

bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

**Article 73.** The Cabinet, in addition to other general administrative functions, shall perform the following functions:

Administer the law faithfully; conduct affairs of state.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

Administer the civil service, in accordance with standards established by law.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

**Article 74.** All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

**Article 75.** The Ministers of 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 that action is not impaired hereby.

#### CHAPTER VI. JUDICIARY

**Article 76.** The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

**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.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

**Article 78.** Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

**Article 79.** The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

**Article 80.** The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

**Article 81.** The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

**Article 82.** Trials shall be conducted and judgment declared publicly.

Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights

of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

#### CHAPTER VII. FINANCE

**Article 83.** The power to administer national finances shall be exercised as the Diet shall determine.

**Article 84.** No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

**Article 85.** No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

**Article 86.** The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

**Article 87.** In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

**Article 88.** All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

**Article 89.** No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

**Article 90.** Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

**Article 91.** At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

## CHAPTER VIII. LOCAL SELF-GOVERNMENT

**Article 92.** Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

**Article 93.** The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

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.

**Article 94.** Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

**Article 95.** A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

## CHAPTER IX. AMENDMENTS

**Article 96.** Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

## CHAPTER X. SUPREME LAW

**Article 97.** 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.** 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. The treaties concluded by Japan and established laws of nations shall be faithfully observed.

**Article 99.** The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

#### CHAPTER XI. SUPPLEMENTARY PROVISIONS

**Article 100.** This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

**Article 101.** If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.

**Article 102.** The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

**Article 103.** The Ministers of State, members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course.

C: 22

Serial No. 66

December 18, 1946

ISSUANCE OF THE POLICY DECISION ON REVIEW  
OF THE JAPANESE CONSTITUTION

The following directive, prepared by the State Department to implement the policy adopted by the Far Eastern Commission on 6 December 1946 under the provisions of paragraph II, A, 1, of its terms of reference, has been received from the State, War and Navy Departments for transmission to you for your guidance in accordance with paragraph III, 1, of those terms of reference:

"1. The terms of the policy decision contained in FEC-034/41 (provisions for the Review of a New Japanese Constitution, approved on 17 October 1946 and forwarded to the Supreme Commander for the Allied Powers on 28 October),\* should be formally communicated to the Government of Japan.

"2. The time and manner of public announcement of this policy decision are still being considered by the Far Eastern Commission."

\*Serial No. 62 (FEC-031/43)

b/2

COPY

IMPERIAL JAPANESE GOVERNMENT

December 27, 1946.

My dear General:

I desire to address you specially with regard to the Criminal Code now in the process of revision. Mr. Kimura, Minister for Justice, was informed orally on December 20 by Brig. Gen. Whitney, Chief of Government Section, to the effect that you had instructed the deletion of Articles 73 and 75 relating to high treason as well as Articles 74 and 76 relating to lese-majesty. As to Articles 73 and 75, however, there are several reasons which necessitate their retention.

In the first place, the fact that even under the new Constitution the Emperor's position is that of "Symbol of the State and of the unity of the people" accords with the traditional faith which has been held firmly by the Japanese nation ever since the foundation of Japan. It is truly a high and lofty position. Moreover, it is undeniable that the Emperor is ethically the center of national veneration. That an act of violence against the person of the Emperor, occupying such a position, should be considered as of a character subversive of the State, and deserving of severe moral censure and a severer punishment than any act of violence against the person of an ordinary individual is quite natural from the standpoint of Japanese national ethics. It is similar to the case of acts of violence against the person of one's parent or ancestor, which is considered as deserving of a severer punishment than an act of violence against the person of an ordinary individual.

Secondly the same is true of the members of the Imperial Family. As long as acts of violence against the person of the Emperor are to be punished with special consideration as above, it follows that a member of the Imperial Family, occupying an important place in respect of succession to the Throne, should be placed in a position different from ordinary individuals.

Thirdly the fact that all the countries under monarchical system such as England have special provisions relating to acts of violence against the person of the Sovereign demonstrates beyond dispute the truth of the above statement.

Accordingly, I believe that the retention of Articles 73 and 75 of the Criminal Code will fall in line with the sentiments and moral faith of the Japanese nation.

I earnestly hope that the matter will receive your reconsideration in the light of what I have stated above.

Yours sincerely,  
(sgd) SHIGERU YOSHIDA.

General of the Army Douglas MacArthur,  
General Headquarters,  
Tokyo.

COPY

Tokyo, Japan.

25 February 1947.

Dear Mr. Prime Minister:

I have carefully considered your letter of December 27th in which you request reconsideration of the instruction conveyed by General Whitney to the Minister of Justice on December 20th that Articles 73 and 75, as well as Articles 74 and 76, of the Penal Code be abrogated. In your letter you submit three reasons for the retention of these articles: first, the position of the Emperor under the new Constitution; second, the position of the Imperial family in relation to ordinary individuals; and third, the special provisions which you assert exist in a monarchy such as England for the protection of the King.

As to your first point, it would appear that to consider an act of violence against the person of the Emperor as "of a character subversive of the State" would be undesirable and inconsistent with the spirit of the new Constitution. As the symbol of the State and of the unity of the people, the Emperor is entitled to no more and no less legal protection than that accorded to all other citizens of Japan who, in the aggregate, constitute the State itself. To hold otherwise would violate the fundamental concept, clearly and unequivocally expressed in the new Constitution, that all men are equal before the law, with the necessary implication therefrom that no individual, whatever his position, shall be vouchsafed judicial safeguards denied the ordinary citizen, the ultimate repository of all State authority.

The respect and affection which the people of Japan have for the Emperor form a sufficient bulwark which need not be bolstered by special provisions in the criminal law implying suzerainty. The former concept of a peculiar Japanese national ethic distinctly differing from universally recognized ethical principles was repudiated by the Emperor himself in his Rescript of January 1st, 1946, eschewing the myths and legends from which this concept was created.

614



As for your second point, I feel that there is even less basis for rationalizing a special position for other members of the Imperial family. The elevation of these members to a higher status under the law could only be construed as a discrimination based upon family origin, the essence of which is repugnant to the emergence of a free and democratic society.

As for your third point, there is no statutory provision in British law comparable to Article 73 and 75 of the Japanese Penal Code. In fact, under the statute of 5 and 6 Victoria, Chapter 61, assault upon the British Monarch is punishable as a misdemeanor. Although, the ancient Statute of Treasons, ordained prior to representative government during the reign of Edward III, took a more serious view of violence against the King's person and, because a mediaeval sovereign then embodied in his person all the powers of state, included such acts of violence within the crime of treason. This six hundred year old statute, last revised a century ago, is a remnant of and derived from the age of Germanic feudalism and there is no record of its modern application, nor is there the slightest analogy to the situation now existing in Japan.

Furthermore, the experience of the United States, where there has never existed any such special safeguards, demonstrates the adequacy of general legislation to punish crimes against even the head of the State. In all instances in American history where violence has been attempted or perpetrated against the person of the President of the United States, even though death has resulted, prosecution of offenders has proceeded under no special statute but in accordance with the general law of the State having jurisdiction.

Now that sovereignty is vested in the Japanese people and, as in the United States, there is no other sovereign, retention of Articles 73 and 75 of the Penal Code relating to "acts of violence against the person of the Sovereign" would be an anachronism. It would at once provoke scepticism both among the peoples of the Allied world and the people of Japan as to the good faith embodied in the new concept underlying the constitutional provision for sovereignty.

In view of the fact that the Japanese Penal Code provides the death penalty for murder and severe penalties for acts of violence against persons, the dignity of human life and the inviolability of the character and person of the individual are fully recognized.

It follows that all articles of the Penal Code relating to crimes against the Imperial House are surplusage and should be eliminated by appropriate Ordinance.

Sincerely yours,

DOUGLAS MacARTHUR.

The Prime Minister of Japan.  
Tokyo.

C  
C: 24

C  
O  
P  
Y

Tokyo, Japan.  
3 January, 1947.

Dear Mr. Prime Minister:

In connection with their consideration of political development in Japan during the course of the past year, the Allied Powers have decided, in order to insure to the Japanese people full and continuing freedom of opportunity to re-examine, review, and if deemed necessary amend the new constitution in the light of experience gained from its actual operation, that between the first and second years of its effectivity it should again be subjected to their formal review and that of the Japanese Diet. If they deem it necessary at that time, they may additionally require a referendum or some other appropriate procedure for ascertaining directly Japanese opinion with respect to it. In other words, as the bulwark of future Japanese freedom, the Allied Powers feel that there should be no future doubt that the constitution expresses both the free and considered will of the Japanese people.

These continuing rights of review are of course inherent, but I am nevertheless acquainting you with the position thus taken by the Allied Powers in order that you may be fully informed in the premises.

With cordial wishes for the new year,

Most sincerely,

DOUGLAS MACARTHUR

Mr. Shigeru Yoshida,  
Prime Minister of Japan,  
Tokyo.

C  
O  
P  
C: 25 Y

Tokyo, Japan.  
May 2, 1947.

Dear Mr. Prime Minister:

With the effectuation of the new Japanese Constitution, there will be established in Japan a government, erected on democratic principles by a free expression of the popular will, composed of coordinate organs of state power fully responsible to the people in whom the sovereignty now rests, and dedicated to the realization and safeguard of the sanctity of human freedom and the furtherance among men of lasting peace.

To mark this historic ascendancy of democratic freedom which events have made possible, I believe it peculiarly appropriate that from henceforth the Japanese national flag be restored to the people of Japan for unrestricted display within and over the premises which house the National Diet, the Supreme Court, and the Prime Minister, as representative of the three main branches of constitutional government, and within and over the residence of the Emperor, who assumes his constitutional role as symbol of the State and of the unity of the people.

Let this flag fly to signify the advent in Japanese life of a new and enduring era of peace based upon personal liberty, individual dignity, tolerance and justice.

Very sincerely,

DOUGLAS Mac ARTHUR.

The Prime Minister of Japan,  
Tokyo.

May 3, 1947

My dear General:

On behalf of the Japanese nation, I wish to express my profound gratitude and appreciation to you for restoring the national flag to the people of Japan for unrestricted display within and over the premises of the National Diet, the Supreme Court and the Prime Minister's residence as well as the Imperial Palace.

I assure you that the Japanese people shall respond to the trust and confidence shown in them by this significant step and shall devote their utmost endeavors to attain the high ideals embodied in their new Constitution.

The effectuation of the new Constitution tomorrow does indeed signify the start of a new and enduring era of peace based upon personal liberty, individual dignity, tolerance and justice. The resotation of the national flag to the Japanese nation at this historic moment is most fitting and shall spur them on to new and higher efforts to become a truly democratic and peaceful nation.

Yours sincerely,

(sgd) SHIGERU YOSHIDA

General of the Army Douglas MacArthur,  
General Headquarters,  
Tokyo.