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only when the people concerned determine their actions and they themselves by daily thinking and acting construct and maintain a lasting system. No voter or citizen or group of them can afford a passive attitude. Successful candidates have in all probability made strong campaign promises. These statements must be examined by the voter and citizen not only during campaign days but also throughout his or her whole term of office. The representative should return to the district which elected him or her and there report what program was followed in the assembly. The voter knows by this method only whether the campaign promises have meant anything at all or not. The representatives all their years in office as public servants have this continuing responsibility. When they shirk or fail in this, the voter has no alternative but to elect another person.

Before the people of Japan today are a host of candidates seeking office for the national and local legislative bodies. On 25 April candidates for the House of Representatives stand for election. Five days later the successful candidates for all the local assemblies will be named for the some 8,000 villages, 1,800 towns, 209 cities and 46 prefectures. In his or her own locality the voter must be conscious of his or her choice. Voters as individuals or as groups must denounce unfair action on the part of anyone who distrubs or hampers the candidate in his speaking and campaigning. All should be heard under as nearly equal circumstances possible. Candidates with unpopular or strange programs should and must be defeated at the polls and only there since it is the lawful way for any and all alike.

Again, because these assemblies are the representative bodies of the people, the voters should go to the open sessions and hear the discussions and debates. They should go many

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times. In doing so frequently the citizen can know personally how well his or her representative is serving the community. The press has to be at these sessions also. The papers and radio should give to the public all they can; for the program of the sessions is the public's business. With the constant attention of the public to the deliberations, the assemblies will be more profound, rational and painstaking in their work. Indeed they will know as not before that they have the public's trust to fulfil.

One word in final summary. These significant elections in terms of the great changes through the New Constitution and all the laws, especially in Local Government, will bring forward the new and young leaders which the people of Japan so desire. They will be young and they will be new and they will rise with strength and courage to meet and solve the problems of today and tomorrow. The Meiji pioneers were young, most of them were not known. They threw out the confines of Bakufu government which had long past served its day. Iwakura, Saigo, Okubo, Kido, Inoue and Ito met the challenges in their day for their generation. The forth coming leaders today and tomorrow have high standards to meet. Imbued in the new spirit and dedicated to the democratic course, these men and women can and will do so.

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LOCAL GOVERNMENT UNDER THE NEW CONSTITUTION

Press Conference, Government Section and Civil Information & Education Section. Statement made at 1100 26 May, 1947.

Few articles in the new Constitution of Japan mark a sharper break from the past than do those which provide for local autonomy.

The Meiji Constitution established a centralized government with strong controlling powers over all the land. It made no provision for local self-government. The natural and inevitable result (as it must be in all such cases) was that the National Government, given a free hand in local affairs, established a system of centralized authority as rigid as any the world has ever known -- a system which made it possible for the central government to reach into every city, town, village, and hamlet in Japan to exercise arbitrary control over the lives of the inhabitants, to probe for intelligence, to disseminate propaganda, and to ensure that all local government conformed to an arbitrary and deliberate pattern deemed best suited for the exercise of full and complete national control over all echelons of local government at all times.

Under the Meiji Constitution the government did establish a structure for local government by laws and by Imperial ordinances. This structure was overshadowed by strict and purposeful administrative procedures which the central government determined and maintained at will. Thus local autonomy as a practical element in government was hollow. Now and then evidences of local government and spirit were seen to burst through like in storms when fitful rays of the sun gleam out to make happy hearts.

In contrast, 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

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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.

Down through the years writers and others have given their definitions of democratic government. Their minds have met that democracy has the following characteristics: (1) a large part of the adult citizens are entitled to vote; (2) there is freedom of thought, speech, and press which the common man enjoys; (3) the principal policy-making officers of the government are freely elected by the voters at reasonably frequent and regular intervals; (4) it is the settled custom that those who are defeated at the polls will withdraw peacefully from office; (5) it is understood that those who are elected and assume office will both endeavour to, and will have the power to, carry on the government in accordance with the public will and the general welfare; and last and above all, men and women are equal before the

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law because their government makes the law for all men rather than for a class or group of men.

Under the form of government permitted by the old Constitution, the question could well be raised as to whether many of these requirements actually existed in either local or national governments. Now, however, under the new Constitution all five fundamentals characterize both the national and local governments.

For example, basically the same electoral qualifications and the same guarantees of freedom of thought, speech, and press apply to both national and local governments. Allowing for the differences occasioned by the use of the parliamentary system in national government and both the parliamentary and presidential systems in local government, both national and local government are fully comparable (1) in the matter of popular selection and control of the executive and legislative branches, (2) in the frequency of meetings of elective assemblies, and (3) in the frequency of elections. No question arises with respect to the applicability of the 4th point while the new Constitution and its enforcement legislation not only provide methods of ensuring public service on the part of public officials but also guarantee to representatives of both national and local governments adequate powers for ensuring the general welfare in their respective spheres of operation.

Of marked further importance, of course, is the essentially educational role of local governments. 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

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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 great and position in life. The government has a welcome pl ace 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.

The April elections, it will be recalled, gave positive proof of the deep interest the Japanese people have in their local governments. Although the two local elections came first and last in the series of the four major elections, the two contests for local offices were characterized by greater popular participation than were either of those for national offices. Again, although the enforcement of the Constitution is but a few days past, local governments are already serving as the proving grounds for methods and devices which will some day be transferred into the national field.

For example, new local government legislation made possible by the Constitution, has provided a wide variety of methods by which the populace may experiment with continuing controls over their officials: <u>recall</u>, by which voters may remove from office chief executives, legislators, members of election administration committees, and inspectors; initiative, by which voters may request the passage of legislation they deserve; and <u>referm</u>, by which they may rescind legislation of which they do not approve. All these, of course, are extensions of the right of peaceful petition for the redress of grievances, translated into democratic action. They are, as well, part of the educational process of democracy -- stimulating public discussion, increasing the voters' knowledge, and providing the electorate with an opportunity for direct popular participation in government. These are vital to the new Japan and local units everywhere must practice these widely. Since they are new and untried as far as Japan is concerned, it

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is entirely proper that first experimentations should be carried out on a local scale.

In this connection, one other experiment permitted by the Constitution of Japan can not fail to attract deep interest. The two usual forms of government are the parliamentary system and the presidential system, the former characterized by selection of a chief executive by the majority of the legislature, the latter by the election of both chief executives and legislatures directly by the people. Both are democratic; both have been adopted in Western democracies. But what is true in the western world is to find a given country using the same system throughout both national and local governments -- not, as has been done in Japan, establishing one system for the national government and features of both systems for local governments. Thus Japan charts a new course for a liberal and serving government. It is just such freedom as this, such guaranty of the right to experiment in government, which marks the new Constitution for the liberal document that it is.

In the last analysis, of course, equally important is the fact that so many rights are inherent in the Constitution. In the legislation which implements it, is the great necessity that they be understood by the electorate and that they be utilized. A great, active, intelligent press through editorials and good reporting will remind the public regularly and well of those rights and responsibilities. These rights and duties can be championed by the press with the issues of the day. In this connection it is particularly important that the mortmain of the past be lifted from the operation of local governments; new laws require new methods and procedures, not a continuation of past practices and traditions. Local legislatures are a case in point. In the past they have always been subject to local executives; now they are co-equals. Should, however, legislators abdicate their true function, should they remain in passive servility to chief executives, the result can only lead to disaster. Legislators not only as members of an important body but also as men of originality and purpose must stand up and have their say aloud, so that others can benefit. No other course is open to them today. Students of history will remember

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that Hitler's first attacks were on parliamentary incompetence. The vitality of legislatures is a true barometer of the rise of dictatorships, national or local. In the new conditions the assemblymen can be original and their own guides. In the past there has been too much dependence on the Central Government. The vitality is measured by the degree to which the members of the assemblies think and act for themselves.

Under the new law for local autonomy there is "responsible government". This means that the executive whether he is governor of a prefecture or a mayor of a city, town or village or yardhead, is responsible to the assemblies for his course of action. He is not independent of the legislative body. Even though he is acting at times in a national capacity under national authority he is not entirely free from the assembly; he must at least report to it what he is to do. Neither the electors nor the legislatures will forget that their power, and not that of the executive, is the ultimate power in government.

In essence the new Constitution ensures powers of self-government readily comparable to those in Western democracies. Recent local government legislation enacted by the Diet is notable for its translation of the general principles and concepts of the Constitution into concrete laws providing for the explicit exercises of local autonomy. These laws provide far reaching opportunities for laying the foundations of democratic institutions and principles throughout all the prefectures, cities, towns and villages in Japan. What is imperative, however, is that the people themselves, electors, continue to exercise the powers, checks, and initiatives with which they have been provided.

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BI-ELECTIONS IN NATIONAL AND LOCAL GOVERNMENT - 1947.

Joint Press Conference
Government Section and
CI & E, 8 August, 1947.

Within a very short period of time the Japanese citizen will, once, again, perform his or her duty at the polls.

Bi-elections to fill vacated seats in the House of Councillors will be held on the 11th and 15th of August. On 11th August Shiga Prefecture will elect one candidate and on 15th August Gumma, Tochigi and Tokushima Prefectures will elect one candidate each while Kagoshima will elect two members.

Because these elections are few in number, their importance in the nation's life cannot or is not to be minimized in the slightest degree. The House of Councillors is part of the highest legislative body of the nation. To some degree it is comparable to the Unites States Senate or the British House of Lords. The agenda of the present Diet calls for the continuance of drafting and enacting laws implementing the Constitution that will be fundamental and far reaching in the history of the New Japan. To a large extent the success or failure of Japan's venture in democracy will depend on the wisdom and the selflessness of the men who have been and are about to be elected to the House of Councillors.

At other times during the month of August various local governments will also hold elections for their chief executives and assemblymen. These will occur in but a few prefectures. Viewed from the broad point of view the proper and able administration of these local offices is another matter that transcends purely local considerations and has a definite and decisive bearing on the welfare of the whole of the nation. Once again the Japanese citizen will have to make choices the results of which will be all important.

In the April 1947 elections for assemblymen of cities, towns and villages 81.2 per cent of those eligible to vote did so. This is an extra-ordinary record of participation. It may well be a world record for any nation wide election conducted in the democratic tradition. This evidence of the interest of the man in the street in the affairs of his government is perhaps the most encouraging of all the signs for a healthful and vigorous

democracy. To a creditable extent it is a reflection of the intelligent and thorough handling of political news by the Japanese press and radio.

The Japanese should take a just pride in the advances made by the Japanese people but the time for resting upon laurels earned is still in the far distant future. The intent of the electorate is obviously good, but it must be remembered that a large part of the populace is still poorly informed and unaware of the full implications of the change from a state of feudalism to one of democratic society.

It is during the time of elections that responsible Japanese government should come to the fore since responsible government can only survive if the elections are conducted in such a way that they guarantee and perpetuate the franchise of the voter.

These elections are to select, from among the Japanese those who will administer the affairs of the Japanese. It should and will be a Japanese election operated and conducted by duly constituted Japanese authority.

Election administration committees selected by local governments under the Law Concerning Local Autonomy will conduct the elections and certify the winning candidate to hold office.

The Supreme Commander will be represented by Military Government teams which will exercise the same surveillance over these elections with the same thoroughness that was called into play during the national and local elections of last April and the national elections of April 1946. Military Government observers will be present as observers only but it is the duty of any citizen to report to the nearest Military Government officer any violation or alleged violation of the law. Complaints thus reported will be sent to the Election Administration committee and appropriate action will be taken through the public procurators and the courts.

Although the elections that have been held in Japan have been most orderly and democratic when viewed as a whole, here and there in some prefectures there have been infractions of the election laws. The greater part of these infractions have already been prosecuted and the perpetrators of attempts to gain office by illegal means are finding that the machinery for the enforcement of the law brings swift retribution.

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Every effort must be made to insure the voter against coercion, intimidation, acts of bribery or any act which might imperil his chance to select the candidate freely whom he believes will best serve the interests of the greatest number.

Violations of the election laws since April have resulted in the indictment of 4,771 persons. Penalties in the form of fines have been meted out to 1,914, imprisonment has come to 53 and penal servitude to 136; one has been found not guilty and 2,667 are still awaiting trial.

Data compiled by the Ministry of Justice shows that of 2,910 cases indicted for violations of the election laws and turned over to the public procurators the two most serious and common offenses were: buying votes (1,160 cases) and demanding or accepting bribes, and material benefits and compensation to be granted after election (1,081 cases). Penalties have been imposed for violations that range from fines (¥300 to ¥7000) and imprisonment (3 months to 18 months).

It is incumbent on all Japanese citizens to remember that the inviolability of their voting franchise is the one thing that can preserve for them the rights that they have finally inherited.

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LOCAL GOVERNMENT

Press Conference of Civil Information and Education Section and Government Section. Statement made at 1100 hours on 10 October 1947.

The conference this morning is a continuation of the subject of Local Government. In the last conference in conjunction with the amendment that no organ or agency of the government could from now on establish branches or "fixed staffs" in the prefectures without beforehand securing Diet approval and further having appropriated monies to pay for and maintain them, the fundamental issue was raised of what is the National Government's business and functions and what is the Local Government's business and functions, regardless of whether the latter was a prefecture, city, town or village. It was stated that through careful examination and definition law by law and enforcement regulation by enforcement regulation, clear refinements can be made as to what is and what is not either the National or Local Government's responsibilities, rights or duties. It was stated also that without question in many spheres, the National Government's business requires a national system and personnel for its proper functioning. The same has been and is true for the Local Governments. But above all, however the citizens of good government know that in critical times, the national interest is paramount. Therefore local interest is secondary. Therefore local interests yield to the national interest because they are part and parcel of it. On such measures as these, that action by the National Government does not mean that the local interest is lost forever. It means normally that the Local Governments have yielded for the moment to their National Government. In other words, it means that for the moment the local interests are suspended. They are suspended for the period of crisis only and for a cause stated definitely and made known.

The Japanese structure of government has provided all along and does so today that the executive authority of the prefectural administration is dual in function or character; it is national part of the time and local the remainder. Many times, therefore, the governor of the prefecture is transacting national business under a national law for a national purpose. When he is performing in this manner, he is under the authority of the Cabinet, the Minister or some other central agency of government. What degree of

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supervision does the central government have in such matters? What can the competent minister do in a situation in which the governor does not carry out the requirements as set forth in the national law? Likewise but within the prefectural sphere of jurisdiction what power can the governor exercise over the mayors of cities, towns and villages?

Article 146 has been amended so as to provide a democratic proceeding in the nature of mandamus to compel a governor or a mayor to carry out the proper duties in respect to the national laws or cabinet orders issued in consequence and in terms of these laws.

The Amendment provides for a simple quick and effective method of carrying out the national functions of these officials. The old provision set up an Impeachment Court to remove the official in case he failed to do his duty. The call of good government however is action. The citizenry desire that the laws be carried out, indeed the desire is that the job will be done. The present Amendment provides a democratic method to compel him to act. Further it provides in cases of necessity or emergency for the taking over of the duties by the ministry concerned until the functions are performed. Should the case be even graver in nature the proceeding provides also for removal from office when the governor after being ordered by a high court to act still refuses. This means that the governor in defying the court's order is therefor defying the government itself, which in law is contempt. If in the second hearing before the court he is found guilty he may be removed from office by the Prime Minister and no one else.

The Amendment provides for three separate steps (1) the original or mandamus hearing, (2) the second or contempt hearing, and (3) the transfer of the case from the court to the Prime Minister for removal proceedings.

In each step the accused official is given adequate written notice. This means that he knows what the charges are. In each step he has a hearing and can appeal each step to the courts. The hearing on mandamus must be within 15 days from the time of the filing of the original petitions or the statement of charges by the competent minister. The decision of the court must be given in another 10 days. The reason why no time is lost is because the issue is a public question. The routine of the court's calendar gives way to the paramount issue for the people themselves, men and women as the government are speaking. No higher authority in government exists.

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The Amendment also sets forward a similar proceeding to be brought by the governors against the mayors. However in these situations the actions and appeals are with the district or lower courts.

The Amended Article 146 therefore applies to national powers and national laws and all local executives concerned.

If the local executives are actually remiss or incompetent in their purely local functions they can be removed under Article 81 of the Law Concerning Local Autonomy. The registered voters and citizenry have the democratic proces. of recall which they can exercise. Again this is precisely as it should be.

One of the most coveted democratic powers exercised by Local Governments is that of the police -- the establishment and maintenance of a police system functioning always through if not actually dedicated to (1) the preservation of law and order by equitable machinery, (2) maintenance of the ideal of human liberty and (3) the positive use of the principle that "authority is derived from the people."

The plan as announced by the Japanese Government and the legislation for which is being drawn now, is decentralized. It follows the principle of local autonomy as set forth solemnly in Chapter XIII of the Constitution and the fundamental implementations by the Law Concerning Local Autonomy.

Each city and town over 5,000 in population will have a police system of its own. Within the city's and town's borders, the police system will be independent from the prefectural government or the central government.

The principal authority in each city and town over 5,000 for the policy supervision of the police system will be a commission of three civilians who will be appointed by the mayors and confirmed by the assemblies. The chief of the police system will be appointed by the commission and will be responsible to the commission for the proper performance of the city's or town's police system.

The total number of men and women who will staff the many systems of the cities and towns is established at a figure of 95,000.

By the sides of these city and town police systems will be the national rural police system of 30,000 men and women. While the system as a whole receives administrative direction from a National Public Safety Commission, the units of it as they are stationed in the various prefectures for service

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to the rural communities, are under the authority and control of the prefectural commission whose three members are appointed by the governor and confirmed by the assembly.

The National Public Safety Commission is a body directly under the authority of the Cabinet. It is composed of five members who are neither career officials nor police administrators. They are appointed by the Prime Minister with ratification by the Diet for a fixed term of years.

Beyond the Commission's administrative direction to the national rural police its supervision extends to a police academy and training institute, criminal records office and scientific research for better police administration.

No channel of command, control or supervision exists between the National Rural Police Force and the local municipal systems. However, technical channels of communication for assistance, coordination and liaison do exist.

Lastly and wisely the plan provides for national emergencies. Upon the recommendation of the National Public Safety Commission, the Prime Minister can assume control for the national crisis not only of all the National Rural Police, but also of such municipal systems, any or all, as he deems necessary. A most important safeguard exists, however, upon the unbridled use of such power through the requirement that within 20 days from the date of taking so grave a step, the temporary control measure must have Diet ratification.

It goes without saying that the national rural system and municipal system will function only in matters purely recognized as police administration.

The purpose of the plan is to bring forward a New Japan polarized from its former police state self. No thought policing functions nor political espionage can be a part of either system. Nor is freedom of speech and assembly to be suppressed by them.

Embodied throughout the plan and legislation is the democratic principle that police power or police systems of men and women cannot be left safely beyond friendly clasp of the citizenry of the nation who authorize and support .

Fully apart from the discussion of these two essential development among many other functions for Local Government, is the subject of the by-elections held since the record establishing series of April 1947. These by-elections occurred mostly in August and September for (1) the filling of six seats for the House of Councillors, (2) contests for the post of mayor

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in two cities, (3) metropolitan assemblymen for two Tokyo-To wards, and (4) settlement an assembly dispute involving 22 seats. In the earlier elections some few village contests were settled.

These by-elections have presented a refreshing contrast to those elections in Europe and other torn segments of the world which received the attention of the international press. Contrasted with the news from Europe and elsewhere that elections were stolen by coercive voting, and out and out iron fist control by certain groups, elections in Japan present a perfect demonstration of an occupied people enjoying absolute, free elective franchise. The citizens rather than being forced into voting here in Japan, exercised their rights with complete liberty. The abstention figures which ran from 53.6% to 72.5% in the House of Councillors elections in five prefectures, when translated into units of a free people who in the presence of occupying military forces elected to exercise their right not to vote, is noteworthy at this particular time.

It is through the Supreme Commander, General MacArthur, and his conduct of the occupation that this feeling of real freedom embraces the people of Japan.

These by-elections were and are great examples of freedom of the elective franchise, to oppressed minorities throughout the globe as well as to sinister and simple critics. These by-elections of August and September 1947 are an effective answer once more to the whole world that the democratic and christian motives of the Occupation move toward World Peace!

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GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

Address delivered on Local Government to the prefectural authorities, Osaka 15 December 1947 and Tokyo 19 December 1947.

Good government demands that all of its members working in it have coordinated and continuous information from all its working elements. The conference today is the best type by which means this goal can be accomplished. The officials of the Naimushō as one of their last acts before the Ministry's dissolution, are to be congratulated for summoning the meeting. To come before this conference of chiefs of departments of the various prefectures to discuss some factors of self-government and some of the great underlying principles of democracy which support it and will give it life, provide a memorable occasion for me. I am indeed happy to meet you today.

Because you all are practical men of governmental training and experience, you do but only have to be reminded that the charter of self-government for villages, towns, cities and prefectures is the Law Concerning Local Autonomy which has been amended just recently. That this Law embraces much more than a mere codification of the four old laws and imperial ordinances is known to all of you here. That the history of these old laws as well as that of their two immediate predecessors is a long one, is known to you also. Very important indeed in this long period is the fact that certain progressive steps even though slowly made, are discernable; they are indeed bright spots in the gloom of authoritarian government which years before crowded out peoples' rightful independence.

During the early years of Meiji there were a number of bold, intelligent and courageous men who took forward steps in developing government in Japan. Because of many delicate as well as powerfully conflicting issues of those years the planners in using forms of western structure kept the dominating authority and control in the central administrators. These men determined a course of action which caused all those in high offices following after them to measure everything first by the principle of national interest. Even the smallest of events in the villages, towns and cities have had to be evaluated in the past in the light of whether the national interest was satisfied.

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Adherence to this principle which so strictly has been the accepted pattern in Japan, embodies the philosophy which virtually smothers local authorities. It causes them to hesitate to answer or to solve their own problems locally. Those good men and women are looking upwards continually for authority ... for permission to act on this or that when they might well be determining their own salvation on those very issues. It is apparent, therefore, that this principle of national interest first when it stifles local jurisdiction has been taken to impractical extremes.

The balance of good government has to be maintained. Those who advocate and desire complete autonomy locally have to exercise care and caution as they may place themselves and others too in a situation in which home rule soon develops home ruin.

The Law Concerning Local Autonomy has undergone recently some amendments which not only bring forward new structure and functions for the local entities but also clarify and extend those powers and responsibilities enumerated in previous changes by the Diet. This progress is the result of the concerted efforts of members of the Diet, executives of the responsible political parties, professional men of learning and others like yourselves, those in the governmental offices and services. These results are obtained from the best thinking at the present time.

Without question the law will be amended again and again as occasion and condition demand. When judgment is exercised this amending process is correct and right; it justifies the existence of the legislature. More and more when abridgements and curtailments of people's rights are made, they will have to be stated and enumerated in the national laws and local by-laws. Such serious matters of substance can no longer be left to executive or administrative discretion. All citizens must have the same legal rights and opportunities; they must have the same legal recourses to ensure them.

By no means would it be wise for a detailed enumeration to appear here of the amended articles. As practical men needing information to meet the public's questions, study of the law, commentaries to be given here orally, instructions in writing and the conference discussions will give you the details.

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Emphasis is placed however upon the following five general issues:

1. In order to clarify fully and to make the implementation of Chapter 8 of the Constitution more definite the jurisdiction of all the local assemblies with regard to their sphere of authority, has been set forth in Article 14. It is self-evident that all local assemblies must always have their by-laws which they enact in harmony with the national laws and in the spirit of the Constitution. It follows further that by-laws of cities, towns and villages and autonomous wards must not only meet these two national requirements but also a local requirement that is those by-laws which may be enacted by the prefectures themselves. This, of course, is because all cities, towns and villages are an integral part of and therefore make up, the whole prefecture. It would be peculiar government indeed were any city, town or village to launch a program of its own which would either disturb or destroy the harmony of the prefecture. Most important, too, is the fact that Article 14 of the Law Concerning Local Autonomy is a general, implementing, national authorization for all the local governments to go ahead and solve their own problems without having to wait, law by law in detail, for the national Diet to take recognition of local minutia. Firstly, it would be impossible for the best of national legislatures to recognize with any reason all local problems and to provide an answer by national law. Secondly, were this feat possible it would be most undesirable as it would contravene the sound principle of self-government which operates for local independent thinking.

Contrary to past action, but thoroughly in line with the new Constitution, neither national government officials nor local officials, nor the various assemblies themselves need judge the validity or constitutionality of the by-laws which the assemblies enact. This problem or question of what is valid or what is constitutional is one for the courts and the courts alone. This does not mean, of course, that the chief executives, the national and local officials or even the assemblies should embark on a program of undue license or demonstrate wanton disregard. Nevertheless, the final answer for any adjudication rests squarely and fully with the courts.

2. The law relating to the administrative departments of the prefectures has also been amended and doubtless in the next session of the Diet will see

DECLASSIFIED E.O. 11,652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 072

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

One word further with regard to responsibility of the departments and departmental heads: the channel of authority is always through the governor to the national government and no one else. The national offices of the various ministries referred to above are something else entirely different. Each of you is familiar with this pattern of administration. Mention here is made as a simple warning for good government. If departmental chiefs receive orders directly from the central ministries, they must certify these to the governor for verification and proper action before taking any steps on their own. Regulations complying with national directives should be approved by the governor in each major instance before any issuance of them locally is allowed.

DECLASSIFIED E.O. 12032 SEC. 3(E) AND 3(B) OR (E) NNDG # 775 012

3. The dual character of administration at the prefectural level of government was introduced into Japan as each of you know, in the middle of the Meiji era. No actual change in the present Law for Local Autonomy has taken place in the dual character of the chief executive when he is functioning directly in his national capacity under the direction of a competent minister to produce results of a national character. An important procedure has been developed in this Law called "mandamus" the details of which are in Article 146 and which will be explained to you. It is vital to good government that when high authority believes one of the executives in line below has not performed correctly, that the high authority say so, do so specifically and in writing by making definite charges. It is, of course, just as important that the executives under censure be given the opportunity to reply to these definite charges with specific written answers. In this important democratic procedure the court of the district concerned may be asked to confirm the facts and to adjust them. The final practical result may be either that the competent minister in the case of an actual recalcitran executive, may carry out the law until the action is completed, or in a graver situation, the Prime Minister may remove the recalcitrant.

When it is a matter of the chief executive's discretion only, however, it is obvious that the governor is performing in terms of his own knowledge and judgment for the benefit of local public affairs.

4. The principle of national interest first and the principle of local autonomy can have reasonable limits. These can be defined in terms of those functions which are so vitally important that only national personnel throughout all levels of government can perform them; for such functions national branch offices have to be established at various levels. It is important, however, that their number be kept small and that the staff and personnel be kept in actual line with the importance of the function and the volume of work which it demands. Energetic local government officials can by study and good performance bear the major weight of the functions of government in Japan. In Article 156 only such national offices and fixed staffs can henceforward be established, except through a national law which at the time of its passage provides the funds for its own operation. This whole problem is

indeed serious. It is serious wholely in terms of sensible administration. As the ensuing months go by those immediately concerned with the problem must resolve a workable answer.

5. That the various assemblies will establish libraries of their own which will become depositories for national and local laws, court decisions and other official information, will be a great aid and a most progressive step forward to all local governments. Officials of your rank and importance will recognize the significance of this new and desirable step. It is to be hoped that each of you will be instrumental in aiding the development of these institutions.

Democratic government in the world is best developed through two collateral and mutually dependent institutions or processes: one institution is through a political foundation in which great men and women are elected by their constituencies to act for, in the name of, and to be responsible to the populace or nation as a whole. The other institution is a foundation of intelligant and faithful civil service officials who as the years pass in the nation's history, perform the important services of government which the populace, through these elected political figures, desires to have carried out. Moreover these civil service officials provide a continuity and permanency to government. When these two processes are in harmony the populace always enjoys a responsible and happy government.

Each of you before me has a direct interest in seeing this goal attained. When one pauses upon it and thinks carefully about it, he realizes the high opportunity which he has in developing the democratic processes which are so desired by the people in Japan themselves and which without question will be mirrored for judgment to the rest of the world. A great man in Japanese history, Saigo, Takamori, wrote sometime ago in his forceful way the following words:

"Administration has never been successful from the old down to the present times, in an age when men, ruler and ruled, feel themselves sufficient. When a man does not feel himself sufficient, he gladly listens to the advice given by the common people. When he feels himself sufficient, he soon gets angry at another's unfavorable criticism of him, and in consequence wise men will refrain from giving advice to help him in his work."

I ask each of you to reflect upon these good thoughts.

In Japan some years ago an old Japanese proverb was given to me; it was this: "Hana wa sakura-gi hito wa bushi". I was never happy with seeing bushi in that place in the proverb, even though the world has produced warriors of noble character. Today let us put the words seijitsu na koboku in the place of bushi. In fact, I look forward eagerly and earnestly to the time when the new proverb will be a working reality.

CECIL G. TILTON
Chief, Local Government Division

AMENDMENTS TO THE LOCAL AUTONOMY LAW

Press Conference of Civil Information and Education Section and Government Section. Statement made at 1100 hours 9 January 1948

The purpose of the conference this morning is to discuss two more important amendments to the Law Concerning Local Autonomy. It will be fruitful for each one of you to have at your desk a full copy of the whole Law - especially with the series of carefully worked out amendments which have been the subject of our recent sessions here. It would be a beneficial service to the public to see various articles and editorials concerning the many elements of this great Law appearing from time to time as a constant reminder of what the Japanese men and women can accomplish in this New Year and in those which are to follow.

The first amendment is a series of important paragraphs to Article 243. The reason for its enactment is to prevent by proper legal procedures an evil of some magnitude in the methods of collecting public monies. During the past few years there has grown up in Japan with sanction unfortunately by overly enthusiastic administrators who have in this matter disregarded the inequities of the method in order to show a good result. Certain non-governmental associations and individuals have been given authority to collect taxes for the municipalities. The local government has specified a required sum which must be collected by this private association, group of persons, or artificial persons. These associations or non-official - non-governmental persons have collected these sums with a peculiar exactness. The municipal governments have generally received their required sums. This is one thing. But the associations or "unofficial tax gatherors" have taken bountiful tribute from their members or "associate members". This is an entirely different thing - a most evil one for here in such a system absolute licensed piracy abounds. In other words these associations have dunned and dunned from persons without rightful legal protection not only the given amount in taxes but also very large funds far over and above the required amounts for which there has been no thought or intention to repay in any service or to give any such thing as an accounting. Summed up this system has fostered the sudden birth and growth of a very small clique who have fattened their purses through daylight stealing.

The new amendment to 243 provides that any local government be it prefecture, city, town or village in Japan may not delegate any of its authority for either the collection or disbursement of public monies to any

private bodies or natural persons or to cause these official bodies or persons to execute such authority or to participate in the issuance of any licenses of business or other similar certificates whatsoever, or in the collection of public monies which relate to these licenses or certificates. Proper exemption in the law exists, however, for taxes to be collected at the source and for such consumer's taxes as the Diet will provide; thus theaters and similar institutions will continue collecting the admission taxes, and as before, paying these sums to the government.

It is clear therefore that a government must perform its own functions and with its own offices and officials - not outsiders - render to the public all proper service.

Proper enforcement of this Article will give straight-way relief to thousands of stall-keepers and merchants who have come under this baneful tax-gathering scheme. This Law further requires that the private representative of the private body or natural person who has collected funds as outlined above, will now have to make an accurate and straight-forward accounting of the yen that has been collected. The accountant or treasurer of the ordinary local public body concerned is given power to require the submission of financial statements, account books, and records, if necessary, to support the rendition of accounts which are now due. Moreover, the statement of these accounts must be signed with seal and certified by the proper official under oath that they are true and correct. Under the law, moreover, when an examination of the statement of accounts indicates an illegal conversion of these tax monies, the accountant or treasurer must refer the matter without delay to the public procurator. There is no discretion on his part; he is required by the law to take action at once.

Article 243 of the Law is further supported by the supplementary provisions of Article 5. In this Article the requirement is set forth that the representative of groups, societies, or associations, or the natural persons who have been collecting these taxes, alloted charges, rents, fees, or license charges, or assessments of any kind to which the local public body is entitled legally to receive, must make the accounting within thirty days from which the amendments as law, take effect. Specifically, the thirty-one days of January fill the requirement of this Law. They should start today getting their accounts in form. For violators and offenders in making illegal conversions of public monies, the Supreme Court can establish rulings and proceedings, provide for actual dissolution of the organization. This, of course, would be followed by proper liquidation procedure. The Lower Courts will handle

most of these cases. The law further provides that upon conviction by the Court imprisonment not to exceed two years at hard labor, or a fine of 200,000 yen or both, in consideration of the circumstances, may be meted out. In summarizing the importance of this amendment the elements of good government are brought out: (1) the person who is taxed by the local entity is the proper person to pay whatever the required sum is to that local entity, he should not ever be put in a position in which others may extort him; (2) for the conduct and operation of a particular business or calling, the standards and requirements which must be met to own or operate it should be stated in the law for any and all to be made aware. It is an old axiom that many people are unaware of their rights. For the citizens of Japan the matter of how they can pay their taxes, should be one of utmost concern; they must be fully aware of why they are collected and where they go.

The second amendment for discussion today concerns Article 158 which relates to the administrative departments in the prefectures. This Article has been amended before and doubtless in this session of the Diet some additional changes can be made if good reasoning demands it. It has been desirable to continue the development of the structure of a prefectural administration in harmony with the principle of government which has been utilized by many western countries, as well as by Japan itself. Certain departments fall within a fixed classification; certain departments fall within a permissive classification. Each classification has an enumerated total. Those departments which fall within the fixed division are by specified function basic to all prefectures. In other words, the major functions and operations of prefectural governments in their dual capacity can be carried out essentially through these fixed departments. At present the law lists seven of these: General Affairs, Welfare, Education, Economic Affairs, Public Works, Health, and Agricultural Land. An examination of the functions of each of these departments is easily made by a reading of the law. These seven departments, therefore, become a conservative base from which necessary extensions or additions can be made. The classification of permissive departments allows those prefectures with divergent interests to give the proper recognition to them. It is desirable and good administration that the local specialties generating their particular volumes of business receive

the proper governmental support and placement. These flexible features give the advantage of simplicity and uniformity. Moreover, by expanding from a conservative base such as has been indicated above, adequate provision is made for a more certain "pay as you go" basis. These permissive departments can be established in each prefecture through ordinary legislative routine. These permissive departments which the governor and the Assembly may establish jointly when under their own conditions they deem it necessary and can justify the expenditure of the increased administration are: Agriculture and Forestry, Commerce and Industry, Fisheries, Labor, and Public Utilities.

The details of organizing and administering the departments are under the powers of the governor and his departmental chiefs. It is clear in the Law also that the central government has nothing to do either with the establishment of a department in the prefectures nor most certainly with the organization of those departments. The prefectural authorities in knowing the Law can and will exercise this power by themselves; they should be unhampered by either direct or indirect "suggestions" from elsewhere.

FIVE MAJOR CITIES' VIEWS ON REALLOCATION OF FUNCTIONS

Aug, 1950 ~~1590~~

City of Kyoto
City of Osaka
City of Yokohama
City of Kobe
City of Nagoya

FIVE MAJOR CITIES' VIEWS ON REALLOCATION OF FUNCTIONS

Aug, ~~1590~~ 1958

City of Kyoto
City of Osaka
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Five Major Cities' Views on Reallocation of Functions

August, 1950

I. Basic principles for reallocation of functions

(1) The functions of the Central Government should be curtailed as much as possible, and only those minimum functions which by nature need retention should remain and all the rest should be transferred to local governments completely.

(2) These local functions should primarily be the responsibilities of cities, towns and villages. In practice, however, the character, scale, ability and financial resources of municipalities differ to a great extent. It is, therefore, necessary to classify municipalities to avoid indiscriminately uniform allocation of functions.

(3) Prefectures should be local governments of auxiliary nature and only those functions which cannot be performed by municipalities should be allocated to them. Under any circumstances prefectures should not be treated as higher local government units as compared with municipalities.

(4) The relation between the Central and local governments should be on a new cooperation basis rather than the hitherto existing supervision and control basis.

II. Criteria of reallocation of functions

(1) Functions of the Central Government

(i) The functions to be retained by the Central Government should be limited to the following, according to the basic principles, in addition to foreign affairs, monetary system, national structure, national finance, etc.

a. Administration of justice.
b. Public prosecution and punishment.
c. Public office screening, observation of purgees, and registration of aliens.
d. National census and designated statistics.
e. Functions which need control on a national basis such as controls of commodities, prices, money market and loans.
f. Labour and unemployment planning, and agricultural land adjustment.

g. Planning of crop quota and national anti-epidemic measures, country planning.

The execution of these plans should, however, be local functions.

h. Management of major rivers, and maritime safety.

i. Rehabilitation following natural disasters.

j. Functions which need facilities on a large scale such as national railways, telegraph and postal services, navigational and meteorological services, national educational and health institutions, and national rural police.

(ii) As a principle, national functions should be performed locally by their own field offices and should not be delegated to local governments, as this will make it difficult to tell who should be held responsible. However, emergency work such as national elections and some statistical work cannot help but be delegated to local governments. In this case they should specify to whom any particular work is delegated and also the Central Government should be held responsible for all the cost involved.

(2) Functions of local governments

(i) The functions of local governments embrace all those which are not retained by the Central Government. They include police, fire service, education, economic and labor services, public health and welfare, sanitation, public works, and harbour, transportation and water supply services.

(ii) Some of these functions are delegated by the Central Government to local governments but should be reallocated as local functions. The following come under this category; relief, child welfare, prevention of diseases, food and environmental sanitation, regulations for conducting business, weights and measures, rationing of daily necessities, land improvement, roads, rivers and canals, building regulations, city planning and family registration,

(3) Functions of cities, towns and villages.

As recommended by the Shoup Mission, local functions should be allocated primarily to municipalities which are directly connected with the people. In practice, however, municipalities differ in size, power and financial resources, and so do local needs. Therefore, it is impossible to assign functions uniformly to various municipalities. We think it advisable to classify

municipalities by population and divide them into four classes, specifying typical functions which need not or cannot be performed by some of the lesser municipalities. This classification, however, need not be absolute and local wishes and judgement should be respected, and if they want to take over any functions which are excluded for the class they belong to they can do so by arranging with the prefectural government.

Class A cities

These cities can perform all local functions without reserve and therefore are functionally independent from prefectures.

Class B cities

These cities can perform all local functions except the following which are to be delegated to prefectures;
harbour, forestry, pasture, conservation of mountains and rivers, agricultural land development, adjustment of arable areas, reclamation and improvement of slum areas.

Class C cities

These cities can perform all local functions except the following in addition to those excluded in the case of Class B cities; rivers, canals, street-cars, waterside ware-houses and sheds, research institutes, laboratories, art galleries, isolation hospitals, sanatoria, public health centers, reformatories, encouragement of inventions, weights and measures, and inspection of produces and cattle.

Towns and villages

These municipalities can perform all local functions except the following in addition to those excluded for Class B and C; water supply, sewerage, hospitals, housing, public hostels, poor houses, orphanages, detention houses, slaughter houses, incinerating plants, placenta disposal, rescue, protection and care of persons under age, the poor, the sick, the old, widows, the physically handicapped, vagrants, the mentally deficient and persons under the influence of liquor, markets, preservation of historical and scenic places and natural relics, approval of buildings and high schools.

(4) Cooperation among municipalities

In performing functions municipalities should cooperate as much as possible. For instance, such functions as police, fire, high schools and hospitals which cannot effectively be performed

by a single smaller municipality could be carried out either by forming joint authorities among municipalities or by securing cooperation from neighbouring bigger cities rather than assigning these functions to prefectures. Especially major cities should give help to neighbouring cities, towns and villages with their more efficient administrative organization in respect to such public undertakings as transport and water supply in addition to those functions already mentioned.

(5) Functions of prefectures.

Prefectures are intermediary or complementary public bodies which embrace a number of municipalities within its jurisdiction. Prefectures, therefore, are not local governments on a higher level compared with municipalities nor be classed parallel with municipalities. Prefectures would perform certain local functions which need not be necessarily performed by municipalities.

III. Part to be played by the Central Government concerning local autonomy.

(1) In allocating functions, the Central Government's part should be restricted so as only to afford means to coordinate local governments and to maintain harmony of administration throghout the country.

(2) The Central Government should regulate local functions by legislative means by setting general criteria for local administration. Their part should end there and actual execution should be left to local govenments. To provide against any possible illegal or improper administration, autonomous supervision such as direct demands of the people, local legislative assemblies and inspection committees, should be used and any mis-administration should be corrected by judicial procedures.

(3) Administrative supervision by the Central Government over local functions should be limited to the minimum, and power control in the form of instruction, order, rescission, attestation, permission and substitute administration should be avoided. The concern of the Central Government should be centered around coordination of local administration and also giving advices and help in the form of recommendations, reports, informations, technical assistance, and consultations, and administrative and financial inspections should be limited only for the purpose of improving routine work and increasing efficiency.

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(4) When certain national functions are delegated to the heads of local governments, the Central Government necessarily retains general supervisory power over the execution of these functions, but even in this case judicial control should primarily be resorted to and the method of administrative supervision should be improved.

(5) The subsidy system has been the principal means by which the Central Government controlled local governments, thereby deterring the progress of local autonomy. According to the Shoup Recommendations all the subsidies are to be abolished except promotional subsidy and the so-called "Shares" of the Central Government are to be consolidated into equalization grant. This program should be carried out to the full extent. Equalization grant and subsidies should be given to cities direct from the National Treasury and the intermediary intervention by prefectures should be avoided to save time and expenses and also to safeguard municipal autonomy.

IV. Other problems concerning reallocation of functions

(1) Financial resources

As a result of reallocation of functions, the work to be performed by municipalities would increase greatly. It is, therefore, necessary to reallocate financial resources for national and local taxes, and also for prefectural and municipal taxes.

(2) Appropriate size of local bodies.

There are at present about 10,500 municipalities in Japan. The financial and administrative abilities of these municipalities should be strengthened, their administrative efficiency increased and cost of administration decreased. In order to achieve these objectives it will be necessary to amalgamate them or adjust boundaries. The same can be said about prefectures.

(3) Major cities

In reallocating functions it will be found the major cities would be functionally independent of prefectures and it becomes meaningless to remain within the prefectural jurisdiction. For the increase of efficiency and the economy of cost and from the point of local autonomy the major cities should be completely segregated from prefectures.

APPENDIX

Detailed reallocation regarding typical functions

1. Daily Life Security

(1) Daily life security service is a municipal service directly connected with the welfare of the people and should be performed on the initiative and the responsibility of the municipality. According to the Daily Life Security Law revised at the Seventh Session of the Diet, however, the daily life security service is retained as a national function and prefectural governors and mayors of municipalities participate in it as the agents of the Central Government. In the distinction between the prefecture and the municipality, the former is given priority and although the execution of this service is the responsibility of municipalities, prefectural governors control and supervise mayors and Minsei-iin. The governors have the power to designate municipalities where social welfare secretaries (Shakai-Fukushi-Shuji) are to be assigned, to designate inspectors to approve and supervise municipal welfare institutions and to give decisions regarding recipients' appeals. In this way the governors intervene in detailed municipal administration, harming coordinated and efficient execution of municipal welfare service and at the same time making it obscure who is responsible for a particular service. It is, therefore, urged that such harmful and useless prefectural intervention should be eliminated.

(2) The Central Government should fix standard of protection regarding scale and method to assure the minimum welfare administration with adequate financial resources to maintain it. Beyond this their intervention should be restricted to quasi-judicial measures such as giving decisions regarding appeals and to technical advices and recommendations.

(3) Prefectures should be responsible mainly for coordination between the Central Government and towns and villages and that among towns and villages.

2. Child Welfare

(1) Child welfare service should be the responsibility mainly of municipalities. In practice, however, although the municipalities maintain child welfare institutions and accommodate children, almost all the necessary powers such as to appoint child welfare officers

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(Jido-Fukushi-shi) and child-welfare-iin (Jido-iin) and to establish child consultation offices and reformatories are vested in prefectural governors. On the other hand, mayors can only request child welfare officers and child-welfare-iin to submit report and other necessary informations and to ask child welfare officers' assistance and give instructions to child-welfare-iin. Under these circumstances the efficiency and effectiveness of the municipal child welfare service are adversely affected.

Child welfare, in line with daily life security, should be the functions of cities and prefectural intervention be eliminated entirely.

(2) The Central Government should fix standard of the service with adequate financial provision and prefectures should perform this service on behalf of towns and villages who are not equipped to undertake it and administer child welfare institutions for them as well as for some of the cities without their own. In other words, their function should be of complementary nature.

3. Disaster Relief.

(1) Rehabilitation and relief following unforeseeable natural disasters should be the responsibility of the Central Government who should bear all the cost involved. Municipalities, however, should undertake rehabilitation of a minor scale which is within their ability. Disaster relief often need immediate and speedy measures on the spot and in this field municipalities should act on their own initiatives according to the standard plan set by the Central Government.

(2) Prefectures should assist in the relief work at the request of municipalities whenever it cannot be managed by municipalities.

4. Unemployment Relief

Under the present economic conditions, unemployment relief is one of the biggest national concerns and needs planning on a national basis. Relief measures and standards should be planned and set by the Central Government. In the execution of these plans, political responsibility should be fixed and to save waste overlapping between prefectures and municipalities in unemployment relief public works should be avoided. It is advisable the execution of these public works should be made the responsibility of cities and only in the case of smaller municipalities prefectures should act on their behalf. The Central Government should be held

responsible for providing adequate financial resources required for these works by local governments.

5. Labor Security

(1) Labor security administration needs coordination on a national scale and should be retained as the function of the Central Government. Labor security, however, is closely connected with daily life security, unemployment relief and vocational guidance which are welfare services of municipalities. It also has close connection with the general welfare of the people and therefore the execution of the labor security work should be delegated to mayors and the power to control and supervise labor security offices, other powers now vested in governors and part of the powers of the Labor Minister which can be used locally under a specific standard should all be transferred to mayors.

(2) Prefectures should administer this service on behalf of cities, towns and villages who do not do so themselves.

6. Prevention of communicable diseases.

(1) Communicable diseases spread regardless of administrative jurisdictions and therefore the counter-measures need to be planned on a national scale. It is, however, municipalities who actually undertake these measures and look after patients. Preventive measures such as isolation and disinfection can be very effective if carried out quickly, and at least municipalities who have health centres should be able to perform this service as their own function without prefectural intervention. The prefectural contention to the effect that epidemics prevention should be prefectural function as it involves several neighbouring municipalities around the outbreak point, is groundless in the case of municipalities on prefectural boundaries (for instance, Osaka City and Amagasaki City). Especially when we think of the retarding effects on municipal execution of preventive measures, the fact that all necessary powers are in the hand of governors instead of mayors should be rectified as soon as possible.

(2) Prefectures should be responsible for epidemics prevention only for the district covering municipalities without health centres and standing liaison and coordinating councils should be set up for overall plans of large-area prevention measures by prefectures and municipalities concerned.

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of national preventive policy and for setting up standard of preventive measures and give assistance to local governments with recommendations and technical advices.

7. Food sanitation

(1) Food sanitation needs national control in its certain aspects but it can be administered more effectively and rationally by local governments with regard to manufacture and sale of food as long as there is national standard to be conformed to. Under the present system, the Central, prefectural and municipal governments have overlapping powers concerning spot inspection and to receive reports from manufacturers and vendors, resulting in lack of uniformity of control and obscurity of responsibility. This kind of function should be assigned exclusively to municipalities, abolishing prefectural intervention. Especially the present practice that governors retain the power to license food manufacturers and yet municipalities are held responsible for receipt, examination and appraisal of applications for licence, should be done away with as it is the cause of inefficiency and diffusion of responsibility and has no other meaning than to enrich prefectural treasuries in the form of fees.

(2) This service should be sole responsibility of cities and the prefectures should perform it on behalf of municipalities who cannot do it themselves only within the area embracing those municipalities. On the other hand, the part to be played by the Central Government should be limited to setting national standard of service and giving recommendations and technical advices.

(3) In performing this function municipalities should be encouraged to establish joint facilities for examinations, tests and researches, if necessary, or to employ services to be offered by neighbouring larger cities, prefectures or the Central Government on these technical matters.

8. Business regulations (for hotels, theatres, public amusement places, barber and hair-dressers, masseurs, acupuncteurs, bone-setters, dry-cleaners, etc.)

(1) Most of the supervisory powers for the conduct of these businesses are given to prefectural governors and only part of them are delegated to mayors. This service is closely connected with the interest of the people and business activities of this sort are territorially limited within the locality. Therefore, this function should be the responsibility of municipalities who operate health

centres and supervisory powers should be given to municipalities eliminating prefectural intervention harmful to efficiency.

(2) The function of the Central Government should be restricted to fixing national standards and to giving technical advices.

9. Sanitation

Cities are responsible for sanitation service and the nominal and detailed supervisory powers given to governors under the present law should be totally eliminated. Some prefectures (for instance, Osaka Prefecture) intervene in this service by setting up prefectural regulations such as Placentae Disposal Regulation and Flush Toilet Regulation, but this practice should be stopped at once.

10. Encouragement of medium and smaller industries

(1) The national economic policy greatly affects the policy for encouragement of medium and smaller industries but on the other hand this service not only has a direct bearing on the interest of the local people but also on the prosperity of the city. Therefore, cities who are well-equipped and also have large interest in this service should be solely responsible for this function, in order to eliminate dual administration caused by prefectural participation and to increase efficiency.

(2) The Central Government should fix standard of service and provide adequate financial resources for local governments. Prefectures should be responsible for this service only for towns and villages.

11. Weights and measures.

(1) Control of weights and measures should have uniformity on the national level as it determines the basis for all business dealings, but actual administration of control can be most effectively carried out by local governments. The control of weights and measures has a direct connection with the people's daily life and, therefore, should be the responsibilities who are closest to the people. In practice, mayors are performing their duties not only with regard to matters delegated by governors but also other necessary matters on their own initiatives. Under these circumstances, all the present powers of prefectural governors should be transferred to mayors.

(2) Control of precision measuring instruments which requires highly technical skill and equipments should be undertaken by the

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Central Government and prefectures should perform general weights and measures control on behalf of towns and villages who cannot do it themselves.

12. Rationing of daily necessities

The collection and distribution of daily necessities which affect national life as a whole and therefore need planning on a national scale, should be the function of the Central Government. But the actual distribution routine work and registration and supervision of dealers which are directly connected with the daily life of the people, should be the responsibility of municipalities who understand the local people best, from the points of view of the convenience of the people as well as dealers.

Actually most of the functions attributed to governors' powers in this respect are performed by mayors, rendering governors' powers almost nominal. In short the Central Government should be responsible for collection of commodities and planning of distribution, and municipalities for distribution and registration and supervision of dealers concerned.

13. Agricultural land improvement

Agricultural land improvement should be retained as the function of the Central Government as it requires direction by national policies. However, in view of the direct connection it has with the welfare of local communities, supervisory powers over Agricultural Land Committees, which are local executive organ in this matter, are delegated to prefectural governors by the Central Government. On the other hand, mayors, who are responsible for the promotion of local people's welfare and are in a position to know local matters best, are unreasonably denied the powers in this connection. The function of the Central Government should be retained but at least in cities the present governors' powers should be transferred to mayors.

14. Roads

(1) Under the present system road administration is the function of the Central Government. In view of the close connection it has with the local people, maintenance, management and repair service for roads should be the function of local governments, although there is the need for classification of national, prefectural and municipal roads, assigning the comprehensive planning and standardization of main highways to the Central Government.

Especially in cities where roads are inseparable from the street system and have a direct bearing on city planning, transport, building control, sanitation and other vital municipal services, the maintenance, management and repair service for all the roads within the city should be municipal responsibilities. In practice, in the five Major Cities the administration of not only municipal roads but also national and prefectural roads, is delegated to the mayors. In this way unified road administration in these cities is proving rational and efficient, and not causing any adverse effects on the relations with neighbouring municipalities concerning road administration.

(2) The Central Government should be responsible for comprehensive planning of road systems as part of national land planning and for fixing standard of important roads from industrial and communication standpoints. Prefectural governments should undertake administration of national and prefectural roads in towns and villages.

(3) The relation between prefectures and municipalities should be adjusted by agreement between these levels of governments concerned, according to a standard set by the Central Government.

15. Rivers

(1) River administration is the function of the Central Government at present but prefectural governors administer rivers as agents of the Central Government excepting those which are administered by the Central Government. On the other hand, river administration has direct effect on the interests of the local people. For instance, rivers in the City of Osaka are closely inter-connected with the City's harbor, sewerage, sanitation and water transportation services, and most of them are actually administered by the City under a nominal supervision by the Governor and the City bears all the costs for improvement, maintenance and repairs. In line with road administration, the administration, maintenance and repair service of rivers should be taken over by municipalities.

(2) Delineation of main rivers for the purposes of flood control and utilization should be the function of the Central Government and certain specified main rivers are to be maintained, managed and repaired directly by the Central Government.

(3) Prefectures should be responsible for administration, maintenance and repair service of rivers for the area covering municipalities excluding major cities.

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16. Building control

The Building Standard Law passed by the 7th session of the Diet has rectified some defects of the Urban Building Law and other allied laws. For instance, the municipalities where building officials (Kenchiku-Shuji) are appointed have become almost independent of the Central and prefectural governments concerning building control administration. However, the following further improvements are needed to fulfil the objects of reallocation of functions;

(1) Building officials and mayors of municipalities who have building officials are subject to the supervision by the Construction Minister and governors, on the ground that mayors are the agents of the Central Government concerning building control. This point should be rectified so that municipalities can confirm building specifications according to the standard provided in the law as their own function.

(2) Qualifications for building officials can be standardized by the Central Government but examination of building official candidates should be done by municipalities.

(3) The provisions of the law are too detailed, and moreover even minor details are to be subject to Cabinet Orders and Ministerial Ordinances, leaving no room for local initiatives.

(4) The relation between prefectures and municipalities should be rectified as follows;

a. Prefectures cannot deny the right of municipalities to appoint building officials, when they wish to do so.

b. Building statistics should be submitted direct to the Minister of Construction without intermediation of prefectures.

17. City planning.

(1) City planning is the basis on which cities are built and directly determines welfare of the people. In view of the diverse needs of each particular city, it should be carried out autonomously in that city on its own initiatives, and should not have any national control except that from the standpoint of national land planning.

(2) The function of the Central Government should be restricted to delineation of city planning areas and designation of municipalities for execution of city planning. The present power of the Central Covernment to permit municipalities to undertake city plan-

ning work should be abolished and reporting of the intention to undertake it by the city should suffice.

(3) Joint authorities should be set up by prefectures and cities for the purpose of district planning and coordination of city planning of various cities concerned.

18. School Education.

(1) Education should be carried out autonomously according to the wishes of the people and to local requirements. Article 55 of the Board of Education Law provides that the Education Minister and prefectural boards of education should not direct nor supervise municipal boards of education administratively and operationally. In spite of this provision, prefectural boards are empowered to supervise municipal boards in many matters under the present laws, and this state of affairs should be rectified. As pointed out by the Shoup Mission, it is harmful to have duplication and overlapping between the activities of prefectures and large cities within their boundaries for high schools. Cities should take over all prefectural schools within their boundaries in order to attain consistent operation of the entire 6-3-3 school system.

(2) The power to prepare the list of candidates for teachers is given exclusively to prefectural boards and appointment and grading of educational public personnel are subject to the decision of prefectural Civil Service Commissions, but this system is not only purposeless but also harmful at least in larger cities. The affairs of municipal education personnel should be left entirely to the discretion of municipal authorities, without prefectural interference.

(3) Equal opportunities for education can be safeguarded by national standards to be fixed by the Central Government.

19. Social education

(1) Social education for the promotion of the people's culture and morals should be the function of local governments and the Central Government should be responsible oniy for fixing national standards. In order to avoid dual administration, cities should be solely responsible for it.

(2) The prefectures should undertake this service on behalf of towns and villages.

20. The election of members of the House of Representatives.

(1) The Central Government is responsible for the election of members of the House of Representatives but this function should

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be delegated to municipal Election Administration Committees as the Central Government can not execute it locally in practice. Whole city area of larger cities should be treated as a unit for election purposes, and the municipal Election Administration Committee should be given administrative powers necessary for the execution of election business.

(2) Election Administration Committees of municipalities other than larger cities should execute election business under the supervision of Prefectural Committees, as election districts usually cover several municipalities and also in view of the administrative ability of some of them.

(3) All the financial responsibilities should be taken by the Central Government and in order to control election administration nationally, it should undertake planning and drafting of the election system and election laws, interpretation of the laws, issuance of instructions and reception of reports. By these means, the Central Government can retain the necessary supervisory powers over prefectural and municipal Election Administration Committees. The present directing and supervisory powers of prefectural Committees over municipal Committees should be eliminated.

21. Family registration

(1) Family registration work has been one of the most important responsibilities of municipalities, since the time of the start of municipal offices as Family Registration offices. This service, therefore, should be taken over by municipalities as their own businesses.

(2) In order to make family registration service as a municipal function, the present system should be overhauled to turn family registers more practical. Specifically, the present systems of permanent domicile and temporary domicile should be abolished and a new system based on actual residence in the line of inhabitants' registration.

(3) The function of the Central Government should be limited to fixing standards and specifications needing national uniformity and municipalities should undertake this service autonomously according to these standards and specifications.

22. Designated statistics

(1) This service is by nature a national function, but some of this work, for instance the national census, cannot be undertaken

practically by the Central Government. It might be advisable to let mayors administer this service as national agents.

(2) The Central Government should be responsible for planning of national statistical schemes and for compilation of data collected and also for the total cost.

(3) Prefectural intermediation between municipalities as executors and the Central Government as the planner and compiler is unnecessary. The present directing and supervisory power and the power to appoint investigators which belong to prefectures should be eliminated, and larger cities be responsible directly to the Central Government. It is also urged that larger cities should be recognized as a unit for national statistic purposes instead of as part of prefectures.

THE FUNCTION OF POLITICAL PARTIES IN A FREE SOCIETY

Press Conference of Civil Information and Education Section and Government Section. Statement made at 1100 hours on 30 January 1948.

Part III - Good Government Under a Sound Political Party System

"We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith."

So reads the first paragraph of the preamble of the new Constitution of Japan. Probably in no constitution in the world is the people's right to govern themselves expressed with greater clarity. The preamble and the new Constitution itself represent almost a complete reversal, point by point, when they are compared with the old Constitution. When the present Constitution was before the Diet for consideration, it was somewhat disturbing to note that eminent Japanese authorities were making statements to the effect that it represented no very substantial changes from the old Constitution. It was shocking to hear a highly placed bureaucrat, in an official conference held some time ago, make the statement that the powers of the government (Cabinet) were about the same under the present Constitution as under the old Constitution.

Concepts like these must be completely eliminated if the Japanese people are to realize and enjoy the full benefits which the Constitution guarantees to them. It might almost be said that the only connection between the present Constitution and the old one is the fact that it was

presented and adopted in accordance with Article 73 of the latter. Under the Meiji Constitution, the people of Japan were ruled by a government of men and not a government of laws. Baron Hozumi stated that the government was at once Theocratic, Patriarchal, and Constitutional. It was Theocratic because of the divine origin of the Emperor; it was Patriarchal because of the deep devotion of the Japanese people to the family idea and the belief that all of them are related by blood. Thus the Emperor was not only divine, but was, at the same time, the real head of the entire Japanese family. It was Constitutional, he claimed, because it was based upon the most advanced principles of modern Constitutionalism. Thus it was only natural that the people, through centuries of indoctrination, would become thoroughly conditioned to the acceptance of a paternalistic society and government which operated along those principles to a more complete degree than the government of any other civilized nation on earth.

If it were accepted that the government was indeed Theocratic, then the western concept that a man can have two loyalties, one to God and the other to the State, could have no place in Japan. The injunction to "Render unto Caesar the things that are Caesar's and unto God the things that are God's" had no place in Japanese thought or conduct. Because the two were one and the same thing, this very naturally resulted in the establishment of an elite class which governed the rest of the people by divine right because it was commissioned to do so by the God-Emperor.

This found expression in Article 10 of the old Constitution, in which the bureaucracy was made responsible solely to the Emperor, who prescribed the organization of the public service, determined the salaries of public servants, and appointed and dismissed them. Hence, service in the upper ranks of the government carried with it no express or implied responsibility to the people. It is perhaps not an accident that the title Sensei is frequently used as a form of respectful address by inferiors when talking to superiors. This, of course, is not the term's exclusive use. It emphasizes that there are some in the community who possess superior position and knowledge and therefore have the right to exercise authority. The

administrator was more important than the laws which he administered. These laws were always couched in vague terms. It was impossible for even the most intelligent citizens to understand what their duties might be under these laws. Moreover, no effort was made to bring the laws to the wide knowledge of the entire populace, but rather it seemed that efforts were made to keep the public quite unaware of the specific rules and regulations which were to govern their lives.

Since laws were to be interpreted and applied benevolently, it was just as well that the people were not fully informed of their particular provisions. Otherwise, the more intelligent might find ways and means of evading them. The officials were carefully selected largely from the upper classes, hence it was certain, so went the theory, that they would rule justly. It is not possible to say equitably because application of the law, in the spirit of paternalism, makes its injunctions fall more heavily upon some than upon others. It was assumed that the official would know the mind, the attitude and the reactions of the offender and would therefore be in a position to fit the punishment to the crime. In following this theory to its logical conclusions, or perhaps one should say illogical conclusions, it can readily be seen how Peace Preservation and Thought Control laws came into being.

There is further evidence of this paternalistic theory of government in a provision which is found in many Japanese criminal laws, a provision which enjoins the government official to take into account the degree of willfulness which prompted the offender to commit the crime and the extent to which he felt regret and remorse for his wrongful deed. This places discretionary powers in the hands of the ruling group to such an extent that it eventually converts it into a harsh and cruel tyrant.

Claims that the people were happy and contented under such oligarchic rule are refuted by the fact that the government found it necessary to exercise more and more repression as the years went on and eventually to give the police force actual and literal power of life or death over Japanese citizens. This power of exercising persuasion or compulsion upon people

through the exercise of judgment and discretion by other people was exemplified just a few days ago when quite a "tempest in a teapot" was stirred up when the vice president of the House of Councillors refused to go to the Imperial Palace and make his obeisance to the Emperor after the formal opening of the second session of the national Diet. Men could reasonably differ as to whether he exercised good judgment or not, but it seems a bit incongruous in the light of the new Constitution to find some elements trying to make a major incident out of such an affair. It was reported in the press that leaders in the House of Councillors had decided to take no action against the vice president because they found he had not acted "willfully." Under democratic procedures, the voters of his constituency have every opportunity to express their approval or disapproval of his actions if and when he next comes up for election. That and that only represents the means by which a public official is held responsible for his actions so long as those actions are not violations of laws which would make him amenable to the courts. The lese majeste laws have been repealed and certainly no encouragement should be given to their revival in custom and spirit after their repeal in letter. In his Imperial Rescript promulgated January 1, 1946, the Emperor stated in part, "The ties between Us and Our people have always stood upon mutual trust and affection. They do not depend upon mere legends and myths. They are not predicated on the false conception that the Emperor is divine . . . .

This, and many other actions by the Emperor, indicate clearly that he desires to assume the position prescribed for him by Article 1 of the present Constitution. There it says that he "shall be the symbol of the State and of the unity of the people." Attempts by anyone to change the nature of his position are a disservice, both to the Emperor and to the people, and are contrary to the spirit and letter of the Constitution. Under the new Constitution, the power of government rests fully and squarely upon the people.

As has been previously pointed out, representative government cannot be conducted except through the use of political parties. Political parties in Japan had never been given the chance for free and full development. The period of relative freedom for political party development occurred during

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As has been previously pointed out, representative government cannot be conducted except through the use of political parties. Political parties in Japan had never been given the chance for free and full development. The period of relative freedom for political party development occurred during

the 1920's. When it is recalled that during that time three Prime Ministers were assassinated, it can hardly be said that the conduct of government along political party lines had a fair show. There is no doubt that corruption and graft in politics and the operation of evil influences in government constituted important factors in the breakdown of party government and gave opportunity to the ultra-nationalists and militarists to seize the reins of government. It is for these reasons that these matters have been so frequently stressed in press interviews given by members of the Government Section. Such evil influences are, without doubt, strong enemies of representative government. This is true, not only in Japan, but throughout the world. Every nation has had its great political scandals, some of which have rocked the very foundations of government. In the countries where free government has become a tradition, such forces of evil are constantly held in check by the power of an alert and intelligent public opinion.

Expressions have been made in this country and in other countries to the effect that some doubt exists as to whether the Japanese people can permanently retain and improve the system of free government which they have secured during the occupation. These doubts are not entirely out of place if the record of the past is taken into consideration, a record which shows that time after time individuals who advocated greater freedom and democracy were ruthlessly dealt with by the authoritarian government. But since hostilities ended, millions of Japanese have had a vision of free government which will not easily be eliminated from their minds. It is in the nature of man to want to be free and once he has had a taste of freedom he is not likely to abandon it voluntarily.

General MacArthur, in his recent New Year's message to the Japanese people, said "The design of a remodelled and reconstructed Japan is nearing completion. The pattern has been etched, the path has been laid. The development now lies largely in your own hands. Success or failure will depend upon your ability to practice the simple yet transcendental principles which modern civilization demands."

It is for the purpose of guiding the Japanese press along these lines that these conferences are held. Here these problems are freely, frankly and frequently discussed. This very frankness seems unfortunately to have given the false impression in some quarters that there exists in Japan what has been termed an "invisible government," with the connotation that it is some form of underground movement that is controlling the very processes of government. Such an impression is of course erroneous and absurd. Corruption and graft in politics and government is a cancer-like growth which affects in more or less degree the entire human society, and which finds its limitations only in the power of an alert and fearless public opinion.

It is for the Japanese people to crush the threat of this evil influence in government and politics if they hope to reap the full benefits of free representative government. Just a few days ago, the Prime Minister requested that the House of Representatives take action to permit the arrest of one of its members who has been criminally indicted for fraud and corruption. Such procedure is in strict accord with the Constitution and laws of this country. The Prime Minister merely performed his duty in the service and protection of the people. Some have declared that the House should not accede to the request because it is contrary to the spirit of the Constitution. Such a position is indefensible. The Constitution left the matter to the sound discretion of the House, but that very fact is a challenge to the sense of responsibility and integrity of every member of the House as a representative of the people. Only by firmly meeting the challenge of public responsibility may the membership of the House gain and hold the full respect of the people and justify their trust. In order to do so, it must ensure that its members come to its chamber with clean hands. The powerful House Management Committee yesterday voted to recommend that the House accede to the arrest of the accused member. When the House votes to follow the Committee's recommendation, the courts of the land will decide whether he is guilty or innocent and he will have the fullest protection under the practices of modern jurisprudence in the enforcement of enlightened principles of justice, thanks to the new Constitution of Japan.

Since the end of the war the Japanese people have made phenomenal progress toward the establishment of a truly representative government. The record is probably without parallel. This major revolution has been brought about without shedding a drop of blood. It would take pages to recount the details of this revolution. Therefore only a few of the outstanding ones are recited.

Demobilization and demilitarization have long been completed.

Except for those Japanese in Soviet-controlled areas, repatriation was largely accomplished during the first year of the occupation.

Church and State were completely separated through the elimination of State-supported Shinto.

The Home Ministry, through whose agencies the lives of the people were completely regimented, has been abolished. This was accomplished largely through the wise statesmanship of the last Home Minister.

The highly centralized police force, which was used to suppress any evidences of independence on the part of the people, is being succeeded by local police forces which will be under the jurisdiction of municipalities with a small national police force to be controlled operationally by police commissions in the various prefectures.

The shackles which held women in subjection as inferior beings have been broken and the legal basis has been laid for complete equality between the sexes.

Land reform laws have been passed and are being carried out. These will place the tillers of the soil in a position to reap the rewards of their labor.

The legends and myths which constituted a large portion of the education of the youth of the country have been stricken from the text books.

The power of the Zaibatsu, whose cooperation with the militarists made it possible for Japan to embark upon its program of aggression, has been broken.

Men and women who labor have been given the opportunity to organize and bargain collectively in order that their lives may be improved.

Local autonomy has been extended and made real.

Elections have been held under conditions entirely free from coercion and interference by the police and other officials.

The Diet, fully representative of the people, is operating as the highest

organ of State power. In its first session, it produced a creditable showing. It operated under many new procedures and notwithstanding the inferior position which it had been forced to fill under the old Constitution, it rose with considerable vigor and skill to fill its present high position under the new Constitution. It inaugurated a committee system which in years to come is bound to develop expert knowledge of government and its intricate machinery which can be used in balancing the power of the bureaucracy which it has held for so many years because of its superior knowledge of these matters. It held public hearings upon a number of bills of widespread interest, and thereby made the processes of democratic government more intimately known to millions of people through press reports of such hearings. The galleries of both Houses have been thrown open to the public since the beginning of the occupation and it is a matter for gratification that thousands of citizens are making use of the opportunity to see their legislative body in action.

The Prime Minister and the members of his Cabinet are operating as the executive branch of the government, recognizing their full responsibility to the people, whose representatives selected them.

A fully independent judiciary has been launched upon its duties and has already made significant decisions under the Constitution and laws of the country.

The government has proceeded with vigor and courage to enforce the laws of the land.

Not only has the blue print been made for a future democratic society in Japan, but representative government along the most democratic lines has begun to function with considerable efficiency. To say that there will be no retrogression in this march toward an ever fuller and freer democracy in Japan would be foolish indeed, but to say that the gains of the two and one half years of the occupation will be lost when the occupation has finished is pessimism of the worst sort, a pessimism which cannot be supported by logical reasoning based upon any known elements in the Japanese situation as it presently exists.

LOCAL GOVERNMENT

Press Conference of Civil Information and Education Section and Government Section. Statement made at 1100 hours on 10 October 1947.

The conference this morning is a continuation of the subject of Local Government. In the last conference in conjunction with the amendment that no organ or agency of the government could from now on establish branches or "fixed staffs" in the prefectures without beforehand securing Diet approval and further having appropriated monies to pay for and maintain them, the fundamental issue was raised of what is the National Government's business and functions and what is the Local Government's business and functions, regardless of whether the latter was a prefecture, city, town or village. It was stated that through careful examination and definition law by law and enforcement regulation by enforcement regulation, clear refinements can be made as to what is and what is not either the National or Local Government's responsibilities, rights or duties. It was stated also that without question in many spheres, the National Government's business requires a national system and personnel for its proper functioning. The same has been and is true for the Local Governments. But above all, however the citizens of good government know that in critical times, the national interest is paramount. Therefore local interest is secondary. Therefore local interests yield to the national interest because they are part and parcel of it. On such measures as these, that action by the National Government does not mean that the local interest is lost forever. It means normally that the Local Governments have yielded for the moment to their National Government. In other words, it means that for the moment the local interests are suspended. They are suspended for the period of crisis only and for a cause stated definitely and made known.

The Japanese structure of government has provided all along and does so today that the executive authority of the prefectural administration is dual in function or character; it is national part of the time and local the remainder. Many times, therefore, the governor of the prefecture is transacting national business under a national law for a national purpose. When he is performing in this manner, he is under the authority of the Cabinet, the Minister or some other central agency of government. What degree of

supervision does the central government have in such matters? What can the competent minister do in a situation in which the governor does not carry out the requirements as set forth in the national law? Likewise but within the prefectural sphere of jurisdiction what power can the governor exercise over the mayors of cities, towns and villages?

Article 146 has been amended so as to provide a democratic proceeding in the nature of mandamus to compel a governor or a mayor to carry out the proper duties in respect to the national laws or cabinet orders issued in consequence and in terms of these laws.

The Amendment provides for a simple quick and effective method of carrying out the national functions of these officials. The old provision set up an Impeachment Court to remove the official in case he failed to do his duty. The call of good government however is action. The citizenry desire that the laws be carried out, indeed the desire is that the job will be done. The present Amendment provides a democratic method to compel him to act. Further it provides in cases of necessity or emergency for the taking over of the duties by the ministry concerned until the functions are performed. Should the case be even graver in nature the proceeding provides also for removal from office when the governor after being ordered by a high court to act still refuses. This means that the governor in defying the court's order is therefor. defying the government itself, which in law is contempt. If in the second hearing before the court he is found guilty he may be removed from office by the Prime Minister and no one else.

The Amendment provides for three separate steps (1) the original or mandamus hearing, (2) the second or contempt hearing, and (3) the transfer of the case from the court to the Prime Minister for removal proceedings.

In each step the accused official is given adequate written notice. This means that he knows what the charges are. In each step he has a hearing and can appeal each step to the courts. The hearing on mandamus must be within 15 days from the time of the filing of the original petitions or the statement of charges by the competent minister. The decision of the court must be given in another 10 days. The reason why no time is lost is because the issue is a public question. The routine of the court's calendar gives way to the paramount issue for the people themselves, men and women as the government are speaking. No higher authority in government exists.

The Amendment also sets forward a similar proceeding to be brought by the governors against the mayors. However in these situations the actions and appeals are with the district or lower courts.

The Amended Article 146 therefore applies to national powers and national laws and all local executives concerned.

If the local executives are actually remiss or incompetent in their purely local functions they can be removed under Article 81 of the Law Concerning Local Autonomy. The registered voters and citizenry have the democratic proces of recall which they can exercise. Again this is precisely as it should be.

One of the most coveted democratic powers exercised by Local Governments is that of the police -- the establishment and maintenance of a police system functioning always through if not actually dedicated to (1) the preservation of law and order by equitable machinery, (2) maintenance of the ideal of human liberty and (3) the positive use of the principle that "authority is derived from the people."

The plan as announced by the Japanese Government and the legislation for which is being drawn now, is decentralized. It follows the principle of local autonomy as set forth solemnly in Chapter VIII of the Constitution and the fundamental implementations by the Law Concerning Local Autonomy.

Each city and town over 5,000 in population will have a police system of its own. Within the city's and town's borders, the police system will be independent from the prefectural government or the central government.

The principal authority in each city and town over 5,000 for the policy supervision of the police system will be a commission of three civilians who will be appointed by the mayors and confirmed by the assemblies. The chief of the police system will be appointed by the commission and will be responsible to the commission for the proper performance of the city's or town's police system.

The total number of men and women who will staff the many systems of the cities and towns is established at a figure of 95,000.

By the sides of those city and town police systems will be the national rural police system of 30,000 men and women. While the system as a whole receives administrative direction from a National Public Safety Commission, the units of it as they are stationed in the various prefectures for service

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to the rural communities, are under the authority and control of the prefectural commission whose three members are appointed by the governor and confirmed by the assembly.

The National Public Safety Commission is a body directly under the authority of the Cabinet. It is composed of five members who are neither career officials nor police administrators. They are appointed by the Prime Minister with ratification by the Diet for a fixed term of years.

Beyond the Commission's administrative direction to the national rural police its supervision extends to a police academy and training institute, criminal records office and scientific research for better police administration.

No channel of command, control or supervision exists between the National Rural Police Force and the local municipal systems. However, technical channels of communication for assistance, coordination and liaison do exist.

Lastly and wisely the plan provides for national emergencies. Upon the recommendation of the National Public Safety Commission, the Prime Minister can assume control for the national crisis not only of all the National Rural Police, but also of such municipal systems, any or all, as he deems necessary. A most important safeguard exists, however, upon the unbridled use of such power through the requirement that within 20 days from the date of taking so grave a step, the temporary control measure must have Diet ratification.

It goes without saying that the national rural system and municipal system will function only in matters purely recognized as police administration.

The purpose of the plan is to bring forward a New Japan polarized from its former police state self. No thought policing functions nor political espionage can be a part of either system. Nor is freedom of speech and assembly to be suppressed by them.

Embodied throughout the plan and legislation is the democratic principle that police power or police systems of men and women cannot be left safely beyond friendly clasp of the citizenry of the nation who authorize and support.

Fully apart from the discussion of these two essential developments among many other functions for Local Government, is the subject of the by-elections held since the record establishing series of April 1947. These by-elections occurred mostly in August and September for (1) the filling of six seats for the House of Councillors, (2) contests for the post of mayor

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in two cities, (3) metropolitan assemblymen for two Tokyo-To wards, and (4) settlement an assembly dispute involving 22 seats. In the earlier elections some few village contests were settled.

These by-elections have presented a refreshing contrast to those elections in Europe and other torn segments of the world which received the attention of the international press. Contrasted with the news from Europe and elsewhere that elections were stolen by coercive voting, and cut and out iron fist control by certain groups, elections in Japan present a perfect demonstration of an occupied people enjoying absolute, free elective franchise. The citizens rather than being forced into voting here in Japan, exercised their rights with complete liberty. The abstention figures which ran from 53.6% to 72.5% in the House of Councillors elections in five prefectures, when translated into units of a free people who in the presence of occupying military forces elected to exercise their right not to vote, is noteworthy at this particular time.

It is through the Supreme Commander, General MacArthur, and his conduct of the occupation that this feeling of real freedom embraces the people of Japan.

These by-elections were and are great examples of freedom of the elective franchise, to oppressed minorities throughout the globe as well as to sinister and simple critics.. These by-elections of August and September 1947 are an effective answer once more to the whole world that the democratic and christian motives of the Occupation move toward World Peace!

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GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Civil Affairs Section
APO 500

SUGGESTIONS FOR SURVEILLANCE TEAMS
HOUSE OF COUNCILLORS ELECTION
4 JUNE 1950

1. You should familiarize yourself with the pertinent election laws, cabinet orders and ordinances.

2. Confer in person to the extent possible with local election administration committees, public safety commissions, chiefs of police and candidates and their representatives at campaign headquarters in your area and inform them as follows:

a. The importance attached by the Supreme Commander to a free and fair election;

b. Your intention to conduct close and extensive surveillance of all phases of the election, especially the administration and enforcement of all election laws and regulations pertinent to the conduct of this election;

c. Your intention to refer to the proper Japanese authorities all violations that you observe and all complaints of violations that you receive;

d. Your determination not to interfere with the election.

3. Maintain a list of all prefectural constituency candidates containing name, residence, political party, address of his headquarters, name of his accountant, campaign manager, if any, and supporting organizations.

4. Maintain a list of all political parties and political organizations containing the name of each, address of its headquarters, name of its head and its treasurer in your district.

5. Attend as many competitive speech meetings, private speech meetings and street speech meetings as possible.

6. Observe that all election laws are complied with and enforced. Refer, not correct, to the proper Japanese authorities, (usually the local election administration officials or the local law enforcement authorities), all violations of election laws and SCAPINS applicable to the election that you may observe or which are reported to you, giving wherever possible name and address of violators, name and address of complainant and witnesses, time, place and nature of the violation. Serious violations will be reported immediately to the Region Legal and Government Officer by the fastest means of communication. A record of all violations and complaints will be kept. The following violations may be noted:

a. Unlawful exclusions from the registration lists;

b. Excessive campaign expenditures, in cash or kind, or failure to report campaign expenses;

c. Interference with legitimate election meetings, with access to the polls, or with free and secret voting;

d. Denial of legitimate candidacy; improper candidacies; evasion of the purge ordinances; failure of responsible officials to make purge questionnaires available for public inspection;

e. Dishonest tabulation or reporting of results;

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f. Use of violence, threat of violence or intimidation;

g. Campaigning for election on the day of election;

h. Acting demonstratively by having parades or processions by motor cars, marching in ranks, etc.;

i. Excessive number of election offices.

j. Improper use or display of literature, posters, and pictures;

k. Excessive use of motor cars, loud speakers, sledges and boats;

l. Providing food or drink, other than tea, for campaign purposes;

m. Speeches made in unauthorized places;

n. Use of motor fuel other than authorized and failure to return unused motor fuel if candidacy is terminated;

o. Anonymous collection of funds;

p. Abuse of authority by officials;

q. Establishment of resting places for the campaign;

r. Participation of unauthorized persons in the campaign;

s. Utilization of school children by their educator for campaign purposes;

t. House to house campaign visits;

u. Celebrations by elected persons subsequent to election;

v. Contributions to the campaign fund by unauthorized persons;

7. Obtain the name, rank and organization of any member of the Occupation Forces or persons accredited thereto, who interferes or participates in any manner in the election, and report the incident immediately to the Civil Affairs Region and, if necessary, to the nearest Provost Marshal.

8. All personnal of each surveillance team must be unbiased and impartial. This is a Japanese election. The following must be especially guarded against:

a. Acceptance or giving of gifts, food or drink from or to any candidate, political party or political organization or person affiliated therewith or election administration officials.

b. Expression of opinion either for or against any candidate, political party or political organization;

c. Appearance at some political meetings and campaign headquarters in preference to others;

d. Participation in any manner in the election;

e. Participation in political meetings such as making speeches or appearing on the stage;

f. Excessive or unnecessary appearances with candidates or persons closely connected with the campaign;

g. Transporting a candidate, or persons closely connected with the campaign, in government or private vehicles;

h. Social visits with candidate or persons closely affiliated with him and election administration officials;

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i. Criticism of the election laws and the administration thereof.

9. Observe the general campaign and report to the Legal and Government officer of your region at least once every day, giving the general trend of the campaign, including activities of candidates and political parties, number of meetings, complaints and violation of laws, activities of police and local officials, extent of local interest and attitude of various groups such as labor, farmers, educators, business, professional, Communist, and Koreans, disposition by Japanese authorities of matters referred to them, and such other information as the Legal and Government officer may desire.

10. All acts, statements or posters inimical to the Occupation must be carefully noted giving the exact details, including where applicable, the nature of the act, the name of speaker, time, place, supported candidate, copy of document, if any, and names and addresses of corroborative witnesses if available. An immediate report must be made of any such incident.

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GOVERNMENT AND THE PUBLIC WELFARE

Press Conference,
Government Section
and Civil Information
& Education Section.
Statement made at 11:00
on 23 May 1947.

The preamble to the Constitution of Japan states that, "Government is a sacred trust of the people, the authority for which is derived from the people, and the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people." This is a more formal way of restating Abraham Lincoln's well known definition of democracy as "government of the people, by the people, and for the people." Earlier conferences in this series have emphasized the structure and operation of the government itself under the new Constitution. Today we shall consider the end for which all democratic government exists -- namely to bring benefits to the people as a whole, to improve their standards of living, protect their health, their civil liberties, their property, and maintain their security.

In short the legitimate end of government is to maintain the public welfare of the community or state over which it exercises its powers. The term "public welfare" is used no less than four times in the Constitution itself in Chapter III on the "Rights and Duties of the People." The term "people" as used in this chapter includes all the people in both their private lives and in public capacities, as representatives in the prefectural assemblies and the National Diet or as officials. Consequently, all are enjoined under Article 12 to refrain from any abuse of their freedom and rights. The representatives of the people and the officials are charged with the responsibility under Article 13 for seeing to it that the people in exercising their individual rights do not infringe upon or harm the public welfare. Article 22 again uses the expression "public welfare" in restricting the freedom of every person to choose and change his residence and to choose his occupation and in Article 29 subordinates the exercise of the rights of private property so as to maintain the public welfare.

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Thus individual and property rights are not absolute rights but are limited rights the exercise of which shall not infringe on the legitimate rights of others or harm the public welfare. The public welfare is the supreme objective of government and its achievement and protection is the duty and responsibility of all legislators, judges and officials of the government. Every law, every court decision, and every Cabinet order, ministerial regulation and official act should promote and maintain it.

It is relatively easy to put into words a fairly adequate definition of the term "public welfare." It might, for example, be that state of affairs which achieves the "greatest good for the greatest number" and the "good" defined as a combination of all those rights guaranteed to the people under the constitution. But it is far from easy to reach agreement on the way in which to realize that good or to determine whether specific provision of laws, Cabinet orders or regulation, and other acts of officials promote the public welfare. The line between public welfare and private interest is an exceedingly difficult one to draw. Yet that line must be established and protected and ever more clearly defined if the government is not to become an instrument in the hands of oligarchical financial, economic, or militaristic cliques who, in their lust for power and wealth, lead the nation to catastrophe such as Japan has experienced. In the years that lie ahead it will be the responsibility of the Diet to pass legislation which will promote the public welfare. It should jealously guard the powers which it holds in trust for the people. In conferring those powers upon the executive branch of the government through law it should carefully and clearly define under each law the power granted. Each law should clearly set forth the objective to be attained and the principles to be observed in carrying out the law that the courts may be better able to construe its intent.

In the past the executive in Japan has operated under the most loosely defined laws as the Diet was considered little more than a debating society. In the future the Diet and the Courts should see to it that the ministries operate within the framework of the law and not encroach upon the powers and prerogative

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of the legislature in their administration of the law. Furthermore the executive should no longer delegate official functions or public monies to private or half private-half public corporations, companies, or associations as in the past. This vicious practice destroys the line between public and private interests and tends to put the government in the pocket of private vested interests which are not inclined to serve primarily the public interest. The relation of government to business should no longer be the personalized relationship of bureaucrats to business organizations flourishing beyond the surveillance of the courts and the ultimate control of the Diet under law. The acts of officials must be constantly under review and check by the courts and confined to the limits clearly defined in law. The diversion of public funds into private hands through semi-public corporations and hidden subsidies is an abuse that needs to be constantly guarded against. The Diet should keep constant watch by careful and detailed scrutiny of expenditures of public monies by the executive either through the Board of Audit or by its own direct investigations carried on by committees especially appointed for the purpose. The maintenance of the public welfare requires more than good men in government, it requires good laws as well - laws which clearly chart the course which officials as servants of the public are enjoined under the Constitution faithfully to administer.

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EQUALITY UNDER THE LAW -- THE ROOT OF DEMOCRACY

Block Conference of
District Procurators
Office of Procurator
General, Tokyo, 5 and
6 February 1948

Because democracy is rooted in equality under the law, the law in a democracy becomes the great leveler of society. The procurators, whose only client is the people can, therefore, render no greater service to Japanese democracy than by prosecuting vigorously and courageously, those hitherto privileged politicians and industrial barons who have flaunted public decency and public morality by selling the economic heritage of the Japanese people for a mess of black market profits.

The indictment of those in high political and industrial circles who are alleged to have defrauded innocent victims of the war, to have falsified questionnaires, to have filed fraudulent income tax returns or untrue reports of political contributions, to have collaborated in improvident transactions in public property, or to have benefited from the proceeds of such illegitimate dealings--all these prosecutions are needed to demonstrate the virility of democracy in Japan and the effective enforcement of the constitutional mandate that "all of the people are equal under the law."

Working hard, silently and indefatigably, without glory or public honor, the procurators are today eradicating the bitter memory of their oppressive thought-control activities and are writing a page in the history of Japan which will distinguish them as the defenders of the democratic faith in the equality of all men under the law.

For the second time in eighty years Japan has been transformed by revolution. The so-called "Restoration of 1868" was actually a revolution since it resulted in a decisive change in the character of government in Japan, even if it did not involve the violent overthrow of established social order. The sovereignty of the Emperor exercised through the financial and military oligarchy, commonly called the zaibatsu and gumbatsu, replaced the sovereignty of the Tokugawa shoguns exercised through the hereditary feudal lords and the military bureaucrats of the administrative government. Prefectures under a higher centralized national government replaced the clans and fiefs. Govern-

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ment bonds bearing high rates of interest compensated the feudal aristocracy for their loss of rice income and other feudal privileges; and the fiscal foundations were laid whereby an economy of monopolistic capitalism succeeded the economy of feudalism, both economies being inevitably characterized by a privileged ruling class and oppressed peasants and workers.

Again today Japan is completing a political, economic and social revolution. The sovereignty of the people, exercised through their elected representatives in the Diet as "the highest organ of state power" has replaced the sovereignty of the Emperor who has become but a ceremonial "symbol of the state and of the unity of the people." Local public officials elected by popular vote of the inhabitants of the community, with authority to administer the property and affairs of the community, have replaced the Home Ministry prefectural puppets of the past. The basis is being laid for substituting a system of free private and competitive capitalism for the concentrated monopoly power of ten family groups. Public office has become a public trust, not a private exploitation; and the public officer is now the servant, not the master, of the people.

With this complete alteration in the relationship of the government to the governed, Japan has entered upon a new epoch. In 1868 the melody changed but the orchestra remained the same. In 1948 the orchestra and melody have both changed.

A recent statement that the "old guard" still controls Japan is false in fact, unfair to the people of Japan, and insidiously intended to mislead Allied public opinion, unaware of the true nature and extent of the Japanese revolution. The motivation for such a canard is mysterious. This so-called "old guard" consisted of an unholy alliance of the economic and military cliques with political factions masquerading as true political parties. The current prosecutions by the procurators are sounding the death knell of this old guard. It no longer reigns or rules but it has yielded to democratic process under representative government.

It is true that there are selfish and short-sighted cliques in Japan which, blindly or maliciously ignoring the demands of a free society and worldwide social trends, still seek to impose their influence on government and society.

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No democratic revolution can, or ought to be expected to, change human nature or motivation. It is only natural that a gerontocracy once under the spell of power remains lustful for power and still seeks to restore and preserve its fading controlling influence. But these geronocrats have been completely discredited and are merely whistling in the political graveyard where the Seiyukai and Minseito have been fortuitously interred.

So long as the procurators continue to apply the law equally to all men, without fear and without favor, there will be no resurrection of the scheming leaders who misled the Japanese people in the era which began with the Tanaka Cabinet of 1927 and ended in misery, hardship and suffering with the Suzuki Cabinet of 1945.

The social forces which have broken through this oligarchic crust will never again be captured by the musty, power-greedy politicians who acted as decoys for monopoly capitalism entrenched behind a military dictatorship. These social forces have stemmed from a tremendous depth, deeply rooted in the soil of political suppression and economic exploitation.

It is safe to predict that there will be no retreat from representative democracy in Japan, no reversion to the myths and legends of the Emperor system, no return to a financial-military oligarchy. For there is no road back when, as in 1648 in England, in 1776 in America, in 1789 in France, and in 1946 in Japan, the relationship of government to the governed has been so fundamentally reoriented, the old leadership so emphatically repudiated, and the old attitudes so generally discarded.

The reconstruction of Japanese society has not required the demolition of all that time and tradition have built. The social revolution since the surrender has fortunately differed from the cataclysms of violence such as characterized the Cromwellian, the American, and the French revolutions. Instead, through the gradual perception of democratic values, representative democracy has been fused with Japanese society.

Only a martinent would want to impose symmetry for the sake of symmetry; only an abstract theorist would want to impose a particular pattern of democracy for the sake of the pattern. Japanese democracy necessarily differs from the democracy of the United States just as the democracy of the United States

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differs from the democracy of the British Commonwealths or the democracy of other countries where the people are free.

But all democratic peoples have one principle in common: equality of all persons under the law; and this is the heart and soul of the current revolution in Japan.

So long as the procurators faithfully apply this principle in the courts of the land no men of good faith can scorn the progressivism of Japan's democracy.

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GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Civil Affairs Section
APO 500

DECLASSIFIED E.O. 12356 SEC. 3(E) AND 3(D) OR (E) NNDG # 775 072

INFORMATION FOR CIVIL AFFAIRS REGIONS CONCERNING THE HOUSE OF COUNCILLORS ELECTION, 4 JUNE 1950

I. INTRODUCTORY STATEMENT

An election will be held on 4 June 1950 to elect 132 members of the House of Councillors. This is the fourth election on a national level since the beginning of the Occupation,--and the third to elect new members for a chamber of the National Diet which, under the terms of the new Constitution, became "the highest organ of state power" and "the sole law-making organ of the state."

Of the 132 Councillors to be elected, 75 will represent prefectural constituencies, 50 the national constituency, and 7 will fill existing vacancies,

As in the previous two elections (April 1947 and January 1949), the pending election will be supervised by representatives of the people rather than by the government. And again, as in the previous two elections, there is a clear-cut distinction between the Administration and a recognized opposition.

In view of the historic importance and of the material influence which this election will exert on the development and strengthening of democratic tendencies, a fundamental requirement of the Potsdam Declaration, it is imperative that the forthcoming election be so conducted as to ensure a free and positive expression of the will of the Japanese people. Assurance of such an election thus becomes a major responsibility of the Occupation.

The Japanese election laws and ordinances provide adequate machinery for fair and impartial elections. Though some provisions may seem inadequate by Western standards and others may appear to impose unnecessary restrictions, all have been carefully worked out and not only embrace but also regulate familiar Japanese customs and practices. Moreover, previous laws and regulations which were found to be impractical and too restrictive and delimiting in the light of actual experience have been revised. A basic law,--the "Public Offices Election Law," incorporating these up-to-date revisions,--was enacted by the Diet and promulgated on 15 April 1950. If Japanese officials, therefore, faithfully execute the provisions of this law, a fair and impartial election will be assured.

However, in the pre-Occupation period, despite efforts to ensure fair elections, election administrators, who were responsible directly to the Home Minister, frequently abused their authority. Prefectural governors and police under their control often intimidated opposition candidates, coerced voters, falsified returns, committed or failed to punish fraudulent and coercive practices, and by these and other devices used their official positions to influence the outcome of elections.

The information contained in this booklet has been prepared for the purpose of providing Civil Affairs surveillance units with a ready reference concerning provisions of the basic election law and other pertinent Japanese legislation concerning the conduct of the election. Since, as has been already mentioned, in some cases former laws and election procedures have been revised or amended in the light of experience, it is of particular importance to guard against the following coercive practices:

(1) Privileges granted to favored candidates.

(2) Unlawful exclusions from registration lists.

(3) Interference by police or government officials with legal campaigning.

(4) Efforts of either major or petty political machines to buy votes with bribes of scarce commodities or cash donations.

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(5) Excessive campaign expenditures, in cash or kind, or failure to report campaign expenditures. Failure of officials to publicize campaign expenditures.

(6) Excessive contributions by private individuals.

(7) Interference with access to the polls or with free and secret voting.

(8) Denial of legitimate candidacy; illegal candidacy; evasion of the purge ordinances. Failure of proper officials to make purge questionnaires available for public inspection.

(9) Dishonest tabulation or reporting of results.

(10) Failures of authorities to prosecute violators.

(11) Use of violence, threats of violence, or other intimidation.

(12) Efforts of any individual or groups,--landlords, labor union leaders, employers, etc.,--to utilize economic pressure to influence voters.

II. REFERENCES

The conduct of the election is governed by the basic election law, the "Public Offices Election Law," and a series of appropriate implementing measures. In this connection, reference is made to the following legislation:

(1) Basic Law: "Public Offices Election Law" (Law No. 100), promulgated on 15 April 1950. This basic law, which is a revision of previous election laws, comprises of 17 chapters, 273 articles, and a set of supplementary rules governing procedures of elections for members of the House of Representatives and the House of Councillors, members of local assemblies, the heads of local public bodies, and members of boards of education.

(2) Law Concerning the Enforcement of the Public Offices Election Law, and the consequent adjustment of related Laws and Ordinances (Law No. 101), promulgated on 15 April 1950.

(3) Law Concerning the Regulation of Political Contributions and Expenditures (Law No. 194), promulgated on 29 July 1948.

(4) Order for the Enforcement of the Public Offices Election Law (Cabinet Order No. 89), promulgated on 20 April 1950.

(5) Order Fixing the Basic Amount and Others for Computation of the Amount of Expenditures concerning the Election Campaign for Election under the provisions of the Public Offices Election Law (Cabinet Order No. 90), promulgated on 20 April 1950.

(6) Order Concerning the Date, Term, and others, of Preparation for the Supplementary Voters' List and the Basic Voters' List of Mariners to be prepared at the First General Election of the Members of the House of Councillors after the Enforcement of the Public Offices Election Law (Cabinet Order No. 91), promulgated on 20 April 1950.

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(7) Enforcement Regulations concerning the Public Offices Election Law (Prime Minister's Office Ordinance No. 13), promulgated 20 April 1950.

(8) Execution Regulations concerning the Public Offices Election Law (National Election Administration Commission's Regulation No. 1), issued on 20 April 1950.

(9) Miscellaneous Rules and Regulations of the National Election Administration Commission.

III. FEATURES OF THE PUBLIC OFFICES ELECTION LAW

The basic election law promulgated on 15 April 1950 has rationalized and codified election provisions and procedures of previous legislation.

In the Public Offices Election Law are incorporated all the essential provisions of the following legislation: Law for the Election of Members of the House of Representatives (Law No. 47 of 1925, and amended in 1926, 1934, 1945, 1946, 1947, 1948); Law for the Election of Members of the House of Councillors (Law No. 11 of 1947); Law Concerning Temporary Exceptions to Election Campaigns and others (Law No. 196 of 1948); Law for Special Instances Pertaining to Writings, Posters, etc., in Election Campaigns (Law No. 16 of 15 March 1947, amended by Law No. 154 of 1947 and Law No. 216 of 1948); and pertinent provisions in the Law Concerning the Regulation of Political Contributions and Expenditures (Law No. 194 of 1948); the Local Autonomy Law (Law No. 67 of 1947) and the Board of Education Law (Law No. 170 of 1948).

It can be said, therefore, that the Public Offices Election Law establishes uniform procedures for the election of Diet members, local assemblymen, executives of local public bodies, and members of boards of education. Moreover, besides unifying existing legislation, this law also provides numerous electoral emendations. Some of these revisions may be cited as follows:

(1) The law provides for a special electors' list for mariners, who have no fixed domicile on land (cf. Article 21 of the Law, and Articles 10-16 of the Enforcement Order).

(2) Provision is made whereby electors, who are unable to inscribe on the ballot the name of the preferred candidate on account of physical incapacity or illiteracy, to vote through proxies (cf. Article 48 of the Law).

(3) The procedures for absentee voting have been expanded in specific cases when an elector, because of physical incapacity, business, travel, or other reasons, is unable to cast his ballot at his prescribed polling place (cf. Article 49 of the Law, and Chapter V of the Enforcement Order).

(4) Public service personnel are prohibited to stand as candidates for public office (cf. Article 90 of the Law, and Article 90 of the Enforcement Order).

(5) The amount of money to be deposited by candidates for public office, as a share of the expenses required for the public management of elections campaigns, has been increased over provisions of previous legislation.

in the case of election for members of the House of Councillors, candidates are required to make a deposit of ¥30,000 (cf. Article 92 and 94 of the Law).

(6) Concerning the election campaign, some of the features provided in the Law are as follows:

(a) No person shall make house-to-house visits for the purpose of canvassing votes. This does not apply

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to personal visits made to relatives, friends, etc., in no way connected with the election (cf. Article 138 of the Law).

(b) On the subject of freedom of the press in the election, the Law states: "The provisions of this law concerning the restrictions of the election campaign do not interfere with the freedom of newspapers and magazines in publishing news and comment concerning the election. However, the fairness of the election shall not be impaired by the abuse of the freedom of expression by publishing false matters or distorted facts." (Article 148).

(c) Concerning newspaper advertisements, the Law states: "A candidate for a public post may publish not more than once (twice in the case of election of members of the House of Councillors from the national constituency) during the period of the election campaign an advertisement concerning the election, in the same size as determined by the National Election Administration Commission, in any one of the newspapers.

"The newspapers inserting the advertisement of the preceding paragraph may be distributed in the ordinary manner by a person engaged as a business in the sale of newspapers..." Such advertisements "may be made free of charge" to the candidate. (Article 149).

(d) Concerning radio broadcasts, the Law provides: "Any candidate...may broadcast his political views without charge through the facilities of the Japan Broadcasting Corporation during the period of the election campaign for the public good.

"...Equal conveniences shall be afforded to all candidates... such as utilization of the same broadcasting equipment, the assigning of the same broadcasting time, etc.

"The number of broadcasts, the date and time of broadcasts, and other matters necessary for broadcasting...shall be determined by the National Election Administration Commission in consultation with the Japan Broadcasting Corporation...." (Article 150).

(e) Concerning broadcasting of candidates' career, the Law specifies that "the Japan Broadcasting Corporation shall broadcast, in accordance with its regulations, the names and ages of candidates...political parties to which they belong, their principal careers, etc., for making them widely known among the electors in the areas concerned.

"The number of such broadcasts shall generally be 10 for each candidate...during the period from 20 days prior to the date of election to the day before the election." (Article 151).

(f) Competitive speech meetings for candidates shall be held under public management (Article 152).

(For regulatory provisions concerning competitive speech meetings, cf. Articles 152-166 of the Law).

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IV. GENERAL LEGISLATIVE PROVISIONS CONCERNING THE ELECTION

Briefly summarized, the laws and regulations cited above provide as follows:

1. VOTERS:

With a few exceptions all Japanese citizens 20 years or older, regardless of sex, are eligible to vote in the locality in which they have resided for at least three months. In certain instances individuals who have moved from their usual domiciles are recognized as having a residual right to vote in the place of their usual domicile. However, the individuals are permitted to vote in only one of the two districts in which they possess the right to vote and prior to the election must indicate their preference. In addition, all repatriates otherwise eligible to vote are released from the three months requirements. Exceptions in both instances include individuals who have been declared incompetent or who are condemned to confinement.

Eligibility for voting, however, is not automatic but is contingent upon the appearance of an individual's name on the poll books of his voting district or upon his presentation, on election day, of a court certificate directing that his name be added to the list of voters.

Since polling districts are the same for all elections, national and local, and since voting requirements for all elections are substantially the same, the same poll books with minor exceptions, are used for all Japanese elections. Appropriate legislation provides that the poll books must be completely checked once a year, commencing with September, with additional registration provided for prior to each election, to permit registration of individuals newly meeting such eligibility as age, etc. Polling lists are available for inspection prior to each election to permit complaints and readjustments, and are therefore considered as final on election day. Other than by court order, therefore, no individual may vote on election day if his name does not appear in the polling list of his election district.

2. CANDIDATES:

In general, any Japanese citizen with the right to vote who meets age requirements and has been screened and passed under the provisions of the purge ordinances is eligible for candidacy for the Diet. However, judges, public procurators, government auditors, election and revenue officials, members of the National Rural Police force, members of the Public Safety Commission of a Metropolis, District, urban or rural prefecture, city, town, or village, and members of the Municipal Police force must resign their posts before they are eligible for candidacy.

Officials of national and local governments, as well as members of local assemblies, may not concurrently hold seats in the Diet.

No public service employee of the national or local public bodies shall be a candidate during his term of office. This, however, does not apply to the following:

a. Prime Minister, Cabinet Ministers, Secretary-General of the Cabinet, and Parliamentary Vice Ministers.

b. Persons other than technicians, experts, supervisors and persons in charge of administrative businesses and designated by the Cabinet.

c. Persons other than those mentioned in the preceding items and who are solely in the office as committee members, advisors, consultants, and others who are also designated by Cabinet order.

In the election for members of the House of Councillors, no person who has filed candidacy to run from the national constituency shall run simultaneously as a candidate from a prefectural constituency, and vice versa.

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Candidacies for the House of Councillors must be filed at least 20 days before election for the national constituency and 10 days before election for the prefectural constituency. In the case of the death or withdrawal of candidates after this date, new nominations may be filed up to three days prior to the election.

A candidate for election to the House of Councillors, or a supporter of the candidate, is required to deposit the sum of ¥30,000 as a share of the expenses required for the public management of the election campaign. In the case that a candidate running in a prefectural constituency fails to poll one-eighth (one-tenth for a candidate running in the national constituency) of the result which is obtained by dividing the total number of valid ballots cast by the fixed number of seats accredited to that prefectural constituency (50 seats in the case of the national constituency), the deposit is confiscated and reverts to the National Treasury.

Candidates for election to the House of Councillors must be 30 years of age. No residence requirements are imposed, permitting candidates to run from any electorial district they wish.

The term of office for all members of the House of Councillors is six years; however, election for half the members takes place every three years, as in the present instance.

3. ELECTION CAMPAIGN:

As already noted, the Japanese election laws provide stringent regulation of election campaigns. The grave problem is not the substance of the law but its enforcement.

Strict limitations are placed on the amount of money that may be spent and the ways in which such funds may be used, as well as contributions to candidates and political parties. A candidate for the House of Councillors in the forthcoming election, for instance, is permitted, according to the law, to spend an amount which varies according to prefectural constituencies. Article 194 of the "Public Offices Election Law" specifies the maximum amount that a candidate may spend on his campaign as follows: "The amount obtained by dividing the total number of persons registered on the electors' list concerned on the day of public notification or notice of the date of the election by the fixed number of the members in the constituency concerned in the ordinary election (in the case of the members from the national constituency, the fixed number of the members in the ordinary election)." The appropriate Cabinet Order No. 90 of 20 April 1950 fixes this amount as one yen. For example, in a typical prefectural constituency with 800,000 registered voters having to elect 2 candidates, the maximum amount authorized per candidate will be ¥400,000. This amount is arrived at by dividing 800,000 by 2 and multiplying the result by 1 yen.

Candidates may not carry on house to house canvassing for votes. Campaigns may not be opened until candidacies have been filed.

Limitations are placed on the use of campaign letters, posters, and the like.

Candidates must report at stated intervals during the campaign on their expenditures to date,--this information then being made public.

However, candidates will be permitted to send post cards free of charge to electors in their constituencies and may also utilize public schools and other buildings for their campaign meetings.

Election bulletins, providing information about the candidates, are published by the prefectures and distributed. Names of all candidates will also be posted in a conspicuous place before the election, preferably at the entrance to a polling place. These provisions have been inserted in the laws at the insistence of the political parties themselves, on account of the paper shortage and the like.

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4. SUPERVISION OF ELECTION:

An election administration commission is set up in each local entity. These committees are responsible to the public at large and charged with supervision of all elections conducted in their area of jurisdiction. Each city, town, village, and Tokyo ward thus has a committee which exercises on its own account, immediate control over elections in its own locality, under the general supervision of prefectural committees. Prefectural commissions have six members, including a chairman; others have four. The commissions have a bipartisan membership. A commission must meet at the request of any member. All complaints regarding the conduct of the elections are normally made, in the first instance, to the commission.

The National Election Administration Commission is under the jurisdiction of the Prime Minister's Office. This Commission is composed of nine regular members and nine alternate members, nominated by the various parties.

According to the law creating the National Election Administration Commission, the Commission is responsible for the administration of all popular elections. This includes elections for both national and local offices, as well as those held for the ratification of amendments to the Constitution or under the People's Examination of Supreme Court Judges Law. Among the specific duties of the Commission are the securing of necessary appropriations, assisting in the procurement of necessary paper, and other preparations concerning the elections.

All political parties and political associations must register with the Commission and file with it financial statements or any other data required.

Although the National Election Administration Commission is placed under the jurisdiction of the Prime Minister, the Commission operates according to the decisions reached by its members.

The affairs pertaining to this election shall be taken charge of by the National Election Administration Commission as for the members of the House of Councillors from the national constituency and by the Election Administration Commission of the prefectures as for the members from the prefectural constituencies.

5. ELECTION PROCEDURES

An election meeting chairman shall be appointed by each commission in charge of the election and, in addition, an election sub-meeting chairman will be appointed by each prefectural commission for the vote for the national constituency candidates within the prefecture.

With minor exceptions, each city, town, village, or ward constitutes a polling and ballot-counting district, which may include one or more polling or ballot counting places.

Each polling place has a voting overseer, minor officials and three to five voting witnesses all appointed by the Election Administration Commission of the city, town or village.

The voting overseer is in charge of the voting and the proper conduct of the election machinery at his polling place.

The polling-place shall be opened at 0700 and closed at 1800 hours with a public notice of the polling place being given by the voting overseer five days in advance of the election.

No person shall vote whose name is not on the registration list.

No elector shall inscribe his own name on the ballot.

An elector may vote for one candidate from the prefectural constituency and one candidate from the national constituency.

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Braille is authorized for the blind, and if an elector is unable to write, he may vote by proxy with the assistance of the voting overseer. Provision is also made for absentee voting.

Electors, persons engaged in the business of the polling place, persons who have the authority to watch the polling place, and the police are the only persons permitted in the polling place.

The doors to the polling place shall be closed at 1800 hours and the ballot box closed after all electors within the polling place have voted.

On the election day the voting overseer accompanied by one or more voting witnesses shall deliver the ballot box and other records to the ballot counting overseer.

For each ballot counting place there shall be a ballot counting overseer who shall have charge of ballot counting affairs.

The ballots of several polling places are usually counted at one ballot counting place.

There shall be not less than three nor more than ten ballot counting witnesses. Each candidate may appoint one witness. If more than ten are appointed, then ten are selected by the witnesses. No more than three may belong to the same political party. The ballot counting overseer appoints up to three witnesses, if that number has not been previously appointed.

Ballots shall be counted on the day of voting or the day immediately following.

Ballots will be invalid for the following reasons:

a. Those for which the regular ballots have not been used.

b. Those on which the name of a person other than a candidate for public office was inscribed, or the name of a person who is unable to be a candidate for public office in accordance with the provision of Article 87 (Prohibition of Double Candidacy), Article 88 (Restriction on Candidacy by the Persons engaged in the Election Business) or Article 89 (Restriction on Candidacy of Public Servants) was inscribed.

c. Those on which the names of more than two candidates for public office were inscribed.

d. Those on which the names of a person without eligibility was inscribed.

e. Those on which other matters besides the name of a candidate for public office were inscribed. However, this shall not apply to those on which the profession, status, address or honorifics were inscribed.

f. Those on which the name of candidate was not written by the voter himself.

g. Those with an inscription by which the candidate for public office is unable to be identified.

Inspection of the ballot counting by the electors may be permitted.

The ballot counting overseer shall immediately report the results to the election meeting or sub-meeting chairman.

The election meeting or sub-meeting chairman shall hold an election meeting as soon as all election reports have been received, and determine the winner for the prefectural constituency. The sub-meeting chairman shall forward to the election meeting chairman the results for the national constituency.

Prepared jointly by
Government and Civil Affairs Sections,
CIE, SCAP.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(B) OR (E) NNDG # 775 012

GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS

LEGAL SECTION

LEGAL COMMENTS

March, 1950

At a meeting of the Public Procurators of Japan held in Akasaka Palace March 28, 1950, sponsored by the Public Procurators Practicing Law Institute, the Chief of Civil Affairs and Civil Liberties Branch, Legislative and Justice Division, Legal Section, delivered the following address which brings out the importance of relationship between Public Procurators and civil liberties.

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Text of speech delivered at the
Public Procurators Practicing
Law Institute, 28 March 1950

In addressing this assembly of procurators on the vital subject of civil rights I am well aware of the importance and the difficulty of the task. Other lectures in this institute aim at adding to your knowledge or opening a new field for your experience, making you more efficient procurators in special cases, handling the New Code of Criminal Procedure to better advantage for the side of the prosecution. This lecture however, invites you to reflect on your job as a whole and aims at giving you a new outlook on it and offers an opportunity to glimpse a new type of professional satisfaction.

We agree, I believe, that a procurator's position is not to be taken as a chance to exert power over others, nor do I believe it is sufficient to picture the procurator as the revenger of the State, intent only on punishment of those who run afoul of the law, without consideration of social conditions and circumstances. Questions of social justice are important to procurators who wish to approach their job with sincerity. This leads to an appreciation of the problems of civil liberties. It is against this backgound of professional sincerity with yourselves that I wish to speak about procurators and civil liberties.

Let me start out with a few historical remarks about the position of government in general in the question of civil liberties:

Until rather recently the government was only the villain in the drama of civil liberties. This is easy to understand, since the reconciliation of liberty and authority is a delicate and never ending task. In the past the danger that the government would extend its authority to the detriment of freedom of the individual was only too obvious. Those who prize fundamental freedoms such as freedom of speech and of the press, the right of assembly, the right of an accused to fair and just trial, etc., looking at the experience of the past and reflecting upon the evils of preceding ages of tyranny, concluded that the threat of arbitrary tyrannical government was the most serious threat to civil liberties. Thus, bills of rights were born in the U.S., in France, in the Germany of 1848, and in many other countries. Since government and government alone was considered the enemy of freedom, these bills of rights were directed against the government. They circumscribed a certain sphere into which the government was prohibited from intruding by laws or other governmental action. A bill of rights of this type could have real meaning only if it actually limited the power of government in the interest of safeguarding individual liberty. A bill of rights which -- as was the case in the former Constitution -- gave such liberties only within the limit of the law, was therefore a distortion of the original idea which aimed at putting those liberties above the general law-making power of the State.

No doubt government can be an enemy of civil liberties.

However, more recently those interested in civil liberties have come to the conclusion that the use of defensive weapons against the State is not enough to insure freedom. A shield is insufficient. Civil liberties have to be protected also aggressively against individual members of the society. To cite an example: there are in all societies people who would exploit differences of sex, race, social status, or family origin, or who are so intolerant of differences of opinion or creed, that they oppress others. There have always been those who believe that they were above the law, that they constitute an authority by virtue of their social power, even if lacking legitimate authority by free election or appointment,

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that their will has to be followed in a certain area without taking recourse to legally established courts and procedures which they disdain. They work by threat, intimidation and violence. Anyone who would, for instance, resist their requests for money for causes they sponsor or who otherwise incurs their disfavor is endangered. In this country this type of person is frequently encountered as boss in various fields.

I cite this example to show, that extensive and frequent losses of liberty may be due to the failure of the forces of government to protect individual citizens from encroachment of their liberty by other citizens who have some power over them.

Considering these cases we must admit that the government which heretofore was considered only as the potential enemy of civil liberties can and should also be the protector of civil liberties; that what is necessary is not only protection of civil liberties <u>against</u> the government but also protection of civil liberties <u>by</u> the government; and that to use a shield in protection of civil liberties being insufficient, a sword is needed which has to be wielded by the government. In a democracy an important function of the law enforcement branch of the government lies in the aggressive protection of the fundamental rights of a free people.

And now let us turn to the practical application of these conclusions. For, civil liberties are not theories or intangibles reserved for academic discussions of constitutional law. They are in the sum and substance of the daily lives of the citizens. To make these rights a reality and to protect them is everybody's business. However, as may already have become apparent, there is a reason why civil liberties are of special, professional interest to procurators. The problem "procurators and civil liberties" does not deal with an utopian dream, but with specific actions procurators must or must not take.

This divides my talk into two parts, one dealing with limitations imposed on procurators; the other with the necessity for certain affirmative actions; on their part.

I shall first talk briefly about the don'ts. This part of my talk will be mainly concerned with the "shield" approach which I mentioned before: Procurators must scrupulously respect the shield with which the Constitution and the implementing laws protect civil rights.

Since these points are elaborated on in other lectures, let me only mention by way of example provisions such of Article 33 of the Constitution which stipulates that in general arrest can be made only upon issuance of a proper warrant; Article 34 which stipulates that no person can be detained without being at once informed of the charges, or without adequate cause, and his right to assistance by counsel; Article 35 which protects the citizen against search and seizure without proper warrant; Article 37 specifying his right to a speedy, public and fair trial, including his right to produce witnesses and examine all witnesses; and his right to be assigned counsel by the State if he is unable to secure same; Article 38 safeguarding freedom from coercion to self-incrimination and stating that confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted as evidence, and that no person shall be convicted or punished in cases where the only proof against him is his own confession; and Article 39 containing the principle "nullum crimen sine lege previa" and the prevention of double jeopardy.

Let me point out that all these provisions are addressed in part to the procurators, prohibiting certain actions on their part.

Turning to the Code of Criminal Procedure, we must never forget that one of its aims declared in Article 1 is the realization of Criminal Laws with fairness and under thorough accomplishment of the security of the fundamental human rights of individuals. Here, I believe, is an outline of your fundamental duties which is not always properly understood. As procu-

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raters you realize that a peaceful society must be protected from those who harm it by criminal violation of the law. But, you must also realize that a peaceful democratic society must rest safely in the knowledge that the police power which is given to the State is not being abused. The citizen must know that he need not be worried because he is safeguarded in his human rights by the law and by the adherence of all public officials to it. The law balances these two needs of society. It is your sacred duty to society to maintain that balance.

The great importance of provisions such as those regarding search and seizure, as well as of those regarding warrant for arrest and detention becomes apparent when we conceive of a society where they do not exist or exist only on paper. When persons can be arrested without reason at will and houses are searched without restrictions, what sense of freedom can there exist in the Community? Only the certain knowledge of the citizen that he is safe from an unbridled power of government because of a wise legislation and because of the understanding of the procurators of their task, will give him freedom from fear, and only where there is no fear can there be real peace in a society.

Democracy cannot exist in the shadow of such fear. A procurator who disregards any of these rules because he does not understand their reason and considers them only as wanton obstacles to efficiency is not only guilty of a minor procedural mistake. He hampers the progress of this nation towards an orderly democracy.

Let us therefore not be induced by a misunderstood notion of efficiency to destroy the right of the citizen to be free from unwarranted interference in his life. A procurator who could safeguard the right of the Community to protect itself against criminals only by destroying this very precious good of the community--the sense of such freedom--could hardly lay claim to any efficiency. To try to obtain convictions at this price to society would be a betrayal of the trust of the community.

I have already referred to protection of civil liberties against violations by individuals. In those cases the State may throw off the old stigma of an enemy of civil liberty and become the true protector of human rights. To give an example: if the government by law or ordinances would deny the right to vote to citizens of a certain social origin, or would allow only voting but no real choice of candidates of various opinions, this would constitute a violation of civil rights. But it is just as possible that private persons abusing their social standing intimidate their fellow citizens into staying away from the polls or into voting in favor of certain persons or groups. As always in these cases, the social position of those who execute this threat may be considerably higher than that of their victims. You must not allow this fact to sway you in their favor. A threat of this type is not directed only at the members of a certain community, it is a threat to the entire system of an orderly functioning democracy. In such cases you must act, being aware of your duty towards the society.

Let me take another example. Freedom of the press is generally understood as the right of the press to publish news or opinions without government interference, so that the people by reading all views on the matter may find the truth. But is there any true freedom of the press when the publisher or editor is intimidated by a boss, when he wants to point out the abuse under which the community suffers?

I have already referred to bosses and their henchmen who terrorize certain neighborhoods extorting money from small business people who are striving hard enough to make a living for themselves and their families. But the story does not end with such cases of intimidation by a single boss and his gang. Often it is a great part, possibly even the majority of a community which, aroused by some narrow-minded spreaders of intolerance, commits violations of civil liberties against a member of the community who has incurred its disfavor. Who of you is not familiar

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with the human tragedies which the word "murahachibu" brings before our mind? This lecture invites you to critically examine these cases and to realize that they involve human tragedies of people who are rendered helpless unless you come to their aid. It is one of the very corner stones of an orderly government that punishments are given only for violations of laws and by due process stipulated by law. An orderly government cannot allow that persons having no recognized qualifications are able to punish others who are socially weak, without reference to any recognized standard but a pooling of mutual prejudices. Where are the limits of such anarchy? Where is there any freedom from fear if such cases go unheeded by those who are supposed to be the guardians of the law? It appears that the provisions of the Criminal Code are sufficient to allow prosecution of such cases and the Supreme Court in a number of enlightened decisions has deemed the provisions of Article 222, for instance, applicable to the cases of "murahachibu". Cases of this sort are a blot on the shield of any society. It may be that the average citizen can only deplore this state of affairs, but you as procurators are not free to mutter a few regretful remarks about the unfortunate fact that so much of the population is still thinking in feudalistic patterns. It is up to you to show that the State disapproves of such illegal mob action.

An important field of prosecution lies in the penal provisions of the Labor Standards Law, many of which have to do with Civil Liberties. Particularly I want to refer you to the provisions aiming at the exclusion of labor bosses and to various forms of slavery existing in this country-slavery in mines, in the textile industry etc. You may for instance consider the position of children and especially young girls sold by their financially needy parents for a paltry low sum into actual slavery. They are forced to stay in any place appointed by their master, and if they wish to free themselves of their bondage they are tracked down sometimes even with the assistance of law enforcement officers. There are now enough laws on the books, I believe, to prosecute such cases. There is also proof that any prosecution has a salutory effort for at least a certain area and period. We must not be blinded by the fact that these conditions are very old in Japan. Slavery in any form is abhorred in a democratic society. Legislators cannot fight it without your help. As procurators you have the power to make your conscience and your feeling of human compassion an active force, and as human beings you should use this power.

Another field of importance are the cases of police brutality which, according to the reports of the Civil Liberties Bureau and according to occasional newspaper items are not infrequent. It is true that the character of the police has changed from an instrument of ruthless oppression to a friend of the people, but old habits are often retained by sloppy thinking individuals. A police force consists of thousands of human beings and as in any other big organization, these human beings are of all types: kind or brutal, swayed by anger or level headed, broad minded or prejudiced. The minority of those who do not recognize their true mission is apt to mar the picture of the entire force. It is therefore necessary to deal with them when they stoop so low as to commit crimes -- and torturing a human being in your power certainly is a crime -- as vigorously as we would with any other criminal. In addition, prosecution of third degree methods is important in order to achieve justice, free of distortion by such force against the suspect. We all are astonished by reports of certain trials in other countries in which defendant after defendant confesses, and if such confessions are the result of torture, justice becomes a travesty. You must show your disapproval of such methods in your own country by prosecution of police officials who abuse their power.

You will have recognized that I have only touched upon some of the civil liberties violations occurring in Japan. I am sure you could have added examples from many a field.

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Generally speaking, I believe that there are enough statutory tools to take action. While in some cases difficulties of proof may exist, I am convinced that they are by no means unsurmountable. In preparation for trials I would, for instance, mention the possibility of assistance through Civil Liberties Commissioners and private Civil Liberties organizations. Considering the fact that complaints are filed frequently enough and sometimes with attendant considerable publicity, I am convinced that a substantial percentage may be successfully prosecuted after careful preparation.

What is needed first of all is sincerity of purpose of the procurators who are aware of their duty to safeguard civil liberties without fear or favor. Successful prosecution will in itself bring about a marked improvement. As a matter of fact many of the difficulties of proof which stem from the atmosphere of intimidation will progressively disappear if the procurators show that they are on the side of the aggrieved people. I cannot stress enough the fact that the very essence of civil liberties consists in the right of every individual to claim the protection of the laws whenever his human freedoms are infringed upon. To afford that protection is one of your first duties.

Let me add one more thought in conclusion. Where there is social unrest we ought to be more anxious and vigorous in protecting civil liberties. Emotions run higher when the clash of interests is frequent and heated. In the battle for public favor extremists urge tolerance for their ideas, intolerance for their opponents. In this welter of confusing factors, civil liberties are often the loser. When you show your sincere interests in these cases, you will be acting as a defender of a new Japan against those radicals who would otherwise utilize your neglect by all means of skillful propaganda and who thereby might sway others to believe that civil liberties are best served by backing them -- while in actuality the propagandistic use of civil liberties slogans is only a means to an end to them, the end being their ascendance to power, which would mean the end of all civil liberties.

For all these reasons, I urge you to give due consideration in your work to the importance of civil liberties.

It is greatly up to you whether the State will continue in the mind of the people as the enemy of civillibertios or will come into its proper position as a friend of civil liberties and whether the public procurator will become a protector of those long suffering under oppression and denial of civil rights.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

LEGAL COMMENTS

April 1950

The recent Supreme Court decision in the case of Akio T.N.K., convicted in the Supporo District Court of robbery is of particular interest, inasmuch as it involves the same rule of the Supreme Court which was overlooked in the Mitsuharu K.T.GIRI case last year. It will be remembered that this mistake of four judges of a Petty Bench of the Supreme Court caused a great deal of adverse publicity and severe criticism which led to an unsuccessful impeachment procedure against the Supreme Court Judges involved. It will be noted from Akio T.N.K. decision reproduced herein, that Judge Takejiro SAWADA dissented.

Colonel Alva C. Carpenter, Chief of Legal Section, delivered the following address at the inauguration of the Judges Practicing Law Institute held in the Supreme Court Building in Tokyo which emphasizes the importance of the Japanese judiciary to the nation as a whole in carrying out the recent legal reforms. Attention is invited to his remarks relative to the judges' key position and responsibility in bringing about a more efficient and workable administration of court procedure, with the objective to expedite criminal trials and civil suits and generally improve the present slow and outmoded practices, which are based on customary attitudes of the Japanese judges rather than on legislation. The newly established Practicing Law Institutes for Judges and Public Procurators are designed to bring about a fundamental change in these practices and attitudes. The continuing Interchange of Persons Program is another means to promote such change. Rules of the Supreme Court containing instructions for expediting civil and criminal trials and suits are in consideration.

"Re" No. 2,000, 1949

J U D G M E N T

T.N.K. Akio
Permanent and present addresses:
Kita-No. 1 No. 9-sen, Iburi-mura,
Ishikari-machi, Ishikari-gun,
Hokkaido.
Occupation: Fisherman
Age: 21

As regards the case of robbery against the above-mentioned defendant, he filed a Jōkoku appeal from the judgment rendered on June 2, 1949 by the Sapporo High Court, so this Court has in accordance with Art. 2 of the Law for Enforcement of the Code of Criminal Procedure come to decide as thus:

Formal Adjudication of Judgment

The present Jōkoku appeal is dismissed.

Reasons

On the statement of reasons for Jōkoku appeal held by Defense Counsel KOBAYASHI Moriji:

According to the record of the present case, the court of origin at its first date for trial on facts on Mar. 15, 1949, designated the next date on which the examination of witness was to be conducted in compliance with the request of the defense counsel as Apr. 16, the same year, however, the court, upon ruling on Apr. 4, the session-off, to change the above-designated date to May 26 of the year, held the second session on the newly-fixed date, thereby concluding the oral proceedings concerning the case. Hence it is clear that fifteen consecutive days or more had been elapsed after the first session before holding the second one. And it is as maintained herein that since the court action was originally brought to the Sapporo District Court on Apr. 16, 1948, the old Criminal Code and the Law for Temporary Measures of the Code of Criminal Procedure should have been applied in the hearings in general of the present case in accordance with Art. 2 of the Law for Enforcement of the Code of Criminal Procedure. However, Art. 13 of the said Enforcement Law provides, "Besides the matters prescribed in this Law, necessary matters concerning the disposal of those cases which are pending in court at the time of enforcement of the New Code shall be provided by the Rules of Court", and in pursuance of the above, the Supreme Court Rule of Enforcement of the Rule of Criminal Procedure stipulates in its Art. 3, Item 3, reading," Even where after the commencement of trial the session has not been held for fifteen (15) or more consecutive days, it suffices to renew the proceedings of public trial only if deemed necessary". Therefore, the court is not always required to recommence its proceedings of public trial even where the session has not been opened for fifteen or more consecutive days after the first prorogued except a case where the court deems it must. Thus being the case, it cannot be admitted illegal in any regard that the court of origin failed to take steps to recommence its proceedings despite that it had stayed its proceedings of public trial for fifteen days or more after opening the first session. Hence the Defense Counsel's purport of assertion is groundless.

For such reason as stated heretofore, the judgment is rendered as mentioned in Formal Adjudication of Judgment.

The above is unanimous among all judges concerned, except Judge SAWADA Takejiro who is of minority opinion that follows:

The provision of Art. 353 of the old Code of Criminal Procedure was one of the embodiments of the spirit of the old Code to be consistent in "Principle of Public Trial First" and "Principle of Direct Examination," being one of the leading provisions in which the characteristics of the old Code of Criminal Procedure had been realized. Therefore aside from how that provision was being applied to actual cases, it was believed in general that the criminal procedure was being practised under the Principle of Public Trial First and the Principle of Direct Examination only on the ground of the existence of the said provision. While the criminal procedure has come to be practised according to the newly-determined Code of Procedure on and after Jan. 1, 1949, yet the Law for Enforcement of the Code of Procedure prescribes in its Art. 2, reading, "Those cases against which public action has been instituted before the enforcement of the New Code shall be governed by the old Code and Temporary Measures Law even after the enforcement of the new Code", thereby clarifying that the cases against which public action had been instituted prior to the enforcement of the new Code should be disposed of under the old Code. Judging from such provision as quoted above, the Enforcement Law orders, it must be said, that the court should, in its conduct of examination of those cases against which public action had been instituted prior to the enforcement of the new Code should be disposed of under the old Code. Judging from such provision as quoted above, the Enforcement Law orders, it must be said, that the court should, in its conduct of examination of those cases against which public action had been instituted before the enforcement of the new Code, respect what the old Code adopted as its reasonable idea. In other words, the Enforcement Law does not expect in any way that a case against which public action had been brought prior to the enforcement of the new Code should, far from the provision of the old Code, be examined in such a way as causes disadvantage to defendant, it must be concluded.

Whereas, the provision of Art. 3, Item 3 of the Rule of Enforcement of the Rule of Criminal Procedure excludes that of Art. 353 of the old Code, thus utterly setting what the old Code adopted as its reasonable idea at naught. Albeit the majority opinion maintains that the above provision of the Rule is of lawfulness determined by the authorization of the rule-making power under Art. 13 of the Enforcement Law, such view, in my opinion, is a fallacy originated in misinterpreting Art. 13 in question. It is true that the said Article stipulates necessary matters concerning the disposal of cases pending in court at the time of the enforcement of the new Code by determined by court by means of its rules, however, we must give serious consideration to the fact that the above provision of Art. 13 is nothing but one of those provisions of the Enforcement Law of Code of Criminal Procedure, among which such a one as that of the above-quoted Art. 2 is contained. If we read the provision of Art. 13 separately from and independently of other provisions of the Enforcement Law, among others that of the before-quoted Art. 2, we are absolutely unable to catch the true significance implicated therein. Altho the said provision authorizes the court to determine by means of its rules the necessary matters relating to the disposal of such cases as pending therein at the time of the enforcement of the new Code, the scope of matters to be established by the court under its rules should, methinks, be taken as confined within those matters which had not been as yet provided for in the old Code as well as in the Temporary Measures Law and not so far extensible as to such matters as are beyond those already stipulated in the above Laws, if we construe the said provision of Art. 13 of the Enforcement Law in reference to the before-quoted Art. 2 as well as other provisions of the same Law. Therefore it must be

said that it is the going-too-far beyond the scope of authorization of the rule-making under Art. 13 in question for the court to determine a rule of such substance as may modify, or may naturally lead to alter and repeal, the provisions of the old Code as well as of the Temporary Measures Law. It is so still more, and must be said, in my opinion, deviating far from the scope of authorization for the court to have acted in such a way as determine a rule of which substance might naturally lead to deny the provision of Art. 353 of the old Code to which (the provision of Art. 353) entrusted a special mission to embody the reasonable idea of the said Code relative to the conduct of hearing. The utterly same thing as the above can be said from the nature of the authorization by virtue of law. Thus being the case, no reasoning from any point of view may be made a ground for the lawfulness and the validity of Art. 3, Item 3 of the Rule of Enforcement of the Rule of Criminal Procedure. If such be the case, there is nothing for it but to be concluded the violation of Art. 353 of the old Code for the court of origin to have failed in recommencing its proceedings of trial on the basis of such an invalid provision as found so in the above, and so the judgment of the said court must be said to be unable to excuse itself from illegality falling under Art. 410, Item 16 of the said Code. Therefore, the present Jōkoku appeal being well-grounded, the original judgment should be quashed and the case sent back to the court of origin.

Public Procurator OSABE Kingo participated in the Present trial.

The Grand Bench of the Supreme Court

Presiding Judge Judge TSUKAZAKI Naoyoshi
Ditto HASEGAWA Taichirō
Ditto SAWADA Takejirō
Ditto SHIMOYAMA Seiichi
Ditto INOUE Noboru
Ditto MANO Tsuyoshi
Ditto OTANI Katsushige
Ditto SHIMA Tamotsu
Ditto SAITŌ Yūsuke
Ditto JUJITA Hachirō
Ditto IWAMATSU Saburō
Ditto KAWAMURA Matasuke
Ditto HOZUMI Shigetoo

(Judge KURIYAMA Shigeru can not add his signature and seal hereto because of his absence due to an official trip.)

Feb. 15, 1950.

GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS

LEGAL SECTION

LEGAL COMMENTS

FEBRUARY, 1950

In the following speech the Chief, Criminal Affairs Branch, Legislation and Justice Division, Legal Section, attempted to summarize the Japanese Criminal Law of Libel, Blackmail, Threat, Intimidation and Violence.

While the speech was delivered to a conference on the Law and the Press which was primarily concerned with so-called "Gorotsuki", or "Gangster Newspapers", the summary might be useful to Civil Affairs Officers and others who desire quick information on the essence of the Japanese Criminal Law in these fields.

Text of Speech
Delivered at the Saitama University
Conference on the Law and the Press
23 February 1950

JAPANESE CRIMINAL LAW OF LIBEL, BLACKMAIL, THREAT, INTIMIDATION, and VIOLENCE

Background of the Problem

In spite of continuous efforts during the Occupation by the Japanese police and other law enforcement agencies to systematically "shake down" the nation's underworld with the aim of ferreting out thousands of gangster "bosses" who were continuing to hold out in defiance of the law, the problem still seems far from final solution. Although hundreds of "big-shots", such as the leaders of the Otsu, Yasuda, and Sekine "Gumi" (feudalistic racketeer organizations) have been arrested, and many similar organizations have voluntarily dissolved, there has been no lessening in gangsterism. On the contrary, many such outlawed bosses were reported simply to have dropped out of the major underworld activities but still to be continuing their unlawful practices on a less prominent scale. Some have merely switched their names; others have set themselves up as heads of questionable business concerns; still others have radically altered their field of activities but retained their past feudalistic system and personnel. Many still have their underworld power in new roles. The Asahi reported some time ago that during one police drive which lasted for a period of about 7 months, the police successfully rounded up over 10,000 underworld criminals, including "big shots", "gorotsuki" newspapers, minor intimidation gangs, and others. Nevertheless there are undoubtedly some hundreds of "big timers" and thousands of subordinate bosses and lesser henchmen still in operation.

The Oyabun-Kobun System

How many of these various types of Oyabun and Kobun are directly connected with the "gorotsuki" newspaper racket and exactly how such newspaper gangsters operate in detail I do not know. However, the "gorotsuki" newspapers are only one manifestation of the Oyabun-Kobun system which dates back as far as the Tokugawa era in Japan and is essentially an extension of the traditional Japanese family system. It expanded from its origin as a number of gambling groups into the field of politics, economics, the police system, and the army and navy. The system is not just one of

corrupt illegal activities but its essential characteristic lies in a hierarchial relationship, between a group of individuals with roots in the feudal attitudes and ideals of a historical past which is very close to the immediate present. Basically the pattern is this: A boss (Oyabun) whose ancestors have been Oyabuns for generations has a number of henchmen bound to him by close ties of personnel loyalty. In return for supplying his Kobuns with money, goods, advice, paternalistic direction and status, the boss receives an absolute loyalty which is accompanied by a feudalistic sense of honor and highly exaggerated regard for a "face". These Kobuns, in turn, have other Kobuns, though they are in the relationship of "Oji-san" (uncle) to these other Kobuns, rather than in the position of Oyabun. In turn, this second group of Kobuns have their own Kobuns, and so the relationship extends on the basis of immediate and close quasi-family ties, until the Oyabun controls a large number of henchmen.

The "Gorotsuki" Newspapers

It is obvious that a system with such deep-rooted history can only be eliminated in the long run by a transformation of Japanese society through education. However, this does not obviate the necessity for continuing efforts to enforce the criminal law as far as it is possible to do so. Regardless of details of the exact methods of operation of the so-called "gorotsuki" newspapers, the general picture is clear. I understand that their organization is similar to the other gangster groups and that they operate by means of libel, blackmail, intimidation and violence. In particular, I understand it is a common practice for such newspapers to prepare libelous articles attacking candidates for public offices and to threaten publication or violence unless they were paid off. Of course, the new Constitution and laws of Japan are designed to ensure freedom of the press, but this does not mean that criminal libel, blackmail, intimidation and violence should be condoned.

Crimes against Reputation

Former Press and Publication laws which were undoubtedly restrictive of freedom of the press have been repealed, but the Penal Code still contains a chapter entitled "Crimes Against Reputation" (Meiyo ni tai-suru Tsumi). Article 230 of this chapter states that every person who has injured the reputation of another person by publicly alleging facts, regardless of whether such facts are true or false, shall be punished with penal servitude or imprisonment not exceeding 3 years or a fine of not more than ¥50,000. However, in order to protect the right of the press to publish facts related to the public interest and primarily for the public benefit, a new Article 230 has recently been added to the Penal Code. This Article provides that publication of facts having relation to the public interest and primarily for the public benefit is not punishable, even though it may injure the reputation of another person, provided that the truth of the facts published is established after inquiry. The article specifically provides that "facts concerning a criminal act committed by a person who has not yet been prosecuted in relation thereto, shall be deemed facts related to the public interest". Similarly, true facts concerning a public official or a candidate for elective public office may be published without punishment even if they injure his reputation.

These new provisions were essential in order to protect the interest of the public in being properly informed about crimes, public officials, and candidates for elective public offices. They also protect the right of the press to freely publish such facts provided that they are true. The qualifications do not make it legal for any person or newspaper to circulate or publish a falsehood which injures the reputation of any suspect, public official or candidate. Article 231 of the same chapter of the Penal Code provides for punishment by detention (imprisonment not exceeding 30 days) or a minor fine of every person who has publicly insulted another person even without alleging facts. The article covers unfavorable comments published concerning a person's character, conduct, antecedents, etc., by the use of insulting language.

Crimes against Credit and Business

Another chapter of the Penal Code which has remained unchanged during the Occupation and which is closely related to the chapter already discussed is the chapter entitled "Crimes Against Credit and Business" (Shinyo oyobi Gyomu ni Tai-suru Tsumi). Article 233 of this chapter provides that every person who has injured the credit of another person or impeded his business by circulating false reports or by fraudulent means shall be punished with penal servitude not more than 3 years or fined not more than ¥50,000. Article 234 provides that every person who has forcefully interfered with the business of another person shall be dealt with in accordance with the preceding article.

Application of the Law

The provisions of the foregoing two chapters of the criminal code may be somewhat clarified by discussing a few of the Supreme Court cases which have interpreted them. The following remarks are based upon such Supreme Court decisions.

Even a person who has committed a crime or another illegal act also has a reputation to keep up. Consequently when falsehoods which injure his reputation have been publicly alleged, the crime of libel under Article 230 is constituted. When a person adversely criticizes another person by an article in which the latter is accused of evil deeds in language interspersed with insulting expression and publishes such article to the injury of his reputation, the insulting language and the allegation of facts form the method of the crime of libel, and the act is therefore punishable.

Even though a defamatory article published in a newspaper, magazine, or another publication contains no direct reference to the name, facial features, nickname, or pen-name of the injured party, if the person to whom the article refers can be inferred from the wording and other circumstances, it may be dealt with as libelous.

The act of printing an article which injures the reputation of a candidate for membership of a prefectural assembly and circulating the same among the electors by special post amounts to the notification of facts which intend generally to injure the reputation of another person. It, therefore, constitutes the crime of libel within the meaning of Article 230 of the Criminal Code. However, under Article 230a, if, upon inquiry into the facts, the truth thereof be established, the said act is not punishable.

Each person is protected by law from having his social position and esteem violated. When violated by another person, therefore, it is an impairment of his reputation.

The crime of injuring a reputation is constituted by violating the social position or esteem of a person by publicly declaring facts whether true or otherwise; the crime of injuring credit however, is formed by imperiling the confidence of another in a person's solvency or willingness to pay by circulating false rumors or by means of a fraudulent stratagem.

An act of circulating a falsehood, may according to circumstances, constitute the two crimes of injuring credit and reputation, or simply the crime of injuring credit or reputation.

Even though the contents of a paragraph inserted in a newspaper and reading in effect that A owes ¥50,000 to B is already well-known to C and others, the crime of injury to reputation is not constituted unless the paragraph goes so far as to imply that A is on the verge of bankruptcy.

The word "credit" within the meaning of Article 233 of the Criminal Code is not included in Article 230, par 1, of the said Code, but is independent and outside the scope of the latter article.

When a newspaper paragraph of an insulting nature forms an essential element of the crime of injury to reputation, the act is not dealt with for the crime of insult in addition to the act of impairment of reputation. If no punishment is imposed for the crime of injury to reputation because the truth of the allegation has been proved in accordance with Article 230a, and the facts alleged were related to the public interest and primarily for the public benefit, then the accused is to be entirely acquitted and cannot be punished for the crime of insult under Article 231.

The published fact involved in the injury to reputation need not necessarily be one not publicly known. The crime is formed even when a publicly known fact is published.

The words "publicly alleging facts" within the meaning of Article 230, par 1, of the Criminal Code denote the intimation of facts under conditions in which an indefinite number of people could have seen and heard the same. Even if no person actually saw or heard the intimation, there may still be a public intimation of facts.

The persons who are to be held criminally liable when the crime of injury to reputation has been committed by means of a newspaper are determined in accordance with the Criminal Code. It is immaterial whether they are the editor and publisher or any of the following persons:

(1) a person other than the editor who actually had charge of the editing;
(2) a person who has signed the article inserted;
(3) in the case of particulars of a correction or refutation, the person who has demanded the inserted article.

If a person has delivered a speech which in view of its whole tenor, the rumors current at the time, and other circumstances, enables the general audience to infer who is reported to have misconducted himself and in what manner, he may be found guilty of defamation. Similarly, a person who has published an article in a newspaper under the same circumstances may be found guilty of criminal libel.

The victim of criminal libel or insult is either a specific person or a specific organization possessing personal capacity.

A reporter who has supplied data with an intention of having an article which is injurious to the reputation of a person inserted in a newspaper causes, in conjunction with the acts of editing and publishing, injury to reputation. When a paper containing such articles has been published, the reporter concerned cannot evade liability as one of the principal offenders of the crime of libel. A newspaper correspondent cannot evade liability for his correspondence which tends to injure the reputation of another person and which has been inserted and published in the paper merely because it is within the exclusive power of the editor to select "copy". Furthermore, by supplying the editor with material for the given article the correspondent has thereby actually perpetrated the crime of libel jointly with the editor and has not merely assisted in preparing for the said crime.

When copies of a paper containing allegations injurious to the reputation of a person are distributed by post to a large number of persons, it amounts to publicity within the meaning of Article 230, even though the number of recipients of the copies may be specifically limited.

When the report of a juridical person has injured the reputation of another person in the name of the juridical person, punishment is thereby imposed on the actual author of the act.

When a letter of complaint containing allegations bearing on the private conduct of a person and tending to injure his reputation is fully published in a newspaper, it constitutes the crime of libel.

When a reporter is informed of facts which tend to injure the reputation of a person with the object of having such facts published in newspaper, and they are published as a result of tacit persuasion, an instigation of libel is committed.

In the crime of injury to the reputation of a person, it is sufficient if an allegation of facts is made to such an extent that it can be deemed to be injurious to the reputation of a specific person. It is not necessary that the facts be therefore minutely specified in regard to time, place, or other details.

The crime of insult is complete when the offender's opinion holding the social position of another person in contempt, is publicly made known without mention of facts; on the other hand the crime of injury to reputation is complete when concrete facts tending to injure the social position of another person are publicly declared.

Even critisism of the public capacity of a person may constitute a case of criminal insult if the offender publicly makes unfavorable comments concerning such person's character, conduct, antecedents, etc., by the use of insulting language.

"Circulating false reports" as provided in Article 233 of the criminal code means to publish false reports; for the completion of the crime therefore, it is not necessary to cause people further to circulate false reports.

"Injuring the credit of another person" within the meaning of Article 233 denotes injury to the financial credit of a person; consequently, the false report circulated for the purpose need not necessarily imply a conception of evil deeds or misconduct.

The act of injuring the credit of a person does not necessarily produce the result of violating his property right.

When discussing injury to credit under Article 233 of the Criminal Code or compensation for damages under Article 709 of the Civil Code, a distinction should always be made between credit and property rights. Article 709 of the Civil Code provides " A person who violates intentionally or negligently the right of another is bound to make compensation for damage arising therefrom." This is the basic provision for a civil action for libel or defamation as opposed to the Articles of the criminal code already referred to which provide for criminal punishment rather than civil damages. It should be noted in this connection that Article 710 of the Civil Code provides " A person who is liable in damages in accordance with the provisions of the preceding article must make compensation therefor even in respect of a non-pecuniary damage, irrespective of whether such injury was to the person, liberty, or reputation of another or to his property rights."

All that is required for the formation of the crime of Article 233 is injury to the credit of another person by circulating a false report or by fraudulent means. It is not absolutely necessary that reference be made to concrete injurious acts.

"Circulating false reports in the sense of Article 233 denotes spreading rumors which are false, it is not essential that the rumor be an invention of the accused in order that it may be found to be false."

When a false article tending to impede the business of another person is inserted in a newspaper and an attitude taken to the effect that similar paragraphs will be continuously published unless a sum of money is paid, and money is thus exacted, the act of impeding business forms the concrete evidence of the crime of intimidation. It is, however, the means used to obtain the money. In other words, it is an act which is the means of a crime and which comes under another criminal category within the meaning of Article 54, par 1, of the Criminal Code. Article 54, par 1, of the Criminal Code provides "When a single act results in several crimes or when the means or result of committing a crime constitutes another crime, sentence of the gravest punishment shall be given". The crime of intimidation is punishable under other chapters of the penal code which will be subsequently discussed.

To circulate false rumors in the sense of Article 233 denotes the spreading of false rumors among an indefinitely large number of people. It is not absolutely necessary that the offender should personally and directly inform a large number of persons of such false rumors.

The word "business" in Article 233 applies in general to all professions, occupations, or other affairs or undertakings requiring continuous attention or employment, whether moral or economic but does not include official affairs.

The word "forcefully" in the sense of Article 234 (referring to a person who has forcefully interfered with the business of another) refers to force or strength to dominate or awe the will be another person. It applies not only when the offender has resorted to violence or intimidation but also when he has terrorized the other party by bluff or by reason of his position or power.

Force within the meaning of Article 234 includes violence.

"The business of a person" in the sense of Article 234 denotes the business of any person other than the offender, and it may be the business of a natural person, juridical person, or other group or organization.

In a judgement which finds the accused guilty of the crime of interfering with business under Article 234, it suffices to find that the accused has by force interfered with the conduct of the business of another person. It is not necessary to state exactly how much loss has been caused thereby.

Crimes of Intimidation

Crimes against reputation, or against credit and business, are frequently connected with Crimes of Intimidation (Kyohaku no Tsumi), which are defined by another chapter of the Penal Code. The word "Kyohaku" may also be translated as "threat", "coercion", "menace", or "compulsion". It has already been mentioned in this connection that a single act amy result in several crimes, or the means or result of committing a crime may constitute another crime, in which case Article 54 par 1, of the Criminal Code provides that sentence of the gravest punishment shall be given. In the chapter concerning crimes of intimidation, Article 222 provides that every person who has threatened another person with injury to his life, person, liberty, reputation, or property shall be punished with penal servitude not exceeding 2 years or fined not more than ¥25,000. The same punishment applies to every person who has threatened injury to the life, person, liberty, reputation, or property of a relative. Article 223 of the same chapter provides that every person who has threatened another person with injury to his life, person, liberty, reputation, or property, or has used violence against another person and thereby caused such person to perform an act which he is not bound to perform or prevent him from exercising a right to which he is entitled, shall be punished by penal servitude not exceeding 3 years. The same punishment applies where the threat of injury was to the life, person, liberty, reputation, or property of a relative. Attempts of these crimes are also punishable.

Application of the Law

The provisions of this chapter may be further clarified by a few comments based upon Supreme Court opinions.

The crimes of intimidation specified in Articles 222-223 of the Criminal Code are constituted if a person is notified that facts which will impair his reputation may be disclosed. It is not necessary to give concrete notice of the facts of which disclosure is threatened.

If an illegal intimation has been made to the effect that harm will be done to the life and property of a person, the fact that such intimation was made in the name of a non-existent person is no bar to the formation of the crime of intimidation.

If an act of intimidation has been perpetrated with the knowledge that it may cause a person to suffer fear, it constitutes the crime of intimidation, despite the fact that it has been perpetrated with an intention ulterior to that of inspiring the person to whom the notice of intimidation has been addressed with fear.

The act of sending a letter intimating that a person whole family will be killed by bombs unless he does a certain act, constitutes the crime of intimidation, irrespective of whether the receiver of the letter believes that the threat will be carried out against him or his family, or whether he is thereby actually inspired with fear.

It suffices for the formation of the crime of intimidation if the offender has adopted means of informing the other party with intention to intimidate that the harm specified in Article 222 of the Criminal Code will be caused to him, and if the other party thereby understands that a harmful act is threatened. It is not necessary that the offender should have communicated directly with the other party by speech or other means.

Article 223, par 1, of the Criminal Code provides for punishment of any person who by threats or violence has caused another person to do or refrain from doing or suffer to be done an act for which he has no right or power and is therefore under no obligation to do.

If a person was caused by threats or violence to perform an act which he was already bound to perform the crime of intimidation under Article 223 is nevertheless constituted.

When a newspaper man intimates to the manager of a restaurant that he will publish something unfavorable to the manager or the restaurant unless the manager performs certain services, it constitutes a threat against the reputation and property of the manager.

Crimes of Violence

There are certain other Articles of the Penal Code which are closely related to Article 222 concerning threats. These articles are Articles 208, concerning the crime of violence, and Article 261, concerning the crime of damage or destruction of animate or inanimate objects. Article 208 provides that every person who has used violence against another person without wounding (injuring) such person shall be punished with penal servitude not