GHQ/SCAP Records(RG 331)
Description of contents

THE NATIONAL ARCHIVES OF THE UNITED STATES

(1) Box no. 2085

(2) Folder title/number: (15) (end)
History - Legislative Division 1945 - 1948,
National Diet

(3) Date: ?

(4) Subject:

Classification	Type of record
021	d

(5) Item description and comment:

A part of drafts of "Political Reorientation of Japan Sept. 1945 - Sept. 1948" by Government Section

(6) Reproduction: (Yes) No

(7) Film no. Sheet no.

I. REORGANIZING THE DIET

A truly representative legislative body, based upon universal adult suffrage, responsible to the electorate, free of domination by the executive, and having full legislative powers, including control over the raising and spending of all public ~~monies~~ moneys, is a primary requisite of any blueprint for democracy under a representative form of government. The Japanese Imperial Diet which came into existence in 1889 by virtue of the Meiji Constitution failed in every respect to meet these specifications. Weak in constitutional and statutory powers and discredited by a tradition of ineffectiveness and venality, even during the relatively few years when liberal ideas and constitutional parliamentarianism seemed ~~for a while~~ to be making headway in Japan, it was completely subservient to the ruling bureaucracy whether civil or military. After the Tojo-controlled election of 1942, when 381 out of the 466 seats in the House of Representatives were filled by candidates recommended by the Imperial Rule Assistance Political Society, it became an ~~complete~~ outright rubber stamp for the executive. This was the Diet in existence when the Occupation began.

The Diet was not consulted in August 1945 when the Japanese Government decided to surrender. On August 24, 1945 it was called into a two-day extraordinary session to begin September 4. The Emperor appeared at that session, stated that his relationship with the Japanese people as one family had been preserved,

and called upon all Japanese to abide by the terms of surrender. The Prime Minister followed with a report of Japan's acceptance of the Potsdam Declaration, the Emperor's Proclamation on Allied Occupation, the Instrument of Surrender and the Supreme Commander's General Order Number 1. A comparatively small group of members of the House of Representatives presented a number of interpellations for the government to answer, directed toward learning the causes of Japan's defeat. This session, the 88th under the old Constitution, lasted just long enough for these proceedings and for the Diet to give its formal approval to the surrender documents. It closed on September 6. The Diet's participation in the war's termination, as in its inception, was substantially nil.

So far as immediate Occupation objectives were concerned, there was little or no use for the Diet. The Supreme Commander's initial policies were effectuated through a series of Directives issued to the Japanese Government which that government implemented by Imperial Ordinances. Thus, a number of positive steps toward the demilitarization and democratization of the Japanese governmental and social structure were taken by executive rather than by legislative action. Among these were the elimination of governmental functions and agencies dealing with war, munitions, totalitarian economic controls, the restriction of civil liberties and the management of overseas territories. At its 89th session, which lasted from November 25 to December 18, 1945, the Diet perfunctorily accepted approximately twenty-five Imperial

Ordinances previously issued by the Japanese Government to implement directives of the Supreme Commander.

Important steps for the democratization of the governmental and social structure of Japan were under active consideration early in the Occupation. To have any prospect of permanence, reform measures must be the product of Japanese thinking and action even if inspired by and drawing upon the experience of the Occupation authorities, for any reforms imposed by Occupation fiat alone would not long survive the Occupation. The Diet, as the only governmental body representing the people, even though imperfectly, must actively participate in the formulation as well as the enactment of the legislation necessary to achieve the desired reforms, but in order to do this the Diet itself must first undergo reformation. To begin with, the existing membership, packed with puppets of the former Tojo Regime, must be replaced by members more nearly representative of and responsive to the desires of the electorate. For this purpose it was deemed necessary to hold a general election at an early date under conditions which would permit a free expression of the people's desires. The next step would be to lodge in the Diet the full legislative powers of the government. This would require basic revision of the constitutional provisions relating to the position and powers of the Diet and of the laws governing its organization and procedures. Finally, the Diet must be groomed to assume its proper place in

the Government and to exercise initiative and responsibility in deciding the vital issues facing the nation, subject only to such external limitations as might be required for the fulfillment or safeguarding of Occupation objectives.

First contact with the Diet was established by means of a brief Memorandum of the Supreme Commander dated October 22, 1945 (SCAPIN 1791) which instructed the Japanese Government to establish a procedure for keeping the General Headquarters informed on the progress of legislation throughout the entire legislative process in the Diet.[1] Following this Directive, the Bureau of Legislation established the practice of furnishing Government Section with copies of all proposed legislation and of notifying the Section of the dates of introduction, committee actions, and passage of all bills in the Diet. Thus, continuously informed on all activities of the Diet, the Government Section was enabled to check all proposed legislation for conformity with Occupation policies, to supervise the legislative process and to advise on reform of the legislature.

The draft of the new Constitution, sponsored by the Japanese Government, was released on March 6, 1946, with the personal endorsement of General MacArthur. Under this proposed Constitution, which guaranteed universal adult suffrage, the Diet would be fully representative of the people; its status would change from that of an impotent debating society in a government run by the executive to "the highest organ of state power" and "sole

1/ This SCAPIN is included as appendix A.

law-making organ of the state"; the Cabinet would derive its authority from and be responsible to the legislature and to the electorate; finally, the subordinate position of the House of Representatives within the Diet would be reversed.

The first post-surrender general election for members of the House of Representatives was held on April 10, 1946. Under the Government Section's program for the removal and exclusion of undesirable persons from public office and government service, all candidates for the Diet were screened and those falling within the provisions of the Purge Directive of January 4, 1946, were disqualified and excluded from the campaign. All candidates who had been endorsed by the IRAPS in the election of 1942 were automatically disqualified and barred. Also in preparation for this general election, the election laws were amended in such manner as to broaden the electoral base and prevent interference or coercion by government officials or others, and to minimize fraud. Finally, under guidance from Government Section, the Occupation Forces supervised the actual conduct of the election to assure a free and untrammelled exercise of the people's franchise. The Diet chosen at this first post-war election was perhaps the most representative and most responsive to the people's will that had ever served Japan, and the Cabinet appointed thereafter was much more representative than any that had ever before existed.

This Diet, convoked on June 20, 1946, as the 90th Session under the old Constitution, was later to enact the most funda-

mental reforms of the Japanese political and social structure effected under the Occupation, including the new Constitution, which it passed in October 1946 after introducing some thirty-two amendments to the government-sponsored draft.

The Government Section's work with the Diet got into stride early in 1946 with the preparation of a manual describing the existing Diet's organization and procedures. This project required the active assistance of the secretariats of both houses and revealed, on the part of those officials, an attitude of ready cooperation and a high degree of efficiency and reliability which did not diminish during the succeeding two years of close association and collaboration. Early in June 1946, four members of the Government Section were guests of the newly appointed Speaker of the House of Representatives at a dinner given at the Speaker's official residence, which was also attended by the Vice-Speaker and the Chief Secretary of the House.

During the course of the evening the Government Section representatives, following the policy of inspiring necessary reforms by suggestion and persuasion rather than by direction, raised the subject of reorganizing the Diet in order that it might discharge its functions in accord with the letter and spirit of the proposed New Constitution. These suggestions were not warmly received, yet the discussion of that evening was the beginning of a series which eventually culminated in the Diet Law which was enacted on March 19, 1947. An apt contemporary

appraisal of the situation as seen by the Legislative Division of the Government Section is contained in the following Memorandum written a few days later for the Chief of the Government Section:

"1. The Chief, Legislative Branch, and his aides have held two meetings with the newly elected Speaker of the House of Representatives and the Chief Secretary of the House. At one meeting the Vice-Speaker was also present. The major purpose of those sessions was to encourage the Speaker to initiate studies, preferably by a select committee of the House, preparatory to revising the organization and procedures of that body. The organization and procedures now in effect were designed for a weak and subservient legislature. If the Diet is to meet its heavy responsibilities under the proposed Constitution as the "highest organ of State power and the supreme law making authority of the State" its machinery must be adequate to permit the full and efficient discharge of those responsibilities. A Diet incompetent to discharge these duties will discredit representative government.

"2. Under present circumstances the Diet requires vigorous, devoted leadership to pilot it through the period during which the Diet must assume effective control of government, strengthen its machinery, and establish its prestige. The new Speaker HIGAI Senzo is tragically unfit for this responsibility.

"3. Because of long experience in the Japanese bureaucracy, the new Speaker looks upon government with bureaucratic eyes. He shares the prevailing attitude of the professional bureaucrats who regard legislation as a subordinate function of government and look upon members of the House of Representatives as half-educated, incompetent boors and ignoramuses. With the formal legalism that characterizes Japanese bureaucrats, he persistently interposes trivial obstructions to important measures necessary to establish the new Diet on a solid foundation. A typical instance was his hesitation to agree to a select committee of House members to study organization and procedural reform because of possible difficulty in securing funds for that purpose and because members might be "too busy" during the coming session.

"4. It is most unfortunate that at this critical moment the Diet should be burdened with a leader who is both,

"a. Too weak to press the interest of the Diet through forceful and constructive leadership, and

"b. Unwilling because of a bureaucratic cast of thought even to concede to the Diet a preeminent role in government."

"GUY J. SWOPE
Comdr, USNR
Chief, Legislative Branch"

It was, of course, within the power of the Government Section, by appropriate staff action, to bring about the removal of the then Speaker of the House as being unacceptable to the Supreme Commander. But to do so would have involved a degree of direct participation in the internal affairs of the Japanese Government which, under the Supreme Commander's established policy, the Government Section studiously avoided. It was considered preferable, even if more laborious and time-consuming, to work with and through the newly elected and appointed representatives of the Japanese people, for only in this fashion could the fundamental lessons of representative government be expected to take hold among the Japanese. Interestingly enough, this same Speaker was eventually compelled to resign by the action of the Diet members themselves after he had outraged their sense of dignity and position by conniving with the Cabinet in an effort to defeat a House-proposed amendment to the new Constitution. This occurred on August 23, 1946. His successor, Takeshi Yamazaki, duly elected by the members of the House of Representatives, although at that time a comparative unknown in government circles, proved [redacted] forward-thinking and energetic, [redacted] and was responsible in large measure for the success of the Diet's legislative program during the 90th, 91st and 92nd Sessions (August 1946 to May 1947).

~~PHASE I REORGANIZING THE DIET~~

The discussions looking toward the reorganization of the Diet proceeded apace and in July 1946, the Chief of Government Section approved a memorandum calling for a number of significant Diet reforms, including the following: (1) a system of permanent standing committees; (2) sufficient time for Diet deliberation of the annual budget; (3) protection of the rights of minority parties and groups; (4) free discussion; (5) increased pay for members; (6) independence of the Diet in determining length of sessions; (7) secretarial assistance for each member; (8) a legislative reference service; and (9) power to subpoena witnesses.

Two months later, another memorandum, recommending even more thorough-going reforms of the Diet's structure and procedures, was approved by the Chief, Government Section. In addition to those changes previously recommended, the following were proposed: (1) salaries and allowances for members to be at least equal to the total pay and allowances of the highest career officials in the government; (2) secretarial assistance and office space for each member to be provided at state expense; (3) franking privilege to be accorded members for mail of an official nature; (4) elimination of practices, procedures, ceremonies, and rituals which tended to dignify government officials at the expense of Diet members; (5) a contingent fund for each House to be used at its discretion; (6) establishment of a Diet Library; (7) a Legislative Council consisting of a joint committee of the Houses to make a continuing study and to propose revisions of the Diet Law and House Regulations; (8) plenary sessions and committee hearings to be open to the general public; (9) public hearings by standing committees on

bills of general interest and purport; (10) a ten to fifteen-minute time limit on interpellations; (11) an annual Diet session of at least six months, beginning on a fixed date approximately midway in the fiscal year; and (12) formulation of a new set of regulations for each House.

B.

center all caps.

II THE IMPERIAL DIET UNDER THE MEIJI CONSTITUTION

Early Impressions of Representative Government

1. Background. In 1860, three of Japan's leading statesmen were in the United States completing the ratification of the Japanese-American treaty. Having first heard of representative government only seven years before, they decided to visit Washington to observe Congress in action. On their first glimpse of Western lawmaking, one of the negotiators commented:

> "One of the men stood up and began to say something in a loud voice as if he were mad. When he had finished, another man stood up and spoke in the same manner. On my asking what it all meant, I was told that they were discussing affairs of state....We were then shown upstairs to the gallery where we were told to seat ourselves on chairs and observe the scene of discussion again....We were given to understand that an important affair was under deliberation. The men in momohiki [trousers worn by fishmongers, carpenters, firefighters, etc.] and tsutsusode [tight-sleeved coat also worn by tradesmen] speaking at the top of their voices; the posture of the Vice President seated on a raised platform; all this looked like our fishmarket at Nihonbashi [central Tokyo]."

Please avoid parentheses

In 1861, three other prominent Japanese statesmen visited England and while there spent some time investigating the parliamentary system. One of them wrote:

> "I could not understand at all what they meant by election in politics. I was very anxious to know what kind of law that Election Law was and what kind of office Parliament was. Those whom I asked simply smiled at me....There were also several parties such as Conservatives, Liberals, etc. All of them vied desperately for supremacy. What a pity it was, I thought, that they should be engrossed in political quarrels in such a peaceful time! I could not understand for the life of me what they were aiming at. It was the strangest thing I had ever seen. They often spoke of such and such a man as being a deadly enemy of such and such another man, and yet I found these men eating and drinking at the same table! What did it all mean? I was at a loss what to make of it."

But the Japanese learn quickly. When the Tokugawa Shogunate was replaced by the Restoration Government in 1867-1868, the much-heralded Charter Oath was promulgated, proclaiming that "An assembly widely convoked shall be established, and thus great stress shall be laid upon public opinion." A few months later, a "Constitution" became effective, providing for an "upper" house, to wield all power of government, and a "lower" house, to deliberate. The latter was established, according to Article 5 of the "Constitution," with the object of obtaining "open discussion and the opinion of the majority." In 1869, the first deliberative assembly, the kogisho, was convened and attended by representatives from each of the 276 clans. "The historical importance of the kogisho," says H. S. Quigley, "lay in the recognition of it as the prototype of a more widely representative lower house." An additional step in the direction of popular government was the promulgation in 1871 of an Imperial Rescript abolishing feudalism. By this measure, the masses, freed from dependence upon their former feudal lords, were [illegible] given an opportunity to develop as an effective political force.

Between 1875 and 1885, something less than a generation after the Japanese statesmen referred to above had been perplexed by the United States Congress and British Parliament, a widespread movement advocating establishment of a popular assembly was underway in Japan. Numerous memorials (one with 87,000 signatures) were sent to the government, political societies were organized, and newspapers joined the movement -- all agitating for a parliament, contending that nothing less would satisfy the demand of the people for popular government. Ably directed by men

from all over Japan who refused to submit to the domination of the favored Satsuma-Choshu-Tosa-Hizen clansmen, the extensive campaign for parliamentarianism could not be ignored by the powers behind the throne. Consequently, the emperor issued a decree in 1881 declaring, "We shall, in the 23rd year of Meiji (1890) establish a Parliament....With regard to the limitation upon the Imperial prerogative, and the constitution of the Parliament, We shall decide hereafter and make proclamation in due time."

Hirobumi Ito, a former samurai of Choshu, was assigned the task of finding a solution to this problem. Assisted by Kentaro Kaneko, Myoji Ito, and Tsuyoshiaki Inouye, clansmen attached to the Imperial Household, Ito devised and framed the Meiji Constitution and the laws and ordinances supplementing it.

Back in Japan after visiting Europe in 1882, Ito began reorganizing the government preparatory to promulgating a constitution. First he re-established the nobility, whose members were to constitute a majority in the future House of Peers and serve as a safeguard against liberalism. Then he replaced the Council of State with a cabinet, each of whose ministers was made directly responsible to the Emperor. Next he created the Privy Council as an additional check on the projected House of Representatives. Finally, he established a bureaucracy designed to prosecute government policies regardless of the whims and fancies of the people's representatives.

2. The Meiji Constitution and the Diet

With this much of the spade-work completed by 1888, the Constitution, together with the Law of the Houses, the Election Law for the House of Representatives, the Imperial House Law, the Law of

Finance, and the Ordinance Concerning the House of Peers, was promulgated on February 11, 1889, the annual public holiday Kigensetsu (Foundation Day). In these enactments, Ito showed his utter contempt for current Western doctrines which regarded law-making "as specially falling within the powers of Parliament." That the sovereign and the people have an equal share in enacting laws, he said in his Commentaries, "arises out of a misconception of the principle of the unity of sovereignty. From the nature of the original polity of this country, it follows that there ought to be one and only one source of the sovereign power of the State....The use of the Diet is to enable the Head of the State to perform his function and to keep the State in a well-disciplined, strong and healthy condition. The legislative power is ultimately under the control of the Emperor, while the duty of the Diet is to give advice and consent. Thus between the Emperor and the Diet, a distinction is to be strictly maintained as to their respective positions."

Ito's deceptive scheme of government, bestowed as a gift of the Emperor, deliberately removed control of state affairs farther than ever from the reach of the people and centered it securely in an oligarchy of feudal clansmen, military chieftains, bureaucrats, and zaibatsu, blasting all future chances for a democratic form of government. Contrary to popular demand, the Meiji Constitution, instead of creating a law-making organ, provided simply for a gikai, meaning talk-club, officially translated as "Diet" after its Prussian prototype. Examination of the Meiji Constitution and the Law of the Houses shows that all powers of state were centered in the executive branch of government and that every conceivable precaution was taken to prevent the talk-club from interfering with national policy.

a. Powers of the Emperor. In Western countries, the theory of the divine right of kings gave way several centuries ago to the principle that sovereignty resides in the people and that governments derive their powers from the governed. Upon this premise, most Occidental nations can be classified either as governments of union of powers, like Great Britain, where the legislative branch is supreme and the other branches are its agents, or governments of separation of powers, such as the United States, where the several branches are coordinate in rank. The distinction between the two types is not significant, since both have a common ultimate source of authority in the people.

In ~~the case of~~ Japan under the Meiji Constitution, the situation was reversed. While the Japanese government was one of union of powers, the sole constituent authority was an emperor, "sacred and inviolable," combining in himself the rights of sovereignty and exercising them in accordance with the generous provisions of a constitution written under his supervision. The following powers of government, which in countries like England and the United States are exercised by the elected representatives of the people, in Japan were denied the elected members of the Diet and were centered, by the terms of the Constitution, in the Emperor, or rather in the imperially-appointed officials of the executive branch:

> "The Emperor exercises the legislative power with the consent of the Imperial Diet.
>
> "...determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses same....
>
> "...determines the organization and peace standing of the Army and Navy.

"...declares war, makes peace, and concludes treaties.

"...confers titles of nobility, rank, orders and other marks of honor.

"...orders amnesty, pardon, commutation of punishment and rehabilitation.

"...issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law.

"...issues...Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects...."

Even w ^ ~~W~~ithout ~~any of~~ these powers, the Diet might have been an important branch of government had it been given ~~the power of~~ (control over the public purse. But the Meiji Constitution removed the nation's finances from popular control as certainly as it did the management of foreign affairs. The expenditures of the imperial house were placed beyond the reach of the Diet "except in case an increase thereof is found necessary." The bulk of the state's finances was removed from popular control by the constitutional stipulation that those "already fixed expenditures based...upon the power appertaining to the Emperor and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the government, shall be neither rejected nor reduced by the Imperial Diet...." In special cases, the government could call upon the Diet for a "Continuing Expenditure Fund," while for deficiencies a "Reserve Fund" was provided in the budget. When the Diet was not in session, the government could "take all necessary financial measures, by means of an Imperial Ordinance," and if for any reason the Diet failed to vote the budget, the government could "carry out the Budget of the preceding year."

Having denied the Diet jurisdiction over finances, the administrative branches, the armed forces, foreign affairs, and the legislative function in general, Ito and his associates took precautions against possible amendments to the Constitution at a future date by the pressure of public opinion. While Article 73 provided that any proposed amendment "shall be submitted to the Imperial Diet by Imperial Order," the preamble made it clear that only the Emperor "shall assume the initiative right," and in no other manner shall "Our subjects be permitted to attempt any alteration thereof." Needless to say, no project for amending the Meiji Constitution was ever submitted to the Diet. (Such a suggestion would have been interpreted as a clear violation of the Peace Preservation Law.) Having devised what he considered an ideal oligarchical system of government, Ito fortified it in the Imperial Oath of 1889, which stated in part, "We, the Successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy co-extensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of government."

In still other ways, Ito set up constitutional safeguards against (assumption of power by) the Diet. A bill passed by both Houses did not become law until the Emperor sanctioned it and ordered it promulgated and executed. The Diet was convoked, opened, closed, and prorogued, and the House of Representatives dissolved, by imperial order. The Constitution limited the annual Diet session to three months and provided for prolonging it, as well as for calling an extraordinary session, only by imperial order. Ministers of state and government delegates were privileged at any time to "take seats and speak in either House."

b. Functions of the Diet. Then what functions did the Meiji Constitution reserved to the Diet have were six in number, to wit: (1) every law required its consent, (2) both Houses voted upon government bills submitted to them and could initiate bills, (3) both Houses could make representations to the government, (4) present addresses to the Emperor, (5) receive petitions presented by "subjects," and (6) make "rules necessary for the management of their internal affairs." In short, the members of the Diet, within limits, were empowered by the Constitution to talk.

Ito confessed that the ordinary Diet session was limited to three months "so as to avoid the endless dilation of deliberations." But, for fear the people's representatives might get out of hand despite this limitation, he provided for a House of Peers "to check the evil tendencies of irresponsible discussions." While Ito in his Commentaries could offer no reason for establishing the popularly elected lower House, he was convinced of the necessity of a House of Peers, representing "the higher grades of society, to preserve an equilibrium between political powers, to restrain the undue influence of political parties...to secure the stability of the Constitution, to be an instrument for maintaining harmony between the governing and the governed and to permanently sustain the prosperity of the country and the happiness of the people." The House of Peers, he said, would represent "the prudence, experience and perseverance of the people, by assembling together men who have rendered signal service to the state, men of erudition and men of great wealth." Although both Houses of the Diet were authorized to initiate legislation, Ito admonished

them instead to leave the framing of laws to the government. Should the Diet, he argued, "proceed to draw up clause after clause of a law according to the opinions of the majority, much delay would be very often caused in the progress of the debate thereon, or the draft itself would not be free from the defect of crudeness and lack of arrangement. It would be far wiser to rely for such work upon the skill and experience of the commissioners of the government." Even the men of erudition and great wealth, the Peers, were not to be entrusted with the "endless dilation of deliberations."

b.c. Functions of the Kanryo. In order to appease liberal elements at home and democratic sentiments abroad, an impotent assembly was provided for in the Meiji Constitution, but the national polity, as defined by the Satcho clansmen, was to be preserved and perpetuated by government officials. Ito and his colleagues ~~meant for~~ intended the kanryo, or bureaucrats, to operate and maintain the government of Japan. Appointed by a sacred emperor, the kanryo not only looked down on the Diet but knew how to hold the people's representatives in a degraded position. The kanryo served the real rulers of Japan, the militarists, nobility, zaibatsu, and professional politicians, to the exclusion of labor ~~leaders, peasants and~~ representatives, farmers, intellectuals, and all others who failed to champion the aims and traditions of the feudal oligarchy. Consolidated as the backbone supporters of those directly below the Emperor, these permanent government officials were chiefs of departments and sections in the various ministries and served as government delegates during sessions of the Diet. In the course of time, they moved up the ladder from bureau chiefs to assistants to the prime minister and

became directors of quasi-government agencies, government banks and corporations, thereby becoming wealthy. Their ultimate aim was to be appointed to the House of Peers, where they could devote the remainder of their lives to politics, keeping constantly in contact with the upper classes and securing appointments to important imperial agencies. The lucky few reached the Privy Council and discussed and deliberated imperial ordinances and rescripts and important bills passed by the Diet. In this manner, they became the watchdogs of the prerogatives of the ruling classes, preventing the Diet from interpreting the Constitution in such a way as to jeopardize the interests of the collective dictatorship revolving about the throne. Occupying important posts in the imperial household ministry and the courts, in addition to membership in the House of Peers and the Privy Council, the kanryo were able to beat down movements calculated to increase the people's voice in government by declaring them destructive of the Constitution and therefore subversive. Having had a part in drafting the Meiji Constitution and its supplementary laws, they set themselves up as permanent guardians of the system of government thus created. In league with the gumbatsu, they joined or abandoned political parties and zaibatsu groups almost at will, awarding profitable government contracts and bounties, selling government property and land, and dispensing numerous favors. The kanryo protected their system against popular encroachment by appeasing in one way or another the overly ambitious political bosses and the more influential members of the House of Representatives.

3. The Imperial Law of the Houses. Had the framers of the Ito system of government been as certain of the tractability and diffidence of the masses

as have been many of the so-called authorities on Japanese character, they should have felt perfectly secure with a divine Emperor, a streamlined and extremely ~~definitive~~ restrictive constitution, a House of Peers, and a purposeful and unyielding bureaucracy. But such was not the case. In order to make doubly sure that a popularly elected lower House would never usurp powers delegated to the oligarchy, Ito's group framed and promulgated concurrently with the Meiji Constitution the Imperial Law of the Houses and the Ordinance Concerning the House of Peers. As a law, the former could be amended only with the approval of both Houses; the latter, an ordinance, needed nothing more than the approval of the Peers to amend its provisions. In other words, the House of Peers could guard the Law of the Houses against the intrusion of public opinion, while the Ordinance Concerning the House of Peers was none of the public's business. As an instrument for degrading and debasing representative government and simultaneously exalting ~~arbitrarily~~ appointed government officials, the Imperial Law of the Houses had no parallel among civilized nations.

a. Restrictions on Public Opinion. The Law of the Houses contained 99 articles. Of these, 27 were designed ~~further~~ to further restrain the people in keeping with the letter and the spirit of the Constitution. Besides a number of provisions pertaining to Diet convocation, opening, extension, closing, and prorogation, all by imperial order, and stipulations requiring the support of 20 or 30 members for introducing and moving to amend bills and for questioning and memorializing the government, the Law of the Houses contained clauses for curbing the Diet in the following ways:

(1) Exclusion of the public from committee meetings.

(5) Disallowance of Diet interim committees except by government consent.

(6) Precedence of government bills over member bills; Diet examination of government bills omitted upon demand of government; government privileged to amend or withdraw a government bill after its introduction; process of three readings omitted upon demand of government; bills passed by Diet promulgated at the government's pleasure prior to the beginning of the succeeding session.

(4) Diet deliberations behind closed doors upon demand of government.

(5) Budget committee of each House limited to 21 days for examining the annual budget.

(10) Petitions for amending the Constitution and those pertaining to administration of justice and administrative litigation prohibited; petitions required to be in the form of a prayer, omitting remarks disrespectful of the imperial family or insulting to the government or the Diet.

(7) Diet permitted no direct contact whatever with the people; neither House allowed to subpoena witnesses or dispatch its members for investigations, nor to correspond with any government office or local assembly except through a minister of state or his delegate.

(8) Request of either House for secret documents furnished at the government's discretion.

(9) Members prohibited from making remarks in either chamber implying disrespect of the imperial house.

(10) No standing committees -- ad hoc committees only.

Not a single article made reference to the rights, privileges, welfare, protection, or even the existence of "subjects" -- except to refuse them contact with their elected representatives.

b. Subordination of Diet to Government Officials. Numerous other articles of the Law of the Houses subordinated the legislative branch to the executive and the members of the elective chamber to government officials.

(1) d. Chairman and vice chairman of each House nominated by emperor.

(2) b. Opening ceremony held in Peers' chamber, the president of the House of Peers presiding.

(3) c. Chief Clerk of each house, chokunin rank, appointed by emperor; secretaries, sonin rank, appointed by cabinet. (Representatives had the equivalent of sonin rank.)

(4) d. Expenses of both Houses arbitrarily fixed by Finance Ministry.

(5) e. Pay of Diet members approximately half that of vice ministers (¥3,000 to ¥5,800).

(6) f. Diet bills presented to emperor through a state minister.

(7) g. State ministers and government delegates privileged to speak at any time at Diet plenary sessions and committee meetings.

(8) h. Schedule of Diet committee meetings required to be reported to ministers concerned.

(9) i. Joint committee meetings freely attended by state ministers and their delegates.

(10) (LC) Lack of Legislative Machinery. As a mere organ of discussion, reminded of its impotence and inferiority in countless ways, the Diet was purposely denied the use of the legislative aids, devices, and facilities common to Western assemblies. The most glaring deficiency was the lack of standing committees, a system by which legislators become expert in one or more fields of public policy. While the Law of the Houses authorized so-called standing committees, it stipulated that "the term of the Standing Committeeship shall last during a single session only." With the month-long new year recess deducted from the ordinary session, "standing committee" members had but two months in which to become acquainted with matters submitted to them. But since all legislative bills without exception were

referred to special committees, the budget was the only important item deliberated by a standing committee, a meaningless procedure inasmuch as the Law of the Houses required each budget committee to "finish the examination of the same within 21 days...and report thereon to the House." Thus, it was impossible for Diet members, minus the aid of library facilities, legislative reference and bill-drafting departments, qualified assistants, the power of subpoena, and the authority to conduct investigations, to match the expertness of the bureaucrats, who had an effective monopoly of all pertinent information. Public hearings, of course, were entirely unknown. In no way could Diet committees legislate intelligently or exercise effective surveillance over the execution of laws by administrative agencies.

It is a singular fact that the Houses had no contingent fund for their own use. The Finance Ministry would have arrogantly brushed aside such a request had either House been so bold as to submit it. Like the Diet, its members were accorded treatment commensurate with their humble station in Ito's scheme of government. Given the equivalent rank of third class government officials, but lacking the privileges and immunities of even the lowest bureaucrats, Diet members of necessity were deferential to their Chief Clerk, a second-class official, whose perquisites included an official residence and an official automobile, in addition to life tenure. Diet members had no offices, no clerical assistance, no franking privilege. Until 1936 there was not even a Diet building.

d. Attempts to Amend. Mindful of the severe handicaps under which it attempted to function as the sole agent of the people, the lower House

tried desperately between 1930 and 1935 to modify the Law of the Houses. In 1933, during the 64th session, a member bill, carefully prepared by the Diet Renovation Committee and signed by more than fifty members, was introduced in and unanimously passed by the House of Representatives, but rejected by the House of Peers. At the 65th session and also at the 67th, the bill was again passed by the House of Representatives, supported by all political parties and groups, and in each instance was rejected by the House of Peers. In view of the fact that this measure was designed to increase the power and prestige of lower House officials and members and to decrease the control of Diet procedures by government officials, the Peers, had they made this concession to public opinion, would have been unfaithful to the trust placed in them by the architects of the Meiji system of government.

Chief among the modest reforms embodied in this measure, as passed by the House of Representatives, were the following:

(1) Outright election of the Speaker and Vice Speaker for sanction by the throne, eliminating the practice of selecting three candidates for each office, one of whom was nominated by the emperor.

(2) Installation of the Speaker and Vice Speaker by an imperial ceremony, in order to increase the prestige of lower House officials.

(3) Raising the Speaker to shinin rank, one step above the Chief Clerk of the House.

(4) Provision for a legislative budget independent of the jurisdiction of the Finance Ministry.

(5) Giving a member bill precedence over a government bill on the agenda by two-thirds vote of the House.

(6) Revision or withdrawal of government bills with House consent.

(d) Appearance of state ministers and government delegates before House committees when requested.

(e) Reducing from 30 to 20 the number of supporters required to move amendments to the budget, interpellate the government, and propose an address to the throne or a representation to the government.

(f) Preparing special account budgets and general budgets independently of each other.

(g) Establishment of a permanent committee of the House.

The latter proposal was the most important. Its object was to circumvent the constitutional provision limiting the Diet to an annual session of three months. According to the reasoning of the Renovation Committee: "Although the length of a session is stipulated in the Constitution, this does not mean that an extension cannot be requested. However, it is customary to extend a session nine days at the most, primarily for the purpose of passing a bill which is being deliberated upon. Even during adjournment, the permanent committee would be able to make preliminary investigations on bills to be submitted to the following session....Thus, in this manner, the shortness of a session can be overcome." Neither the Peers nor the government relished the prospect of a year-round source of embarrassment to the entrenched oligarchy, latent in this suggestion of the House of Representatives for a permanent committee.

4. Rise and Fall of ~~Responsible~~ Parliamentary Government. Notwithstanding the efforts to regiment the people's thinking and actions and to exclude them from any voice in government whatever, a remarkable degree of responsible government was achieved in Japan between 1890 and 1931. Although the members of all cabinets were appointed by and directly responsible to the Emperor, the Takashi Hara Cabinet, formed in 1918, excepting only the ministers of war,

navy, and foreign affairs, was composed of political party members. From 1924 until 1932, every cabinet was organized along the lines of parliamentary government, that is, selected on the basis of election returns. These gains were lost, however, because of fundamental defects in the Meiji Constitution which permitted the enactment of the Peace Preservation Law, the invasion of Manchuria in 1931, and the China Incident in 1936, irrespective of public opinion. Responsible directly to the emperor under Articles 11 and 12 of the Constitution, the warlords of the army and navy prevented the formation of cabinets of which they disapproved. Because of the constitutional provision for continuing the current budget, the Diet was unable to check the militarists by cutting their appropriations. Politicians, instead of representing the people who elected them to the House of Representatives, took orders from their gumbatsu-zaibatsu masters. A few brave champions of popular government pitted their power to ask questions against the military and financial power of the oligarchy of militarists, zaibatsu, nobles, bureaucrats, and politicians. Despite their advantages, the reactionary forces took severe beatings at the polls in 1936 and 1937, causing the army and navy to set up a howl for restricting the electorate, reducing the power of the Diet, and revising the Constitution! The results obtained are suggested by Toshio Shiratori, former Ambassador to Italy, who was able to write in 1938, "The once widely accepted theory of government which sees in parliament the real center of power now has been completely rejected and the country is fast reverting to totalitarianism, which has been the fundamental principle of Japan's national life for the past thirty

centuries." Prince Konoye completed the downfall of responsible government when he organized the Imperial Rule Assistance Association in 1940-41 and the Imperial Rule Assistance Political Party in 1942. That the forces of popular sovereignty were completely routed is not surprising under the circumstances; what is significant is that they accomplished so much against such overwhelming odds, ~~proving that the Japanese people are desirous of participating in government.~~ In this fact lay the hope for popular government in the Japan of the future.

~~On the basis of this analysis of the Meiji Diet, Government Section undertook, in the new Constitution and the Diet law, to clothe the National Diet with powers and procedures befitting a real legislature. What was accomplished along these lines is described in the following pages.~~

III THE NATIONAL DIET UNDER THE NEW CONSTITUTION ~~OF JAPAN~~

~~THE NEW DIET~~

1. Constitutional Powers. The new Constitution of Japan, which became effective May 3, 1947, together with the numerous laws and codes supplementing it, represents ~~the most~~ a drastic revolution ~~ever undertaken~~ in the government of ~~a nation.~~ Japan. From the standpoint of the national legislature, the following reforms are most significant:

a. Popular sovereignty replaces the sovereignty of the emperor.

b. The Diet is the highest organ of state power.

c. An elected House of Councillors ~~has~~ replaces the House of Peers.

d. The Cabinet is responsible to the Diet.

e. The Diet Law supersedes the repealed Imperial Law of the Houses.

f. The people are legally delivered from the last vestiges of the feudal heritage.

g. The "invisible government" of crown agencies is abolished.

The preamble to the new Constitution begins, "We, the Japanese people, acting through our duly elected representatives in the National Diet...do proclaim that sovereign power resides with the people." As for the once sacred and inviolable emperor, he "shall not have powers related to government," but functions merely as "the symbol of the State and the unity of the people, deriving his position from the will of the people with whom resides sovereign power," performing, "with the advice and approval of the Cabinet," only such acts as promulgating laws, convoking the Diet and dissolving the House of Representatives, proclaiming general elections, attesting the appointment of officials, and awarding honors.

Pursuant to the principle of popular sovereignty, the Diet ranks first among the branches of government. The Constitution states that the Diet, consisting of the House of Representatives and the House of Councillors, whose members are elected and representative of all the people, "shall be the highest organ of state power, and shall be the sole law-making organ." Executive power is invested in a Cabinet "collectively responsible to the Diet" and headed by a prime minister "designated from among the members of the Diet by a resolution of the Diet." The crippling financial limitations imposed upon the Diet by the Meiji Constitution have been removed and the principle established that the nation's finances are administered "as the Diet shall determine." No money shall be expended nor shall the state obligate itself, unless so authorized by the Diet. The Cabinet prepares budgets and submits them to the Diet for consideration and final decision. The Diet ~~at its discretion~~ may authorize a reserve fund for the use of the Cabinet, but payments from this fund must subsequently be approved by the Diet. Exclusively vested in the Diet is the power to levy new taxes or to modify existing taxes. All Imperial Household property has become the property of the state, and expenses for the Imperial Household are appropriated annually in the budget. The absolute control by the Diet of every aspect of national policy is limited only by the power of the Supreme Court "to determine the constitutionality of any law, or order, regulation or official act." The Japanese Diet, therefore, has considerably more control over national policy and administration than has the United States Congress, but slightly less than the British Parliament. In short, the

old gikai, or talk-club, has assumed the policy-making powers once exercised by the Cabinet, Privy Council, military boards, genro, Imperial Household Ministry, senior statesmen, and the imperial conference. The Cabinet may issue Cabinet Orders, not, however, as imperial ordinances were formerly issued, but only for the purpose of executing the provisions of the Constitution and of laws enacted by the Diet. The method for amending the Constitution has been simplified, requiring only a two-thirds vote of each House of the Diet and subsequent ratification by a majority of the voters.

2. Genesis of the new Diet Law. Repealing Ito's Law of the Houses, the Diet Law, according to the Official Gazette, received the "consent of the Imperial Diet" on March 19, 1947, and on April 28 was promulgated by the Emperor, countersigned by all Cabinet Ministers, and approved by the Privy Council --in accordance with Articles 6, 55, and 56 respectively of the Meiji Constitution. The order of promulgation read, "I hereby give my sanction, with the approval of the Privy Councillors, to the Diet Law for which the concurrence of the Imperial Diet has been obtained and cause the same to be promulgated."

In no respect is the preceding paragraph an accurate description of how this measure became a law. The new Constitution and all laws supplementing it, excepting only the Diet Law, were drafted and introduced in the Diet as Cabinet bills in keeping with time-honored procedure; the Diet Law alone was drafted by the House of Representatives without the approval of the Cabinet or the collaboration of the House of Peers. In all particulars, it was a piece of legislation initiated by and expressing

the will of the only agency in the national government directly representing the people. Accurately stated, the Emperor, the Cabinet, the Privy Council, and the House of Peers gave their consent to a law enacted by the House of Representatives for the Diet of the future, as prescribed by the new Constitution.

"If we assume that the new constitution is a dragon, we can say that the Diet Law is its eyes." This refreshing simile was contributed by Kotaro Bando, veteran member of the lower House, who assisted in drafting the Diet Law bill. A simple statement of the origin of the bill, as reported in the Official Gazette for December 19, 1946, was made by Makoto Oike, Chief Clerk of the House of Representatives, to the special committee of 36 members appointed by the Speaker to examine this proposal and make recommendations to the House:

> "With the establishment of the new Constitution, the supplementary law known as the Diet Law was to be enacted for governing the procedures of the National Diet. This task placed a heavy responsibility on the House itself for formulating a democratic law. On the one hand, the Government appointed the Special Provisional Legislative Investigation Committee to revise the Law of the Houses, and on the other hand, the House of Representatives commissioned twenty of its members, representing all parties, to do the same work. The first meeting of the House group was held on July 6. Throughout the remainder of the harried Diet session, the members carried on vigorous debates and drafted a Diet Law bill consisting of 19 chapters. On the basis of this draft, codification of the bill was taken up in earnest following the close of the Diet session on October 12. Each member freely expressed his opinions and deliberated all articles with great seriousness. At ten or more of these meetings, to which numerous Government experts were invited, discussions were carried on in a spirit of harmony, with the result that this final draft received the approval of all twenty members of the House committee. Government Section of GHQ rendered every assistance throughout this period, supplying us with the

Legislative Reorganization Act of 1946 as passed by the United States Senate, encouraging the committee to frame a genuinely democratic Diet Law, and offering suggestions on numerous occasions for increasing the authority of the National Diet, for which the entire membership of this committee is most grateful."

At the conclusion of two days of vigorous debates, December 19-20, a spokesman for each political party and group represented in the special committee of 36 endorsed the bill. Speaking for the Cooperative Democrat Party, Kuniei Uda said, "Following the spirit of the history-making Constitution, we members of the House of Representatives have drafted this Diet Law Bill. In studying the entire measure, clause by clause, we of the Cooperative Democrat Party find it truly democratic and, in addition, endowed with authority. Therefore, we heartily approve this proposal." Michio Hosono, representing the Social Democrat Party, said, "I approve this bill. It contains some unsatisfactory points, but, after all, these have to do with operations. Since Diet members will carry out this law, let us correct any faults that may be found from its actual operation." The comments of the spokesmen for the Liberal, Democrat, People's, and Communist parties were similar to those made by Uda and Hosono.

The House of Representatives passed the Diet Law bill without a dissenting vote on December 21, 1946, and immediately sent it to the House of Peers.

Before the bill was referred to committee in the House of Peers, Soichi Sasaki, a member, was granted permission to put an urgent interpellation to the government on two relevant matters. His first question and comment: "Why did not the Government itself draft and present this

Diet Law Bill? The Government should have drafted it as a matter of course, in accordance with the Imperial Constitution which is still in force. In cases of such importance as the Diet Law Bill, it has been customary for the Government to take the initiative."

State Minister Etsujiro Uehara replied: "The argument is plausible that the Government should have introduced it. In fact, the Government had at first intended to draw up a bill following deliberations of the Cabinet Legislative Investigation Committee and submit it to the two Houses for approval, but in the meantime, the Speaker of the House of Representatives reminded us that inasmuch as the Diet Law would govern the future operation of the House of Representatives and the House of Councillors, it behooved the House of Representatives to formulate the draft and introduce it in the Diet. The Government quite agreed with the Speaker on this point, for under the new Constitution the Diet Law will be operated by the two Houses rather than by the Government and it will be more in accord with the spirit of the new Constitution to entrust the task to the First Chamber."

Mr. Sasaki's second point: "I wonder if it is necessary to have the National Diet Law enacted during the Extraordinary Session, which will close in two or three days. The purpose for which the National Diet Law Bill has been drafted is substantially different from that for which the Law of the Houses was drafted. For this reason, I think that the House of Peers, which has for a long time been acting in conformity with the Law of the Houses and which has fully clarified the purpose of the Law, will also have to deliberate upon the Diet Law Bill as a new one sub-

stantially different from the old one. I think it very difficult for our House to finish the task in two or three days."

State Minister Uehara answered: "The House of Councillors Bill passed by you is now before the House of Representatives and will most probably meet its approval. The new Constitution, as all of you know, will come into force on the 3rd of May next and the Government is anxious to see the House of Councillors in working order before that date. If the two Houses are to deliberate in conformity with the spirit of the new Constitution, the present Law of the Houses will be found inadequate. It is therefore most desirable that before the House of Representatives and the House of Councillors coordinately enter upon deliberation of state affairs in the name of the Diet, the Diet Law be ready for enforcement. Though it makes a voluminous code, to those who have ripe experience like you in pushing through legislative business and who are fully acquainted with the spirit of the new Constitution and of the prospective Diet Law, it will be no great difficulty to dispose of the Bill in two or three days."

At this point, State Minister Uehara, a veteran member of the lower House, took occasion to voice a sharp protest against an unwarranted restriction placed upon the Diet by the Meiji Constitution: "The bill, as already alluded to, is a law project introduced by the other House. When a measure introduced by one of the two Houses is passed and sent up to the other, the latter is denied an opportunity under the current Law of the Houses to hear an explanatory statement by its authors in the former. This fact has made for a great deal of inconvenience and disad-

vantage to both Houses by hindering smooth progress of proceedings on the bill. This shortcoming has been rectified in the new Constitution, but under the Constitution in force today no remedy can be found for it. It is highly regrettable that this House will have to endure such inconvenience in reviewing so important a bill. To alleviate such inconvenience in a degree, the Government suggests that before formally opening committee meetings on the bill, this House may find it advisable to invite either its authors or the Speaker and Chief Clerk of the other House that they might give you comments or answers to questions about the spirit underlying the bill, the object of each article, and the viewpoint of the lower House as a whole."

Three days later, on the final day of the 91st Diet Session, the Peers committee killed the Diet Law bill by refusing to report it out, justifying its action by the limited time allowed for deliberation. The basic reason, however, was the Peers' resentment against "those people" in the lower House who initiated a bill affecting the Diet without deferring to the opinions of the "men of learning and erudition" in the upper House.

Without changing a word, the House of Representatives on February 21, 1947, again introduced and unanimously passed the original Diet Law bill, sending it to the House of Peers, where it was approved with a dozen or more minor amendments on March 18. Next day, the House of Representatives accepted these amendments and thereby gave final Diet "consent" to the Diet Law bill.

Count Jitsuhi Hashimoto, in making the final report of the proceedings of the House of Peers committee, said: "The length of time devoted

to the study of this bill is almost unprecedented." Otherwise his report revealed that the Peers' resentment toward the law and its framers had not abated since the previous December.

3 The new Diet Law. The Diet Law contains 132 articles, of which 48 were taken unchanged from the Imperial Law of the Houses, 2 from the Meiji Constitution, and 4 from the Regulations of the House of Representatives. Since these articles concern qualifications, resignations, and leaves of members, police protection, and other routine matters common to all legislative assemblies, no further mention need be made of them here.

Of the remaining 78 articles, 41 pertain to subjects included in the Law of the Houses and the Meiji Constitution, but which, in the Diet Law, are radically altered or completely reversed in meaning, leaving a total of 37 articles dealing with subjects not heretofore contained in Japanese laws or regulations.

a. Discarded Procedures. A number of [redacted] practices and procedures formerly imposed upon the Diet are omitted from the Diet Law. Most important of the omissions are the following:

(1) Division of the Houses into sections.

(2) Imperial appointment of Diet officials and the secretariat.

(3) Committee of the Whole House.

(4) Three readings of a bill.

(5) Government consent for Diet committee meetings between sessions.

(6) Prorogation of the Houses.

(7) Time limit for deliberation by budget committees.

(8) Requirement that subjects and schedules of Diet committees be reported in advance to the government.

(17) Addresses to the throne and representations to the government.

(18) Requirement that petitions be presented in the form of a prayer; that they contain no remarks disrespectful of the Emperor; that they contain no suggestions for amending the Constitution, interfering with the administration of Justice, or with administrative litigation.

(19) Prohibition of Diet contacts with government offices and local assemblies except through a minister of state.

(20) Remarks by Diet members implying disrespect of the imperial house.

The word "Emperor" appears nowhere in the Diet Law, while the expressions "imperial rescript" and "throne" are used only in connection with convocation and the promulgation of laws.

B. BASIS ~~Radical~~ Changes. The 41 radical changes made in provisions of the Law of the Houses and the Meiji Constitution which were incorporated in the Diet Law have as their primary aims removal of all shackles from the Diet, increase in the dignity and prestige of both Houses, and recognition of the primacy of the House of Representatives.

The name of the national legislature is changed from "Imperial Diet" (teikoku gikai) to "National Diet" (kokkai). By providing for convocation of the ordinary session within the first ten days of December, the Diet Law eliminates the former government policy of opening the Diet in late December immediately prior to the traditional month-long new year holiday, which in effect reduced the term of the session from three to two months. Since the Japanese fiscal year ends on March 31, the new convocation date allows budget committees a maximum of about three months, exclusive of the new year holiday, for examining the annual budget. Henceforth, the Speaker of the House of Representatives, rather than

the President of the ~~House of Peers~~ "upper" house, will preside over the joint assembly of the Houses at the Opening Ceremony, which presumably will be attended by the Emperor, although the Diet Law is silent on that subject. The latter point is unimportant inasmuch as convocation, not the Opening Ceremony, as in the past, authorizes the Diet to function. The term of the ordinary session is increased from three to five months, while the term of a special session is determined by the Houses. The extension of a session is no longer determined by imperial order, but by the decision of the Houses, the wishes of the House of Representatives prevailing in case of disagreement. The Chairmen and the Vice Chairmen, as well as the Secretaries General, are now elected by the members of the respective Houses, thus completely eliminating the former prerogatives of the emperor and the Cabinet to appoint them.

Article 32 stipulates that "Expenditures of each House shall be appropriated independently in the national budget," followed by a subordinate clause which says, "The above appropriation shall include a contingent fund." This release from the stranglehold of the Finance Ministry was an occasion for rejoicing among Diet members, including Peers. During the Peers committee deliberations on the Diet Law bill two days before Christmas, 1946, Viscount Kiko Okochi asked, "What is meant by 'expenditures of the Houses shall be appropriated independently in the national budget'?" He continued, "Reductions of Diet expenditures by the Finance Ministry in the past were unreasonable....The Diet and persons connected with the Diet should be treated like human beings..../Heretofore the government's idea/ was to have members loaf on the job as much as possible

so as to prevent them from being active in the affairs of the Houses. It was a common practice to have no lights at night....Even if the House of Peers Journal did get to our hands, it was a lot of bother and was just as good undelivered....If we did not appear for work, there were no objections raised....If the Diet members fail now to receive treatment due to human beings, there will be no chance for democratic government."

State Minister Uehara advised Viscount Okochi to put his mind at ease. "Once the new Constitution is enforced," he said, "there will be no need to worry about these points....If part of the budget is appropriated by the Finance Ministry as at present, the Diet cannot function freely. If past conditions should prevail, permitting the budget to be modified by the Bureau of Accounting of the Finance Ministry, the Diet, which is to be the central organ of state power, would lose its power to conduct the affairs of the government....The Diet must have the right to establish its own budget....An independent budget for the legislature of the nation has great significance....For the first time, we have reached a point where good democratic government is possible."

Instead of the disgracefully low salary allowance grudgingly handed out to Diet members in the past by a paternal government, members now receive an annual allowance "not less in amount than the highest pay for government officials in general," that is, not less than vice ministers. Moreover, a retirement allowance is provided for members at the end of their Diet service, permitting them, as one member said, to "concentrate on state business and lead the people, free from the anxieties of family affairs." Relief from financial dependence upon

corrupt politicians and their benefactors may lead an increasing number of Diet members to place national welfare above personal gain.

The Houses are free from numerous humiliating restrictions formerly imposed upon them for no other purpose than to emphasize their impotence and inferiority. No longer is the Cabinet permitted to withdraw or amend a government bill already on the agenda of either House without the consent of the House concerned. The Cabinet cannot compel the Houses to hold closed sessions. Bills to be promulgated are now reported to the throne through the Cabinet by the Speaker of the House of Representatives, who also communicates to the throne the nomination of the Prime Minister. Although the Constitution authorizes a Minister of State to speak at any time in either House, the Diet Law requires him, before doing so, to notify the House Chairman. The Cabinet is required to report to the Houses annually on the disposition of petitions submitted to it. The government cannot deny the request of either House for reports and documents of any kind, and "The Cabinet and the Ministries must send copies of their publications to the Diet Library" and to Diet members when deemed necessary by the Diet Library Management Standing Committees.

In other major respects, the Diet Law reverses the provisions which gave the government priority over the Diet. In his explanation of the Diet Law bill to the House of Representatives on December 18, 1946, Manitsu Tanaka said, "...none of the regulations found everywhere in the Imperial Law of the Houses giving priority to the Government have been retained; those regulations have been completely eliminated." The government practice of running rough-shod over the Diet by freely appointing its members to government positions is modified by the stipulation that

such appointments require the consent of the respective Houses. Designed to give the Diet an opportunity to reconsider the system of parliamentary vice ministers, councillors, and secretaries, inaugurated in 1924 as a means of rewarding and controlling Diet members by making them government officials, this proviso cannot be fully implemented until Article 10 of the Election Law for the House of Representatives, which authorizes the appointment of Diet members to certain government posts, is repealed. The government practice of selecting bureaucrats, sometimes as high as 180 for a single session, to represent the various ministries in Diet plenary sessions and committee meetings is now checked by the requirement that such government delegates must be approved by the presiding officers of the Houses. The Diet Law permits Diet committees to require the presence of Board of Audit officials at their meetings, a practice denied them by the Meiji Constitution. Any member who desires to interpellate a Cabinet Minister may now do so upon his own request; previously, ~~30~~ thirty supporters were required.

(L.C.) New Legislative Machinery. Having rejected or altered those clauses of the Law of the Houses and the Meiji Constitution which subjected the Diet and its members to preposterous discourtesies and insults by government officials, the Representatives who framed the Diet Law went a step ~~further~~ further and equipped the Diet with a number of new aids, devices, and facilities essential to a modern legislative body. It will be recalled that the Diet Law drafting committee used as reference the Legislative Reorganization Act of 1946 as passed by the United States Senate; in addition, it had the latest editions of the Rules of both Houses of the

United States Congress. The purpose of the Joint Committee on the Organization of Congress was to "recommend improvements in such organization and operation with a view toward strengthening the Congress, simplifying its operations, improving its relationships with other branches of the United States government and enabling it better to meet its responsibilities under the Constitution." This description fits perfectly the mission and accomplishments of the Diet Law drafting committee of the House of Representatives. Inspired by the timely admission of United States legislators that congressional procedures were in need of renovation, the Japanese Representatives willingly adapted to their needs a number of the best practices, old and new, of Congress, and incorporated them into the Diet Law.

(1) Franking Privilege. Diet members now have the franking privilege "for posting documents and communications of an official character." Japanese Diet members may make weird use of free mailing rights, but at the same time they may be expected to avoid the many abuses which have grown out of the franking privilege in the United States. Its reckless use for cheap political and sometimes dangerous propaganda purposes will not be tolerated in a country where candidates for the Diet are prohibited from making house-to-house visits and from attracting crowds with elephants, hill-billy bands, or other forms of entertainment, which require a license. As a device for encouraging closer contact between Diet members and their constituents, the frank is a novel idea in Japan, and, regardless of the way it is used, it gives Diet members a privilege heretofore reserved to government officials.

(3) Offices and Clerical Assistants. Also calculated to elevate the position of elected representatives, ~~popularly~~ formerly regarded as a low calling, is the Diet Law provision for furnishing each member with an office and one clerical assistant at state expense. Throughout Japanese parliamentary history, Diet members have had only such office space and clerical help as their respective political parties could afford because the government refusing to appropriate any money for such "wasteful" purposes. In explaining the Diet Law bill in plenary session, Representative Tanaka said, "[These conveniences will] enable us to devote ourselves faithfully to the state without being bothered by trifling matters."

(2) Diet Library and Reference Service. Provisions for establishing a Diet library and a bill-drafting and reference service for each House are as novel as those calling for free mailing rights, office space, and clerical assistants. Under a system wherein ~~It is meant for~~ government officials ~~to~~ maintained a monopoly of knowledge, ~~and to draft~~ all bills, ~~But the need for~~ these services, ~~were~~ the Diet Law bill's explainer, has "hitherto been repeatedly emphasized by our predecessors."

(4) Free Discussion. Replacing the Committee of the Whole House, never used once during 57 years of the Diet under the Meiji Constitution, is the system of "free discussion" under which each House must meet at least once every two weeks while the Diet is in session to discuss state policy or other matters in which rank and file members are interested. "It is by no means an exaggeration to say," declared Manitsu Tanaka, "that under the existing law we members of the Diet have had practically no chance to express our views unless we participated as members of the

Budget Committee. It is indeed a matter for profound regret that the Diet has fallen short of its name as the 'seat of public opinion'. However, by this system of free discussion, it is expected that this weakness of the Diet will be greatly rectified. Since this system is for free discussion, members are enabled ~~freely~~ freely to express their views and opinions on whatever problem they desire to take up. They may be questions to the Cabinet, or expressions of views to either of the speakers, or the party to which they belong. By this system questions deviating from the problem under discussion as practiced now in the Budget Committee meetings will no longer be necessary, enabling this committee to revert to its proper function."

At free discussion sessions, the presiding officers are authorized "to limit time for questioning, debate, or other utterances," so as to prevent filibustering, but "the part of a member's speech omitted because of the time limit may be entered in the Record of Proceedings to such an extent as considered suitable by the House Chairman." Diet members, of course, will not be allowed to enter in the Record books, long articles, and other extraneous matter, as happens so often in the United States Congress. A subject under debate, upon the motion of a member, may be put to a vote of the House. The attitude of the House thus expressed will not be ignored by a responsible Cabinet. The fact that these sessions have been labeled "free discussion" will probably cause them to be employed as sounding boards of opinion by representatives of various parties and groups rather than for conducting the business of the House.

(6) Interpellations. "Free discussion" is likely to bring about changes in the traditional system of interpellations. The practice of questioning Cabinet members at each plenary session may be expected to give way to that of making an "urgent" interpellation only when the occasion calls for it. Hence, the attendance of Cabinet members at plenary sessions will be less frequent. The procedure whereby a bill is introduced in plenary session and followed immediately by long-winded interpellations of the proposer, usually the government, is set aside by the new procedure of referring a bill directly to committee without the customary explanation of it in plenary session. Either House may, however, if it so desires, request the presence of a Cabinet Minister, or of a member, if he is the introducer, for explanation of an important bill at the time it is submitted to the House. But as a rule, bills will be referred directly to committee, as in the United States Congress, doing away with most of the harangues, called interpellations, which in the past consumed an inordinate amount of the Diet's time.

The interpellation system is valuable and its best features have been retained and improved upon. With just cause, any member may interpellate the government upon the approval of the House Chairman; should the latter object, the member may appeal to the House. If the member's request is rejected, still the purport of his interpellation will be entered in the Record, affording proof to his constituents that he "interpellated the government." The value of restricting the interpellation device to legitimate uses lies in the fact that Cabinet members will be less inclined to make brief, insolent, and meaningless replies to

serious questions, inasmuch as their answers may be put to debate on motion of a member. The opposition will take particular delight in using this weapon to embarrass the government, while members of the government party or parties will employ it to turn the light of public opinion upon the weaknesses in the armor of their antagonists in the House.

(6) Treatment of Bills. Another important innovation pertains to the treatment of bills. Any member may introduce a bill without the support of any other members by the simple process of handing it to the House Chairman. Bills brought in by the government do not take precedence over member bills. Excepting those transmitted from the other House, bills die if the committee decides not to report them out, unless within seven days of the committee's announced decision twenty or more members demand that the bill be brought into plenary session. In the United States House of Representatives, one more than half of the entire membership is required to force a bill out of committee. In order to prevent filibustering by the technique of offering numerous unimportant amendments, a motion to amend a bill reported out of committee must be supported by twenty or more members. If a member bill is passed by one House, the member is privileged to explain his bill in the other House upon its introduction -- a right heretofore reserved to the government. The Diet Law bill, it will be recalled, was explained in the House of Peers by State Minister Uehara because the Law of the Houses had no provision permitting anyone other than a government official to do so. In order to speed up the legislative process, a government bill introduced in one House must within five days be submitted to the other House for preliminary examination.

(7) Standing Committees. The most significant part of the Diet Law, the chapter dealing with standing committees, parallels in several important respects the United States Legislative Reorganization Act of 1946. The system of standing committees more than anything else differentiates the House of Representatives from the British House of Commons and gives the Diet a strong resemblance to the United States Congress. Whether the Diet becomes "the highest organ of state power and the sole law-making body," or continues to pursue its historic role as a mere organ of discussion, will depend, in the last analysis, upon the degree to which the standing committees use the powers conferred upon them and the skill with which they employ the legislative aids and devices provided in the Diet Law.

If it is kept in mind that the Law of the Houses, in reality, provided only for ad hoc committees, lacking the power, machinery, and time to become acquainted with legislative bills referred to them and subjected at every turn to the rank indignities of imperially appointed government officials, the new system of standing committees can be seen in clearer perspective. The Diet Law sets up 21 standing committees in each House, one for each major field of jurisdiction, such as foreign affairs, budgets, audit, commerce, transportation, education, labor, and the like, plus steering, library, and disciplinary committees. Each member of the Diet must be appointed to at least one of these committees but to no more than three, and once appointed he is privileged to serve throughout his term, six years in the House of Councillors and a maximum of four years in the House of Representatives. Standing committee chairmen are elected by each House, not by the respective committees, thus giving them the

important status of House officials, while special committees elect their own chairmen. Membership in both standing and special committees "shall be allotted in proportion to the numerical strength of political parties or groups in the respective Houses." Whereas under the Law of the Houses the rule against outsiders attending committee meetings was rigorously adhered to and approved by a majority of Diet members, hearings are now open to the public except when a committee votes to hold a secret meeting. In the past, a minority report was not permitted unless at least one-third of the members of the committee disagreed with the majority position, but now any member who so desires may make a minority report. In view of the fact that the House of Representatives in the 1930's waged a bitter fight for the power to establish a permanent lower House committee, only to be defeated by the House of Peers, it is interesting to note that the Diet Law allows standing and special committees to "examine matters entrusted to them only during the term of a session," but at the discretion of the respective Houses one or even all committees may be authorized to conduct investigations between sessions, thus making it possible after all, said Tanaka, "to achieve the objective,..which has been maintained by the House of Representatives for years."

(8) Qualified Specialists. It was pointed out above that a Diet library will be established, that in connection with it legislative reference and bill-drafting services will be set up, and that Diet members will have clerical assistants. In addition to these aids for members, "each standing committee shall be provided at least two qualified specialists who are not Diet members, and an adequate number of secre-

tarial assistants, all of whom shall...receive adequate remuneration and shall not be otherwise employed. They cannot occupy any post in the administrative branches of the Government for two years following their resignation from a standing committee." Inherent in this plan is the development of a Diet bureaucracy, but to the extent that it provides technicians, working for and not against the legislative branch, who can match and offset the ministerial bureaucracy, it will be an advantage to the inexperienced Diet membership.

(4) Open Hearings. The Diet Law permits popular participation in the lawmaking process by empowering committees to "conduct open hearings on important questions of popular concern or public interest in order to hear the views of interested parties and persons of learning and experience." In adopting this old and successful legislative practice from the United States, the only nation which uses it extensively, the House of Representatives special committee on the Diet Law bill accepted it only after winning over an obstinate minority. It may come as a surprise to nationals of other countries to learn that among some lower House members there exists a peculiar attitude toward the duties and obligations of elected representatives. One member of the committee unblushingly stated that Article 51 of the Diet Law requiring public hearings "in a way may seem to be a progressive rule, but the basic ideology of the public hearing is an insult to every member of the committee....It can be said to be a self-denial. Of course we members of the committee cannot deny that we are the representatives of the people, but I am absolutely against having experienced scholars or interested persons attend our meetings. Especially when the subject concerns

bills for budgets or incomes, I am against opening the meetings to the public. It is fine for us to have party members attend and give us their opinions on certain subjects, but I am opposed to having a public hearing on important budgets and incomes....If the opinions of the public and the committee should be completely different, of course the final decision would be made by the committee, but if this news should at once be published, the people would think that we were not cooperating with them. In such a case, committee members would be...bound by the attitude of the general public." Another member of the committee agreed that while "it is only natural for each Diet member to try to gain all kinds of knowledge in every possible way...there is a great difference between a Diet member acting on his own and the entire House of Representatives setting up a public hearing system....I think that this is very radical in the sense that the general public is able to participate in legislation." Though the majority of the House committee was able to erase the doubts of the minority concerning the public hearing system, opinions expressed by the opposition are presented here because this subject "was the most discussed provision" during the examination of the Diet Law bill by the special committee. The opposing members were brought around upon being convinced that a public hearing would always be planned and conducted in a systematic and orderly fashion under the complete control of a Diet committee.

(10) Examinations and Investigations. While a few members doubted the wisdom of permitting the general public and "men of learning and experience" to express their views at committee hearings, none objected to the article authorizing each House to "dispatch its members for purposes of

examination and investigation." Even if this new privilege should be abused at the outset, committees will eventually find it a most effective aid in formulating and supervising state policy. With the power of investigation and the new power to "summon witnesses to testify in connection with legislative matters and the investigation of national affairs," members of standing committees in the course of time ~~will~~ should become no less expert in their respective fields than government officials.

(M) Legislative Committee of the Houses. The Diet Law sets up an unique agency called the Legislative Committee of the Houses, composed of 10 Representatives and 8 Councillors, whose function is to "make recommendations to the Houses and the Cabinet concerning the introduction of new legislation, existing laws, and Cabinet orders; it shall also investigate and study the Diet Law and other regulations of the Houses and make recommendations to the Houses for their revision." With reference to interim sittings and permanency of membership, the regulations governing standing committees apply equally to the Legislative Committee of the Houses. Similar in some respects to legislative councils successfully employed by two or three state governments in the United States, this committee is probably the only one of its kind in the world serving a national government. Should friction arise between the unusually powerful House of Representatives and the newly established House of Councillors, or between the Diet as the highest organ of state power and the Cabinet elected by and responsible to the Diet, the Legislative Committee of the Houses, the only permanent joint committee in the Diet and the only committee capable of rising above the turmoil of party politics and factionalism, may advance

an acceptable solution before any damage is done. That the committee has advisory powers only will give its decisions more weight than if it had compulsory powers, inasmuch as its reliance solely upon persuasive influence is not likely to engender Diet and Cabinet antagonism based on jealousy. Because a committee of this nature has not been tried elsewhere on a national scale, it will be interesting to observe its development from session to session for evidences of originality and sound judgment which may contribute to the successful operation of the Japanese government under the new Constitution.

~~Conclusion. The Constitution and the Diet Law provide the national legislature of Japan with the power and the legislative machinery comparable to that possessed by the law-making branch of the most democratic countries in the world. For representative government to succeed in Japan, as elsewhere, there must be a stable economy able to supply food, shelter, and clothing for all the people. In addition, the bureaucracy must become the servant instead of the master of the nation, and the political parties must stand for the welfare of all the people rather than for narrow and selfish factions. Finally, the political parties must stand for the welfare of all the people rather than for narrow and selfish factions. Finally, the political morality of the people must be raised by the intrusion of original thinking and the exclusion of the notion that thought is dangerous. Now that there are no Japanese "subjects" constrained to exercise their individual rights "within the limits of the law," the perpetuation of the ideals, practices, and regulations of the feudal period should be ended. By eliminating the nobility, subordinating former imperial officials to the popular will,~~

DRAFT

Full caps & centers

IV The Process of Legislation

I PROCESSING LEGISLATION

A great volume of legislation was enacted by the Japanese Diet during the first two and one-half years of the Occupation, as the following table shows:

Session	Date	No. of Laws Passed
90th (Imperial Diet)	Jun 20, 1946 to Oct 12, 1946	97
91st (" ")	Nov 26, 1946 to Dec 26, 1946	21
92nd (" ")	Dec 27, 1946 to Mar 31, 1947	95
1st (National Diet)	May 20, 1947 to Dec 9, 1947	174
2nd (" ")	Dec 10, 1947 to Jun 20, 1948	100 (estimated)

Since most of these laws were required, inspired or influenced by Occupation objectives and policies or otherwise bore some relation to them, they were all, at one stage or another, examined by General Headquarters. The degree of SCAP influence on and interest in Japanese legislation varied, of course, with the subject matter. It also changed as the Occupation progressed, for as the legislative enactments necessitated by the requirements of the Allied policies in Japan were effectuated, the sector in which the Japanese were free to legislate without SCAP influence or restraint occupied a larger and larger part of the legislative field.

U+Lcase underline

1. PREPARATION OF LEGISLATION

It has already been noted that early in the Occupation the Japanese Government was handed a series of directives in the form of memoranda from the Supreme Commander which required that certain actions be accomplished. Implementation of these directives often involved the repeal or amendment of existing laws or the enactment of new ones. Some of these laws were promulgated as Imperial Ordinances and later ratified by the Diet; some were drafted by the Cabinet as government bills to be enacted as Diet laws in the first instance. Some of the laws, enacted pursuant to SCAP Directives, were essentially a repetition of the SCAP instructions. More often, however,

the SCAP directive merely stated the objective to be achieved and the principles to be observed in its achievement, leaving to the Japanese Government the task of preparing suitable plans and drafting the necessary legislation. Usually the directive authorized direct communication between the responsible ministries or other agencies of the Japanese Government and the various staff sections of GHQ for consultation and advice on methods and details of implementation. In any event, since direct communication on technical matters was authorized from the beginning of the Occupation, the practice was for the Japanese, upon receiving a directive, to make contact with the appropriate GHQ staff section for consultation and advice on plans and legislation necessary to implement the directive. It took weeks and sometimes months to achieve a satisfactory draft. The basic work on the substance of a bill would be performed by the responsible ministry or other agency of the Japanese Government. Thence it would go to the Cabinet Bureau of Legislation where it would be examined and edited for constitutionality, consistency with existing legislation, and form and phraseology before being submitted to the Diet. In passing it may be noted that, although the Cabinet Bureau of Legislation was ostensibly legal advisor to and legislative draftsman for the Cabinet, it had, by years of bureaucratic practice and precedent, arrogated to itself the power to alter not merely the form and language but also the substance of draft bills received from the various ministries to make them conform to its own ideas of governmental policy. In February 1948, when the Office of the Attorney General of Japan was established, the Cabinet Bureau of Legislation was abolished, and the duty of rendering legal advice and drafting assistance to the various executive agencies of the Government, on their request, was assumed by a section in the office of the Attorney- General.

In addition to
~~Besides~~ the legislation called for by the formal memorandums of the Supreme Commander, a number of laws in furtherance of Allied policies were prepared and enacted by the Japanese Government as a result of informal discussions between the various Japanese governmental agencies and their respective opposite numbers in General Headquarters. The influence exerted in this ~~position~~ manner varied. At times the Japanese, recognizing the desirability of some suggested action, would respond readily. At other times a considerable amount of discussion and persuasion was required to induce them to institute some desirable change. Occasionally the Japanese would come forward with a proposal of their own for furthering Allied policies and GHQ consent was readily given. Finally, a number of laws were proposed by the Japanese which were intended to meet problems and needs that were purely domestic. As to these the established policy of the Supreme Commander was to permit the Japanese to administer their internal affairs free of interference or intervention by the Occupation authorities, provided that Occupation policies and objectives were not violated or jeopardized. Regardless of the nature of the problem, however, the advice, assistance and cooperation of the responsible staff section of General Headquarters on both matters of policy and technical details was constantly available to and frequently used by all branches of the Japanese Government.

By far the greatest number of laws enacted during these two and one-half years, especially in the early part thereof, consisted of government bills. This was only natural in view of past practice and because the initial directives, orders and suggestions of General Headquarters for furthering Occupation objectives were addressed to the executive branch of the government. The Diet did, however, make many amendments in the laws proposed to it by the Cabinet. As time went on and especially after the committee system in the new National Diet was instituted, the number of member bills became more frequent.

(Bill-finding etc. (P 37)

2 COORDINATION WITH SCAP STAFF SECTIONS

In General Headquarters, each staff section supervised Japanese implementation of Occupation directives and policies in the fields for which that section was responsible. This included, of course, instruction, suggestion and advice on proposed legislation in those fields. The staff section having primary interest in the subject matter of a proposed law effected necessary coordination with other sections having an interest in the subject, carried on the main discussions with the Japanese officials concerned, and indicated to them when the draft was considered satisfactory from SCAP's point of view. Once approved or cleared by the responsible staff section of General Headquarters, the bill was ready for final processing and approval by the Cabinet before introduction in the Diet.

When a bill was ready for introduction in the Diet, copies would be delivered to Government Section under its working arrangements with the Diet. Unless the proposed law dealt with matters falling within the scope of Government Section's staff responsibility (in which case the Section would have participated, either as principal or as other interested staff section, in the discussion and coordination leading up to the final draft) this would be Government Section's first contact with the proposed law. Assuming that (1) the bill had previously been discussed with and passed by the section having primary interest, (2) coordination within GHQ had been fully achieved, and (3) no material changes had been made subsequently by the Japanese, the bill, as submitted to Government Section, would be cleared by Government Section for introduction in the Diet. ~~This clearance would be issued by Government Section~~ after referring the bill to the interested staff sections of GHQ and receiving word from them that it was satisfactory or that there were no objections. About 800 bills were so processed. Amendments introduced in Diet committees or at plenary sessions were treated in the same manner as the original bills. As a rule, the laws as finally enacted constituted

It also involved protecting the Diet against bureaucratic pressures to which it had yielded so readily in the past ~~found~~ which it was as yet ~~found~~ ill equipped to resist unaided.

a composite of the views of General Headquarters, the Cabinet and the Diet.

U+L cover 3.

DIET'S INDEPENDENCE ENCOURAGED BY SCAP

One of the Government Section's principal concerns was to groom the Diet to assume and exercise fully the powers and functions assigned to it by the new Constitution. This involved building up the dignity and prestige of the Diet - in the estimation of its members as well as of outsiders -- that they might better ~~recognize and~~ discharge their ~~duty and~~ responsibility to the electorate. Early in 1946, even before the Constitution became effective but after the first general elections under the Occupation, it was made clear to the Japanese Government bureaucrats that they could expect no help from GHQ in any attempt to continue to use the Diet as a rubber stamp, that the Diet would be expected and encouraged to consider and discuss fully every measure that was put before it by the Government, and to register its decisions for the information of the people and for the Cabinet to heed. So long as it did not enact laws or adopt resolutions which jeopardized some objective or policy of the Occupation, the Diet was to be permitted the fullest freedom in the exercise of its functions.

Upper Lower case. No Underline

A. MacArthur Urges Freedom of Debate

In June 1946, just before the 90th Session of the Diet, a high official of the Japanese Government informally approached General Headquarters with the suggestion that in view of the urgent issues to come before the Diet and of that body's known tendency to expend valuable time in dilatory debate for purely political effect, it might be beneficial if the Supreme Commander were to address a statement to the Diet urging it to limit political discussion and to act expeditiously on the measures to be submitted to it by the Government. The draft of the new Constitution of Japan had been published in March, ~~1946~~ had been ~~publicized in~~ (widely discussed before and after) the general elections (of April 1946), and was to be the first important government proposal to the new Diet. On June 21, 1946 General MacArthur, in a public statement on the submission of the draft constitution to the Japanese Diet, called upon the Diet to "assure to all members a free,

fair and untrammelled right of discussion and debate" and "to give thoughtful consideration to every suggestion offered by its membership, regardless of strength or party affiliation." This was not the sort of statement the Japanese bureaucrats had hoped for. It was, however, in keeping with the Supreme Commander's ideas of the role of the legislature in a representative government.

In line with this policy both the Cabinet and the Diet were informed by Government Section at every opportunity that the legislative process would not be subverted by ordering the Diet to pursue any given course of action. In connection with bills of purely internal import, whether government-sponsored or member bills, there was to be no interference whatsoever with the Diet's free exercise of its functions. If any government bill for implementing some objective or policy desired by SCAP were turned down by the Diet, the remedy lay not in prostituting the Diet by making it pass legislation under covert SCAP pressure, but to issue a "Potsdam Ordinance", pursuant to a SCAP directive, i.e., an order issued by the executive branch under the government's obligation to carry out the Potsdam Declaration as agreed in the Instrument of Surrender. If the Diet were to pass a bill which violated or jeopardized some Occupation policy or objective, such act could be set aside by SCAP order. Actually it was never necessary to exercise this power. Once, when the Government Section directed the Diet's attention to the impropriety of a resolution by Yukio Ozaki calling for the return of certain of Japan's former outlying island possessions, the House of Representatives itself withdrew the resolution.

On the whole, the supervision of the flow of legislation in the Diet under these policies functioned smoothly. So far as Japanese government officials and Diet members were concerned, the basic principles were well understood and established at an early stage. ~~Such~~ Some breaches did occur, however, on the SCAP side. On ~~one or two~~ a few occasions SCAP officials, in their zeal to secure the passage

of some desired measure or the defeat of one which they considered objectionable, undertook to issue direct instructions to Diet committees. These breaches were emphatically corrected as quickly as discovered, but in order to protect the Diet against ~~repetition~~ recurrences of pressures of this sort a staff memorandum[1] was circulated to all sections of General Headquarters on March 20, 1947, instructing them that Government Section would advise the House of Representatives and the House of Councillors on bills proposed by or to the Diet, and that all proposed legislation would be coordinated with Government Section. This formally made the Government Section GHQ's clearing agent for all legislative proposals desired or sponsored by other staff sections, as well as those initiated by the Japanese.

b. Use of Executive Orders Curtailed:

Soon after the Constitution became effective, it was observed that both the Cabinet and the Diet were failing to draw the proper distinction between legislative enactments and ~~Diet~~ Cabinet Orders, often using the latter to effect what amounted to substantive legislation. This was an understandable hangover of ~~the old habits and habits which if allowed to go unchecked might perpetuated the use of Cabinet Orders in about the same way as Imperial Ordinances had been~~ old habits formed under the Meiji Constitution, when the ~~executive branch~~ of the government legislated by Imperial Ordinances. In some instances such Cabinet Orders ~~virtually ignored the so-called legislature. It must be noted that this practice was condoned and even fostered by certain~~ had the approval of some SCAP officials, who had themselves followed ~~habits formed in getting over~~ the early days of the Occupation when SCAP ~~orders~~ instructions were ~~swiftly~~ implemented by corresponding Imperial Ordinances promulgated by the Cabinet without reference to the Diet. To correct this abuse before it became ingrained, the Government Section in July 1947 arranged with the Government to have all Cabinet Orders, except those of a purely routine administrative nature, submitted for clearance before they were promulgated. Three months later, for the information and guidance of SCAP officials who might be ~~tempted~~ inclined, for reasons of expediency, to request or approve Cabinet Orders where the subject was one

1. This Staff Memorandum is included as Appendix B

calling for Diet action, a staff memorandum was circulated to all staff sections of General Headquarters requiring them to coordinate with Government Section all proposed Cabinet Orders in which they were interested.

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C. Diet: Encouraged to Initiate Bills

During the first year of operation under the new Constitution approximately 500 Cabinet Orders were issued of which 200 were examined by the Government Section. The proportion of rejections was sufficient to make abundantly clear to both the Cabinet and the Diet where the proper line of demarcation lay between executive powers exerciseable by means of Cabinet Orders and the legislative prerogatives of the Diet.

By far the greatest number of laws enacted during these two and one-half years, especially in the early part thereof, consisted of government bills. This was only natural in view of past practice and because the initial directives, orders and suggestions of General Headquarters for furthering Occupation objectives were addressed to the executive branch of the government. The Diet did, however, make many amendments in the laws proposed to it by the Cabinet. As time went on and especially after the committee system in the new National Diet was instituted, the number of member bills became more frequent.

~~During the first two and one-half years of the Occupation~~ Only fifty bills drafted by the Diet members were cleared by General Headquarters before introduction in the Diet. Of these, ~~28~~ twenty-eight were enacted into law. Since the Diet had never had a professional bill-drafting service, the preparation of legislation having been almost exclusively the prerogative of the ministerial bureaucrats, many of the member bills were found to be poorly drafted. Nevertheless, in keeping with established policy, Government Section consistently encouraged the drafting of member bills on the initiative of ~~the~~ individual members or committees. ~~themselves~~. In February 1948 the National Diet Library Law was enacted providing, among other things, for a legislative reference service similar to that maintained by the United States Library of Congress. In April 1948 an amendment to the Diet Law provided for a strong bill-drafting department in each house of the Diet. As a consequence of these developments it is expected that a greater proportion of Japanese legislation in the future will be initiated by Diet committees and individual members with the executive drafting a smaller proportion of the total. This trend should contribute materially to the growth of power and prestige of the new National Diet.

ESTABLISHING REPRESENTATIVE GOVERNMENT

The new Constitution became effective on May 3, 1947, and with it the new Diet Law and the House of Councillors Law. The first session of the new National Diet lasted from May 29 to December 9, 1947; the second, from December 10, 1947 to May 7, 1948. The basic constitutional and statutory framework for a democratic and responsible legislature had been created. The membership had been thoroughly reconstituted as the result of the general elections of 1946 and 1947. This was no lame duck affair but Japan's first attempt at truly representative government. If the Diet did not immediately measure up to its position as highest organ of state power, it at least worked with enthusiasm and made a promising start, despite its background of legislative impotency under the Meiji Constitution, the opposition of the still dominant bureaucracy, the inexperience of party leaders in the Cabinet and of many members in the Diet, the depressing economic plight of the country, and the presence of Allied troops.

The first two sessions of the National Diet might be called a period of growing pains, during which Government Section's role, aside from the observation and supervision of legislation affecting the Occupation, was that of adviser. Members of the Section, in daily conferences with the presiding officers of both Houses, the Secretaries General, committee chairmen and rank and file members, advised them in the use of the Diet's new powers, legislative machinery, aids and devices; analyzed their parliamentary errors and deficiencies as revealed by actual operations and suggested remedies therefore in corrective procedures and practices; advised on interpretations of the Diet Law, and guided them in their relations with the executive branch of the Government.

1. Election of Diet Officers

The first item of business in both Houses in the 1st National Diet was the election of officials, formerly a matter of little consequence, since the Emperor personally appointed highest ranking nobles as President and Vice President of the Peers and nominated as Speaker and Vice Speaker one of three candidates selected by the Representatives. However, the new elective House of Councillors, successor to the House of Peers, ~~showed its understanding of the times by~~ selected as President a man "above" party politics -- a distinguished Foreign Office bureaucrat and descendant of the first Tokugawa; as Vice President, it chose a left-wing Social Democrat, champion of Japan's untouchables, the Eta class. The House of Representatives chose as Speaker a veteran labor leader, and as Vice Speaker a political wheelhorse of the Democrat Party. Except for the latter, who was replaced during the 2nd National Diet session because he bolted the party, these House officials were inexperienced parliamentarians.

2. SELECTION OF THE PRIME MINISTER

Instead of being appointed by the Emperor upon the recommendation of various imperial agencies, the first Prime Minister under the new Constitution was designated by the Diet. Actually Tetsu Katayama, Social Democrat, was selected by leaders of the coalition parties, who started conferences on the subject a week before Diet convocation and reached a final decision two days after the Houses had elected their presiding officers. Article 67 of the Constitution stipulates that designation of the Prime Minister by the Diet "shall precede all other business." Had the embarrassing delay in agreeing on a Prime Minister been prolonged two or three more days, the Houses would probably have resolved the issue by voting in plenary session on nominees designated by each party, balloting until

one candidate received a clear majority. The House of Councillors prodded the party leaders into action by announcing its intention to proceed with the designation of its choice if the parties could not reach an agreement by midnight on (23) May. Before this deadline, the parties agreed upon the submission of a single candidate for Prime Minister, Tetsu Katayama, to the Houses for designation.

Almost nine months later, upon the resignation of the Katayama Cabinet, there was no party agreement upon a ~~single~~ Prime Minister designate. In the House of Representatives, Hitoshi Ashida, Democrat, was designated Prime Minister on the first ballot with 216 of the 421 votes cast, as against 180 for Shigeru Yoshida, Liberal. In the House of Councillors, however, Yoshida received a plurality on the first ballot, 101 of the 218 votes cast, with Ashida receiving 99. On the second ballot, Yoshida received 104 and Ashida 102 of the 216 votes cast, with 10 declared invalid. By a vote of 113 to 105, the Councillors decided that Yoshida had not received a majority of the votes cast and had, therefore, not been designated Prime Minister. Later that evening, the House of Councillors reversed itself and voted by acclamation for Yoshida. In accordance with Article 67 of the Constitution, a joint committee of the Houses met to break the deadlock, but upon its failure to agree, Ashida became the Prime Minister under Article 67 of the Constitution. Thus, on the second occasion for designating a chief executive, the Diet exercised its constitutional right to elect ~~a leader~~ the Prime Minister rather than accept a single candidate picked by political leaders.

In ~~proceeding with~~ the organization of the Houses in the ~~past~~ first two sessions, it was decided that the distribution of committee chairmen and

memberships should correspond to the division of posts in the coalition Cabinet. Despite some discussion as to whether committee chairmen should be divided equally among all parties, the House of Representatives decided to pick them exclusively from the government parties and to apportion committee membership on the basis of the strength of each party in the House, a scheme which gave government parties a majority on all committees.

3. DIET-CABINET RELATIONS

The first important Diet-Cabinet conflict arose early in the 1st session over the appointment of parliamentary vice-ministers and councillors. Article 10 of the Election Law of 1925 stipulates that Diet members may be appointed to a number of administrative positions, including those of parliamentary vice-minister and parliamentary councillor. Article 39 of the Diet Law, however, an expression of the true intent of the Diet in 1947, provides that members are not to be appointed to administrative positions except by law or by consent of the Diet. When the Katayama Cabinet began appointing Diet members to executive positions, each House protested, claiming violation of the law. Their real opposition was to the fact that arbitrary raids on Diet membership by the Cabinet constituted an affront to the dignity and position of the Houses under the new Constitution. Neither side won a clear-cut victory. In return for the privilege of appointing eleven parliamentary vice-ministers, the Cabinet gave up its right under Article 10 of the Election Law for Members of the House of Representatives to appoint parliamentary councillors, and, in addition, agreed to re-examine the question at the close of the session in May 1948. During the course of this dispute, Japanese newspapers generally denounced

selection of Diet members for government positions as unnecessary, vicious, corrupting, and at variance with the new system of standing committees in each House. Meantime, the new Prime Minister, Hitoshi Ashida, reopened the question by asking for more than eleven parliamentary vice ministers from the House of Representatives, positions which he needed for bargaining purposes. The House of Representatives and the House of Councillors countered by offering to allow eleven parliamentary vice-ministers from each House for the duration of the 2nd session, provided the Cabinet-sponsored bill contain a clause repealing Article 10 of the Election Law for Members of the House of Representatives which would eliminate the system entirely. The Cabinet agreed to this and incorporated it in the Bill for Temporary Appointment of Parliamentary Vice Ministers, which was approved by the Representatives on (5) April and by the House of Councillors on (7) April 1948.

Numerous factors contributed to ministerial delays in submitting bills to the Diet, thereby causing the original 50-day session of the 1st National Diet to be extended four times. On the occasion of the first extension, Chief Cabinet Secretary Suehiro Nishio announced publicly that he would request the Diet to extend the session three weeks. Thereupon, the presiding officers of the two Houses, ~~without consulting the Cabinet, immediately~~ released the following statement: "In contrast with former procedure, the term of a special Diet session, under the new Constitution, is decided by the National Diet itself, and not by the Government....The National Diet receives no directions in this connection....This announcement is made in order to make clear to the nation the position of the National Diet." The Cabinet ~~quite appropriately~~ promptly yielded.

4. EXPANSION OF DIET STAFF AND FACILITIES

Unlike its predecessor, which was literally confined to the four walls of the ~~magnificent~~ Diet Building, ~~overlooking the palace grounds~~, the new Diet, with its expanded functions, ~~early~~ anticipated that it could not operate properly with its limited secretarial staff and inadequate office space, and ~~consequently~~ drew up plans [and requested appropriations for ~~construct~~]ing buildings for members, committee hearings, printing offices, the National Diet Library, members' quarters, pressmen, stenographic training schools, and a reception hall. In the past, the [Budget Bureau of the] Finance Ministry [on its own authority could and] ~~laughed heartily at so~~ [curtly denied such] ~~outlandish~~ a request [from the Diet even if it had been made, which is unlikely.] ~~on the part of the elocution club known as the Diet~~;

But in the spring of 1947, two months short of the effective date of the new Constitution, Diet officials, ~~somewhat~~ conscious of their future status, approached the Economic Stabilization Board and the Cabinet Construction Board for materials and blueprints and then ~~persuaded~~ persuaded the Finance Ministry to set aside, over a three-year period, approximately 270,000,000 yen for the House of Representatives and 125,000,000 yen for the House of Councillors to cover the cost of 16 structures. While the Houses were busy throughout June and July electing their officers and a Prime Minister, organizing committees, ~~contending~~ differing with the Cabinet over parliamentary vice ministers and the extension of the Diet session, and awaiting the submission of Cabinet bills to the Diet, the Cabinet Construction Board was ~~removing rubbish from~~ clearing building sites and letting contracts for the construction of eight Diet buildings during the fiscal year of 1947-48. Although two partially completed structures were destroyed by fire in February 1948, two others were completed in May, with the remaining four to be ready later.

During the 1st Session of the National Diet, the secretariat staffs were increased from 371 to 597 employees in the House of Representatives and from 164 to 420 in the House of Councillors; in addition, a clerk was employed for each of the 466 Representatives and 250 Councillors. Moreover, the Diet in April 1948 requested sufficient budgetary appropriations to recruit 604 people for the staff of the new Diet Library, including the legislative bill-drafting and reference service.

5. DIET EXERCISES NEWLY WON POWERS

~~In some respects, the Diet with its new powers was not unlike a child with new toys; it took delight in asserting itself.~~ Reveling in its new powers the Diet delighted in asserting its authority as shown by the following incidents:

Standing committee chairmen, desirous of recognition commensurate with their position as House officials, concluded that they no less than the bureaucrats, deserved automobile transportation furnished by the Government. Acting in concert, they demanded that each Ministry release one sedan to them and that the Transportation Ministry supply additional vehicles ~~from time to time~~ purchased from the ~~Eighth Army~~ Occupation Forces as U.S. surplus was supplied. Their request was ~~fully complied with~~ granted.

A technique for dealing with government officials was demonstrated early in the 1st session by the Diet Library Committees. The Diet had informed the Closed Institutions Liquidation Commission, custodian for the South Manchurian Railway Library, that it wanted for the Diet this book collection, for which the Finance Ministry was also quietly negotiating. Upon learning that the Finance Ministry had all but closed a deal for the books, the Library Standing Committees threw their full weight into the controversy, even threatening a joint resolution of the Houses. Summoned before a joint meeting of the Library Committees, a Finance Ministry official admitted under questioning that ~~although~~ the Ministry had not intended to consult the Diet on the matter, not considering that Diet interests took precedence over those of the Finance Ministry, [and that] it had, by ignoring the Diet, committed ~~a technical~~ an error. The Chairman of the House of Councillors Library Committee called the Ministry's

action "a continuation of the malicious and premeditated bureaucratic practice of disregarding the legislature." Acknowledging the priority of the Diet, the Finance Ministry withdrew its 5,000,000 yen bid for the book collection and the Diet secured it free of charge.

3. In years past, the Government reserved a number of rooms in the Diet Building for government delegates and parliamentary vice ministers. Under pressure from committee chairmen for additional space, the House of Councillors instructed the Cabinet to vacate the Diet Building by the end of the 1st Session. The Cabinet moved.

4. A number of clashes occured between Diet committees and government officials. Typical was one in October 1947 when the Chairman of the House of Councillors Communications Committee, rebuking the parliamentary vice minister of Communications for superficial replies to questions and for "standing on ceremony," said, "We urge the Ministry to speak more frankly and to inform this committee in detail on all major problems at hand." The parliamentary vice minister replied, "Needless to say, it is not our intention to keep any matters secret. If some awkwardness has been apparent to date, it is attributable to our inexperience with the new Diet procedures." Under similar circumstances in the House of Representatives a few days later, the Chairman of the Hoarded Goods Special Committee deplored the uncooperativeness of Justice Ministry officials, saying that government delegates on one pretext or another would not appear before his committee when requested, and unjustifiably withheld documents. The Justice Minister declared, "The Government will do its utmost to cooperate with the Committee, and Cabinet Ministers will attend its sessions as often as possible. Delay in submitting documents has been due to the scope of the subject as well as to confusion at the time of the surrender."

5. The importance of a Japanese government official can be measured largely by the elegance of the official residence furnished him by the

government. For example, the Foreign Minister has the use of a far more luxurious residence than, say, the Minister of Agriculture and Forestry. In keeping with this ~~principle~~ practice, the presiding officers of both Houses determined at an early date to obtain for their official residences the most ostentatious estates remaining after the bombings of Tokyo. The Speaker of the House of Representatives took over without opposition the home of a prince of the blood, but the President of the House of Councillors, bidding for the palatial ~~Kotsu Prince Ri~~ estate (of the Korean Prince Ri), found that the Chief Justice of the Supreme Court and the Minister of Justice wanted the same place. Previously, no Diet official would have had the temerity to contest with a high government official, but in this case the Councillors' President let it be known that he would take the place by virtue of his own high office -- and he did.

I In one significant respect the Diet adhered to tradition.

Insert A: although it departed from former usage by featuring the Speaker of the House of Representatives instead of the Prime Minister and the President of the other chamber, the Opening Ceremony of the Diet on 23 June, 1947 and again on 21 January, 1948 nevertheless still starred the Emperor, as in the past, ~~despite the fiction that he came as a guest. To~~ despite his new position as guest. To the hundreds of Japanese officials and a handful of ordinary Japanese citizens present, the Speaker, representing the people, was ~~completely~~ still overshadowed by the arrival, the entrance and the departure of the Emperor. In both instances, the Opening Ceremony was an occasion for emperor-worship.

Ia. Scope of Cabinet Orders Restricted

Under the Meiji Constitution, approximately three-fourths of all laws were enacted by imperial ordinances, of which emergency ordinances only required subsequent Diet approval. Although the new Constitution stipulates that Cabinet Orders may be issued only for the purpose of executing the provisions of the Constitution and of laws enacted by the Diet, bureaucratic officials continued to write substantive laws as of old. It ~~is to be re-~~ will be re-

called that Government Section, under the [redacted] staff memorandum dated October 1, 1947[1], was charged with responsibility for screening proposed Cabinet Orders as a means of restricting their scope to administrative matters. About midway in the 1st session, the House of Councillors for the first time undertook to instruct the Cabinet as to how far it could go in the use of Cabinet Orders. The Labor Ministry Bill, as passed by the House of Representatives, contained a clause permitting the Labor Ministry to increase bureaus by cabinet order; the Councillors amended this clause by substituting "Diet consent" for "cabinet order," meaning that the Labor Ministry could expand its functions only after submitting the plans for expansion to both Houses of the Diet. ~~Taking~~ while they took no exception to the substance of the Councillors' amendment, the Representatives ~~nevertheless~~ resented the fact that the new second chamber would presume to tinker with a bill as approved by the powerful first chamber, and would have re-enacted the original bill had they been able to muster the necessary two-thirds vote. This being impossible, the House of Representatives acquiesced in the amendment of the House of Councillors and thus established the principle that the Cabinet must consult the Diet on matters of substance. When the Diet in February 1948 refused to allow the revenues which the Cabinet proposed raising by increased railway and communications charges to be used to pay the 0.8% salary increases to which the government was committed, it precipitated a crisis which led to the resignation of the Cabinet. The Cabinet, at times during the two sessions, was irritated by what it considered unnecessary delay in procuring Diet approval of certain classes of Cabinet Orders, but it did not contest the Diet's interpretation of the Constitution.

1. → Turn page over, b. Diet Action on Budget Problems

It is reasonably certain that henceforth the Diet will play a larger part in budget making, from the initial stages of compilation by the Finance

Ministry to final passage by the Diet itself. Unable in the past to initiate, increase, or decrease the budget, the Diet had only the right to pass it. Under the new Constitution, "The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year," but, "The power to administer national finances shall be exercised as the Diet shall determine." During most of the 1st Session, members wondered whether the Diet could really increase the Cabinet's budget and whether it could add and delete items. Finance Ministry officials answered both inquiries in the negative and thereby left the Finance and Budget Committees in doubt as to their power to administer national finances. But in the closing days of the session, the Budget Committee of the House of Representatives suggested the Diet's future course of action when it made the following declaration: "Supplementary budgets for the 1947 fiscal year were decided chiefly in consultations between GHQ and the Finance Ministry, while the Budget Committee started deliberations only after the ~~Government~~ l.c. formally submitted the budget to the Diet. In the future, especially in formulating budget estimates for the next fiscal year, the Budget Committee shall ask~~s~~ GHQ to consider the views of the Committee while the budgets are being compiled. Above all, the Committee hopes that, before reaching a decision with the government, GHQ will establish a channel of communications with the Committee." In the future the Finance Ministry, in compiling budgets, can ill afford to ignore the Diet.

C. Use of Resolutions By Diet

Nothing better illustrates the development of the Diet's understanding of its position under the new Constitution during the 1st and 2nd sessions than its experience with resolutions. Ignorant of the use of resolutions by ~~Western democracies~~ other legislatures, the Diet continued to pass representations, (usually expressing nothing but) pious wishes, beseeching the ~~Government~~ l.c. to follow a certain course of action.

Early in the 1st Session, the House of Representatives, for example, approved a "resolution" to stabilize the currency by increasing savings, which concluded with this ~~empty~~ declaration: "...it is hereby resolved that we now unite, forgetting party differences, and pledge ourselves to make all efforts for the achievement of the object of the savings movement." During the latter part of the 1st session and throughout the 2nd, the number of resolutions proposed declined sharply, ~~which in itself~~ demonstrated a greater appreciation of their use, but those approved contained specific instructions and definite demands for government compliance. For example, the House of Councillors, alarmed over the increase in crime, requested the government to "take action to insure prompt and equitable disposal of cases, by increasing the fixed number of judges, public procurators and jail officials, and by improving their treatment sufficiently to assure them a satisfactory standard of living....The Government is to report to the coming ordinary Diet session on the results of the requested measures." The Justice Minister promised to comply, knowing that failure to do so ~~will~~ would invite a resolution of censure during the next session. Both Houses made headway in the transition from representations to meaningful resolutions.

That ~~all~~ members of the Diet are ~~proud of their status under the new Constitution and~~ genuinely desirous of elevating the national legislature to the position of the highest organ of government is ~~not~~ exemplified in their ~~feverish~~ efforts to establish a functional Diet Library and with it a national library system ~~second to none~~. From the very beginning of the 1st session, in an effort to implement both Article 130 of the Diet Law, which provides that "...a Diet Library shall be attached to the Diet in order to help members conduct their investigations and researches," and the Diet Library Law enacted 28 March, 1947, the Diet Standing Committees on

Library Management, acting jointly, ~~worked with a singleness of purpose~~, surveyed library conditions throughout Japan, established and maintained contact with British and American librarians and library systems, and outlined a broad plan for a national library system. In July 1947, having progressed as far as possible without technical expert assistance, Diet leaders ~~upon the recommendation of Government Section~~ appealed to General MacArthur for the aid of an American Library Commission. Their appeal was granted, and in December, Verner W. Clapp, Assistant Chief Librarian of the Library of Congress, and Charles H. Brown, Chairman of the American Library Association, arrived in Japan to work with the Diet Committees, in coordination with Government Section and Civil Information and Education Section. The National Diet Library Law which the Committees drafted on the basis of recommendations of the American Library Commission, adopted unanimously by the Diet on 4 February, 1948, envisages the establishment of an institution comparable in size and scope to the United States Library of Congress, the French Bibliotheque Nationale, or the English National Library in the British Museum. Of inestimable value to the Diet will be the legislative reference service, which will free legislators from their former dependence on the executive branch of government for information desired. Under the guidance of Tokujiro Kanamori, Chief Librarian, organizational plans for the Library were completed, staff recruited, and arrangements made for temporary quarters for the Library in the Akasaka Detached Palace, pending construction of a permanent Library Building as provided for in the National Diet Library Construction Law, enacted on 4 February, 1948. The formal opening of the National Diet Library was held on June 5, 1948.

6. CONDUCT OF DIET BUSINESS

In the course of deliberations on some 250 legislative bills and 30 budgets in the 1st and 2nd sessions, the Diet, in committees and in

plenary sessions, had ample opportunity to test the new legislative machinery provided in the Diet Law.

Introduction of Bills

a. The new method of introducing bills by simply handing them to the Speaker, who, in turn, referred them to appropriate committees, proved to be satisfactory. Because this plan eliminated the former procedure whereby each bill was introduced and explained in plenary session, followed by interpellations, the number of plenary sessions was reduced, causing some members to feel that there was a dearth of Diet business. But when they discovered that an important bill, such as the State Control of Coal Mining Bill, could, at their request, be explained in plenary session at the time of its introduction, they ceased complaining.

Conduct of Discussions

b. The practice of "free discussion," required at least once every two weeks, taxed both Houses beyond their capacity. Besides the fact that Japanese do not indulge in the Western type of argumentation and debate in their schools or public assemblies, there were two reasons for the difficulties encountered by the Houses in attempting conscientiously to indulge in free discussion. First, Japanese plenary sessions were always extremely formal affairs, thoroughly planned and rehearsed beforehand, permitting no extemporaneous speaking and no motions or any other actions not agreed upon and placed on the agenda prior to the sitting. Second, and more to the point, the steering committees of the Houses purposely refused to allow controversial subjects, the ones in which members were genuinely interested, to be placed on the agenda. The single exception was the hotly contested nationalization of coal mines issue, which was fiercely and successfully debated at a free discussion session. GHQ was

strictly neutral ~~in this instance.~~ Despite their willingness to experiment, the Houses would not allow a member, without prearrangement, to take the floor and speak his mind. Perhaps at some future date the leaders will risk giving the rank and file members their day in court, regardless of what they may say.

c. Daily Calender And Prosedural Matters

Despite the creation of a Management (steering) Committee, each House held fast to the formal Inter-party Conference, a body representing all political parties and groups, for fixing the daily calendar and settling all disputes arising in connection with the business of the House. Although the Diet Law clothes the presiding officers with considerable authority, they exercised it only with the advice and consent of the Inter-party Conference, which met immediately prior to each plenary session. Since this practice reduces the presiding officers to figure-heads and, at the same time, deprives the Management Committees of their rights, the desire of many Representatives and Councillors, conscious of this anomolous situation, to eliminate the Inter-party Conference resulted in the adoption in April 1948 of an amendment to the Diet Law providing that the presiding officer may confer on procedural matters only with a sub-committee of the House Management Committee.

7. THE WORK OF DIET COMMITTEES

Allowing for a generous amount of awkwardness, fumbling, and timidity, as well as the necessity for experimenting, the ~~21~~ twenty-one standing committees in each House made an excellent showing and gave promise ultimately of establishing the Diet as the strongest of the three branches of government. As ~~suggested~~ noted in previous paragraphs, these committees challenged, though not always successfully, the Ministers and the entrenched bureaucrats under them, and what they learned will be used to advantage in

succeeding sessions. In taking issue with the executive branch over Cabinet Orders, the committees gave notice of their determination to be responsible for substantive law. By showing an increasing understanding of their power over taxation, appropriations, and administration, the Finance, Budget, and Audit Committees indicated that the people's representatives will henceforth exert a strong influence over these matters. If in all cases they did not prove to be experts in operating their new legislative machinery, they at least showed both willingness and ability to learn as they examined and deliberated scores of bills.

a. The Use of Qualified Experts

Although the fairly alert Japanese press continued to treat Diet members in general as self-seeking and ignorant adventurers, it never accused them of failing accurately to analyze bills. That members showed a certain uncanniness in hitting upon the salient features must be attributed in part to the two full-time "qualified specialists" attached to each standing committee. Some of these experts have distinguished records both at home and abroad in their respective fields of finance, foreign affairs, public health, transportation, commerce, communications, and the like. Studying the bills, they explained them to the committees, detected flaws, suggested amendments, pointed out encroachments on legislative authority, briefed committeemen who interpellated government delegates, provided background information, and ~~otherwise~~ in general served as a match for the experts in the executive bureaus. A committee's qualified specialists, for example, alerted the House of Councillors Labor Committee to the provision in the Labor Ministry Bill allowing the creation of additional bureaus by Cabinet Order, thus initiating the controversy which ~~dramatized~~ ended the executive's ~~unwarranted~~ attempted invasion of the

legislative field. Numerous important amendments to government bills were adopted by the Houses upon the recommendations of these special committee experts. Incidentally, to them belongs the credit for resolving, on an impartial basis, some of the serious disputes between political parties.

b. Investigation and Research

Prohibited for 57 years by the Law of the Houses from investigating conditions outside the Diet Building, the new standing committees, taking full advantage of their new privilege of making on-the-spot investigations (even abusing it at times), traveled to all parts of the four islands to investigate everything first-hand -- coal mines, factories, power sites, penal institutions, police systems, courts, cultural centers, shrines, schools, libraries, hospitals, repatriation camps, flood-damaged areas, and harbors. The value of this type of experience is self-evident.

A number of committees, with fewer bills referred to them for examination, quietly busied themselves with the study of matters within their respective fields, gaining information, background, and experience for drafting legislation of their own and for preparing themselves to evaluate government proposals. While the Electricity Standing Committee of the House of Councillors examined not a single bill, it took testimony from producers and consumers of electricity, electrical workers, and electrical engineers. As a consequence, toward the end of the session, when the first cold spell brought on a power crisis, this committee won House approval for a resolution on the subject which did more to focus public attention on the nature of the trouble and a sensible solution than did any action on the part of an executive agency. The Library Committees

of the Houses prepared themselves so well that when the United States Library Commission arrived in December, it went to work in less than 24 hours on the basis of the committees' findings, thereby saving months of background research. Other committees made similar studies.

c. Public Hearings

No new legislative practice was used more successfully or effectively by the committees than public hearings, an interesting development in view of the fact that there was more opposition to the provision for public hearings than to any other provision in the Diet Law. Public hearings conducted on the Criminal Code, the Civil Code, the Coal Bill, the general budget, the Habeas Corpus Act, the Minor Offense Bill, and others were dignified, fair and informative, and attracted unusual attention. Committees invited leading experts and ordinary citizens of both sexes to present their views, a procedure which benefitted the committeemen, attracted large crowds to the hearings, and produced wide coverage in the press, results which far more than adequately justified the effort. Spectacular, circus-like antics were avoided, and the members made no effort to capitalize on the hearings to gain personal publicity.

d. Special Committees

Under the Meiji Diet, all legislative bills, insofar as they were examined at all, were studied by special committees, whereas the Diet Law provides that practically all legislative bills will be deliberated by standing committees. Nevertheless, during the 1st and 2nd sessions, special committees were appointed to investigate flood-damage, repatriation, certain political matters, hoarded goods and illegal property transactions. The Hoarded Goods Special Committee deserves special attention because it undertook to investigate a matter of ~~tremendous magnitude~~ dangerous political ramifications, under severe handicaps, and won sufficient public support to have its tenure extended. At the

beginning of the 2nd session, its powers were greatly enlarged and its field extended to include illegal property transactions. The function of this committee was to locate and put to use billions of yen in commodities which had been ~~pilfered~~ dispersed and ~~plundered~~ diverted wholesale at the end of the war, profits from which contributed to ~~the widespread~~ political corruption during the ~~Occupation.~~ post-war period. During the 1st National Diet, the Committee, opposed fiercely by persons in and out of office, suffered because of its inability to administer oaths to witnesses. On the last day of the 1st session, this limitation was removed by enactment of the law for Oath, Testimony, Etc., of Witnesses at the Houses, a measure drafted by the Judicial Affairs Committee of the House of Representatives. Early in the 2nd session, witnesses subpoenaed by the Illegal Property Transactions Committee and testifying under oath openly ~~frankly~~ admitted to having given false testimony to public procurators when called before them. By February 1948, the committee had uncovered stolen and hoarded goods worth five billion yen and was responsible directly or indirectly for the arrest of a number of influential persons, constituting the largest investigation ever undertaken in Japan, reminiscent in of ~~preceding the ecclo~~ the Teapot Dome Scandal Investigation in the United States following World War I.

8. THE POSITION OF THE UPPER HOUSE

A favorite pastime during the debates on the Constitution and later on the Bill for the House of Councillors was to view with alarm the purposes, functions, and position of the second chamber. As if conscious of every fear previously expressed about it, the House of Councillors, by carefully weighing every move it made, was able within ~~the~~ first six months of its existence securely to establish itself as a necessary and desirable part of the legislative branch. In selecting as its officials a Tokugawa

and an Eta, in crossing swords with the more powerful House of Representatives, in denouncing boisterousness in the first chamber, and in avoiding rowdyism in its own; in its deliberations on the Coal Bill; and in its every pronouncement and action, the Councillors impressed the public with their fitness to rise above partisanship and to sit in judgment on decisions which the House of Representatives sometimes rendered in haste and without ~~proper~~ sufficient regard for the ~~nation's~~ General welfare. ~~So~~ Thus far, control of the House of Councillors has been held by non-party members, whose desire ~~is~~ has been to avoid the factiousness and partisanship so evident in the House of Representatives. ~~As political parties become stronger, they will try to win more seats in the House of Councillors.~~

Table

It is, however, inevitable that as the political parties become stronger they will win an increasing number of seats and eventually assume control in the House of Councillors.

POLITICAL PARTY STRENGTH IN THE DIET

House of Representatives

PARTY	20 May, 47	10 Dec, 47	20 Apr, 48
Social Democrat	144	140	123
Democrat	132	105	92
Liberal (Democratic-Liberal after 16 Mar, 48)	129	120	150
People's Cooperative	31	32	30
Social Renovation (Split from Social Democrat)	-	-	21
Doshi Club (Merged with Democratic-Liberal)	-	22	-
Independent Club	18	15	10
Japan Farmers	8	8	7
Communist	4	4	4
Japan Liberal Club (Split from Democratic-Liberal)	-	-	6
Non-affiliated	-	3	4

House of Councillors

PARTY	20 May, 47	10 Dec, 47	20 Apr, 48
Green Breeze	91	90	88
Democrat	42	44	46
Social Democrat	47	46	46
Liberal (Democratic-Liberal after 16 Mar, 48)	44	43	44
Independent Club	19	14	14
Communist	4	4	4
Non-affiliated	3	3	3

VI THE NEW UPPER HOUSE OF THE DIET

THE NEW UPPER HOUSE OF THE DIET

I. The Upper House under the Meiji Constitution

Under the new Constitution of Japan the Diet consists of two Houses, ~~namely~~ the House of Representatives and the House of Councillors. To this extent ~~Thus~~ the bicameral system which existed prior to the new Constitution was continued, but there the similarity ends.

The origin of the House of Peers, predecessor to the House of Councillors, was peculiar. ~~had an unusual origin.~~ No provision was made for such a body ~~It was not provided for~~ by the Meiji Constitution ~~of 1889~~ or by statutory law. It owed its existence solely to ~~Instead it was originated by~~ an Imperial Ordinance ~~which was~~ promulgated ~~at~~ on the same day ~~time~~ as the Meiji Constitution, February 11, 1889. This was prior to the convening of the first Diet in November 1890, but subsequent to the formation of the first Cabinet in 1885. ~~The first feature of the House of~~

Described by Prince Ito, author of the Meiji Constitution, as "an assembly of the higher grades of society," the ~~Japanese~~ House of Peers represented merely the ruling oligarchy in Japan. Its membership consisted of the aristocracy, prominent citizens appointed by the Emperor and wealthy men co-opted ~~selected~~ from among the nation's highest tax-payers.

a. Nature of Membership

During its last ten years of existence the House of Peers averaged ~~about~~ 408 members. The following table represents its composition in the 92nd Diet which was dissolved on March 31, 1947. ~~It~~ was the last ~~Diet session held~~ under the Meiji Constitution and marked the termination of fifty-eight years of existence from February 11, 1889, to May 2, 1947.

Princes of the Blood	0
Princes	10
Marquises	23
Counts	18
Viscounts	66
Barons	65
Imperial Nominees	128
Imperial Cabinet Members	0
Highest tax-paying members	63
Total	373

Members from the imperial family were required to be only eighteen years of age, princes, marquises and all others, thirty, with the exception of those members elected by the highest taxpayers who were required to be forty or over. The average age of all members of the House of Peers during the 92nd Diet was sixty.

The highest tax-paying members were currently elected from and by the 100 or 200 persons in each prefecture, depending upon its size, who paid the highest direct national taxes on land, or on industrial or commercial property. The term of office was for seven years except for the members of the imperial family, princes, marquises, and emperor-nominated members, all of whom served as life members.

Although under the Meiji Constitution the two Houses of the Japanese Diet, as in the Congress of the United States, ostensibly enjoyed equal legislative and budgetary powers, ~~unless the right of the House of Representatives to receive the budget estimates first be regarded as an advantage, under the traditional and unwritten laws that governed practice,~~ the lower House was in fact in a completely subordinate position, being under the domination of the House of Peers, the Cabinet and the Privy Council. Furthermore, the House of Peers not only occupied the superior position but also constituted a protecting influence ~~in favor of the interests of~~ for the aristocrats and bureaucrats whom it represented. ~~This was emphasized in many ways.~~ It was provided, for example, that whenever the Emperor appeared before the Diet the accompanying ceremonies would be held in the chamber of the House of Peers, with the President of that body specifically designated as the presiding officer on such occasions. While most of the members of the Upper House were from the ranks of the nobility, members of the House of Representatives on the other hand possessed a court rank even lower than bureau chiefs in the executive branch of the government.

The bulk of legislation under the Meiji Constitution was accomplished by one of the three forms of Imperial ordinance. The Diet merely advised and assisted the Emperor in legislative processes. It could not initiate policy, it could only apply

temporary checks. Of the comparatively small number of laws enacted by the Diet nearly all were ~~usually~~ government-sponsored measures drafted by the Cabinet Bureau of Legislation.* ~~Few~~ bills were originated by the people's representatives in the Lower House, and popular member-sponsored legislation which passed the House of Representatives was too often rejected by the House of Peers. The latter, ~~by nature an ally of the aristocratic executive branch of the aristocratic executive power~~, was traditionally contemptuous of the Lower House and consistently hostile to political party projects. An outstanding example of this attitude ~~occurred~~ in connection with unsuccessful attempts ~~that were made~~ to liberalize the old Diet Law which provided for ~~the~~ organization and procedures ~~of the House of Representatives--a law a subject minutely considered by Prince Ito in his framing of the Meiji Constitution.~~ based on the ~~procedures~~ of the Prussian Diet. The original Diet Law was promulgated in 1889 and was given the force of statutory law when adopted by the First Imperial Diet. ~~Therefore, it was subject to legislative amendment.~~ Subsequent to its adoption, not less than six attempts were made to amend it. In the 1920's when ~~political parties were still important and~~ representatives of political parties were customarily included in the coalition cabinets ~~there was a strong~~ there was a trend toward the establishment of parliamentary government, ~~as known in the western world~~, three attempts were made by the Lower House to remove the shackles imposed upon its procedures and powers by the 1889 Diet Law, ~~These efforts took the form of member bills.~~ but (the reform bills initiated by the Lower House were) rejected upon reaching the House of Peers.

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*The functions of the Cabinet Bureau of Legislation were transferred to the newly created Attorney General's office on February 15, 1948, pursuant to act of the Diet of December 9, 1947. Although the Bureau of Legislation was originally conceived of in 1885 as a bill-drafting service for the executive branch of the government, during its 73 years of existence it actually passed on all government bills and ordinances and gradually became a powerful policy-making agency. Its president sat in Cabinet meetings by virtue of his position as an extra-constitutional legal adviser to the government and nearly attained the status and power of a Cabinet minister. On several occasions Ministers of State were actually appointed to this post.

2. Creation of the House of Councillors

With the passage of the new Constitution of Japan, the Diet (Ikai) has now become the National Diet (Kokukai), the supreme organ of state power and the sole law-making organ of the state in a horizontal structure of government where the powers of the legislative, the judiciary and the executive are separate. ~~Also,~~ both houses are now elected and the former exalted position of the Upper chamber ~~less responsible to the influence of public opinion~~ has been modified. The new Constitution provides in place of the House of Peers, an elected House of Councillors, representative of all the people. It further provides for six-year terms of office in the Upper House staggered every three years. The Constitution is silent, however--

[redacted] on the number of members, the composition of constituencies, the method of election, and the qualifications of members and electors. ~~These matters were left to law so that~~ leaving these matters to be determined by law in the interest of flexibility, statutory ~~adjustments~~ might be made from time to time, ~~to enable the Japanese people through their representatives to meet unforeseeable changes necessitated by the complex structure of modern representative government.*~~

The groundwork of preliminary research and discussion ~~In order to provide the~~ necessary legislation to implement the Constitution and fill ~~in~~ the gaps in that portion ~~of the new charter~~ establishing the House of Councillors, ~~Japanese law-makers and Government Section personnel held numerous joint~~ was held during a series of conferences ~~on the subject and studied~~ between the Japanese law-makers and Government Section personnel in the course of which the history and composition of many of the world's bicameral legislative systems were analyzed and the possibilities of adapting their best features to Japanese requirements were explored. ~~It was soon realized that any law enacted in Japan for this purpose would, of necessity, be experimental in nature and suggest~~

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*The Constitution provided a six-month period from the date of its promulgation within which laws necessary for its enfordement could be enacted, the House of Councillors elected and the necessary procedures could be established. The expeditious formulation of plans and measures to execute this task was accomplished entirely by the Japanese, with officials of the Government Section acting as observers to insure that the principles of the Potsdam Declaration were followed, but otherwise advising rather than directing. This procedure followed the Supreme Commander's established policy of permitting the Japanese to exercise the maximum of initiative and responsibility in implementing Allied policies and decisions.

**This project was closely coordinated with Lt. Col. P. K. Roest and Dr. Justin Williams who were concurrently responsible for legislation reforming House of Representatives elections and legislative procedure in the Diet, respectively.

to some extent at least of artificiality. It was also fully realized that the adoption of any recognized system would call for its attunement to the particular Japanese scene and requirements.

The Japanese Provisional Legislative Investigating Committee considered well over a dozen different proposals, including variations of the following systems: proportional representation; functional representation, i.e. occupation, interest, or class representation; combinations of proportional and functional representation; majority or plurality election from House of Representatives districts; indirect election by local authorities, such as by prefectural or city assemblies; and direct election from dual constituencies.

Throughout the discussions held between the Government Section and the Japanese on the various proposals, during the Summer and Fall of 1946 a wide variety of opinions were expressed on all phases of the bill, and it was only and it was only natural that some difficulty was encountered in arriving at an acceptable and consistent interpretation of Article 43 of the Constitution which provided that: "Both Houses shall consist of elected members, representative of all the people." To some conferees this Article of the Constitution would be complied with if nomination of Upper House candidates were made by the Diet or by a commission appointed by the Prime Minister. Others thought that it would authorize indirect election in a manner similar to that by which United States Senators were selected prior to the seventeenth amendment to the United States Constitution. Still others considered that limited occupational representation in the Upper House would be quite constitutional. Strong arguments were presented from some sources that any form of representation in the Upper House other than on a strict functional basis would establish that body as a mere duplica-

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*A Cabinet agency organized to investigate and recommend to the government draft legislation considered as indispensable to the early implementation of the Constitution. For a more detailed account of the functions of the committee, and a similar one organized in the Government Section to supervise its activities, see chapter on "Evolution of the Government Section," page ____.

tion of the Lower House, and thus vitiate the principle of bicameral legislation embodied in the Constitution.

Some of the Japanese conferees, reflecting distrust in the existing political parties, were fully convinced that members of the Upper House should be above party politics, held that selection on a functional basis was the way to avoid party color in the makeup of the House of Councillors. This school of thought was opposed by those who adhered to the James Bryce theory that "Parties are inevitable. No free, large country has been without them. No one has shown how representative government could be worked without them."

In a series of lengthy discussions there were eliminated from further consideration those arguments which have been discredited by history as unsound, and the

b. Representation And Election

The various conferees, however, were eventually brought around to the viewpoint arrived at the conclusion that both Houses should be directly elected by the people; that there should be no discrimination in the qualifications of electors for the two Houses, even though some differences in the qualifications of the members might be permissible; and that anyone with the appropriate qualifications should be eligible for candidacy. These principles finally agreed upon were based on the premise that among the functions appropriate to the Upper House were those of initiating its own bills; examining and reviewing bills passed by the Lower House, interposing sufficient delay in the passage of bills to secure the expression of public opinion and thus to be guided at the crucial moment by the views of the nation as a whole, and conducting full and free discussion on all important questions, particularly those which might not be likely to receive full discussion in the Lower House if the fate of a Cabinet were involved.

Once these principles were agreed upon, fairly rapid progress was made in determining the size of the body, the composition of constituencies, the minimum vote required to win a seat, the manner of supervising campaigns and elections, the balloting method, and other important details. Determination of the minimum acceptable

age for candidates nearly proved to be a stumbling block, however, due to the traditional Oriental respect for the elders. Despite the suggestion of one conferee and a more general opinion that forty was a suitable age, the conference placed at sixty. The draft eventually agreed upon was submitted to the Diet in November 1946. It first passed the House of Peers, the body which it eliminated, with only minor amendments, and on December 25, 1946 was adopted by the Lower House and became law.

3. The House of Councillors Law provides for a maximum of 250 seats, 150 of which are filled from the forty-six prefectural constituencies, roughly on a population basis, with the remaining 100 members elected at large from a single nation-wide election district. Each elector votes for one national and one local candidate. The size of the upper House was purposely kept small in order to facilitate the maintenance of a high quality of membership. The dual constituency feature within the one chamber favors election of locally well-known men and encourages selection of well-qualified, nationally famous leaders from all fields of endeavor. There is no guarantee that all the seats will be filled, as successful candidates from the prefectural and national constituencies must poll at least one-fourth and one-eighth respectively of the valid votes cast, divided by the number of seats authorized for their respective districts.

a. Qualifications

The qualifications for electors and candidates for both Houses of the National Diet are now substantially the same except that a candidate for the House of Councillors must be over thirty years of age, while a candidate for the Lower House need be only twenty-five. The voting franchise for all public offices is now extended to any Japanese national over twenty years of age, save those who are "incompetent," "quasi-incompetent" or in prison or sentenced to penal servitude.

b. Method of Nomination

Unlike in America, there is no system of primaries or nominating conventions in Japan. One becomes a candidate for either House of the National Diet simply by

notifying the Election Chairman and filing a deposit of 5,000 yen. The deposit system discourages indiscriminate filing as the money is not returned unless the candidate polls 10% of the valid votes cast divided by the number of seats to be filled from the district.

4. The House of Councillors' Election Law

A prominent feature of the House of Councillors Election Law, now found in all Japanese election laws, provides for the supervision of elections by ~~democratically~~ ~~selected~~ administration committees chosen by the local assemblies. For the national Diet elections this function is exercised by a committee chosen by the Diet itself. These committees appoint election officials, supervise voting and counting, and rule on the validity of elections. This feature is particularly significant in view of the many irregularities which characterized Japanese elections in the past. It is a well-known fact that bribery in elections was the rule rather than the exception and that party leaders depended upon big business for the money necessary for a campaign. During that era in the 1920's and 1930's when political parties flourished, interference with elections through the party-controlled Ministry of Home Affairs was so common that the government in power seldom lost an election.

5. Subordination of the Upper House

There are certain provisions of the new Constitution and implementing laws which, ~~if applied to the old House of Peers, would have placed that body~~ place the House of Councillors in a definitely subordinate position. Formerly, the House of Peers could block a House of Representatives' bill with a majority vote; ~~A similar situation is no longer possible as~~ now the latter may by two-thirds majority of those present pass a bill over the objections of the House of Councillors. Even though failure by the new Upper House to take action within sixty days on a bill passed by the House of Representatives constitutes a rejection, the measure may still be passed by the Lower House with a two-thirds majority. ~~If~~ Now if the House of Councillors fails within thirty days to pass the budget presented to it by the Lower House, ~~it~~ the budget becomes law without consent of the Councillors. Under the Meiji Constitution both houses were equal in financial matters.

~~The Emperor~~ formerly ~~appointed~~ the Prime Minister, was appointed by the Emperor. He and his Cabinet were not responsible to the Diet but to the Emperor and the advisors close to the throne, which often included certain members of the House of Peers. The Prime Minister is now appointed by the National Diet from among its members. If the two houses cannot agree on a selection or, if the Councillors fail to make a nomination within ten days after one is made by the Lower House, then the nominee of the latter chamber becomes the Prime Minister of Japan. 12

Under the new Constitution, when the Lower House is ordered dissolved the House of Councillors is at the same time prorogued unless called into session by the Cabinet in time of national emergency. Any measures enacted by the Upper House while sitting as the National Assembly become void unless ratified by the House of Representatives within ten days after the opening of the next session of the Diet.

Thus, the former predominance of the House of Peers over the House of Representatives is not reflected in the present National Diet, where the Lower House occupies a definitely superior position. Yet the Councillors are charged with extremely important responsibilities in the legislative process and will undoubtedly exercise a stabilizing influence in the National Diet, ~~as well as check what otherwise might constitute improper actions on the part of the Lower House.~~ Even though the House of Councillors may be overridden by a two-thirds vote, nevertheless, it shares equally in the responsibility of initiating and enacting the nation's laws, and ~~in~~ The those cases where party lines in the House of Representatives cause a split on an issue, not an abnormal situation, the House of Councillors in actuality assumes the role of the determining body. It is unlikely that a measure once rejected by the Councillors ~~will~~ would receive unchallenged support in the Lower House.

16. The elections for both houses of the National Diet ~~inaugurated a new and highly significant~~ phase of Japanese political life. ~~The first free elections for the House of Representatives held in April, 1946, marked a favorable start along the path of~~

progress. The first election for members of the House of Councillors in April, 1947, was particularly significant because it constituted another ~~g~~ step in the expansion of the popular franchise ~~and also for the equally important reason that the~~ Japanese law-makers in both the legislative and executive branches of government, after months of careful study, jointly devised the unique and perhaps revolutionary method of dual constituency selection ~~to, and representation in~~ for the Upper House. They devised a system of democratic representation for the second chamber of a bicameral legislature which is novel in the field of political science. The two bodies are chosen by different methods in order that all interests may be effectively represented and in order that one house may act as a check or modifying influence on the other. The Lower House in Japan is more widely representative of the people, but it is subject to dissolution and in any event its tenure expires in four years. The Upper House is not subject to dissolution but is a continuing body with members elected for staggered terms of six years and in cases of emergency may function as the National Diet while the Lower House is dissolved. This bicameral system contains not only some of the better features of western republics and constitutional monarchies, but also has new provisions which are truly Japanese in character and origin, ~~The electorate of Japan has turned its back upon the past~~ &c.

FRANK E. HAYS
Special Adviser to the Chief
Government Section

(Leg Div) APPENDIX A

COPY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 601 (22 Oct 45)GS
SCAPIN 179

22 October 1945

MEMORANDUM FOR : IMPERIAL JAPANESE GOVERNMENT,

THROUGH : Central Liaison Office, Tokyo,

SUBJECT : Proceedings of the Diet.

1. In order that the Supreme Commander may be informed of the activities of the Diet, it is desired that the Japanese Government establish a procedure by which this Headquarters will be furnished with copies, in English, of proposed laws and reports on the progress of proposed legislation from the time the bills come before the Bureau of Legislation throughout the entire legislative process until enacted into law.

2. It is desired that the proposed procedure be submitted to this Headquarters for consideration not later than ten days after receipt of this Memorandum.

FOR THE SUPREME COMMANDER:

/s/ H. W. Allen

/t/ H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

(Leg. Div.)

Appendix C

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
AND
FAR EAST COMMAND

AG 091.1 (25 Sep 47)GS

APO 500
1 October 1947

STAFF MEMORANDUM)

NO.....82) (SCAP)

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:

PAUL J. MUELLER,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

R.M. LEVY
Colonel, AGD,
Adjutant General.

(Leg Div.)

Appendix B

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
AND
FAR EAST COMMAND

AG 320 (18 Mar 47)GS

STAFF MEMORANDUM)

NO.....29) (SCAP)

APO 500
20 March 1947

STAFF RESPONSIBILITY FOR
JAPANESE LEGISLATION

1. Reference, Memorandum for the Imperial Japanese Government, file AG 601 (22 Oct 45)GS (SCAPIN 179), 22 October 1945, subject, "Proceedings of the Diet."

2. General Application. The directive (SCAPIN 179) establishes the policy of this Headquarters to supervise the legislative process and proceedings of the National Diet of Japan.

3. Purpose. Under the new Constitution of Japan the Diet is the highest organ of state power and the sole law-making organ of the State. The purpose of this staff memorandum is to fix the relationship between this Headquarters and the Diet and to establish staff responsibility for dealing with proposed legislation. Nothing herein shall be construed to alter existing procedure under which technical discussions on proposed legislation are carried on between staff sections and appropriate ministries of the Japanese Government.

4. Staff Responsibility. The Government Section is charged with staff responsibility for all matters relating to the Diet and will advise the House of Representatives and the House of Councillors on bills proposed by or to the Diet for enactment into law.

5. Coordination. No proposed legislation, whether in the form of a bill or other act of government (except Ministerial ordinances, instructions, or regulations under existing laws) will be approved by any staff section without coordination with the Government Section.

BY COMMAND OF GENERAL MacARTHUR:

Paul J. Mueller,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

/S/
JOHN B. COOLEY,
Colonel, AGD,
Adjutant General.