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to give to them personally any changes in policy or new plans. Moreover, the mayor and assistant mayor, particularly if he is not the immediate superior to the chiefs, should on occasions make inspections of the branch offices or wards. Such visits are morale building factors to the subordinates concerned if nothing more. Once the city's branch offices are created that fact does not prevent, and it should not prevent, the mayor or assemblymen from re-examining and re-evaluating the need for them. The city should not follow the example nor the prefectural government should not follow the example set by the national bureaucrats during the past two years in spider-webbing Japan with costly duplicating, overlapping branch offices stuffed and overloaded with personnel.

Whenever a supposedly functional service or operating office starts to decay or to become so mechanically routine that the work and the administrative procedures require little thought to exercise in their one, two and three order, and the administrators are restricted and cut off from exercising discretion, the taxpayers should see that the mayor or the assemblymen take specific action to save municipal expenses by (1) replacing the professional officials with clerks, or (2) eliminating personnel, or (3) abolishing the office altogether and having the services performed through the post office. Branch offices must serve a real governmental service to justify continued existence. Bureaucratic empire building is dangerous to good government.

Use of branch or ward offices is not usual in Australia. With one exception, Brisbane, communities which are too unwieldy for centralized administration are divided into separate municipalities. In such cases, however, metropolitan boards made up of representatives from all municipalities concerned may be used to operate public utilities for the benefit of all. Thus, Melbourne, with a population of 1,115,200, has a Board of Works to provide water supply and sewerage, a Tramways Board to operate bus and streetcar transportation for the group of cities, towns and boroughs of which it is comprised. In Australia this is then considered a better means of obtaining policy control by electors in local affairs than through the branch office system. Much good exists in the application of this principle of government.

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Fundamental Relationships of the Administration

1. Relationship with the Assembly. City office personnel are called upon to perform clerical work for the Assembly Affairs Office, an organization similar in purpose to the Diet Secretariat. This should continue as long as municipal assembly sessions are brief and the volume of clerical work required is small. As the expansion of local government services takes place, the use of personnel on a full time basis by the assembly will be required. The city assembly should employ its own personnel to provide itself with a staff whose interests and loyalty will lie primarily with the assembly and, therefore, not leave the normal administrative offices with extra burdens.

It is the rule in democratic countries that officials in the executive branches of the government when called, appear before the assembly committees to talk on bills and measures relating to the public which they administer as the competent municipal officials. In addition, they can be sent for to produce books and documents or to pass upon the technical correctness and advisability of projected legislation. In general, they can be asked to answer any non-confidential question relating to municipal administration. When the mayor or assistant mayor is unavailable, it is the duty of the chief officials, or those directly responsible for the compilation of the budget, to give full explanations of the items contained therein to the assembly. They must avoid any attempt to conceal expenditures or executive maneuvers which might later become the basis for criticism of the mayor and other subordinates. For the assembly to fulfill its obligations wisely and efficiently, it must gain a true picture of every phase of municipal administration. This can be accomplished best by close cooperation between assembly committees, set up to specialize in certain functions, and the corresponding or appropriate executive department. As a warning, it should be recalled that Article 100 of the Chihojichiho provides severe punishment for false statements made by persons, including government officials, before assembly committees.

In order to promote greater harmony and understanding between the administration and the municipal assembly, it is imperative that the heads of the executive departments, after clearing with the Office of Mayor, confer with the assembly leaders to the greatest practicable extent concerning the functions and problems under their jurisdiction. Failure to keep the assembly

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fully informed frequently leads to misunderstanding and resentment, a condition which is most natural. It can result quickly in personal embarrassment to the mayor as well as bring forth charges of arrogance and bureaucratic callousness. Many times this severe censure is well deserved.

2. Relationship to the Independent Agencies. The administration is a service body. Unless the work of the committee, commission or board is sufficient to justify the full time employment of a secretariat or clerical staff, the personnel from the appropriate bureau, department or section in the administration, or those persons assigned through the Office of Mayor, will be the part time assistants and clerks. This work is important. The records and files should be kept by the independent agency even though worked upon by personnel not strictly its own. Hence, during the period of elections, audits of city accounts or similar special work, the administration must perform additional duties. Plans can be made ahead of time to allot this work.

Insofar as some administrative sections are responsible for the final stages of municipal budget drafting, the Chief, General Affairs Section, or Finance Section and assistants must hold frequent conferences with the Public Safety Commission, Election Administration Committee and the Board of Education. It is not the function of the administration to do all the estimating and calculating for the budget of each of these agencies. Each of the three authorities is duty bound to produce its finished budget which, when coordinated with others, becomes the city's general or special budget.

3. Relationship with the Prefectural Government. Most official relationships between the city government and the prefectural government are carried on between the mayor and the governor and this is a correct procedure. Some relations, as well as contacts and conferences between the city administration and prefectural administration, are not only necessary but also most desirable. City officials can go either to the central prefectural offices or to the prefectural branch offices. The latter offices at present are too restricted as to competency to justify much time on the part of the top city officials. Moreover, as long as the prefectural branch offices are of this nature, they should be curtailed and their number kept few.

The relationships existing at present can doubtless be strengthened to the benefit of both groups. Examples of functions in which the corresponding

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working level relationships can always be improved are in finance and public works projects. In today's hard system of taxation, a close relationship must exist between the prefectural authorities and the municipal governments which have to levy surtaxes upon the prefectural taxes; unnecessary duplication of effort can be avoided. The public works projects which require joint participation by the prefectural and municipal governments necessitate close coordination for maximum effectiveness. From such working level collaboration, many if not most, otherwise troublesome issues can be settled satisfactorily before they reach the mayor or the governor for final arrangements.

4. Relationship with the National Government. Most mayors and city officials in Japan prior to the enactment of the Chihojichiho had very little dealing with the central government directly. Under the old Shisei and the many related ordinances, the prefectural governments were the strong regulating, regimenting arms of the Naimushō and national government. They performed most of the functions transferred, suddenly and unwarrantedly by the national ministries bent upon retaining their grasping authority, to an overly large number of newly established branch offices. The calculating bureaucracy in this vicious expansion attempted a wholesale usurpation of local government powers and responsibilities which they can perform most reasonably. The national bureaucracy in this case was practicing again in its customary happy fashion the feudalistic principle of power, Kanson Mimpi.

Under the old Shisei and the Chihokankansei, instructions received from the Naimushō and other ministries were handed down by the governors to the mayors. Today, although some categories of commodities and foodstuffs continue to be allocated by the competent ministries to the prefectural governments, and then to the cities, other categories are now allocated by the local office of the national branches. As long as these offices exist, the officers of the city government must exert their utmost for prompt execution and compliance of laws. The national bureaucracy invented the idea and perpetrated the costly duplicating offices and system upon the alleged grounds that municipal authorities are incapable of administering national laws as thoroughly and efficiently as they would with their own personnel in their own branch offices. Most all city administrations in Japan can demonstrate the folly of this flimsy premise! Nevertheless, in order to forestall further

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encroaching possibilities and to protect their own local autonomy, it behooves the city administration to give close attention to faithful, efficient execution of all national affairs coming to the city's jurisdiction.

Some working level relationships between the city administrators and the national bureaucracy are, as with the prefectural governments, needed and desirable. Many a national bureaucrat can get good advice from a municipal official if he only will do so instead of thinking that he has the answer before he knows the problem. The stupidity of arbitrary quotas and many other distasteful actions shunted to the local governments and impossible of sensible execution could be avoided. The ministry could be saved possible embarrassment. The mayor and the chairman of the city assembly, beyond their own necessary official trips, should see that those of the other city officials are likewise officially made and that the number taken is not to become symptomatic of a chronic disease! Particular attention should be given to the factor of rotation of personnel making the official trips, unless continuity of operation on a project is deemed vital. The total number of all trips to Tōkyō, directly or indirectly relating to official business, should be few. City officials should be deciding issues locally on their own judgment.

The various national laws, examples of which are given in Paper No. 2 of this series, assign either the mayor or the city government with definite responsibilities. Study of the material provisions show the duties and services which require continuous coordination between the city administration and the central government either in Tōkyō or its regional agencies.

Saving the Taxpayers' Money

The cry to save city expenses is chronic. Seemingly individuals and all parties take up the slogan, "Save the taxpayers' money!" The voters have to hear this magic phrase over and over again. Some people mean what they say when they use the slogan. Others can mean to accomplish savings when they declare and promise so, but somehow on assuming the reins of office they manage to pile up still larger budgets!

The savings of tax monies can best be accomplished by carefully planned courses of action. They ought to be the most careful courses of all. There should be thorough studies and analyses with exacting evaluations of (1) the

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city's functions or services, (2) all the property, equipment and mechanical devices of either fixed or moveable types, from Diesel, gasoline or steam power generating equipment down to typewriters and dictaphones, and (3) the procedures and practices within the whole city government. Saving money is a science. It is not a hit or miss operation. A farmer makes his mikan no ki, nashi no ki or mono no ki bear their delicious fruits by his careful pruning of their branches year after year. The uekiya and the niwashi, who produce the beautiful bonsai, study and evaluate each of their actions most carefully before they touch the roots or apply the knife. Even when the farmer wants to cut the tree down completely and to do away with it, he does not stand off a distance and throw the axe at it! The uekiya and the farmer perform their work with a purpose, which produces excellent results.

Too many people with savings of expenses in mind approach the governmental budget with the idea of cutting drastically here and whacking wildly there. Therefore, they force the principle of "pinch penny finance" into operation in government. Where this odd principle of finance belongs, if it belongs anywhere, is in our childhood when we save our sen in momentary majesty in order to make the grave decision of whether to spend all our money on ice candy or to squeeze a little out for another ticket to have one more look at the monkey! When we make our recommendations for saving expenses in government, we must use only the most careful methods, the best planned and calculated actions as does the niwashi and farmer in their work.

The following illustrations show how study and investigation can produce savings in money and manpower:

1. A city police department maintained an office for emergency services for all types of accidents: automobiles, trains, gas leaks, asphyxia, fires, and for assistance to police authorities in difficulties. The personnel strength was approximately 500 policemen and the office had 20 emergency trucks. The fire department maintained a staff of 100 firemen and 4 rescue trucks to do almost precisely the same duties. By consolidating the function in the fire department, (1) no additional men had to be added to the fire department, (2) more than 350 policemen were freed for regular police duty, (3) three-fourths of the trucks were transferred from the police department, and (4) over one million dollars a year in salary and police service time were saved.

2. A city had three very large departments, which over a period of years had grown up with no particular planning. Each department maintained separate medical staffs and laboratories. The total personnel of all three departments was over 35,000 men and women. On examination, many bad practices and conditions found among the three were: (1) doctors' and nurses' salaries varied materially from one department service to the other, and some subordinate medical doctors actually received more money than their supervisors, (2) the

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work load of some of the doctors and nurses was greatly out of proportion to others, not only among the three departments, but also within two of them, (3) the quality of services rendered and the treatment time to the individual allowed were not the same because of physical equipment and clinic policy, and (4) sick leave policy and compensation payments to employees were sharply different. A consolidated system remedied these ills, produced better morale in the whole city administration and made savings of over one-half million dollars.

3. In a city of relatively small size, each of five departments maintained a small fleet of passenger cars and trucks and each attempted to operate a repair shop of its own. This was a costly operation for all departments and bad service to the city employees resulted frequently. Infrequent breakdowns, different types of repairs necessary, part-time employment of mechanics and relatively poor equipment were the causes. Although the immediate outlay for machinery and repairing equipment was costly, the sum spent was the proper investment for the city, for it: (1) centralized repair work, (2) provided regular repair services, and (3) gave regular and better maintenance for all vehicles.

4. In many large cities in the United States, hand labor when used regularly and in considerable quantity becomes very expensive in comparison to machine operation. A city in this category, after much experimentation, invested in a mechanical snow and broom sweepers because one operator of a mechanical broom sweeper could replace eight hand sweepers. The machine could sweep eight miles of streets while the hand sweeper did less than a mile. In localities in which hand labor is very cheap as compared to mechanical equipment, such savings could not be gained.

5. Some cities have found that the equipment which they possess is not only out of date but also that it is costly to operate in man hours and money, in power bills and building space to house it. One 30-year-old printing machine was used by two city departments jointly. The machine operated slowly and awkwardly. It necessitated 32 men, 9 of whom were uniformed firemen. Only rough calculations convinced the mayor that for the printing work of the two departments, he could, case for case, save the city substantial sums by having the printing done commercially outside and returning the firemen to their proper duties rather than make printers out of them. The city had hired the firemen to be firemen not printers!

6. Many cities frequently "clean house" regularly of old or bad office equipment. The mayors and department chiefs make improvements by securing (1) good typewriters, (2) good mimeographing equipment, (3) dictaphones, (4) steel record cases, (5) microfilming equipment to replace tons of city papers and many <u>tsubo</u> of space, and (6) desks, desk equipment and practical office furniture. Regularized savings can accrue by such regular methods.

7. In all cities savings in personnel are familiar. There is little question but that many offices are overstaffed or that some offices should, along with all the personnel, be abolished. Surveys of positions, jobs, services and whole bureaus, departments or sections yield the proper answers.

Many mayors in Japan have discussed their need for more practical, less costly and more useful equipment. Similar action in the types of cases shown above can be taken in most any city in Japan.

<u>Summary Conclusion</u>

In the New Japan the cities will unquestionably perform more services and execute more functions. The role of the administration will be more demanding of the civil servants. Specialized training will be preparatory for this.

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The administration of the cities with new incentives for all of its work must render a yen's worth of effort for each yen spent in the municipal payroll.

Moreover, in order to insure impartial execution of all laws and to exclude partisan influences, the individual civil servant must keep his political activities to himself. He or she certainly can and each certainly should vote. He and she can attend political meetings and be a member of a political party, but neither can campaign for anyone, even indirectly. Nor can the public servant accept outside employment whether for private businesses, political organizations or for employee associations. His or her sole employment is that in the public service.

The municipal officials can help themselves by themselves. In England the National Association of Local Government Officials has 70,000 members. It is an organization designed to improve the professional status of the local government employees. It has developed its Preliminary Test for which public examinations are held twice a year. It has convinced many local governments to require the Preliminary Test as an entrance qualification of incoming employees. The Association gives examinations for advanced certificates in public administration. It conducts correspondence courses for higher professional examinations and in similar manner, by agreement with universities, has the latter award the Diploma of Public Administration to qualifying candidates. The Association also has arrangements which foster improved and better civil service. Organized on an entirely different basis is the Civil Service Assembly of the United States and Canada, famous for the type of professional services rendered because of its wealth of experiences with public administration. Both national and local governments avail themselves of the Assembly's services. For most municipalities such work is difficult. Nevertheless, the work is good, and in similar fashion it can be done well in Japan today.

The members of the municipal administrations of Japan can achieve great service in loyalty to good government and its orderly processes. The city employees do not need to be in a position of disdain in which so many of the national smug bureaucrats have held them so long. The national bureaucrats might well change: Yo wa ainochi.

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For the first time in Japanese history the Chihojichiho provides the legal framework for real popular participation in government. The municipal administrations can give vitality to the framework. There is no question here, Seishin itto nanigoto ka narazaran. For generations the Japanese people have desired a system of bureaucracy which insured and perpetuated the principle that as long as the government needed services, opportunities open and equal to all would exist for those of demonstrated abilities. In attaining the legal structure for such a merit system today, the Japanese people in certain civic mindedness must be vigilant to support it and to keep it functioning at all levels of government, whether village, town, city, prefectural or national.

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FOR FILE

HEADQUARTERS EIGHTH UNITED STATES ARMY
Civil Affairs Section
Legal and Government Division

THE LOCAL AUTONOMY PROGRAM FOR THE CITIES OF JAPAN

Paper No. 5.

Committees, Commissions and Boards
As Independent Agencies in Local Government

The development and use of committees, commissions or boards as independent or nearly independent agencies in government, functioning for particular purposes, are relatively new in Japan. As organs of local government, they are absolutely new. Only during the immediate past years have these agencies been established in the local governments as functioning bodies responsible to the public. The fact that they have already demonstrated their values in the operation of city governments all over Japan is significant. Most definitely they can become of even greater service in all the local public entities. These new agencies will function at their best when: (1) the taxpayers and voters see that a particular function, whatever it may be, requires such a special method of execution as to have it separated from the regular city administrative offices and made directly responsible to them; (2) the members of the particular committee, commission or board understand that they are performing their legal functions in the public interest; (3) the mayor and staff, members of the assembly and the entire city administration comprehend thoroughly that the members of the agency have the responsibility in law to carry out the specified function. This fact definitely means that the mayors and other governmental officials do not have that responsibility and, therefore, that the agency's business is not their affair; and (4) the courts as judicial architects of government through careful decisions draw the agency in its proper perspective. Indeed, the judges in this entire matter of dealing with the agencies directly responsible to the public have a grave responsibility which they must discharge in certain precision.

Under the old and now abolished Shisei, or Law Concerning the Organization of Cities, the municipalities as a group were styled the autonomous system. However, most all Japanese realized that real autonomy did not

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exist. The bureaucrats of Naimushō, or Ministry of Home Affairs, and others too, with a smug indifference knew that there were very few functions of government which the municipalities could carry out by themselves without the direct consent, supervision or interference of the governor as an official in the prefecture or Naimushō, or of other officials in Tōkyō of Naimushō itself. In the execution of the important affairs of the city, the mayor in deference to the governor always had to yield and make the best of it. Rare is the case in the entire history of the old "Local Autonomy System" that a city mayor could stand on his legal rights, face the governor or much less Naimushō, and say, "Under the Shisei, this affair is our city's affair. We do not want your supervision or interference! We here in the city can and will settle this matter ourselves."

Because of the very small sphere of municipal authority in which the mayor could act independently, he had little need to seek out the advice of people or to learn the opinions of representative groups of citizens. Indeed, with such a small amount of independence, the city's government of affairs was quite routine. Because routine in government allowed little or no variation in administration, the mayor by means of a relatively small series of sections, branches and units could execute and conduct the simple affairs. No function of city government was important enough to single out for special administration. The important functions were administered by the bureaucrats in Tōkyō. The city government had no need for other agencies as independent committees, commissions or boards. Moreover, what city services existed were few; funds to conduct these were never plentiful. The brunt for all city living was borne by the taxpayers who had so little to say. The condition in which city government and management, with but slight routine exception, were controlled so authoritatively by Naimushō or Ministry of Home Affairs, should and must be relegated to the past. The condition should not be dragged out again except as a bad example of what not to repeat. Today, municipal government has the unique opportunity to be resourceful and creative.

Reasons for Establishment

The creation and setting into operation of committees, commissions

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or boards either completely or relatively independent of the regular departments of city government to administer a particular function, have been the result of some specific causes and conditions. The history of these bodies in the United States is replete with facts and causes for their establishment on the part of the citizens as taxpayers and voters, and that of the officials as legislators and administrators.

In Japan today the legal position of all local public bodies is markedly changed and different from that of a very few years past. The legal difference today automatically has placed some functions of government on new levels for operation and in new positions for administration. The specific result of these changes means that the structure or organization of municipal government can and ought to change. Not only are there these legal differences but also many social and economic differences, not to say variations. As the financial conditions of the local governments are bettered through a reorganized tax structure and the present evils remedied, more substantive benefits from these social and economic differences can be gained by the citizens.

Specific reasons for the establishment of these independent or relatively independent bodies in local government can best be tabulated here in the following four:

First, a nation whose society is basically rural and agricultural undergoes real social and economic changes when it either gradually or quickly turns a substantial portion of its population into an industrial course. During the past 30 years this situation took place in Japan. If the turnover is forced and rapid, many new and varied demands by society upon government for more aid and services are in evidence. Many aspects of this, too, can be seen in Japan. In addition to these factors, the past war years have brought socio-economic changes of their own into Japan; these changes have also generated strong pressure on government for additional aid and services. In terms of a nation's life, what has taken place so suddenly and with what result? The volume and variety of demands and needs of the new groups and the changing society as a whole upon government are so overwhelmingly out of proportion to its or-

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ganizational and structural ability to comply that change in government's organization must be made. The old organization, the old procedures are outmoded and wholly ineffectual. To attempt to maintain the old organization or the old procedure is not only political folly but also governmental blundering. In Japan the Diet acted promptly. Sensible changes in governmental structure and procedure have been achieved. The usual bureaucratic red tape ran out. Moreover the Diet in altering governmental organization of the local government proceeded correctly by enacting laws which established substantive rather than administrative achievements.

Second, the citizens and officials may desire to take one function of government because of its great importance and separate it for special treatment from the other functions of government. Why would they do this? The answer for many cases has been a political one. The playing of bad politics anywhere in government completely distorts good administration and action which otherwise left alone would produce a just or rightful result for the public. If all functions of government are administered through the same offices, quick discernment can be most difficult as from which office the bad politics is generating. For the sake of politics, therefore, a function of government may be singled out by a law so drafted and enacted that a particular agency will be established to administer it under a given set of standards and regulations. Thus it will differ from the regular administrative offices. The erection of this type of a legal fort makes political tinkering difficult to cover up. In most cases it lets the public see precisely where the responsibility lies. In other words the function and the body to operate it are in such a governmental position that the public has little trouble in knowing and seeing that the committeeman or commissioners carry out the law as commanded. This is exactly what is needed. The good jeweler places his pearls on a piece of dark lavender or black velvet so that the customer's eyes can concentrate on the precious gem with no distraction. In similar manner the assembly through special enactment draws the public's eyes to the particular governmental affair and agency.

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Third, a particular service of government may demand segregation and a specially created agency of government to execute the duties connected therewith because of its highly technical operation as well as its great and extensive need by the public. The taxpayers and legislators in each state of the United States have felt that such great services which have to be developed with water and transportation, and especially with electricity and gas for light or power, could best be administered for the public good by a particular instrumentality. Public utility commissions are the standard special agencies for those four services in the United States in federal, state and municipal governments. It must be stated here, too, that in the United States the private citizen as an individual and the large or small corporation own and operate virtually all of the great enterprises in water, transportation, electricity and gas which serve the public; the individual and the corporation in their privately operated and owned business are regulated by the state for the public interest and benefit. The governmental regulatory body which tells the various business enterprises how to sell their products and at what prices or rates is the public utility commission or board. Many advantages accrue to the government through such special agencies; financial savings and better use of personnel have resulted.

Fourth, for some functions of government more than all others combined, the individual citizen has a direct and continuing interest. It is so immediate, so continuing and so much a part of his or her daily life that an agency created specially to handle it is the only answer for proper solution. This is because the function must be administered close to the people for it is sensitive to their needs. An independent agency is far more flexible from the point of view of simple administration or management than were it left as just another part of the regular governmental offices. The agency is established with specific powers to administer one function; it can act and make decisions quickly, far more quickly than were it forced to be dependent upon other offices,

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departments or bureaus for concurrences and ratifications for actions and decisions. For this one reason alone thousands of municipalities have singled out the functions of police and education for special treatment.

All four of these reasons have been causes for the Diet to create independent or relatively independent committees, commissions and boards from the regular administration not only for the national government but also for the local governments. The Election Administration Committee in the Chihojichiho, the Public Safety Commission in the Police Law and Local Board of Education in the Board of Education Law were created as a result of the first, second and fourth reasons.

Definition and Character

In the foregoing pages the importance to the taxpayers of the committee, commission or board as an essential agency of government has been made clear. As an agency charged to carry out a particular duty or set of duties under the law, although it is independent or relatively independent of the city's regular offices, bureaus, departments or divisions, it nevertheless must be remembered that the agency is a definite element of the city's government. Under no circumstances is the agency separated from the whole of the municipality. Some definitions should be given and some characterizations explained.

Before either the definitions or characterizations can be made meaningful, however, some important governmental facts must be understood. Under the Japanese Constitution separation of the three branches of government is made; there is the executive branch which is the cabinet, the legislative branch which is the Diet and the judicial branch which is the court system. This separation of powers in Japan is similar to that in the United States found in the Federal Constitution and the constitutions in each of the 48 states. Although the separation of powers exists in England, it is not so sharply drawn.

It is clear, too, that for nearly all affairs nearly all the time, each of the branches must as a whole be kept and exercised separately

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from the others; thus the competent official of one cannot perform more than the whole of his own; he or she does not perform either of the others. Specifically, the cabinet would not be a court pronouncing judgments or it would not be an assembly enacting legislation; the Diet would not be a court pronouncing judgments or it would not be an executive administering laws; the court would be neither the executive nor the legislature. Moreover, and of just as great importance, are the facts that (1) the legislative authority with its creative powers of enacting laws could not delegate all or even a substantial portion of its powers to an agency which it might establish, (2) the legislative authority cannot create a punitive body pronouncing final judgments and imposing sentences of punishments without appeal, or (3) the legislative authority cannot establish an independent administrative agency such as could usurp or encroach substantially upon the executive's powers. It is obvious also that because an agency cannot be created to perform any single function of the given three in any substantial manner, no agency could be created to perform all of these functions in any substantial manner. Thus, it is important to remember continuously the principle that no one person, no one political party, clique or groups or no one authority or office of government can be allowed to exercise the whole of more than one of the powers; never should the whole of two or of the three powers come under one and the same authority. Reflection must be made continuously upon this great principle.

Defined then, a committee, a commission or board is a tribunal of limited jurisdiction because the particular powers are enumerated in the law or by-law establishing it. As an official or representative body it is organized outside the regular administrative offices to perform a public trust and to execute official or representative functions. Further, it is established to have the management of a public office responsible to the public directly for the exercise of governmental and administrative functions.

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Having defined what the agency is in a general positive statement we can define what it is not in a general negative statement. By creation, the committee, commission or board cannot be a court or judicial body in Japan because by the Constitution it could not have the power that would allow it to regulate its own proceedings completely or enforce its own decision with finality. Also because of the Constitution, on the basis of whole or complete powers for each branch of government, the agency cannot be a legislative body enacting laws at will. Neither can it be the executive authority exercising final administrative action for the same reason.

In each case of establishment, the agency's powers are similar to those of the central government's powers. They approximate the central government's powers; they never are, however, the same in degree. Specifically, the agency cannot go beyond its statutory powers. The agency is responsible in court for its judgments. This means that it can sue and be sued. The agency furnishes a method, machine or vehicle of government to accomplish an object for the public. It certainly furnishes management for a service of a given area or district. Within the law creating it, the agency can set standards and general rules for the conduct of affairs of the citizen which reach a public interest. Being created for the public interest, the agency can never take the legal character of a private individual. Therefore, it must never attempt to act like a private individual. Nor should its members represent it as a private individual. Its members duly qualified and duly sitting, either by total membership or legal quorum, are a legal collective public body. Therefore, they should function as a public body.

The Legal Functions

The basic function of the committee, commission or board can be entirely different in each case. This fact is general. The laws are enacted purposefully in this manner.

For the correct terminology when giving a functional title to these special agencies, the word quasi must be used; it means similar to, not quite the same, approximating the power or character of something. Specifically, the agency is quasi-judicial, quasi-legislative, or quasi-administrative in character.

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First, an agency can be quasi-judicial. This legal fact means that it is a body which can make certain decisions on issues or facts brought before it which are binding upon the people concerned. It issues orders which must be obeyed unless an appeal from the decision is taken to a court and there altered. Thus the quasi-judicial body acts like a court yet it is not a court as it has no final judicial authority.

Second, an agency can be a quasi-legislative body. This legal fact means that it is a body empowered to pass rules and regulations which are binding upon people. But these rules and regulations must always be only those which implement the organic act which establishes the body. They can never be outside the act, that is new rules, or any series of regulations which the commissioners think that they would like to pass. Here again the quasi-legislative body acts like a legislature but it is not one as it cannot enact laws at will.

Third, an agency can be quasi-administrative. This legal fact means that the body performs executive and administrative functions. In doing so the body, like the regular departments or bureaus, is in a channel of authority. The agency can be making executive decisions for administrative action of a high or relatively high level. But even so, the legal possibility is always open to the real executive authority (1) to over-rule the administrative action or (2) to give a final signature.

Fourth, in some cases depending upon the functional authority, it would seem that the agency has all of these quasi powers although actually only one quasi power predominates.

Fifth, fully apart from the type of agency given above, is the body established by law or by-law with the special function to give advice to some governmental office. The certain affairs on which the advice is given are enumerated in the law in either general or specific manner. Obviously, the agency's advice is merely an opinion. The agency's advice is never an order or a decision of the legally forceful character affecting people as are those of the quasi-type body given above. Moreover, the office to which the advice is given can accept

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or reject it. The office is not legally bound to take the agency's opinions, although, of course, in governmental practice the office does take the advice.

In addition and of importance is the fact that these advisory bodies are nearly always composed of highly qualified persons who because of training and experience can give technical, professional and sound opinions.

The legislative authority is duly bound to specify in the law the jurisdiction of the agency. The assembly should pass an act defining clearly and specifying what the committee, commission or board is to do. The law should specify what the powers of the agency are. Most important is the extent of the agency's power of discretion. Such important legal matters should never be left vague, mystical or mixed up.

Committees, Commissions and Boards in the Local Communities

In Japan the authority which establishes these agencies is contained in the laws or the local government by-laws. For the proper operation and functioning of these agencies, not only do the laws and by-laws apply but also the Cabinet Orders, the ministerial regulations and the announced rules made by the agencies themselves.

In Japan classification of these agencies should be made as to whether they are established out of a provision of law or through a by-law originated and passed solely under organic authority of a local government.

The Diet has provided that a committee, commission or board will be created in the local governments by outright requirement in the law or by a grant of authority which the local public bodies can exercise at will, through enactment of local by-laws. Examples of the agencies established by requirement of the laws are:

1. The Election Administration Committee established by the Chihojichiho.
2. The Public Safety Commission established by the Police Law.
3. The Local Board of Education established by the Board of Education Law.

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4. The Agricultural Land Commission established by the Agricultural Land Adjustment Law.
5. The Agricultural Adjustment Committee established by the Food Maintenance Temporary Measures Law.
6. Committee for the Prevention of Infectious Diseases under the Law for the Prevention of Infectious Diseases, Law No. 36, as of 1897, amended 1905 and 1949. Article 15.

Two examples of agencies provided for in laws by grant of authority which the local government can establish through an implementing by-law as they desire, are:

1. The Inspection Committee as granted in the Chihojichiho.
2. The Prefectural Agricultural Improvement Committee as granted in the Law Concerning Improvement and Promotion of Agriculture.

Examples of committees, commissions or boards established only by enactment of a local by-law could be given from most any city in Japan whether large or small. The following are advisory in function appointed by the mayor:

1. In Morioka, the Committee on Tax Payment, the Committee on Sanitation, and the Committee on Distribution.
2. In Osaka, the Committee on Public Works and the Committee on the Operational Management of the Port Area.
3. In Kobe, the Committee on Property Evaluation and the Committee for Coordination of Municipal Enterprises.

In Japan today from the standpoint of membership two types of agencies have been developed, the bi-partisan body; for example, the Election Administration Committee, which is composed of members from two political parties; and the non-partisan body; for example, the Inspection Committee, in which membership is not determined by political affiliation of the members but by the expert knowledge or experience of the members.

Of the two types of agencies, the non-partisan type perhaps, should be developed more because a given program can be accomplished with less difficulty when members are not bound by party policies and alignments.

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Generally the members of non-partisan bodies are prompted by opinions based on their own or acquired knowledge and experience. Bi-partisan agencies afford too great an opportunity for political party influence to determine the course of public affairs. Frequently, because of politically minded members, deadlocks result, squabbles can be current, and hence at times, little can be accomplished by the body. However, bi-partisan agencies do not always "go bad."

In the local governments of Japan today, methods vary as to manner in which members are selected for the different agencies. Some committee members are elected by all the voters from the citizens in general, for example: Local Board of Education. Some may be elected by a select group of electors from a select group of citizens, for example: Agricultural Land Commission or Local Agricultural Adjustment Committee and Committee for Land Readjustment. Some may be appointed by the mayor with the consent of the assembly, for example: the Public Safety Commission, the Inspection Commission, the Welfare Commissioner Nomination Conference. Some may be appointed by the mayor alone, for example: the Human Excrement Disposal Committee, and the Construction Planning Committee. Some may be appointed by the mayor with the advice of an organization outside the city government such as the Agricultural Cooperative Association of similar group, as for example: the City Election Commission on Agricultural Land Commissioners provided in Imperial Ordinance No. 38 of 25 January 1946 as the Ordinance Concerning the Operation of the Agricultural Land Adjustment Law. Some may be appointed by the assembly alone, for example: the Election Administration Committee. The number of the members on these agencies today range from three to one hundred, depending on the kind or purpose of the committee.

As has been mentioned, the law or by-law creating a particular agency determines its functions and its composition, whether bi-partisan or non-partisan. The law or by-law usually provides also for the number of members to serve on the committee. The issue in government of determining the practical or manageable number of members who are to compose the agency is an important matter. The membership must not be so large

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as to make the committee unwieldy. Decisions are hard to arrive at in governmental bodies of unwieldy membership. Moreover, when any agency is large, it is common practice for members to feel that their own presence at the sessions or work outside is not necessary because there are so many other members to participate in the activities. In this way many members avoid their responsibility; some in a selfish manner, others unwittingly. Membership of a committee should be just large enough to make each member feel that he or she shares an equal responsibility with every other member of the agency in making the decisions. In the United States the common totals for the number of members of nearly all important public commissions or boards are 3, 5, 7 and 9; by far the greater number of independent agencies is composed of but 5 members.

In Japan a member may or may not have to devote his full time to the work of the local government agency. For a great many agencies no fixed or definite period of time can be clocked out beforehand to be devoted to the work of the committee. These facts are found in the United States also. The amount of time he or she spends in committee work depends entirely on the function, its relative importance and the amount of work required by it. Police commissions meet regularly all year long; boards of education meet regularly during the school year; election administration committees meet infrequently and advisory bodies meet infrequently.

Committees, commissions or boards, have regulations and rules of procedure by which they administer their function and conduct their sessions. In Japan quite detailed rules of procedure are provided for by the Diet or local government organizing the agency, that is, the law, cabinet order, ministerial rule or local by-law will enumerate most all the essentials. The training and fondness of the Japanese bureaucracy in Tokyo to supervise, to control and to regulate anything and everything that they can lay clutching hands upon, has led them to prescribe for themselves to execute matters and affairs which are fundamental to the established agency. Only the fewest fundamentals belong in the organic law or local government by-law.

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Discretion in exercised powers and flexibility of management demand that rules of procedure be adopted and promulgated by the agency itself under its own authority; thus the agency itself can cope with moderating or altered situations. Stated in another manner, such an agency has the inherent authority or power to formulate its own rules to administer the function for which it is created.

Universal practice demands that the regulation and rules of procedure should contain all of the details necessary for the agency to function properly. Among the more important items these should provide for:

1. The selection of a chairman and a vice chairman from among the members.
2. The proper notice of calling a meeting.
3. The establishment and schedule of regular meetings.
4. The authority to call special sessions.
5. The keeping of minutes.
6. The percentage of members to constitute a quorum.
7. The method or methods of voting.
8. The disciplinary action against members.
9. Organization of the secretariat and personnel.
10. Policy relations with executive subordinate staff.
11. The establishment of sub-committees.
12. The preparation of its budget.
13. The making of an agenda.
14. The presentation of matters by any person to the agency.
15. The conduct of hearings.
16. The announcement of decisions.
17. The issuance of orders.
18. The preparation of reports.
19. Recording of criminal and civil cases in which committee is involved.
20. The relations with other governmental agencies, in particular, the offices of the procurator and the courts.
21. The use or non-use of its properties by the public.

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22. The attendance of visitors at the sessions.

23. Relations with the press.

A committee, commission or board, is normally presided over by the chairman, or in his absence by the vice chairman in the regular scheduled sessions or special meetings. The chairman or person authorized to call the special meeting has the secretariat send out notices to the members stating the time and the business to be discussed. Special matters are always specified in the call notice to allow members ample opportunity to prepare for the meeting.

The agency's meetings, as a rule, should be open so that the public can have an opportunity to attend. The press, also, should have free access to the sessions to observe their activities so that they can keep the public informed. The members of the body can never forget that it is responsible for its acts either directly or through a public official to the public.

In Japan, unlike many agencies in the United States, particularly boards of education, most committees or boards have to look to the assembly for the funds on which they have to operate. However, it is necessary for the agency in Japan to prepare a budget. It then submits it either directly or through an administrative section head, to the mayor, who in turn, includes it in his regular budget which he submits to the assembly. This budget includes remuneration for its members, salary for the secretary, for any other clerks that the committee needs, and other operating expenses that may legally be required. There is little question but that these independent agencies should have more control over their budgets.

The independent agencies of government which have the greater authority and more enumerated powers normally make many decisions, issue orders and have court cases, criminal and civil. The chronological record of all these is the heart of the agency's work. These decisions, orders and cases become the fundamental guide for future action. They should be printed and issued yearly with an appropriate title sudh as "The Report

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of Such and Such an Agency, 1949."

Minutes of the agency's meetings comprise its "little policy" and operational file; they are kept by the secretary. Such minutes are kept as a matter of record. This record is most important for the purpose of member reference. Verification of action at a previous session is required frequently. Also, because of membership changes through death, resignation, and expiration of office, the agency's continuity of operation is interrupted, hence, a proper record provided by the minutes furnishes the new members their knowledge of what the board or commission has done previously. Moreover, minutes also can provide a means by which officials or people interested in the affairs of the agency can study its activities.

Much of the work of a committee is done other than in the regular session. It is in the meeting that discussion takes place, that votes are taken and that decisions are made. However, much work and study have to be done by the individual members outside the confines of their offices. They have to accomplish much before they can discuss intelligently the problem at hand and make a wise and sound decision concerning it. Members often must make investigations of their own. They certainly should verify evidence as well as get the opinions of persons who know something about the matter. In searching and seeking out these opinions a cross section of the citizenry can be interviewed to advantage. Small shopkeepers, farmers, and the like have crystallized opinions of their own just as do professional men and persons of academic training. Their practical views of city affairs ought not to be overlooked.

It sometimes happens that the ground work for a finished discussion at a regular or special session has to be done by a sub-committee appointed for that purpose and to bring in information on which the committee can act.

Relations with the Courts

Because of the most important relationship of the committee, the commission or the board, directly or indirectly with the courts, special attention must be directed to it.

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The orders and decisions of the quasi-legislative, quasi-judicial and quasi-administrative agencies are binding on the people. The orders and decisions have to be obeyed by citizens. The precise reason why the law created the agency was that it would regulate and supervise some activity and that citizens would conform. However, the person whose conduct is affected by the orders and decision and who feels that he or she does not have to conform to the order or rulings, certainly has the right under law to contest the agency's rulings. Many legal disputes and law suits will take place.

The aggrieved party comes to court complaining that the committee's, commission's or board's orders or rulings are oppressive and unreasonable. These two terms mean that the plaintiff feels the rulings to be arbitrary, capricious or outright confiscatory of his or her rights.

The court's functions are (1) to determine whether the commission has statutory authority to act, whether its acts were reasonable, and then (2) to tell the parties what they must do, either plaintiff or defendant. When the organic act setting up the agency is well drafted and clear, the judge has little difficulty in deciding the competency of the board. The judge may then decide whether the board's action was reasonable. He does so by finding out (1) whether or not the action conforms to the law, (2) whether or not the action was, before being taken, based upon competent evidence or findings, and (3) whether or not it was issued arbitrarily.

Thus it is that the decisions of committees, boards and commissions are subject to judicial review in the courts of Japan. Not only can their decisions be reviewed but in certain cases they can be restrained. The agencies can be enjoined by injunctive relief from having their orders carried out pending the final decision in the proceeding for review. The authority for such legal action is found in "The Law for Special Regulations concerning the Procedure of Administrative Litigations" being Law No. 81 of 1948. Article 10 of the Law provides for injunctive relief. For example, an election committee can be enjoined from holding a recall election when a showing of irreparable damage can be made. Injunctions

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were granted in the Mito and Utsunomiya district courts and two were granted in the Okayama district court. Injunctions were denied in cases in Hiroshima and Mito district court. In this type of case the committee, board or commission is made the defendant. It is purely a civil proceeding and the plaintiff or moving party is represented by his or her own private lawyer and not by the public procurator. The courts in Japan should not hesitate at any time to grant relief against all such agencies which act illegally, exceed their authority, do not have their decisions supported by the law or adequate evidence.

When the case is being decided in court, the judges rarely will substitute their judgment for those of the parties at court when they find only good faith and no improvidence or inefficiency. Furthermore, in deciding such important cases, the judges must adjudicate the full rights of both the public and the complaining parties. The public as one litigant is entitled to no more from the other litigant than fair protection to the government's authority or to no more return than the services given are reasonably worth. The individual or company as the other litigant is entitled to fair action or value from the public on what has been performed for the public's convenience. Very important for the judge in making his decision is whether the litigant on his or her part has acted wilfully. However, it must not be forgotten at all that one of the great duties of any court in representative government is to protect the individual citizen from illegal, arbitrary and capricious acts of public officials. Upon making decision the judge then instructs the plaintiff or the defendant that the order must be or need not be carried out.

When aggrieved parties come to court, involving these quasi-agencies, badly drafted laws regarding their powers and authority confuse everyone. The agency's position and the action taken by it are challengeable and weak. The complaining party's position is not too clear either; it can be placed in confusion. When such badly drafted laws mix the government's position and citizen's rights and a suit started by either arises

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in court, an evil day results for many. Pity the judge who, because of weird provisions in the law, must sit alone in his chambers with ice pack and towels round his dizzy head attempting to fathom a legislative blunder which instead should have been a correctly drafted article of law! The legal snarl and kink in the badly drafted law vex and torment the best of legal minds. The judge has before him the plaintiff's brief which at first appears alright, and then suddenly they become blurred as does the photograph in the pan of bad developer fluid. This disappointment causes the judge to send for more ice and on securing it, he adjusts it and the towels round his head! He then picks up the brief of the attorneys for the defendant. This brief at first looks tenable, then unfortunately, it too becomes murkey because of the plural interpretations arising from the articles of the badly drafted law. The judge does not hesitate, he orders more ice! With fatigue, the judge puts both briefs aside, picks up his brush and with his deep conviction, begins to write and declare his own mind. Hardly has he begun when he realizes that his interpretations of the law are quite at variance from those of either of the contending parties' attorneys.

After a slight hesitation the judge decides that there can be no reconciling of these possible interpretations. Suddenly, right through his chamber door, comes a hollow but sincere voice! It is the voice of the assembly! The voice rasps out, "What we really meant, when we passed this bill is this, only this!" The judge quickly answers the voice, "But you did not state it so!" However, the voice is gone and there is no reply! The judge has no help from anyone; he finds himself in a futile situation, Gun-yo o Karite, Moko o Semu. To attack the wild tiger with a herd of sheep, all the judge can do is to order more ice and then finish his work as he views it himself. This irksome but solemn task is his responsibility.

Fully apart from all of the cases in civil litigation in which the committees, boards and commissions may become involved, there is the wide field of criminal violations. These are always handled by the

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procurators' office. Violations of the organic act, cabinet order, or regulation of the agency carrying a criminal penalty should be rigorously enforced in the criminal courts by the procurators. For example, circulators of a recall petition who obtain signatures through fraud or forged signatures, wilfully or unintentionally, to the petition, violate the cabinet order and should be prosecuted by the procurator's office. When the agency can furnish the evidence to secure the conviction, it certainly is duty bound to do so. In all instances in which the agency does furnish the evidence, it of course is not a direct party in the criminal proceedings.

The committee, commission or board may or may not win its case in court. The important facts are that the agency goes to court to have its orders enforced and that, regardless of outcome, the orderly processes of government are carried out. These orderly processes of government demand the continuous use of the principle made clear in the Japanese proverb, Horitsu wa, Hito o erabazu: The law makes no choice of persons.

Required Committees, Commissions and Boards under Law

In Japan today a sound beginning has been made in the use of independent agencies for the administration of particular functions in local government. Hajime ga daiji. Some examples will be cited as to what the laws provide, both for the type whose activities directly affect the people - the quasi-judicial, the quasi-legislative and the quasi-administrative, and the type whose activities affect only an office and are wholly advisory. Moreover, some commentaries will be advanced.

The Election Administration Committee. This agency, required to be a part of the local public entities of Japan, is the only one of its type provided for in the Chihojichiho. It is established in Chapter VII, Section II in the provisions of Article 181.

The total functions of this Committee are derived from the Chihojichiho and other laws and their cabinet orders.

The Law for the Election of Members of the House of Councillors and its Cabinet Order No. 191 of 29 July 1948: the Law Concerning the National

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Election Management Commission, Law No. 154 of 7 December 1947; the Law Concerning the Provisional Exception to Election Campaign and Others, Law No. 196 of 29 July 1948; and the Law for Election of Members of House of Representatives, Law No. 47 as of 5 May 1923 and amendments.

Thus the functions of the city Committee are to conduct all national elections, and all prefectural and city elections within the city's area and to declare each election. These involve (1) proper registration of voters, proper voting, counting of votes, determination of valid votes, announcements of results, receiving complaints and appeals and making of decisions.

In executing these functions, the city Committee in addition to enforcing material articles of the laws, cabinet orders and instructions from the National Election Management Commission, formulates rules and regulations of its own under Article 194 of the Chihojichiho which the candidates for elections, the political parties and the voters at large must obey. Complaining parties can appeal to the courts for relief from these decisions. The city Committee, therefore, has many elements just like those of the quasi-judicial and quasi-legislative types of agencies. As was stated above, these particular types make decisions and formulate policies in the administration of their affairs.

The city Committee, like others in the prefectural, town and village governments, is responsible under the Chihojichiho to the public directly for its conduct of all local elections. Article 4 of the Law Concerning National Election Management Commission is contrary to the Chihojichiho for this local management; it also clearly violates the intent and purposes of Chapter VIII of the Constitution for administering local affairs. This portion of Article 4 should be deleted from the Law.

When the city Committee is conducting national elections, the four laws as given above apply; national supervision can be exercised. The city Committee is made up of four members elected by the city assembly for a term of 2 years from among those persons who have a right to vote. They are subject to recall procedure. The legal quorum necessary for the Committee to conduct its affairs is three. The city assembly can, if it

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desires, elect an equal number of supplementary members, of whom there cannot be more than one from any one political party. A committeeman cannot be concurrently a member of the Diet, a public procurator, a government police official or a member of the Public Safety Commission. Furthermore, he or she cannot be a candidate for any elective position in the city.

These requirements are similar to those under which the Board of Elections functions in the City of New York. The Commissioners are appointed by the city council upon the recommendation of the two major political parties; they serve a term of four years and continue until their successor is appointed and has qualified. The president and the secretary are selected by the Board and cannot be of the same political organization. The Board has a chief clerk, a deputy and an office in each one of New York City's five boroughs.

The city Committee in the administration of the elections has great responsibility. The problems arising from candidates' excessive campaign expenditures or use of literature on speaking, call for patience, common sense and rigorous enforcement of the laws. The committeeman cannot be timid with these public duties.

This is the Committee which receives petitions for recall. The committeemen before accepting the petition from the responsible parties should make these people testify that the petition is in complete conformity with the Chihojichiho and its Cabinet Orders. People starting petitions cannot feign ignorance of their legal requirements; they must be held responsible under the law. The committeemen only invoke an election if the petition calling for it has the valid signatures of the registered voters of the city. Husbands cannot sign petitions legally for their wives nor can wives sign petitions for their husbands.

The signing of a petition by a citizen to call an election is a public act in the same sense that voting is. The individual citizen as a voter is the only person who can place his or her ballot in the box; no other person can do this for him or her. Under Article 94 of the

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Cabinet Order No. 16 of 3 May 1947 as amended, the City Election Administration Committee must examine the signatures against the election register. It is not enough for the committeemen simply to find that a person's name is in the voters' register. This, of course, does not mean that the Committee go for days checking each signature house by house! They are required to be and they must be satisfied that the signing and sealing as demanded by Article 92 of the *Chihojichiho* is performed individually by the voter. What can the Committee do in suspicious cases? It can investigate, take testimony and call in writing experts to confirm genuineness of signatures. The Committee should not accept petitions which do not have the required number or percentage of signatures. Petitions in which the signatures are forged wilfully or unintentionally, and in which insufficient valid signatures exist for the requirement, should be rejected; the Committee should then turn these papers over to the procurator immediately for prosecution.

The Election Administration Committee has definite relations with the Office of the Mayor and with the city assembly. The Committee must make out its own budget for its normal operations and for those extra expenses which are caused by the elections themselves. The Law provides that the budget will be submitted through the Office of the Mayor to the assembly. The members of the Committee should be interested to follow their budget through the various offices and to final enactment of the general or special budget by the city assembly.

The Committee's relation with the assembly is not only the financial one to which reference has just been given as coming from the Office of the Mayor with regard to the budget, but also in terms of the provisions in Article 121 and Article 125 of the *Chihojichiho*. Members of the Committee must appear before the city assembly to make explanations with regard to the work of the Committee if the chairman of the assembly requests. Moreover, the city assembly may adopt petitions of its own and forward them to the Committee for action and the Committee is duty bound to make a report to the assembly of its progress and of the action taken with regard to this request.

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The Election Administration Committees should assert their position in administration more forcefully. The members of the administrative affairs departments or sections are the subordinate officials for the Committee. These officials take direction and supervision from the Committee on administering the elections and on preparing financial statements and the budget. The Committee's rules and regulations for the personnel affairs of the subordinate executive staff should be unmistakably clear.

The Public Safety Commission

The Police Law in Chapter III, Section 1, Article 40, places clearly the authority and power of law enforcement and policing in every city of Japan and certain other autonomous entities: "Cities and urban communities having five thousand population or over (hereinafter called cities, towns and villages) shall be responsible for the maintenance of police and enforcement of law and order within their boundaries."

In the same clear manner, Article 43 places the control of the police authorities in the Public Safety Commission: "There shall be established under the jurisdiction of the mayors of cities and headmen of towns and villages Public Safety Commissions of cities, towns and villages to control the police within the boundaries of the respective cities, towns and villages."

It is absolutely fundamental to the understanding and solving of law enforcement problems in Japan that Article 54 of the Police Law be kept in mind: "There shall exist neither administrative nor operational control by the National Rural Police over the police of cities, towns and villages. These police shall be obligated to cooperate with each other."

Thus it is that the purposes of this municipal system are (1) to place the responsibility of policing in local jurisdictions; (2) to repose in the local communities one of the most important governmental functions; and (3) to have the Public Safety Commission control the police within the boundaries of the city.

The Commission, therefore, because of its policy-making authority being within the executive channel - that is, under the mayor's jurisdiction - is a quasi-administrative agency. However, it also has rule-making power of its own for the establishment of certain policies of law enforcement

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which the chief of police will cause the police force to carry out.

The Diet, in enacting this Law, has taken every precaution to insure that the members of the Commission are (1) persons who have a clear public record, (2) free of any pressure which might influence their decisions, and (3) persons in whom the taxpayers can have the utmost confidence in their integrity and honesty. It is these commissioners who determine the type of police officers and the police force that the city both can and will possess.

The mayor of the city appoints, with the consent of the city assembly, the three commissioners, each of different political party affiliations, from among those persons who have the right to be elected to the assembly and who do not come within the restrictions of (1) having been in the police service (2) having held a public appointive office, (3) being a non-rehabilitated bankrupt, (4) having been sentenced to imprisonment, (5) being concurrently a member of an assembly, (6) being on the payroll of a metropolis, district or prefecture, (7) being an official of a political party or other political organization, and (8) being a person, who, on or after the date of the enforcement of the Constitution of Japan, has organized or joined a political party or any other organization advocating destruction by violence of the Constitution of the government created thereunder.

A member of the Public Safety Commission holds office for a period of three years. He may, however, be reappointed. In case of vacancy for any reason, the new commissioner appointed to fill the vacancy serves only during the unexpired term of his predecessor. Moreover, a commissioner automatically loses his seat on the Commission if he (1) becomes a non-rehabilitated bankrupt, is sentenced to imprisonment, (2) joins a political party to which another member belongs, (3) becomes a member of a political party or other organization advocating the overthrow of the Constitution or government by force, or (4) is recalled under the recall provisions of the Law Concerning Local Autonomy. No member may be dismissed against his will unless dismissed by the mayor with the consent of the assembly because he has become incapacitated, has violated his official obligations or committed "an act ill befitting a member" of the committee. The ascertainment

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of what is "misconduct ill befitting a member" is difficult. However, by the Law it is an issue which the mayor and assembly must determine jointly.

For purposes of comparison of some of the provisions of the Police Law just enumerated, a short statement regarding the police structure in New York City can be made.

The police commissioner as head of the police department is appointed by the mayor for a 5 year term and is removable at the pleasure of the mayor or the governor of the state. Any commissioner so removed cannot be re-appointed. Vacancies must be filled within 10 days. Neither the commissioner, nor any member of the force, can accept any other public office or any nomination for an elective office. No member of the police force can contribute any money to any political fund or become a member of any club or association either directly or indirectly intended to affect legislature dealing with the police department or any particular member. The police commissioner is assisted by 6 deputies. For the executive offices also, there is a secretary, a chief engineer, a secretary to the police commissioner, a chief surgeon, a property clerk, a superintendent of buildings and a superintendent of telegraph. Moreover, the police force is one of slightly more than 15,000 men.

In every city of Japan the functions of the police for law enforcement are provided for through Article 41 and enumerated in paragraph 2 of Article 2:

"1. Maintenance of public order;
2. Protection of life and property;
3. Prevention and suppression of crimes;
4. Detection of crimes and apprehension of suspects;
5. Control of traffic;
6. Serving of warrants of arrest and of detention and other affairs ordered by the Court, Judge or Public Procurator and provided for by law."

The Commission through its own rules of procedure and its regulations should implement each of these six powers explicitly to show its own duties. The Commission's own authority is thus made clear as to what it can and as to what it will do in carrying out its functions.

The Commission's executive subordinate is the chief of police. The Commission appoints him, and for cause dismisses him, in accordance with

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the city's by-laws as provided in Article 47. The power of appointment and dismissal belongs to the Commission - not to the mayor, not to the assembly. The Commission approves the chief's appointment and dismissal of the junior police officers. The Commission at regular intervals should sit in review of its policies which it has instructed and directed that the chief of police carry out. This the Commission can do by having the chief report directly on such matters. The Commission should have real confidence in the chief; it should give the chief responsibility and then hold him liable for all of it. As the highest operational officer, the chief must be held liable for these duties. If he cannot perform them, the Commission has the duty to dismiss him and not keep him in office because as a little boy he was once very kind to cats or because his father one time received a very nice letter from some Daijin. The Commission must deal with the police force through the police chief. It must back up the chief's decisions. If these should be wrong, the Commission should correct them with the chief personally and not with the police force.

The Police Law in Article 54 provides that the National Rural Police and Municipal Police will cooperate and coordinate on law enforcement affairs; in Article 56 it provides that the chiefs of police of the respective systems will be the liaison officers. In times of stress or emergency, the Commission, not the mayor nor the assembly, has the legal power and must make the decision of whether or not to call in the National Rural Police for assistance, Article 55.

Like other committees or boards, the Commission has definite relations with the Office of the Mayor and the assembly. Some of these are executive in character, others are advisory or of a recommendational nature.

On matters of finance, especially the budget for the police, the Commission sends its budget to the Office of the Mayor for transmittal to the assembly. The police budget and police financing have to be studied carefully by the Commission. Moreover, the Commission should follow the police budget through to final enactment of the city's general or special budgets.

The financing of the municipal police force for adequate administration needs concerted and direct attention. A complete overhauling of the

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tax structure has to be made so as to allow the local public bodies adequate sources of revenue. They have been forced to take the burdensome left-overs from the central government for 50 years and that period is long enough! Their financial condition today is most critical.

In its recommendational capacity the Commission should advise the mayor on general conditions of law and order in the city. The information should not be guesswork; the mayor should be given a good account. Because the mayor is the executive authority in the city, he has ideas and develops plans in connection with law enforcement. The Commission can well make recommendations for changes in or further enactment of new by-laws on law enforcement.

The Commission's relations with the assembly, other than those arising in terms of its work on which communication is desired, are specified in the laws. In the Police Law in Article 45 the municipal governments, by means of by-laws, establish within their boundaries "the location, name and jurisdiction of each police station and the name and organization of the headquarters of the police." The Commission must advise the assembly on all these important affairs.

In terms of the Chihojichiho, Article 121 and Article 125, the commissioners can be asked by the assembly chairman to appear before the assembly and there explain particular matters. Also, if the assembly sends a petition of its own to the Commission for action, the Commission has to report back not only its work of progress but also its final results.

It is most important that Japan develop governmental responsibility in the local administration of police affairs and law enforcement. It is vital to sound local government. England in its long remarkable history has not had a national unified police system appointed and controlled by the central government. The police system in England is a series of local police forces, each with a proud and singular history. In the United States each city, town and village has its local police authority. Viewed by democratic standards, the spy system which developed and stands out on the Continent of Europe is a bad substitute for a police force. In representative government each citizen has the opportunity of participating in

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the preservation of law enforcement and maintenance of order. The present harrowing days of local government financing in Japan must not be a deterrent or used as an excuse to bungle or misuse the local municipal police system. Local government financing is poor today; it can and must be remedied.

The Local Board of Education

The Local Board of Education is a quasi-legislative authority. This legal fact is made plain in Article 53 of the Board of Education Law:

> "The Board of Education may legislate the regulations of the Board of Education concerning the affairs under their control, as long as such regulations are not contrary to the laws and ordinances.
>
> "The regulations of the Board of Education shall be publicly announced in conformity to a stated form of public notice."

The Board is responsible directly to the public for its educational program. It is not under the jurisdiction of the mayor nor is it responsible to him. It is not under the jurisdiction of the assembly, but it has certain responsibilites to the assembly.

The Local Board of Education, established by the Diet, should be organized in all cities, towns and villages by 1 November 1952. The Board is composed of five members, four of whom are elected by the people and one is elected by the city assembly from among its members. The term of office is four years. Half of the members are elected every two years but the assembly member holds his seat only during his term of office. Those persons who have the right to vote for or who are eligible for membership in the city assembly may vote for or be a member of the Local Board of Education. However, a member cannot concurrently be a member of an assembly, a national public official or a paid member of a local public body or a member of a Prefectural Board of Education.

The election of members of the Local Board of Education generally follows the provisions in the Law Concerning Local Autonomy which control the election of members of the city assembly. There are some exceptions, however. For example, a candidate for this Board must be recommended by sixty voters but he does not have to make a deposit with the Election Administration Committee. At the election, those candidates receiving the

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greatest number of effective votes become elected members of the Board. The members of the Local Board of Education are subject to recall just as the members of the city assembly are, the same rules applying for each.

The Board of Education is a most important one. It takes charge of and executes affairs concerning education, science, and culture, Article 4. However, it has no jurisdiction over higher educational institutions or private schools unless so authorized by law. As Article 55 in paragraph 2 provides, the Local Board of Education is not under the direction of the Mombushō or the Prefectural Board of Education. Its main purpose is to see that the administration of education is free of undue pressure and based upon the popular will; also that its educational program meets the actual needs of the community.

Under Article 49 of the Law, the Board is charged with 18 enumerated fuctions. Summarized, these have to do with (1) the establishment, management, operation and control of schools, (2) the selection of text books, (3) the appointment and dismissal of teachers, (4) the curriculum to be taught, (5) the preparation of the budget, and (6) social education. Other such subjects fall within the consideration and determination of this Board. Since all these matters are of primary concern to the people in a community, the meetings of the Board are generally open to the public, so that the public can listen to the deliberations and can have an opportunity to hear the entire discussion on matters which affect them so vitally.

Broadly speaking, this Board is responsible to the citizens as a whole for its entire program. This is the case despite the fact that the operational affairs seem entirely directed to school children and their parents or concerned relatives.

The executive subordinate to the Board is the Superintendent of Education. He is appointed by the Board and becomes its chief executive officer. Special confidence should be reposed in him as a technically trained person. The policy of the Board is to be executed by the Superintendent in cooperation with the staff. He should make recommendations on the progress and results of his work and the Board should "sit in review" in terms of these reports as well as its whole program. Should the Superintendent become

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incapacitated or incompetent, he should be dismissed. Precisely like the police function, the educational function is too significant in the life of the country to permit poor administrators to perform it.

The Board of Education has relations with the Office of Mayor and the assembly. The most significant one with the former is the budget. Unlike the condition in the United States the Board in Japan does not possess independent financial status. This power it should have; if not that, then at least separation from Ōkurashō and Mombushō. On financial affairs the Board must work up its own budget carefully. After sending it to the Office of Mayor, the Board should follow it through to final passage in the general or special budget. Although the Board has jurisdiction in operation and control of school properties under the Law in Article 49, it must consult on matters of ownership with the mayor on school buildings and construction because he is responsible for city government's ownership of all public buildings. Once the properties are assigned for school purposes, the Board assumes the control which includes abolishment of schools or their use by political or religious groups. For the latter purposes the Board must exercise great discretion and insure equal treatment.

The Board's relations with the assembly are not only such matters as local bonds for education, Article 61, and basic property and reserve funds, Article 61, but also others. In dealing with the assembly the Board should discuss its budget at the assembly's main budget hearings, Articles 56-60. The assembly determines the amount of remuneration the Board's members can receive, Article 61. It is the assembly that decides upon the number of teachers and of other personnel connected with educational administration, Articles 31, 45, 61 and 66. The Board, like all committees or commissions in their relations with the assembly, must adhere to Article 121 and Article 125 of the Chihojichiho.

Permissive Agencies under Law Established through By-Laws

As has been explained earlier, the national laws can either require the establishment of committees, commissions and boards in the local governments or grant authority to the local government to create them at will.

The Inspection Committee, as provided for in Article 195 of the Law Concerning Local Autonomy, is not compulsory in a city, as are the three

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agencies discussed above. This Committee must be established through by-laws.

This Committee has for its function the inspection of any enterprise carried on by the city and of the administration of the financial affairs of the city. The inspection must be performed at least once a year. A competent administrative official of the city or the assembly can make demand upon the Committee for an inspection at any time. The Committee, on the other hand, can initiate its own investigation at any time. The result or report of the inspection is made to the official or assembly requesting it, after which it is made public.

In a city in which an Inspection Committee is established, it is composed of either two or four members. They are appointed for two years by the mayor with the consent of the assembly. Moreover, the membership is divided equally from among the members of the assembly and from among persons having special knowledge and experience. An Inspection Committee member cannot concurrently be a paid official of a local public body, a public procurator, a government or local police official, a revenue official, or a member of a Public Safety Commission.

The Inspection Committee has another very important function to perform in case a citizen of the city is of the opinion that the mayor, the chief accountant or treasurer or other public official, has made an unlawful expenditure or has squandered public funds or wasted public property or has executed or performed an unlawful or ultra vires contract. The citizen can make a demand upon the Inspection Commissioners to make an inspection and to restrain, enjoin and prohibit the act. The citizen in doing so attaches to the demand his or her written proof of the charges. For this particular type of case the Committee has to make an inspection within twenty days. If it determines that the demand is correct, it orders the mayor to restrain, enjoin or prohibit the act. If it finds that there is no justification for the demand, it notifies the person who has made the demand to that effect.

By provisions of the Chihojichiho, Article 121 and Article 125, this Committee can also be called for questioning before the assembly, and it

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can be made to make a report to the assembly on matters referred to it as a result of an assembly's petition. The members of this Committee are also subject to recall by the people.

The Inspection Committee has great power to see that the affairs of the city are properly administered and to see that the interests of the people of the city are protected.

Agencies Established under Municipal Powers

From what has been stated already, the issue is clear that the city government has enumerated powers under Article 2. For the execution of any one of these functions, both the mayor and the assembly may desire a committee, commission or board created in connection with it. Any of these can be *quasi*-legislative, *quasi*-judicial or *quasi*-administrative; they can, of course, be advisory also.

The city government has this authority and power to establish the agency either with or without the assembly's ratification. The initiative for establishment of the agency would normally be taken by the mayor, but the assembly need not be too content to wait on the mayor should the occasion in its judgment demand solution by a committee.

A number of cities in Japan have established these committees for varied purposes. A few examples are illustrative:

In Fukuoka there is the City Owned Evaluation Committee and the Police Personnel Committee; in Kurume there is the Committee for Handling Complaints of City Employees. In both cities the committees are appointed by the mayor and are advisory to him.

Summary: Three Conclusions

The power and authority of all the local governments in Japan to establish independent agencies to perform a particular function should and must be used with intelligence and real moderation. Good causes and good reasons ought to be in evidence before committees, commissions or boards are established. These agencies need not be established simply to make room for some person's forty-fifth cousin, especially when the other forty-four cousins are already having lunch off the municipality's unknowing

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taxpayers! Indeed, these agencies need not be established as the Family Monopoly or the Friends' Institution! A municipal government or any government can easily be hampered or its authority dissipated wildly by a multiplicity of offices and agencies. Friction develops, discontent matures and inter-departmental jealousies become rife; good government is vitiated quickly and easily by overdoing the agencies. Moderation in number or function of agencies will produce no public censure or bad political repercussions.

When committees, commissions or boards are created, their function most assuredly is to perform the given task, to do the work; in short, they are duty bound to produce! Who is to see that the agencies do produce? How is it done? Does the checker or inspector close his eyes, squint with one, or open both? Some agencies report to the public, some to the mayor, some to the assembly and some to administrative offices. Each of these parties to whom the agency is responsible has the duty to check and to evaluate results. If an agency does not or cannot produce, even after change of personnel, the mayor must abolish it or the assembly legislate it off the books. The keeping of useless agencies is just grounds for wholesale criticism of the city's government.

What should the mayor, the particular office, the assembly or the city government as a whole do with the committee's, the commission's or board's technical advice or professional recommendation? Throw it away? Use it to start an argument? Or file it safely in some little dark corner where none need see it? When an agency of technically experienced or professionally trained personnel presents its findings and recommendations, the public, the assembly, the mayor or the administrative office - each is duty obligated to receive, to analyze and to give the most careful attention. To go counter to a qualified agency's report, the burden is on the party doing so to produce the strongest evidence. Why have the agency otherwise? Why use the taxpayers' money? Indeed, Honeori zon no katabire mōke: To labor hard but to gain nothing but fatigue.

July 1949

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SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Local Government Division

Paper No. 1

Representative Government

Mr. Chairman, Mr. Governor, Mr. Chairman of the Assembly and Ladies and Gentlemen:

The long and splendid history of your Prefecture is a great heritage. All who hear or read of this impressive chronicle, will ponder long in thoughtfulness and with profound happiness over the trials, the sorrows, the great happinesses and the splendid triumphs through which your mothers and fathers and your mothers' mothers and your fathers' fathers have gone. We are happiest, of course, and we give thanks from our hearts when we examine their achievements. From the experiences in their progress during such a long history, today each citizen of your Prefecture can learn much and benefit greatly.

We have come to your Prefecture to talk with you about the fulfillment of some of the goals which your forefathers struggled to realize. For many reasons these greater joys which can be yours were never theirs. Progress is always in the beyond but when we set our hearts and minds to attain it, we can be a living part of it. We must work for these goals: Hatake-kara hamaguri torenu.

Your forefathers desired liberty and freedom of thought and action. You know this and so do I. As individuals they did not have the opportunity to pioneer a system of government which could and would further their aims as good and loyal members of that system. Those men and women, because of the great difficulty of the years and the paucity of means to work the resources perhaps, could not have organized themselves for action as a state in which they were sovereign. You good people and all of your friends' friends have the greatest and most favorable juncture of circumstances in all Japanese history to possess it and to maintain it. No Japanese could think otherwise!

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NAO

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Your presence here today is indicative of it.

The system of government in which men and women organize themselves as sovereign and through elected representatives attain their goals, is a democratic or representative government. This system of government is given its proper foundation by a constitution. More frequently than not in the Western worlds, the constitution is written as in New Zealand, Australia, in the South American republics and the United States. In England it has never been written. In all of these countries bodies of laws or codes and statutes exist only in terms of their constitutions for no other laws have any legal force. The laws, of course, implement the constitutions.

What is representative government? What is democratic government? Let me relate some characteristics of it to you: (1) through the enactment of laws by which minimum qualifications are established regardless of classes or groups, a substantial proportion of the adult citizens is given the right to vote; (2) there is freedom of thought, speech and press which the common man enjoys daily; (3) most all the principal policy-making officials of the government are elected freely by the voters at reasonably frequent or regular intervals; (4) the men or women who are elected and assume office will both endeavor to, and will have the power to, carry on the government in accordance with the public will and general welfare; (5) the men and women representatives of an electorate are responsible to that group and must report back to these people what has transpired and what action he or she has taken; (6) the men or women who have been defeated at the polls will withdraw from office peacefully but that they can and often do at the subsequent elections, advance their candidacy again and again; (7) the greater issues and problems of the country are settled at the polls rather than by executive discretion, and (8) above all, the laws of the land are for everyone. Men and women are equal before law, because their government is one of laws rather than for a class or

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group of persons.

Representative government is to be valued in terms of its suitability for the conditions which have to be transformed into the power of the state for execution. Constitutions and laws change in terms of the times and peoples' will, and rightly so. The amending process answers the critical issues of the days. The law makers of one generation cannot foresee in any detail which will mature in the future.

Political parties play a dominant role in democracies, because in countries with great populations there would be either autocratic cliques controlling or a multitudinous crying of weak independent candidates. Some parties are large enough to be called communities, because they join thousands of cities and towns for a common cause. By their platforms they adopt economic, social and political reforms. The parties and their leaders must be responsible for their actions to the people; parties must be substantial bodies whose membership is more steadfast than not. No democracy can exist without responsible political parties.

The constitution of Japan is one of the most democratic in the world. The Law Concerning Local Autonomy implements the Japanese Constitution in similar manner as other laws do in Western governments. The citizens of your Ken as a whole, the residents of each village, town and city, will receive today from their respective local governments many more rights of action, many more responsibilities of government and many more needed services of benefit than they have yet experienced in their history.

The framers and drafters of the Meiji Constitution established for Japan a centralized government with strong controlling powers over all the lands. No provision was made for local self-government in that document. Prince Itō, Prince Yamagata and the remaining Hanbatsu adopted and adapted the Continental or German and French principle of government. This Continental System provided that each central

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government would possess and exercise all the authority and power. The Central Governments allowed the local governments to exist and to exist only for the convenience of the Central Government rather than for a few or any of the interests of the local bodies. The natural and inevitable result for Japan has been a system of centralized authority as rigid as any this world has ever known. Prince Itō's and Prince Yamagata's Hanbatsu established a system which made it possible for the Central Government to reach into every buraku in Japan (1) to exercise arbitrary control over the lives of the inhabitants, (2) to probe for intelligence of the most personal nature, (3) to disseminate propaganda, and (4) to make certain that all local governments conformed to an arbitrary and deliberate pattern deemed best suited to its exercise of full and complete control over them with ease and without noise or pain to the national administrators.

Prince Yamagata did produce the Chōsonsei, the Shisei, the Gunsei and the Fukensei. Altogether there were some elements of local self-government in their program. But as a practical matter, the self-governing system was hollow. These two strong characters made their determinations known; they established the system for their own purpose. The structures established, such as they turned out to be, were overshadowed by strict and purposeful Imperial Ordinances and purposeful administrative procedures which in discretion the Central Government determined.

In contrast to the Meiji Constitution and all of those authoritarian and rigid laws, Chapter VIII of the New Constitution, composed of Articles 92, 93, 94 and 95, guarantees that the future government of local public entities shall be in accordance with the principle of local autonomy. This principle is then defined to include direct popular election of local chief executives, assemblies, and such other local officials as may be determined by a law or series of laws passed by the Diet. It includes the right of local communities to manage

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their own property, affairs, and administration and to enact their own regulations within law.

The principle of local autonomy is grounded on recognition of the impossibility of introducing or maintaining an effective and healthy system of democratic government for any nation unless the central organs of government are supported by strong and democratic local units. These very local units derive their just powers from the consent of the people whom they govern. These same local units possess the important powers and responsibilities to manage local affairs. This condition means that powers otherwise in the central government are decentralized. This decentralization is particularly desirable in a country which has no strong tradition regarding the rights of individuals or the rights of the community to control the exercise of governmental power.

Essentially, of course, local governments are the strongest check on the unwholesome concentration of national power. Autocracy and centralization are not synonymous. However, history has taught the world that freedom and justice are more likely to survive and flourish in nations in which government is decentralized than those countries in which great power lies in the hands of a few. An interesting Japanese proverb applies here: "Oni ni kanabō."

To provide this necessary brake, it is particularly important in any democratic country that both national and local governments be equally democratic in their own spheres. Such means that citizens enjoy rights in respect to their local governments comparable to those they possess in respect to the national. Above and beyond such technical considerations as centralization or federalization, it is all too possible to have democracy on the national level but to deny it on the local level or even to reverse the condition and have it on the local scale but not on the national.

What services do the local governments render? Traditionally, in all countries, strong local governments have provided:

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a. Opportunity for popular participation in political affairs at lower levels, providing that experience and training which is essential for the development and maintenance of democratic government at higher levels.

b. Sufficient responsibility for elected and appointed officials in local government to permit the development of qualities of leadership and initiative which subsequently can be exercised in the arena of national affairs.

c. Opportunity for the people of a local community to experiment for themselves with the general governmental organization of their own community.

d. Opportunity for local representative bodies and officials to participate in the determination of national policies. Local units of government, rather than merely serving as vehicles for the transmission of national policy, are given opportunity to participate in the formulation of that policy.

e. Opportunity for experimentation on a small scale with governmental practices and procedures which, when tried and tested, may later be applied on a national scale.

All these opportunities are made possible by the New Constitution. Thus the Japanese man and woman can realize a great and precious grant and position in life. The government has a welcome place for him or her. While greater experience in local government will naturally be required before the Japanese people avail themselves of these to the fullest extent, there are already indications of progress and of widespread interest.

Let us talk now about some specific provisions of the Law Concerning Local Autonomy as they relate directly to the citizens and voters themselves. We cannot talk about self-government with any practicality unless we mean within our minds and hearts that each person is a definite part of that self-government. The Law Concerning Local Autonomy, therefore, brings the men and women closer to their

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local government.

The citizens of each local government have today methods for direct relation with their chief executive, their legislators and other elected officials: (1) The voters themselves have the power of recall. Disagreements on courses of action in public affairs is commonplace among all people. When an electorate is dissatisfied with the governor or particular members of the assembly, the voters, by following the procedures of the Law (Articles 80, 81, 82, 83), cause the individual or group of individuals to vacate his or her or their offices. What steps are taken? They are as follows: (1) the persons concerned draw a petition which must be signed by one-third of the voters of the local public body, whether it is a village, town, city or prefecture; (2) the petition is then given to the Election Administration Committee which forthwith must hold an election; and (3) if the election by a majority vote of the electorate is unfavorable to the person or people, he or she or they must vacate the position. (Article 83).

The second situation of this same power is its use in dissolution of the assembly, the steps for which are the same as those given above. However, one-third or more of the voters are required to sign the petition in order to launch this serious action.

The third situation in the use of this power concerns the recall and removal of the assistant governor or mayor, the assistant head or treasurer, electoral administration committeeman or inspection commissioner, as is provided in Article 86. These people are appointed to their offices with the ratification of the assembly rather than being elected; their recall and removal procedure is different from the two situations already given: (1) a petition to start the proceedings must be signed by at least one-third of the voters; (2) the demand is given to the mayor who must forthwith (a) make the matter public, and (b) present the case to the assembly; (3) the vote of the assembly can only be taken if two-thirds of the members are present; it is an

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unfavorable vote if three-fourths of the members cast their ballots against the incumbent; and (4) the notification to vacate is given to the official by the chief executive rather than by the Election Administration Committee as is the case with the elected officials. The second power to be exercised by the people directly is called the initiative. Many issues - the enactment, revision or repeal of by-laws - may come before the public for which they will desire to start proceedings of their own. Moreover, they may desire to force a slowly acting local public body to make a decision! The steps in this procedure are as follows: (1) the petition to get the issue started requires but one-fiftieth or two percent of the voters; (2) the petition is presented to the mayor who must (a) make the demand public, (b) and within twenty days call a meeting of the assembly should it not be in session and then present the demand, together with his opinion, to that body; (3) the assembly has to act one way or the other, and (4) the result the mayor must make known to the public. (Article 74).

Another form of the peoples' demand for action is to require the inspection commissioner to undertake a particular investigation into the management of any public undertaking or, more especially, into financial affairs. The petition goes to the inspection commissioners who must make not only the demand known to the public, but also the investigation and, after completion of the mission, report the findings publically to the assembly and to the chief executive. (Article 75).

The third power of the citizens of any local public body concerns the right of the individual, man or woman, to bring suit against the local public body itself for recovery against an illegal action supposedly committed by it. This issue, now before the Diet, will probably be an amendment to Article 96. In addition to the section which will be added for such a needed right, there are general provisions of the Civil Code which establish procedures for citizens to recover damages from local public bodies. In a democracy public bodies

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are actionable before the law as are private bodies and natural persons. Why should not it be so?

The fourth power provided the individual citizen is his or her right to sue any official personally for his wrongdoing as an official. An amendment before the Diet to Article 243 will provide this long needed remedy. Such action will, without question, make all officials a little more circumspect in their work. In the United States this action is generally termed "a taxpayer's suit," for it normally has been concerned with local public body's use or misuse of the taxpayers' money.

When you return to your homes with your family and friends, please think about all these precious rights. Citizens of the Western world did not get them over night. They struggled many decades to possess them. The list which I have just enumerated is an impressive one. But I have stated already that the purpose of the Law Concerning Local Autonomy was not only to bring Suzuki-Kun and Watanabe-Kun closer to their government, but also to make them definitely parts of it and in a free manner.

In talking about people being a part of government and moving freely in it, I want to remark upon the ousted Tonari Gumi; ousted, I say, and abolished by the former Naimushō on 22 January 1947.

What has been the nature of this evil system of control? How was it organized and how did it function? Historically every Japanese citizen knows that all echelons of Local Government have served primarily as agencies of the Central Government. The chief executives of the villages, towns, cities and prefectures have been the officials who have passed the orders and instructions down to the people and performed the necessary action. During the war and since its cessation too, every Japanese citizen has realized that after the establishment of the Tonari Gumi System, he or she could move only with less and less freedom. The ten or so families who composed any Tonari Gumi

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had to be members of it. No official ever asked the family as a unit or most assuredly any individual whether it or he or she desired or wanted to be a member of the particular Tonari Gumi. The family as a whole and individuals alike were forced to join whether they wished to do so or not. Indeed they had no way out because most all essential rations were distributed by the System and hence no Japanese could obtain sufficient necessities of life without joining and taking part in the compulsory organization's activities.

In everyday life, the Japanese citizen through the Tonari Gumi System had between himself or herself and the village, town or city government at least two and sometimes three arbitrary, additional echelons of authority. The whole channel of authority stripped the villages, towns and prefectures of what vestiges of autonomy they possessed. The shichō, chōchō and sonchō became, and some against their wills, nothing but tools of the totalitarian government for the prosecution of the war, for prevention of any discontent among the population for regimentation and for the fulfilling of all requirements. There certainly was no place in this system for any type of criticism, for freedom of speech or action. The effect of this System put the national government mainly through one minister, that of Home Affairs, in autocratic control of 47 governors who influenced or ordered 11,000 mayors and headmen of cities, towns and villages to act as desired; the mayors and headmen influenced if not commanded more than 200,000 Rengōkaichō, Chonaikaichō and Burakukaichō and these in turn dominated or persuaded more than one million Tonari Gumichō, who, together with their families, made up the some 70 million people who composed the nation.

Within this regimentive Tonari Gumi System there were some leaders of unquestioned sincerity and community faith for fair and honest treatment of their particular group. Whatever bright and warm rays of light could be seen amid a cloud of controlled darkness came from their good hearts and aiding hands. But these men and women

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alone could not release the groups (over whom they were elected or appointed) from the confines of the imposed autocratic controls. As all Japanese have since learned and certainly those who organized it know, this colossal and ficious System was built to convey orders from above to those below and to propagandize the nation. In wartime swiftness it stifled freedom; it rooted out democratic practices, and it provided rigid bases to perpetuate tyranny.

A real purpose for abolition also has been the result of the government's decision to shoulder its own functions, duties and responsibilites. During the war, as well as the immediate period following, the <u>Tonari Gumi</u> were forced to carry burdens of an unwarranted nature. People were compelled to give time and services to a pernicious degree without any compensation. Today, with the re-assumption by the government of its proper functions, the people are to be relieved from this involuntary servitude.

Thus, the <u>Tonari Gumi</u>, the <u>Chōnaikai</u>, the <u>Burakukai</u> and the <u>Rengōkai</u> and all such compulsory organizations have no place in representative government. The fewer levels of authority between the citizen and his government, the safer and better.

All the people of Japan have to exert themselves for the development and progress of it. I dare say here, and with the deepest conviction, that the women of Japan will come forward to give the existing political and social institutions a breath of life! Their contributions are needed today and from hence forward in Japan. The music of the remarkable Beethoven in a majestic symphony exalts mankind when the glorious harmony bursts forth, "The eternal feminine leads us on!" Yet we need not idly sing their praises! In the Western world hundreds of thousands of women occupy professional position; some, indeed, have risen to high office in government and the law. In Japan, women in government will contribute the great qualities of honesty and efficiency. More than one office could use in like manner

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the efficiency and care which she exhibits daily in her daidokoro. The women of the New Japan can take the leadership in many branches of government. Let them study and appraise the opportunities and assume their rightful positions.

In no system of government does the individual citizen have to think more often and more carefully about himself or herself and his or her neighbors, than he or she does in a democracy. All democracies rest upon the principle of shuken toshite no kokumin. Every Japanese will have to realize more and more that to afford the services and to live a better and freer life will necessitate revenues. These funds are nearly always from taxes; sometimes they are from bonds and other loans. The taxpayer, man or woman, should be far more careful to find out where the revenues are spent. He can't afford to sleep upon his rights! It is his responsibility, it is her responsibility, to be ever aware of what is taking place. Neither person can shirk that duty and then later seek redress when damaged! The local governments to operate properly can exert themselves even to discovering new, fruitful sources of revenue as their very own. But in so doing, one group of people need not be played off against another. The tax problem is everybody's problem.

Mr. Chairman and Friends, there is nothing more important than that Suzuki-Kun and Watanabe-Kun develop a sincere bunmin no sekinin. There must be for good local autonomy shimin no hokori. Would that you could travel to the Western world to observe these! In the past thirty years the policy makers of Japan stopped going abroad as their predecessors carefully did. They have made tragic errors too, which their fathers did not do. Need these truly awful mistakes be repeated? The individual citizen with sincere effort can develop sonmin toshite no hokori, chomin toshite no hokori, shimin toshite no hokori.

In closing our discussion, I want to say again that people in the great Western democracies think in terms of others. Their thinking

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is not just in terms of _hakuai_ which is noble in itself. Their thinking, good people of your Ken, transcends simple _hakuai_, for it ascends in the Christian way to even loftier heights, _jinruiai_! In the Western mind, in the Western life, in the Western action from day to day, there is a great difference in the concept and in the reality of the two. You, all before me, and your friends' friends, in diligent and sincere effort will understand and in so doing achieve the joys in the realization. Thus one person can no longer dwell within himself or his family; he and she can dwell, if you please, must dwell in the hearts of others too.

The people on this troubled planet must know that the democratic form of government in the Western world, especially in the United States of America encouraged and made the great industrial development and economic progress possible. Under democracy in the United States in particular because there have been abundant opportunities for self-expression and self-development on the general basis of merit regardless of race or creed or class distinction. There is a clear recognition by the people and therefore the government elected by them, of the fact that the individual is a responsible human being, free and self-controlling. Hence the costs of bureaucracy and policing have never strapped the taxpayer; in fact being low these costs have allowed him to reap the better share of the fruits of any extra effort which he was willing to put forth. The citizen has been free to concentrate his energies for a tremendous and unending production of useful goods and services.

Progress in greatness and power in the United States has generated and generates today from the democratic system that has allowed millions of people as free men to toil a little harder, to save a little more, to invest in capital, to produce better tools and labor saving devices. Through this republican form of government natural human energies have expanded one billion fold. All of this power,

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strength and happiness flower from the natural, normal outgrowth of a political structure that unleashed the creative genius and energies of millions of men and women, by leaving them free to work out their personal affairs unregimented, without coercive authority, but rather through voluntary cooperation based upon enlightened political consciousness and moral responsibility. Witness today that with this strength the United States has and does feed millions of victims of aggressor nations as well as feeds and helps reconstruct those very aggressors themselves.

In this troubled planet, my friends, all eyes of the world turn to observe your progress. Can you not feel their searching glance? In the old world of the pioneers who advised the Meiji, there was trouble too; those men perhaps performed as best they could. But whatever evil nexus there now remains, it must be broken and lost.

In this troubled planet, my friends, the stars are shining. Mankind in democracies will, and can, see them shining; the democracies for mankind will keep them shining.

Delivered by:

Cecil G. Tilton
Chief, Local Government Division

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SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Local Government Division

Paper No. 2

POWERS AND RESPONSIBILITIES OF THE OFFICE OF GOVERNOR

The Law Concerning Local Autonomy for the first time in the history of Japanese government affairs has brought forward the executive branch of government for all local public bodies as it is exercised and whole-heartedly believed in by the Western democracies. In responsible and representative government, the executive exercises powers and authority within his own jurisdiction; he does not in law exercise legislative or judicial functions. Powerful tradition, constitutions or statutes make clear the chief executive's powers and responsibilities in law and in administration for the structure of government over which he presides. In Japan today, the Law Concerning Local Autonomy enumerates the chief executive's governmental powers of the local public bodies as executive powers only. For particular functional powers in each of the great activities of government, there are other Diet laws and local by-laws which provide the chief executive with special duties and responsibilities. All of you present are familiar with this manner of administration in Japan.

There is a vast difference between the manner in which a chief executive CAN conduct and CAN administer his office in a representative government from that in which he does in a highly centralized or authoritarian government or in which he has done so in the past history of Japanese governmental affairs. The Diet, composed of representatives from this very prefecture, decided unquestionably in passing the Law Concerning Local Autonomy and many other acts, to establish once and for all the office of governor on precisely the same pattern of power and responsibility as Western democracies for themselves provide and enjoy. In taking this unqualified and forward

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stand, the Diet has implanted in the villages, towns, cities and prefectures a newer, more healthy life. In doing so the Diet has created additionally a fuller national life for the New Japan.

What are these factors or divisions of power among the elected officials which account for the vast existing differences? All of these points will be made clear to you by contrasting what powers your governor exercised under the old and rightly discarded regime with those powers which he holds in law today. In other words, I am now going to summarize what existed prior to the Diet's enactment of the Law Concerning Local Autonomy which was promulgated 16 April 1947.

First of all, you will please recall the middle years of Meiji, the days of Prince Itō and Prince Yamagata. The Cabinet System was adopted in 1885 for Japan. You will remember that one of the first acts accomplished by the new cabinet was to issue a Chokurei -- the Chihokankansei -- on 20 July 1886. It has existed until abolishment by the passage of the Chihojichiho, 16 April 1947. In these years of Meiji the prefectures were entirely national organs. Naturally the governor and all important officials exercised national powers because they were the national agents of the national government. This important Chokurei established in any prefecture the authority of the governor without any question as the highest authority exercising national governmental powers in the prefectural boundaries. That this was true is evidenced clearly by the fact that of all government officials the governor was the only one who could (1) issue Fukenrei, (2) demand the dispatch of troops, and (3) supervise the heads of villages, towns, gun and cities. These regulations also fixed the number of officials and the structure of the organization. Over both of these the governor was given great powers. His power of selection, promotion, transfer and dismissal in relation to hannin and sonin rank officials is thoroughly familiar with all of you. Moreover, when the Gunsei was in force, power over personnel existed also. As

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important as all of these, was the provision that the governor was the direct appointee and in some degree a henchman of the Naimudaijin who controlled virtually his entire career as a government official.

You will remember full well that the Fukensei was enacted by the Diet 17 May 1890. This law introduced and fixed the principle of dual capacity and power of administration in the prefectural government. The governor, therefore, from that date forward has had dual responsibilities. Prior to the enactment of the Fukensei, three other laws had been passed -- the Chōsonsei, the Gunsei and the Shisei. The first and last laws were passed to inauguarate self-government. In passing let me state, and I do so regretfully, that while self-government was started by these laws it never was nor has been developed with reality.

The Fukensei gave the governor in law further powers over the prefectural administration, as well as over the other two levels of supposed, self-governing bodies. These new powers we will call his authority in the local government system.

Within the prefectural government itself, the governor was an official to be pleased and feared: (1) he alone could call the assembly into regular and special sessions and to all practical extent determined their duration; (2) he could when he chose override the assembly's action and if the occasion seemed difficult through the assembly's stubbornness, he appealed to the Naimudaijin who appointed him; and (3) he presided over the fukensanjikai which met during the some nine, ten and eleven months of the year in which the assembly was not in session. Only by a miracle through a benevolent governor, could an assembly possibly get its own action passed!

Further powers in the self-governing system were evidenced by the degree of supervision which the governor could exercise over the cities at one level and the towns and villages at another. At the time of the indirect elections of the sonchō, the chōchō and the shichō, the candidates' names went to the governor's office for formal

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approval; hence, the election process was never complete. The governor could almost by his own discretion remove a sonchō or chōchō from office as well as dissolve the little sonkai or chōkai. Upon his recommendation the Naimu Daijin removed the Shichō or dissolved the Shikai.

These are all political controls. They must be contrasted with his financial ones, especially on the submissions and actual approval of budget with the Kenkai. Over the villages and towns and the cities the governor had indirect supervision of their budget and borrowings. What better way can a governor supervise than by holding the purse strings? Especially when he exercised these other powers too? Let me hasten to say that the general supervisory powers varied from time to time in terms of the amendments to all three laws. I have been talking in general terms which I'm certain you understand.

Court ranks in Japan have always been significant. Under the Joijorei of 6 May 1887 which became the I Kai Rei on 21 October 1926, the governor was a Chokunin official and of a high grade within that rank. This was a source of great political and social prestige.

What is to be said of this important government official in final summary? Simply this. No one professing even the slightest knowledge of government and political science could but state that no one man or no one office should be allowed the power and right to wield such extensive authority. In a democracy the citizenry could not and would not tolerate it.

What of Japan today? As a result of over two years of our travelling throughout Japan, I can say that countless Japanese citizenry and local government officials, have loathed the domineering, centralized controls; they too have had enough. They have demanded a change and the Diet has given them their answer as desired.

In a representative form of government, in a democracy, the elected chief executive can also possess wide authority at times.

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But even so, operating restrictions are provided in the laws, legal standards replace wild discretionary privileges and the legislative and judicial branches of government contest and hold in check any over-zealous executive.

The Law Concerning Local Autonomy established the democratic pattern of government for the office of chief executive of all public bodies. I wish this morning to talk about the Kenchiji only. I shall make my remarks in terms of the more important articles of the Law. I should state at the beginning that there are many practices in local government which follow the British parliamentary system and there are as well many procedures which follow the presidential system of the United States. I shall point out a few of these similarities.

The first part of the discussion concerns that division of the dual character of the governor which deals with local autonomy. As the elected governor of the prefecture, what powers may he exercise over prefectural affairs for the benefit of the taxpayers? Stated in another way, what are powers of local autonomy which the governor can exercise?

First of all, what are the qualifications of the candidate who is to run for the office of governor? Any citizen of Japan thirty years of age and eligible to vote can be elected to the office of governor. In similar manner with the British parliamentary practice, the candidate need not necessarily be a resident of the prefecture in which he runs for office; age and Japanese citizenship are the two tests of eligibility. The governor as well as other chief executives of the village, town and city serve a term of office for four years. In utilizing this specified or fixed term of office as a practice, the presidential system is followed. However, the term of office as used here in Japan is actually not "fixed" in the sense in which the term is used in the United States, because the chief executive can, during this term of four years, be ousted by a vote of

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non-confidence. The use of the procedure of a vote of non-confidence is again the pattern of historic British custom.

Certain restrictions of great merit are put upon the governor the moment that he assumes office. In general summary they are the following: (1) he shall not hold either the office of Councillor or the office of Representative concurrently with his governorship; (2) he must not make any contracts with the public entity directly or indirectly; (3) he must give a thirty-day notice before resigning from office, unless he has the consent of the assembly (Articles 140, 141, 142, 145); and (4) he may not appoint his wife, one of his children, one of his parents, or brother or sister to either the offices of chief or deputy accountant or chief or deputy treasurer (Article 169).

As to personal matters, (1) the governor's salary and travelling expenses are provided by law; (Article 204); and (2) upon retirement the governor is given an allowance and in case of his death his family is given an allowance (Article 205).

The governor is the chief executive of the prefecture and as such he has charge of and coordinates all of the departments: (1) he supervises some specific and administrative organs (Article 156); and (2) he must set up such bureaus and departments as are provided for specifically by Diet law, or by prefectural by-law. With regard to the establishment of those departments in the class designated as permissive, he, of course, uses utmost discretion (Amended Article 158). Moreover, in case he believes that any act of an administrative officer is <u>ultra-vires</u>, he can suspend its action (Article 151).

Formerly, the governor was the coordinator of all the national branch offices, subject only to the instructions or veto of the Minister in Tokyo concerned. Now he does not have this general authority. The law setting up these offices must specifically provide him with this responsibility (Article 157). In the event an office or department is to be abolished or transferred by Cabinet order,

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the governor takes the action and should anyone refuse to comply, he can be given a fine, the maximum of which is ¥2000. (Amended Article 159).

Specifically, the governor, (1) administers all functions of the prefectural government for which the prefecture pays the cost; the prefectural budget will, of course, provide for the proper expenditures. These functions, of course, cover all the range of government, such as, for example, police, fire, public works, roads, agriculture or fishing; (2) continues, as he always has done, to present bills to the assembly for proper legislation, as well as other messages and other communications; (3) manages the real estate and establishments of the prefecture, the affairs concerning which may be most complex and extensive; (4) is the chief accounting officer of the prefecture. This responsibility is of the utmost important in the proper management of the entire prefecture, indeed no one can minimize this functions's significance; (5) possesses the custody of all official documents, papers and instruments. This functions is not to be confused, however, with the proper jurisdiction of the newly established assembly libraries which must be instituted in conformity with the Law Concerning Local Autonomy; (6) enforces and authorizes the collection of the independent local taxes, the charges, the fees and the rents according to such national laws or prefectural by-laws as may give him that authority; (7) administers all other matters of government, even though not specifically delegated to do so. This provision means, of course, that in general all administrative matters are the governor's responsibility (Articles 147 and 149); and makes appointments of personnel and exercises discipline (Article 154).

The governor may be given further local government powers from other national laws. As I have stated, his functional powers in particular fields of government are found in such laws as the two following illustrate:

(1) In Police Law, Section 3, Article 20, the governor is

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vested with the following authority:

> "There shall be established under the jurisdiction of the Governors of To, Do, and Prefectures Public Safety Commissions of To, Do, and Prefectures.
>
> "The Public Safety Commissions of To, Do and Prefectures shall exercise operational control over the National Rural Police of To, Do, and Prefectures."

Article 21 provides:

> "Members of the Commission shall be appointed by the Governor -- with the consent of the assembly, etc."

Article 24 gives the governor authority to dismiss members of the commission for cause with the consent of the assembly or if two members belong to the same political party.

(2) In the Fire Defense Law complete authority is given to the mayors of villages, towns and cities; however, Article 17 thereof reserves to the governor as follows:

> "The fire defense of such special wards shall be controlled by the Governor of To.
>
> "The Chief of the Fire Department of special wards shall be appointed and dismissed for cause by the Governor of To."

Article 22 provides:

> "The mayors and headmen of cities, towns and villages shall, on forms and in the manner provided for by the National Fire Defense Board, make reports of fire defense statistics to the National Fire Defense Boards through the Governor of To, Do and Prefectures."

Article 24 provides that the Fire Board, the National Safety Commission, the governors and the mayors and headmen may make agreements beforehand to carry out the purpose of the Act effectively. More might be given but these two examples will suffice.

The governor of a prefecture, for aid in his office, can have from one to three assistant governors who receive and act only under certain <u>delegated</u> authority. They act on behalf of the Governor. They have no authority in their own name. Only when the governor dies or vacates his office can one of these assistants actually assume the office and, in consequence, the powers of governor. He does so at such time only for a short period as the law provides, that is election

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can be held and a new governor selected. The assistant governor is an appointed official after confirmation by majority vote of the assembly. If there is more than one assistant governor, assumption of the governor's office is in the order of their previously fixed priority, provided for in a prefectural by-law. In grave situations in which both the governor and the assistant governor are disabled at the same time, the senior secretarial official, designated by prefectural by-law, carries out the duties of the governor (Amended Article 247). The governor has the power to delegate <u>temporarily</u> any of his duties to an official of the prefecture (Articles 152 and 153).

The governor has many duties and responsibilities in his executive relationship with the assembly. Nothing is more important for good government than to have a harmonious relationship between the executive and legislative branches. The major relations which can be listed are as follows: (1) his general duty is to call the assembly for the regular and special sessions although the assembly has certain rights also regarding the same; (2) it has been the custom in Japan for the governor to introduce most of the bills into the assembly. But he is not to usurp the rights. It is not his exclusive jurisdiction because any member of the assembly can do so likewise; (3) perhaps of all the bills which the governor introduces into the assembly, none is more important than the budget which by law he must prepare and submit (Article 234). Later because of necessity he may supplement or revise any budget which has been passed (Article 235); and (4) he is required to make a financial report at least three times a year to the public at large; the taxpayers, indeed, have a right to know how much money has been collected, in particular, where and how it is being spent. The assembly through a by-law should specify the dates of such reporting to the public.

Because of the seriousness of public affairs, strong minded men should, and often do, have sincere and widely different opinions

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regarding them. In case that there is a sincere disagreement between the governor and the members of the assembly, the lawful means exist to settle the problem. In fact, this difference of opinion on grave occasions is taken for settlement to the people themselves in whom all sovereignty lies. First, the governor may send the issue back to the assembly for reconsideration when he considers it ultra-vires. If the reconsideration is refused, the governor may bring an action in court (Article 176). Secondly, he can and probably will rely upon the great procedure of non-confidence. This is the general result of strong differences on the budget (Article 177). In the exercise of the vote of non-confidence the governor takes one of two steps: (1) either he decides to remain in office and does so, then dissolves the assembly and then waits for a confirmation of his stand from the newly elected assemblymen. Should he not receive a favorable vote, he must resign forthwith. There would then follow an election according to the Law; or (2) he decides not to dissolve the assembly and, therefore, is forced to resign immediately. The election administration committee must hold an election within the specified period provided by the Law (Article 178). In either situation there is an expression of the opinion of the voters, which is the most democratic procedure.

What are the governor's powers in relation to other matters of the prefecture? His powers are supervisory but far different than under the old Fukensei and other ordinances. He can remove a mayor of a village, town or city from office for cause only (Amended Article 146). The process is through the mandamus procedure which involves the courts. In a democracy the removal of a person from high elective office is serious action. Because of this the function is never left to administrative discretion alone. Thus no longer is the power of removal left to the simple discretion of the governor and his friend who appointed him, the Naimu Daijin.

The governor today and henceforward, instead of the Naimu Daijin,

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will make the determination effective a change in boundaries of any political subdivision based upon proper proceedings taken by the local public entities involved. (Amended Article 259). The same determination is made with regard to divisions of local entities (Amended Article 260). When two or more prefectures join in a project for some specific purpose, the governors choose a central chairman from among those concerned. (Article 252).

We have been discussing thus far the governor's powers and responsibilities when he is exercising them as a prefectural governor of a prefectural electorate. Let us discuss now the governor's position when he is a national agent acting for a competent minister of the national government, as provided for in a Diet law. This is the other division of the dual character of the office. Stated in another way the governor is the representative in the prefectures of the Central Government and the Ministries thereof. Being so, he is responsible for the execution of Diet Laws and Cabinet and Ministerial Orders relating to national affairs within the prefecture boundaries. The administration of many functions must during the present emergency be executed through a national policy in order to conserve and allocate scarce items in the national economy like food, building materials, raw materials, and natural resources. Experience in Japan has indicated that the dual system can work efficiently. The marvelous cooperation of the governors in carrying out the rice delivery quotas and other similar programs attest this fact. Until normal conditions, especially in finance, on all levels of government return, local governments will be working under unusual restrictions. They can, of course, work in close harmony with the national policy even though they are quite independent of it.

When the governor is in this position as a national representative, he must be answerable to the Central Government. Especially must he be responsible in the management of central government funds placed in his hands for national purposes. A provision has been placed in

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the Law Concerning Local Autonomy which gives the Central authorities a procedure to bring a governor to account for failure to carry out the prescribed duties under the national law or cabinet or ministerial orders. This proceeding is one in the nature of a mandamus proceeding which has been utilized in a limited way in the administrative law heretofor. The proceeding is incorporated in an amendment to Article 146, and applies not only to the governors but to mayors also, as was shown above. The amendment provides a simple, relatively swift and effective method of enforcing the national functions assigned to these offices. The procedure provides for a method to compel the governor to act. In certain cases of necessity it allows the ministry concerned to take over particular duties until they have been accomplished. The proceeding also provides in extreme situations for the removal of the governor in cases in which he refuses to act after a court order has been issued requiring him to do so. The removal is made by the Prime Minister after the case is referred to him in one of the High Courts. The proceeding is in three parts: (1) the original or mandamus hearing; (2) the contempt hearing, and (3) the transfer of the case by the High Court to the Prime Minister for possible removal proceedings. While this proceeding is designed to provide a method of control by the central government over the execution of national laws and orders in the prefectures, it also affords to the governor a sounding board on which he can raise legal objections to laws which might be unconstitutional or otherwise unpopular with his constituents (Amended Articles 146 and 150).

The enforcement of national laws by the governor may cause and arouse much local criticism about or against him. This may result in unpopularity which of course is damaging to him politically. The governor by a good press, radio, and proper addresses to the people can explain to them that he is enforcing a national law. He can state the name of the law, the particular articles concerned and show the implementations which he has devised to carry it out. In this manner

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he makes clear to the voters that in the given situation he is acting as an official of the national government and is not acting as their elected official. Moreover, by quoting the Diet law under which he must perform his sincere duty, the voters know that there is no double talk or simple political excuses behind which he is attempting to hide or to placate the electorate's anger. The voters always have to be on their guard to discover and to see through the political propaganda devised cunningly to gloss over a bad or unpleasant situation for which the official should take the entire responsibility and blame.

Please let me turn now to some of these actual situations in some newly passed laws by the Diet. In these we shall observe what the governor is required to do as a national representative in one way or another.

1. In the Road Transportation Law there are delegations of authority to the governor. Article 4, paragraph 5, sub. 2 provides:

> "The power or authority provided in Chapter V shall be delegated or commissioned to Director of Road Transportation Supervision Office as well as to Governor of To, Do, Fu or Prefectures."

Sub-paragraph 3 provides:

> "Matters pertaining to entry or use of land for the purpose of constructing automotive car road may be delegated to Governor of To, Do, Fu and Prefecture."

Article 8, paragraphs 5 and 6, provides that the governor shall recommend to the Minister of Transportation and he, in turn, to the Prime Minister and the members of the Local Road Transportation Commission.

2. The Employment Security Law, Article 7, leaves to the governor the following:

> "The authority to manage such affairs concerning the enforcement of E.S.L. as control of the business of the Public Employment Security Office and the supervision of the chief of personnel thereof."

Article 9, page 3, provides as follows:

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"The authority to appoint and discharge the third officials and other personnel who are engaged in the affairs concerning the enforcement of the Employment Security Law in the Prefectural Office and in the Public Employment Office."

Article 10 gives the governor authority to appoint and to discharge liaison officers under the Act.

Article 27 gives to the governors the authority to establish and to maintain vocational training projects or to delegate this authority to some other agency.

Article 55, page 3, gives the governor authority to expend necessary funds other than those given by the central government to carry out the purpose of the Act.

3. In the Unemployment Insurance Law, the authority to give approval to employers desiring to come under the Act, a normal function of the Labor Ministry is delegated to the Governor in Article 8, page 1, and Article 13, page 1, and Article 52 of said law.

4. The Disaster Relief Law, Article 12, gives the governor wide powers in taking over supervision of business, of production, collection, sales, distribution, custody and transportation of supplies necessary for relief, or he may expropriate supplies necessary for relief. Article 13 gives him or agents authority to enter in places to look for supplies and to demand reports thereof. Article 22 gives to the governor the exclusive jurisdiction of handling relief work under the Act. Article 24 gives him authority to requisition medical construction, engineering and transportation facilities to aid in the relief of disaster under the Act. Articles 25, 26, 27 and 28 delegate other similar powers.

5. In the Children's Welfare Law, for example, there are sixteen paragraphs which give certain powers to the prefectural governor in the Act. Article 8 places the Local Child Welfare Board under the jurisdiction of the governor. Article 9 gives to the governors and the Welfare Minister authority to appoint members to the Central or Local Welfare Boards. Article 11, gives the governor authority to

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designate in what area the welfare workers shall be assigned. Article 16 provides that Child Welfare Stations shall be under the jurisdiction of the governors. Article 19 places the Welfare Program and Security phases in Chapter 11 under the supervision of the governors.

The dual character of the office of governor when viewed as I have listed and shown the functions and administration can be appreciated. In terms of the Japanese governmental structure and economy it is necessary. There will, however, always be some difficulties, especially through clashes in personalities, but they will not be of great burden.

A major problem today of the entire prefectural government is the onrush of national officials, swarming like leeches, into the prefectures. In general, their duplicating services are undesirable, unwarranted and an unforgiveable drain of expense upon the taxpayers. In particular in those instances in which these national officials are performing the same or similar functions which have been and are being performed by the local governments. These national branch offices and their officials, one and all, should be invited to leave if set up in violation of Amended Article 156. Indeed it is the duty of the Chief Executive to take action to restrain such maneuvers. The prefectural governments cannot perform their duties nor can the mounting expense be justified for these duplicating branch offices and agencies.

The Law Concerning Local Autonomy cannot be realized adequately without ample funds. The Local Finance Committee of the Diet has this great problem to solve. Every citizen in Japan must meet this issue in the interest of his own village, town, city and prefecture, The local finance problem must have an early practical solution.

In this general review of one of the great branches of government, I am certain that each person here has visualized many more issues

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that are most significant and I shall welcome any and all suggestions tomorrow in the conferences.

In closing, let me state that the record of the governors to date has been a most impressive one. They must be congratulated. From my heart I can do so freely. Indeed, they have contributed to an early movement to build a democratic local government in the New Japan.

Delivered by:

Mr. Michael E. Nolen
Chief, Town and Village Branch

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SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Local Government Division

Paper No. 3

POWERS AND RESPONSIBILITIES OF THE LEGISLATIVE BODY

The Law Concerning Local Autonomy creates and establishes for the first time in the long history of Japan village, town, city and prefectural assemblies with powers and responsibilities such as would rank them with similar legislative bodies in England, Australia, New Zealand, the United States and the Western democracies. In England the councils have always held steadfast for the peoples' desires, wants and needs. In the United States their role has not been as long but they have been the great and real legislative voice of the people.

Under the old Imperial Ordinances and Regulations concerning the authority of government officials, the Law Concerning the Organization of Urban and Rural Prefectures, the Law Concerning the Organization of Cities, the Law Concerning the Organization of Towns and Villages and their enforcement ordinances, all the assemblies if viewed as legislatures were weak, impotent bodies. In more than one way they were not only ineffectual to the people who elected them but also they were ineffectual to themselves. The assemblyman as a law-maker in the old Japan had little power or authority. He made representations and resolutions and rarely in Japan's history has he had the legal position in his own right to resist the chief executive's pressure for action.

Under the old regime, therefore, the assembly was a hollow representation of a democratic legislative body. It was too often the rubber stamp of a distant central government or of some agent of that central government whose watchword was never more than kanson mimpi.

Today the assembly is a legislature of real power and responsibility. It is a free organ or agent of government. It is free to deliberate for the best interests of the people and as I shall make clear later, all of the actions taken by it are within the Constitution and subject to existing national laws. The people of the local public bodies now have a new breath of life and they must develop and utilize their

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assemblies to the fullest extent.

Because of my background and training, I am pleased to talk on this subject to you all, because first, many of the people here are assemblymen, interested in that general subject and second, the word "assembly" brings back to my memory events of several years ago when I was a member of the General Assembly of the State of Ohio, one of the great States of the United States of America. Ohio has many large cities with their urban industrial problems and likewise it contains many acres of some of the richest farmland in the United States. I, therefore, feel as if I know personally some of the problems and issues that constantly beset you who are members of the assembly here, both those from the densely populated urban centers and those from the rural areas.

Membership in a legislative assembly is an honor for which any man or woman should be proud. It is a trust which has been placed in you by others to act for them in matters which materially affect their property, their well being, their happiness, their freedom and even their life itself. This honor today of being an assemblyman in Japan is greater than it has ever been before because as I have said already, never has the assembly had the powers and the responsibilities that it has at present.

The assembly derives its existence fundamentally from the Constitution. Article 93 of this great document provides, "The local public entities shall establish assemblies as their deliberative organs, in accordance with law." This is implemented by the Law Concerning Local Autonomy, passed by the Diet, which Article 89 states that "An ordinary local public body shall have its Assembly."

A brief summary of the mechanics of becoming an assemblyman or the mechanics of the operation of an assembly is all that is necessary today. I am certain that you are more familiar with these matters than I am. You know that any qualified voter twenty-five years of age or over is eligible for the office (Article 19) with the exception of a

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man or woman holding a particular position which because of the nature of that position disqualifies him or her, such as (1) an election official, (2) a public procurator (Article 21), (3) a member of the Diet, (4) a paid official of the local public body concerned (Article 92). You know very well, too, that the term of office is four years (Article 93) and that the assemblyman is elected by the people from an electoral district (Article 22) and that the number of assemblymen varies according to the population. (Article 91).

After its election the assembly convenes to organize itself to carry out its responsiblities. In general three parliamentary steps are taken: (1) Elects from its members a chairman and a vice-chairman (Article 103). The chairman, (a) presides at the meeting, (b) maintains order and discipline among the spectators or the members themselves, and (c) conducts the business which comes before the assembly in an orderly fashion (Article 103, Section LX). (2) The standing committees receive their new members and special committees may be appointed, and (3) The Calendar or agenda is made.

The important part of the formation of the assembly is the fact that the Law reads that any qualified elector, with the exceptions stated, may be a member. Further, that the assemblyman is elected by the people. Nowhere in the Law is there a statement that the qualification for an assemblyman is even indirectly dependent upon his being (1) of a certain rank or class, or (2) that he be possessed of a certain portion of the wealth of the country, either in land or other property. The Law does not state anywhere that there is a qualification for voting of rank, class, family or wealth. It states clearly that the only qualifications require the voter to reach a certain age and to be a resident of the area and a citizen of Japan and not subject to certain physical or mental disqualifications, nor has committed certain acts against society. Today, therefore, you are a part of an assembly free from domination or control of small groups. You are representative of the people at large. In most solemn and the highest of duty,

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you are responsible to those same people.

What can the assembly do ? What are its powers? The answers to these important questions demand that all assemblymen give them continuous thought. The assemblyman has heard either through the newspaper or from other sources that he now possesses more power and that his position is more important because of increased responsibilities and functions. Some factors may intervene which prevent him from exercising the powers fully and assuming the responsibilities. The assemblyman often is not given the information which will give him the facts. Even worse is the fact that often the information is withheld from him by certain groups who are averse to losing the power which they once possessed. Those certain people are prone to allow those who now possess the power legally to exercise the same. The assemblyman himself though must make every effort to obtain the information he needs to advise him of his powers and responsibilities. He cannot refrain from doing so. He must do this to perform his duties adequately as an elected representative of the people. He must study the Constitution and the Diet laws and then discuss them earnestly with his colleagues and neighbours. He must read the newspapers and listen to the radio. Because of representing the people he must bend all energy to be one of the best informed men in his district on matters of local government. Moreover, and of utmost significance is the duty of this elected representative to report back on what he has been doing to the people who elected him. He stands on his record at the polls.

What are some of the powers and responsibilities of the Assembly ? The powers of all the local assemblies are derived form the Constitution, Article 94, which reads:

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

Thispart of the charter of self-government is implemented through

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laws passed by the Diet. For self-government the principal law of them all is The Law Concerning Local Autonomy. Let us first refer to Article 14 of that law which reads as follows:

> "An ordinary local public body may promulgate any by-law on affairs mentioned in paragraph 2 in Article 2, unless the by-law contravenes the national law, cabinet order and ministerial regulation duly authorized by law.
>
> "The local public entity shall stipulate its disposition of the administrative affairs by its by-law unless otherwise provided by the national law, cabinet order and ministerial regulation duly authorized by law.
>
> "The prefectural government may stipulate the disposition of the administrative affairs of the city, town and village by its by-law unless otherwise provided by the national law, cabinet order and ministerial regulation duly authorized by law.
>
> "If the city, town and village by-law regarding the disposition of the administrative affairs contravenes, to that of the prefecture mentioned in the above clause, it shall be null and void.
>
> "The local public entity may stipulate by its by-law the imposition of the imprisonment with or without hard labor not exceeding two years, the fine not exceeding ¥100,000, the detention, charge or confiscation for the violation of its by-law unless otherwise provided by the national law, cabinet order and ministerial regulation duly authorized by law.
>
> "The crime specified in the preceding clause falls under the jurisdiction of the national court."

Article 14 empowers the prefectural assembly and all assemblies for that matter to enact any by-law, which it deems fit in regards to the affairs of the local entity, provided that it is not contrary to the Constitution or that it does not contravene a law passed by the National Diet. The subject matter of these by-laws can be and is wide and varied, ranging form by-laws regulating traffic to by-laws levying taxes necessary for theoperation of the local entity. I shall cite a few examples of powers of the local government for which it might be necessary and possible for an assembly to enact by-laws or resolutions:

1. To maintain local public order, protect and preserve and care for the safety, health, comfort and general welfare of the inhabitants and visitors.

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2. To establish, construct and administer the parks, playgrounds, open spaces, green districts, roads, bridges, rivers, canals, reservoirs, irrigation and drainage waterways and dykes, and to grant rights to use them.

3. To manage water plants and water supply, sewerage systems, electric plants and distribution systems; gas plants, street-car services, automobile services, vessels and other transportation systems, and other services.

4. To establish, construct and administer docks, moles, piers, wharves, lighthouses, warehouses; sheds and other structures necessary for other sea and land carriage and/or to grant rights to use them.

5. To establish, construct and administer schools, laboratories, experimental stations, libraries, museums, art museums, goods exhibitions, auditoriums, theatres, musical pavilions and other structures concerning education, literary accomplishments, culture and promotion of industries and/or to grant rights to tuse them.

6. To establish, construct and administer the hospitals, isolation wards, sanitoria, disinfecting stations, lying-in stations, residences, lodgings, dining-halls, baths, public latrines, pawn-shops, workhouses, public nurseries, asyla for the aged, almshouses, reformatories, jails, butcheries, dust-disposing stations, dirt-disposing stations, crematories, cemeteries and other structures concerning safety, health, and social welfare.

7. To clean, disinfect, beautify, and prevent from noises or to restrain public morals and action profaning cleanliness and besides to administer the matters concerning refinement of safety, health and social welfare.

8. To protect against criminal offenses, to prevent from disasters, to make rescue at disasters and to relieve the sufferers.

9. To relieve, instruct and care for minor, poor, sick, old and weak, widow, defective, vagrant, insane or inebriate persons and others.

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10. To manage forest, ranch, markets, fishing water surface, public work houses and besides to undertake for profit works considered as necessary in order to promote public welfare.

11. To carry out hill and river improvements, far cultivations, adjustments of arable land, reclamations of land from public sea, city plans, improvement of district under poor condition and other improvements of land.

12. To manage affairs concerning invention, betterment or protection and promotion of special products etc., increase of other productions and undertaking of industries.

13. To protect and manage historic places, places of scenic beauty, and other remembrances.

14. To investigate and make statistics of the matters necessary for disposal of affairs of a local public body.

15. To manage the affairs relating to enumeration, identification and registering etc., concerning the inhabitants, visitors thereto and other persons recognized as necessary.

16. To inspect meters, all sorts of produce, domestic animals.

17. To make restraint concerning structure of building, equipment, the area of yards, courts, density, open spaces, districts, dwellings, the areas on the basis of space, industry and other business of inhabitants in accordance with the determination of laws.

18. To regulate occupation or business or to grant it for the sale of local public welfare.

19. To appropriate, enter upon and hold personal or real property for any local public purpose in accordance with the determination of laws.

20. To adjust and coordinate the activities of the bodies within the area of an ordinary local public body.

21. To levy and collect local taxes, rents, fees, alloted charges, entrance fees, or statutory labor and actual articles.

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22. To create and manage the permanent property, sinking funds and besides the reserve fund and grain.

23. To determine the estimated annual revenue and expenditure.

24. To approve of a report of the final accounts.

25. To make refund of moneys paid for local taxes, rents, fees, alloted charges, entrance fees or statutory labor and actual articles unlawfully levied or charged.

26. To take or dispose of property and to establish or dispose of structures.

27. To assume new duties, to take by charged gift, grant, bequest or devise and to waive right.

28. To make contracts.

29. To handle matters relating to filing of objection, the appeal, action reconciliation, intermediation, arbitration and peace-making.

30. To determine the amounts of compensation for legal damages.

31. To handle matters relating to the adjustment and coordination of the activities of the bodies within the area of an ordinary local public body.

An assembly also has the power to regulate itself and determine to a certain extent its own membership. This power in itself is very important as it could deprive the electorate for a certain period of time of full representation. This power is exercised by the Assembly when it passes on certain qualifications of its members and when it exercises its right to discipline its members for misconduct even to the extent of expulsion. This right of discipline must always be exercised with a great deal of caution as the Assembly must remember that the person being disciplined has been elected by the people and the people will be, at the next election, the final judge of the member. (Section IX).

Some of the most far reaching powers ever to be exercised by an assembly in Japan are provided in Article 100. It is often necessary for an assembly during the course of its existence to investigate the

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affairs of the local entity and during the investigation to obtain certain information. The assembly as it may deem necessary, or the committee (as will be shown in a later paper) conducting the investigation, has the power to summon persons to give information. This person must appear. If the assembly determines that his person has given a false statement, he is subject to imprisonment. If, however, prior to the conclusion of the investigation he tells the truth, then the assembly may not refer the person to the procurator for prosecution. The assembly itself has no power to inflict punishment; it can only refer the facts to the procurator for whatever action he may decide to take.

One class of persons is exempt from testifying before the assembly during the course of investigation. This exemption applies to a person who is called upon to give testimony or present records which he believes to be official secrets. Under this condition he can so declare to the assembly. The assembly must then obtain the consent of the government or public office concerned before the person is forced to give the testimony or produce the records. If within 30 days after being requested, the government of public official (1) does not declare the matter in question contrary to the public interest if disclosed, or (2) gives its consent, then the testimony must be given or the records produced. (Article 100)

This power given to assemblies to investigate is extremely important as it may involve the right of the assembly to question the acts of the chief of the local public body by demanding reports and examining his management of the affairs of the local body, his method of execution of resolutions and the manner of raising revenue and the expenditure thereof. (Articles 98 and 121) I do not have to remark that such a profound and sober condition simply could not have existed under the old laws and Imperial ordinances. This great change, however, is precisely as it should be.

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This does not apply to the management of local affairs only. It also applies to national affairs delegated to the chief of the local public body. If the matters are concerned with the public benefit, a written statement can be sent to the administrative office concerned. (Article 99)

This power to call an official of the local government to report or make explanation is not limited to the chief of the local public body. It applies equally to any official including the election administration committee and the inspection committee. (Article 121)

The assembly need not conduct the investigation itself but may call upon the inspection committee to make an inspection of the affairs of the local public body andupon completion of its inspection to make a report to the assembly. This should be the normal procedure for routine inspectors or investigators as the inspection committee often are members of the assembly. (Articles 98,195 and 199).

The question of finances is always a matter of major importance to any public entity, for without funds it is impossible to operate. Practically every matter which comes before the Assembly involves the question of finance and it must be considered by the assembly. Because of its importance the assembly has been given great power in this field. This power is one which is often abused by the body to which it is given. The assemblyman too frequently forgets that it is the money of the people which is being wasted when he approves extravagant expenditures for unnecessary matters. The assembly in its approval of the budget has an opportunity to be of the greatest benefit to the people in determing necessary appropriations and in striking out unnecessary expenditures. The assemblyman, especially in these trying days, must scrutinize carefully every item contained in the budget, and if there is any item on which he isdoubtful, he should call for an adequate explanation before approval.

It should never be forgotten in the approval of an expenditure of government funds that those funds are only obtainable by taxation,

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charges, licenses or other forms of revenue which must be obtained from the people. All forms of taxation are unpopular no matter how worthy the purpose. It is normal for people to desire all of the benefits of government without cost to them. The assembly in its deliberations on the question of levying taxes must always keep in mind the fact that the power to tax is the power to destroy. No tax is a proper tax which destroys the object of taxation and this can be done by levying excessive taxes beyond all reasonable ability to pay.

The chief of the local public body has the responsibility of preparing the budget but the final responsibility rests in the assembly as it has the power to revise or expunge before final approval. Here again as all of you will realize, a long road has come to an end. How different the power is today for the assembly from the lack of it under the old laws! The work of the assembly in regard to the receipts and expenditures is not completed upon approval of the budget. In addition, the assembly is informed of proper accounts through the audit of the receipts and expenditure. (Article 240)

Practically every financial transaction of the local public body must be approved by the assembly or conducted in accord with a by-law previously adopted. The amount of salary and allowances of public officials and employees (Chapter VIII) the obtaining of a local loan (Article 226), the establishment of a special accoutn (Article 239) and many other matters all require action on the part of the assembly.

The assembly has many duties in regards to the appointment and dismissal of personnel of the local public body. This responsibility may determine the efficiency of the operation of the local public body. It is to be hopedthat this will take place.

The assembly elects the electoral administration committee which controls the election machinery of the local public body. (Article 182) An honest electoral administration committee, one which is not subject to corrupt influence, can practically prevent corrupt practice in an

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election and insure the electorage that their candidate will receive a fair and honest count. Honest elections are fundamental to good government.

The inspection commissioners are appointed with the consent of the assembly. Their duties as watchdogs of the government, to prevent improper practice upon the part of the public officials, is of extreme importance. Many officials, while not dishonest, are subject either to making or becoming involved in mistakes. These mistakes are detrimental to the people the same as are unlawful acts. Therefore, it is essential that the inspection commissioner be a person who shall be alert to detect both honest mistakes and unlawful acts in time to prevent them both. (Article 192).

The power of ratification of the assembly is a strong one. The vice-governor and certain other officials are appointed by the governor but the consent of the assembly is required to complete the action. Likewise, these people can be removed by the assembly either by petition of the electorate or on its own initiative. In the original appointment the number of officials is controlled by by-law. The assembly maintains by this authority a close check on the activities of the executive and administrative branches of the government. (Article 162, 86 and 87).

In addition to the powers and functions already referred to, the Assembly, as you well know, has many additional powers and functions, all of which are important when required to be exercised, Let me refer to such matters as (1) determining or changing the location of the office of the public body (Article 4), (2) disposing of property as a result of a boundary change (Article 7), (3) receiving reports from various committees and officials, (4) entering into mutual agreements for the creation of a partial affairs association (Article 284), (5) conducting hearings for employees who feel aggrieved at the allowances made to them (Article 206), and many more, sufficient to keep an assemblyman always busy. Did I really hear someone state that the assemblyman really had nothing to do? Every prefectural assembly could be as busy

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with prefectural affairs as the National Diet has been with national matters:

There are certain affairs of a purely national character which belong to the central government. The assembly of the local public bodies should not exercise any power over them. They are as follows:

1. Affairs concerning judicial administration.
2. Affairs concerning penal and national disciplinary punishment.
3. National transportation and communication affairs.
4. Postal affairs.
5. National institutions of learning and research.
6. National hospitals and institutions of medical treatment.
7. National investigation, meteorological and hydrographic functions.
8. National museums and libraries.

The assembly has only one principle responsibility and that is the obligation to exercise its functions with a view to the promotion of the interests of the people of the local public entity. I do not mean just those people who voted but I mean all of the inhabitants of the local body.

The question that should always be paramount in the mind of the assemblyman is how, as a duly elected assemblyman, one in whom the people have reposed their faith, can he best fulfill this obligation.

An assembly is made up of a wide variety of persons, some farmers, some lawyers, some doctors, some merchants, some workmen, some industrialists, and some of various other vocations and professions. Rightfully so! It should, if it is to be truly representative of all the people. Many of the assemblymen were elected as members of various political parties. They were elected with the help and assistance of certain groups, the laborer may have had the backing of his union, the fisherman the backing of his cooperative, but after the candidate is elected, he is a member of the assembly representing to the best of his ability all of the people all the time. He is not just representing the special group which supported him in the election. He is a <u>representative</u>. He

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is not a simple delegate to a rally or convention. Please think carefully and regularly upon this vital point: You are a representative not a delegate. An assemblyman, therefore, is a servant of all of the people, all of the time.

The Law Concerning Local Autonomy recognizes this fact in numerous articles. Thus, all by-laws enacted by the assembly shall be publicly announced in conformity with a stated form of public notice (Article 16) and all sessions shall be open to the public except upon certain occasions, secret sessions may be held, hence giving the public knowledge of the activities of the assembly.

Thus far we have had many points to discuss. In this pleasant hour with you, I wish to leave for your daily thought and action one final issue -- if you please -- an issue which has no compromise when it is put to the test.

Leadership is essential in an assembly as it is essential in all groups of people in order to achieve a definite goal. Without good parliamentry leadership you have a loose grouping of individuals arriving at a momentary course of action; never is the action a parliamentary decision. This defeats the goal of all legislative bodies to enact sound legislation. Leadership and dictatorship are two widely different things. Leadership is to guide; dictatorship is to domineer. Leadership has a definite place in an assembly but dictatorship has no place. The chief of a local public body, because of his intimate knowledge of the needs of good legislation, can be of great assistance to the best interests of the people by suggesting to the assembly courses of action necessary for the conduct of the affairs of the public body. By leadership, never dictatorship, he can guide the legislation through to enactment.

Leadership, though, must be developed in strength as to be unchallengeable within the assembly itself. From this day forward you cannot rely constantly, as before, upon leadership from without. The assemblyman must familiarize himself with the needs and desires of his

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constituents and upon his own initiative, bring forward a host of new ideas to be introduced into positive legislation. Through his own leadership, by logical discussion, argument and debate, he should see that this legislation is enacted. The assemblyman, unless he exercises this right of leadership which is given him by law, betrays the trust given to him by the electorate who have elected him to represent their wishes and desires. In addition, the voters demand that he use sound judgment for their best interests, that he stop being only the echo of a source far removed from them. Now is the time for the assemblyman to grasp this opportunity to be the leader, portray to the electorate that he can think for himself and that in the conduct of the affairs of the assembly he acts in unhampered manner.

Finally, therefore, act for yourselves. Do not be dissuaged by someone who states that what you are proposing is wrong, that it is unconstitutional, that it is not legal, or that someone else might be or could be responsible for the action which you are taking. The Courts and the Courts alone state what is legal and what is not legal. The governor and the administrators cannot do this for you nor should their opinion no matter how sincere, stop your action. Your action is sincere too! This difference of sincere opinion when put into the law goes to the courts. As assemblyman, you must rest your case there and in no other place. This is the character which you must possess. You cannot be defeated in your purpose by side line yapping and sniping. In other words, please produce! In the last analysis in a democracy the great issues are settled at the polls in the Bar of Public Opinion.

Mr. Chairman and Guests, in closing, I desire to quote to you part of a letter written many years ago by an eminent member of the British Parliament, and advocate of civil liberties, Edmund Burke, in which he so ably expressed the relationship which he thought should exist between an assemblyman and his electorate:

> "It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence and the most universal

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communication with his constituents. Their wishes ought to have great weight with him, their opinion high respect, their business unremitting attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions to theirs; and above all, and in all cases, to prefer their interests to his own.

"Best, his unbiased opinion, his mature judgment, his enlightened conscience he ought not to sacrifice to you, to any man, or any set of men living. These he does not derive from your pleasure, nor, from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable.

"Your representative owes to you, not his industry alone, but his judgment, and he betrays, instead of serving, you if he sacrifices it to your opinion.

"To deliver an opinion is the right of all men; that of constituents is a weighty and respectable opinion which a representative ought always to rejoice to hear and which he ought always most seriously consider."

A legislative body, whose members have been honestly elected, freely deliberating on the problems which confront it, in cooperation with the executive and his administration, is bound to produce a democratic local government, subservient only to one -- the people.

What limits cannot be reached in the New Japan with such high ideals?

Delivered by:

Mr. Howard D. Porter
Chief, Prefectural Branch

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SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Local Government Division

Paper No. 4.

ADMINISTRATION, FUNCTIONS AND RESPONSIBILITIES

The officials of departments and sections, the secretariat and the assembly's staff compose the administration of the mura, machi, shi and fuken. In general, the officials of the administration compose the Civil Service. These officials are also called a bureaucracy. There is but one and only one justification for the existence of a Civil Service or bureaucracy in a democratic form of government. The justification is to serve the public. Whenever there is a deviation from this principle, the sovereignty of the people is betrayed.

In the representative form of government, a legislature exists to give the people, by proper legislation, solution to their needs and wants. The chief executive, with either his large or small administrative staff, has the function of putting these laws into execution. The Civil Service forms the foundation of any government to carry out the directions of the laws as the executive may require and as the rules, procedures and regulations provide. The judiciary, as many may well know, exists to declare what laws and actions are within and what laws and actions are without the constitutional framework of government. Each of these branches of democratic government checks upon each other; one is not to intrude on the other's function.

In the large modern governments of today bureaucracies are necessary. The public functions performed by the governments require the employment of several millions of persons. This fact alone necessitates an intricate, formal organization, innumerable degrees of specialization in training, skill and experience, and continuity of service. The execution, therefore, of these extensive and great public affairs develops a bureaucracy. The essential goal in the development and in the adequate administration of the bureaucracy is to have it perform daily

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in the manner consistent with the basic concept of representative government -- shuken toshite no kokumin. Specifically, in the modern democratic governments the problem is that of making the bureaucracy serve the people, or, most simply stated, making the bureaucracy enforce the law. The bureaucracy does not make the law, as I have already said.

The position of the administration is, therefore, clear in a democracy: The civil servant secures his or her position through appointment after examinations and interview. Once appointed, however, he or she, precisely like those persons coming into office directly as a result of the ballot, has the one duty of serving the people loyally as long as his or her tenure lasts.

The chronicle of the Civil Service in world history shows very clearly the evils which the people of the nations have suffered when the allegiance of administration has been shifted away from the main goal which, as I have stated, is service to the people.

In the centuries past, the administrative officials gave their full energies to serving the crown, no manner on whose head it rested, benevolent or cruel, sane or insane. In zestful eagerness to achieve personal favor, these administrators herded and hounded the populace. There was such complete isolation of the people themselves (as taxpayers) that the regimentation burst in violent revolutions, as French history demonstrates; brute forces made the change. Upon this point many people must cast thoughtful glances backwards.

In England's historic past the Civil Service once served the monarch only, then served only Parliament; the bad conditions within themselves forced a healthy change, thus remedying the evil.

In the United States one hundred years ago the administrative officials served but the political parties, election after election. This type of plunder satisfied hosts of people and dissatisfied only a knowing few. Nothing in a legal way was done in the first one hundred

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years of the American Republic to develop a sound public personnel policy. The first six presidents did not recognize the necessity of the problem. They made their appointments upon merit as a rule, though without examinations of a formal character. The Office Act of 15 May 1820 provided a maximum term of four years for numerous governmental positions so as to allow the proper dismissal of dishonest and inefficient personnel as well as to provide a regular turnover, merely to assure good administration. Excessive political activity of all appointed to office, however, reversed the situation which I stated above. A host of persons was dissatisfied and only a few remained satisfied. Too many of the appointees did nothing but attend to party organization in their offices on government hours of time; they gave too little of their efforts to the office of government. The appointees were forced to pay considerable sums from their salaries to the party funds which they soon learned went into the pockets of those who secured their appointments. For some years, however, party organization continued to demand as a matter of simple right assessments from party members.

Gradually, and in democratic manner, laws were passed which corrected the "Spoils System" by inaugurating a Civil Service. One of the purposes of the Law was to stop the party or political assessments evil. Today Federal laws forbid any United States Senator, Representative or other officeholder directly or indirectly to solicit or to receive any assessment, subscription or contribution from any other officer or employee in the Service. It also makes illegal any such solicitation in any Federal building or place used for the purpose of the national government. Violators are, therefore, guilty of a gross misdemeanor and are subject to fine of not over $5,000, imprisonment for not over three years, or both. Many states have similar laws and regulations. The Civil Service in the United States, was, therefore, evolved over many years to produce a loyalty of service to the people; the people met their conditions squarely with appropriate laws.

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The history of administration in Japan, of course, is a long chronicle of a relatively small group of people. My remarks will concern only a short period of time. There is little need to relate events of the Tokugawa Bakufu. All here are familiar with that three hundred year record of control, control, control; all here know of the penalties which were inflicted when administrators found or caught erring souls! The modern bureaucracy in Japan today had its foundation in the middle of the Meiji Era. It is about this that I wish to review some facts and to offer some thoughts.

What were the conditions under which the Japanese modern bureaucracy was established? You all know better than I do the details of the decisions which the young leaders surrounding the even younger Meiji made. One great fact stands out, however, through the entire era, and that was the everlasting determination of the Hanbatsu to retain the power of government not only for the Emperor, but also for themselves. A rather remarkable chain of circumstances permitted the Hanbatsu to accomplish their willful purpose. Within his iron will and under his cunning and adroit maneuverings, Prince Yamagata developed a bureaucratic network, the like of which the world has rarely seen.

The Continental System of government, as has been related in another paper, pleased Iwakura, Itō and especially Yamagata. The Prussian Victory which crushed the French in 1871 dazzled the Japanese students of government. High officials and some scholars of the new unified Germany inveigled them into believing that the Prussian System of authoritarian controls was the Western answer to Japanese problems. Yamagata did not deviate from his course of action. As Naimu Kyō he took control of domestic affairs and formalized the elements of his plan. As Naimu Daijin, after the cabinet System was adopted, for five years he explored further, enlarged the number of officials, and extended the limits of their powers and his system. The Prince, in cementing his Kanryo Seiji over all the land, soon earned the name

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Kanryo shugisha, which the newsmen coined for him.

In building his Kanryo seiji Yamagata wielded tremendous influence and, in so doing, built careers for some and wrecked those who opposed him. Yamagata as a Hanbatsu statesman developed a satanic policy of effecting liberal measures at one instant and of mitigating them promptly at another. The Chōsonsei, the Shisei and the Gunsei appear to be liberal steps. The term of self-government is employed, but that is all that can be said. Yamagata had the local officials so heavily supervised by national agents that no breath of fresh air was frequent enough to prevent suffocation. Even though the Fukensei became a Diet Law, it was in many ways vitiated by the continuous power of the Chihokankansei of 20 July 19 Meiji. Yamagata's policy, unfortunately for the Japanese taxpayers, has pervaded the kanryo too long. A series of bureaucratic generations has grown up. I have been talking as though this one strong person was responsible for it all. Such is not so; the blame has to be borne by others too.

Under an authoritarian, highly centralized, highly cliquish bureaucracy, the administrators "can afford to be" arbitrary and curt to the public. They have taken the vow to be loyal to anyone but those people whose tax money furnishes them with a livelihood. The laws have been made for everyone else but them, and the reason that the kanryo knows this is because they practice it! What more is needed?

Under such conditions the kanryo can even be guilty of fushinsetsu. To my regret, in my travels, I have heard that one of the reasons for the public continually losing confidence in the kanryo is because of this very fact. Why should Suzuki-Kun have all the trouble that he encounters with the madoguchi shubi? Will the person who stands there never show any friendly interest in the problems of Suzuki-Kun? When he goes into the inside office, why must he be forced to look at the kanryo behind the desk with a long face, on such a very long face that no barber could make any money shaving it? Will the man behind the desk remember how bad he is, in so doing? He should. The people

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of Japan today, I am certain, are weary of hambun jokurei day in and day out. And when a business man comes for an answer to a pressing problem he receives no answer. Why? The kanryo is too absorbed in his kijyo no plan! Is there any wonder why Suzuki-kun is angered? He has a right to be so.

The Chihōjichihō in Article 158 establishes the department or bu as the highest administrative division in the prefectural government. Within the department or bu are the sections or ka and within these, in turn, are the units or kakari. Before the enactment of the Chihōjichihō, the department was an integral division of the old governmental system; it was a part of the bureaucratic ladder of organization. The official as buchō looked with longing eyes toward Tōkyō for recognition and promotion. Today that system does not exist. Today the official on becoming buchō has reached the highest administrative office in the local autonomous system. Today within this sphere of jurisdiction the buchō corresponds precisely to the post of kyō-kuchō within the national sphere of jurisdiction. As representative government develops in practice more and more in Japan, the realization of what I have been stating will be greater and greater to all. The details of organization of Civil Service for the local public bodies will be provided for by the Diet; selection, placement, training, promotion, dismissal, retirement, salary, pension and such related affairs will compose the substance of the law.

The structure of the administrative departments affects each one of you and is, therefore, of your concern directly. It has been desirable to continue the development of the structure of the departments in harmony with a principle of government which has been utilized by western countries as well as by Japan itself for a half century; thus the division of fixed and permissive categories for departments has been retained. It has been desirable to have such departments as are basic to all prefectures the same because of the advantage of simplicity and uniformity. In other words, the

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major functions and operations of prefectural governments in their dual capacity can be carried out essentially through these fixed departments. It must be remembered here that these offices which are in the vertical or single line of national authority are not included here. Because of some prefectures having divergent interests with a major volume of business, it is desirable that a series of permissive departments be allowed so that these local specialties can be performed. This flexible feature is most desirable. The stated limit of the permissive departments is also advantageous, as it allows for conservative expansion. It would be odd government in principle, not to say costly government in operation, were all prefectures to begin with the maximum and then start in the program of contraction. As officials of experience and training each of you knows the many difficulties of administration and personnel which are bound up in a program of contraction. It is most desirable that officials in all the local levels now become specialists in particular fields of knowledge, rather than to continue the program of specialty administration.

The Chihōjichihō in Article 158 provides for the prefectural departmental organization. The mandatory class contains the departments of General Affairs, Health, Education, Welfare, Economic Affairs, Agricultural Land and Public Works, and the permissive class contains the departments of Agriculture and Forestry or Forestry, Commerce and Industry, Labor, Fisheries and Public Utilities. In Tōkyō-To and Hokkaidō some few variations will be found. The Law makes quite clear that no prefecture need form a permissive department unless the prefectural government desires to do so. The Central ministries in Tōkyō can suggest that the permissive departments be established; the suggestion, such as it is, may be taken or may not be. Under no conditions can the Central ministries order the particular permissive department established. The prefectural authorities should be particularly careful in this regard.

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This structure, as provided in Article 158, has ample room by itself to accomplish all the work necessary to administer the prefectural government, not only in its local character for functioning locally, but also in its national character in functioning nationally. The continuous establishment beside the prefectural office of national branch offices of a duplicating and overlapping character should be stopped at once. Such a flood of Kanryo over Japan is worse than nanking mushi. While they make in one bite only two holes, the kanryo make many holes which are bottomless so far as taxes are concerned. The prefectural authorities should prevent such mismanagement. They have the legal power for many cases under Article 156, which states:

> "No local branch office (including fixed staff. The same rule shall apply herein and hereafter) shall be opened by any Ministry of Centray Governmental agency hereafter without first being authorized by the Diet. All funds needed in connection with the operation and function of such authorized branch offices shall be paid for by Ministry of Central agency concerned.
>
> "The provisions of the preceding paragraph shall not apply to the judicial administrative and disciplinary organs, police offices, railroad, communications, postal services, (including insurance and savings divisions), national institutions of learning, national hospitals, and sanitariums, navigation, meteorological stations, hydrographic organs, harbor construction offices, and forestry stations and public works branch offices whose functions are solely supported by the national treasury."

The officials who compose the bureaucracy in the mura, machi, shi and fuken have before them today truly great opportunities to develop notable careers. Notable, I repeat, because they can become generally respected and admired by the public at large. The past record, I am told regularly, is that only a very few people, individually, in each public body enjoys the confidence and sincere respect of his fellow citizens. The Chihōjichihō has filled a long existing vacuum because there will be a great variety of opportunities in the local governments to develop careers. The opportunities will vary from one locality to another, but the changes will now invite young and intelligent men and women to enter the

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local services without being frozen out by Tōkyō appointees. Better recruitment and more channels for proper promotions will take place. The personnel administration will undergo better the selection, training, promotion, general morale and discipline for the men and women who actually patrol the streets, operate water plants, extinguish fires, and do the thousand and one things to which local governments must attend. Upon the quality of their performance depends almost completely the quality of local government itself. If the rank and file of public servants are competent, contented, industrious and loyal, there is almost sure to be good government. If they are incompetent, discontented, lazy, or disloyal to their trust, good government is clearly impossible.

There is a vast distinction in the concept of <u>knowledge</u> and of <u>interest</u>. I am fully aware that for the adult the development of interest and good action from it are difficult. Too few officials have an interest in the great task of law enforcement. To have the real interest in his work, the official has to <u>feel the significance</u> of what he or she is doing.

In local government the local official is under much more scrutiny day by day than if he were in the national government. In the local governments the official lives not only his or her official life in the community, but also his or her personal life. I am certain that many a local official lives with many of his official problems in his home most of the time. The national official, freed from these neighbouring continuing interests, does not have the close supervision day in and day out, year in and year out. In many ways the national official can escape censure by taking official tours. In fact, he often does so. Even inspectional tours are few and far between for the local official.

The bureaucracy in Japan has long been under the stinging, although sincere, criticism that its members are too aloof from <u>Kobayashi-Kun</u> and <u>Watanabe-Kun</u>. To whatever extent this criticism

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is true, it is most regrettable. It is unforgiveable. In sound representative government there is no place for this aloofness, or for arrogance or fushinsetsu. The bureaucrat who continues to flaunt his position will only too soon find this fact out.

Moreover, the kanryo in a democracy do not make policy for the government. They have performed this very function in Japan far too long for the good of the country. The elected candidates of the people, chief executives and legislators, have that function to perform and they must perform it in their high offices of public trust as reflecting the will of the electorate at a given time. The chiefs of local public bodies and the legislators in the New Japan must be everlastingly awake and on guard against any encroachment by the bureaucracy.

Worse and in greater betrayal of the public trust in representative government is the formation within the kanryo by its members of small cliques or large cliques who seek to divert authority for themselves and, in so doing, thwart and vitiate the will of the people found expressed in the laws. When one group either within or without the government establishes or forces its will above that of the government itself, untold evil and wanton power are released. No loyalty to the public can exist. Such action is conspiracy; it can never be loyalty. Indeed, Taikan wa chū ni nitari! The investigatory powers of either the special investigating committees and of the standing committees in every assembly throughout Japan will, however, when exercised wisely and fearlessly, be a democratic guard to this greatest of evils. When this self-reform is not democratic, it takes an uglier pattern. Cannot the New Japan have all that evil left forever behind?

The bureaucrat must forever, because of the very nature of his position, be neutral politically — be neutral, I say, to all machinations! His allegiance, positively expressed, is to enforce the law through rules and regulations as legislation provides.

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The bureaucrat today can develop an interest in his work and have a sincere appreciation of what he is doing. The public official in Japan must realize quickly that his obligation is to satisfy the public's wants, needs and desires. He cannot indulge in his own fancies or his theories or give vent to his temper. No part of what I have been stating, however, is to be taken even by inference that the kanryo in a democracy is not to be a "good colleague" as well as an "enterprising subordinate." In Japan the kanryo has long whetted his taste to a large appetite for governing others. The influence of Yamagata in founding a system which has forced a bureaucracy to be primarily interested in preserving itself for power should be buried in the past.

There will, as the Diet and the local assemblies legislate, be those changes so long needed. Did you hear Suzuki-Kun and Watanabe-Kun talking last week? I did. The former had just come from kanryo after trying very hard to get his business problem answered by this long faced official. "Did you notice that the kanryo's right eye was a glass eye?" Watanabe-Kun asked. "Yes, I did finally," replied Suzuki-Kun. "How did you realize the glass eye to be his right eye?" asked his friend. "Well," said Suzuki-Kun, "When I was discussing the difficult part of my affairs, I noticed a faint and quivering gleam of sympathy in his right eye! His real eye was stone cold to me!"

The voters and citizens of Japan are expecting sincere service from a reformed kanryo. In fact, why keep the term kanryo which has been distasteful to so many? Perhaps Yakunin would be better.

The proverb "Hana wa sakura-gi hito was bushi" is old in Japan. This proverb was given to me twelve years ago when I was in Japan before this terrible conflict. I was never happy with finding the word bushi in that proverb, even though the world has produced