

PREAMBLE TO THE CONSTITUTION OF JAPAN

Having, by virtue of the glories of Our Ancestors, ascended the Throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favoured with the benevolent care and affectionate vigilance of Our Ancestors; and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, a fundamental law of State, to exhibit the principles, by which We are to be guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

The rights of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in future fail to wield them, in accordance with the provisions of the Constitution hereby granted.

We now declare to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law.

The Imperial Diet shall first be convoked for the 23rd year of Meiji and the time of its opening shall be the date when the present Constitution comes into force.

When in the future it may become necessary to amend any of the provisions of the present Constitution, We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it, according to the conditions imposed by the present Constitution, and in no otherwise shall Our descendants or Our subjects be permitted to attempt any alteration thereof.

Our Ministers of State, on Our behalf, shall be held responsible for the carrying out of the present Constitution, and Our present and future subjects shall forever assume the duty of allegiance to the present Constitution.

Henry Stansbury

DOC 6901

THE CONSTITUTION
OF
JAPAN
PART I

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INTRODUCTION

The officially recognized year of the founding of the Japanese Empire is 660 B.C., and from then until A.D. 645 the government of Japan may be described as tribal.

It was, of course, a primitive form of government and in A.D. 646 the tribal institutions were discarded. During the 7th and 8th Centuries, there grew up a central government, with the capital at ~~KYOTO~~, consisting of a national council of three Imperial Advisers and eight Administrative Departments of State. Governors were designated by the Emperor to rule the provinces and magistrates for the districts were appointed by the Provincial Governors.

The Imperial Family was kept in seclusion in KYOTO, and for centuries prior to the MEIJI Restoration in 1867, Shoguns and other military lords ruled Japan.

The Tokugawa Shogunate, ruled by fifteen successive Shoguns lasted from 1603 to 1867. It was an autocratic military government fully centralized and built on a wide basis of feudal functionaries whose duties reached to all parts of the Empire. The Emperor reigned ceremonially without governing as he had done for centuries, and the central agency of government was the Council of State.

The economic causes for the fall of the Tokugawa Shogunate were many. The gradual and steady expansion of the money economy and the growth of the merchant class had the definite effect of undermining feudalism. Moreover, Imperial salaries were largely paid in land and large tax-exempted estates were built up. As a result, the revenues of the central government were reduced to such an extent that the governmental machinery collapsed through malnutrition.

The 15th and last Shogun gave up his title without resistance in 1867, the Imperial Government was proclaimed, and the Restoration under the Emperor Meiji began. The government was moved from Kyoto to Edo in 1868 and Edo was renamed Tokyo or East Capital.

Feudalism was abolished by Imperial Rescript in 1871 and the Reconstruction dates from that year. Important administrative changes soon followed. Many organs of the national government of today were created during this period and some, as will be discussed later, do not

operate within the structure of the present Constitution but do so independently of it.

After Japan was opened to Western commerce, Western political ideas were taken up by many Japanese and the demand for some form of representative constitutional government became so vehement that it was considered advisable to have the Emperor issue an Imperial Decree promising the establishment of a parliamentary system.

The Imperial Decree of 12 October 1881 contained the declaration:

"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 and make proclamation in due time."

Full understanding of the functioning of Japanese administration demands the recognition of the fact that although the Imperial Constitution (Teikoku Kenpo) is the central legal document of the government, it is certainly not all-governing.

The government of Japan functions under multi-policy forming bodies which are separate creations from the Imperial Constitution. The construction of government is vertical and laws, ordinances and rescripts come down to the subjects. The difference between a law and an ordinance lies mainly in the fact that a law can make alterations in any of the existing ordinances whereas no ordinance can alter any of the existing laws (Article IX of the Constitution).

In addition to determined efforts to glean the best from Western nations to operate a centralized monarchical government, the Japanese early brought into the Empire all scientific knowledge which they thought they could use - communication systems, telegraph, lights, telephones, railroads and steamships - all were required to enable the monarchy to cement its position of regained authority.

The work of the Reformists may be summed up by saying that they created a new monarchical government dressed in western forms.

The result is a scheme of government in which the basic law or Constitution is essentially Prussian in origin, the structure of the law-making bodies is patterned on those of England, and the system of local government is similar to that of France's Third Republic.

Manhood suffrage, ministerial responsibility, a Privy Council, political parties, a bi-cameral parliament with an aristocratic upper house, the secret ballot, prefects and mayors, national law codes, a constitution, trial by jury and administrative courts - all of these are features of modern Japanese government, yet none is indigenous to the country.

It should be mentioned at that stage that in Japan the Ordinance power goes beyond the effectuation of statutes and the delegation of functions, to which the Ordinance power is essentially, though not entirely, restricted in Great Britain and the United States. It accomplishes, under the constitution, a variety of purposes which are, in many western countries, left to the Legislature. It follows the model of the continental European type by which the Executive exercises a limited inherent power of legislation at his own discretion.

This inherent power of legislation by ordinance in Japan is greater than in any other constitutionally governed state and embraces the power to establish the whole administrative hierarchy, to determine the organization and peace standing of the army and the navy, to declare war, to make peace and to conclude treaties.

I. - EXTRA CONSTITUTIONAL BODIES

Before discussing the Imperial Constitution, mention is made of the bodies and offices of administrative power which are "unseen", do not function publicly and are outside the Constitution. These agencies may be termed extra-constitutional, and give vitality to the formal structure created by the Constitution because by force of tradition they are competent to advise the throne.

The functions and membership of these extra-constitutional agencies will be fully explored and explained in the second part of this discussion. It is perhaps sufficient at the moment to say that their functions transform an otherwise inert document, such as the Constitution, into a highly interesting instrument of administration.

These agencies are:

(I) Imperial Conferences (Gozen Kaigi), which function only under the gravest situations.

(II) The Elder Statesmen (Genro), whose advice was given upon the direct request of the Emperor and who disappeared in 1940 with the death of Prince Saionji, the last surviving member.

(III) The Senior Statesmen (JUSHIN), who were late in coming into being and appear to be taking the place of the Genro in some respects. Their advice is sought in grave emergencies.

(IV) The Emperor's Military Boards

(a) Board of Marshals and Fleet Admirals, which was established in 1898 and consisted of the Princes of the Royal Blood and the highest army and naval officers.

(b) The Supreme War Council, which originated in 1887 when the services were being revamped on western lines and was definitely established by Imperial Ordinance No. 294 in 1903.

II. - EXTRA CONSTITUTIONAL OFFICES

(I) Lord Keeper of the Privy Seal (Naidaijin), who is appointed directly by the Emperor.

(II) The Minister of the Imperial Household, (Kunai Daijin), who is also appointed directly by the Emperor and is charged with the administration of matters relating to the Imperial Household. He is not a member of the Cabinet.

III. - THE IMPERIAL CONSTITUTION

(I) Conditions under which drafted.

(a) World Tours.

In 1884, Prince Hirohumi Ito returned from Germany after two years of study and close association with leading statesmen of the Western world, particularly Bismarck. Ito's trip abroad was only the last of a series which had begun ten years earlier and of which Iwakura's mission was the most famous. Upon his return, Ito and his assistants began the work of drafting all the preparatory documents leading to constitutional reform.

(b) Commission of Administrative Reform.

This Commission was attached to the Imperial Household and not to any other governmental body. In May 1888, the Privy Council took over the final deliberations of this Commission and held its meetings in the Palace with the Emperor present at many of the sessions.

(c) German Influences.

British or American democratic ideas and their concept of power coming from the people could not be adapted to the Japanese system or psychology of those years and consequently Ito took little from England or the United States. The unification of Germany by Bismarck on the other hand appealed to the Japanese and the Constitution may be said to owe much to German influences.

(II) Promulgation of Constitutional Laws and Ordinances.

(a) Characteristics.

The Japanese Constitution consisting as it does of seventy-six brief articles is shorter than the Constitutions of many other nations. The language is simple and concise. It was promulgated by Imperial Rescript on 11 February 1889.

(b) Other Laws and Ordinances.

The law thus provided is a mere skeleton and important laws and ordinances which were promulgated with the Constitution in 1889 were:

1. The Law of the Houses;
2. The Imperial Ordinance concerning the House of Peers;
3. The Imperial Ordinance concerning the Election of Members of the House of Peers;
4. The Imperial Ordinance concerning the Cabinet;
5. The Penal Law concerning the infringement of Ordinances;
6. The Judicial Court Formation Law;
7. The Court of Administrative Litigation Law;
8. The Board of Audit Law.

(III) The Chapters of the Constitution.

(a) Chapter I is devoted to the Emperor. The first articles have reference to the Tenno being sacred and

inviolable and that an unbroken line of Emperors will reign over Japan for ages eternal.

The position of the Emperor in relation to the Constitution is stated by Ito in his "Commentaries on the Constitution of the Empire of Japan" as follows:

"The Sacred Throne of Japan is inherited from Imperial Ancestors and it is to be bequeathed to posterity; in it reside the power to reign over and govern the State. That express provisions concerning the sovereign power are specially mentioned in the Articles of the Constitution in no wise implies that any newly settled opinion thereon is set forth by the Constitution; on the contrary, the original national policy is by no means changed by it but is more strongly confirmed than ever."

And again Ito says:

"His Imperial Majesty has himself determined a Constitution and has made it a fundamental law, to be observed both by the Sovereign and by the people.

"All the different legislative as well as executive powers of State, by means of which he reigns over the country and governs the people, are united" in this most Exalted Personage, who thus holds in His hands, as it were, all the ramifying threads of the political life of the country, just as the brain, in the human body, is the primitive source of all mental activity manifested through the four limbs and the different parts of the body."

(b) Chapter II is entitled "Rights and Duties of Subjects". Among the rights are freedom of religious belief and of speech, freedom from arrest and protection of property rights. Among the duties are the liability for service in the Army or Navy and the liability for the payment of taxes.

(c) Chapter III concerns the Imperial Diet.

(d) Chapter IV concerns the Ministers of State and the Privy Council.

(e) Chapter V sets forth the organization and jurisdiction of the Judiciary.

(f) Chapter VI determines the financial powers of the Diet and other governmental bodies.

(g) Chapter VII contains the supplementary rules which provide for amendments to the Imperial House Law, the Constitution and for the continuation of all laws, ordinances and regulations enacted before the Constitution provided that they were not in conflict.

IV. - THE CABINET (NAIKAKU)

The Imperial Rescript on the permanent system of Cabinet Organization was issued in September, 1889. The Cabinet in its initial state was instituted in 1885 and the Council of State was abolished. It is to be observed that except by inference, the Cabinet is not mentioned in the Constitution.

Article LV of the Constitution provides:

"The respective ministers of State shall give their advice to the Emperor and be responsible for it. All Laws, Imperial Ordinances and Imperial Rescripts of whatever kind, that relate to the affairs of the State, require the countersignature of a Minister of State."

Ministers of State are appointed by the Emperor on the advice of the Prime Minister.

Referring to the creation of the Cabinet, ITO in his Commentaries says:

"By the said reorganization, the Ministers of State were made each separately to bear his share of responsibility to the Emperor directly. Over them were placed the Minister President of State. The object of this change was, on the one hand, to give weight to the functions of the Ministers of State and to impress upon them a higher sense of their responsibility and, on the other, to maintain the unity of the Cabinet and to avoid all complications and variances therein."

(I) Membership.

The Cabinet is composed of:

(a) The Prime Minister who has specific powers and duties of his own and is appointed by the Emperor on the advice of the Lord Keeper of the Privy Seal.

(b) Thirteen Ministers of State selected by the Prime Minister and appointed by the Emperor:

War	Commerce and Industry
Navy	Communications
Home Affairs	Railways
Foreign Affairs	Education
Finance	Justice
Agriculture and Forestry	Welfare
Overseas Affairs	

(c) Such other Ministers without portfolio, not to exceed four in number, as are provided in Article X of the Cabinet Rescript. The office of the Minister without Portfolio has been utilized as a means of contact with economic and political groups such as the Imperial Rule Assistance Association and the Imperial Rule Assistance Political Association which groups will be discussed later.

(II) Functions.

Ito's Commentaries set forth the intention of the framers of the new Constitution:

"First, that the Ministers of State are charged with the duty of giving advice to the Emperor, which is their proper function, and that they are not held responsible on His behalf; secondly, that the Ministers are directly responsible to the Emperor and indirectly so to the people; thirdly, that it is the Sovereign and not the people that can decide as to the responsibility of Ministers, because the Sovereign possesses the rights of sovereignty of the State; fourthly, that the responsibility for Ministers is a political one and has no relation to criminal or civil responsibility; nor can it conflict therewith; neither can the one affect the other."

The Cabinet is relatively free from popular controls since its members are primarily responsible to the Emperor and only secondarily to the elective branch of the national legislature, the House of Representatives.

Article V of the Rescript contains the seven functions of the Cabinet:

"I. -Drafts of laws, financial estimates and settled accounts.

- II. -Treaties with foreign countries and all national questions of importance.
- III. -Ordinances relating to Administration, or to the carrying out of regulations and laws.
- IV. -Disputes connected with the relative competence of Ministers of Departments.
- V. -Petitions from the people, handed down from the throne or submitted by the Imperial Diet.
- VI. -Expenditures apart from the ordinary estimates.
- VII. -Appointment of Chokunin Officials and of Prefects and Governors, as well as their promotions and removals.

"In addition to the above, any important matters connected with the duties of Ministers of Departments, and having relation to the higher branches of the Administration, shall also be submitted for deliberation by the Cabinet."

All of these functions are carried out by the Cabinet under the direction of the Prime Minister.

(III) The functions of the Prime Minister in the Cabinet.

He is of Shinnin rank and has the following specific powers and functions:

- (a) Gives direct advice to the Throne.
- (b) Co-ordinates the work of the ministries.
- (c) Represents the Cabinet in all public affairs.
- (d) Issues orders for the suspension of any administrative operation or of any order made by a Minister of State.
- (e) Issues Cabinet Orders.
- (f) Directs the Metropolitan Police Board of Tokyo, as well as the Prefectural Governors.
- (g) Appoints Shinto Chief Priests and Sub-Chief Priests who are made *sonin* in rank.

The Prime Minister also has the power to serve concurrently as a Minister of State, and this has been done a number of times.

Of the relationship between Premier and Ministers, ITO wrote:

"The Minister President of State is to make representations to the Emperor on matters of State and to indicate, according to His pleasure, the general course of the policy of the State, every branch of the administration being under the control of the said Minister. The compass of his duties is large and his responsibility cannot but be proportionately great."

Thus, he placed the Premier in a position of distinct superiority, responsible for the administration as a whole and empowered to direct it.

(IV) The functions of Ministers of State in the Cabinet.

All the Ministers of State except those for War and Navy are of Shinnin rank and are appointed by the Emperor upon recommendation of the Prime Minister.

This would perhaps be an appropriate time to state the ranks of Japanese officials. They are as follows:

SHINNIN Rank Officials: Those personally appointed by the Emperor.

CHOKUNIN Rank Officials: Those appointed directly by the Emperor on the recommendation of the Premier.

SONIN Rank Officials: Those appointed by the Premier with approval of the Emperor.

HANNIN Rank Officials: Those appointed by departmental Ministers.

The Ministers have three general duties:

- (a) To bring matters of his Ministry before the Cabinet through the Prime Minister.

- (b) To delegate his functions to another Minister should it be necessary.
- (c) To validate by his signature all laws, ordinances and rescripts which originate in his Ministry.

It made it clear, however, that the responsibility of the Minister for measures did not lie in the fact that his signature was formally on the law but from the fact that he was an adviser to the Throne.

(V) Organization of Administrative Staff.

The Administration of the Cabinet is carried out by a Secretariat, two sections of Bureaux and Boards and a large number of Committees.

(a) The Secretariat.

The Secretariat is presided over by the Chief Secretary of the Cabinet.

(b) Boards.

1. The Board of Planning.

This Board, which is headed by a President, is the most important unit of the Cabinet. It was formed on 14 May 1937 by Imperial Ordinance. The same Ordinance abolished the Board of Investigation which had similar functions.

The Board is organically a part of the Cabinet as a section for deciding upon national policies.

The functions of the Board are found in Article I of the Ordinance:

(i) To make recommendations, acting on the instructions of the Prime Minister, with pertinent observations, both in regard to important national policies and to their co-ordination and adjustment. The Board's regular function is to advise the Premier so as to avoid conflicts and to adjust all matters among the various ministries.

(ii) To investigate important policies proposed to the Cabinet by its Ministers and to make appropriate recommendations. Policies proposed by the different departments are referred to the Board, which studies them in the light of their importance and investigates

them from the point of view of the unity of all national policies. Each Minister knows the requirements of his own department, but the adjustment of those requirements between departments is dealt with by the Board rather than by the Premier alone.

(iii) To investigate important policies, and to study the means of co-ordinating and adjusting them. The latter constitutes "The permanent and regular function" of the Board. On such matters it does not make its decisions public, but always tenders them to the Premier.

(iv) To make recommendations concerning control over budget estimates on proposed policies.

The Board may call for explanatory data in case such are necessary for carrying out the functions of the Board.

The organization of the Board includes:

- (i) A president who is appointed by the Emperor from among the Cabinet Ministers.
- (ii) A Vice President
- (iii) Twenty full-time councillors.
- (iv) Fifteen assistant councillors.
- (v) A regular staff of both junior and senior members.
- (vi) Permanent advisers from the bureaux of the various ministries.
- (vii) A staff of technical advisers when required.
- (viii) Under Article III of the ordinance, each Ministry is required to have a liaison officer present.

A later change in the organization provided for the appointment of a Director which position was filled by a Minister without Portfolio.

2. The Legislative Bureau.

This Bureau drafts all bills and ordinances of the government which are to be submitted to the Diet.

All changes by amendment or repeal of laws and ordinances come to this Bureau. The President, because of the work carried on, may attend and speak at Cabinet meetings.

3. The Decorations Bureau.

This bureau is in charge of awards of the Order of Merit and decorations and pensions.

4. The Manchurian Affairs Board.

This Board is concerned with matters arising in connection with Manchuria and for the Kwantung Leased Territory.

5. The Board of Information.

This Board is the public relations office of the Cabinet.

In order to centralize the work of public relations for the Government, a Commission of Information was created in July 1936. This was changed to the Cabinet Information Bureau in September 1937.

Under the powers granted by the General Mobilization Law, information sections of the various governmental offices were combined into one. The Bureau of Information of the Ministry of Foreign Affairs, the same in the Ministry of War, the Publicity Bureau of the Ministry of the Navy and the Books or Censorship Section of the Bureau of Public Order in the Ministry of Home Affairs, were all centralized into the new Board.

Its organization includes a president, usually a Minister without Portfolio, a vice-president, fifty-one secretaries and engineers and specialists.

Originally, there were five Bureaux whose functions related mainly to such matters as the dissemination of information at home and abroad, censorship, and the control of publicity and broadcasting.

During the war, the Board was further re-organized to control propaganda at home and abroad.

It is divided into three Divisions and collects and disseminates information on national policies, censors all publications in the nation and controls broadcasting, motion pictures and musical and theatrical entertainment.

6. The China Affairs Board.

This Board was established by Imperial General Ordinance 16 December, 1938, to administer civilian affairs in the occupied areas. The functions of the China Affairs Board of the Ministry of Foreign Affairs and of the Ministry of Overseas Affairs were transferred to this new Board.

The direction and administration of all East Asia policies are centered in this Board whose specific duties comprise:

- (i) Political, economic and cultural problems relating to the China Affair.
- (ii) The study and investigation of governmental policies to be taken in regard to matters coming under the above category.
- (iii) Supervision of the operations of the companies established under special laws for the purpose of carrying on business in China as well as the control of the business transactions in China by persons who are so engaged.
- (iv) The maintenance of unity in the administrative affairs of the different government offices relating to China.

The important North China Development Company and the Central China Promotion Company are under the control of the Board. These companies administer large activities in China.

The organization of the Bureau is necessarily large and the President is the Prime Minister ex officio. The Ministers of Finance, Foreign Affairs, War and Navy serve as vice-presidents. The Director-General is the actual administrator. He has fifty officers and sixty clerks to compose the staffs of four bureaux - political, economic, cultural and technical.

7. Other Boards.

The Bureaux whose administration is routine and headed by a Director are inter alia the Statistics, Pension and Printing Bureaux.

(c) Councils.

1. The Cabinet Advisory Council.

This body was created by the Imperial Ordinance of 15 October, 1937, as a consequence of the outbreak of the China Incident in July 1937.

The purpose of the Council was to study and have at hand material on domestic and foreign matters brought about particularly by the Incident and to participate in the deliberations and planning of the cabinet in regard to that incident.

For the first time businessmen and industrialists were combined in high office with the military and diplomats. All members are called councillors and are twelve in number.

2. Central Economic Council.

The various ministries submit their economic items to the Prime Minister who in turn refers such items to the Council.

(d) Committees.

Permanent and temporary committees do special work for the various bureaux. The names of the committees suggest their functions and are as follows:

- (i) Higher Civil Service Committee.
- (ii) Education Investigation Committee.
- (iii) Central Statistics Committee.
- (iv) Pension Arbitration Committee.
- (v) Resources Investigation Committee.
- (vi) Rice and Cereals Investigation Committee.
- (vii) Temporary Committees.

These Committees are set up from time to time, as required, and deal with such matters as, for example, the correction of election evils.

(VI) Cabinet Procedure.

Cabinet meetings are closed and secret and, while formal records of cabinet meetings are maintained, they are not published.

Voting on questions is rare and differences of opinion are either compromised in the cabinet meeting or final decision is left to the Prime Minister and only one decision or opinion is made public.

Cabinets fall in Japan for a number of reasons. They have fallen because of -

- (i) Opposition from the military;
- (ii) Opposition from the House of Peers or House of Representatives;
- (iii) Opposition from the Privy Council;
- (iv) Defeat in the elections;
- (v) Public opinion; and
- (vi) The death of the Prime Minister.

However, defeat in election and public opinion have never been potent causes in bringing about the fall of a cabinet.

(VII) The Double Cabinet.

The Cabinet of the Japanese is unusual in world cabinets. The Premier nominates all Ministers except the Minister of War and the Minister of the Navy. These two Ministers are nominated by their respective services. No civilian has ever held the posts. A partial exception occurred during the Washington Limitation Conference in 1922 and the London Naval Conference in 1930 when the Premier held the post of Minister of the Navy concurrently with his premiership as was his right so to do.

Prince ITO declared in his report to the Emperor in September 1891 that only military personnel should be appointed Minister of War and Minister of the Navy in order to maintain Imperial prerogatives as well as military prestige and to place the supreme military and naval command beyond parliamentary interference and party politics.

The Ministers of War and of the Navy as well as the two Chiefs of Staff may report directly to the Emperor concerning matters within the purview of the Supreme Command. These ministers must be, under Imperial Ordinance, high military and naval officers respectively. The practice dates from the earliest Cabinet and was embodied in two Imperial Ordinances -- No. 193 and No. 194 of 1900 affecting both Ministries, and amended by Imperial Ordinance No. 165 of 1913 for the Ministry of War, and by Imperial Ordinance No. 168 of 1913 for the Ministry of the Navy.

The earlier Ordinances required that a Minister of War hold at least the rank of Lieutenant-General, and a Minister of the Navy at least that of Vice-Admiral, in both cases in active service. The amendments of 1913 made it possible for a senior officer on the retired list to be appointed Minister.

In 1936, the regulation was again changed by Imperial Ordinances No. 63 and No. 64 to provide that senior officers in both services eligible for such appointments must be in active service.

As will be seen later, this power of appointment and withdrawal of the Minister of War and of the Navy has enabled the military to prevent a government being formed, or to bring about its fall after it was formed. It will be shown that the Supreme Command, when acting within its proper sphere is supreme over the civil power, and that the right of direct access of the military prevents the Cabinet from acting collectively at all times as a parliamentary body when an important segment of its function and administration is carved away.

V. - THE PRIVY COUNCIL (SUMITSU-IN)

It is obvious that the framers of the Constitution desired the Privy Council to be a permanent

institution. They organized the Cabinet as a government body to function with a personnel of changing statesmen. They organized the Council to be a permanent governmental institution. Each is policy forming, and each is advisory. The Privy Council also exercises the legislative function. It is the highest constitutional body of the advisers of the Emperor.

(I) Membership

The Privy Council is composed of a President, a vice-president and twenty-five councillors, all of whom are appointed for life by the Emperor and are of shinnin rank. The practice, however, has grown up that the Premier nominates the candidates after consultation with the President or Vice-President of the Council. Councillors must be over forty years of age. They may resign and often do so despite the high honour of the office. Should a councillor accept a Cabinet office, he must resign from the Council. Councillors are generally members of the House of Peers.

(II) Functions and Powers.

The Imperial Ordinance of 8 October, 1890, was issued shortly after the Imperial Constitution was promulgated. The ordinance changed and clarified the original ordinance of 30 April, 1888.

Article VI of the 1890 ordinance sets out six specific powers:

- I. -Matters which are under its jurisdiction according to the provisions of the Koshitsu Tempan, or the Imperial House Law.
- II. -Drafts of laws and doubtful points relating to the provisions of the Constitution and laws and ordinances supplementary thereto.
- III. -Proclamation of martial law under Article XIV and the Imperial ordinances to be issued under Article VIII and LXX of the Constitution, as well as all other Imperial Ordinances having penal provisions.
- IV. -International treaties and agreements.

- V. -Matters relating to the amendment of the organization of the Privy Council and the rules for the conduct of its business.
- VI. -Matters specially submitted to its deliberation for advice, in addition to those above mentioned."

The Constitution in Article LVI contains specific provision for the Council:

"The Privy Councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of State, when they have been consulted by the Emperor."

In its relation with the Imperial Household, it meets with the Imperial Family Council. The internal affairs of the House are not discussed, but only those which concern the relation of the Family with the State - such as land and property to be included in Imperial Hereditary Estates, the Regency and succession to the Throne.

The relations of the Council to the State are both executive and legislative. It amends many of the drafts of new laws and ordinances before they are submitted to the Diet. When bills are being passed by the Diet the advice of the Council may be asked. In this instance, it does not amend but advises adoption or rejection of the whole issue. The actual power of decision of what is to be submitted to the Council lies with the Cabinet. Moreover, the Cabinet is legally free to secure advice from other offices in cases in which the advice given by the Council is not what is desired. But the political effect of a recommendation of the Council may be a deterrent to the Cabinet to seek further advice.

The legislative power of the Council lies in the ratification of treaties in foreign relations. The Cabinet negotiates the treaties and the Council advises the Emperor whether to ratify or reject. The powers of the Council are such that it may cause serious embarrassment to a Cabinet and even wreck it.

In 1927, the Cabinet of Premier Wakatsuki sought to save the Bank of Taiwan (Formosa) by authorizing large advances by the Bank of Japan under government guarantee. The government had obtained legislation supposedly sufficient to protect the banks in the Diet session which had recently closed, but apparently had not gauged the needs of the Bank of Formosa at that time. The Privy Council insisted that an extra session of the Diet should have been convened and refused its approval on the ground that the measure was unconstitutional. This refusal brought about the fall of the Wakatsuki Cabinet.

The legislative power by way of emergency ordinances is used under grave and dangerous conditions of State. Such ordinances may be issued whether the Diet is in session or not. The emergency powers are derived from Articles VIII and LXX of the Constitution.

"Article VIII. The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law. Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve of the said ordinances, the Government shall declare them to be invalid for the future."

"Article LXX. When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures by means of an Imperial Ordinance. In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto."

(III) Procedure.

Meetings are held in the Imperial Palace in Tokyo at which the Emperor sometimes attends as an auditor. Decisions are reached by a majority; the minority members have their votes recorded with explanations.

Non-members who may attend and vote are Princes of the Royal Family and Cabinet members. Information is given to the press in some detail and sometimes even information on the voting appears in the papers.

Records are kept and opinions on the issue are sent to the Throne as well as to the Premier.

There has been a gradual encroachment by the Privy Council over other bodies and in particular the Cabinet. No case exists in which the Cabinet has been overruled by the Privy Council and has then petitioned the Throne for an adoption of the minority opinion. The Emperor would not overrule his highest constitutional body of advisers.

VI. - THE IMPERIAL DIET.

The Imperial Diet, established by the Constitution of 1889, is composed of two chambers - a House of Peers and a House of Representatives.

In defending the adoption of a bicameral system, Ito in his Commentaries says (page 64):

"The aim of a representative system is to draw profit from the results of public deliberations. Now, when all the political forces are united in a single House, and are left to the influence of excited passions and abandoned to one-sided movements, with no restraining and equalizing power over them, that House may in the intemperance of biased excitement overstep the limits of propriety, and, as a consequence, bring about the despotism of the majority, which may in turn lead to anarchy. Evils would be far greater under such a state of things, than they were in the days when there was no representative system at all."

Furuya, writing in 1899 expressed the following view:

"The system of two chambers is absolutely indispensable in Japan, where the feudal regime was abolished scarcely a quarter-century ago."

The Imperial Diet possesses no constitutional power in the declaration of war, making of peace, conclusion of treaties, recognition of new states and governments or in the appointment of diplomatic and consular officers.

With the gradual development of a parliamentary system, however, the Diet has tended to exert an increasing influence, though indirect and often ineffective, over foreign policies as well as over domestic affairs, through legislation, fiscal control and parliamentary debates. Nevertheless, its powers although extensive are not exclusive; they are secondary, not primary; the Diet is competent to apply checks but cannot initiate policy.

The Law of the Houses of the Diet provides for the relations of the two Houses of the Diet to each other and sets out the procedure to be followed in each House.

(I) The House of Peers (Kizoku-in).

(a) Membership.

Article I of the Imperial Ordinance of the House of Peers sets forth the qualifications of membership for this chamber:

- (i) Members of the Imperial Family.
- (ii) Princes and Marquises.
- (iii) Counts, Viscounts and Barons who have been elected thereto by the members of their respective orders.
- (iv) Persons who have been especially nominated by the Emperor on account of meritorious service to the State or of erudition.
- () Persons who have been elected, one member for each city or prefecture, by and from among the taxpayers of the highest amount of direct national taxes on land, industry or trade therein, and who have afterwards been nominated thereto by the Emperor.

There are in addition certain age limit qualifications. The House is not divided into political parties but rather into groups which are opinion forming. There are approximately four

hundred members.

(b) Powers.

1. The Imperial Ordinance for the House of Peers which is its governing law can only be amended by this body (Article XIII).

2. It is consulted by the Emperor on privileges of the nobility (Article VIII).

3. Because of its legislative power, it can interfere in the organization of the House of Representatives.

4. It can settle qualifications and election disputes of its own members (Article IX).

A committee system is used to carry on the work of the House as stated in Chapter IV of the Law of the Houses of the Diet. There is a Committee of the whole House and various Standing and Special Committees.

ITO wrote in his Commentaries:

"If the House of Peers fulfills its functions, it will serve in a remarkable degree to preserve an equilibrium between political powers, to restrain the undue influence of political parties, to check the evil tendencies of irresponsible discussions, to secure the stability of the Constitution, to be an instrument for maintaining harmony between the governing and the governed."

(II) The House of Representatives (Shugi-in).

(a) Membership.

The Constitution in Article XXXV provides that the House of Representatives shall be composed of members elected by the people, according to the provisions of the Law of Elections.

Article I of the Law of Elections requires the member to be elected from specific electoral districts. Japan is divided into 119 electoral districts and a minimum of three and a maximum of five members are elected from each district for a term of four years.

The total number of seats is 466. Formerly any male subject over 25 years of age had the right to vote and any male subject over 30 years was eligible to be a candidate. Recently the age qualifications were lowered and in the election of April 1946, the franchise was extended to women who also became eligible to be candidates.

There are certain restrictions on both franchise and eligibility, e.g. bankrupts, the military on active service and certain government officials. No official can combine his office with membership in the House of Representatives. Cabinet members are one of the exceptions to this rule.

The Commentaries remind members-to-be of the House of Representatives that they are:

"all of them representatives of the whole country... Representatives, therefore, are to speak freely in the House, according to the dictates of their individual consciences, and are not to regard themselves as the delegates only of the people of their respective districts, commissioned to attend merely to matters entrusted to them by their constituents."

(b) Powers of House of Representatives and limitations thereon.

1. The Budget is submitted to the House of Representatives before it is debated in the House of Peers.

In 1892 an issue arose between the two houses regarding their respective right in connection with consideration of the Budget. The issue was referred to the Emperor, who referred it to the Privy Council.

The decision set the precedent of equality.

"With regard to the right of consent to the budget vested in the House of Peers and Representatives respectively, neither house is superior or inferior to the other except in one particular, that, according to the 65th Article of the Constitution, the lower house receives the budget from the government before the upper. Therefore the House which deliberates subsequently is in no respect bound by the decisions of the house which deliberated previously, and it consequently follows that the restoration of any items which may have

been excised by the house previously deliberating falls strictly within the right of revision vested in the house subsequently deliberating. The house subsequently deliberating has only to employ the method indicated by the law of the houses, namely to seek the concurrence of the house previously deliberating."

2. Because the Law of Elections controls the qualifications for candidates, the chamber has no authority on these matters such as is enjoyed by the House of Peers.

3. The legislative power of the House of Representatives is not equal to that of the House of Peers since its group action and "party organizations" can be interrupted and broken through dissolution. In other words, the character of the house is changeable and it has a temporary atmosphere with little solidarity among members as compared to that in the House of Peers. As will be discussed later, all political parties in Japan were dissolved in 1940.

(c) Comparison of Powers of the Houses of the Diet.

1. The House of Peers is never dissolved; it is prorogued only. The House of Representatives is not only prorogued concurrently with the House of Peers at times, but also it is dissolved. Dissolution may be forced upon the House of Representatives by the government. While this chamber is in dissolution and its members awaiting re-election, the House of Peers is only prorogued. Because many seats may be filled by new members, a change of policy in this chamber often takes place.

2. The political parties of the House of Representatives may be reflected in the Cabinet and the Cabinet actually may be a party cabinet. But because the Cabinet, as soon as appointed, becomes the government and pro facto responsible primarily to the Emperor and only to the Diet or people secondarily, differences of opinion between the Cabinet and Diet on questions of policy frequently develop.

3. The Cabinet being the government and desiring to test public support in a controversial issue, asks for a rescript to dissolve the House, throws the issue to the people in another election and wins.

The process is successful for rarely have the opponents been returned in the same number as they were before. Costs and expenses for re-election rather than simple public opinion account for the defeats in many cases on which fact the government relies. None of these burdens are borne by the House of Peers.

4. The House of Peers determines its own rules and activities yet can take part in legislative action with the House of Representatives for the organization of the latter body.

5. Custom gives the House of Peers prestige by having the opening and joint sessions held in the upper chamber with the President of the House of Peers presiding.

(d) Powers of the Diet as a whole.

1. Legislative power - constitutional limitations.

- (i) It cannot convene voluntarily. It is convened at the call of the Emperor.
- (ii) It cannot initiate Constitutional amendments since this is the sole prerogative of the Throne.
- (iii) It has no control over the Imperial dynasty.
- (iv) It is confined in activity and scope by the use of the Ordinance powers of the Emperor.
- (v) Because of the direct access of the military to the Emperor, it is isolated on military or war matters although they concern vital matters of Government and Empire.
- (vi) It has little to do with treaties and major policies in foreign relations. The Constitution is very brief in its treatment of foreign relations, confining itself to the statement: "The Emperor declares war, makes peace and concludes treaties."

ITO comments:

"The principal object of the present article is to state that the Emperor shall dispose of all matters relating to foreign intercourse, with the advice of His Ministers, but allowing no interference by the Diet therein."

- (vii) It has no control over additions in territory to the Empire. Taiwan became a part of the Empire by treaty after the Sino-Japanese war of 1895 and Karafuto by treaty after the Russo-Japanese war of 1904-5. Chosen was annexed by treaty in 1910. None of these territorial acquisitions received legislative approval by the Diet.
- (viii) The Government monopolizes the introduction of bills into the Diet. Members have the right to introduce bills and they do but the mortality of such bills is severe. Actually no legislation has been submitted by a private member since political parties were eliminated. It is now customary for the Diet to legalize all measures presented to it by the Cabinet and then to retire. Normally a bill is read three times in the Diet before it becomes law. The procedure in this regard is to be found in Article XXVII of the Law of the Houses of the Diet, which provides:

"A project of law shall be voted upon, after it has passed through three readings. But the process of three readings may be omitted, when such a course is demanded by the government and by not less than 10 members, and agreed to by a majority of not less than $\frac{2}{3}$ of the members present in the house."

The legislative power of the Diet may be summed up in the words of Ito in his Commentaries:

"The Legislative Power is ultimately under the control of the Emperor, while the duty of the Diet is to give advice and consent."

2. Financial Powers.

(i) The Budget.

Under the Constitution, "The expenditure and revenue of the state require the consent of the Imperial Diet by means of an annual budget.

The entire budget, which takes the form of an appropriation bill, is voted upon by both houses of the Diet, but there are important categories of items that may

not be altered by the Diet without the concurrence of the government.

This means that the Diet must accept such items unless it can persuade the ministry to modify or delete them. It does not carry the inference that the Diet can establish any items of the budget without the concurrence of the government, but rather there are some items which the government may not establish without the concurrence of the Diet.

The Excepted Items of the Budget are:

- (1) The expenses of the Imperial household, which are paid each year out of the National Treasury.
- (2) The expenses "based by the Constitution upon the powers appertaining to the Emperor" (Article LXVII of the Constitution) among which are:
 - (I) Salaries of military and civil officers and pensions of civil officers.
 - (II) Expenses of army, navy, gendarme and colonial militia.
 - (III) Expenses arising from treaties with foreign countries.

Under the limitations of this clause the Diet is powerless to withdraw appropriations once agreed to - or which were in effect before the Diet was established for the conduct of a Ministry or any division thereof. It is not, however, restrained from effective disapproval of appropriations entailed by new ordinances, e.g. an item for the creation of a new ministry or other agency.

- (3) Expenses authorized by Article LXVIII of the Constitution "in order to meet special requirements, the government may ask the consent of the Imperial Diet to a certain amount as a continuing expenditure fund, for a previously fixed number of years." Once these funds are voted, no changes are made. The total is

divided and allocated to each year and hence is part of that year's budget regardless whether the Diet is not in session through having been dissolved or whether the budget was passed. Examples of special accounts which may be cited are:

- (I) The Sino-Japanese war, 1894-95, when the fund continued over sixteen months.
 - (II) The Russo-Japanese War of 1904-5 when the fund continued over three years.
 - (III) World War I when the fund continued for eleven years.
- (4) Expenses as may have arisen "by the affect of law", e.g. expenses of the houses of the Diet, annual allowances to the members, pensions, annuities, expenses and salaries required by the organization of offices determined by law and other expenses of a like nature.

Items in this category may be altered only by the modification of the statutes authorizing them. In such cases the Diet will have had an opportunity to debate the principles involved in the authorizing act, but it is not free to repudiate its decision by refusing the necessary items in the budget.

- (5) Expenses as appertain "to the legal obligations of the government". These include the interest on the national debt, redemption of the same, subsidies or guarantees to companies, expenses necessitated by the civil obligations of the government and compensation of all kinds. Funds to maintain temples, to provide agreed sums to subsidize navigation companies, railways and schools and to pay damage interest and rentals fall within this class.

Uchiiki and Sakamoto in their article, "The Budget System of Japan" state:

"The total amount of the above funds

(what are called here the excepted categories) is usually about two-thirds of the total expenditures of the budget, and if we add to this the continuing appropriations, a very small amount is left for consideration in the Diet. It is only in case these permanent expenses are to be increased that the consent of the Diet is necessary. Thus the scope of the vote in the Imperial Diet is very limited; but nevertheless there are sharp debates on the bill."

The Constitution provides (Article 64) that:

"any and all expenditures overpassing the appropriations set forth in the titles and paragraphs of the budget, or that are not provided for in the budget shall subsequently require the approbation of the Imperial Diet."

The Article is supplemented by another (Article 69) under which:

"in order to supply deficiencies which are unavoidable in the budget and to meet requirements unprovided for in the same, a reserve fund shall be provided in the budget"

Thus the Diet endows the government with blanket power to employ the reserve fund in its discretion, but it is entitled to a report upon such expenditures at a subsequent session. At that time it may refuse to approve them; however such refusal will not invalidate the acts of the government nor the obligations which it is under as a result of its acts. The Diet may fail, - frequently it has failed - to vote the budget. In that event the device of Bismarck, authorized by the Constitution (Article 71) is called into play, and the government, theoretically carries out the budget of the preceding year - theoretically only, however, since it employs deficiency appropriations to a continually increasing extent to increase the old budget. It may not, however, apply an appropriation for any object other than that prescribed in the budget; nor are the Ministers of State permitted to interchange the amounts of the appropriation in each section, one for the other (Law of Finance Article 12).

It is apparent that when the budget, due to dissolutions, is that originally prepared for the preceding year, there will be need for many deficiency appropriations.

The government formerly dreaded a dissolution before the budget was passed, but because deficiency appropriations, which are supposed to be used only in emergencies, have become a usual mode of procedure, the government is not dismayed at the prospect of its budget being thrown out. Once an expenditure is made, the opposition is likely to be half-hearted, and in this way the control of the Diet is still further diminished.

- (ii) The Tax Power of the Diet is derived from Articles LXII, LXIII and LXIV of the Constitution.

Special tax laws are submitted to the Diet. They are separate from the budget or appropriation bills. While new taxes require the sanction of the Diet, such tax laws are not part of the budget; the government is not dependent upon annual debate or discussion for renewals and its revenues go on being regularly collected.

- (iii) Floating of Loans is provided for in Article LXII of the Constitution which provides that the consent of the Diet to such loans is required.

- (iv) Emergency Ordinances.

The First and Second Reserve Funds established by Article 7 of the Law of Finance and provided for by Article LXIX of the Constitution may not be sufficient to finance unexpected catastrophies or the emergencies of war. Moreover, neither time nor public safety may exist for an extraordinary session of the Diet. When these two grave situations occur, the government is authorized under Article LXX of the Constitution to take". . . all necessary financial measures by means of an Imperial Ordinance."

Funds received in this manner have to be sanctioned at the next regular session of the Diet, and the Ordinance must be withdrawn if disapproved by the Diet (Article VIII). Non-approval does not affect the past operation of the ordinance.

The power of the Privy Council in regard to such emergency ordinances is important, as that body

must be consulted whenever such ordinances are to be issued. It may be said that the Council has consistently opposed the practice of issuing emergency ordinances which would have further restricted the already limited financial powers of the Diet.

VII. - THE BOARD OF AUDIT.

The Board of Audit is a separate administrative body created under Article LXII of the Constitution which provides that:

"The final account of the expenditures and revenues of the State shall be verified and confirmed by the Board of Audit. . ."

The President of the Board is appointed directly by the Emperor after advice and deliberations with the Premier. He is not a Cabinet Minister, but is on an equal footing with the Ministers of State.

The abovementioned Article further provides that the final account "shall be submitted by the government to the Imperial Diet, together with the report of verification of the said Board."

The Diet is enabled in this way to check the account against the budget and to demand explanation of variances between them.

This approval is not attended with legal consequences but the Diet may vote lack of confidence or submit an address of criticism to the Emperor.

VIII. - THE MINISTRIES OF STATE

The Ministries have been established by both laws and ordinances. The basic legal form of the Ministries was determined at the time of the promulgation of the Constitution in 1889. Amendments through ordinances and laws have altered, added or abolished Ministries and their bureaux, sections and personnel.

(I) General Structure of the Ministries.

(a) The Ministers (Daijin).

1. The constitutional powers of the Ministers of State are derived from the Preamble and Articles LV and LIV.

The Preamble charges that "Our Ministers of State on Our behalf, shall be held responsible for the carrying out of the present Constitution..."

Article LV provides that "... they shall give their advice to the Emperor and be responsible for it." By the same Article the signature of the Minister is required on "all laws, Imperial Ordinances and Imperial Rescripts of whatever kind, that relate to the affairs of the State..."

Article LIV is permissive in that Ministers and their delegates "may, at any time, take seats and speak in either House."

Concerning the Ministers of State, ITO wrote, "They are severally held responsible for the matters within their respective competency... there is no joint responsibility among them in regard to such matters."

He then pointed out that each Minister was "controlled by the will of the Emperor" and that the danger in creating a Cabinet with joint responsibility was the growth of "party combination" which, it was feared "would ultimately overrule the supreme power of the Sovereign." Yet he recognized that there were important matters of concern to all the Ministers, that regarding them the Premier would naturally consult with the Ministers and that "in such matters it would of course be proper for the Cabinet to assume joint responsibility."

Thus it may be said that ITO contemplated individual responsibility of Cabinet Ministers for matters pertaining to their respective departments, joint responsibility for general matters, and responsibility of the Premier for both types of decisions.

OZAKI in "The Voice of Japanese Democracy," pp 63-64, states the Japanese principle of responsibility as follows:

"For acts done by the head of a department of state of his own volition and not by virtue of resolutions passed in the Cabinet, the Minister concerned alone is responsible, while for acts done pursuant of resolutions passed in the Cabinet, all the Ministers are conjointly responsible."

2. The specific powers of the Ministers of State may be summarized in part as follows:

- (i) They are with minor exceptions in command of their special field of government for the whole Empire.
- (ii) They issue ordinances for the carrying out of their functions and duties.
- (iii) They issue directions to the Kenchiji or Governors in their respective branches of government.
- (iv) They supervise all public relations and in person represent the Ministry and staff in public gatherings.
- (v) They, with their vice ministers, control the tenure of the senin rank officials.
- (vi) They appoint and remove all hennin rank and lower rank officials.
- (vii) They have the dual function in the Cabinet of being not only Cabinet statesmen to formulate and carry out a national policy but also of being lobbyists for their own ministries.

Ministers are appointed by the Emperor upon the recommendation of the Prime Minister.

Party affiliations may or may not be borne out in the selection of the Ministers. A political party may have a majority in the Diet but the colour of the Cabinet may be quite different. Victory of a party at the polls does not mean control of the affairs of State or dominance in the Cabinet. These two possible situations are sharp limitations upon the power of the democratic ballot.

For most Ministers, tenure in office is only for the term of one Cabinet. However, some have been continued in office consecutively for two or three Cabinets and some have been recalled after having gone out of office.

Concurrent office holding has been frequent in recent years. The permanent Vice Minister does not

step up to fill a temporary vacancy as is the practice in some countries.

(b) The Permanent Vice Minister (Jikan).

The powers of this officer are usually defined in the ordinances as the executive assistant to the Minister whose duties are to regulate the business of the Ministry and to supervise the operations of the bureaux.

The Vice Minister is appointed indirectly by the Emperor through the Minister and while his tenure of office was contemplated as being of long duration so that continuity in ministerial policy could be maintained regardless of change in the office of Minister, actually in some ministries the Vice Minister has gone out of office almost as frequently as the Cabinet Ministers, for the reason that the Vice Minister has found it difficult to work with the New Minister.

(c) The Parliamentary Vice Minister (Seimujikan).

This officer frequently appears before the committees of both chambers to make explanations and to present information furnished by his Ministry. More frequently than not he is a member of the Diet and as such maintains a dual position.

This appointment to office is made by the Prime Minister on the nomination of the Minister.

(d) The Parliamentary Councillor.

The functions and duties of this officer are similar to those of the Parliamentary Vice Minister as is his tenure of office.

(e) The Secretariat.

The Secretariat is the administrative staff for the entire Ministry

(f) The Bureaux (Kyeku)

They are the main administrative units of the Ministries.

(g) The Committees (I,inkai).

Committees are appointed for permanent and temporary purposes. They may be executive, advisory or investigative.

(h) The Boards (In).

Boards as organs of government are definite supplementary agencies for administration purposes.

(II) The Ministers of State.

Until recently there were thirteen Executive Ministers of State: (1) War; (2) Navy; (3) Home Affairs; (4) Foreign Affairs; (5) Finance; (6) Agriculture and Forestry; (7) Commerce and Industry; (8) Communications; (9) Railways; (10) Education; (11) Justice; (12) Welfare; and (13) Overseas Affairs.

The Ministry of the Imperial Household is actually an additional Ministry but because it was separated legally in 1884 from the executive Ministries of State with specially created functions to serve only the throne, it is not a part of the executive machinery of State.

In 1942 a new Ministry of Greater East Asia was established. In substance this new organization removed all matters which dealt with the Greater East Asia Co-Prosperity Sphere from the Foreign Office.

In 1943 the Ministry of Overseas Affairs was eliminated and its functions, together with the amalgamation of four other Ministries, resulted in the creation of three new Ministries. The Ministry of Commerce and industry, the Ministry of Communications, the Ministry of Railways and the Ministry of Agriculture and Forestry gave way to the creation of a Munitions Ministry, a Transportation and Communications Ministry and a Ministry of Agriculture and Commerce.

IX. - THE MINISTRY OF WAR (RIKUGUNSHO).

As has been said earlier Prince Ito declared in his report to the Emperor in September 1891 that only military personnel should be appointed Minister of War and Minister of the Navy in order to maintain Imperial prerogatives as well as military prestige and to place the supreme military and naval command beyond parliamentary interference and party politics. Mention has also been made of the various ordinances requiring the Minister of War and of the Navy to be senior officers on the active list.

(I) Specific duties.

Because many important policies of the Army are not determined in the Ministry but go to the Emperor directly the Minister does not carry on the type of policy conference which exists in other Ministries. The Ministry may be described as the administrative machinery of the Army.

Almost all of the Ministers of War have been outstanding figures in the Imperial Army. They have been graduates of the Military Academy and have been military attaches, divisional commanders, chiefs of staff of armies and members of the Supreme Military Council.

(II) The Bureaux (Kyoku).

The Ministry has eight bureaux to carry on its administration. Normally each is headed by a Major General or Colonel.

(a) Personnel Bureau (Jinji Kyoku).

1. Appointment Section (Honin Ka).

- (i) Appointment, promotion, assignment, retirement, etc.
- (ii) Wartime duties of personnel in the Ministry - military and civilian.
- (iii) Personal records.

2. Pensions and Decorations Section (Onsho Ka).

- (i) Pensions.
- (ii) Decorations.
- (iii) Furloughs, marriages, etc.

(b) Military Affairs Bureau (Cumru Kyoku).

1. Military Administration Section (Gunji Ka).

- (i) Matters concerning the fundamental principles of national defense.
- (ii) Matters concerning the armament of the Army and other general administration of the Army.
- (iii) Matters concerning the establishment, peacetime organization and equipment of the Army.
- (iv) Matters concerning the principles of guarding against danger, defence, defence, mobilization of the army and manpower.
- (v) Matters concerning the general control of the military estimates.
- (vi) Matters concerning fundamental munition administration.
- (vii) Matters concerning the control of the duties of the air service and others connected with aviation.
- (viii) Matters concerning manoeuvres and inspection.
- (ix) Matters concerning allotment of units and corps.
- (x) Matters concerning various regulations in wartime.
- (xi) Matters concerning resident-officers in foreign countries, officers studying abroad.

(xii) Matters concerning Army Research Committee.

2. Military Affairs Section (Gummu Ka).

(i) Matters concerning general affairs of the national defense policy.

(ii) Matters concerning international regulations.

(iii) Matters concerning foreign officers attached to army units.

(iv) Matters concerning general affairs of national demobilization.

(v) Matters concerning army affairs of Manchuria and China and orders concerned with them.

(vi) Matters concerning army affairs of foreign countries except Manchuria and China.

(vii) Matters concerning connection affairs with Imperial Diet.

(viii) Matters concerning popularization of national defense spirit and counter-plan for nation's thoughts.

(ix) Matters concerning controlling of direction of parties researching for military affairs.

(c) Military Service Bureau (Heimu Kyoku).

1. Military Service Section (Heimu Ka).

(i) Duties of various armies and branches of the service exclusive of the gendarmerie and the air force.

(ii) Training and duties of members of military bands.

(iii) Training manuals.

- (iv) Discipline and punishment.
 - (v) Internal duties.
 - (vi) Military ceremonies, etiquette, insignias.
 - (vii) Parade grounds, rifle ranges, etc.
 - (viii) Military training of students and youth.
2. War Preparations Section (Heibi Ka) as it existed before the war.
- (i) Matters relating to military service.
 - (ii) Recruitment and replacement of officers and men.
 - (iii) Military mobilization
 - (iv) Muster
 - (v) Mobilization of men in general.
 - (vi) Requisitions
 - (vii) Matters pertaining to ex-servicemen
3. Defence Section (Boei Ka).
- (i) M.P.'s mission
 - (ii) Military Police (except that in charge of Judicial Bureau and protection of military units).
 - (iii) Spy protection
 - (iv) Air Defence
 - (v) Guarding and safety precautions
 - (vi) Garrison duty
 - (vii) Construction and complement of fortifications and lands used for national defence.

(viii) Laws applied to fortified zone,
military management laws applied
to army transport areas.

(ix) Domain and city planning.

4. Horse Administration Section (Basei Ka).

(d) Military Preparations Bureau (Seibi Kyoku).

(e) Ordinance Bureau (Heiki Kyoku).

(f) Bureau of Intendance (Keiri Kyoku).

(g) Medical Bureau (Imu Kyoku).

(h) Legal Bureau (Horu Kyoku).

The Army Press Section has been the public relations office for the Ministry and the Army. So important to the Army is its propaganda and official releases that a Major General has been in command of the section. Since the formation of the Bureau of Information under the Cabinet, important announcements and information have not been given out through the Army Press Section.

(III) The Army.

To complete the Army organization, attention is drawn to the following offices and institutions which are not a part of the Ministry of War, nor under its supervision.

As has been stated under the powers of the Emperor, all matters of organization, mobilization and operation are his personal commands and are not a part of the Ministry of War.

The Army by taking the initiative on the battlefield can present the Foreign Office with a fait accompli. This leaves its diplomats no alternative other than to accept the existing situation. As has been said the Army acts and the Foreign Office explains.

Ito says of this power,

"The exercise of the right of warfare in

the field - - - as the exigency of circumstances may require, may be entrusted to the commanding officer of the place, who is allowed to take actual steps his discretion dictates, and then to report to the government. This is to be regarded as a delegation of sovereign power of The Emperor to a general in command of an army in order to meet the stress of emergencies- - -"

Nakane in the "Ordinance Power of the Emperor" wrote:

"Though the declaration of war and conclusion of peace are placed under Cabinet control, the general staffs having the supreme command of the armed forces, could force the declaration of war and the conclusion of peace by sending an aggressive expedition against a foreign power or withdrawing troops from the field."

(a) The General Staff (Sanbo Honbu).

1. Organization.

- (i) Chief of the General Staff, who is concerned with the broad phases of military strategy, planning and mobilization. The Regulations of the General Staff Office provide that a general or lieutenant-general is appointed by the Emperor to the post of Chief of the General Staff, and is placed under the direct command of the Emperor, attends the War Council, takes charge of the formation of plans for national defence and strategy and supervises the General Staff Office.
- (ii) Vice Chief of the General Staff.
- (iii) Staff Members.

Attached to and under the jurisdiction

of the General Staff are the following institutions:

- (i) The General Staff College (Army War College).
- (ii) The Army Land Survey Department.

The Chief of the General Staff is appointed by the Emperor.

2. Bureaux.

- (i) General Affairs Bureau.
 - (1) Personnel Affairs.
 - (2) Organization and Mobilization Section.
- (ii) Operations Bureau.
 - (1) Operations and war plans section.
 - (2) Fortresses section.
 - (3) Manoeuvres section.
- (iii) Intelligence Bureau.
 - (1) American and European section.
 - (2) Asiatic section.
 - (3) Secret Service section.
- (iv) Transport and Communications Bureau.
 - (1) Communications (wireless and wire) section.
 - (2) Transport (Land and Sea).
- (v) Historical Bureau.
 - (1) Wars in which Japan took part
 - (2) War in which Japan did not take part.

(b) The Inspector General of Military Training.

The office of the Inspector General of Military Training is responsible for all technical and tactical training of the separate arms. Briefly one might say that the Minister of War administers, the Inspector General trains, the Chief of the General Staff employs the Army in manoeuvres or battle. To the Inspector General of Military Training chiefly falls the important task of building the national esprit de corps known in the Japanese Army as "spiritual mobilization."

Military schools are under its jurisdiction together with a number of inspectorates such as the artillery, engineering, transport, cavalry, chemical warfare and communications inspectorates.

(c) The Inspector General of Military Aviation.

The Inspector General of Aviation is directly responsible to the Emperor for matters pertaining to air training, while in other respects he is subordinate to the Big Three (Chief of General Staff, Minister of War and Inspector General of Military Training).

The Inspector General of Aviation is responsible to the War Minister in matters pertaining to personnel and military administration, and is responsible for operations to the Chief of the General Staff.

(d) The Army Aviation Headquarters.

The office is a subordinate agency under the Ministry of War. The principal functions appear to be largely procurement and supply.

(e) Japanese Military Police.

1. Organization:

The military police (Kempei) form a branch of the Army under the Provost Marshall General who is responsible to the Minister of War.

2. Sections:

(i) General Affairs Section. This section

is concerned with policy, personnel, discipline, records and the control of thought in the Armed Forces.

(ii) Service Section. This section has three main functions:

- (1) The supply, organization and training of police units.
- (2) Security.
- (3) Counter-espionage.

3. Duties:

The military police take orders from different authorities according to the areas in which they are stationed.

In Japan, during peacetime, they are responsible to the Minister of War for their normal military duties, to the Minister of Home Affairs insofar as they assisted the civil police and to the Minister of Justice for duties connected with law administration.

In Manchuria, Korea and Formosa, although they are primarily responsible to the Commanders in Chief, they may also be called upon to assist the local civilian authorities.

In all areas their broad duties are:

- (i) The surveillance of military discipline.
- (ii) The enforcement of security.
- (iii) The execution of conscription laws.
- (iv) The detection of crime among soldiers.

In combat areas they are, in addition to their ordinary duties, concerned with:

- (i) The detection and arrest of fifth columnists.
- (ii) The suppression of subversive activities.

In the Pacific area they are responsible for:

- (i) Pacifying hostile natives.
- (ii) Settling disputes between natives and Japanese soldiers.
- (iii) Requisitioning native foods and supplies.
- (iv) The recruitment of native labour.
- (v) Organization of native spies operating behind allied lines.

In New Guinea, according to reports, the military police were given charge of a native force both for reconnaissance purposes and in order to harass the enemy.

(f) The Supreme Command Organs.

1. The Board of Field Marshalls and Fleet Admirals (Gensuifu).
2. Supreme War Council (Gunji Sangiin).
3. Wartime Imperial Headquarters (Senji Daihonei).

The present Imperial Headquarters was formed in 1937 when it became apparent that the China Incident was developing into a war of major proportions. Its purpose is to assume supreme military command with the general staff as its nucleus. In other words it places the Supreme Command on a war-time basis. Its membership is essentially the same as the Supreme War Council with the exception of the Board of Fleet Admirals and Field Marshalls who are not members. The Emperor as Supreme Commander-in-Chief is the head of the Imperial headquarters.

(IV) Administration of Prisoners of War.

(a) Jurisdiction.

By Imperial Ordinance No. 1182 of 23 December 1941 prisoner of war camps were placed under the jurisdiction of the Minister of War. The Ordinance provided that they were to be administered by a Commander

of an Army or a Commander of a Garrison under the general supervision of the Minister of War.

(b) The Prisoner of War Information Bureau.

The Prisoner of War Information Bureau was organized by Imperial Ordinance No. 1246 of 27 December 1941 and placed under the control of the Minister of War. Article I of the Ordinance provided that the Bureau shall be charged with the responsibility of the following matters:

- (i) The investigation of internments, removals, releases on parole, exchanges, escapes, admissions into hospital, deaths of prisoners of war and the maintenance of records for each prisoner.
- (ii) The communications, correspondence, and information regarding the conditions of the prisoners of war.
- (iii) The custody and the transmission to families and other persons interested of objects, articles and wills of the prisoners of war who are released on parole, exchanged, or those who died at hospitals, medical dressing stations, or prisoner of war camps.
- (iv) The forwarding of gifts to prisoners of war and of money, objects, and articles sent by or to the prisoners of war.
- (v) Information obtained by the army or the navy from those killed or slain in battle, the handling of their objects, and wills and of objects found in the field of battle.
- (vi) Investigations concerning persons who are prisoners of war in enemy countries and the facilitation of communications between those prisoners of war and their families residing in the empire.

(c) The Prisoner of War Administration Division or Department.

The Regulations for the Treatment of Prisoners

of War (War Ministry Notification Asia, Confidential No. 1034 dated 31 March 1942) provided by Article II that the Prisoner of War Administration Division be established in the Ministry of War for the conduct of all affairs relative to the treatment of prisoners of war, and of civilian internees in the theatre of war.

Provision was also made in the Regulations for the appointment of a Division Head with the rank of Lieutenant General or Major General, and staff members with the rank of Field or Company grade officers. Article IV provided that the Division Head shall administer the affairs of the division under the orders of the Minister of War and the staff members shall carry out their duties under the orders of the Division Head.

The new division dealt with such matters as the supervision, exchange, liberation, punishment, utilization and treatment of prisoners of war.

(d). Complaints regarding Prisoners of War.

For about a year after the outbreak of the war, complaints from the Swiss Government relating to the treatment of prisoners of war were received by the Treaty Bureau of the Ministry of Foreign Affairs and forwarded to the Prisoner of War Information Bureau of the War Ministry.

The replies, if any, to the Swiss Government were based on the replies received from the War Ministry.

Subsequently, the Service Bureau of the Ministry of Foreign Affairs was established and the prisoner of war matters formerly dealt with in the Treaty Bureaux were transferred to the new Service Bureau.

X. - THE MINISTRY OF THE NAVY (KAIGUNSHO)

The Ministry of the Navy was created in 1872 when the Ministry of War was separated into two Ministries. It was established more formally in 1885 and 1889 and with some later amendments remains in that structure. The Navy itself follows the British pattern of organization.

(I) The Minister of the Navy (Kaigun Daijin).Specific Duties.

Important questions of policy are decided by the Chief of Staff directly with the Throne. Details of administration are the major concern of the Ministry.

The Ministers of the Navy have been distinguished men and have been graduates of the Naval Academy. They have been commanders of fleets and squadrons and have held other high offices. Many of the Ministers have continued in office from two to three Cabinets.

The Minister has not appeared before the Diet any more often than the Minister of War which has been infrequent.

(II The Bureaux (Kyoku))

The Ministry has had eight bureaux for its administration. Normally each is headed by a Rear Admiral or Captain: Naval Affairs Bureau, Personnel Bureau, Education Bureau, Munitions Bureau, Medical Bureau, Intendance Bureau, Armaments Bureau and Legal Bureau.

The Naval Affairs Bureau is divided into sections:

Section I:

- (a) Matters concerning naval armaments and other matters concerning naval administration in general.
- (b) The construction or organization of, and service abroad or at warships, units, offices and schools.
- (c) The organization and service of warships and units.
- (d) Naval discipline and morale.
- (e) Naval manoeuvres.

- (f) Naval reviews.
- (g) Ceremonies, etiquette, uniforms and flags.
- (h) Warships and weapons of war and other munitions in general.
- (i) Guarding and defence.

Section II:

- (a) Matters concerning national defence policy.
- (b) International conventions and personnel dispatched abroad.

Section III:

- (a) Matters concerning the use of engines.
- (b) Construction aboard warships.
- (c) Maintenance and preservation of warships.

Section IV:

- (a) Matters concerning the dissemination of consciousness relating to national defence.
- (b) Matters concerning the guidance of organizations connected with naval affairs.

There is a Naval Affairs Dissemination Department which is charged with the planning and execution of naval publicity. Like other public relations offices of the Ministries, this Department has had its main function absorbed by the Bureau of Information of the Cabinet.

(III) The Chief of the Naval General Staff.

It is provided by the ordinance creating this office that the Naval General Staff Office shall take charge of matters concerning national defence and the use of armed strength.

The ordinance further provides that there shall be a Chief of the Naval General Staff office

who shall be personally appointed by the Emperor, who shall be directly subordinate to the Emperor, take part in the confidential affairs of the Emperor's headquarters and control the Naval General Staff office.

Provision is also made for the appointment of a Vice Chief who shall assist the Chief, supervise the Division and coordinate the affairs of the Division.

XI. - THE MINISTRY OF FOREIGN AFFAIRS(GAIMUSHO)

The Ministry of Foreign Affairs is more popularly known as the Foreign Office. The Office of Minister of Foreign Affairs was not established formally until 23 December 1885.

(I) The Minister of Foreign Affairs - Duties.

In addition to the general duties of the Minister as set out in the general section of the ministries, the Minister of Foreign Affairs under Article I of the Basic Ordinance is charged with the duties of -

"the execution of affairs relating to foreign countries, the protection of trade and commerce, and matters relating to Japanese abroad, and shall supervise and control all diplomatic and consular offices."

It also provided in the Basic Ordinance that-

"The Minister of Foreign Affairs shall direct and supervise the Japanese Ambassador Extraordinary and Plenipotentiary to Manchoukuo in regard to those affairs of the Kwantung Bureau which pertain to external matters."

At the opening of the Diet the Minister of Foreign Affairs makes a formal address. The Prime Minister informs the Diet as to Empire affairs generally, and the Minister of Foreign Affairs informs the members with regard to international agreements, commitments and treaties.

By reason of their long training and great experience, the Ministers of Foreign Affairs have been powerful figures in the Cabinet and it is an office which has often led to the post of Prime Minister.

As chief executive of the Ministry, the Minister develops the foreign policy. Information necessary for planning the national program is obtained by the Bureaux of the Ministry and is formulated in the deliberations of the joint conferences. The Minister presides at these Conferences whose members include the Vice Minister and the Bureau Chiefs.

(II) The Bureaux.

Under Article IV of the Ordinance establishing this Ministry, the bureaux are set up geographically and functionally.

(a) The Geographic Bureaux.

1. The East Asia Bureau composed of three sections is confined to China, Hongkong and Macao. The duties include negotiations and revision of treaties.

2. The Europe and Asia Bureau. The duties of this bureau are the same as those set out above except that they pertain to the other areas of Asia and to Europe.

3. The American Bureau. The duties of this bureau are the same as those set out above but pertain only to America.

4. The South Seas Bureau. This Bureau has charge of diplomatic affairs concerning Thailand, the Philippine Islands, Indo China, Burma, Malaya, North Borneo, the East Indies, Australia, New Zealand, the other Oceanic Islands and the Antarctic region.

(b) The Functional Bureaux.

1. The Bureau of Commerce. The functions of this bureau are set out in Article VII and are confined to navigation, emigration and immigration.

2. The Bureau of Treaties and Convention. The functions of this bureau are set out in Article VIII and comprise drafting and interpreting treaties, dealing with extraterritorial rights and the administration of all other foreign legal affairs such as the world conferences and the League of Nations.

(III) The Departments.(a) The Intelligence Department (Joho Bu).

Article IX creates this department as the public relations office for the Ministry. Until the creation of the Cabinet Bureau of Information in September 1937, in which all agencies giving out governmental information were centralized, the Intelligence Department was the centre from which information on all diplomatic affairs emanated.

The departmental chief gave daily interviews to international newspaper correspondents and the local press.

Direct interviews with the Minister himself are not a common practice in Japan with either the foreign or local press. Foreign correspondents often wrote short statements, submitted them to the Minister for signature and consent and then published them.

Direct censorship of the press was not a function of this Ministry but it did issue short prohibitive statements to the correspondents from time to time regarding its own news items.

(b) The Cultural Undertakings Department.

The department concentrated its work entirely on cultural activities in China. The first attempt to organize propaganda for China originated in this department. The volume and variety grew to large proportions. The Department was absorbed by the Ministry of Greater East Asia.

(IV) The Secretariat.

The Secretariat is divided into six sections and consists of a large staff.

- (a) The Personnel Section.
- (b) The Protocol Section.
- (c) The Documents Section.
- (d) The Accounts Section.

(e) The Translation Section.

(f) The Telegraphic Section.

(V) The Foreign Service.

The Foreign Service was one of the great innovations made in Japan following the Restoration. The members of the staff increased from 34 in 1871 to over 1000 in the early thirties. The training of the officials, both diplomatic and consular, is minute in law, international relations, social institutions and languages.

The number of ambassadors is without limitation but limitations are placed on the number of envoys extraordinary, ministers plenipotentiary, councillors, ministers resident, consuls general, consuls, vice consuls, secretaries and attaches.

XII. - THE MINISTRY OF FINANCE.(OKURASHO)

The Ministry of Finance was one of the original Ministries created at the time of the promulgation of the Constitution.

By Imperial Ordinance 209 (The Law of Finance) 1893, the Ministry is required to "oversee all financial affairs of the State including the business concerning the balance account, cash account, taxes, national loans, currency, deposit in the Treasury, safe-deposits in the Treasury, banking and trust business, and the supervision of the financing of the municipal and other local administrative organizations."

(I) The Minister of Finance

The Bill of Appropriations more commonly called the Budget is the most important responsibility of the Minister. The drafting of all bills for bond flotation and redemption and the setting of tax rates and general interest rates are also his responsibility.

There are extensive relations with the great banks and other moneyed institutions. The acquisition of conquered territory greatly increased the duties arising out of money and banking. Guidance of the banking system established in Manchuria

has been a heavy responsibility.

The financial experience of nearly all the Ministers has been wide and varied. With few exceptions, all have served for a number of years within the Ministry. They have also held important positions in the government banks and in large private industrial corporations.

The Minister of Finance always makes a formal address on fiscal matters before the Diet.

(II) Bureaux.

- (a) Accounts Bureau.
- (b) Bureau of Taxation.
- (c) Bureau of Fund Employment or Finance.
- (d) The Banking Bureau:

1. Governmental Institutions: (i) Bank of Japan, (ii) Yokohama Specie Bank, (iii) Hypothec Bank of Japan, (iv) The Industrial Bank of Japan.

2. Large Private Banks such as: (i) The First Bank, (ii) The Mitsubishi Bank, (iii) The Mitsui Bank, (iv) The Sumitomo Bank.

- (e) The National Savings Encouragement Bureau.
- (f) The Bureau of Monopoly. The Government maintains four monopolies: (i) The Tobacco Monopoly, (ii) The Salt Monopoly, (iii) The Crude Camphor and Camphor Oil Monopolies, (iv) The Alcohol Monopoly.
- (g) The National Prosperity Bureau.
- (h) The Mint Bureau.
- (i) The Customs Bureau.
- (j) The Foreign Exchange Control Bureau.
- (k) The Deposit Funds Management Bureau.

XIII. - THE MINISTRY OF HOME AFFAIRS

The Ministry of Home Affairs is charged with the responsibility for domestic relations and conditions within the interior. Because of its control of State Shinto, the police and fire departmental systems, together with the conscription system, wartime price enforcement and general elections, this Ministry reaches into the family life of every subject in Japan. Control and supervision of the lower echelons in government down through the Ken, Machi and Mura, together with all the implications of the electoral system, empower this Ministry with tremendous political advantages.

(I) The Bureaux.

- (a) The Shrine Bureau.
- (b) The Bureau of Local Affairs.
- (c) The Police Bureau.

The administration of the Civil Police System is a heavy responsibility because of its ramifications and varied duties.

The Civil Police are not to be confused with the Kempei-tai who are military police under the Provost Marshall General of the Army.

Although acting under the authority of the Minister of Home Affairs, the civil policeman is considered by the Japanese a representative of the Emperor. This fact gives vitality to all his functions and powers. It brings about curious situations when Army and Navy personnel are involved for they too have always considered themselves representatives of the Emperor. Moreover, rank and official prestige make little difference when the police take action.

As an officer of the Emperor, whether on the beat, directing traffic or in his home, the policeman is feared as well as respected. When speaking to them, men remove their hats and bow deeply. They do not put on their hats until the conversation is over and they have bowed again in taking their most polite leave.

Police stations are established in districts which are determined geographical areas. People for generations have come to the police station to register complaints, present local grievances and give information of any unusual circumstance. Much of the power of the police in Japan comes from this age-old people to patrolman custom.

In his district he has duties to perform other than strict policing. He is in charge of:

- (a) Census taking.
- (b) Important civil surveys.
- (c) General inspectional tours.

These civil duties add to his high prestige and power. Citizens of his district send him freshly cooked food, rice or candies.

His sword is a token of dignity held over from a long samurai past. He has, in the larger cities, modern mechanical and electrical equipment such as radio, telephone and sirens.

Specific instructions on the method of challenge are given by Seki in Lectures on Police duties:

- "(1) Decide whether or not a person is suspicious from his external appearance such as his features, peculiar characteristics and behaviour.
- (2) Ask the original starting point, destination and nature of his business.
- (3) Ascertain his domicile, residence, occupation, name and age.
- (4) Ask questions on other points which do not touch upon the main point of the case if either the doubt is not cleared up or the suspicion is strengthened.

- (5) Inspect his possessions with his permission. Only after doing these things is it to be decided whether or not the suspect is to be accompanied to the police station."

Further there is added:

- "(i) Not to permit the destruction of proofs.
- (ii) Not to permit escape.
- (iii) Not to neglect the precautionary measure of self defence."

1. The Peace Preservation Section.

The section is concerned with maintaining order in the country through routine and special investigations such as are required by the Public Peace Police Law. Before public meetings are held the organizers have to clear the purposes and speakers of the meeting with the police. They have the power

- (i) to stop speakers when they are indoctrinating the audience with Left Wing doctrine; and
- (ii) to close the meeting.

Public morals and public conduct are supervised minutely. All places of amusement are inspected. Licensed prostitution is controlled and protection afforded to the Geisha system.

2. The Crime Prevention Section.

The crime rate is low in Japan and great attention is paid to all suspects.

3. The Books or Publications Section.

This section has charge of Censorship of all books, magazines and newspapers. However, censorship bans are issued also by the Metropolitan Police Board and by judges of the District Court.

Books and magazines are censored in the manuscript form before publication and thus there are few banned books in Japan. Foreign publications

are restricted generally at the ports although some have been banned after they have been in circulation for some period of time.

Newspapers are sent official warnings as to what can or cannot be published or how much of a situation or story at any time may appear in print, e.g., as of 3 September 1940: "Nothing is to be mentioned of the coming to Japan, presence here, or movements of Heinrich Stahmer, a German Minister, who will be at the German Embassy on a certain mission." Forced apologies, fines, imprisonment and closing down of newspapers are the results of any infringements.

4. The Economic Peace Preservation Section.

The function of this section is price control enforcement and black market control.

(II) Attached Agencies.

Attached to the Ministry are three other highly significant institutions of national importance.

(a) The Metropolitan Police Board.

The work of this Department includes the Special Higher Police Department which corresponds to the American Federal Bureau of Investigation. Special instructions are issued on thought control.

(b) The Air Raid Defence General Headquarters.

(c) The Police Training School.

XIV. - THE MINISTRY OF EDUCATION

The Meiji reformers founded a Department of Education and an educational system early in the Restoration after careful planning and study of western forms and systems.

The Ministry with the exception of the Schools of the Army and the Navy and a few special others, is charged with the direction and supervision of all educational matters which include the arts, the sciences and religion.

Under the jurisdiction of the Ministry also are scientific laboratories and observatories, many institutes, libraries and councils whose influence reaches to all parts of the Empire.

It controls the national schools or those of the central government and all higher institutions of learning, such as the universities, colleges, technical colleges and the higher schools.

In the Bureau of Textbooks there is a Textbook Committee in charge of the data and material used in all the texts and manuals over which the Ministry has complete authority. Members of the Committee are from the Army and Navy, universities and business world. This complete control by the central government over all important educational affairs has enabled the authorities to inculcate the younger generation with its own dogma and has been one of the reasons why the Japanese have acquiesced so easily in government policies.

XV. - THE MINISTRY OF WELFARE.

The Imperial Ordinance of 10 January 1938 established the Ministry of Welfare following an investigation and report by the Cabinet Planning Board.

The Ministry is charged with the responsibility of "promoting the physical strength and welfare of the nation" which involves the general and special fields of health, sanitation, hygiene, labour and social insurance.

In the formation of the Ministry of Welfare the Ministry of Home Affairs lost the Bureaux of Public Hygiene and Social Welfare, reducing the Home Ministry by two-fifths of its regular number of personnel. The Ministry of Commerce and Industry lost the section of labour hygiene administered by the Bureau of Mines. The Ministry of Communications lost some of its jurisdiction over post office life insurance and annuities. The Ministry of Education surrendered its duties relating to training and sports outside the school system.

The Section of Housing expanded rapidly during the war because of the necessity of increased housing facilities in factory areas.

XVI. - THE MINISTRY OF COMMUNICATIONS.

In 1943 this Ministry was merged with the Ministry of Railways. The new Ministry is that of Transportation and Communications. Although some bureaux and sections were eliminated the essential services and functions have been retained.

The old Ministry of Communications was established in 1885 and its functions were widened so that its authority comprised the post office, the fields of aviation, shipbuilding, water transportation and all matters of electricity including the telephone, telegraph, radio, cable and beacon services.

The Ministers' experience has nearly all been in politics, although a few men in the last ten Cabinets have had executive and business careers in steamship or business corporations.

XVII. - THE MINISTRY OF JUSTICE.

A department or section in government for justice has been traditional for over a thousand years in Japan. The Great Reform Measure of A. D. 649 established the first definite Ministry. In the Tokugawa era the court system was greatly enlarged. Laws and ordinances passed down to 1889 have given the Ministry its present structure.

The Minister of Justice is responsible for the administration of civil and criminal law and penal institutions. Supervising authority is exercised over procurators and judges.

Prosecuting and defending cases involving the Imperial Family and the State are other important duties of the Ministry.

The personnel of the Ministry includes not only the District Court judges and procurators, but also those of the Court of Appeals and the Supreme Court, and their personnel.

Almost without exception the Minister has been either a Supreme Court Justice or a Procurator

General and has had long experience within the Ministry. He appoints Judges and Procurators and whether they are promoted depends upon his recommendation.

XVIII - THE MINISTRY OF COMMERCE AND INDUSTRY

The Imperial Ordinance No. 137 of March 1926 created the Ministry of Commerce and Industry as a separate Ministry. In 1943 it was abolished and its functions were transferred to the Ministry of Munitions and the Ministry of Agriculture and Commerce.

The Ministry had general jurisdiction of industry and all industrial matters of supplies - their processing and fabrication. It also controlled the import and export trade of all commodities. The Patent Office came under its jurisdiction.

XIX. - THE MINISTRY OF RAILWAYS

After the nationalization of railways in 1907, a Railway Board was created to operate and manage the new State system.

By Imperial Ordinance No. 143 of 15 May, 1920, the Board was abolished and its function absorbed by the newly established Ministry of Railways.

The Ministry is responsible for the operation and management of the Imperial Government Railways, and also the supervision of the private railways, which include the private and municipal trolley lines. In performing these duties the Ministry maintains electrical generating stations and power plants and operates large ferry services and an hotel system.

The Ministry is independent in its finances from the State accounts because of the provisions of the Imperial Railway Special Account Law of 1909.

The appointment of the Minister has been unusually free from politics and so has the entire administration.

XX. - THE MINISTRY OF AGRICULTURE AND FORESTRY.

Now merged with some of the bureaux of the Ministry of Agriculture and Commerce, this Ministry had authority over all matters relating to agriculture, forestry and fisheries.

XXI. - THE MINISTRY OF OVERSEAS AFFAIRS.

This Ministry was established by Imperial Ordinance No. 152 of 10 June 1929.

Article I of the Ordinance provided that the Ministry was to control all affairs relating to the Chosen Governor General's Office, the Taiwan Governor General's Office, the Kwantung Administration Office and the South Seas Administration Office. It also provided that the Ministry was to supervise the operation of the two great corporations, the South Manchuria Railway Company Ltd. and the Oriental Development Company Ltd.

In the abovementioned areas the Ministry did not have complete authority, for some matters were the responsibility of the Ministries of war, of Finance, of Communications and of Home Affairs.

In the major wartime reorganization of the government, the Ministry was abolished and its functions divided and transferred to the Cabinet and to the Ministry of Home Affairs and some finally to the Ministry of Greater East Asia. Constant political changes have taken place in colonial administration with a view to strengthening the government by making the colonies feel that they are an integral part of the Empire.

XXII. - WARTIME CHANGES IN GOVERNMENTAL ADMINISTRATION.(I) THE MINISTRY OF GREATER EAST ASIA.

In September and October 1942 a Cabinet reorganization removed all matters pertaining to the "reconstruction" of the Greater East Asia Co-Prosperity Sphere from the Foreign Office and placed them in the hands of the Minister of Greater East Asia.

Article I of the Imperial Ordinance No. 707 of 1942 creating the Ministry provides:

"The Greater East Asia Minister shall supervise the operation of the Kwantung Bureau and of the South Seas government office. He shall direct also the work of diplomatic officials and consuls residing in Greater East Asia."

In many respects the establishment of this Ministry effective on 1 November, 1942, was the most important single administrative change in Japan within recent years.

The Government in announcing the creation of the Ministry stated that it was to be a general agency "for conducting administrative work covering the field of politics, economy and culture within the Greater East Asia Sphere, excepting Japan proper, Chosen, Taiwan and Karafuto". However, all matters of a purely diplomatic nature were left to the jurisdiction of the Ministry of Foreign Affairs.

The administration of Greater East Asia Affairs had previously been divided between the Ministry of Foreign Affairs, the Ministry of Overseas Affairs, the China Affairs Board and the Manchurian Affairs Board.

The new Ministry reflected the confident hope of the Government that Japanese conquests were permanent and that the time had come for full and complete exploitation of occupied territories. By the formation of this Ministry, the Army deprived the Foreign Ministry of any power it might still have to challenge Army policy in occupied territory.

This point is made clear in Article XIX of the Imperial Ordinance No. 707 of 1942 creating the Ministry, which provides that:

"For close cooperation with the Army and Navy, the Greater East Asia Ministry will conduct affairs concerning administration of the occupied areas within the Greater East Asia area."

The Ministry was originally organized into four bureaux but a fifth was added in December 1943.

They were as follows:

(a) The Executive.

This Bureau had jurisdiction over all matters pertaining to the adjustment of ministerial affairs, elaboration of industrial and economic policies and the computation of statistics.

(b) The Manchurian Affairs Bureau.

The Manchurian Affairs Bureau had under its jurisdiction matters pertaining to the formation of Manchurian policies, the Kwantung Bureau, the Bureaux of Finance, Trade, Industry, Commodities, Prices and Communications relating to Manchukuo, the Southern Manchurian Railway Company, the Manchurian Development Company and other agencies interested in the development of Manchukuo.

(c) The China Affairs Bureau.

The China Affairs Bureau was entrusted with the formation of policies in the execution of administrative affairs concerning China, the promotion of cultural enterprises, finances, trade, agriculture, forestry, fisheries, the North China Development Company, the Central China Development Company and other activities of a similar nature.

(d) The Southern Regions Affairs Bureau.

The Southern Regions Affairs Bureau had jurisdiction over general affairs connected with the Southern Regions. Included within its scope of operation was the protection of Thailand and French Indo China, the education of Japanese in the Southern Regions, the administration of cultural enterprises, finance, trade, agriculture, forestry, fisheries, communications and other similar activities in those areas.

(e) The Industrial Bureau.

The Industrial Bureau was organized in December 1943 to take over certain commercial affairs in Greater East Asia formerly under the jurisdiction of the abolished Ministry of Commerce and Industry.

(II) A CABINET ADVISORY COUNCIL.

Legislation was enacted for the setting up of a system of Cabinet Advisers at a level somewhat lower than that of a Minister without Portfolio, although they were to be afforded the treatment of officials of "Shinnin" rank and were appointed by Imperial Order. They were "to participate in matters of importance concerning the execution of state affairs by the Prime Minister."

The legislation also provided for the creation of a Wartime Economic Council within the Cabinet, an Administrative Supervisory Council, and a Planning Board. The first three bodies form a kind of interlocking directorate under the direct supervision of the Premier.

The Cabinet Advisory Council appointed in March 1943 was made up of seven leading industrial and political figures. Late in November, 1943, the Government announced the appointment of three additional members of the Cabinet Advisory Council, thus raising the membership to ten. The three new members were all important industrialists - experts in their fields.

The Wartime Economic Council included all Cabinet Advisers and also certain State Ministers to be designated by the Premier, including the War and Navy Ministers, and other Ministers concerned with economic development.

The new Planning Board was composed of three advisers, twenty investigators and ten Diet members who were to attend to the administration of the control of natural resources.

The functions of the Board are set out in Article I of the ordinance:

- "1. Drafting of plans concerning the expansion and employment of the total national resources in time of peace and war, and reporting of such plans, together with reasons therefor, to the Prime Minister.

- "2. Investigation of the gists of proposals which are submitted by the Ministers to the Cabinet Council and which have an important bearing upon the expansion and employment of the total national resources in time of peace and war, and reporting together with its opinions to the Cabinet through the Prime Minister.
- "3. Reporting, together with its opinion, to the Cabinet through the Prime Minister with reference to the control of budget for important matters related to the expansion and employment of the total national resources in times of peace and war.
- "4. Adjustment and co-ordination of affairs of various government offices with regard to the making and execution of a national mobilization plan.
- "5. Matters concerning the making of a plan for the utilization of the territory and matters concerning the control of affairs of various government offices as needed by the plan for the utilization of the territory."

(III) THE MUNITIONS MINISTRY.

(a) Background.

A Cabinet Planning Board was established in 1937 to assume responsibility for the expansion and mobilization of Japan's National strength in the war with China. It drafted plans for Japan's mobilization and presented them to the Cabinet for its consideration.

In order to co-ordinate the plans of the Cabinet Planning Board with the various governmental Ministries, Control Associations were established by the end of 1941 for each important industry.

These Control Associations were under the supervision of the Ministry of Commerce and Industry and were directed by the former heads of the leading

cartels of big business houses. The programme schedules of production in Japan proper, in colonial territories and in occupied territory were first drawn up by the Cabinet Planning Board and after their approval by the Cabinet were transmittted to the Control Associations.

However, the demands of the war for increased production resulted in competition among the various Control Associations for raw materials and other supplies.

Consequently, more complete control measures had to be inaugurated by the Government at the insistence of Army leaders.

The result was finally achieved in the autumn of 1943 through the establishment of a Ministry of Munitions and the inauguration of widespread administrative changes within the Government.

(b) Functions.

The Cabinet Planning Board and the Ministry of Commerce and Industry were abolished and their duties with respect to manufacturing and armament production were transferred to the new Munitions Ministry.

The new Ministry likewise was responsible for the functions formerly carried out by the Control Associations.

In short, the purpose of the Munitions Ministry was to give military leaders of the Government direct control over all activities of industry to increase the production of war materials.

(IV) THE TRANSPORTATION AND COMMUNICATIONS MINISTRY.

It was the intention of the Government in creating the new Ministry to co-ordinate the whole transport system by sea and by land in Japan, Manchukuo and occupied China under a single authority. All types of communications, including mail, telephone and wireless services, were placed under the control of the new Ministry.

(V) THE MINISTRY OF AGRICULTURE AND COMMERCE.

It was the intention of the Government to delegate all remaining functions of the Ministry of Commerce and Industry, after all other activities had been taken over by the Ministry of Munitions, to the newly created Ministry of Agriculture and Commerce. In addition, the new Ministry obtained a wide jurisdiction over agricultural activities. Special emphasis was placed upon the supply of food and consumer's goods.

(VI) THE SUPREME COUNCIL FOR THE DIRECTION OF WAR.

The Supreme Council for the Direction of War was created in August 1944. Its purpose as announced by the Japanese Government was to formulate a fundamental policy for directing the war.

Mention has already been made of the Board of Fleet Admirals and Field Marshalls and the Supreme War Council both of which were advisory bodies to the Emperor.

Other agencies which should be mentioned in this connection are the Army and Navy General Staffs, who are charged with the duty of advancing a programme for national defence and military operations. In matters of national defence their decisions are reported directly to the Emperor during peacetime, but in time of war they are reported to Imperial Headquarters. When the problems are of sufficient importance they are brought before the Board of Fleet Admirals and Field Marshalls or to the Supreme War Council or to both. After Imperial sanction has been given, the matters are referred to the War Minister or to the Navy Minister for execution. However, on any matters pertaining to the actual operation of the armed forces on the fighting fronts, the General Staffs assume complete responsibility.

Following the China Incident the military brought about the creation of a Liaison Committee to establish a basic policy for directing the war by co-ordinating the civilian and military branches of the Government. Its membership consisted of the War Minister, Navy Minister, Chief of the Army General Staff, and Chief of the Navy General Staff, and, as a Committee, it stood between the Imperial Headquarters and the Government.

For almost seven years the members of the Liaison Committee accomplished their tasks fairly well but when the Japanese Army and Navy began to suffer reverses a still closer tie was found to be necessary.

In February 1944, steps were taken to combine under a single head the Army and Navy Ministers and the Chiefs of the Army and Navy Staffs. The purpose of this move was to strengthen and coordinate the existing functions of the Liaison Committee. Because of strong opposition within high governmental and military circles to this innovation and for other reasons, the Government of Premier Tojo fell.

The succeeding Government under Premier Koiso separated the military from the administrative and set up a new body called "The Supreme Council for the Direction of War". As a result of this reorganization, the Liaison Committee was abandoned largely because it did not have enough power and was unable to iron out the many differences of opinion in high governmental circles, particularly on the question of industrial production.

The new Supreme Council was an effort to unify the supreme command and national affairs after the basic administrative and military policies had been formulated. Its task was one of integration with particular reference to military operations and production.

The new Supreme Council was responsible for decisions relating to the basic plans for the execution of the war and the all-important aircraft and other war production. The basic policies decided by the Council were carried out by the Imperial Headquarters and the Government. The relations between the new Council and the Government were not based on legislation but on political considerations. In other words the Cabinet was not bound legally by the decisions of the new Council, but from a political standpoint, as a matter of course, it was governed by the decisions of the Council.

XXIII. - WARTIME LEGISLATION.(I) THE NATIONAL MOBILIZATION LAW.

This law originally promulgated in 1938 and revised in 1941 is the foundation of almost all wartime laws.

(II) THE NEW PEACE PRESERVATION LAW.

This law enacted in 1941 provides heavy penalties for persons who organize associations the object of which is to change the national policy, or who instigate sedition.

Mr. Wakatsuki, the Home Minister, said in introducing the bill,

"It aims at prohibiting such illegal societies as are subversive of the fundamental principles underlying the national organization."

(III) THE EXTRAORDINARY WARTIME AUTHORITY TO ACT MEASURE

This legislation was introduced in January 1943 and gave the Premier, whenever he deemed it necessary, direction over the expansion of production of key war materials, and authority to execute the duties of any State Minister on matters concerning the production of such materials.

XXIV. - GOVERNMENT OF THE JAPANESE OCCUPIED TERRITORIES .(I) THE GREATER EAST ASIA MINISTRY.

When the Greater East Asia Ministry was created in 1942, it absorbed the Bureau of the former Overseas Ministry which had originally administered the territories of the Mandated Islands (i.e. the Carolines, Marshalls and the Marianas), the Kwantung Leased Territory and the occupied areas in China and the South Pacific.

(II) MANCHUKUO.

Although the Manchukuoan Government bore

the outward signs of an independent organization, it was in practice controlled by the Japanese occupying forces.

Its constitution and governmental organization resembled that of Japan in almost every respect. Its Legislative Council did not meet once in its supposed existence, and all legislation has been enacted by a State Council headed by the Premier, who was appointed by the Emperor. It is not too much to say that the actual ruler of Manchukuo was the Commander-in-Chief of the Japanese Kwantung Army, who also served as Japanese Ambassador to Manchukuo.

(III) OCCUPIED CHINA.

The occupied portions of China were organized into three jurisdictions:

- (a) The National Government of China at Nanking.
- (b) The Mongolian Government.
- (c) Special Administrative areas along the south coast of China.

The National Government of China at Nanking was a puppet state. This Government claimed control over all of China, but its actual existence depended upon the support of the Japanese occupying armies. Structurally, the Government was complete, having Assemblies, Ministers, Provincial Districts, Governors and Magistrates.

Opposed to the Nanking regime stood the Government of Republican China, led by Generalissimo Chiang Kai-Shek from his capital at Chungking. In the north west, the Chinese Communists, while steadfast in their opposition to the expansion of the Japanese, have never worked in harmony with the Chungking regime.

The Federated Montolian Autonomous Government was actually under the control of the Japanese Kwantung Army.

XXV.--THE IMPERIAL RULE RESISTANCE ASSOCIATION

In Japan, political parties were largely built around the personality and influence of individual leaders rather than around meaningful principles and party platforms.

Two of the most prominent political parties were probably successful because each was backed by the economic interests of a powerful Japanese family corporation.

In October 1940, Prince Konoye demanded as a condition of his acceptance of office the voluntary dissolution of all political parties.

A national political agency, the Imperial Rule Assistance Association, was organized and replaced or absorbed all political parties and assumed their functions.

It is a government-controlled propaganda agency and acts in economic as well as political matters on both national and local levels.

The Premier is President of the I. R. A. A., but much of the actual direction is in the hands of the Vice-President - usually a Cabinet member without portfolio. The Premier appoints all high-ranking officials.

The I. R. A. A. had only a qualified success. In the election of April 1942, the I. R. A. A. won 81% of the seats in the House of Representatives and in May 1942 an additional body - the Imperial Rule Assistance Political Society - was set up to function in the political sphere and to secure a more complete control over elections.

CONCLUSION

It is not the purpose of this discussion to attempt to point to defects in the Japanese system of government for the purpose of demonstrating that it has proved to be unsuited to the development of peaceful practices and policies. But it is submitted that this phase of the subject may be summed up by stating that it is apparent that there is in Japan an

absence of an effective system of responsibility of the Government to the people.

The present Japanese Constitution was drawn up with the dual purpose of, on the one hand, stilling popular clamor for representative institutions and on the other, perpetuating and fortifying the centralized and autocratic governmental structure which its framers, the Meiji leaders believed necessary for the continued existence and development of Japan in the modern world. Consistent with this latter purpose, power was retained in the hands of a small group of personal advisers around the Throne, and the elected representatives of the people were given only limited supervisory powers over legislation.

When a Cabinet falls, the new Prime Minister, who selects his own Cabinet, is appointed not automatically as the leader of the majority party in the House of Representatives, but by the Emperor after taking advice. The nature and composition of a new government consequently is determined by this advice, rather than by the majority view in the lower house.

It has been pointed out that the power of the Diet to control government expenditures is greatly restricted by the provision in the Constitution that if a budget is rejected by the Diet, that of the preceding year automatically goes into effect, and also, by the magnitude of the excepted items in the budget itself. If to these items is added the continuing appropriations, a small amount of the expenditures is left for the consideration of the Diet.

Although the passing of general laws pertaining to the internal affairs of the nation are within its province, in practice, most bills are introduced by members of the Cabinet, in whose selection the Diet has no part.

The powers to declare war, make peace and conclude treaties are Imperial prerogatives over which the Diet can exert only an indirect influence because of its inability to control the Cabinet and the Privy Council which, together with other advisers close to the Throne, advise the Emperor on these matters.

The Diet has no power over dynastic affairs, it cannot initiate amendments to the Constitution, it cannot convene of its own accord, and it may be prorogued for a period up to fifteen days any number of times during a session by the Emperor on the advice of the Prime Minister.

It has also become apparent that inasmuch as approximately one-half of the House of Peers is composed of the nobility, one fourth of persons elected by and from the highest tax-payers and one fourth of Imperial appointees, its equal legislative power with the popularly elected lower house gives representatives of the propertied and conservative classes in Japan an undue influence on legislation.

The Privy Council, composed of a president, a vice-president, twenty-four councillors appointed for life and the members of the Cabinet ex officio, serves as the supreme advisory body to the Emperor. The Ordinance defining its powers, promulgated in 1890, stipulated that, generally speaking, its advice was to be solicited by the Emperor only on constitutional questions, international treaties and agreements, and prior to the issuance of emergency Imperial Ordinances.

Gradually, however, the Council has extended its activities and increased its power until in recent decades it has come to resemble a "Third Chamber" with broad supervisory powers over the executive in both foreign and domestic matters. It has frequently opposed the Cabinet on policy questions and on several occasions has forced the downfall of Cabinets possessing the confidence of the Diet. Owing no political responsibility to the Diet or to the people for its activities, and yet exerting important influences over the entire affairs of the State, the Privy Council has proved an important barrier to the development of a sound parliamentary system.

The ability of the military to affect government policy both within and without the area of their assigned responsibilities and, in their proper sphere, to exercise supremacy over the civil power has created a divided responsibility between the military and civil authorities in the Japanese Government. The effect of this division on the determination of

policy will be made the subject of a full exposition later in the case.

It has been my task to paint with a broad brush a picture of the existing governmental structure resting as it does upon the Constitution itself and upon the basic laws and ordinances supplementary thereto.

The Tribunal will now be informed more specifically as to the areas of division, gap and overlap in the Japanese constitutional system and as to the functions of these bodies and offices which operating privately and "unseen", fill the gaps and carry out the required liaison and whose competence to advise the Throne rests primarily outside the constitution upon custom and tradition.