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In answer to questions, prior to his departure from Tokyo, the Rev. Gordon Lang, leader of the British Parliamentary Delegation to Japan, said that he had observed many changes since his last visit. The signs were most encouraging and amongst them were:

1. The greatly improved cheerfulness and buoyancy of the Japanese people. They had clearly acquired hope.

2. An obvious improvement in the health of the children.

3. A new attitude of police and people, especially instanced by the way children played with and were friendly with the police--different from the tenor of pre-Occupation days.

4. A marked improvement in the attitude adopted by prison officials to those in their charge. Mr. Lang said that he had spent several days in a minute inspection of gaols and reformatories.

Mr. Lang further said that his interviews with leading members of the Diet satisfied him that they understood and believed in the principles of democratic government and were determined to apply them.

With regard to Christianity, Mr. Lang stated that he had had numerous interviews with Japanese and other Christian leaders all of whom were most optimistic as to the future.

Asked if his delegation had been given liberty of action during their visit of Japan, Mr. Lang said they had had complete freedom. He himself had lunched with Prince Chichibu and the princess, had tea in an ordinary Japanese home and eaten at least two meals in Japanese gaols.

As an indication of the growing interest of the Japanese people in democracy, Mr. Lang said that he had lectured to 70 prison guards attending a special four months course in Tokyo and had been astounded at the penetrating questions put to him at the close.

On behalf of the Delegation, Mr. Lang presented General MacArthur with a framed etching of Big Ben and the Houses of Parliament.

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BIOGRAPHICAL DATA
on
MEMBERS OF UNITED KINGDOM PARLIAMENTARY DELEGATION

VISITING JAPAN

10 October 1947

The Reverend Gordon LANG.

Stalybridge and Hyde. Born 25/2/93. Married. One son and one daughter. Educated Monmouth Grammar School and Cheshunt. Occupation - Free Church Minister lecturer in psychology. War Record - Lecturer to H.M. Forces. Other Activities - Chaplain to Showman's Guild of Great Britain and Ireland; writer on criminology and penalogy and author of Biography of Mr. Justice Avery. Hon. Vice President National Federation of Meat Traders. Special Parliamentary Interests - Education, International Peace, Home Office questions, Jewish National Home in Palestine, Old Age Pensions and Ex-Service Men's Welfare. Parliamentary Select Committees - Members Expenses. Party Record - Member of Parliamentary Labour party Legal Judicial Group. Senior Labour M.P. for Oldham 1929-31, M.P. for Stalybridge 1945. Other Details - Member of Inter Parliamentary Union; Empire Parliamentary Association; and Anglo-American Parliamentary Association, Member Parliamentary Scientific Committee.

Mr. John PATON.

Norwich. Born 8/8/86. Married to Florence PATON, M.P., 1 son. Educated - Elementary School until 13 years old. Other Activities - Author: "Proletarian Pilgrimage" and "Left Turn." Special Parliamentary Interests - Foreign Affairs, Economics, Social Security, Penal Reform. Parliamentary Select Committees - Library. Party Record - Member of Horta County Council past member of Aberdeen Town Council. Past National Organizer and General Secretary Independent Labour Party, one time editor of "New Leader"; numerous local offices of I.L.P., Labour Party, Trade Union. Member of Parliamentary Labour party groups on; Legal and Judicial, External Affairs, Elected 1945. National Clubs/Organizations - Fabian Society, Howard Legue for Penal Reform. Other Details - Secretary of National Council for Abolition of Death Penalty.

Capt. W. R. Stanley PRESCOTT.

Darwen (Lancs). Born 25/4/12. Married. Educated - Boardman's and St. John's College, Cambridge; Barrister-at-Law (Grays Inn) B. A. (Cantab.). Occupation - Politics and Business. War Record - Territorial Army officer Aug. 1939; Royal Corps of Signals. Served U.K. and overseas, Invalided June, 1943. Other Activities - Member Court of Common Council,

Capt. W. R. Stanley PRESCOTT - cont'd.

City of London; Governor, Tottenham Grammar School; Member of the Executive British Council of Rehabilitation; Liveryman Worshipful Company of Paviors. Special Parliamentary Interests - Trade and Finance; Cotton Industry; British Empire; Old Age Pensions. Party Record - Speaking Member of Conservative Parliamentary Party Committees on: Trade and Industry, Finance, Housing, Scientific, Imperial Affairs. National Clubs/Organizations - Constitutional Club, City Livery Club. M.P. since 1943. Other details - Freeman City of London.

in

Mr. Hervey RHODES.

Ashton-under-Lyne. Born 12/8/95. Married. Four children (two of them adopted). Educated - Greedfield Elementary School. Evening Classes and Technical College. Occupation - Started life as piecer in woollen mills at 12 years of age. Went to Canada in 1913 and returned in 1914. Started own manufacturing business with wound gratuity and developed two mills making woollen goods. War Record - 1914 - 18; Private in King's Own Regiment... Regiment Cpl., then commissioned; transferred to Air Force. Won D.F.C. and Bar. Severely wounded 1918 and in hospital until 1921. Other Activities - Chairman of War Charities Committee, which raised L30,000 for Red Cross, etc. during the war. On Council of Huddersfield Chamber of Commerce; Member of Export Group in Huddersfield. Special Parliamentary Interests - War Pensions, Textile Trade, particularly cotton and wool. Party Record - Member of Local Council and past Chairman. Member of Parliamentary Labour party group on: Trade and Industry. Elected 1945.

Mr. William TEELING.

Brighton. Born 5/2/05. Married. Educated - Gratory School, Edgbaston; Magdalen College, Oxford; B.A. 1924. Occupation - Lecturer. War Record - R.A.F. (Intelligence) 1940; Flight Lieutenant, Dec. 1940; P.A. to Air Officer Commanding Northern Ireland (82 Group) 1941-42; F ighter Command 1942; Air Ministry 1943-44. Other activities - Lectured in Canada and U.S.A. 1930-31, Australia, New Zeland, Malaya, Philippines, China, and Japan 1934-36; for British Council in Norway, Sweden, Denmark, Austria and Yugoslavia 1937-38. Author: "England's French Dominion?"; "Gods of Tomorrow", "The Pope in Politics", etc. Special Parliamentary Interests - Foreign and Imperial Affairs, Party Record - M.P. since 1944. Other details - Has studied labour and unemployment in the U.S.A., Canada, and Europe. Executive Chairman Catholic Emigration Society of Great Britain and Northern Ireland 1929-31. Member of council of the Queen's Institute of District Nursing.

CONFERENCE WITH UNITED KINGDOM PARLIAMENTARY
DELEGATION, GOVERNMENT SECTION

14 October 1947

Members of the Delegation:

The Reverend Gordon Lang (L), Stalybridge, Hyde
Mr. John Paton (L), Norwich
Mr. Hervey Rhodes (L), Ashton-under-Lynne
Mr. W. Teeling (C), Brighton
Mr. Stanley Prescott (C), Darwen

Col. Kades: I may just say a few words about the men present if you would like. Commander Swope's full name is Guy James Swope. He was a Congressman from Pennsylvania in the United States House of Representatives and Governor of Puerto Rico. He went on active duty in the Navy during the war, and became Military Governor of Saipan, later coming in here just about the time of the surrender.

Major Rizzo was a Wall Street economist and then Chief Economist for the National Security Dealers Association. He enlisted in the Army as a private in 1942, and later was commissioned lieutenant in the Infantry. He rose through grades to become a major. After an assignment in the Civil Affairs Division of the War Department General Staff, he was sent out here during the early days of the Occupation.

Colonel Tilton was a professor of political science at Connecticut University. He was commissioned at the outbreak of the war and became an instructor at the School of Military Government, later coming to Japan before the formal surrender, in the latter part of August.

Major Napier enlisted in the Army at the outbreak of war and rose to be a major in the Adjutant General's office and is the Chief of our Public Service Qualifications Division which administers the purge. He has been

commissioned in the Regular Army after some difficulty in qualifying physically because of high blood pressure induced by the purge. (Laughter)

Commander Swope is Chief of the National Government Division and Major Rizzo is special advisor to General Whitney. Colonel Marcum, who is Chief of the Political Affairs Division, is a professional bureaucrat (laughter) and was associated with the Civil Service Commission at Washington. He ended his wartime service as Chief of the Counter-Intelligence Detachment in the Philippines under General MacArthur's command.

Doctor Williams is a professor of political science of the University of Wisconsin, and is Chief of the Legislative Division. During the war he was an officer assigned to Military Government.

All of us are in the reserves and were on active duty until about the first of this year.

Commander Hauge was in the Navy and is Chief of the Public Affairs Division which handles all of the dissemination of political information and democratic indoctrination relating to the work of the Government Section. He was the Public Relations Counsellor to the Norwegian Embassy in Washington and is held chiefly responsible for convincing the American people that Norway is a democracy.

The only Division Chiefs not represented here are Judge Oppler, who will be here this afternoon, and Commander Hussey, who is Chief of the Governmental Powers Division and is in the United States on leave. Judge Oppler is Chief of the Courts and Law Division. He is of German birth, was Chief Judge of the German Administrative Court, opposed Hitler and was expelled from Germany in 1933, becoming an American citizen as soon as legally possible.

We are involved in some very important legislation coming up in the Diet which he is reviewing this morning, and since we don't reach his section until this afternoon, I excused him until that time. Commander Hussey is a grass roots lawyer of general practice from Massachusetts and Mr. Campbell is substituting for him to answer any questions in his field.

General Whitney has been with General MacArthur from the very first of the Pacific campaigns. He was a regular army officer who resigned his commission some years ago to become the leading lawyer in Manila. Prior to the war, as a matter of fact, when regular army officers were returned to active duty, he entered on active duty. He prides himself as being one of General MacArthur's staff officers and that is all he will insert in his Who's Who biography. Although he was in complete charge of the guerrilla underground in the Philippines which rendered invaluable aid to the troops, he feels that his greatest accomplishment is having gone through the entire war as General MacArthur's adviser. Before becoming Chief of this Section he was Chief Civil Affairs Officer in the Philippines.

Until the outbreak of the war I was Assistant General Counsel for the Treasury and I then became a lieutenant in the Infantry, serving in France and in Washington, and landed at Atsugi with Generals Wainwright and Percival on the 31st of August, 1945.

We haven't anything formal prepared -- only a few papers here in case it should be necessary to refer to them and copies of the Constitution in front of you. We thought the best way of approaching it after discussing the matter with Colonel Figgess would be to start to talk and then let the discussion take its course as might be indicated by your questions. For that purpose I might just begin along more or less boilerplate lines.

Less than two years ago Japan was a feudal military police state and today it is a nation in which sovereign power is vested in the people as you can see from the preamble and early articles of the Constitution. Instead of an oligarchy which was dominated by a very small group of militarists, bureaucrats and industrialists, it is now being reconstructed into a constitutional democracy. It is rather a blend of British and American forms of government.

The new Constitution which is the nation's fundamental law has merged divergent ideas into an eclectic instrument and it is probably as democratic in theory and in words as the Constitution of any modern democratic state. Some of the provisions are more favorable, for example, to workers than the Russian Constitution -- not by that implying that Russia is a constitutional democracy but its Constitution has been frequently held up as an advanced social document. The Japanese Constitution exceeds that in many respects.

Probably unique is the constitutional provision renouncing belligerency and war as a sovereign right. By that provision Japan divorces itself from its past and assumes the lead in declaring its faith in the justice and tolerance of mankind.

The next most notable feature of the Constitution is the provisions regarding the Emperor, abolishing all political functions, making him a mere symbol of the state. He is not even a titular head of the state as the King of England. He is reduced to purely ceremonial functions of attesting certain appointments. In other words, he countersigns the appointment of certain ranks of officers made by the Prime Minister. It is pretty much the same way as the Secretary of State attaching the seal of office to a law after it has been passed by Congress and signed by the President.

Mr. Paton: Suppose he doesn't sign?

Col. Kades: It makes no difference. For instance, the Prime Minister's appointment under the Constitution is attested by the Emperor. The Prime Minister is elected -- or designated -- as translated in the Constitution. Immediately after the election Mr. Katayama as Prime Minister assumed the functions of office even before the ceremonial attestation by the Emperor.

Mr. Prescott: May I ask this question? In England a law is made by being passed by the House of Commons and House of Lords and the bill will be signed by His Majesty, the King. Does not the Emperor have anything to do with signing the bill?

Col. Kades: Yes, he does. The word used again is attestation. What he does is to put his little seal called a "han" on the document but that act is analogous to the affixing of the seal by our Secretary of State. I am not familiar with British practice, but after the bill is passed by both Houses of Congress in the United States and signed by the President which authenticates it, then the seal of the Secretary of State is put on. Now the Emperor's act is analogous to that action; it is not analogous to the signing by the President. It becomes a law when its provisions state it goes into effect; the Emperor simply attests the fact that it is promulgated.

Rev. Lang: What exactly is the value of that? It evidently has no legal value, and will you permit me to ask the question, might it not be dangerous insofar as the large numbers of the Japanese people knowing that the Emperor affixes his seal might still be led to believe that the Emperor has power? I can't see any reason in it. I can see danger.

Col. Kades: There is a slight risk involved, but the reason for the attestation was simply that the Japanese wanted to mention the Emperor in the Constitution. It is a written constitution, after all, as distinguished from the British Constitution. They were faced with the same problem as you might be to say what the King's functions were.

Here they wanted to give the Emperor less functions than your King has. However, they wanted to give him something to do. To guard against any real risk, the Constitution provides that he shall never have powers related to government. It also provides that he is authorized to act in any matter under the Constitution, even those not related to government, only with the advice and consent of the Cabinet.

Mr. Teeling: Doesn't that in effect, put him back in the spiritual light?

Col. Kades: As far as deification is concerned he has himself denounced the stories of his being spiritual as myths and legends. He undoubtedly still has the affection of large numbers of the Japanese people and that is something that the law or Constitution can't eradicate. It must come by itself. He made a bad impression on the people in a recent incident. A leader of the labor union in one of the factories which he was inspecting came forward and asked, "May I shake hands with you?" and the Emperor said, "I prefer that we conform to the Japanese habit of bowing." If he makes mistakes like that he will lose the affection of the people. That incident was commented on by the press.

Mr. Paton: Has the comment in the press been critical comments?

Col. Kades: Yes, in this particular instance. Also, you see,they are trying to popularize him and are trying to humanize him.

Mr. Teeling: Surely, handshaking is an essentially western courtesy, whereas bowing is essentially eastern.

Col. Kades: But here was a labor leader offering his hand. Also the newspapers have criticized him because he asks questions as he goes around on his inspection tours of factories or visits to the mines and rice fields, and his answers have generally been "Ah, so" -- not any intelligent comments on his own part. He just says, "Ah, so." The Japanese papers have expressed a hope that he would add something more substantial to the discussion.

Mr. Rhodes: What were the arguments for and against keeping him on?

Col. Kades: The principal argument for keeping him on was the hold that he had in the hearts of the Japanese people. If he were removed that would make a martyr of him, and it was far better to use him to Allied advantage rather than to depose him and thereby martyrize him. That was the principal argument in favor of his retention. Against his retention was the argument that since he was the crux of the Japanese feudal system, that unless he were deposed, it would be impossible to establish a democratic country. The Supreme Commander, however, was under instructions from the United States Joint Chiefs of Staff not to remove him without consultation with the Joint Chiefs. In other words, when we entered here General MacArthur was under instructions to use the Emperor and to use the government, but not to support and not to remove the Emperor without consultation. Does that answer your question?

Mr. Rhodes: Yes.

Mr. Prescott: You used the expression and it was used yesterday, that the

Emperor wasn't even a "titular head" of the state, but in the first Article of the Constitution, it says the Emperor shall be the symbol of the State. In view of that Article I, how can one say he isn't the titular head of the state? Surely he must still be.

Rev. Lang: It was used yesterday in the same way. However, in our connotation titular means just "title." I think when you say "titular" you mean he hasn't the power of the monarch at home.

Col. Kades: The word titular I used -- and I think Colonel Otto, if he used it also, used it in the sense that he is not a constitutional monarch. He is not a monarch in any sense except that he is called Emperor. I might indicate the way the Japanese people view it. I was giving a press conference about six weeks ago to the Japanese press, and the point was raised by one of the members of the Japanese press whether, since the Emperor was only a symbol of the unity of the people, it wouldn't be a lot less expensive to have Mt. Fuji as a symbol of the people. The very fact that a reporter could ask a question like that without committing les majeste was in itself remarkable. I answered, of course, that if the Japanese people wanted Mt. Fuji as a symbol, all you have to do is amend the Constitution. It is clear to the people that the Emperor sits on the throne, so to speak, only by reason of the consent of the Diet and the people, and he sits there for a purpose analogous to the flag of the United States, and possibly the flag of Britain also. He is an animated symbol, but he is not considered as much as the head of the State. For example, in ratification of treaties, he simply attests instruments of ratification and other diplo-

matic documents. If he really were the head of the state, even in the sense of the King, he would ratify treaties with other countries.

Mr. Teeling: Don't you think you are going to give him much more influence that way? He is becoming a spiritual head again.

Mr. Paton: Are certain distinctions of this kind likely to be appreciated by the mass of the simple people? This is all right for constitutional lawyers and politicians, but now, is a peasant in the countryside going to understand distinctions of this type?

Mr. Teeling: He is going to become more and more spiritual.

Major Rizzo: Not until the school system gets these concepts into the heads of the younger generation, are they really going to become widespread. Nobody here is kidding himself that all these concepts are already in the minds of the Japanese grown-ups. They are in the minds of a great many people in the higher brackets. They are already understood by the people of the press and they are already understood by the intellectual class and from these groups it has to permeate the rest of the people.

Mr. Hauge: May I add one point? It happens that the Education Ministry in the course of the next few months will distribute about six million copies of a booklet which explains various phases of the Constitution in great detail and this is a point which is very clearly explained. That is only one thing that is likely to be done. I think that the booklet is likely to have some considerable influence over a period of time. It will be distributed throughout the schools in the course of the next few months.

Rev. Lang: Has anybody formed an idea as to how long this is likely to take to be disseminated in the schools and to be understood and accepted?

Col. Kades: That question was asked of a group of leading members of the Diet last year. That was almost the precise question asked, and the answer was that the minimum time would be about ten years and the maximum time about fifteen years. So, I say that the Japanese political leaders think it will take somewhere within the range of from ten to fifteen years.

Mr. Paton: This is very important. You know generally the set-up far, far better. With our monarch in England who is looked up to by the masses of our whole common people, and we have had him for generations, it is somewhat the same. But here the Emperor had not only all powers of a ruler, but of God; and it seems extraordinarily wrong to me to imagine that we are going to up-root that very easily and quickly while we still maintain that position for him. That, to simple minds, still gives the appearance of power.

Mr. Teeling: Ever so much more when the Emperor doesn't do very much except use his name.

Major Rizzo: When you come right down to it the answer is this. For generations the Emperor exercised little if any powers, the powers being used in his name. Acts of state were done by a small group of self-appointed leaders who rotated the leadership and the power among themselves. For many, many years it was kept within that close circle, and what we have done is to break that circle. Aside from taking from him even the necessity to use his name in the exercise of his state power, the power of government is no longer exercised in his name. It is exercised in the name of the people.

Secondly, we had to break up the little group which had the reins in its hands, and to make that possible first by means of the Constitution,

then by laws and then by actual physical removal of the leaders, thereby causing a rotation of the leadership and thereby establishing new forces which would act and offer resistance to any effort on the part of the old leaders to return to power. It isn't we who are going to do this; we aren't going to be here forever. But if we could get started what we consider the irreversible action, with leaders coming up and new powers becoming vested, these will be the people who will oppose the return of the old system. The whole problem is broad. It is political, economic and educational.

Mr. Rhodes: Isn't the Emperor associated with a tremendous acceleration in trade and government of the Japanese economy, and what is his position going to be in the minds of the people if the stability and the growth of the Japanese economy is a very poor comparison, say, in the next ten or fifteen years with what they associated with the Mikado in their minds? Have they really got hold of the thought on the putting of the Emperor in the position that he is? Don't you think they will always associate him with a great period in their history when they licked a lot of the western powers?

Major Rizzo: I think it's really come home to them that they suffered defeat under the old system, and one of the things that has made our job relatively easy from a psychological standpoint is that the people have recognized that their leaders made the mistake.

Mr. Prescott: But if you had removed the Emperor would there not have been a greater chance that he would have stood for something far greater than he does now, and he would have been made a martyr?

Major Rizzo: Assuming that we had the power or the choice, anything like a

forcible removal of a dynasty head and imposition of a republican form of government would have been associated with violence, and would have been an act invoked upon them from the outside and would have been resented.

You know, in our most drastic revolution in history, the French Revolution didn't outlast one generation. You can not reverse the trends in history in one generation. You can give history a good kick in what you consider the right direction.

Rev. Lang: All that I see, and I still can not see the answer in what we said this morning. It is true, I think that Mr. Prescott is right, that the removal of the Emperor would have been disastrous. By and by when the occupation was gone times might come when they would pull him back, I quite see that. What I do not see is that while he is retained in a sort of titular sense and has this final power of attesting. Now, it sort of appears that the Emperor's position is much stronger when the final act is his, and it is the final act of a deity, no matter how nominal it is. It is the act of the Emperor himself. During the ten or fifteen years in which the new education is going to teach the young people what has happened, may not other things happen especially after the occupation is gone? And is there not the possibility that this very act -- a sort of act of God, the last seal -- however much you and I and Japanese leaders know its meaning -- won't that act preserve in the minds of the masses of the people that after all the Emperor is a divine person and that without his seal it really isn't so?

Col. Kades: I have acknowledged that the possibility exists, but it is a very abstract danger because the oligarchy that used it has been smashed.

We haven't established a democracy in Japan but we have destroyed the oligarchy which used the Emperor and promulgated the doctrine that you just enunciated. Of course, another group might possibly arise which would attempt to use the Emperor along the lines you mention. We have taken, however, a calculated risk. There isn't in existence any group which is ready to use the Emperor for that purpose or which is accumulating any strength for that purpose. That risk has always existed, but as between that alternative and the consequences of the other alternative of removal of the Emperor or depriving him of every ceremonial function, it seemed by far the lesser risk.

Mr. Paton: It is a question of balance.

Col. Kades: Balance and judgment. That was the only reason for putting an Article on the Emperor in the Constitution.

Major Rizzo: After all, we had to give him something to do.

Comdr. Hauge: There are developments constantly which are tending to reduce the stature of the Emperor in the minds of the people. For instance, the Diet today will finally enact the new Criminal Code which completely eliminated les majeste. This repeal and the decisions the courts have taken in the last few months on incidents of les majeste point up the fact that les majeste is no longer thought of as a crime in Japan.

Col. Kades: I might read to you a letter at this point. I started to get it out when we began to discuss the Emperor. General MacArthur wrote it last February in reply to a letter from the Prime Minister asking for reconsideration of General Whitney's original instructions that les majeste should be repealed. This letter is dated the 25th of February and reads as follows:

Quote

Tokyo, Japan
25 February 1947.

Dear Mr. Prime Minister:

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

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

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

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

As for your third point, there is no statutory provision in British law comparable to Articles 73 and 75 of the Japanese Penal Code. In fact, under the statute of 5 and 6 Victoria, Chapter 61, assault upon the British Monarch is punishable as a misdemeanor. Although, the ancient Statute of Treasons, ordained prior to representative government during the reign of Edward III, took a more serious view of violence against the King's person

and, because a mediaeval sovereign then embodied in his person all the powers of state, included such acts of violence within the crime of treason. This six hundred year old statute, last revised a century ago, is a remnant of and derived from the age of Germanic feudalism and there is no record of its modern application, nor is there the slightest analogy to the situation now existing in Japan.

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

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

In view of the fact that the Japanese Penal Code provides the death penalty for murder and severe penalties for acts of violence against persons, the dignity of human life and the inviolability of the character and person of the individual are fully recognized. It follows that all articles of the Penal Code relating to crimes against the Imperial House are surplusage and should be eliminated by appropriate Ordinance.

Sincerely yours,

(sgd) Douglas MacArthur

(tpd) DOUGLAS MacARTHUR

The Prime Minister of Japan,
Tokyo.

Unquote

I might mention at this point all members of the royal family, except the Emperor and Empress, his mother, three brothers, and his children, are resigning from the royal family this week and becoming Mr. and Mrs. Of the fifty-one who are resigning, twelve princes will be purged within the next few days and forever barred from holding public office in Japan. This is being done on the government's own initiative by reason of their military careers and is something which we very gladly approve.

May I mention that this letter has never been published. We offered the present cabinet the opportunity to publish it if they felt they needed to in order to combat on the floor of the Diet any suggestions that les majeste be put back as a crime in the Criminal Code. There is some minor conflict about the Criminal Code, not related to the les majeste, but it will probably be enacted into law today or tomorrow. The real point I want to make is that this letter is not known to the members of the Diet. The Diet has passed the repeal of the les majeste provisions considering in their judgment that a crime of les majeste is inconsistent with the present position of the Emperor.

Rev. Lang: It is very strong evidence that you produce. It is a very competent letter and one utterly agrees with everything it says. But, isn't it evidence that even though General MacArthur and the occupation know exactly where they are, that even the Prime Minister himself, at that time, responsible for carrying out the new Constitution was not very clear himself as to the position of the Emperor? And if the Prime Minister was not very clear, it does seem to me most optimistic to believe that the vast numbers of the

people have gone as far as the politicians, with their tongues in their cheeks, may have gone.

Col. Kades: I agree with you but there are matters which indicate a change. For example, the trolley cars used to stop in front of the palace and the motorman and conductor would get out and bow. That does not take place any more.

Mr. Teeling: Does that matter very much?

Col. Kades: The point is that the motormen and conductors used to do it as a matter of respect because they did attach religious significance to the Emperor. Another example is when he comes to the Diet, the officials no longer pull the shades as they used to do because no one was supposed to look down upon him. That isn't done any more.

Mr. Teeling: There are many rapt catholics who would not conform to the Pope's opinion on some matters, but they will always conform on religious matters notwithstanding.

Comdr. Swope: I don't agree that reform is not indicated. Neither do I agree that the Catholics follow the Pope. Perhaps that is because I am an American. (Laughter)

Mr. Teeling: When he speaks, they do.

Comdr. Swope: You have to limit the field in which your expression is valid.

Mr. Teeling: He is speaking officially in authority, and they agree.

Comdr Swope: On the points on which he has authority. But there are millions of American Catholics who would dispute the points on the ground he had no authority.

Major Rizzo: Your reaction to stress "the need for this letter" is based upon the fact that Yoshida had raised that point. After all, Yoshida is and was leader of the most conservative party in Japan. His views are those of a man who thinks and likes to preserve as much of the old as he possibly can because it is the old which he knows and which he grew up with and which he has faith in. However, isn't there a partial answer to your question in the fact that he is no longer Prime Minister, and in the fact that the party which drew the largest number of votes is the party which has among its members and leaders the largest number of people who think that these things for which Yoshida was fighting are poppycock?

Rev. Lang: Yes, that is a very good point and very possible.

Col. Tilton: It was just going to say that I agree with Major Rizzo's answer. Yoshida wanted to keep the Emperor just as his group had always had him. There was no further reason or mysticism in his mind.

Col. Kades: If we had left it to Mr. Yoshida the Constitution wouldn't have been in its present form. We had to go over Mr. Yoshida's head into the ranks of the members of his party who are more enlightened.

Major Rizzo: I think General Whitney must have used the word "nudge."

Comdr. Hauge: In that particular instance not even the letter made it perfectly clear to Yoshida.

Col. Marcum: You have raised the question concerning the extent to which the people had been able to absorb democratic ideas and to divorce themselves from the feudal state concepts and have expressed more or less the apprehension as to whether they have. Our main problem is not what can be done by SCAP.

The preliminary steps have been done and have been taken by the Japanese Government. A small nucleus of Japanese individuals have absorbed these new ideas and have developed some degree of skill in explaining and promoting these ideas and practices, methods and reforms.

Our big problem, however, is overcoming what they lack. Specifically, the problem has been passing from one set of values and forms to another completely different set of values and forms. The limitations in educational facilities and the time required for the education both for adults and children tend to perpetuate to some extent feudal ideas and standards. A very important point that I think does lack appreciation is the difficulty of an individual readjusting to a set of ideas in conflict with those to which he has an emotional attachment. This is particularly true in the divinity of the Emperor. The reflection of that idea is always unparalleled. I think those are the problems that only time can overcome.

Mr. Prescott: Isn't it really that you have provided a scaffolding, but the building has to be erected by the Japanese Government itself?

Col. Kades: We have often used a phrase very much the same as that. We have often told the Japanese we can only give them a blueprint. We did more, too, in that we tore down the old structure so there was room for the new. The smashing of an oligarchy and the construction of a democracy are two different things.

You might be interested in seeing these posters. The Society for the Popularization of the Constitution got an allocation of paper and printed copies of the Constitution at the expense of a couple of textbooks. Then they put out a lot of posters like this which they show the children and also

the grown-ups -- but they are primarily intended for the children. They try to show the difference under the old Constitution and the new.

Major Rizzo has learned to read as well as to speak Japanese since he has been in Tokyo. Since the statements on these posters are all in Japanese ideographs I will ask him to explain them to you, at the same time providing you with a demonstration of his language proficiency and facility.

Major Rizzo: This first chart shows how, under the Meiji Constitution, the Emperor is on the highest pedestal, the Peers on the slightly lower one, the man below him, and the woman on no pedestal at all. Today a truck labeled "The Constitution" has removed the inequalities and all of the Japanese people are equal.

This second chart shows how, under the Meiji Constitution, the Emperor and his Ministers of State made the laws and ruled the people. But under the new Constitution the people elect the Diet which makes the laws for the control of the Ministers of State who govern for the People.

The third chart shows that under the Meiji regime all public officials were regarded as superior beings and were bowed down to by the people. But this poster shows that public officials are the servants of the people and obey their dictates.

Chart No. 4 shows that formerly the National Shinto was the only religion and was backed by the full force of the Imperial Japanese Government. Under the new Constitution the people are free to worship as they please, to choose between Christianity, Buddhism and Shinto.

The fifth chart shows how, under the former regime, the police controlled all public activities, such as assemblies, publishing, broadcasting, etc., and

granted permits on a purely arbitrary basis. The new order, as depicted in this chart, shows the people are free to assemble, to publish, to broadcast as they so desire and the activities of the police are restricted to normal police functions.

The next chart shows the man as head of the house, owning the property, participating in public affairs, dictating to his wife and arranging the marriage of his children. Under the new Constitution man and wife are on an equal basis, sharing property jointly and participating in all activities together and their children are free to choose their own mates.

The seventh chart shows that formerly managers had absolute arbitrary control over their employees, while now the right of collective bargaining is granted.

Chart No. 8 depicts the police making arrests, entering private houses and searching as they saw fit without any restrictions or safeguards whatsoever. Now they are required to secure a warrant issued by a court of law before they can enter, arrest, or search.

The ninth chart sets forth that under the Meiji Constitution the all-powerful executive ruled the Diet. But under the new rulings Ministers of State and all other government officials are responsible to the Diet and Ministers of State are required to appear before the Diet to answer those questions.

This chart shows the Emperor employing the behind-the-throne facilities appointing a select few to the House of Peers which controlled the Lower House elected by only a few of the people. Today all of the people over 20 elect the members of the House of Representatives and House of Councillors, the sole law-making authority.

The eleventh chart shows that the Cabinet was dominated by the Ministers of War and Navy, but now there is neither army nor navy, neither War Department nor Navy Department, and all members of the Cabinet must be civilians.

Chart No. 12 shows how, under the Meiji rule, the executive spent the public money as it saw fit without control of any sort. Today the revenues of the State are controlled by the Diet which must appropriate, and only for specific purposes.

The thirteenth and last chart shows the Meiji Constitution allowing the central government to appoint chiefs of regions, governors of prefectures, and mayors of cities and towns, collecting taxes, and ruling the people of local communities completely. Under this new Constitution, however, the people of local communities elect their mayors who govern for them.

Comdr. Hauge: Incidentally, this same Society for the Popularization of the Constitution that produced these charts and similar charts have produced three feature-length motion pictures and a series of short subjects that are being used to indoctrinate the people. This organization is working now in conjunction with another organization called the League for Political Education which is under control of the Diet and they are both formulating a very competent educational program which includes motion pictures, radio, schools and so on.

Mr. Paton: Do they have an allocation or is it purely voluntary?

Comdr. Hauge: The Society for the Popularization of the Constitution is getting ten million yen a month from the government. That budget will continue until the first of March, 1948. After that time it will be merged with the League which is getting about five million yen a month. In terms of the program the League has projected it is a very modest budget.

Col. Kades: The question that Rev. Lang raises was debated by the public both in the campaign which preceded the election of the Diet which approved the Constitution. During the campaign all political parties took positions on the various provisions of the Constitution. Again, after the new Diet convened in early April, 1946, there was a long debate in the committees and on the floors of both Houses. The very question of the feeling between the Emperor and the people was thrashed out in debate in the House of Representatives, in the House of Peers, and on the radio. The Communist party took the position that the Constitution should not be ratified because the Emperor was retained. The Communist party lost votes as a result of that stand. In the recent election in April 1947 even the Communists dropped that plank from their platform.

Mr. Paton: How and why does the Diet do all this? Did Yoshida do this?

Col. Kades: The old Tojo Diet had been sitting and it was obviously desirable that it be dissolved. The Public Service Qualifications Committee which is what the Japanese call the screening committee for the purge excluded a majority of the Diet from holding public office. General MacArthur then approved the Japanese request for an election.

Major Rizzo: The membership of the Diet has been t urned over twice and there are very few old faces.

Col. Kades: This last election in the spring of 1947 was held because General MacArthur felt the Cabinet should resign and a new Diet be chosen so there would be a completely new government when the Constitution went into effect consisting of a new Diet, a new Cabinet and a new Supreme Court.

Rev. Lang: Let's see if there is anything else. I think we have gone into

it very thoroughly and we are very much obliged to you. I have gathered some very good information.

Mr. Paton: The point I am not clear on at all is how was the Prime Minister chosen?

Col. Kades: The Prime Minister is elected by both Houses of the Diet. In the event that there is disagreement between the two Houses, the choice of the House of Representatives prevails. In other words, the House of Representatives has the controlling voice in the selection of the Prime Minister.

Mr. Paton: What happens, I suppose, is that the parties throw out nominations.

Col. Kades: Each party here has a president and the president is chosen with a view that if the party has the majority, he will be elected Prime Minister.

Mr. Paton: There can, I suppose, be a coalition?

Col. Kades: Yes, as in the present case.

Mr. Teeling: The members of his Cabinet have to be elected members of the Diet.

Col. Kades: A majority of the Cabinet must be members of the Diet but in fact, all present Cabinet are members of one House or the other. It is the Constitution which requires that the majority must be members.

Mr. Paton: Under this set-up, the Emperor doesn't have any power?

Col. Kades: He attests the appointments.

Mr. Prescott: Is it as in England -- the Prime Minister chooses his Cabinet, then the Cabinet members go before the King, His Majesty, to receive their seals?

Col. Kades: After the Prime Minister was designated, he appointed the members of his Cabinet and then and only then he and his Cabinet call upon the

Emperor. After calling upon the Emperor the Prime Minister called upon General MacArthur. The Cabinet received good wishes from the Emperor and the Prime Minister received sound advice from the Supreme Commander. (Laughter)

Mr. Rhodes: Chapter I, Article 2 reads: "The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet." What in effect is the Imperial House Law? Do they have to pass an act on the death of the present Emperor to re-elect him?

Col. Kades: That law is a very brief law. It simply provides for the successor and who shall be members of the family. The Imperial House Council controls the affairs of the royal family in every sense of the word. The Council consists of ten members. That Council is the one that may have actually "nudged" the princes and princesses to retire from the family recently and in any event they are the organization which approved it. In other words, the Diet has even, to a certain extent, democratized the management of the internal affairs of the Imperial Family. I will read the important provisions of the law.

Quote

THE IMPERIAL HOUSE LAW

Chapter I. Succession to the Imperial Throne

Article 1. The Imperial Throne shall be succeeded to by a male offspring in the male line belonging to the Imperial Lineage.

Article 2. The Imperial Throne shall be passed to the members of the Imperial Family according to the following order:

1. The eldest son of the Emperor.
2. The eldest grandson of the Emperor
3. Other descendants of the eldest son of the Emperor.
4. The second son of the Emperor, and his descendants.

5. Other descendants of the Emperor.

6. Brothers of the Emperor and their descendants.

7. Uncles of the Emperor and their descendants.

In case there is no member of the Imperial Family as under the numbers of the preceding paragraph, the Throne shall be passed to the member of the Imperial Family next nearest in lineage.

In the cases of the two preceding paragraphs, precedence shall be given to the senior line, and in the same degree, to the senior member.

Article 3. In case the Imperial Heir is affected with an incurable and serious disease, mentally or physically, or there is a serious hindrance, the order of succession may be changed by decision of the Imperial House Council and in accordance with the order stipulated in the preceding paragraph.

Article 4. Upon the demise of the Emperor the Imperial Heir shall immediately accede to the Throne.

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Chapter III. Regency

Article 16. In case the Emperor has not come of age, a Regency shall be established.

In case the Emperor is affected with a serious disease, mentally or physically, or there is a serious hindrance and is unable to perform his acts in matters of state, a Regency shall be instituted by decision of the Imperial House Council.

Article 17. The Regency shall be assumed by a member of the Imperial Family of age according to the following order:

* * * * *

Article 18. In case the Regent, or a person falling in the order of assumption of Regency, is affected with a serious disease, mentally or physically, or there is a serious hindrance, the Imperial House Council may decide to change the Regent or the order of assumption of Regency, according to the order stipulated in the preceding article.

Article 19. When, because of minority of the person falling in the order of assumption of Regency or because of the obstacles mentioned in the preceding paragraph, another member of the Imperial Family has become

Regent, he shall not yield his post of Regent to the said member of the Imperial Family who has the precedence on the ground of his attainment to majority or the removal of those obstacles, except in the case such person happens to be the Kotaishi or Kotaison.

Article 20. In case the obstacles mentioned in Article 16, paragraph 2 have been removed, the Regency shall be abolished by decision of the Imperial House Council.

Article 21. The Regent, while in office, shall not be subject to legal action. However, the right to take that action is not impaired hereby.

* * * * *

Chapter V. The Imperial House Council

Article 28. The Imperial House Council shall be composed of ten members.

These members shall consist of two Imperial Family members, the Presidents and Vice Presidents of the House of Representatives and of the House of Councillors, the Prime Minister, the head of the Imperial House Office, the Chief Judge and one other judge of the Supreme Court.

The members of the Imperial Family and the judge other than the Chief Judge of the Supreme Court, who are to become members of the Council, shall be chosen by mutual election respectively from among the members of the Imperial Family of age and from among the judges other than the Chief Judge of the Supreme Court.

Article 29. The member of the Imperial House Council, who is the Prime Minister, shall preside over its meeting.

Article 30. There shall be appointed ten reserve members in the Imperial House Council.

As regards the reserve members for the Imperial Family members and the Judge of the Supreme Court in the Council, the Provision of Article 28, paragraph 3, shall apply mutatis mutandis. The reserve members for the Presidents and Vice Presidents of the House of Representatives and of the House of Councillors in the Council shall be selected by mutual election from among the members of the House of Representatives and of the House of Councillors.

The numbers of the reserve members mentioned in the two preceding paragraphs shall be the same as the numbers of the members in the Council, and the order of assuming their functions shall be determined at the time of the mutual election.

The reserve member for the Prime Minister in the Council shall be the Minister of State who has been designated as the one to perform temporarily the functions of Prime Minister under the provisions of the Cabinet Law.

The reserve member for the head of the Imperial House Office in the Council shall be designated by the Prime Minister from among the officials of the Imperial House Office.

In case there is a hindrance with regard to a member of the Council, or he is missing, the reserve member for him shall perform his functions.

Article 31. As regards the President, the Vice-President and members of the House of Representatives mentioned in Article 28 and the preceding paragraph they shall be, in case the House has been dissolved and pending the selection of the successors, those persons who were respectively the President, the Vice President and members of the House at the time of its dissolution.

Article 32. Term of office for the members of the Council, who are members of the Imperial Family and a judge other than the Chief Judge of the Supreme Court and their reserve members shall be four years.

* * * * *

Article 36. A member may not participate in the deliberation of any matter in which he has a special interest.

Article 37. The Imperial House Council shall exercise only those powers which are provided for by this and other laws.

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Unquote

Mr. Prescott: Of course, we are today lunching with the President of the House of Councillors and he undoubtedly will be able to give us a great deal of information.

Rev. Lang: He will be able, whether he will be willing remains to be seen.

Mr. Prescott: There are many points I should like to ask on local government.

Mr. Paton: Before we pass on to the next section what about finances? Is the formulation of the budget and the whole control of the financial problems of the country in the lower house or both houses?

Major Rizzo: The House of Representatives has the primacy in all budgetary and financial matters. An ordinary law passed by the House of Representatives, if not passed in the Upper House, can be passed by the House of Representatives by a two-thirds vote. The budget or any other financial matter passed by the House of Representatives must in the first place be introduced in the House of Representatives, and if passed by the House of Representatives and not passed by the House of Councillors, the decision of the lower house, that is to say, the House of Representatives, prevails. In other words, a simple majority vote is all that is needed to override a House of Councillors veto in financial matters.

Mr. Paton: In the case of finance, it goes to the Upper House, then it has to go back to the Lower House and again be voted upon?

Major Rizzo: It does not.

Col. Kades: The first vote is decisive. The Upper House can request a conference, and if the Lower House grants a consent to a conference a joint committee can confer and iron out difficulties, but if the Lower House decides it prefers not to confer, that ends it.

Major Rizzo: The Upper House cannot stop the adoption of the budget as passed by the Lower House.

Mr. Prescott: Is there any payment to members of the House of Representatives?

Dr. Williams: They get pay of not less than a vice-minister.

Col. Kades: With allowances that amount to about five thousand yen a month, which is not very much but is much more than they used to get. It was two thousand or three thousand yen a year before the new Constitution. Even

though the yen was worth more, the pay was not equal to the pay of a vice-minister.

Comdr. Swope: That is the main point, to elevate all Diet members to a point right below the Cabinet. That is the principle that has been established.

Dr. Williams: May I ask a question? What is the pay of a member of the House of Commons relative to a vice-minister in England?

Rev. Lang: Well, an undersecretary receives a thousand pounds and the average salary of a parliamentary secretary is fifteen hundred pounds.

Mr. Teeling: A member of parliament gets his free of income tax, but when he becomes a minister, the extra five hundred a year goes for income tax.

Comdr. Swope: In the American Congress, the principle has been established for years that no member of the government excepting the Cabinet and Supreme Court may receive more salary than a member of either House. It is just a custom but laws provide that no administrative official, no matter by what formula they are paid, may receive more than $10,000 a year.

Mr. Paton: You drop the officials down?

Comdr. Swope: No, but we didn't let them go up.

Col. Kades: Mr. Prescott, Col. Tilton will go into local government in detail, but in view of the fact that you are lunching with the Speaker of the House of Representatives and the President of the House of Councillors, maybe we should discuss the powers and procedures of the Diet now.

Mr. Teeling: The secret societies, isn't that this morning?

Col. Kades: Yes, I can treat that in a very few minutes. A great deal of the government of Japan back of the oligarchy of which we have spoken was invisible and was guided by the Dark Ocean Society and the Black Dragon

Society and their numerous offspring. This Section is charged with the responsibility for dissolving those organizations, and with the help of investigative agencies, of preventing their recurrence. We have dissolved approximately 130 societies of that nature, and from time to time have had to re-dissolve successors when they cropped up. We don't know whether all of them are dissolved, or whether there may be some secret societies still in existence, but as far as we are able to ascertain there are none in existence at the present time. For example, we need not worry about a government by assassination as was the situation in the thirties. Whether or not we have accomplished our mission in that regard will only be known when the Occupation is withdrawn. But our guess is that we have been pretty successful.

I thought you might be interested in how the Diet functioned, and Dr. Williams will give you the practical operation of it, but I will outline its powers. Under the Constitution, the Diet is the supreme organ of state power. It follows in that respect the British system rather than the American system. The executive is definitely subordinate to the Diet or Parliament. The judiciary is independent, but the supreme organ is the Diet which consists as you know of two Houses. Both Houses must be representative of all the people. Hence, there is no possibility of a chamber of corporations which was proposed and discussed at the time the Constitution was formulated.

All the members of both houses are elected by secret ballot and universal suffrage. The right to vote can't be abridged because of race, creed, sex, family, social status or other similar reasons. The term of office of the members of the House of Representatives if four years, subject to the fact

that the House may be dissolved in the interim. The term of office of the House of Councillors is six years, with half of the members chosen every three years. No person is permitted to be a member of both Houses simultaneously. The deliberations of both Houses are public, except on a two-thirds vote they may be secret, but the proceedings may be made public later.

The House of Representatives are chosen by districts. A candidate need not be a resident from the district of which he is chosen. The House of Councillors has two types of members, 100 being chosen from a single national constituency and 150 being chosen by prefecture. Every one of the 46 prefectures has at least two members in the House of Councillors representing it and, in addition, the difference between the 92 and the 150 is distributed among all the prefectures according to the population.

As Major Rizzo has already indicated, the House of Representatives is superior in the approval of the budget and it is also superior in the selection of the Prime Minister and in the ratification of treaties, in the sense that in the event of a disagreement the House of Representatives position is the prevailing position. In the case of any law other than on those three subjects, the House of Representatives can maintain its position only by passing a bill over the veto of the House of Councillors by a two-thirds vote in the event they are not able to iron out their differences.

When the House of Representatives is not in session, the Prime Minister is authorized to call an extraordinary session of the House of Councillors and their actions are considered to be the actions of the Diet, but the laws or other actions taken by the House of Councillors during that period must be ratified within ten days after the reconvening of the House of Representatives. Otherwise they become void.

So far as the dissolution of the House of Representatives is concerned that can take place upon the failure of a motion of confidence or upon passage of a vote of no-confidence in which case the Prime Minister has the option either of resigning en bloc with his Cabinet or dissolving the House of Representatives and calling for a national election. I think that follows the British pattern.

If you have no questions on the legal framework of the two houses, I'd like Dr. Williams to explain how they operate in practice, because the development in the Diet in the last two years has been very great.

Mr. Paton: May I ask one question? Is the principle of responsible government accepted as in Britain? The idea that the Minister is responsible directly to the Diet for every act of himself and his servants?

Col. Kades: That is an underlying principle of the Constitution. The Japanese have followed in large measure the practice under the British Constitution.

Dr. Williams: The Speaker of the House whom you will see shortly met your Foreign Secretary, Mr. Bevin, some time back in England and in Geneva; and I am sure if he gets a chance he will say something about that. The President of the House of Councillors who will be there was Ambassador to England in 1920. The Social Democratic Government here claims to be a younger brother of the Labor Party in England. They also claim that the type of government that they have, that is, responsible government, is along the line of the British Parliamentary system. They will make those claims and I think the first five and a half months of the Diet under the new Constitution is proving that essentially that is correct though not completely.

Major Rizzo told you that the House of Representatives can have the final

say by simple majority vote on all financial matters. So, as far as finances go, it absolutely is working as a parliamentary system and the Cabinet is the responsible agency controlling the majority in the House of Representatives, and as difficult as it is in Japan, the Cabinet so far is managing to hold that majority in the House of Representatives.

The big difficulty that confronts the Diet is this long tradition of absolute impotency. It is just not in the heads of Diet members to feel that they are the chief organ of state power. They are moving greatly in that direction, of that there is no question. But they haven't gotten there yet and that is the biggest difficulty to overcome. I believe that the experiment is going to work out, in that the Cabinet will work with the majority in the House of Representatives and I repeat, on financial matters they can go ahead on a strictly parliamentary system.

Outside of financial matters, however, it doesn't follow the parliamentary principle of responsibility, strictly speaking, because the House of Councillors has a very definite veto which has been exercised successfully at one time. There is a prospect in connection with the biggest test of all, the Coal Bill, that the House of Councillors may exercise its veto. I'm assuming that the government will have its way and in one way or another get this bill through the House of Representatives, but it is possible that the House of Councillors may refuse to pass the Bill.

Rev. Lang: Can they re-introduce it if the House of Councillors does not pass it?

Col. Kades: There is no need to re-introduce it; they can take another vote.

Maj. Rizzo: The veto is overridden by a two-thirds vote of the House of Representatives.

Dr. Williams: The chief difference between the Cabinet and the House of Representatives relationship and the chief difference between the British form of responsible government and the system here is this power of the House of Councillors. The House of Representatives and House of Councillors also follow the United States Congressional committee system and not the British system. There is a considerable difference because the Japanese have twenty-one standing committees, one committee for each major field of jurisdiction, and the committee chairmen are elected by the House. In the United States, the senior member of the committee of a majority party automatically -- not by law -- automatically becomes the chairman of the committee, and the committee chairmen in the House of Representatives, of course, have a great deal of power.

This system is different from the system that you have. The standing committees have caused some anxiety here, but the members of both houses, all-in-all, are growing more and more to like the committee system, and strangely enough, it is not preventing cooperation between the Cabinet and the Houses as some thought that it might in the beginning because of the power that the committee chairman might have. In fact, the Japanese think what they have is patterned after the British system. They call certain officials parliamentary vice-ministers, and they lifted that expression from the British, but it never worked at all as it has worked in England. The parliamentary vice-minister amounted to nothing more than a chore boy. The only equipment they need is a bicycle.

Col. Kades: I think you might mention by specific example, if you can, some of the instances in which the Diet has shown its independence in the drafting of legislation and in the enactment of legislation which the government proposed.

Dr. Williams: The Cabinet, for example, stated that it would ask the Diet to extend the last session for nine days. Well, the leaders of both Houses, supported by the members publicly told the Cabinet that it was none of the Cabinet's business, that they would extend the session if they wanted to and as long as they wanted to. Those are technicalities, but there have been a number like that that have arisen during this session and each time the Cabinet has acceded to the demands of the Diet, but in no way has it interferred with fundamental government responsibilities. There is a current question. The Cabinet is going to ask the Diet to extend this session again. The sentiment of the House of Representatives, also, is in favor of a longer extension. But whatever the House of Representatives thinks and in spite of the fact that the major parties in the House are bossed by the members of the Cabinet, the Diet will extend the session longer than the Cabinet asks for it to be extended.

Col. Kades: Here you had a different situation than what you have in England. Here the executive was always the predominant organ of the government and the legislative was very submissive. What the Diet is doing in these cases is not in any sense of the word intended to show lack of "confidence" in the government as such. For example, in a recent bill there was a provision whereby the Cabinet would fix the enforcement and effective date of the bill.

No Diet ever before had the temerity to change a government bill, even though it might have its own bills. The bill was thoroughly debated and one of the points raised was that the Diet itself should decide when the law would become effective, so the Diet amended the bill by fixing the enforcement date. As far as the Diet was concerned, it had established its constitutional prerogative.

Mr. Rhodes: How are the standing committees used?

Dr. Williams: Every bill that is introduced, whether a member bill or a government bill, is referred to the committee having jurisdiction. For example, if it is the Coal Bill, it goes to the Committee on Commerce and Industry. Labor bills and welfare bills will go to the committee on labor or welfare respectively. Each committee is really a miniature House of Representatives and all of the parties are represented in the committee in proportion to their total number. The committee will investigate the bill. The committee may subpoena witnesses. It may go to the countryside and investigate conditions firsthand. It has the power to hold public hearings. For example, today is the second day of public hearing on the Coal Bills.

All these powers are exercised under the guidance of a standing committee, so that committee members theoretically have every means of investigating all angles of the bill and they actually do make changes in government bills. I don't mean fundamental bills because if the government made it an issue of confidence and the committee made a radical change which the government would not accept, the House probably would accept the government bill.

In talking to members of the committees, however, you will find this is their line of reasoning. "Yes, this is a government bill and it is our

government, but the bill is drawn by bureaucrats and even the members of our party in the Cabinet aren't sure of what is in there so we must examine these bills under a microscope to be sure they are what our party should have." Actually, committees on occasion have proposed changes and they have consulted with appropriate cabinet members and the Cabinet has agreed to the changes. To protect the Diet in making policy against the possibility of the bureaus making the policy, the standing committees feel it is one of their duties to check against the encroachments of the bureaucrats.

Mr. Paton: May I ask this, has the government sole responsibility for determining the legislative program?

Dr. Williams: No, sir. Any member of any committee as such can produce a bill which has as much standing as a government bill. Now, actually most of the important legislation is coming from the government, but there will be more and more member bills of significance in the future.

Mr. Paton: How is the time allocated? Does the government give the time to its own bills and therefore shut out time to other bills?

Dr. Williams: No, sir, they cannot do that. I would like to say a word about how the Diet operates.

Mr. Prescott: In our House of Commons, members can initiate legislation, and there is time allocated for private members' bills, but some governments sometimes take away a private member's time (laughter). Therefore, you can get into the position into which, indeed, we have gotten, where theoretically the private members can introduce legislation but the government will allocate no time for that legislation to be discussed. (Laughter)

Dr. Williams: The government has no jurisdiction in allocation. Let us

suppose there is a plenary session scheduled this afternoon. At eleven-thirty what is called the Negotiating Committee of the House meets. In fact it is meeting right now. It consists of eighteen members distributed according to party strength.

The committee does not exist in law but only by custom. There was once a custom that a party must have twenty-five representatives before it can be represented in this conference, but as a matter of fact they now permit all groups to be represented. Every part of this afternoons's session will be planned by these eighteen representatives, no speech can be made, no bill introduced, and no motion made, unless it was arranged through this group. All of its decisions must be unanimous. On a previous occasion the conference sat three solid days and on into the night without a plenary session, simply because they could not agree upon the agenda. Until all of the members agreed, they didn't have that plenary session.

Mr. Prescott: How often do they meet?

Dr. Williams: They regularly meet three days a week.

Col. Kades: I don't know whether we ought to pursue this discussion further. After all, we represent all the Allies and you are very subtly drawing a possibly unfavorable comparison between one of our closest Allies and the enemy. (Laughter)

Mr. Rhodes: No, no. What I'd like to know -- you have got a debate on a coal bill -- can that go on indefinitely or can they allocate a fortnight or two or three days on getting it through?

Dr. Williams: That would be a filibuster -- is that what you mean?

Mr. Rhodes: Well, do they allocate a certain length of time for getting a bill through the House of Representatives?

Dr. Williams: Formerly they did so but always to the disadvantage of the Diet. For example, the Diet Budget Committee was limited to twenty-one days' consideration. Bills would be brought in at the end of the session -- say, within a week of the end of the session -- thrown into the lap of a special committee and the committee would in effect be told "Get that back out here in three days." Now they can't do that. The more important the bill, the longer the time allowed. An ordinary bill will go to the committee; that very afternoon, sessions on that bill will begin; it will be passed; and that is all there is to it.

Because of the importance of the coal bill, every single device is being employed -- public hearings for three days, and special investigations. Committees of the Diet have gone to the coal fields of Kyushu and Hokkaido. They are investigating every angle of it, but delaying tactics as such will not be prominent even in connection with this coal bill. They may be resorted to but the Japanese have a way of requiring sincerity. That is their word; and if you are insincere in using delaying tactics, the membership in general disapproves of that. While they will give every possible hearing here and the hearings will go on until the very last day of the session, they will take a vote. But there is no time limit.

Mr. Paton: How does this general set-up that you are describing affect the government's executive power? Does it in fact weaken the power of the executive to such an extent that it may become ineffective?

Dr. Williams: No, sir, I think it strengthens it. If the Cabinet had, let's say, an emergency measure, then even the hearings could be dispensed with because in the negotiating conference, for example, a majority of the persons

are government supporters and they will put it up to the opponents. The opponents may refuse, but you will find a hundred per cent cooperation on an important party measure or government measure.

Col. Kades: Mr. Prescott asked the question whether the bills are all drawn by the government. Dr. Williams has answered "practically all important bills are so drawn." There is one exception at the present session. The Local Autonomy Bill which is being drafted at the present time by legislative drafting services of the houses in conjunction with the two local government committees. This bill will be an important piece of legislation initiated by two committees of the Diet rather than by the Cabinet. Heretofore, as Dr. Williams has pointed out, all bills have been drafted in, and originated by, the Cabinet.

Mr. Prescott: May I ask this -- in the House of Commons and in the House of Parliament at the beginning of the session, His Majesty, the King, comes down and he reads a speech which is in effect the government's plan for the session. Is there any comparable action in the Diet?

Maj. Rizzo: There is a fairly close substitute. In the first place, the Social Democratic Party before election had an eight point program, stating the main parts of what it would try to do if it became the majority party, and the very first act after the formulation of the Katayama Cabinet was the reading of the White Paper on Japan's present economic condition. The White Paper presented a good study of basic factors in Japan's present economy and an indication of the lines of solution which the government had decided to follow, and shortly after that the government began to introduce a series of bills all aimed at meeting the current situation. That is equivalent to the program of which you speak.

Mr. Prescott: The Emperor opens the House session, but doesn't the Emperor or even the Prime Minister at the beginning of the session outline the program of his government?

Maj. Rizzo: The Prime Minister does.

Mr. Swope: One of the significant things of the opening of this present parliament, that the Japanese press commented upon universally, was the fact that the Emperor had been invited as a guest to witness the opening of the parliament. However, the Emperor does not advocate any legislative program as a guest.

Mr. Prescott: In the House of Commons we have what I think is a very, very valuable procedure and all members of the House support it. That is question time every day in the House of Commons except on Fridays for an hour there are questions. It is very valuable, I think. Is there anything comparable in the Diet to question time in the House of Commons?

Dr. Williams: Yes, every session, if they desire, they may invite members of the Cabinet over for special questioning or for general questioning. Now, you mentioned the opening speech of the Prime Minister. That is a big occasion and always has been. It is customary for him to outline his program and then to spend the next ten days of the session doing nothing but answering questions. One of the problems here is that even the members of the Government parties continue trying to embarrass their own government. I have called their attention to that and inquired, "Why don't you ask questions that will be in line with supporting your government?" The problem exists because for fifty-five years here the Cabinet was appointed by the Emperor without regard for the Diet, so that Diet Members -- with no control over the Cabinet -- exercised their only

powers, which were to talk, ask questions, and try to embarrass the government. Well, now, they haven't completely recovered from the system of interpellating the government.

Mr. Rhodes: And I hope they never will.

Mr. Prescott: I'm not quite sure you appreciate the point I was putting there. The questions you were dealing with would be on broad policy. For example, in the question time in the House of Commons on one day you will have the Secretary of State for War answering the questions. The next day it will be the Minister of Agriculture and the First Lord of the Admiralty. It changes, you see, and at question time you write your questions out on a piece of paper and lay it on the table, and if you want them answered orally, you just put a star against it. The sitting commences and if I have question No. 1, the Speaker says, "Mr. Prescott," and the Minister to whom I have directed the question gets up and answers the question. It may be a question on some matter of high policy or it may be why Private Smith in Japan hasn't had his rations or his billeting properly. The questions can be on almost anything. If I'm not satisfied with the answer, I can ask a supplementary question, and the Speaker allows the matter to go on until he feels it has had a fair run. That is very, very important, I think.

Dr. Williams: Yes, absolutely, in letter and in spirit that is the strongest practice they have, the strongest thing they always have had. There is one difference that is Japanese. You submit your question in writing. It will be answered by the appropriate minister, and if you are dissatisfied you will have an opportunity to put another question or to comment or to get up and

say, "I don't think the answer is any good." But friends of your's over here will never be permitted to stand and ask an additional question in support of the one you asked because no one rises in the chamber unless the Negotiating Conference that meets ahead of time has given you permission.

Mr. Teeling: It isn't quite the same.

Mr. Prescott: It is really quite restricted.

Mr. Teeling: How often do they do it?

Dr. Williams: They do it at every Plenary Session.

Mr. Prescott: I don't like that position of their being so restricted.

Dr. Williams: The Speaker recognizes no one who has not made previous arrangements.

Col. Kades: That rule is something we should ask the Diet to consider revising.

Rev. Lang: Doesn't that nullify the effect of free questioning?

Dr. Williams: They have what is called free discussion period which is required once in two weeks, and as a matter of practice they have been having it every week. At this period members can make fifteen or twenty minute speeches, ask questions and say anything they like. If ahead of time, they wish the Minister over at the House or the Cabinet they can ask for them to come over and be present. I have done everything in my power to get members to argue with each other. They can take any subject they like or on some occasions they can speak without having subject matter formally assigned for the free discussion period.

Col. Kades: Even at the free discussion period, is it true that a member isn't free to rise unless he has made prior arrangements?

Dr. Williams: Prior arrangements have been made in every case.

Mr. Prescott: The point I want to make is that we have far greater opportunity of getting up and raising matters than any other government.

Col. Kades: Because I thought valuable suggestions like this might be made, I asked your permission to take this conference down. We would like to give this suggestion to members of the Diet.

Mr. Prescott: If you are going to do that, one should complete the picture. Supposing I have asked a question or Mr. Lang has and some Minister has answered but he prevaricates. You can rise in your place after the answer has been given and give notice that you will raise the matter on the adjournment, and every day when the House of Commons rises, be it ten o'clock at night or half past four, there is half an hour when the matter can be discussed. You then write the Minister concerned and say, "I have the adjournment on such-and-such a day. Will you please be there to answer questions?" By arrangement I may speak for ten minutes and allow another member to make a speech.

Rev. Lang: That is very important. There is one other thing if I may put it. When it is not possible for members to raise a matter without prior arrangement, you can't overcome the difficulty that a member may put a question, the minister may give an answer -- another member may be on the same side of the House or opposite side and he may know the answer is not entirely correct. He may get up and ask if the Minister is not aware of so-and-so. Otherwise under the system as you have it you may get a series of answers that are not proper answers.

Dr. Williams: That is right.

Col. Kades: I think we may be getting more out of this session than you.

(Whereupon the conference recessed for informal luncheon with leading members of both houses of the Diet.)

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(Conference reconvened at 0215 hours)

Col. Kades: I want to say at the outset that we have been discussing the Constitution and the Diet more or less in the abstract except for Doctor Williams' statement. You may have gotten the impression that we think that everything is hunky-dory and rosy here. We don't. There is a seamy side of government also and Commander Swope who is an expert on seamy sides of government will go into it.

Comdr. Swope: Gentlemen, the discussion this morning about the Emperor made me think that the question of the place of the Emperor in the Japanese social and political structure is one of which reasonable foreigners can have honest differences of opinion. I think the most significant thing is that there is evidence in what we see here and what we read in the press that the Japanese themselves are beginning to have differences of opinion about it. To me that is far more significant than what we might think about it as members of the Occupation. We have to start out by saying that one of the most drastic revolutions in the status of a nation in all time has occurred in Japan in two years.

When we realize that we are heirs ourselves of the most expert development in democratic processes, as inheritors of the Anglo-Saxon heritage --

and I came in through the side door because my ancestors generations ago come from Germany. It took our forefathers seven hundred years to come to the point where we are today, and under the more than expert guidance of General MacArthur and his associates in Japan there has been laid down a sufficiently broad basis upon which the most liberal form of a democratic society can in the future grow. Whether it does or not I wouldn't want to predict, but I think that certain positive actions can be taken in the formulation of the Peace Treaty which will make it more than likely that the trend upon which we have set the Japanese will be followed and maintained for a goodly number of years. Perhaps then there will be a sufficient number of Japanese people who will have become impressed with the virtues of a democratic society and who will, upon their own initiative, struggle for its preservation. It is my belief that man instinctively wants to be free. If he has knowledge of what that freedom means and has an opportunity to exercise for a sufficiently long time that freedom, he will cling to it and die for it if necessary.

When we examined the Constitution this morning we should also have examined, I think, article by article the old Constitution because in that comparison we see more clearly the complete reversal that has been laid down in the basic charter of the people. The two constitutions do not match at any one point or any place. In almost every section, almost every article, it is not only different, it is a complete reversal. The Meiji Constitution that was handed to the people of Japan in 1889 was not a great step in the advancement of constitutional development in Japan.

Unfortunately, some of our people in the latter days of the last century came and saw a very orderly society, developing very rapidly along industrial lines and then went to their respective homes in your country and my country and wrote glowing books about the Orient and how wonderful it was that this development was taking place without the stress and strain of politics, that here was a society that was orderly and united, intent upon certain objectives and, therefore, perforce it was good.

To my mind there is nothing that will as quickly guarantee the freedom of a nation as the disorderliness of politics. If I have been called a politician I take that designation gladly because I believe I am a good politician.

The Meiji Constitution was not the basis for the establishment of a constitutional monarchy. It was not a true Constitution. It was a set of rules by which the Emperor was going to dominate the Japanese people. It was the kind of a thing I was used to getting when I went to a one-room country school and a teacher wrote a lot of things on the blackboard that said that was the way we were going to act during the school year. The Meiji Constitution was nothing more than a consolidation and stabilization of a feudalism of the past, making it stronger than ever because it centralized authority and erected the form of government by which feudalism could be maintained by the ruling classes of Japan. Many of us, when we approached the problems of Japan in our studies, started with the ideas that militarism began in the twenties and that Japan became committed to aggression through actions that originated then. That is completely untrue. The manifestation of the Japanese people in the latter twenties, the thirties and the forties

was the truest thing that you could expect from the pattern of behavior of the Japanese people over the centuries, not only in the last two decades.

The Diet was only an advisory body under the Meiji Constitution. It in no way by virtue of power delegated to it under the Constitution either controlled or influenced the government of Japan. The only way it functioned was by the use of the interpellation that was described by Dr. Williams -- by arousing the government, or holding it up to scorn where it had transgressed the rule of decent government. For a short period of time governments were selected on the basis of party majority in the Diet. That lasted for only several administrations because when the militarists saw that if this idea of party government proceeded for sufficiently long, there would never be a chance for restoration of the oligarchy. Therefore, by assassination and by recrimination and by ridicule they tried to hold up the Diet and the political parties represented in the Diet to scorn before the public. Thereby they were able to seize control with the full consent of the people.

The Cabinet was selected presumably by the Emperor under the Meiji Constitution but actually by this invisible circle that controlled the government of Japan. The Cabinet had no responsibility either to the Emperor or to the Diet. The only use that the Cabinet could be made of from time to time was, if excesses were carried too far by those in control and it was necessary to make some kind of an admission of error, the Cabinet could be made the scapegoat.

The government actually consisted of the groups that were constituted by the Privy Council, the Elder Statesmen (Genro) and those who had access to the Emperor but who never had to answer publicly to the people for any of

their actions. Of course, the most dangerous element in this whole structure was the fact that the war and navy minister had access to the Emperor directly and not through the Prime Minister. Therefore, the Prime Minister had his hands tied at every point, even if he attempted to give a decent and honest administration. The army and navy ministers could wreck any cabinet by withdrawing from it, and could also in effect name the members of the new cabinet, by the general staff's refusal to permit any of its general officers or flag officers to serve as war or navy ministers unless the other members of the cabinet were acceptable to this militaristic leadership.

Another of the dangerous elements was the extraordinary budget. Major Rizzo has explained the budget under the new Constitution. Under the old constitution extraordinary budgets were submitted to the Diet, voted upon and never accounted for. Even to this day, I suppose it will never be possible for anybody to find out how much the army and navy spent in the Manchurian and Chinese ventures because those ventures were all secret and there was no accounting necessary. Am I correct on that?

Maj. Rizzo: Yes, that's right.

Comdr. Swope: Even had the Diet been able to become the true legislative organ under the old constitution by the strength of its own efforts, the Emperor had the power of promulgating Imperial Ordinances which had the full force of a law. Therefore, you had here a government by edict; and that principle became firmly established and the practice became commonly accepted by members of the government and by the public at large. Even today under the new Constitution which specifically forbids that any legislation which affects the lives of the people may be originated anywhere except in the Diet,

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the bureaucrats in control of the various government departments will still time after time, bring in what they call Cabinet Ordinances that represent substantive legislation and they have to be turned down by SCAP.

In this governmental scheme there were the three strong points, the group around the Emperor, the military representing the army and navy and the Ministry of Home Affairs, which was used as the strong institution to subdue all efforts of the people to secure freedom or peace.

Col. Kades: You may be interested in an order issued the first of October to staff sections in GHQ apropos of Commander Swope's remarks concerning the function of the Cabinet Ordinances.

Quote

STAFF MEMORANDUM

NO. . . . . 81 (SCAP) 1 October 1947

CURTAILMENT OF SCOPE OF JAPANESE CABINET ORDERS

1. Article 41 of the new Japanese Constitution establishes the Diet as the sole law-making authority of the Japanese state. The practice of the Japanese Government of issuing cabinet orders dealing with matters of substantive right is irreconcilable with this basic principle and with other constitutional safeguards for the protection of the people.

2. Accordingly, staff sections should not encourage or approve any cabinet order unless it:

a. Is specifically authorized by statute which defines the scope and standards to be applied to such order, or

b. Deals with matters which are purely administrative in nature and do not impair, alter, or abridge the liberty or the property of individuals.

3. The Chief, Government Section, General Headquarters, Supreme Commander for the Allied Powers, is responsible for determining whether a proposed measure should be adopted as a cabinet order or should be handled as a bill in the Diet.

BY COMMAND OF GENERAL MacARTHUR:

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Unquote

Mr. Rhodes: That is interesting. I was mentioning that this morning. We have a similar type of legislation but what we have to do, or the Minister when he has made his order, is to put it on the table of the House. There it remains for forty days and if, during that time, the opposition wish to ask the removal of that order, then a debate can be initiated.

Col. Kades: In England there is little reluctance to object to a Ministerial order, whereas in Japan it would take real impetus to object to Cabinet orders.

Mr. Prescott: We frequently keep them up very late at night praying against their orders.

Col. Kades: I wanted you to be aware of the fact that General MacArthur is watching the governmental panorama very closely to see to it that, even though there may be some color of legitimacy to a cabinet order, if it contravenes the spirit of the Constitution, it is forbidden. The Chief Justice, Lord Hewart, would approve this staff memorandum, don't you think?

Mr. Prescott: Yes, indeed, but the mere fact that they should think of doing this without any authority at all shows how far their mind is from democratic ways.

Maj. Rizzo: They have to get into good habits.

Comdr. Swope: We have to knock them over time after time. I shall confine myself to mentioning merely that the Home Ministry -- which is supervised by Colonel Tilton in connection with local government -- was the completely autocratic arm of the Japanese Government in controlling their lives, and I mean lives, of the people of Japan because it had every element of government that affected the people in their every-day comings and goings under its firm control through the appointment and dismissal of governors, mayors and

assemblymen. The Home Ministry could dismiss anyone or shift anyone. It controlled the police force and the election machine, and, believe me, it controlled elections. The details, I am sure, will be sketched in by Colonel Tilton.

Now, under the new Constitution the Cabinet is not only selected by the Diet, not only must the Prime Minister and the majority of the Cabinet members also be members of the Diet, but the Cabinet is, by provisions in the Constitution, made completely responsible to the House of Representatives. Therefore, the Diet becomes not only the sole legislative organ in the Japanese scheme of government, but it actually becomes the superior organ of government in the state. I am sure that those of you who sat at the table today and had a chance to converse with members of the Diet, feel as you ought to feel, that it may be some time before the Diet will rise to its place and be able to carry the responsibilities given to it by the Constitution. But it is to be hoped that that day will come and I think it can come. I think it is a possibility so that someday there will be no more invisible government. In theory today there is none, but in fact there is invisible government in Japan. The invisible government, I think is represented by three prime elements. Corrupt politics, the underworld, and the traditional subservience in the Japanese people.

I think that corruption of politics is perhaps not matched anywhere. We have corrupt politics in the States. We have in the States plenty of corrupt politics, but we also have a mayor of Boston and a former member of Congress in the penitentiary. We also have another former member of Congress who has been convicted of receiving bribes during the war and who will go to the

penitentiary. We put in the penitentiary the leader of a political machine in Kansas City, Pendergast. But in Japan the upper classes just don't go to jail.

Mr. Rhodes: Is that so now?

Comdr. Swope: That is so now.

Col. Kades: The Tokugawa Period had a maxim which was enforced to this effect -- "Do not deal courteously with the commoner and never punish the gentleman." Of course, we hope that in time in Japan there won't be either commoners or gentlemen, but that with peerage abolished and social status equalized, all persons will be dealt with equitably.

Comdr. Swope: Unless we get over-righteous I think, perhaps we might just refer to our reading of history and the development of modern society in England and other parts of the world, and we can find a corollary in our own history for everything we have found in Japan. The only difference is the time concerned. What we are trying to do here is to give just enough stimulant to hasten the process. We hope that that can be done. I think it can be.

We have urged upon the Japanese the necessity of cleaning up corruption in public life. In this Section now we have initiated action which will undoubtedly lead to some real results, I think we need only to make a few examples of important persons, and then the common people will realize that the upper classes, too, are subject to the same law as the lower classes and will perhaps begin to see to it that the upper classes conform to law and that if they don't, there will be substantial penalties.

Connected with corrupt politics is the underworld. It is not recognized as an underworld because it has been to some degree accepted by the Japanese as a fixed part of their social pattern. There are various forms of control which are extra-official. For instance, the collection of taxes and license fees in the association of street merchants. If you have been to the Ginza -- and I hope you have -- all those street stalls belong to various associations and those associations are the tax-collecting agencies for the government. Without any auditing, they collect monies from these street stalls and then turn over certain monies as taxes; and it is admitted that they probably collect much more than they turn over. Now, any sort of activity like that is dangerous. At least, we recognize it as being dangerous in western society.

Rev. Lang: There is just one small point. Supposing street traders refuse to pay these taxes. Would these people have any force or means of enforcing this payment?

Maj. Rizzo: The shop might burn down.

Comdr. Swope: Or they might go for a walk and never come back.

Col. Kades: Recently the Japanese police put in jail a man by the name of Ozu whose technique in Tokyo was very much the same as Al Capone's in Chicago -- and it is my understanding that an article will soon appear in the Saturday Evening Post comparing Ozu's technique with Capone's technique -- showing how similarly they developed along independent lines.

Maj. Rizzo: With one difference. Capone soon got to the point where he hired murderers. Ozu has done all his own killing.

Col. Kades: In that connection -- this is a little divergence, but relevant

to Rev. Lang's question -- Ozu was one of the leading gangsters to whom Comdr. Swope has referred. Ozu was arrested and tried for extortion. The sentence for extortion is three years. Pending sentence he was released by a bench of three judges, because of ill health. He was supposedly suffering from insomnia as a result of his crimes. This just occurred about a month or so ago. There was enough public resentment aroused about this that the Minister of Justice suspended the procurator in the case who consented to his release and the Supreme Court ordered an investigation of the three judges. We don't know what are the results of the investigations, but the fact that the procurator was suspended in this case and that the judges are being investigated by the Supreme Court is hopeful. A year ago nothing would have happened. The people simply had lost all the capacity for indignation which they seem to be regaining now.

Mr. Meyers: May I bring in a point with regard to these organizations, the Tekiya. Apart from gangster methods, there are legal levers forcing these people into the association. They must be a member of an association in order to have a license to do business. Consequently, if they don't pay their fees they will no longer be members of the association; therefore, they wouldn't be able to do business legally.

Rev. Lang: You mean it is the people who will not pay their fees that are liable to this extortion.

Mr. Meyers: No. The municipal regulations provide that people will be allowed to do business in the street stall if they are members of an association. These associations are the ones to which Comdr. Swope is referring. Consequently if they don't pay their fees, they are expelled from the association.

Mr. Rhodes: The government delegates to this association the collection of the taxes and the licensing of stalls in the streets?

Comdr. Swope: Yes, We are working on repealing the law which sanctions the operations of these street associations operating in the taxing and licensing fields and substituting a different system.

Mr. Rhodes: It isn't a protective association as we know it in America and at home. It is just an association for their own benefit?

Comdr. Swope: Yes, but part of the profits of these ventures eventually become part of the campaign funds of political parties. That is where the tie-up exists, which is dangerous to honest political life in Japan. However, the loss of face all over the world is important. The loss of face in the Orient is much more important than it is to us. One of the reasons why many men who have watched the situation in Japan before, during, and since the war, are willing to make unqualified statements that militarists as such will have no chance in Japan for at least a generation or two is that the militarists have lost face. There is no question of that.

I don't think our problem is one of preventing restoration of militarists in Japan. Our problem is pure, ordinary democratization, and in that process the loss of face is also important. If enough prominent people are placed in the penitentiary for their misdeeds the system will be given a body blow because the people will become awakened to the problem. These corrupt people have standing, and even a gangster if he has standing, is a big shot and not much can be done about it so far as the common people are concerned without courageous and honest leadership.

That brings me to the third phase and that is traditional subservience. That exhibited itself in the elections, although I am satisfied that from the standpoint of machinery, the elections in Japan are one of the most excellent that have been held in the world. The two elections that I witnessed here were orderly, but the people themselves take little part in the inner workings of the political system. That again is something that a few people at the top handle. In town elections parties do not matter a great deal. There is a town assembly of fifteen members and in some cases somebody has decided who they will be and then they are elected. That is the type of tradition that must be destroyed and it will come in time through a loss of face.

Although SCAP has no official connection with the making of the peace treaty, it is my personal opinion that in the post-treaty phase there should be surveillance and sanctions. The treaty must provide for a substantial surveillance of Japanese life for a long time to come. The Japanese are ready to accept it. They will accept it and I am sure they are ready to accept it. I am sure that there are hundreds of thousands of people in Japan who are ready and really and truly praying for democracy.

I feel we need a strong surveillance organization and a reasonable method of applying sanctions effectively and quickly when it is necessary to draw attention to the breaking of treaty provisions. That is my speech.

Col. Kades: I think it would be logical to go from the problem of national government as it was described by Commander Swope to the problem of local government which Mr. Prescott was interested in.

Mr. Paton: May I ask a question? You mentioned the corruption of politics, what other forms of corruption are present?

Comdr. Swope: The use of considerable sums of money. That has been more effective than in the past because in the past the ruling crowd could win elections by using force. And the use of scarce materials like rice. Black market rice, a few quarts of rice, might bring the vote of four or five members of a family.

The election system is very efficient and very smoothly run. There is no evidence of corruption at the polls. The polls are the most orderly that I have seen in my life. There is no electioneering, no badgering, no speech making around the polls. Men and women walk up there, cast their ballots and walk away. I think the counting is honest and the whole election machinery is honest and almost perfect. It is the influences that are used before the election in getting the votes of the people in one way or another.

Mr. Paton: The second point that we have sanctions in the post-treaty period, what do you mean by that? What type of sanction?

Col. Kades: That is really a problem for the diplomats.

Comdr. Swope: My style is a bit cramped because my chief is sitting here. I will say that I'll answer you individually. (Laughter)

General Whitney: It is a saying in this Section that every once in a while so-and-so goes way out on a limb right behind the Chief of the Section. I'm always up front. (Laughter)

Col. Kades: It is because of the capacity of the General always to be out a little further on the limb than we are that we have all decided to stay here

and see it through as civilians. Because there isn't one -- not one of us -- who would be in Japan today if it weren't for the leadership of General Whitney and our respect and affection for the General.

Comdr. Swope: I think there should be available in Japan even after the treaty an international tribunal to which violations, certain violations of treaty provisions, could be brought and in which speedy action could be obtained, resulting in anything from the death penalty down to say, ninety days in jail. That is purely my own idea.

General Whitney: Of course, you understand that SCAP has no responsibility in respect to treaty making at all. Any views you hear on that subject are personal views. They don't represent the views of General MacArthur or anyone else.

Col. Kades: In view of the fact that Commander Swope, especially in answering your questions, has touched upon the control by which the police and the bureaucracy in the past have manipulated elections so that it was possible for the Home Minister to predict before an election the results of an election that would be held the following day, I think you might be interested in hearing parts of a letter which General MacArthur wrote the Prime Minister just last month in connection with the whole police problem. Colonel Figgess has told me that you are going to discuss general problems of public safety tomorrow with Public Safety Division, and this letter also may give you some background for discussion of the question of local government.

At the time that the Home Ministry, within which the Police Bureau is the strongest agency, was being reorganized, provisions regarding elections and the supervision of elections in communities were given to communities

in accordance with the Local Autonomy Laws which Colonel Tilton will speak to you about. The Home Minister was in General Whitney's office one day and said -- this was more than a year and a half ago -- "If this plan is followed, there won't be anybody in the Home Ministry who knows how to control elections." That was said in all seriousness, and of course, made us feel we were on the right track.

The police before resorting to terroristic tactics as described by Comdr. Swope or more refined methods of thought control and prosecution of persons for having so-called "dangerous thoughts" established a system of political espionage which would have been patterned after the Communist cell-and-block system except that it antedated it by centuries. Through use of this system the police controlled the daily lives of the people, and at one stroke held the leader of every group of ten families as a hostage for the behavior of those ten families at the same time as he acted as a spy on the group of families in his neighborhood. This system was called the tonari-gumi system. Every ten families constituted a tonari-gumi or neighborhood association. The heads of ten neighborhood associations constituted a block association and the heads of these block associations constituted an association of block associations and so on in groups of approximately ten right into the police bureau of the Home Ministry, the apex of the pyramid being the Home Minister.

The special police and higher police were all abolished in October 1945 and their members barred from police activity and from important positions in other agencies of government. The government abolished the tonari-gumi system when we required that the block leaders must be elected by the people. But

the police structure remained. The Japanese have been wrestling with the problem of how to rid themselves of that structure. Finally in the early part of September the Prime Minister not being able to get agreement in his Cabinet wrote a personal letter to General MacArthur and asked for his advice. I will read it to you. It is dated the 16th of September and the legislation resulting from this letter came into this Section only yesterday. Judge Oppler was absent this morning because he has been studying it with a view to making such suggestions as we may have. It will probably be introduced to the Diet next week and should be enacted at this present session.

Quote

Dear Mr. Prime Minister:

I have given careful consideration to your letter of September 3rd and to the plan for the reorganization of the police system submitted therewith. I fully understand your difficulty in reaching an acceptable compromise between the two divergent schools of thought of which you speak -- a compromise which will prove adequately effective to meet the requisites for the preservation of law and order within Japan, and yet at the same time not impinge upon the ideal of human liberty to which the people of Japan are now committed, nor upon that fundamental principle indispensable to a democratic society so aptly stated in the Preamble of the Constitution of Japan, "Government is a sacred trust of the people, the authority for which is derived from the people, and the benefits of which are enjoyed by the people."

I am in full accord with the proposition that the realities of the situation require the maintenance of a national rural police unit to maintain law and order in the rural areas and available to the National Government to meet emergency conditions with which police forces available to the several local governments may be unable adequately to cope, and your suggested increase in the overall authorized police strength to 125,000 men, to provide for such a national rural police meets with my full approval. I am not in accord, however, with the idea of, nor the necessity for, delaying the decentralization of the police power now existing, as I feel that the preservation of that power in its present centralized form is wholly incompatible with the spirit and intent of the new Constitution and inimical to democratic growth.

It has been a dominant characteristic of modern totalitarian dictatorships, as it was in Japan's feudalistic past, to establish and maintain a strongly centralized police bureaucracy headed by a chief executive officer beyond the reach of popular control. Indeed, the strongest weapon of the military clique in Japan in the decade prior to the war was the absolute authority exercised by the national government over the thought police and the Kempei Tai, extending down to prefectural levels of government. Through these media, the military were enabled to spread a network of political espionage, suppress freedom of speech, of assembly, and even of thought, and by means of tyrannical oppression to degrade the dignity of the individual. Japan was thus in the fullest sense a police state.

It is in recognition of this condition that the police system must be so reorganized as to provide what you so clearly describe in your letter as a "fundamental remedy of the misuse of the police by the state power as in the past." In the achievement of this objective, the potentiality of a police state inherent in centralized control must scrupulously be avoided. It should never again be possible for anti-democratic elements, either of the extreme right or the extreme left, to enmesh the freedom of the people in a web of police terrorism.

This basic objective can best be accomplished by the thorough decentralization of the police system in accordance with the principle of local autonomy embodied in the Constitution. Each city and town should be responsible for the preservation of law and order within its boundaries through its own local police system independent of the central government and headed by a police chief to be appointed and removable by a commission composed of three civilian members appointed by the mayor of the city or town with the consent of the local assembly and holding office for a fixed term of years. At the prefectural level there should also be a corresponding commission similarly appointed which will exercise operational control over the national rural police operating within the boundries of that prefecture, reserving to the national government administrative authority over such national rural police wherever staticned.

Such a reformation of the Japanese police system would be in consonance with the general pattern of the reorganization of the Japanese governmental structure, integrating police officials and services as agencies of the people at the appropriate levels of government. Action toward such end should proceed immediately upon enactment of the appropriate statute.

The national government should allocate the necessary funds until such time as local financing is possible. So long as it is necessary for the national government to make allocations of funds, the strength of the police in the various localities should remain fixed at the present number, but after provisions have been made for the localities to assume the financial burden, the responsibility for determining the necessary numbers within their respective borders should belong to the cities and towns, in accordance with local requirements.

The necessary legislation should, of course, be enacted at the present session of the Diet. If vigorously prosecuted, I believe that completion of the plan may be accomplished within a period of ninety days thereafter.

As to an appropriate organization on the national level, I believe that there should be created directly under the authority of the Cabinet a Public Safety Commission composed of five members who have not been career officials, either in the police or the civil service. Such commission should be appointed by the Prime Minister, with the consent of the Diet, and should hold office for a fixed term of years.

To prevent the resurgence in disguised form of a centrally controlled national police network no channel of command should exist between the national rural police unit and the local police forces, but technical channels of communication should, of course, be permitted in the interest of overall efficiency and to facilitate a relationship of mutual assistance, liaison and coordination. The intervention by the national government into control over prefectural or local police affairs should temporarily be provided for, however, in the event of a national emergency when, upon the recommendation of the National Public Safety Commission, the Prime Minister might assume operational control over prefectural units of the national rural police force, subject to ratification by the Diet within twenty days. In this way the authority of the prefectural governor may be protected against arbitrary police interference by the national government, at the same time affording adequate safeguard for the national interest.

In the past, one of the ill conceived aspects of the Japanese police system was the exercise by police officials of numerous administrative functions not related to the task of investigation and apprehension of criminals or the preservation of public order. All such functions should be exercised by non-police representatives of the particular ministry having responsibility for such matters, and wherever proper should be decentralized to local public entities in accordance with the provisions of the Constitution conferring upon such entities "the right to manage their property, affairs and administration."

Closely related to the law enforcement process is, as you have specifically pointed out in your letter, the subject of reform in the judicial administrative system. Under the Constitution of Japan, the Supreme Court is now vested with the administration of judicial affairs and the rule making power. With the establishment of an independent judiciary, the Ministry of Justice no longer is responsible for the determination of rules of procedure and of practice, the internal discipline of the courts, or other attributes of the judicial process. Moreover, with the diminution of the role of the procurators in the administration of justice and their subordination to the rule-making power of the Supreme Court, the basic attributes of the procuratorial system under the Ministry of Justice have been radically revised.

On the other hand, to the Cabinet, as the executive branch of the government, is expressly delegated the responsibility for executing the provisions of the Constitution and of the laws enacted by the National Diet, as well as for determining questions of amnesty, commutation of punishment, and restoration of rights. To reflect adequately this constitutional separation of powers, it would seem desirable that the Ministry of Justice, within which authority over adjudicative functions has been traditionally intermingled with executive power, be replaced by an Attorney General, sitting in the Cabinet as a Minister of State and serving as the chief legal adviser to the executive branch of the government.

To administer the laws effectively requires the closest coordination between police officials charged with the apprehension of offenders against the national laws, and public attorneys charged with the prosecution thereof. The establishment of an Attorney General's Office with the responsibility of conducting all litigation, criminal and civil, in which the government has a direct interest, and of furnishing all legal advice to the Prime Minister and other Ministers of State in the discharge of their duties, would I believe provide a mechanism for such close coordination, facilitate the faithful execution of the laws, and support the independence of the judiciary as the bulwark of the liberties of the people. Consistent with this concept of an Attorney General, the present Legislative Bureau of the Cabinet can be dispensed with in the interest of governmental efficiency and economy.

Within the framework of the plan outlined in your letter, modified in the manner I have indicated, I feel confident that a law enforcement system may be evolved in Japan which will satisfy all requirements of public safety, which will provide for the definitive separation of the administrative from the judicial process, and which at the same time will comply meticulously with the underlying principles of the Constitution. In this connection it should be borne in mind that, in the final analysis, police power in the preservation of law and order in a democratic society does not attain its maximum strength through oppressive controls imposed upon the people from above, but rather does it find infinitely greater strength in the relationship of a servant of, and answerable directly to, the people. Thereby, and thereby alone, may it encourage respect for the people's laws through confidence and paternalistic pride in the police as the law enforcement agency of the people themselves.

I am hopeful that the legislation necessary to give effect to these programs in the reorganization of government can be completed in time for consideration at the current session of the National Diet. To such end do not hesitate to call upon this headquarters for any assistance which you believe would be helpful.

Sincerely yours,

DOUGLAS MacARTHUR.

The Prime Minister,
Tokyo, Japan.

Unquote

Rev. Lang: Now, that is absolutely first class and I find it very well put. The measure to provide for the independence of the judiciary, is that to come at this session also, do you know?

Col. Kades: The judiciary are independent now. Their independence is a result of the constitution and laws. However, notwithstanding the independence of the judiciary, that old Ministry of Justice, still retaining in its nominal authority a certain monitoring of the courts, has continued to exist. The only way that concept of administrative supervision could be destroyed was to destroy the Ministry of Justice itself. That legislation will be introduced also at this session of the Diet and is in process of preparation.

Both the Prime Minister and the Minister of Justice are more than enthusiastic, more than anxious to put into effect these reforms which they themselves strongly advocated, but they needed the support of the Supreme Commander.

Rev. Lang: I really enjoyed every word of that letter.

General Whitney: May I interject a remark or two? The thought that I would like to suggest here is that here you have a graphic illustration of the relationship between General MacArthur as Supreme Commander and the Prime Minister as head of the Japanese Government. The Prime Minister presents the problem to the Supreme Commander. They have two completely different views within the Cabinet and they discuss it and ask for the advice and counsel of the Supreme Commander. The Supreme Commander, taking full advantage of that, goes in and gives his advice, and at the same time, explains as carefully

as he can the underlying philosophy to the action which he believes the Japanese Government should take in the matter.

All the way through you will find that when that relationship comes to such a head the Supreme Commander's reply will be couched in just these terms, taking fullest advantage of the situation which is represented by the government coming to him for help, and at the same time showing the government and the people of Japan as clearly as possible the underlying philosophy to the action which is proposed.

In this particular case the government released this letter to the public and that letter received the most widespread publicity throughout Japan. It was one of those situations in which the government was not anxious to have the issue resolved upon the initiative of the government itself, but it wanted to show the position that the Supreme Commander had taken in order to support its position before the people.

Col. Kades: As distinguished from the les majeste measure and the letter which I read you this morning which the government preferred not to publish. This struggle between the police bureaucracy and the democratic forces in the present government has been really a bitter struggle because the police bureaucracy is the last stronghold, the last legal stronghold of the old order in Japan, and that will be completely eliminated as a result of the legislation. The legislation submitted today conformed completely to the spirit of the letter.

Comdr. Hauge: I just want to note a very interesting press reaction to the letter. Every major Japanese newspaper published an editorial on the terms of the letter and it was widely applauded. In addition the editors went on

to comment on the specific details of that plan and it was very evident that they knew a difficult problem existed.

Judge Oppler: I may emphasize one feature of the important significance of the Bureau of Legislation. The Bureau of Legislation is directly under the Cabinet and it has the responsibility of checking on all government bills regardless of what ministry they come from.

Now, the checking should be, according to the rules, purely editorial from the point of view of formulation. Actually, however, this bureau developed to the point of policy making and, even according to the judgment of Japanese bureaucracy, it became most reactionary and legalistic minded. For that reason we thought it would be an excellent idea to do away with that Bureau of Legislation completely and integrate its functions into the Ministry of Justice; but in that case, the Minister of Justice should have not only the purely checking function but he will also be the chief legal advisor of the cabinet members. He will receive the bills from all the ministries and he really will be the organ responsible for uniform law drafting.

Col. Kades: In other words, the policy maker can be called to account by the Diet, whereas heretofore you had hidden away in the Cabinet a group of bureaucratic policy makers that were not accountable.

Mr. Prescott: In England we have our parliamentary draftsmen and their job is somewhat like that parliamentary draftsman with the Attorney-general at the head on the legal side available to the draftsman on any legal point.

Col. Kades: He will be more a prosecutor as I think he is in England.

Mr. Prescott: Oh, no. It is very seldom that the Attorney-General prosecutes a case. In a case of very great importance he might. His duties are far

greater than prosecuting criminals. For example in the House of Commons on many bills, especially of a complicated nature, he will be present, sitting on the front bench to take part in the debate, and take part in the government's argument in the House.

Rev. Lang: The Attorney-General should not be confused with the Public Prosecutor.

Mr. Prescott: Is there anything in the United States to conform to the Bureau of Legislation?

Comdr. Swope: The Congress has its own Legislative Bureau attached to the Library of Congress, but in the executive branch of the government each department drafts its own bills. The Attorney-General normally does not pass on the form or substance of legislation.

Mr. Prescott: Well, at one time I was a parliamentary draftsman so I'm rather interested in this idea of Bureau of Legislation. I take it it is the continental system. I personally don't like the idea.

Maj. Rizzo: We found it was bad.

Col. Kades: The letter of the Supreme Commander states that "the present Legislative Bureau of the Cabinet may be dispensed with in the interest of governmental efficiency."

Mr. Prescott: It always seems to get more than its legitimate functions. My idea is that it is to continue in some form?

Comdr. Swope: The functions of examinining the legislation, that is, from a technical standpoint, will continue.

Maj. Rizzo: Not as to policy, however -- just to the form and legality.

Mr. Prescott: There is to be no central bureau?

Col. Kades: It won't be a cabinet bureau, but the function will be given to the Attorney-General.

Mr. Prescott: I think it is much better to have your parliamentary draftsmen.

Col. Kades: They will. Even now each Ministry has its own draftsman and each House its own legislative drafting bureau. But the evil here was that after the bill was drafted, then it would go to this cabinet bureau of legislation where it would get a very rough bureaucratic treatment to conform to their personal views on substance and policy. That is completely done away with. If a minister wants to be sure that his bill is drafted in conformity with general governmental practices and form he will consult the Attorney-General.

Dr. Oppler: I want to remark that the New Constitution still distinguishes between cabinet bills and member bills. Now in Japan 99% of all bills were cabinet bills so far, and I do not need to tell you how much we encourage the development of member bills. Therefore, this Bureau of Legislation was the tool for cabinet bills.

Mr. Prescott: I assume in Japan as in England, if a private member wishes to introduce a bill -- and if the government will give him time -- he can get assistance from the parliamentary draftsman in putting it into legal form.

Col. Kades: Each house has legislative draftsmen available for that purpose. Now, I think Col. Tilton might give us a brief discussion on local government and then we can turn to the administration of justice.

Mr. Prescott: I'd like to pursue that further.

Rev. Lang: I'm interested in local government, of course. I don't pretend to be an authority on it and therefore when that comes I should feel that

the discussion will be left to those who are. What I'd like to know is whether we are going to jumble the two together or whether, as I prefer, we should have them separately.

Col. Kades: When you were in Japan last year, I gathered you were very interested in prison reform. You will be meeting with the Public Safety Division tomorrow. That is one phase of the public administration we don't handle.

Mr. Paton: Surely the logical thing is to complete this system of government.

Col. Kades: And then take the administration of justice. That will follow very naturally and will be the logical preliminary to your program for tomorrow morning. Do you have any questions?

Rev. Lang: Now, we will proceed with local government?

Col. Kades: Yes.

Col. Tilton: Suppose I give you a short resume and then show you what has been done. At the time of the Constitution, in 1889, there was a system of forty-seven prefectures. It isn't until after the century's turning that we have two other laws following that one. One law was for cities and another law for towns and villages. Now, at various times the width of the application of those laws was widened, until late in the twenties the military clique took over. To review quickly, you then have three basic laws which established these three echelons of government, and they exercise no more powers than are called for by each of those three basic laws.

So far as structure is concerned you have to go beyond those three organic actions and come to use, say, a law in education or a law in commerce and

industry or a law in agriculture to find additional powers. With these laws are always these detailed imperial ordinances which have the force of laws and they implement these statutes, and in general, you find many of the jokers in those.

Now the first work which we did here in the Section was to go over those laws, article by article and with those the imperial ordinances, and then there was a follow-up in terms of administerial regulations which gives the minister more detailed control over whatever function that may be or whatever competent ministry that applied to. Now, after a long study of those laws and ordinances and ministerial regulations, we went to the prefectural governments and also to city governments and the town and village governments, clear from the top there in Hokkaido down to Kyushu, and instituted certain must reforms as the Potsdam Declaration calls for, real democratization in government, meaning the direct election of chief officials.

Mr. Prescott: May I interrupt? You refer to direct election of officials, that is, in local government structure. That is something that you are advocating -- that SCAP is advocating?

Col. Tilton: That is right, that is an accomplished fact.

Mr. Prescott: Direct elections on a somewhat similar basis as in the United States?

Col. Kades: Each community elects its own mayor and each prefecture elects its own governor.

Col. Tilton: I'm talking about the chief executive in each of these cases. I'm talking about the governor of the prefecture, formerly appointed by the

Home Minister and now elected by the populace. He comes in by nomination. The same applies for the mayor of a city, town or village. A direct election. Previously the old laws had the indirect form in which the town assembly nominated three people and one got the appointment through the governor. Further, if it were a city, the appointment was by the Minister of Home Affairs. Then during the twenties that was changed and they had elections of assemblymen direct without this hierarchy from above.

Mr. Prescott: But you said election of the mayor by the people. Now, in England you have the councillors elected and they choose the mayor.

Col. Kades: That is what we call indirect election.

Mr. Prescott: So you have a chap coming out and saying, "I want to run as mayor of this town."

Mr. Rhodes: But there is some different part I think we are evading. He gets a salary.

Mr. Prescott: Does he?

Col. Tilton: Oh, yes, that is the significant difference. You call him a chairman in some cases. The mayor here has specific powers of his own and always has had. We did not change them.

Mr. Prescott: It is rather similar to the German form?

Col. Tilton: Or our American form.

Col. Kades: Or the Australian system.

Mr. Prescott: The Australian and yours -- it is the same?

Col. Tilton: Yes, he is the different person from the Council Chairman.

Mr. Prescott: And your governor, that is like the prefecture here? He has no democratic assembly elected.

Maj. Rizzo: Actually what it amounts to is an executive and legislative at each level.

Mr. Rhodes: It is a continuation of the breaking down of the Home Office?

Col. Tilton: That is correct. For each of the echelons you have an executive and you have an assembly. In the prefectures you have a series of departments. The maximum at present is nine. In a city you have an executive, you have a city assembly and then we talk about sections of administration, and they run depending upon the size of the city, running to about twenty-two in Tokyo. When you get down to your town or village you have your executive and a smaller assembly and about six to eight sections and that is your government.

Col. Kades: Well, may I add that the sections are the administrative agencies of the executive. It is not a third department. The chiefs of those sections are appointed by the mayor, not by the Home Minister.

Mr. Rhodes: It is the business side, in other words?

Col. Tilton: That is correct. He is appointed by this executive, the governor or the mayor and must be confirmed by the assembly. He is appointed and confirmed and he may last as long as his executive desires to keep him. He doesn't stay or come in with a full term of office, nor does he have any powers of his own. In fact, about eight months ago they raised the issue as to whether or not the vice-governor, as they were going to call him then, would have powers of his own, and in that case he would have been an elected official, but since he does not, he is nothing more than an executive secretary, and therefore, gets his appointment and confirmation by the assembly.

Mr. Rhodes: Tell me -- what of these section heads. Supposing he was unsatisfactory in view of the elected representatives, who would dismiss him?

Col. Tilton: The mayor.

Maj. Rizzo: They are his assistants and he is responsible for them.

Col. Tilton: He hires, promotes and dismisses them.

Mr. Rhodes: What if the mayor or gov ernor is not satisfactory?

Maj. Rizzo: Oh, he can be removed.

Mr. Rhodes: At the next election?

Col. Tilton: The removal of the governor can be handled by a very interesting process. If two percent of a prefecture draw a petition for the removal or recall of this executive they present that petition to the Election Commission and that Commission doesn't debate the matter -- it has no power to debate. It must put the question to the populace of that prefecture and if they get a majority vote out of the prefecture the governor is recalled and an election called for. That is popular direct control.

Mr. Paton: Two percent is all that is required?

Maj. Rizzo: Two percent initiates the action.

Mr. Paton: It is a very small percentage.

Maj. Rizzo: It indicates sufficient popular action.

Mr. Prescott: What is the period of a mayor?

Col. Tilton: Four years. I'd like to say one other thing. In the local government, in all three echelons you have a very interesting meshing of the presidential system and the parliamentary system. We have had our first use of the parliamentary system in the central part of Kyushu.

There is a little town there in which the mayor was having some trouble with his assembly over the budget and over what he called progressive action on his part. He dissolved the assembly. At that time there were twenty-two

people in it and seven were with him. He dissolved the assembly, they had another election, and the result was that more of the younger men who were with the mayor and supported his ideas were re-elected and this whole group went out. This is the first case we have had.

Col. Kades: I might mention in that connection, if you don't mind my interrupting, that at the time that the suggestion was made to the Japanese that there should be a decentralization of authority from the Home Ministry, the Home Minister came in and asked us for suggestions concerning control by the people over elected executives. We said there are two ways to handle it; one, the method of the British parliamentary system, or two, by a method of recall as it is handled in some of the western States. The Home Ministry officials went back and adopted both ways, so they have a combination of both. We were rather afraid they might be going to democracy with a vengeance and that the mayor would be constantly running for office, but the Japanese preferred to have both alternative methods and we didn't want to impose any brakes upon them so we didn't object. In some places the communities are using the parliamentary procedure and in other places it looks as if recall will be utilized.

Col. Tilton: The point is that the first year the man is in office you don't touch him. You have got to give him a chance to get organized. Beginning in the second year, you can recall him or otherwise.

Mr. Prescott: I don't suppose it happened in the past that men who served as councillors got into the Diet. In England many members of parliament got their experience in Councils.

Col. Tilton: I think that is one of the things we have to go for in a great

way, and I think by giving more authority in the law we will have young men remain in prefectural matters much longer than we ever had before. There wasn't much incentive to keep a young fellow on there. He had to come to Tokyo or he never got started in the government.

Mr. Rhodes: The governorships and the minorities are disassociated entirely from the Home Office and that link is broken, but now it is handed to the political parties to exercise the power, the way it is in some other countries, is that right?

Col. Tilton: That's right.

Col. Kades: Not only is the link broken, but the Home Office itself will be dissolved and is now in the process of dissolution. That point about the local assembly being the proving ground is very good. The Japanese don't use it to a large extent. The Speaker sometime ago was discussing the activity of women in the Diet and he said that if only the women would get elected to local assemblies first and get some experience there before they come to the Diet they would be more valuable in the Diet. Of course, his views apply equally to men.

Mr. Prescott: But especially women, because they are so interested in local problems.

Col. Tilton: I am sure you realize that the Japanese Government has planned for control to be in Tokyo and they have kept up magnificently. That meant that no prefectural assembly had any real authority even on the budget. When it came to the budget, they would submit it and it would be voted down. The governor would say, "Do you want it or shall we get confirmation from the Minister of Home Affairs?" They knew they had to take it. In the new law

they override the governor's veto and they may raise the total amount of a budget. So they really have something to do locally, and are able to get experience where they were not before.

Mr. Paton: Could you tell us something about the financial set-up? What is the connection between local and central finances?

Col. Tilton: It is our greatest problem and one of the greatest evils. About thirty per cent of the national dividend is utilized by all three local governments, and for about a half century, the national government has taken somewhere between sixty and seventy percent regularly. Now, the tax structure of Japan is, in a sense, weird -- not that it isn't weird in other parts of the world too, because we have frightful overlapping taxation schemes. They have in Japan a very interesting reallocation plan. The municipalities collecting the money and bringing it in to Tokyo, and then on a per capita basis reallocating that money all over the area. Now, the district mechanism is all right, but as we say, the "kitty" is pretty badly managed. Sometimes there aren't proper funds to give anywhere near adequate distribution.

Mr. Paton: The big thing is that a general tax is levied by the central government which comes into the central government, and then on a per capita basis at least part of it is allocated?

Col. Tilton: That is right. The Japanese have a beautiful expression: "The stream flows horizontally." It is very common in Japanese finance.

Mr. Paton: I suppose you are familiar with our system by which we have a double system. We have a local rating from which a large percentage of our revenues come, but then we are assisted in the localities by what we call block grants

and grant-in-aid. That is the way the government tries to equalize one area with another. The poor and the rich help each other out.

Col. Kades: That is exactly what Col. Tilton is trying to put into effect now.

Col. Tilton: There are three ways in which this has been done. They use an out-and-out subsidy in one form of finance, they use a grant-in-aid scheme in another and they use this allocation. Those are three separate issues. A fourth which is really most difficult to get is one in which there are areas worked out that are national and then the prefecture comes along and puts a surtax -- in some cases two hundred percent on this item, and the city with another smaller percentage and the town and village still smaller -- they keep that right there and spend that. For instance, you can see right here in the city -- there is a man pulling a cart in an iron bar, he pays five yen a year. You see another man with a horse, probably twenty-five yen, if he rides, it is a little higher. Those small things are for the towns and villages.

Mr. Paton: Is there any property tax or income tax?

Col. Tilton: There is no property tax in Japan.

Mr. Paton: What income tax?

Col. Tilton: It is so weird. It is on the income of the rental value of your property. For example, the owner secures two hundred yen a month for his house and fourteen percent of that goes to the government. The two things can be wholly unrelated.

Mr. Paton: It is not actually an income?

Col. Kades: That tax is a gross rent tax. There is also a general income tax which is not progressive. It falls very heavily on earned income particularly in the lower brackets, and it is an outrageous system which the Finance Division is attempting to induce the Government to revise. We only meet the problem of giving local government, along with their autonomy, some degree of independence financially, and that is the particular problem as we in the Government Section hit it, but an attempt was made to equalize the distribution of wealth here to some degree, however, through a capital levy of progressive rates running from twenty-five percent to ninety percent on the capital wealth of individuals, which was only partially successful by reason of the terrific inflation which took place between the time the levy was imposed and the time it was collected.

Mr. Paton: You are really collecting worthless paper.

Col. Kades: Also, by selling at inflated value one estate of many estates owned by a taxpayer, if he is in the upper brackets, that taxpayer would be able to discharge his entire tax assesed at pre-inflation value. You have put your finger on a domestic problem that is very sadly dealt with at the present time by the Japanese Government.

Col. Tilton: We meet the problem in the course of the process of decentralization. In order to afford these services which they want and should have, their budgets must be much larger, and they must have the power to get at it. That is one of the main reasons why we entertain tax discussions.

Mr. Paton: I may just add that all this question of local government finances is one of our headaches in England at the moment which complicates the problems of all.

Col. Kades: What we hope to do, although we haven't decided ourselves just how to do it, is to allocate certain types of taxation to the local communities and certain types of taxation to the national government. For example, a property tax for localities and income tax for the national government might be a just allocation. Once we get a local tax system, the Finance Division will attempt to get a reasonable type of income tax here which will have progressive rates. Tax collection here in many cases is a question of bargaining and compromise.

Mr. Paton: It is oriental in a way.

Col. Kades: That is right. The tax collector comes along and says, "You're Baron Mitsui, your taxes should be so-and-so," and the Baron says, "Well, suppose we call it thus-and-so." There may be more haggling along that mutually satisfactory line but agreement is ultimately reached; and no one has been put in jail in Japan for income tax evasion because it is always a question of negotiation. That is a phase of the problem which we hope to attack. It's been impossible to get at the problems like that as long as you had a centralized bureaucracy. These problems become visible as a result of the breakdown of the tightly knit, oligarchic, irresponsible form of the government.

Mr. Paton: How are you finding it in the prefectural areas with regard to finding a sufficient number of men and women with sufficient experience to take over these jobs formerly held by bureaucrats?

Col. Tilton: I think you will find some prefectures where there is a lack of these people, in others you find a sufficient number. I have been in a

little over half of the prefectures here personally and not in one of those places have I found a group to take care of these functions. From my point of view the most encouraging thing I find, is to go to the small communities, sit down in their administrative offices for three or four hours and getting their points of view, finding them so eager and willing to try it and to learn. That part is very hopeful. I think you might be interested in knowing, too, that as soon as the Diet Committees -- which are now finishing a very important series of amendments to this Local Autonomy Law -- as soon as that is completed and the law is actually promulgated, we will take that law to all the prefectures for about two days and then to the cities and so on. In other words, we will have a session with all these people and explain to them what the law means to the people themselves.

Mr. Prescott: A question I'd like to ask on that. That is, with regard to what I call "officials." I don't know what the term is for you in the States. However, in the States, very often they change with the political complexion of the governor which always struck us in England as being unusual. In Japan it is desired that the permanent officials should remain permanent and should not change just because there is a change in the political complexion of government.

Col. Tilton: What they desire and I am sure they will have. They will have a substantial Civil Service group who will be the foundation year in and year out to do the real work of a popularly elected group of people who are going to reflect what people want and desire and what they need. You will have some change. I have spoken about this assistant governor and mayor. It is natural he will change from election to election because he is that man.

Mr. Prescott: But it is bad for the new governor to turn out all officials and put in new ones.

Col. Kades: Heretofore there has been a bureaucracy which has been strong enough to prevent that just by reason of its own strength. The underpinnings of that bureaucracy have begun to be knocked down. What we call the "spoils system" could easily develop here, but there is a bill pending in the Diet at the present time, sponsored by this Section, and resulting from recommendations of an Advisory Commission which came here at the request of the Japanese Government, which will institute a real honest-to-goodness civil service system. At the same time it will prevent the "spoils system" from becoming the method by which these officials are chosen. Now, under the new civil sercice system tenure of office during good behavior will be guaranteed to all officials below the rank of vice-minister in the national government who pass the required civil service examinations. The local government civil service is a piece of unfinished business on our agenda. First we want to apply it on the national level and then get into the local level because it is going to result in a very sharp overturn in government officials. It should, of course, if these examinations are properly drawn and administered.

Col. Tilton: One of the great evils which existed before and I think is here today -- the Home Ministry in appointing a governor might keep him six months, three months, or a year. The longest has been about two and a half to three years. The Japanese were very insistent in their conferences here that they at least have four years for a governor.

Comdr. Swope: I should like to go on record here personally that I believe in a little bit of a spoils system at the upper levels. I'm really serious about

this. I believe in a little bit of the spoils system at the upper levels. It appears to me that a new government that is perhaps a radical departure from the old ought to be entitled to have in the upper levels sufficient strength and power and knowledge of the government to implement the program which they want to establish as the result of their party platform and as a result of their promise to the people. That is my personal opinion only.

Mr. Paton: We find no difficulty at all in our civil service on that score.

Col. Kades: The Headquarters is committed to a civil service system through all ranks of government up to the Cabinet and Vice Ministers. Although I happen to be a product of the spoils system like Commander Swope, we are both helping to implement a policy of a system based on merit. The president of the Civil Service Association of the United States and of Canada -- an international association -- Mr. Blane Hoover is the director of the Civil Service Division of the Government Section. He is not here today because he is on his way back from the United States where he went to recruit experts. It is his job to install a civil service system perhaps more similar to the British system in its scope and range than to our own system, and that is the system that General MacArthur is sponsoring over the vehement protest of Commander Swope. (laughter)

Mr. Paton: It will take a long time to get it.

Col. Kades: The maximum period of time in the law before the system is required to be fully in effect in the national government is three years in order to make it possible to go through that transition period without disruption.

Col. Tilton: I want to add one other point to which Commander Swope alluded

a moment ago. I have the actual figures and the record of the elections in the eight thousand and some odd villages. The largest of those villages -- and in a few towns, also, because they were small -- the largest population is 18,000, and by far -- I should say 70% -- of them had one candidate, or the number of candidates for the assembly exactly equalled the number of vacancies or exceeded it by two only. That is a very interesting story, of the 8,000 villages, it runs a little more than 3,000 in which that occurred. So, in other words, the example of that is not a large area. It is like coercion one might say, because you have just one man running for office, therefore, no election. In most of the cases it will be small farming communities or small fishing villages. We have about 2,500 fishing villages.

Mr. Rhodes: Wouldn't that be rather the acceptance of a tradition?

Col. Tilton: I think it is. I'm not alarmed about it as other people are. If it was in a third of 290 cities then I would say it is possible we should get excited about it. It is a strange thing to go and be told, "I want to introduce you to the new mayor." When you tell them they haven't had their election yet, they say, "Oh, that is all right, we decided who it is."

Col. Kades: Usually his father before him and his father before him held that exalted position in the village. The mayor is a benevolent despot in the small fishing communities along the coast.

If you have no further questions on local government, I think we should turn to judicial administration problems. Commander Hauge has handed me a little note to the effect that we will have a fifty-page review available for distribution within a few days and it will be made available to you.

But if you would rather take it by easy stages as we have been doing today, we will be very happy to reassemble in the near future, at your convenience.

There are three major subjects which we haven't covered, perhaps four. One is the reformation of the civil and criminal codes and the problem of the reformation of the whole system of jurisprudence, including the family system, which is very fundamental to the social as well as to the political development of Japan. The second is the purge, an interesting story about which I think you will hear a great deal, particularly if you mix with the Japanese of the upper circles, and which has resulted in the removal or exclusion from office of a great number of ultra-nationalists. The third is the development of political parties here and their relationship to the government and the people. A fourth might be added if you cared to consider in more detail the civil service.

It would probably take at least an entire morning or afternoon, or both, if you want to go into these problems and we will be very glad to take as long as you want. I think from what Colonel Figgess said you have a very tight schedule.

Col. Figgess: Would you like to try to fix it now?

Mr. Paton: We might mention that one way in which it might be possible to fit it in this rather large program might be on some occasions to split forces and have two sessions going on at the same time. I rather like this exchange.

Mr. Rhodes: It's been a very good day.

Mr. Paton: Extremely, I have enjoyed it immensely.

Col. Kades: It has been very interesting to both sides, and especially profitable to our side.

(Conference adjourned at 1645 hours to a date to be determined)