foreign Agriculture*, Vol.1, No 9, (Sept, 1937), pp. 441-449

11. Moore, Barrington Jr., *Social Origins of Dictatorship and Democracy*, p. 287

12. Ike, Neboutaka, *The Beginning of Political Democracy in Japan*, p.51

13. Paul Baram, *The Political Economy of Growth*, p. 298

14. V.I.Lenin, *Sochinenya* (Works), 4th Edition, Vol.15, p.161.

of Japan it is more difficult to draw a sharp distinction between a democratic and a fascist phase than in the German instance. In foreign affairs, it began with the conquest of Manchuria in 1931. In domestic affairs, the assassination of Prime Minister Inukai and an attempted *coup d'état* on 15 May, 1932 marked the end of the hegemony of the politicians, leading to the ascendancy of the militarists and crypto-fascists.

In 1932 a small group of peasants led by a Buddhist monk planned to assassinate the 'ruling clique' responsible for the misery of the peasantry. They killed a former Finance Minister, Inoue, and the Chief Director of Mitsui, Baron Dan, before the plot was uncovered. A band of young naval and army cadets then attacked the *Zaibatsu*, political leaders, and men around the Emperor "to save Japan from collapse," as they claimed. One unit shot the Prime Minister, others killed police chiefs, court officials and capitalists. This violence initiated a period of semi-militarist dictatorship which ultimately led to outright fascist totalitarianism a few years later.

Four years later in 1936, Japan had a relatively free election. The Conservative *Min-seito* party fought it on a slogan—'What shall it be, parliamentary government or Fascism?' got 205 seats and defeated the fascists who got only 6 seats while a labour party, *Shakai Taishuto*, received 18 seats. To this defeat, a section of the army reacted with another attempted *coup* known as 26 February (1936) Incident. Several high officials were killed and a fascist 'new order' was proclaimed by the rebels. High army authorities refused the use of force to crush them. Since the Satsuma Rebellion, this was the biggest crisis of State in Japan. However, this 'fascism from below' was defeated through diplomacy. It was essentially the anticapitalist, left-wing of Japanese fascism, which was sacrificed to 'fascism from above' i.e. right-wing pro-capitalist fascism.

Barrington Moore says "Respectable fascism now made rapid strides. National mobilization was decreed, radicals were arrested, political parties were dissolved and replaced by the Imperial Rule Assistance Association, a rather unsuccessful copy of a Western totalitarian party. Shortly afterward Japan joined the anti-Comintern. Triple Alliance dissolved all

trade unions, replacing them with an association for 'service to the nation through industry'. Thus by the end of 1940 Japan displayed the principal external traits of European fascism."¹⁵ Unlike Nazi Germany, no blood purge was necessary to exclude the right-wing radicals from power. Japanese big business successfully resisted attempts to subordinate profits to patriotism. The whole period of military hegemony and fascism was very profitable to capitalists.

Industrial output increased from 6 billion yen in 1930 to 30 billion in 1941. The share of heavy industry in the total industrial output rose from 38 per cent to 73 per cent in the same period. "By nominally yielding to government control the *Zaibatsu* were able to obtain fairly complete domination of all industry. The four great *zaibatsu* firms, Mitsui, Mitsubishi, Sumitomo, and Yasuda, came out of the Second World War with total assets of more than 3 billion yen, compared with only 875 millions in 1930,"¹⁶ In the Asian version of fascism, The army played a different political and social role from that of the German army under Hitler. Japan was backward relative to Germany and its agrarian sector was far more important. The Japanese military leadership, therefore, could not so easily dismiss agrarian demands.

For the same reason, sections of the Japanese army intervened in the political arena by attempting *coups d'état* in a distinct contrast to the behaviour of the German army. Japanese fascism differed from its European counterpart in other respects as well. "There was no sudden seizure of power, no outright break with previous constitutional democracy, no equivalent of a March on Rome, partly because there was no democratic era comparable to the Weimar Republic. Fascism emerged much more 'naturally' in Japan; that is, it found congenial elements in Japanese institutions even more than it did in Germany. Japan had no plebeian *Fuhrer* or *Duce*. Instead the Emperor served as a national symbol in much the same way."¹⁷

Unlike Fascist Italy and Nazi Germany, Japan did not have a really effective single mass party. The Imperial Rule Assistance Association was an artificial structure created from the above with no popular base. Lastly, the Japanese fascists did not have a racial enemy like the Nazis had found in the Jews. In spite of the above difference, there were basic similarities between

15. Barrington Moore Jr., *Social Origins of Dictatorship and Democracy*, p. 301

16. *Ibid.*, p. 302

17. *Ibid.*, p. 304

the Asian and European versions of fascism. Germany, Italy and Japan entered the industrial world at a later stage. In these countries, dictatorial regimes were established whose main features were aggression abroad and repression at home. In all fascist countries, the social basis of their rule was an alliance between the capitalist class in cities and a land-owning class in villages. Finally in Europe as well as Japan, a form of rightist radicalism emerged as a consequence of petty-bourgeois and peasant discontent under developing capitalism. The radical slogans were used earlier by these repressive regimes but soon this spurious radicalism was suppressed in order to consolidate the alliance with monopoly capital.

During the totalitarian phase of Japan's modern history, the peasantry was integrated into the national structure in a way that is broadly similar to Tokugawa methods for penetrating and controlling rural population. These arrangements show compatibility between significant aspects of Japanese feudalism with its twentieth-century totalitarian institutions. The oligarchical structure, internal solidarity and strong vertical bonds with higher authorities continued in Japan's villages with little change during and after the transition to modern production for the market. The landlords maintained most of the old village structure because they could extract in this way and sell enough of a surplus to stay on top of the hierarchy.

Here is a lesson for all societies which attempt a non-revolutionary transition to modernity, democracy and development, including India. Barrington Moore says, "The adaptability of Japanese political and social institutions to capitalist principles enabled Japan to avoid the costs of a revolutionary entrance onto the stage of modern history. Partly because she escaped these early horrors, Japan succumbed in time to fascism and defeat. So did Germany for very broadly the same reason. The price for avoiding a revolutionary entrance has been a very high one. It has been high in India as well. There the play has not yet reached the culminating act, the plot and the characters are different.

Still, lessons learned from all the cases studied so far may prove helpful in understanding what the play means." ¹⁸

Post-War Capitalist Democracy

The state intervention in every aspect of economic life, a characteristic of post-war capitalist democracy, is nothing new in the history of capitalism. Even in the countries most dedicated to *laissez faire* capitalism, state intervention has been of crucial intervention, especially in any period of crisis. While advanced capitalism provides a broadly similar socio-economic environment for political life, politics itself can often be exceedingly dissimilar. For example the twentieth century capitalism provided the context for Baldwin's Conservative rule in Britain, for Nazi totalitarianism in Germany, Roosevelt's New Deal in the United States and the Asian brand of fascism in Japan. "The notion that capitalism is incompatible with.... authoritarianism may be good propaganda but it is poor political Sociology." ¹⁹

In post-war society of capitalist Japan "aristocracy still carries a good deal of *cachet*, but the business classes are no longer conscious of being *parvenu* and socially inferior to any other group or class." ²⁰ A Japanese writer says that in Japan "today those who engage in commerce and industry are considered the pillars of the community and find easy entry into the most respected levels of society. Seekers of wealth no longer need to be apologetic.... The change in the ethos is but one measure of this rise of business to a position of dominance in the political life." ²¹ A.B. Cole points out that "the top bracket of business executives has already superseded the older *Zaibatsu* families, and has become the principal elite in post war Japan." ²² As suggested by Abegglen and Mannari, "For Japan, the largest proportion by far the business leaders is drawn from fathers who were themselves executives or owners of large enterprises, with the sons of landlords and small businessmen second and sons of labourers nowhere." ²³ R.P. Dore also notes "The total absence in the Japanese sample of the sons of manual labourers and tenant farmers in the recruitment of contemporary Japanese business

18. Barrington Moore, Jr., *Social Origins of Dictatorship and Democracy*, p. 313

19. R. Milliband, *The State in Capitalist Society*, p. 82

20. *Ibid.*, p. 42

21. N. Ike, *Japanese Politics*, p. 82

22. A.B. Cole, *Japanese Society and Politics- The Impact of Social Stratification and Mobility on Politics*, p. 86

23. Abegglen and Mannari "Leaders of Modern Japan: Social Origins and Mobility" in *Economic Development and Cultural Change*, Vol 9, no 1, part 2, p. 112

leaders."²⁴

Japan's privileged classes, having lost their fascist masters and protectors, now found a new set of protectors, and rulers in the shape of their American conquerors and occupiers. Defeat in war and the collapse of the fascist dictatorship raised the spectre of social revolution but the U.S. occupation authorities had no desire of allowing any radical change in Japan. In fact, an occupation by the American army was an absolute guarantee to Japan's dominant classes that any threat to them will be opposed, if necessary with the full force of military power. Indeed defeat at the hands of the United States provided an additional bonus to the Japanese capitalist class as this rid its members of indigenous rulers whose failure in war had turned them into encumbrances which they could not have been able to remove on their own.

At the end of war, it appeared that General MacArthur's programme of purging 'pro-fascist' elites in Japan might push 'democratisation' too far as to make the pre-war business elites lose hope of coming back to power. Japanese capitalists also distrusted the policies of 'decartelisation' proclaimed by the victorious allies. But all such fears proved to be highly exaggerated. The 'artificial revolution' forced upon Japan and Germany at the end of the war "brought no permanent stigma to those who had led their country to ruin; neither country emerged into sovereignty with any important reservation against the employment of nationalist fanatics of the thirties and forties, even in the most responsible positions."²⁵ Thus in both Germany and Japan, the former fascists and businessmen were running the post-war 'democratic' regimes.

It was a form of 'palace revolution' involving the return of older elites in place of the 'fascist' upstarts. Shift in the power structure occurred mainly within a middle-and upper-class context and did not change their hegemony. As for 'decartelisation,' the programme proved to be abortive. Halliday points out that "a list of 1200 firms to be broken up was compiled; this was progressively reduced until there were only 19 firms on the list—and when nine of these had been dealt with the board set up by SCAP (composed of five prominent US businessmen) decided enough had been done"²⁶ A few years later after the war, big business in defeated

Japan was bigger than ever and launched on a spectacular course of expansion. Thus capitalists in post-war Japan achieved a position in society which was more eminent than at anytime in the past.

As Ralph Miliband puts it, "the postwar triumphs of capitalism in Germany, Japan and Italy were hardly a case of the Phoenix rising from the ashes. The Phoenix had been alive and prospering throughout the years of dictatorship and terror. Defeat at the hands of the Western powers merely gave it the chance to do even better. For the business and other elites of these countries, those years were not a dark hiatus between overthrow and restoration. There was no overthrow and there was therefore no need for restoration."²⁷

The most visible innovation of the MacArthur Constitution was the renunciation of war as an instrument of national policy by Japan. Japan's defence became the responsibility of the United States under a Security Treaty signed by both the countries. Japan's armed forces demobilized and armament factories ceased production of arms and ammunition. Yet Japan has been allowed to build and augment its Self-Defence Forces equipped with modern weapons. These so-called Self-Defence Forces, in fact, constitute a fully equipped, modernized armed force. The ratio of officers in the army and air force is five times larger than what it should be, which ensures a rapid increase of recruits whenever required. This shows that Japan's disarmament is unreal. Militarism and national fanaticism remain part of the ruling class ideology. The military elite has an honoured place in post-war Japanese society, economy and polity despite its invisibility. The 'industrial-military' complex is not a figure of speech but a solid fact, cemented by a genuine community of interests. Despite its relative enfeeblement in numbers, the role of the military elite in the post-war management of capitalist democracy is not insignificant.

Prime Minister Kishi spoke in favour of acquiring nuclear weapons by Japan as early as possible: "Not all nuclear weapons can be considered as falling within the purview of this prohibition (Article 9 of the Constitution). If there is nuclear weapon that can be considered as solely a defensive weapon, then it is not

24. Ward and Rustow (eds) *Political Modernisation in Japan and Turkey*, p.203

25. J.D.Montgomery, *Forced to be free- The Artificial Revolution in Germany and Japan*, p.35

26. J Halliday, "Japan—Asian Capitalism" in *New Left Review*, no.44, July-August, 1967, p.11

27. Ralph Miliband, *The State in Capitalist Society*, pp. 87-88

outside the realm of possibility for Japan to possess it." 28 By 1962 Japan's armed forces had 243,923 men, the navy 469 ships totalling 128,000 tons and the airforce 1100 planes. In the decade 1954-1963 defence expenditure rose from 135 billion yen to 247 billion yen.

Japan still looks at East and South-east Asia as its Zone of action and expansion. By 1969 it was making 97 per cent of its own ammunition and 84 per cent of its aircraft, tanks, guns, naval craft and other military equipment. It was the fourth country to launch a space satellite and it is technologically prepared to produce nuclear weapons. As three branches of its forces are heavily over-officered, which means they could be expanded at a short notice. Japan's forces are already the seventh strongest in the world. They are just "short of a leap to a full-scale offensive nuclear strategy."²⁹ In absolute terms, Japan's military expenditures are very high and have been rising from year to year. Japan's seizure of the Tiaoyu islands in the winter of 1970-71 went almost unnoticed.³⁰ Japan has worked as a junior partner of the United States in all its wars against the Asian nations by supplying arms, ammunition and other material for waging power.

As Halliday and McCormack have pointed out, "Weapons for use in the Korean and Vietnam wars played a crucial part in Japan's postwar economic recovery and growth. U.S. military procurements in Japan between 1951 and 1960 amounted to 6 billion dollars.... The Japanese economy was largely moulded by the demand for war materials."³¹ Military-industrial solidarity, which began during the pro-fascist

period, has now been institutionalised under post-war capitalist democracy. "The practice of 'descent from heaven', by which youthful admirals, generals and other military officials retire from their posts to join companies engaged in defence-related works is a long-established one. During the 'Defence Secrets scandal of 1967-8 it was learned that there were 265 Defence Agency officials, who had retired between 1962 and 1967, who were so engaged."³²

In post-war Japan, the Liberal Democratic party has emerged as the permanent ruling group except for a very short stint by an opposition coalition. The party came into existence as a result of the merger of two conservative parties in 1955 and since then it has been in power almost without any interruption. Both in terms of its any social composition and actual politics, it represents the corporate rich of the Japanese society. It is heavily financed by big business and pursues policies dictated by this class. The administrative and judicial elites, like business and political elites, are educated in Tokyo University and a few other elitist institutions and work through a network of common friends and relatives. Nepotism and corruption have become part of Japanese party politics and administrative institutions. Despite these negative points, 'Japan Incorporated' has made tremendous economic progress making Japan the second largest economy in the world. Capitalist democracy in Japan is so far a success story. Pre-war fascism has assumed the form of an entrenched, reactionary conservatism under American hegemony.

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