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CIVIL INFORMATION OFFICER

DEMOCRACY IN THE NEW CONSTITUTION

(This material will appear in "Primer of Democracy, Vol. II" soon to be published by the Ministry of Education.)

Establishment of the Constitution of Japan.

At a time when the Pacific War reached its final stage and the total defeat of Japan was approaching hour by hour, the Allied Powers issued a declaration at Potsdam, Germany. While demanding the unconditional surrender of all the Japanese armed forces, the Declaration also insisted that Japan be placed under the occupation of the Allied Forces until a peaceful, responsible government be established in accordance with the freely expressed will of the Japanese people. Moreover, the United States' reply to the Japanese proposal to accent the Declaration made it clear once again that the ultimate form of the government of Japan should be determined by the freely expressed will of the Japanese people.

The basic form of government in modern nations is usually determined by a constitution. In order to establish in Japan a postwar form of government in accordance with the principles of the Potsdam Declaration, a constitution expressing the will of the Japanese people had to be enacted. The former Japanese constitution was a constitution granted by the Emperor (Kintei Kempo), or a constitution enacted by the command of the Emperor. The Meiji Constitution was so devised as to make democratic government possible to a certain extent, but, as we observed in the preceding chapter, it contained various provisions which obstructed the development of democracy. Thus, in postwar Japan, the problem of a fundamental revision of the constitution was soon taken up. After various meanderings, a new constitution was drawn up through the deliberations of the Diet, representing the people. The new Constitution was promulgated on November 3, 1946 and came into force on May 3, 1947. It is called "The Constitution of Japan".

The Sovereignty of the People

As stated before in this book, here are three important principles which are present in any democratic government. First, the government must be a "government of the people." Second, the government must be administered as a "government by the people." Third, the government must aim at "government for the people." The new Constitution, which was enacted with a view to making Japan a thoroughly democratic nation, is naturally founded on these three principles. This is clearly set forth in the greamble of the new Constitution, which states: "Government is a sacred trust, 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. This is the universal principle of mankind, upon which this Constitution is founded."

The "universal principle of mankind" means that, in any country and in any period, good government must always be exercised in accordance with these three principles. In the United States of America, 'since Lincoln's famous definition of democracy as stated in the first chapter, "the government of the people, by the people, and for the people" has been regarded as the one right way of government. The Japanese Constitution also enunciated the same three principles and made them the fundamental tenets of government. Therefore, in order to have a correct understanding of democracy as embodied in our new Constitutio, we must know how the form of government of Japan has been revised in accordance with these principles.

To begin with, the first principle is expressed in the new Constitution by the words "The authority for government is derived from the cople." Just like Lincoln's "government of the people," this principle signifies that the source of the power to conduct the action's government lies in the people. In other words, sovereignty resides with the people, - the people themselves are sovereign. Thus the new Constitution, in the beginning of the preamble, proclaims the sovereignty of the people's will.

If this fundamental principle of the new Constitution is compared with that of the Meiji Constitution, it is crystal clear that a very important change has taken place. The preamble of the Meiji Constitution stated, "The power to rule the nation is inherited from the Emperial Ancestors and shall be handed down to posterity." This means that severeignty had been handed down from Emperor to Emperor since the founding of the nation, and would continue to be handed down to posterity.

What then was the origin of such power? In other words, how did the first Emperor obtain his power? According to the mythological explanation of the founding of the nation, it was due to the statement of Goddess Amaterasu-Omikami: "My descendants shall rule over the Abundant Reed-plain Land (Toyo-Ashihara-no-Mizuho-no-Kuni)." In other words, the power to rule the state was given to Emperors by an oracle, and the source of this power was the will of the Goddess. The Meiji Constitution adopted this idea and declared that the constitution was a clarification of the teachings of the Imperial Ancestors. The new Constitution has abandoned this conception altogether, and has adopted, instead, an entirely new premise - i.o. that the power to govern lies in the will of the people, and therefore sovereignty resides with the people. In this way the new Constitution has first of all established the principle of the sovereignty of the people. At the same time, the sovereign people have come to shoulder heavy responsibilities undreamt of in the past.

Now, under the new Constitution, we, the people, exercise the powers of government. To use a constitutional motto, Japan has become "Our Japan which we ourselves govern." This constitutes the most important governmental change since the beginning of Japanese history. The Meiji Constitution was characterised by the fundamental concept that a clear line was drawn between the rulers and the ruled. National morality consisted solely of the obodience of the subjects. The ruler governed at the top, while the

subjects were placed below merely to serve and obey his commands. The necessitution discorded this idea completely. We, the people, are no longer subjects, but are severeign as free and equal people.

Then what kind of power is this sovereignty of the people? Sovereignty includes various powers. But, since sovereignty resides with the people, the power of basic importance is the right to determine the constitution in which the form of government is prescribed. This is the meaning of the preamble of the new Constitution which, immediately after proclaiming the sovereignty of the people, declares that "we, the Japanese people do establish this Constitution." Not only is the new Constitution established by the people, but amendments to the Constitution shall be initiated by the Diet, and, after being approved by the people, shall be proclaimed by the Emperor in the name of the people (Article 96). This also is basically different from the Meiji Constitution which was determined and granted by the Emperor, and in which the Emperor was to initiate amendments and refer them to the deliberations of the Imperial Diet.

Now, then, if the people are sovereign and if the fundamental policies of the national covernment are to be determined by the will of the people, what has happened to the position of the Emperor? The new Constitution, in Article I., clarifying this point, states: "The Emperor shall be the symbol of the State, and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power." This concept also fundamentally differs from the Meiji Constitution. Not that the Emperor was not a symbol under the Meiji Constitution, but he was actually far more than a symbol. Under the new Constitution, the Emperor is merely a symbol. What, then, is a symbol?

In the 1848 proclamation of the French Republic there is a line: "The Tricolor is a symbol of liberty, equality, and fraternity, and is a symbol of order." The French people, when they look at their national flag, realize that their ideals of liberty, equality, and fraternity are vividly expressed, and feel that, under the flag, the people of France are united. This is the meaning of the symbol of the Tricolor. In a similar sense the Emperor is called a symbol in the new constitution.

Under the new Constitution, constitutional amendments, the enactment of laws, and the appointment of Prime Ministers are all manifestations of the people's sovereignty. It is however, obviously impossible for eighty million people to get together to perform such acts. So the Emperor promulgates amendments of the Constitution and laws, and appoints the Prime Minister, as designated by the Diet, thereby symbolizing the united conduct of the people, (Articles 6 and 7). These acts of the Emperor are merely symbolic functions which entail no real political power. Actually, the people approve constitutional amendments, and the Diet, which represents the people, enacts laws, and designates the Prime Minister. Thus the Emperor, like the flag, is merely a symbol, and has no political power. In this respect also, the new Constitution differs basically from the Meiji Constitution, under which the Emperor was a symbol but, at the same time, had political power.

Who, then, has the political power under the New Constitution? Mithout question we, the people, have the power, and no one else.

Parliamentary Government

Under the New Constitution sovereignty resides with the people. The people have the real political power. Those who exercise the political powers must be the people and only the people. This is the second principle of democracy, which was described by Lincoln as "government by the people."

In small nations like the ancient Greek city states, the people could debate and decide upon each political problem, but, in the large nations of the modern age, this method is difficult to follow. Therefore, in the modern democratic nations, actual government is, in most cases, determined by the representatives of the people. Thus it is customary for nations adopting "representative democracy" to operate a "government by the people" through a "government by the representatives of the people." Our new Constitution follows this pattern. It is in this sense that the preamble of the New Constitution states: "The powers of government are exercised by the representatives of the people."

Under a system of representative democracy, it is an exceedingly important task of the people to elect those who will discharge the affairs of state on behalf of the people. The right to choose public officials, the representatives of the people, and to dismiss those who are found to be unsuitable, is one of the poople's sovereign rights. This is an inalienable right of the people, which no one can renounce or transfer to others, (Article 15). The only general qualification necessary for participation in the election of public official; is to be at least twenty years old, there being no discrimination between the sexes. Furthermore, secrecy of the ballot is preserved inviolate. That is to say, all persons past their twentieth birthday can vote freely for the candidates of their choice in accordance with their own conscience. This right of secret, free elections is one of the most important manifestations of the sovereignty of the people. The immense significance of the ballot must now be clear to you. One must not forget that if this precious right to vote is ignored it will endanger the sovereign status of the people. .

There are various public officials who are elected by the people and who take charge of government on behalf of the people. Among them, the most important are members of the Diet whose orimary function is legislation. Besides the legislative, there are also the executive and the judiciary tranches of government. Those who take charge of the latter two functions are also representatives of the people. However, the Ministers of State, who administer the government, or the judges who handle judicial affairs, are not chosen directly by the people. Among the State Ministers, the Prime Minister is selected by the designation of the Diet, and other Ministers are appointed by the Prime Minister. The judges are also nominated or appointed by the cabinet. Therefore, the executive and judicial officials

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are chosen indirectly by the people. In contrast, the members of the Diet are public officials chosen directly by the people. This clearly illustrates how important the election of the members of the Diet is to the sovereign people.

The Diet consists of the House of Representatives and the House of Councillors (Article 4). Hence, the legislature, as provided by the New Constitution, is bicameral. But this is very different from the bicameral system of the Meiji Constitution. Under the Meiji Constitution, the members of the House of Peers were elected from a small-minority of the privileged class, i.e., the Imperial Family, nobles, high taxpayers, etc. On the contrary, the members of the present House, of Councillors are true representatives of the people, elected from among the entire people exactly as in the case of the members of the House of Representatives (Article 43). Therefore the House of Councillors may be said to be a legislative body essentially no less democratic than the House of Representatives. Yet the powers of the House of Councillors are quite weak compared with those of the House of Representatives. Briefly, in case the two Houses fail to agree on a proposed bill, the approval of a budget, the ratification of treaties, and the designation of the Prime Minister, etc., the decision of the House of Representatives takes precedence over the decision of the House of Councillors. (Articles 59, 60, 61 and 67). In this respect, their relationship is similar to the relationship between the House of Commons and the House of Lords of Great Britain.

The Japanese House of Councillors, however, is essentially far more democratic than the British House of Lords. Accordingly, in some cases, the new Constitution grants the House of Councillors powers entirely equal to those of the House of Representatives. For example, the initiation of amendments to the Constitution requires a concurring vote of two-thirds of all the members of each House. Accordingly, if more than one-third of the members of the House of Councillors are opposed, amendments of the constitution cannot be initiated by the Diet (Article 96). In this respect, for example, the House of Councillors and the House of Representatives together constitute the Diet and help each other, and are equal in their importance.

The Diet, thus organized, is the highest organ of state power and the sole law-making authority of the state (Article 41). The fact that the Diet is the sole law-making authority of the State is exceedingly significant from the standpoint of democracy. This significance may be considered from two angles.

First, the enactment of laws is the function of the Diet alone, and does not require the cooperation of other governmental organs. Under the Meuji Constitution, the enactment of laws was a manifestation of the sovereignty of the Emperor. The Imperial Diet was merely to consent to the enactment of legislation. Compared to this, it is abundantly clear that the New Constitution is based on a fundamentally different concept of government. However, in order that a law passed by the Diet may actually be

enforced, it is necessary that it should be signed by State Ministers and promulgated by the Emperor, (Articles 74, 7). But these are nothing more than formal procedures, added to what is already established as law by the decisions of the Diet. Laws are enacted by the Diet, independent of all other State organs, and serve as the ruling principle of all the executive, and judicial functions.

Second, under the new constitution, there can therefore be no state organ, except the Diet, which can enact laws independent of the Diet. The Meiji Constitution permitted what were called "Emergency Imperial Ordinances" and "Independent Orders" which were enacted independent of the Diet. These are all abolished under the New Constitution. Since laws provide for such things as the methods of government; ounishment to be meted out to criminals, and the duty of the people to pay taxes in accordance with their incomes, it is extremely important, from a democratic point of view, that the power to enact laws should belong to the Diet alone, which is elected by the people and truly represents the will of the people. If organs other than the Diet. particularly the executives who are supposed to be in charge of administraonly, should obtain legislative powers, then the people's freedom and welfare would be at the morey of the executives. Such is one of the most striking characteristics of dictatorship. We must not forget that the bemining of Hitler's dictatorship was when he deprived the Reichstag of legislative power and placed it in the hands of his Nazi government.

Side by side with legislative power, the Diet has the important function to designate the Prime Minister (Art. 67). The Prime Minister, designated by a resolution of the Diet, appoints the Ministers of State and forms a cabinet. And the cabi at proceeds to exercise executive power, (Art 65).

The fact that the Diet chooses the most responsible person of the cabinet has great significance in determining the pattern of democratic government of Japan. For the cabinet cannot be established, or even survive, unless it has the support of a majority in the Diet. Under the Meiji Constitution, the Emperor exercised executive powers with the assistance of the State Ministers. Accordingly, it was considered that the State Ministers were responsible, not to the people, but to the Emperor. In contrast, under the New Constitution, all public officials are regarded as the "public servants" of the people. Therefore, the cabinet, which does the most important work with regard to administration, is responsible to the Diet, which directly represents the people (Article 68). The Prime Minister, "designated" by the Diet, is "appointed" by the Emperor, but, as has already been explained, this appointment is merely a formal act of the Emperor as a symbol of the nation, (Article 6).

Under the New Constitution, not only the Prime Minister is designated by the Diet, but, when the Prime Minister appoints the Ministers of State, a majority of their number must be chosen from among the members of the Diet (Article 68). If the House of Representatives passes a non-confidence resolution, the cabinet must resign on masse, unless the House of Representative is dissolved within ten days, (Article 69). Moreover, when concluding

treaties or compiling budgets, the cabinet must have the approval of the Diet, (Article 73, 86). Thus the Constitution is so framed that the cabinet cannot long carry out its policies unless it has the support of the majority opinion of the Diet. In this sense, the cabinet is subordinate to the Diet. In other words, the legislative branch has a predominant position over the executive branch. If this relationship should ever be reversed and the executive branch becomes more powerful that the legislative, the governmental system tends to become a dictatorship.

As may be seen from the above, under the New Constitution the governmental private is the Diet. In this sense, the Diet is truly the "highest organ of state power" rticle 41). It is perhaps in England that such a parliamentary democratic government is most advanced. If you review the history of the English political institutions and the contemporary systems as explained in Chapters IV and III, the present structure of the Japanese government will be better understood.

The Determination of Constitutionality

The other branch of the government, besides the legislative and executive, is the judiciary. It is needless to say that the judicial power is vested in courts. One of the significant characteristics of a democratic government is that judicial functions are completely independent of the executive. In the despotic age, kings and feudal lords interfered in trials. Thus fair trials did not take place. Instead, those in authority tended to infringe want only on the freedoms and rights of the beople. The same can be said with regard to any dictatorship. For this reason, democracy attaches particular importance to the "independence of the judicial power". The New Japanese Constitution gives a lofty expression of this spirit, declaring that a judge shall be independent in the exercise of his conscience and shall be bound only by the Constitution and the laws. (Article 76).

Courts are divided into the Supreme Court, established by the Constitution, and inferior courts, established by law. The Supreme Court is the highest court which exercises judicial power in accordance with the Constitution and laws. (Article 81). The Supreme Court has the extremely important power of determining the constitutionality of any law, order, regulation, or official act. That is to say, even though the Diet may enact a law, the Supreme Court can declare the law null and void if a majority of its members believe that the law c attravenes the Constitution. This is called the Supreme Court's "power to determine the unconstitutionality of legislation."

In the past, this system has generally been practiced in the United States, In the United States, however, this system is a convention, and is not explicitly stated in the Constitution. The Japanese Constitution is the first to stipulate it in the constitutional text.

In a representative democracy, the Diet, representing the people, makes laws; and these laws become the compass for the executive and the ruling principle of the judiciary. But even the Diet is a gathering of human beings, so the laws they enact are not always right. Laws must accord with the purport of the Constitution, but, owing to circumstances, a law might be enacted which will violate the provisions of the Constitution. The New Constitution, taking such a possibility into consideration, has given the Supreme Court the power to examine the constitutionality of laws and orders. This is a system designed to protect and ensure the spirit of the Constitution. In so far as this aspect of government is concerned, it may be said that the judicial power is above the legislative power.

The New Constitution places heavy responsibilities upon the Supreme Court. But, can we be certain that the judgement of the Supreme Court is always right? The Supreme Court is also a gathering of human beings. So one cannot be certain that its judges are always fit for their posts or that their decisions are always infallible. Election by the people may be considered as a means of selecting proper judges. In the United States, there are cases when judges are elected by the people, but the Japanese Constitution did not adopt this system. The chief judge of the Supreme Court is designated by the cabinet and is appointed by the Emperor. All other judges of the Supreme Court are appointed by the cabinet (Articles 6, 79).

It is thus desirable to determine whether judges thus chosen are fit for their posts. Who examines them? It is none other than the people. Therefore, the New Constitution stipulates that the appointment of the judges of the Supreme Court shall be reviewed by the people every ten years. If the majority of the voters indicate that they favor the dismissal of a judge, he shall be dismissed (Article 79). Here is another clear illustration of the fact that the Japanese people are sovereign.

The Fundamental Rights of the People

We have perhaps clarified the outline of a "government of the people" and a "government by the people". Democracy, however, has another important principle. This is what Lincoln termed as a "government for the people". According to the preamble of the New Constitution, the benefits of government are "enjoyed by the people". How is the New Constitution to achieve this great objective? We must further clarify this point.

Before this subject is discussed, we must first of all make it clear that a "government for the people" is not a separate thing from a "government of the people" and a "government by the people". Most nations, at least outwardly, claim that their government is a government for the people, which is a principle not necessarily limited to a democratic form of government. However talking about a government for the people is quite another thing. When the reins of government are held by a single person or by a few persons, even though it may be said that the government is for the "general welfare" does this make a government for the people a factir History has proved that it

does not. When a dictator or a privileged few monopolize powers, there can never be government genuinely dedicated to the welfare of the whole people. A democratic government must be "a government for the people". Therefore, it must, at the same time, be "a government of the people" and "a government by the people". In other words, the third principle becomes a reality only if it is backed by the other two principles. This is a crucial fact about a genuine democracy.

True, democracy aims to guarantee the welfare of the people. But the happiness and best interests of the people are not usually won except through the efforts of the people themselves. They must be built up through the individual endeavors of the people. There is a proverb, "God helps those who help themselves". Democracy emphasizes the spirit of independence and the attitude of self-help. Every individual has the right to stand on his own feet and pursue his own kind of happiness. Democracy guarantees these rights and freedoms. It is true, of course, that democracy aims at a government which is devoted to the welfare of the people. This means that such fundamental rights of the people are equally protected, and individual human freedoms are guaranteed in so far as they do not encro sh upon the freedoms of others.

Then what are the freedoms that are indispensable if democracy is to be realized? President Roosevelt, in his message to the congress in the beginning of 1941, enunciated the four fundamental freedoms, namely, freedom of speech, freedom of faith, freedom from fear, and freedom from want. Of these freedoms, the latter two were further solemnly declared in the Atlantic charter, released in August of the same year. Let us see if our Constitution also guarantees these freedoms.

In regard to freedom of speech, article 19 of the New Constitution stipulates that "Freedom of thought and conscience shall be held inviolable". Long before the outbreak of the Pacific War, not only the thought, but the conscience, of the Japanese pecole were forcefully controlled. Unless the people are free to believe what they consider right and express their convictions freely, they cannot correct the course of covernment, however much it may go astray. In past Japan, speech was severely supressed and the people were forced into an uncritical acceptance of covernment controlled propaganda. Therefore a fundamental prerequisite for a democracy in Japan must be freedom of thought and conscience, and a consequent freedom of speech to express them.

Concerning freedom of religion, article 20 of the 1ew Constitut: .provides: "Freedom of religion is guaranteed to all. No religious organizations shall receive any priviloges from the State, nor exercise any political authority. No person shall be compolled to take part in any religious act, celebration, rite, or practice. The State and its organs shall refrain from religious education or any other religious activity". Thus the Constitution clarifies the spirit of freedom of religion. Religion wields a deep influence in moving man's spirit and influencing his conduct. If religion is utilized.

by those in power as during the war Japanese politicians implanted in the minds of the people the ultra-nationalistic idea of a Divine Land a terrible catastrophe may once again befall the nation. Religion must be left to the free choice of the individual, and must be believed out of pure religious faith. If, for political reasons, the government gives a particular protection to a certain religion, forces it on the people, and also suppress other religious, social life, based on the dignity of the individual, will be threatened, and, to that extent, the freedom of the human spirit will be destroyed.

What, then, is meant by the third freedom - the freedom from fear? To understand this, we have only to recell the fears to which the Japanese people were exposed in the days of dictatorship and militarism.

In the days when a feudalist rule prevailed in this country, a "sumurai" (warrior) could slay a tradesman on a mere triviality with impunity ("Kirisutegomen"). There was no way for a commoner to appeal or lodge a protest against such conduct. No matter how inhumanly the people might be tried and tortured, they had no choice but to endure in silence. But this is by no means a mere tale of by one days. Even now the nations of the world are not free from the fear of war. It sometimes happens that those who criticize covernment are arrested and innocent people are punished. Freedom from fear aims at a beaceful world free from the fear of war, and a government under which no such outrageous violations of human rights can occur. Article 9 of the New Constitution proclaims the renunciation of war. Art. 17 provides that every porson has the right to sue for redress whenever he thinks he has suffered damage through an illegal act of any public official. Article 18 provides that no person shall be held in bondage of any kind. Article 36 declares that the infliction of torture and cruel punishments by any public official are absolutely forbidden. There are many other provisions in the New Constitution which guarantee individual freedoms. These are all intended to ensure "freegom from fear".

The fourth freedom is "freedom from wanti. In economic democracy, a moderate free competition is valued as a condition of economic development.

But the wide gap between the rich and the poor which developed as a result of free competition, must be narrowed as much as possible. It is an important objective of democracy to see that those who suffer from extreme economic adversities are enabled to maintain a life worthy of dignified human beings. It is for this purpose that article 25 of the New Constitution provides that "All people shall have the right to maintain the minimum standards of wholesome and cultured living". This shows that the government should always endeavor to promote the general welfare. Further, in order to protect the people from the fear of want, all must work, and employment must be provided to all those capable of working. So article 27 provides that "All people have the right and the obligation to work", and article 28 quarantees the right of workers to organize, to bargain, and to act collectively in order to protect their interests. By these stipulations, the New

Constitution seeks a peaceful realization of economic democracy and strives to lay a foundation for the coal of a freedom from want.

These four freedoms form the basis for realizing a "government for the people". The New Constitution guarantees these and other various resultant freedoms, and makes it clear that these fundamental human rights will be guaranteed to the people as eternal and inviolate rights (Anticle 11). However, such fundamental freedoms and rights cannot be enjoyed by people who stand idly by. They can be preserved only by the constant efforts of the people. The people have freedoms, but they should refrain from any abuse of these freedoms. The people have rights, but they shall always be responsible for utilizing their rights for the public welfare (Article 12). Thus the achievement of a "government for the people", step by step by the will of the people themselves and through their indefatigable and responsible efforts, is the lofty ideal of democracy which pervades the New Constitution.