the great and real voice of the people. Under the old regime they were merely rubber stamps, but now they have broad powers to enact by-laws and resolutions. The power to investigate is extremely important and could not have existed under the old laws and Imperial ordinances. The question of finances is a matter of major concern, because otherwise it is impossible to operate. The final responsibility for the budget rests with the assembly.

The assembly's duties with regard to appointment and dismissal of personnel determines the efficiency of local bodies. By its election of the electoral administrative committee which controls the election machinery it can prevent corruption. Once the assemblyman is elected he is not representing the special group who supported him but representing all the people. He must bring the people real leadership. He must think for himself and let the court decide what is or is not legal. A proper functioning legislative body is bound to produce a democratic local government.

4. Administration, Functions and Responsibilities ascribed to the Participating Officer of the Regional Military Government Team, but written by Mr. Tilton.

The only justification for the civil service is to serve the people by carrying out the directions of the laws. The modern bureaucracy founded in the middle of the Meiji era was autocratic, highly centralized and cliquish, and not interested in the man in the street. Now the department is the highest administrative division in the prefectural government.

Such departments as are basic to all prefectures are the same for reasons of simplicity and uniformity, but there are permissive departments to make this system flexible. National branch offices of a duplicating nature should not be allowed. There are great opportunities to develop notable careers in local areas without being frozen out by Tokyo appointees.

Kanyro in a democracy do not make policy as they have done for too long in Japan. Chiefs of local bodies and legislators must be on guard against encroachment of bureaucracy. Bureaucrats must forever be neutral politically.

5. The Committee System of the Local Public Bodies by Major Roy A. Harris, USAF, Deputy Chief, Local Government Division.

The committee system plays a large role in representative government because it has been found to produce an adequate solution to a problem in the shortest possible time. In order to operate, it is vital that the selection

of

of members be done carefully, bearing in mind that "active brains are not co-equal with age simply because of age".

Members now have three ways of being informed which they never possessed before; an assembly library, the hiring of experts, and first-hand investigations and travel. All persons affected by legislation under consideration can present their views by means of open or closed hearings. Committees can get needed information by resort to a subpoena if necessary. A friendly press should be encouraged to inform the public.

Two other papers are planned, one for cities and one for towns and villages. It is proposed to extend these conferences to cities and, if possible, to devise means to hold them in towns and villages.

When the papers are completed they are to be published in the Japanese language, with an introduction by Mr. Tilton, and distributed widely.

Respectfully yours,

W. J. Sebald

Enclosures:

1. Representative Government
2. Powers and Responsibilities of the Office of Governor.
3. Powers and Responsibilities of the Legislative Body.
4. Administration, Functions and Responsibilities.
5. The Committee System of the Local Public Bodies.

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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!

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 comman 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

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 what 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

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 Ito'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

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:

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

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 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 Administrative 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

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

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

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 every day 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 shicho, chocho and soncho 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 Rengokaicho, Chonaikaicho and Burakukaicho and these in turn dominated or persuaded more than one million Tonari Gumicho, 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

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 vicious 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 basis 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 responsibilities. During the war, as well as the immediate period following, the Tonari Gumi 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 Tonari Gumi, the Chonaikai, the Burakukai and the Rengokai 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 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 neighbours, 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 sōnmin toshite no hokori, chōmin 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

is not just in terms of hakuai which is noble in itself. Their thinking, good people of Miyagi 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 freemen 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, 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; these 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

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 governmental 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

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

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 Chosonsei, the Gunsei and the Shisei. The first and last laws were passed to inaugurate 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 sōnchō, the chōchō and the shichō, the candidates' names went to the governor's office for formal

approval; hence, the election process was never complete. The governor could almost by his own discretion remove a sōnchō or chōchō from office as well as dissolve the little sōnkai 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.

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

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 ultra-vires, 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,

the governor takes the action and should anyone refuse to comply, he can be given a fine, the maximum of which is Y2000. (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 importance in the proper management of the entire prefecture, indeed no one can minimize this function's significance; (5) possesses the custody of all official documents, papers and instruments. This function 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

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 delegated 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

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 temporarily 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 an 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

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,

will make the determination effecting a change in boundries 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 253).

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

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

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 those 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, Artidle 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:

"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 purposes 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

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

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:

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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 ttheir 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

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 in Article 89 states that "An ordinary local public body shall have its Assembly."

A brief summary of the mechanics of becomming 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

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 responsibilities. 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 IX). (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,

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. These 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 from 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."

This part of the charter of self-government is implemented through

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 those by-laws can be and is wide and varied, ranging from by-laws regulating traffic to by-laws levying taxes necessary for the operation 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.

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 use 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, cemetries 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.

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, farm 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 sake 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.

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 rights.

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

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 this 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 or 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.

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 and upon 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 determining 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 is doubtful, 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,

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 account (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 hoped that 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

election and insure the electorate 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 aggreived 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

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 navigation, 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 fulfil 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

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

constitutents 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 dissuaded 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 opinions 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 assemblymen, 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

communication with his constitutents. 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 unbiassed 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 constitutents 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:

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Chief, Prefectural Branch

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

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 matter 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. These people, of course, must hope that the incidents are far behind!

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

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 were 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.

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 do I 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

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 shugi? 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

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-buchō 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

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 specialities 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, Forestry, Commerce and Industry, Labor, Fisheries and Public Utilities. In Tōkyō-To and Hokkaido 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.

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 or Central 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 or 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

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 knowledge and of interest. 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 feel the significance 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 Kobayashi-Kun and Watanabe-Kun. To whatever extent this criticism

is true, it is most regrettable. It is unforgivable. 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.

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 distastful 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

some noble warriors. From now on, let us put the words "seijitsu na koboku" in the place of "bushi". The world will look forward eagerly and earnestly to see this proverb a working reality in Japan.

Delivered by:

Participating Officer
Regional Military Government Team.
Prefectural Military Government Team.

SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Local Government Division

Paper No. 5.

THE COMMITTEE SYSTEM OF THE LOCAL PUBLIC BODIES

The Law Concerning Local Autonomy in Section V, Chapter VI, Articles 109-10-11, provides for the assemblies of prefectures, cities, towns and villages to have standing committees. The Law in Article 110 provides for the appointment of other committees such as the local governments may determine in the need of some particular occasion. The great national law, therefore, establishes the authority for the existence of any one or all committees. The assemblies of the prefecture, city, town and village have the power and authority given them by this Law also, to determine the jurisdiction, function and operation of these various committees. Indeed, the legislators of all the assemblies must pay careful and continuing attention to the committee system.

In representative government the committee system plays a major part in developing and maintaining democratic procedures. The committee system historically has proven not only useful but of real necessity to all legislative bodies whether they are unicameral or bicameral as organs of representative government.

Today and tomorrow we shall discuss together (1) the reasons for the rapid growth and widespread use of the committee system, (2) the classes and organization of committees, and (3) the nature of a committee's function and operation.

Some generalizations can be given at the outset: (1) The first reason concerns the competence of a large body of legislators to handle the complex affairs of the public trust with any real degree of rationality and promptness. For the proper handling of affairs, the members of the assembly have to utilize their time in the best possible manner. They at once form committees which can specialize on particular matters. The committees, therefore, serve to produce an adequate solution to a given problem in the shortest time. Were matters handled otherwise, all members

of the assembly would be forced into the unhappy and unsound situation of giving opinions and judgments on many matters at the same time. The baneful result of this would be that only superficial action could be taken. Each person here today is thoroughly familiar with this problem.

(2) The second reason is that the committee system serves the general body of which it is a part as a second mind or a second set of brains. This situation is true even though the membership of the committee comes from the membership of the parent body. Stated in another manner the assembly has its problems and the legislation concerning them, handled in two logical parliamentary steps. Moreover, in general procedure, the public has more opportunity to know about its affairs and how they are being solved.

Different entirely from these two general reasons is a particular and special reason for the committee system to be utilized to the fullest extent by the legislative organ of government. It will be remembered for all time that the function of passing legislation rests solely with the legislature. This is why we have legislatures. Legislatures have to be strong, careful in their duties and responsibilities and devoted to drafting and passing good legislation. Moreover, legislatures must be ever vigilant to see that their powers and jurisdiction are never exercised or encroached upon by any other agency or person. Legislatures must prevent the intrusion of either an over zealous chief executive or a grasping bureaucracy, no matter how kindly either may act toward the legislature.

For a legislative body, either unicameral or bicameral, to be strong and self-functioning, the committee system has to operate continuously, carefully and with measured dispatch. The full realization of this democratic procedure depends entirely on the class and organization of the committee and on its jurisdiction and administration.

Let us turn our attention now to the classes of committees and their organization. For the specified purpose of the Law Concerning Local Autonomy, there are two classes of committees, the standing committee and the special committee. The standing committee through by-laws of the

assembly is established to control and direct a major and continuing function of government. Thus the standing committee is more than less permanent. Contrasted with the standing committee is the special committee which comes into existence for a particular situation or problem. When the situation is cleared or the problem solved to the satisfaction of the assembly, the committee is dissolved. In general these special committees are of a very temporary nature when compared to the standing committees. Special committees may be established by a resolution of the assembly. Moreover, they may deliberate during the session of the assembly upon matters referred to them by a resolution.

How can these committees best be organized to perform their function? A committee has a chairman who is elected by the committeemen from among their number. He has exactly the same powers as do the other members, no more, no less. As chairman he (1) calls the meetings, (2) steers the committee through its business from the agenda, (3) casts a deciding vote by breaking a tie when need be, (4) reports the committee's action on the resolution or the bill before the plenary session and (5) adjourns the meetings.

A feature of the committee system which is of importance is that of their size. In determining this feature a number of considerations have to be taken into account. Among them the most important are (1) the size of the assembly itself, (2) the number of committees for which provision is made, and (3) the importance and volume of work to be handled by the several committees. Although it is true, generally speaking, that a small body is a more efficient instrument than a large one, it is desirable that the committee should be of such size as to afford an opportunity to all of the assemblymen to participate equitably in committee work. This fact means that the smaller the number of committees the greater should be their size. This is especially true of the committees of major importance, both because it is desirable that as great a proportion as practicable of the assemblymen should participate in their proceedings and because of the volume of business to be handled by them.

The membership of committees is usually in some equalized proportion

to the political party strength. With regard to standing committees, the composition of membership from one-half to two-thirds at least should be the same from one session of the assembly to another. When membership is arranged in this fashion that only one-quarter or one-third is new each session, continuity of function, continuity of business and continuity of the committee's system of work is maintained. Indeed, the membership of committees should be arranged only in this manner.

A committee must have an adequate staff which can perform the alloted tasks. These men or women as qualified specialists and capable secretarial assistants compose the committee's permanent personnel and because they are, they aid the committee to preserve its character and strength.

The organization of committees must provide for its rules of procedure to administer its business such as the following (1) maintenance of a record of incoming and outgoing business, (2) provision for its agenda, (3) determination of a proper quorum for the opening of deliberations and transacting of business, (4) method of securing advice from technical experts and professional men, (5) proper travel by committeemen to determine conditions first hand, (6) the subpoena for witnesses, books and records, (7) conduct of hearings both open and closed, (8) report of the committee's actions to the assemblies, (9) report of the minority opinion to the assembly, and (10) method of procedure when the assembly is not in session.

Once the assembly has established the standing committee or the special committee--that is, determined the class--and once the committee has formed its own rules of procedure, then the committee is ready to receive its function and to carry out its business such as is on its agenda. In each House of the Diet in Tokyo there are twenty-one committees as well as some special ones established from time to time. Because the Diet is the national body, because its affairs are most complex and because of its great volume and pressure of work, the fact that it has twenty-one committees is to be expected. The function of the committee is determined for all practical purposes by its name. A similar parliamentary procedure can be followed in the prefectural, city, town and village assembly. The number of the committees and their functions are determined by the will of the

assemblies, not by the chief executive, not by the bureaucrats. Because harmony must exist among these three agencies of government, one would expect to find a standing committee to correspond to each department as a minimum. Because of the nature of the work in some departments, the assembly may in its own discretion, create more than one corresponding committee. Quickly summarized, one might find in each assembly, committees on Finance, on Health, on Education, and Administrative Affairs, on Agriculture, on Economic Affairs, on Public Welfare, on Labor, on Fisheries and on Public Works. Others could be listed. Very important from this moment forward because of the responsibilities and power of every assembly in Japan, is the solemn responsibility of each assembly to establish an adequate body to prepare and to draft properly all legislation. The assembly can do this either by having a Standing Committee on Legislation or by creating a body within the secretariat of the Chairman of the Assembly.

The assembly in its by-laws must establish each committee's function with clear jurisdiction.

How is the work of the standing committees (or the special ones) accomplished? How do they operate? How do they administer the business on their agenda? How do the members as representatives of the people, prepare themselves to carry out the trust of the people? A number of extremely important suggestions can be listed here today. (1) None of you before me can under-estimate the importance of selecting qualified members for each committee and the committee in turn selecting the best of their group for a strong chairman. In this great problem of appointing the proper representatives to the responsibility of committee membership, one principle is certain and that is that active brains are not co-equal with age simply because of age. The assumption of democratic practices by any people or set of people is a serious and solemn act and the possession and exercise of brains--active brains--are continuously necessary to discharge the duties to make a happy community, indeed, if you please to produce a happy life. Each one of you before me knows the importance of this entire problem; age is not important of and by itself, brains and common sense are needed. Please choose people with them!

2. The members of a committee must, to accomplish its purposes, be thoroughly informed on the affairs before them. Through the Law Concerning Local Autonomy the members have unlimited opportunities to obtain the facts and knowledge they need. There are three specific methods which furnish the opportunities never possessed before.

a. The Assembly Library, which every assembly in Japan must establish, will be a firm and developing foundation from which all members can inform themselves continuously. This library is the legal property of this assembly and not that of any other branch of government in the local public bodies. The assemblies should cooperate with these other branches of course. Moreover, the prefectural budget must be adequate to operate and maintain it. As a depository of all national laws, papers and documents coming from the Diet, the members, through the libraries, will have information readily available. Each committee should make every effort to increase the number of papers, pamphlets, books, documents, letters and any testimony related to its particular function. The Committee on Finance should secure all information available on bonds, taxation and budgets, that on Health all on its related matters and the other committees the same. There is much to do. The physical problems alone of securing and maintaining a library are enormous. An inter-prefectural or inter-city, town and village library loan system is most desirable and effected easily. Intelligent committeemen will seek information from all sources.

b. Expert or technical information can be secured from professional persons or technicians, depending upon the problem--health, mining, agriculture, labor or industry. Moreover, the Committee must be ever on guard to see that it gets its money's worth from these people. The Committee will have to determine carefully well in advance how to pay for such services from meager budgets! Nevertheless, the duty of the committee is to get the information necessary for it to act. You cannot hesitate in this regard.

c. First hand knowledge of the facts often requires the committeeman to travel directly to the locality for which corrective

action is to be taken. The committeeman takes the bus, the train or the ship and goes to the area to discover the conditions for himself and his committee. If these trips are not well planned, are not result producing and are not thoroughly justifiable in written reports for the people to see, they are nothing more than disgraceful wasteful expenditures of the taxpayer's money. The committeeman who allows himself to be a party directly or indirectly to such chicanery should be recalled by the voters at once or defeated soundly at the polls at the next election. Direct travel may be the key to the situation, hence the committeeman cannot hesitate just because of criticism. He has a job to do and he must act.

3. The open hearing or the closed hearing is a procedure and practice of vital importance to the life and existence of the committee system. Discussion to some extent has been given already. No more democratic method of conducting representative government has been devised. The open hearing gives the Committee its golden opportunity to hear and to make use of all the people, institutions or agencies which one way or another are concerned with the problem. If necessary, the people should "come from far and wide" to present all issues. Article 109 of the Law Concerning Local Autonomy provides for holding public hearings. These can be held on the initiative of the committee itself. They may be called in pursuance of its desire to secure information upon which to base its actions. They are desirable to hold on the request of outside parties who desire to advocate or oppose the measure, or to secure its modification. The hearings may be conducted by the entire committee or by a sub-committee appointed by the committee for that purpose. Although it rests entirely with the committee to determine whether or not it will hold a hearing upon a particular bill or resolution, such a hearing need rarely be refused when a person or persons request it and can show any reasonable ground for being heard. The facts and opinions brought out at these hearings should be made available not only to all members of the committee, whether they were present at the hearings or not, but to all other members of the assembly and, to the extent possible to general public. This sytem affords all persons affected by or interested in the

proposed legislation the opportunity to be heard. At the hearings, no attempt should be made by the committee to consider the bill under discussion with a view to reaching conclusions regarding its approval, modification, or rejection, though the committee members often participate in the discussion and at times freely express their opinion regarding its merits. Such considerations generally can be left to the formal meeting of the committee from which the public is excluded. These meetings should be called by the Chairman or upon written request by a majority of the committee. After the committee has heard, studied, and debated the testimony of witnesses and experts as the case may be on the bill, the members must then prepare an exhaustive report setting forth their decision and their reasons therefor. The report should be available to all. These open and closed hearings, because of the overlapping nature of the public questions, will be held by more than one committee—each are called joint hearings. But the responsibilities cannot be divided; each committee has to assume its own responsibilities.

4. The power or privilege of the subpoena is inherent in representative government. On far too many occasions in grave public matters, certain people are needed to testify and particular documents, books, or records have to be produced for they alone possess the secret parts to what would otherwise be a bad puzzle. The subpoena is generally used when individuals either refuse to come themselves or to send the adequate written instruments. Penalties should and must be meted out when such antagonism is encountered. Severe penalties must be imposed, for either oral or written misleading or false information. In this regard no excuses can be tolerated for such wrong doing is criminal in nature. It is an insult to the peoples' representatives. It certainly is a flaunting of the public justice. The committee has this great power today which it never had before. It should exercise it carefully but fearlessly. Again, all testimony should be tabulated, documented and made available properly "to all concerned".

5. The final committee's endeavor, whether it is the drafted bill or a great report, must be presented to the executive sessions of the assembly.

More than likely there will be divided opinion in the committee, especially on grave issues. There may be majority and minority opinions in other words. Both are the property of the assembly as a whole. The minority group must present its case; it must speak up. Members who fall in this responsibility make a bad compromise with the voters who elected them.

6. It is important to bear in mind that a friendly press is a great asset in endeavoring to inform the public of committee efforts which are naturally to their benefit. Invite the press to conferences. Send the press prepared statements. Whenever the committee deems it necessary to conduct business behind closed doors it is advisable to talk to the press "off the record" in order that it will understand the motives of the committee and thus aid it in its work. Again, remember that a friendly press is a valuable asset in accomplishing works of public interest. Because of the extraordinarily responsible position of all the press to the public, the committeemen must be frank and truthful with newspapermen: Kuchi wa kazawai no kado.

In summary, two final suggestions may be taken to heart as to the entire committee system and its functioning. The first of these relates to the normal or routine business on the calendar of the committee. I have stated already that the calendar or agenda not only of the assembly, but also of all the committees should be kept with meticulous care. The committee should make sharp, clear distinctions between normal or routine business and the special or grave affairs which come before it. Matters of all kinds which are routine should be handled with real promptness and dispatch. Rapidity does not mean, however, that the matters or affairs can be slighted; they cannot be passed upon haphazardly. Yet, no time consuming period need be involved on them. The special affairs or the grave public problems are those upon which the full strength of the committee machinery is reserved and should be exerted. On such serious affairs

the committee will (1) engage in a comprehensive study at once; (2) entertain formal hearings; (3) take careful testimony in writing; (4) make a complete report to the plenary sessions of the assembly, and (5) give wide publicity to the public.

The second of these final suggestions relates to the procedure in which the committee will obtain its business: First, suppose that Kobayashi-Kun desires to have a matter introduced into the assembly? He can request either the representative from his district or another representative to introduce it for him. In many states of the United States a representative will perform this public duty automatically. Generally the member has printed on the bill after his own name, the words "Introduced by request." Such a statement informs all of the bill's origin, as well as that the legislator is doing his duty. This bill, <u>like all other bills</u>, goes at once to the assembly through the chairman, the assistant chairman or the presiding officer of the assembly, who, after recording and giving the substance to the assembly, then sends it to the proper committee for action. Second, suppose that Kobayashi-Kun has a pertinent matter to the affairs under consideration by either the special investigating committee or the standing committees. Because his matter is directly germaine, Kobayashi-Kun can give it to either of those committees. The respective committee chairman will take the matter personally or call the committee together which, as a body, will take it. If the affairs and matters are not germaine, the committee should not accept them. The chairman or committeeman should refer these non-germaine affairs to the general assembly for action like all other new matters.

In terms of both of these final suggestions, that is in terms of the affairs and business of a committee, it must be said that the committee has within its own discretion the right to say whether these affairs are important enough and of sufficient public interest to come before plenary session of the assembly. In the United States it is often said,

"The bill was killed in committee." This means that the committee, for its own reasons, did not report the matter back to the assembly for action. It may happen that the general assembly might object to the committee's decision in not reporting the affairs of the committee. In such a situation, of course, the assembly may request that the affairs be brought before it. Probably, in only very serious situations, would the general assembly as a body take issue with one of its committees.

Thus far we have been talking about governmental procedures and practices. These are grave matters indeed. All of you can observe that standing committees are vital organs of a democratically functioning assembly.

In closing, let us turn now to the most serious of affairs. In a democracy, once a candidate has been elected to office, he is in the position of the public's confidence. This very act means that he has assumed a very definite responsibility. No elected representative of the people can dodge or possibly circumvent this solemn fact.

The Law as has been stated puts more power and responsibility in the lawmaking assemblies. The committeemen, therefore, have more public and governmental work to do than ever before. There is the opportunity today for every assemblyman to produce as he never was allowed previously. Each assemblyman is today and henceforward a more important element of government than he or she has been.

In the foundation of the New Japan what committeeman in his new position can resist being a creator for the public good?

Delivered by:

Roy A. Harris, Major, USAF
Deputy Chief
Local Government Division

DC/R

ACTION
is assigned to

DC/R

UNITED STATES POLITICAL ADVISER
FOR JAPAN

DIVISION OF
NORTHEAST ASIAN AFFAIRS

JUN 16 1948

DEPARTMENT OF STATE

No. 327

UNCLASSIFIED

Subject: Directory of Central Liaison and Coordination Office

The Acting Political Adviser has the honor to enclose for the information of the Department five copies of the Directory of the Central Liaison and Coordination Office of the Japanese Government. The directory sets forth in detail the organization of the Office.

ACTION COPIES TO:
O
OCD

Enclosure:

Five copies of Directory of Central Liaison and Coordination Office.

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FILED

OCT 29 1948

DIRECTORY

CENTRAL LIAISON AND COORDINATION OFFICE (C. L. C. O.)

DIRECTOR-GENERAL — Mr. Eki Sone ..... 57-7849 or Ex. 305

Secretary to Director-General — Mr. K. Makimura 57-1304

DEPUTY DIRECTOR-GENERAL — Mr. Hisanari Yamada ..... 57-1304 Ex. 203

Secretary to Deputy Director-General — Mr. G. Takizawa ..... Ex. 307

DIRECTOR-GENERAL'S SECRETRIAT

SECRETARIAT SECTION

1. Personnel
2. Documents
3. Accounts
4. Miscellaneous Matters

Chief — Mr. K. Tatsuke ..... 57-2511 or Ex. 315

Assistants — Mr. N. Okuda ..... Ex. 326
Mr. S. Ooizumi ..... Ex. 243
Mr. T. Ootaki ..... Ex. 211
Mr. T. Kijima ..... Ex. 209

FIRST DIVISION

Director — Mr. S. Kimura ..... 57-4780 or Ex. 215

GENERAL AFFAIRS SECTION (1G)

1. Planning & Expediting
2. Public Relations
3. Translation
4. Inter-sectional Coordination
5. Matters not handled by other Sections of CLCO

Chief — Mr. Y. Katsuno ..... Ex. 298

Assistants — Mr. K. Nishimura ..... Ex. 408
Mr. H. Mazaki ..... Ex. 407
Mr. T. Iwama ..... Ex. 408
Mr. T. Mori ..... Ex. 407
Mr. S. Kōno ..... Ex. 408
Mr. K. Yasuda ..... Ex. 408

LIAISON SECTION (1L)

1. Correspondence to Allied Military Authorities
2. Correspondence from Allied Military Authorities
3. Telephone Liaison with GHQ

Chief — Mr. K. Yoshida ..... Ex. 205

Assistants — Mr. T. Yoshioka ..... Ex. 205
Mr. K. Usui ..... 57-4697 or Direct Phone with JL, GHQ
Mr. K. Tsurumi ..... Ex. 205
Mr. H. Yokota ..... Ex. 205
Mr. O. Kurino ..... Ex. 205

LOCAL AFFAIRS SECTION (1LA)

1. Control & Coordination of Matters concerning LLCO
2. Liaison with LLCO
3. Liaison with Allied Military Authorities concerning LLCO

Chief — Mr. A. Nishiyama ..... Ex. 322

Assistants — Mr. T. Kawashima ..... Ex. 247
Mr. N. Komuro ..... Ex. 247
Mr. K. Matsumoto ..... Ex. 247

SECOND DIVISION

Director — Mr. S. Ishiguro 57-7845

GENERAL AFFAIRS SECTION(1G)

1. Planning & Expediting	Chief	Mr. Y. Katsuno	Ex. 298
2. Public Relations	Assistants	Mr. K. Nishimura	Ex. 408
3. Translation		Mr. H. Mazaki	Ex. 407
4. Inter-sectional Coordination		Mr. T. Iwama	Ex. 408
		Mr. T. Mori	Ex. 407
5. Matters not handled by other Sections of CLCO		Mr. S. Kōno	Ex. 408
		Mr. K. Yasuda	Ex. 408

LIAISON SECTION(1L)

1. Correspondence to Allied Military Authorities	Chief	Mr. K. Yoshida	Ex. 205
2. Correspondence from Allied Military Authorities	Assistants	Mr. T. Yoshioka	Ex. 205
3. Telephone Liaison with GHQ		Mr. K. Usui	57-4697 or Direct Phone with JL, GHQ
		Mr. K. Tsurumi	Ex. 205
		Mr. H. Yokota	Ex. 205
		Mr. O. Kurino	Ex. 205

LOCAL AFFAIRS SECTION(1LA)

1. Control & Coordination of Matters concerning LLCO	Chief	Mr. A. Nishiyama	Ex. 322
2. Liaison with LLCO	Assistants	Mr. T. Kawashima	Ex. 247
3. Liaison with Allied Military Authorities concerning LLCO		Mr. N. Komuro	Ex. 247
		Mr. K. Matsumoto	Ex. 247

SECOND DIVISION

	Director	Mr. S. Ishiguro	57-7845 or Ex. 284

COORDINATION SECTION (2C)

1. Matters concerning Central Liaison & Coordination Committee	Chief	Mr. T. Nakagawa	57-6010 or Ex. 292
2. Changes in Government Personnel	Assistants	Mr. T. Yasukawa	Ex. 290
3. Liaison with GS in the final Clearance of Bills & Cabinet Orders		Mr. H. Kobayashi	Ex. 290
		Mr. H. Tanaka	Ex. 290
4. Matters not handled by other Sections of 2nd Div.		Mr. S. Nishida	Ex. 290
		Mr. Y. Matsuoka	Ex. 229

POLITICAL AND ECONOMIC SECTION (2P)

1. Political & Economic Matters, particularly SCAPINs & Memorandums related thereto	Chief	Mr. T. Mitsudō ..... Ex. 412
2. Matters, concerning Constitution	Assistants	Mr. T. Katō ..... Ex. 412
3. Relations between Cabinet & Diet		Mr. H. Hotomi ..... Ex. 302
4. Coordination among economic Ministries & Boards		Mr. I. Katagami ..... Ex. 302
		Mr. M. Nozaki ..... Ex. 302

PUBLIC ADMINISTRATION SECTION (2PA)

1. National Administration in general	Chief	Mr. M. Fujisaki ..... Ex. 231
2. Administrative Structures	Assistants	Mr. N. Fujiyama ..... Ex. 353
3. Local Government		Mr. M. Itō ..... Ex. 353
4. Relations between Cabinet & Court		Mr. T. Yoshimatsu ..... Ex. 353
		Mr. G. Akatani ..... Ex. 353
		Mr. K. Masuzawa ..... Ex. 353

THIRD DIVISION

	Director	Mr. S. Hirose ..... Ex. 320

WAR CRIMES SECTION (3WC)

1. Matters in general concerning War Crimes	Chief	Mr. M. Yoshimura ..... Ex. 299
2. General secretarial Matters for IMTFE	Assistants	Mr. H. Nemoto ..... Ex. 321
3. Delivery of War Crimes Suspects to Sugamo Prison		Mr. H. Natsume ..... Ex. 321
4. Services for Sugamo Prison		Mr. Y. Furuya ..... 86-0020 (assigned to Sugamo Branch of CLCO)
5. Matters not handled by other Sections of 3rd Div.		Miss S. Tajima ..... Ex. 321

PROSECUTION SECTION (3P)

1. Prosecution matters	Chief (temporary)	Mr. S. Hirose ..... Ex. 320
	Assistants	Mr. S. Yamashita ..... Ex. 361

INVESTIGATION SECTION (3I)

1. Apprehension of war Crimes Suspects	Chief	Mr. T. Ishii ..... Ex. 288
2. Summoning of Witnesses	Assistants	Mr. T. Sekimoto ..... Ex. 361
3. Investigation on above Matters as requested by Allied Military Authorities		Mr. S. Hamaguchi ..... Ex. 361
		Mr. S. Furuyama ..... Ex. 361
		Mr. Y. Ebizawa ..... Ex. 296

NOTES:

1. "Ex." numbers can be reached from outside dials by calling any of the following twenty-five (25) numbers and asking the operator for the "Ex." number wanted:

57-4175	57-4801	57-5110	57-5115	57-5121
57-4176	57-4814	57-5111	57-5116	57-5122
57-4177	57-4819	57-5112	57-5117	57-5123
57-4178	57-4822	57-5113	57-5118	57-5124
57-4179	57-4835	57-5114	57-5119	57-5125

2. There are also the following four (4) direct line numbers:
   a. First Division 57-6618
   b. Second Division 57-6010

3. Delivery of War Crimes Suspects to Sugamo Prison		Mr. H. Natsume	Ex. 321
4. Services for Sugamo Prison		Mr. Y. Furuya	86-0020
5. Matters not handled by other Sections of 3rd Div.		(assigned to Sugamo Branch of CLCO)	
		Miss S. Tajima	Ex. 321

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57-4177	57-4819	57-5112	57-5117	57-5123
57-4178	57-4822	57-5113	57-5118	57-5124
57-4179	57-4835	57-5114	57-5119	57-5125

2. There are also the following four (4) direct line numbers:
   a. First Division 57-6618
   b. Second Division 57-6010
   c. Third Division ..... or 57-7845
3. LLCO, appearing under LOCAL AFFAIRS SECTION (1LA), is abbreviation of "Local Liaison and Coordination Offices." 57-1306

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DEPARTMENT OF STATE

AIRGRAM

DIVISION OF
NORTHEAST ASIAN AFFAIRS
3334
JUN 22 1948

FROM: Moscow, U.S.S.R.

DATED: DEPARTMENT OF STATE June 10, 1948

DESPATCHED: June 12, 1948

RECEIVED:
June 17, 1948 3:35 pm

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ACTION EUR
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FE
OCD
CIA

Secretary of State,
Washington.

A-572, June 10, 1948.

Communist indignation with alleged reactionary program of Ashida government and its U.S. sponsorship sharply expressed in following selections from Sov press:

Red Star, May 30:

"Japanese reactionaries, dreaming of the restoration of the pre-war regime, are increasing the persecution of democratic elements in the country. The Cabinet, headed by the revengist Ashida, is working on various bills restricting even those inconsiderable liberties which were introduced after the defeat of Japanese militarism.

"An 'idea', imported from across the ocean has struck the Japanese rulers: on the pattern of Mundt's bill they are drawing up a bill banning communists from public posts."

Pravda, May 30:

"The anti-Communist campaign of the Anglo-American reactionaries has inspired those of like mind in a number of other countries. According to the paper 'Asahi', the Japanese Foreign Minister Ashida gave the following answer recently in the Lower Chamber to the question whether the Government has 'definite intentions of expelling the Communists': 'The Government is at present considering the question of prohibiting the Communists from holding public posts merely on the grounds that they are Communists.'"

.....

"Ashida does not attempt to conceal the example he is following in his ultra-reactionary dealings. On the contrary,

UNCLASSIFIED

contrary, he emphasizes the heights he has attained in mastering the achievements of 'Western democracy'. He is only oppressed by one thing: 'We have so far been unable to obtain copies of recent British legislation in this respect for study.' But the curious Prime Minister hopes to obtain these 'specimens of democracy' in the near future.

"The present Japanese Premier hardly requires a copy of the British anti-Communist law. The respect he pays to the representatives of 'Western democracy' is little more than a subterfuge. This old militarist has at his disposal his own considerable experience of anti-Communist activities and of the suppression of the democratic movement.

"It is no secret that, in the years 1933-1939, Ashida, as president and editor of the 'Japan Times', played the role of populariser of the Anti-Comintern Pact and was later a member of the ultra-reactionary 'Political Association for Aid to the Throne'. He was also one of the 'reliable' deputies recommended by the government of the war criminal Tojo for the pro-fascist parliament of 1942. After the capitulation of Japan, Ashida, with the support of the American occupational authorities, rapidly acquired a position for himself, held ministerial posts and eventually became Prime Minister. It was his fierce hatred of the Japanese workers and the Communist Party which made him acceptable to MacArthur's staff.

"Ashida's close contact with the occupational authorities in the suppression of the strike movement, his attempts to split the trade union movement and finally the open proclamation of an anti-Communist campaign--all this again shows the nature of the 'democratisation' being carried out under the direction of the American occupational authorities. Quite recently, MacArthur described Japan as the 'impregnable citadel of democracy in the East'. The facts, however, indicate that this 'citadel' is in fact the preserve of militarism, in which the regime existing in Japan in the dark days of the Tojo dictatorship is being revived."

SMITH

Copy to Tokyo

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THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

UNITED STATES POLITICAL ADVISER

FOR JAPAN

No. 397

Tokyo, June 30, 1948.

UNCLASSIFIED

Subject: Termination of Headquarters Office on Disqualification From Public Service.

The Honorable

The Secretary of State,

Washington, D.C.

Sir:

I have the honor to report that the Public Service Qualifications Division of the Government Section of this Headquarters was abolished on June 21, 1948, bringing to an end its functions in connection with the removal and exclusion of Japanese from particular positions and employment.

The press release announcing the termination of this division is enclosed (five copies). It will be noted that, in spite of the abolition of the division in question, the personnel and records of the Headquarters agencies which reviewed the work of Japanese purge committees have been transferred to another office within the Government Section.

Respectfully yours,

W. J. Sebald

Enclosure:

Press release 1630, GHQ, FEC,
Public Information Office,
June 22, 1948 (five copies).

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Original and ozalid to the Department.

UNCLASSIFIED

GENERAL HEADQUARTERS
FAR EAST COMMAND
Public Information Office

Press Release:

1630
22 June 1948

REPATRIATION FIGURES REACH 5,910,861

Repatriation figures reached 5,910,861 with the return last week of 14,615 Japanese from Siberia, Manchuria, the Kuriles and Karafuto.

Of this amount, figures released by G-3's Repatriation Section, indicate that the Soviets released 12,111 Japanese from Siberia, Karafuto and the Kuriles.

SCAP had provided shipping, during the first two weeks of June for more than 20,000 Japanese expected to be released so far this month. But the Soviets used only 17,138 spaces. The bulk of these passengers arrived during the period June 11-17.

The weekly repatriation report issued by SCAP puts the number yet to be repatriated at 696,622. Of this total 632,531 remain to be released from areas in the Soviet zone of influence.

-0-

ABOLISH LAST OF PURGE MACHINERY IN GOVERNMENT SECTION

Abolition of the Public Service Qualifications Division of SCAP's Government Section, effective Monday, indicates completion of the review of the activities to remove and exclude undesirable personnel from public service, including public information media and economic enterprises affecting the public, SCAP sources revealed.

This announcement marked the end of a two and one-half year program which had its start in a SCAP directive in compliance with objectives of the Potsdam Declaration.

Brig. Gen. Courtney Whitney, Chief of SCAP's Government Section, pointed out recently that the purge program, while fully consistent with the purposes of the Japanese Government and people in chartering a democratic future, is one of the direct requirements of the Potsdam Declaration. As such, final action taken thereunder is regarded to be of a permanent nature for which the Allied Powers will unquestionably hold future Japanese Governments fully responsible.

The Public Office Qualification Appeal Board, a Japanese agency which heard appeals of purgees, and the Public Qualification Examination Committee were abolished earlier. The affairs of these two Japanese agencies will be handled by the Office of the Prime Minister or prefectural governors according to specifications contained in the ordinances which dissolved the agencies.

(more)
(over)

Personnel and records of SCAP's agencies which reviewed the work of Japanese purge committees have been transferred to the Statistics and Records branch of the Government Section's Administrative division.

During the program which began on January 4, 1946, 717,415 persons were screened by the committees and 8,781 were barred from holding public office or were removed from offices already held. Of these the central committee screened 66,015 of whom 3,681 were removed and 1,019 were barred from public service. Local committees screened 651,400 persons of whom 1,907 were removed and 2,174 persons were barred from future activity.

Provisional designations on the basis of official records and documentary evidence were concluded on May 10 when 204,304 non-office holders were eliminated from future positions of public service. Petitions submitted by 11,124 of these persons contained sufficient counter-evidence to reverse the purge decisions and thus reduce the total number of such purgees to 193,180.

On May 20, the Japanese government reported that 1,070 of the 201,944 purgees listed at that time had filed appeals. The Prime Minister approved the subsequent reinstatement of 129 persons, leaving 201,815 persons still subject to the restrictions and prohibitions of the purge directive.

-0-

DALE T. MUSSELMAN
ATTORNEY-AT-LAW
521 MT. VERNON BOULEVARD
ROYAL OAK, MICHIGAN

GBR

September 9, 1948

Office of Secretary of State
Washington, D.C.

Dear Sir:

The writer will be engaged during this school year in teaching government at the Detroit Institute of Technology.

Could someone in your office suggest a source or sources from which the changes in Japanese government can be secured? We will be interested in such changes as have occurred since the American Occupation began and including the present relationship of the Japanese Government to the occupation together with proposed plans for changes.

Cordially yours,

Detroit Institute of Technology

Dale T. Musselman
Instructor in Political Science

DTM/hb

In reply refer to
PL 894.01/9-948

My dear Mr. Musselman:

In accordance with the request contained in your letter of September 9, 1948, there are enclosed documents containing information about changes in the Japanese Government since the surrender of Japan and that Government's relations to the occupation forces. It is suggested that additional information may be obtained from the Department of the Army and the Far Eastern Commission, 2516 Massachusetts Avenue N. W., Washington, D. C.

If the Department can be of further assistance in supplying information, please let me know.

Sincerely yours,

For the Acting Secretary of State:

Leonard R. Cowles
Chief
Public Views and Inquiries Section
Division of Public Liaison

Enclosure:

Material on Japan.

Mr. Dale T. Musselman,
521 Mt. Vernon Boulevard,
Royal Oak, Michigan.

PA:PI:GBRuckh:ETC:kc 9/27/48

Form DS-302
(7-2-46)

DIVISION OF
COMMUNICATIONS AND RECORDS
TELEGRAPH BRANCH

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DEPARTMENT OF STATE

INCOMING TELEGRAM

DIVISION OF
NORTHEAST ASIAN AFFAIRS
SEP 24 1948
Control: 8437
Rec'd: September 24, 1948
2:26 a.m.

FROM: Moscow

TO: Secretary of State

NO: 2108, September 23

PRESS

Some Soviet papers September 22 carried 14 line Prague Tass despatch summarizing Tokyo telepress story that both chambers Jap parliament decided form committee for investigation, and leftists in order gather testimony to form basis for law prohibiting Communists from occupying government posts.

Department pass Tokyo as 30.

KOHLER

PPM:MW

NOTE: Passed to Tokyo September 24, 1948. 2:30 a.m. (TWM).

HH

PLAIN

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

Office of the United States
Political Adviser for Japan

Tokyo, June 24, 1949.

No. 413

RESTRICTED

Action Assigned to NA
Action Taken NO action
Date of Action
Action Office Symbol NA
Name of Officer M Lyon
Direction to DC/R file

Subject: Supreme Court Judgment in the NISHIO Case.

The Honorable
The Secretary of State,
Washington.

Sir:

I have the honor to refer to this Mission's despatch no. 820 of December 31, 1948, reporting on scandals in the Japanese Government and to enclose in that connection an English translation of the judgment of the Supreme Court of Japan of June 1, 1949, in the case of NISHIO Suehiro. Also enclosed is a mimeographed copy of the judgment in Japanese.

As stated in the despatch under reference, Nishio was tried before the Tokyo District Court on charges of perjury before a Diet committee and of violation of a Cabinet Ordinance requiring the registration of contributions to political parties. Nishio was acquitted by the District Court and this sentence was upheld upon appeal to the Tokyo High Court. The Government appealed the case to the Supreme Court which affirmed the sentence.

The Supreme Court held (1) that so long as Nishio understood the donation to be one to him personally and not to the party, there was no violation of the Cabinet Ordinance, even if the donors considered the gift to be to the party, and (2) that the original court's finding that donations made by a group of contractors to Nishio was a contribution to Nishio personally rather than to the Social Democratic Party of which he was a leading member, was a finding of fact properly to be made by the lower court and one that was not contrary to the evidence submitted. The crux of Nishio's defense was that, since the contractors' contribution had been made with the express understanding that it would not be used to assist the leftists within the Social Democratic Party, the contribution

contribution was not a contribution to the party within the meaning of the applicable Cabinet Ordinance. The Court upheld this contention. It was also held that the perjury charge was not justiciable by the judiciary since no charge had, as required by law, been preferred by the Diet committee before which the alleged perjury took place.

The judgment was notable for a strong and cogent dissent by Judges MANO and IWAMATSU who on the basis of broad political reasoning considered that the lower court had not given due weight to evidence and logical deductions tending to show that the contribution was in reality made to the party rather than to Nishio personally. The dissent argued that legally a gift subject to a condition was still a valid gift, that in fact there was considerable evidence here to show that the gift was actually made to the party and not to the individual, and that Nishio's evidence did not rebut the presumption that this was a donation to the party.

Although the Supreme Court's decision was confined to the facts of this case, it is anticipated that the judgment will have considerable bearing on the trials now taking place of Nishio, former Prime Minister ASHIDA, and others in connection with the Showa Denko case. The legal test applied by the Supreme Court appears, by emphasizing the understanding of the recipient and by stressing minor conditions, to establish a rather relaxed standard for determining whether a contribution is made to a political party or to an individual. The conclusion is inescapable that the dissenting judges, by applying a common-sense standard to political contributions, have proposed a more realistic criterion.

Respectfully yours,

Cloyce K. Huston
Chargé d'Affaires ad interim

Enclosures:

1. English translation of Judgment of Supreme Court in NISHIO Case, June 1, 1949.
2. Japanese text of same (one copy).

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RBFinn:hh

Parchment mat to Department.

RESTRICTED

Enclosure No. 1 to Despatch No. 413 dated June 24, 1949, from the United States Political Adviser for Japan, Tokyo, subject: "Supreme Court Judgment in the NISHIO Case".

JUDGMENT OF THE SUPREME COURT

"Re" No. 1951, 1948

NISHIO Suehiro, fifty-nine years old, former member of the House of Representatives.

Permanent domicile: 62 Sumienaka 1-chome, Sumiyoshi Ku, Osaka.

Address: 259 Mita, Meguro Ku, Tokyo.

The Supreme Court renders the following judgment on the appeal filed by SATO Hiroshi, Chief Procurator, Tokyo High Procurators' Office, against the decision rendered by the Tokyo High Court on November 29, 1948, on the charge against the above-named individual concerning violations of Cabinet Ordinance No. 328 of 1947 and of the Law Governing Oath and Testimony of a Witness in the Diet:

That part of the original decision against the accused concerning violation of the Law Governing Oath and Testimony of a Witness in the Diet is reversed, and the indictment on this count is hereby quashed.

The appeal against the remaining part is dismissed.

Reasons

Concerning the substance of the appeal by the procurator:

The substance of the facts of this case are that the accused received a donation of ¥500,000 to the Japan Social Democratic Party, but that he failed to submit a report required by a Cabinet Ordinance, and that as a witness at a committee meeting in the Diet on this case he gave false testimony to the effect that this donation was not made to the party but to himself as an individual. Against this charge the accused stated in exculpation that the ¥500,000 was not donated to the Japan Social Democratic Party but to himself individually as the Secretary General and a leader of the party.

The original judgment, it is argued, first classifies the above principal points at issue into two categories, namely, (1) the intention of the contractors who made the said donation, and (2) the understanding

of the

of the accused who received the donation. These two categories are further divided into details, each of which is discussed on the basis of a large volume of evidence. As is claimed by the procurator, it appears possible to consider the donation as one made to the party. The accused, however, pleads that it is proper to recognize that the donation was made to the individual as a leader; that in the light of the intention of the contractors and the understanding of the accused as are recognized above, the ¥500,000 was donated to and accepted by the accused as an influential leader of the rightists of the Japan Social Democratic Party for the purpose of assisting the sound development of the Social Democrats and excluding the so-called leftists; that the donation was made and accepted individually for use at the sole discretion of the accused; and that accordingly, the donation is not in violation of the Cabinet Ordinance concerning Financial Aid to a Political Party, and therefore the original decision found the accused not guilty and dismissed the charge of perjury.

Cabinet Ordinance No. 328 of 1947 provides:

"The Secretary General, or other leader corresponding thereto, of a political party consisting of members of the Diet is required to submit not later than January 15, 1948, a report to the Governor of To, Do, or Ken of the district in which the principal office of the party is located of the amount of donations to the political party during 1947, setting forth in the report the names and addresses of influential financial supporters.....

"Failure to submit the report prescribed in the preceding paragraph, or a false report, is punishable by imprisonment with or without hard labor for a period not exceeding ten years."

It is also prescribed in this Ordinance that, of the organizations coming under the provisions of paragraph 1, Article 5, of Imperial Ordinance No. 101, 1946, "Prohibition of Formation of Political Parties, Associations, and Organizations," only political parties consisting of members of the Diet are required to submit a special report on donations made to the political party concerned during 1947. Therefore, the

obligation

obligation to submit the report prescribed by the Cabinet Ordinance exists only in cases where financial aid is rendered to a political party, in other words only in cases where a political party has a right to use, derive benefit from, or dispose of such financial assistance. It is very evident, in the light of the specific provision of the Ordinance stating "to the political party" and from the spirit of the legislation, especially Article 5 of the Imperial Ordinance prohibiting formation of certain organizations and making public the structure of such organizations, that cases are exempted where such right merely belongs to an individual member of a political party. Therefore, the finding of the original judgment concerning this point is proper, and the views insisted upon in point 5 of the (appellant's) arguments and the arguments based on such views are unacceptable. Therefore, even assuming, for instance, that the accused falls under the term, "leader", prescribed in the Cabinet Ordinance, violation of the obligation to submit a report required by the Ordinance requires that he understood in his subjective recognition that the financial assistance was made to the political party.

However, the finding of the original judgment concerning the subjective recognition of the accused rejected, as stated before, the arguments of the procurator, and accepted as true the accused's plea and depositions at the original trial concerning his understanding of the receipt of the donation in question, as is shown by the conclusions indicated in the original judgment. That the original judgment has not from the evidence found facts which would constitute a crime is clear from the finding of the original court, especially the fact that the original judgment specifically quoted as evidence the accused's statement at the original trial concerning this point. It is of course within the discretion of the original court to decide whether or not such a statement by the accused is to be accepted. Therefore, the arguments of the appellant in this respect are nothing but criticism of the discretion of the original court, and cannot be accepted.

As long as the accused in his subjective recognition considers the donation as made to an individual but not to the party, there is no violation of the Cabinet Ordinance, even supposing that the donors had meant the donation to the party. Therefore, it is clear that each

of the

of the remaining arguments of the appellant does not in any way affect the original decision, and cannot be accepted.

However, investigation made under authority vested in paragraph 2, Article 434, old Code of Criminal Procedure, reveals that the Law Governing Oath and Testimony of a Witness at the Diet (Law No. 225 of 1947), in the light of circumstances of the enactment thereof, was enacted to prescribe procedures within the Diet to meet requirements of investigations by each house of the Diet concerning national administration. Because such special provisions as the text of Article 8 and a proviso thereof concerning indictment of perjury in the Diet were laid down, it is proper to interpret that internal affairs within the Diet should be disposed of by the Diet within its own self-governing power, and that the charge provided for in the said article is essential to a public action regarding the offense. Since it is evident, however, that no charge of perjury was made by the House of Representatives or the committee indicated in the decision, a public action on this charge is improper. The original court therefore violated the law by hearing the public action, carrying out a substantial trial, and acquitting the accused. The appeal to the Supreme Court on this point is reasonable, and the original decision must be reversed.

Accordingly the decision is given in accordance with the provisions of Articles 447, 455, and paragraph 6 of Article 364 of the old Code of Criminal Procedure concerning the above part, and in accordance with Article 446 of the said code concerning the remaining part.

The above is the unanimous opinion of all judges excepting Judges MANO Tsuyoshi and IWAMATSU Saburo.

Dissenting Opinion of Judges Mano and Iwamatsu

We believe that the original judgment should be reversed for the following reasons:

The original court made a finding based on the evidence that the accused on or about April 11, 1947, received ¥500,000 from IIDA Seita, Managing Dire tor

of the

Enclosure No. 1 to
Tokyo's Despatch No.
413, June 24, 1949.

of the Railway Industry Co., Ltd., out of the total of ¥3,500,000 jointly collected by Takenaka Engineering Co., Ltd. and over ten other contractors belonging to the Japan Construction Industry Association for the purpose of assisting the Liberal Party, Democratic Party, and the Social Democratic Party.

(A) The original judgment then determined the object for which the contractors planned a joint raising of the fund and the understanding on which they delivered the ¥500,000 to the accused. As to the intention of the contractors it was found:

> "The ¥500,000 was delivered to the accused, who was then the Secretary General of the Japan Social Democrats and who was considered a representative of the party, by the Takenaka Engineering Co., Ltd. and other contractors who, on the occasion of the general election of the House of Representatives on April 25, 1947, jointly collected a total of ¥3,500,000 as financial aid for election campaign funds of three political parties - the then Progressives, the Liberals, and the Social Democrats, for the purpose of donating ¥1,500,000 each to the Progressives and the Liberals, and ¥500,000 to the Social Democrats. It would seem possible to conclude that the donation of ¥1,500,000 each was made to the Progressives and the Liberals through the intermediary, respectively, of CHISAKI Usaburo and ONO Banboku, then Secretary General, as representatives of the political parties, and that in like manner a donation was made to the accused."

The original judgment gave as evidence therefor the following:

(1) Deposition of TAKENAKA Toemon, witness in the original trial, in the records of third public hearing in the original trial.

(2) Deposition of IIDA Seita, witness in the original trial, in the records of third public hearing in the original trial.

(3) Interrogation of FUKAI Akira by procurators.

(4) Interrogation

(4) Interrogation of HONDA Noboru by procurators.

(B) The original judgment, after "studying the facts in detail", further states as follows:

> "The intention of the contractors in handing ¥500,000 to the accused is different from their intention in delivering ¥1,500,000 each to ONO of the Liberals and CHISAKI of the Progressives, and on the assumption that their object was to assist only the rightists of the Social Democrats the donation was not meant officially for the Social Democrats. The donation was intended for the accused who was a powerful and representative leader of the rightists and then Secretary General, for distribution at his discretion among the rightists for election expenses and other political funds. It is sufficiently recognized that the donation was not intended for the Social Democrats including its leftists."

The original judgment made the above finding and gave as evidence therefor the following:

(1) Deposition of the accused at the public hearing of the original trial.

(2) Depositions in the records of public hearings of each of the witnesses at the original trial: ASANUMA Inejiro, MORITO Tatsuo, SUZUKI Yoshio, TAKENAKA Toemon, SHIMIZU Yasuo, SUGAWARA Michinari, MIYANAGA Heisaku, TODA Rihei, SENOO Kazuo, HONDA Noboru, and TANAKA Hajime.

(3) Letter entitled "Reasons for Supporting Each Party".

Now the so-called "influential financial aid to a political party", prescribed in Cabinet Ordinance No. 328 of 1947, means generally and popularly donations or contributions to a political party or parties.

(X) Such financial aid to a political party is made in some cases without any strings attached, or made with some strings or desires attached. It is beyond doubt from a sound common-sense point of view that both

of these cases come under the financial aid to a political party. For example, any donation to a school, with conditions or desire attached for purchase of food for nourishing pupils lacking meals or for purchase of a microscope, is intended for that school. Or any donation to an asylum for the aged with a condition or desire attached for the comfort of aged women over seventy years old is a donation to the asylum. Similarly a donation to a certain political party with a condition or desire attached for campaign funds of candidates of less than forty years old or for construction of new headquarters, or a donation with a condition or desire attached for contributing election funds of members excepting a certain section of a political party must be said to be a donation in each case to a political party. Such conditions or desires, depending on concrete cases, may vary in degree of leniency or strictness. In a strict case, whenever a political party fails to live up to the conditions attached to financial aid, the supporters may be able to demand legal fulfillment of such conditions, or may revoke the gift and claim a return of the donation. In a lenient case a condition or a desire may be often merely treated as a matter of moral obligation without any binding legal effect.

Now democracy originated in Greece. In the Greek language "demo" means people (citizens), while "cracy" means government (rule). Among the Greeks, in whom the idea of democracy originated, sports (kyōgi) constituted a real foundation for education. Similarly in the United States, which is a typical democratic country, all sorts of sports are widely enjoyed. The foundation upon which the United States has been established is, indeed, democracy and sportsmanship, which in the last analysis are based on the spirit of fair play.

It is beyond doubt that by means of public notice of or giving publicity to (submission of reports and public inspection) any influence of material power on the formation of political ideas in political parties, the spirit of the provisions of the foregoing Cabinet Ordinance is, in the same manner, to realize the spirit of fair play based on justice, fairness, soundness, and vitality of government subject to the free criticism and judgment of people, for the purpose of preventing corruption and degeneration of politics due

to secret and behind-the-curtain deals of government. In other words, this law has the high aim of regulating political funds for the sound operation and development of democratic government, and is a link in a chain of important provisions guaranteeing and endorsing democratic government under the constitution. If a donation to a political party with a condition or desire attached thereto is to be interpreted as not constituting financial aid to that party, the aim of the provisions of the foregoing Cabinet Ordinance may be easily defeated through attachment of some condition or desire to such a donation. Such unreasonableness and absurdity are against the spirit of fair play, and run counter to the aims of the law for preventing corruption of party politics. Such cannot by any means be tolerated.

(Y) Viewed from another angle, financial aid to a political party is sometimes made directly in a simple manner, or may be given in the legal form of a trusteeship, or some other similar form, with the political party concerned as a beneficiary, and its executive members or other persons as trustees. They, in accordance with the provisions of the trusteeship, are charged with the management and disposal of the property under trust. Each of such cases comes under the category of financial assistance to a political party, because through these methods also a political party derives the benefit of sufficient and substantial financial aid. If such aid is not considered financial aid, the provisions of the foregoing Cabinet Ordinance may be easily evaded by means of these processes, bringing about a result contrary to the spirit of fair play and to the aim of the law.

Let us return to the original judgment again. Did it give fully conscious recognition to the aforesaid points (X) and (Y)? Was such recognition fully expressed in the language of the judgment? As to these points we entertain grave doubts, and we cannot help but do so.

First of all, the original judgment at once concluded by inference that the "donation had not been officially made to the Social Democrats", since "the contractors' intention to deliver the sum of the ¥500,000 in question to the accused....was to support only the right wing of the Social Democrats". From

this deduction

this deduction through inference, the original judgment concluded that "it is sufficient to determine that the donation was not intended for the Social Democrats including the leftists". However, to infer instantly from the conclusion that "the donation had the purpose of assisting only the rightists of the Social Democrats", that the assistance of the Social Democrats was not intended is an arbitrary conclusion. Herein evidently lies the impropriety of the reasoning. As is stated in (X) above, even supposing that the donation was made with a condition or desire that "only rightists be assisted", the donation may be considered as assistance to the Social Democrats. Also as is stated in (Y) above, even supposing that the donation was made to the accused, who was then the Secretary General of the Social Democrats, in the form of assisting the rightists at the discretion of the accused, with a condition or desire for realizing the purpose of "assisting only the rightists", the Social Democrats might have fully enjoyed the substantial benefit of the financial aid. Therefore, the situation exists that this donation may be considered as assistance to the Social Democrats.

Further, let us study the evidence referred to in the original judgment. All of the evidence presented in points (1) through (5), (Translator's note- apparently depositions in the original testimony), as the basis for conceding that "it appears possible to recognize that as regards the Social Democrats also, the ¥500,000 was delivered to the accused, then Secretary General of the party, as a representative of that party", proves that the donation was made to the Social Democrats unconditionally and without any desire attached thereto. Next, all the evidence presented in points (1) through (4) as the basis for finding (B) above is nothing but proof that there existed within the Social Democrats rivalry between the leftists and the rightists. TAKENAKA under (5) deposed:

> "It was intended to exclude the leftists, especially those affiliated with the Communists, among the Social Democrats";
>
> 'The donation was made to the Social Democrats excluding the Reds (namely, communist sympathizers)";
>
> "I thought

"I thought NISHIO was most powerful in the Social Democrats, and the leftists were a very small minority including some Reds";

"The ¥500,000 was donated to assist election funds of the Social Democrats for use of the party";

"I left to the discretion of NISHIO the matter of how this money would be used for the activities of the Social Democrats";

"I said that our only desire was that this money not be handed to communist sympathizers."

SHIMIZU under (6) deposed:

"It was our intention to assist the Social Democrats excluding Red elements";

"This donation of ¥500,000 was made ostensibly to the Social Democrats excluding the Reds, but actually it was intended for the NISHIO faction, which was the axis of the party. The donation was after all intended for the party."

SUGAWARA under (7) deposed as follows concerning the donation to political parties:

"It was decided to make a donation to the Social Democrats also."

MIYANAGA under (8) deposed:

"The reason for assisting each party....was to support the Social Democrats excluding the Reds";

"The purpose of the ¥500,000 was that we thought that, if delivered to NISHIO, the money would be delivered to those other than the Reds; therefore after all, the donation was made to the Social Democrats excluding the Reds."

According to points (5) through (8), although it can be concluded that the financial aid was made to the

Social Democrats

Social Democrats excluding Reds with a condition or desire attached thereto that this money not be delivered to the Reds, yet it is impossible to recognize that the aid was not given to the Social Democrats. However, the conclusion in the original judgment to the effect that "the above was not intended as a formal donation to the Social Democratic Party itself" is improper reasoning in that it is due to a hasty conclusion that only an unconditional donation, without any desire attached thereto, to the Social Democrats was a donation to the said party, and that accordingly the donation with a condition or desire attached thereto mentioned in the foregoing (1) was not one to the party. Also the original judgment made a hasty conclusion that only a donation made direct to the Social Democrats was one to the party. Accordingly, the original judgment must be said to have been based on improper reasoning in arriving at the hasty conclusion that financial aid to the party in the legal or other similar form, mentioned in (Y) above, was not aid to the party. Moreover, the evidence presented in (1) through (5) above mentioned is in each case sufficient to enable the conclusion that the donation was made to the Social Democrats without a condition or desire attached thereto. The original judgment even concluded from this evidence that such a conclusion was once possible. Therefore, as long as the aid to the party is acknowledged as is stated in (X) and (Y) above, definite evidence is necessary in order to determine that the donation in question was made to the accused as an individual. It has been stated in the foregoing that the evidence (1) through (5) of (B) mentioned above is not worthy for this purpose.

From the above statement it is believed that existence of illegality of reasoning in the original decision has been demonstated. Therefore, the appeal to the Supreme Court being after all well-founded, the original judgment should be reversed and sent back. (Also, the original judgment concluded that the accused understood that the donation was not made to the party but to himself as an individual. It is clear that this conclusion also was made on the premise and basis of the incorrect reasoning of the original court as is stated above. Therefore, it is clear that

this conclusion

this conclusion is incorrect. As regards the understanding of the accused, re-examination is also necessary for the above reasons for the purpose of reaching a conclusion.)

Lastly, we agree with the majority opinion concerning the point that the perjury in question has the nature of an offense prosecutable on accusation.

Public Procurators MIYAMOTO Masuzo and IDEIRI Yoshio participated in the appeal.

Tokyo, June 1, 1949

Grand Bench, Supreme Court:

Presiding Judge: Judge TSUKAZAKI Naoyoshi

Judge HASEGAWA Taichiro

Judge SAWADA Takejiro

Judge SHIMOYAMA Seiichi

Judge INOUYE Noboru

Judge KURIYAMA Shigeru

Judge MANO Tsuyoshi

Judge KOTANI Katsushige

Judge SHIMA Tamotsu

Judge SAITO Yusuke

Judge FUJITA Hachiro

Judge IWAMATSU Saburo

Judge KAWAMURA Matasuke

Translated by:
MATSUO Chuhei,
Interpreter-Translator

Enclosure No. 2 to Tokyo's Despatch No. 413 dated June 24, 1949, from United States Political Adviser for Japan, Tokyo, subject:"Supreme Court Judgment in the NISHIO Case".

D-413 Tokyo ik

昭和二十四年(れ)第一九五一號

判　決

大阪市住吉區粉江中一丁目六二番地
東京都目黒區三田二ノ五九番地
元衆議院議員　西尾末廣
當五九年

右の者に對する昭和二二年政令第三二八號違反、議院に於ける証人証言等に関する法律違反破壞事件について昭和二三年一一月高等裁判所の言渡した判決に對し、東京高等檢察廳檢事より上告の申立があつたので、當裁判所は次のとおり判決する。

主　文

本院における証人の宣誓及び証言等に関する昭和二二年政令第三二八號違反被告事件に對する部分を破棄し、同事件に對する上告を棄却する。

昭和二三年(れ)第一九五一號

本籍 大阪市住吉區墨江中一丁目六二番地
住居 東京都目黒區三田二五九番地
元衆議院議員

判決

西尾末廣

當五九年

主文

原判決中證人の宣誓及び証言等に関する部分を破棄し、同事件に対する公訴を棄却する。

右の者に対する昭和二二年政令第三二八號違反、證院に於ける証人の宣誓及び証言等に関する法律違反被告事件について昭和二三年一一月二九日東京高等裁判所の言渡した判決に対し、東京高等檢察廳檢事長佐藤博から上告の申立があつたので、当裁判所は次のとおり判決する。