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**KODANSHA
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texts of the constitutions

In Japan the term *kempō* (constitution) was first used in reference to the SEVENTEEN-ARTICLE CONSTITUTION (*Jūshichijō no Kempō*) enacted by Prince SHŌTOKU in 604. This was actually a collection of moral and religious instructions for government officials and was not a constitution in the modern sense. The word *kempō* continued to be used thereafter in reference to any body of law, regardless of content, but it was only early in the Meiji period (1868–1912), under the influence of Western writings, that it came to mean the basic law of a country defining the powers and duties of its government and the rights of its people.

In the modern period two constitutions have been enacted, the Constitution of the Empire of Japan or Meiji Constitution, 1889, and the Constitution of Japan, promulgated in 1946, effective in 1947 and still in force. (An earlier charter, the so-called Constitution of 1868 [*SEITAIISHO*], was hastily prepared shortly after the Meiji Restoration, but it proved unworkable and was discarded the following year.) The Constitution of the Empire of Japan was drafted in imitation of those of mid-19th-century German states. The Constitution of Japan was modeled after the American and British constitutions; in substance, however, it resembles that of the United States more than that of Britain. Although the present constitution is basically different from the constitutions of socialist countries, it incorporates aspects of socialism in the form of a democratic quest for social justice.

UKAI Nobushige

MEIJI CONSTITUTION

(Meiji *Kempō* or, more correctly, Dai Nihon Teikoku *Kempō*, Constitution of the Empire of Japan). The constitution of Japan in effect from 11 February 1889 until 3 May 1947, when it was replaced by the present constitution. Eight years in preparation, it was a flexible document reflecting the uncertain balance of political forces at the time. The system of government it prescribed had the potential to develop in either liberal or authoritarian directions.

The CHARTER OATH of April 1868, together with the so-called Constitution of 1868 (*SEITAIISHO*), represented the first Japanese attempt to define the fundamental principles animating the new government following the MEIJI RESTORATION, and in that sense it may be considered the first step toward constitutional government. It served as the basis for the tearing down of the old feudal order and the building of a strong national unity. It inspired the abolition of the *shōgun-daimyō* BAKUHAN SYSTEM and the establishment of the PREFECTURAL SYSTEM, the elimination of class distinctions, and the enforcement of universal conscription and compulsory primary education, tax reform, and other legislative, administrative, and judicial innovations.

Debates on the Constitution — The idea of formulating a written constitution incorporating Western principles of limited government had been advocated since the early years of the Meiji period (1868–1912) both within and outside government circles. The government leader KIDO TAKAYOSHI insisted that a constitution was necessary to unify the country, prevent officials from the arbitrary exercise of power, and protect the natural rights of the people. He also saw the need for a parliament whose duty was to advise and consent and to check arbitrary proceedings. On his instructions, AOKI SHŪZŌ compiled a draft constitution in 1872. This was the first systematic attempt to formulate a constitutional charter. ŌKUBO TO-

SHIMICHI, too, saw the need for a constitution; the new form of government should be a constitutional monarchy, namely, joint rule by the emperor and the people.

What the leaders could not agree upon was the time and the nature of the constitution to be enacted. Both Kido and Ōkubo thought that it was too early to establish a constitutional government with an elected parliament. They advocated gradualism on the grounds that the customs and conditions of Japan should be carefully taken into account. ITAGAKI TAISUKE and the other opposition leaders, however, called for the immediate creation of a popularly elected assembly and submitted a memorial in January 1874. The debate between the advocates of gradualism and those who demanded through the FREEDOM AND PEOPLE'S RIGHTS MOVEMENT the immediate convocation of an elected assembly and the promulgation of a constitution was resolved with the imperial rescript of 12 October 1881, which proclaimed that a parliament would be convoked in 1890 and that a constitution would be prepared in the meantime.

Discussions on the nature of the constitution concerned mainly the model to be followed, the position of the emperor, and the rights of the people. Even among the government leaders there were differences of opinion. In June 1878 the GENRŌIN (Chamber of Elders) submitted a draft constitution. Although the person of the emperor was declared sacred and inviolable, clear checks and controls were established in order to limit the power of the central government and of the emperor. This draft proposed a division of sovereignty between the emperor and the people. IWAKURA TOMOMI, then minister of the right (*udaijin*), did not approve of some of the liberal implications of the Genrōin draft and petitioned the throne to order the junior councillors in the government to report their views on constitutional government. The leaders of the central government submitted their views to the emperor between December 1879 and March 1881.

YAMAGATA ARITOMO suggested that the pace of the changes since the Restoration had been too rapid for the majority of the people; an alienated people could not form the basis of a stable and strong government. Harmony and unity between ruler and ruled could be achieved only through a constitution and a representative assembly.

The views of ITŌ HIROBUMI are of particular importance because of his later role in the formulation of the Meiji Constitution. Itō saw the movement toward change stemming from two sources, the discontent of the many former samurai who had lost stipends, property, and privileges, and the growing interdependence of the nations of the world. The democratic ideas of Europe could not be ignored. The only solution was to discard absolutist ways and share political power with the people.

ŌKUMA SHIGENOBU in his proposal insisted on the necessity of government by political parties, pleading for the British model, which he saw as the essence of constitutional government. He advocated that the cabinet be organized by the leader of the party having a majority in the national assembly and that the cabinet either resign or dissolve the assembly on a vote of no confidence. INOUE KAORU had already expressed his belief that the ideal form of government was a political system based on democratic parties. But it was Ōkuma who described in detail the organization and functioning of a government based on a system of institutionalized opposition in which the people chose from among alternative contenders for public office. Ōkuma, moreover, asked for the early convocation of the national assembly. The constitutional principles expressed in Ōkuma's opinion were also present in a draft constitution prepared by the KŌJUNSHA, a political association, that followed closely the description of the British system in Alpheus Todd's *On Parliamentary Government in England* (1867–69).

Iwakura Tomomi, in his proposals prepared by INOUE KOWASHI, made a comparison of the British and Prussian systems of constitu-

tional government and concluded that Japan, with no tradition of political parties, was ill-prepared to adopt the former pattern. He proposed that the emperor alone should have the power of appointing and dismissing cabinet ministers independently of parliament. Even without a majority in parliament, the cabinet would not have to resign or change its general policy. Ōkuma was dismissed from the government in October 1881 for his “radical” ideas, and his expulsion signaled the defeat of those government leaders who advocated a constitution based on the British model (see *POLITICAL CRISIS OF 1881*).

The controversy over the nature of the constitution was carried on in newspaper articles as well as in the numerous draft constitutions being prepared by the political and intellectual leaders of the time (see *SHIGI KEMPŌ*). The newspaper *Tōkyō nichinichi shimbun*, close to government circles, stressed the special divine origin and inviolability of the emperor, but the *Tōkyō Yokohama mainichi shimbun* and the *Chōya shimbun* strongly attacked the concept of the divinity of the emperor. If the emperor were declared divine, they reasoned, he would be under no obligation to obey the constitution, and his alleged divinity could be abused as an instrument of absolutism and despotism.

Perhaps the most liberal draft constitution was written by UEKI EMORI, a leader of the Freedom and People's Rights Movement, in 1881. The principles guiding the new constitution should be reason, democracy, freedom, and equality. There was no need to copy Western constitutions, because they had been drafted under special circumstances, often preserving feudal customs. Ueki declared that sovereignty resided in the Japanese people and advocated a federal form of government following the Swiss system. Only foreign policy was reserved to the central government; matters concerning police, economic problems, and local laws were the responsibility of autonomous local governments. The civil rights of all citizens were recognized and guaranteed, including the right of open resistance against oppressive government. It is interesting that whereas Ueki upheld the “natural” rights of life and freedom for all without discrimination, he made a distinction about the “legal” rights of participation in the electoral system: he restricted the right to vote to those who paid taxes. The powers of the emperor were clearly limited: he had the right to ask the legislature for a re-examination of bills approved by the assembly; his power of amnesty could be exercised only with the approval of parliament. The emperor had no power in matters affecting the rights of the people, the disbursement of funds, or changes in state territory. Ueki advocated a unicameral national assembly that would decide matters concerning the whole nation without interfering in the internal affairs of the autonomous prefectures. Ueki's document was probably the most advanced statement of civil liberties, although similar ideas were also upheld by the political thinker NAKAE CHŌMIN.

The Prussian, Bavarian, British, French, American, and many other constitutions were examined, and all the currents of Western political thought influenced in some way or other the thinking of the Japanese leaders both within and without the government. But at the same time there was also a strong current of traditional thought that, although vaguely stated, attempted to reserve to the emperor a special place as the center of Japan. This idea was expressed in the word *KOKUTAI*, national polity or entity, meaning the permanent and fundamental constituents of the Japanese national, and particularly the imperial, system. ŌKI TAKATŌ insisted on the uniqueness of the Japanese nation; the *kokutai* was immutable, and the emperor was the fountainhead of peace and happiness for the people. MOTODA NAGAZANE also insisted that the constitution should be based on the unchangeable *kokutai*, that is, direct rule by the “one divinely descended imperial line unbroken for ages eternal.” In Motoda's plan Confucian thought also played a large role. The emperor was to be at once ruler and teacher, ruling his subjects as the father of a family.

FUKUZAWA YUKICHI in his *Teishitsuron* (On the Imperial House), although recognizing the special position of the emperor, stated that the imperial family should be kept out of the political arena, since it belonged to the people. Politicians should not abuse the sacredness and dignity of the emperor either to defend their theories or to attack their adversaries. As in Britain, so also in Japan the sovereign must reign but not rule. A perfect constitutional system, according to Fukuzawa, involved the rotation of power. The opposition should always be ready to take over the reins of government if the majority failed in its trust or if the people, through elections, decided that the time had come for a change. The emperor would remain as the symbol of unity and continuity.

Drafting of the Constitution — On 21 October 1881 a special government bureau was established to assist in drafting laws and regulations and to act as a consultative body on the formulation of the constitution. Itō Hirobumi was appointed chairman. On 31 March 1882 the emperor ordered Itō to lead a mission to Europe to observe and study different constitutional systems. The authority and prestige of European scholars such as Lorenz von STEIN and Rudolf von GNEIST could also be used against the opinions and draft constitutions of the opposition. The two men who in fact most heavily influenced the framing of the Meiji Constitution were Hermann ROESLER and Inoue Kowashi.

In a preparation for the promulgation of the constitution and the convocation of the IMPERIAL DIET several reforms were implemented. Through the Peerage Ordinance of July 1884 five ranks (prince, marquis, count, viscount, baron; see *PEERAGE*) were established in order to provide the assembly with a majority of peers in the upper house to serve as a check against the lower house. In December 1885 the DAJŌKAN system of government was superseded by a modern cabinet system, with Itō as the first prime minister. After completing the administrative reorganization, the real work of drafting the constitution began. The drafters directly involved were Itō Hirobumi, Inoue Kowashi, ITŌ MIYOJI, and KANEKO KENTARŌ. In addition, Roesler and Albert MOSSE took part as legal advisers. Each of the Japanese drafters was entrusted with a specific legislative task. Inoue's responsibility was the constitution and the IMPERIAL HOUSEHOLD LAW. The central problem confronting Itō and his collaborators was how to resolve two contradictory positions, the principle of imperial sovereignty and the principle of constitutional, that is, limited government. From 1886 to 1888 in an atmosphere of utmost secrecy many drafts were prepared, discussed, and revised. The final draft was submitted to the emperor in April 1888. An ad hoc council, the Sūmitsuin or PRIVY COUNCIL, was established to discuss and ratify the final draft. Itō resigned as prime minister and became president of the council, which formally began its work on 8 May and continued the discussions until January 1889. It was Itō's task to defend the new constitution. Constitutionalism was new in Japan; whereas in Europe and America Christianity and long traditions of individual freedom formed the basis of constitutionalism, in Japan no such traditions existed. Only the imperial house could serve as the “pivot” of the new constitutional system. At the same time, Itō insisted on the need for well-defined limits on the power of government and for the protection of the rights of the people.

The Meiji Constitution — The Constitution of the Empire of Japan was promulgated on 11 February 1889. On that occasion it was stressed that the constitution was a gift from the emperor, who, in his wisdom, had limited his powers and bestowed upon the people rights and liberties and a share in the administration of national affairs.

Many students of Japan have interpreted the Meiji Constitution as a selfish attempt by the oligarchs to perpetuate their power behind a façade of constitutionalism. It was certainly not a democratic document, but neither did it close the door against progressive and even democratic interpretations of its provisions. More than anything else, it was an ambivalent and ambiguous charter, a compromise between two contradictory principles: sovereignty of the divine emperor and “transcendental” or nonparty cabinets on the one hand and parliamentary government and rights of the people on the other. The Meiji Constitution did not solve the contradiction, leaving it to the following generations to choose between two possibilities, the gradual emergence of a strong parliamentary system or an absolutist, militaristic regime under the cover of imperial sovereignty.

Emperor — Article 1 of the constitution states, “The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.” This article, together with the imperial oath at the promulgation ceremony and the official commentaries on the constitution, stressed the *kokutai* theory, the mythical Shintoist interpretation of the unique nature of the Japanese nation. The emperor was made the repository of sovereign power because he was descended from an unbroken line of divine ancestors going back to the sun goddess AMATERASU ŌMIKAMI. The first part of article 4 also states, “The Emperor is the head of the Empire, combining in Himself the rights of sovereignty.”

Articles 1 and 4 would seem to give the emperor unbridled authority, but the second part of article 4 states that the rights of sovereignty were to be exercised “according to the provisions of the present Constitution.” The emperor's judgments and even his commands had no legal force in themselves: “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" (art. 55). This meant essentially that the government was conducted by the emperor upon the advice of his ministers. "The respective Ministers of State shall give their advice to the Emperor, and be responsible for it" (art. 55). But this responsibility was due only to the emperor. This was the theory of "TRANSCENDENTAL" CABINETS: namely, that the ministers of state were not responsible to the people and the Diet, but only to the emperor, who had to follow the advice of these ministers. The military too were responsible directly only to the emperor, since the emperor had the supreme command of the army and navy. The cabinet in general and the military in particular could always benefit from the protection afforded by the mystic prestige of an aloof emperor, since their conduct was regarded in a legal sense as the exercise of an imperial prerogative. There were no means of checking the irresponsibility of a transcendental cabinet and of an independent military, since they could always hide behind the emperor, who, legally speaking, was responsible to neither the Diet nor the people.

Constitutional Government — Notwithstanding its absolutist tendencies, the constitution established clear limits to the emperor's sovereign rights. The limitation of imperial sovereignty was mainly visible in the courts' right to function independently of all executive interference, even though they exercised their powers in the name of the emperor. The legislative power, too, although attributed to the emperor, still required the consent of the Diet. The Diet had also the authority to initiate legislation, make representations to the government and memorials to the emperor, and receive petitions from the people. The idea of having majority cabinets and making cabinets subject to votes of no confidence was not expressed in the constitution. Yet it was impossible for the cabinet to remain completely independent of the Diet.

Rights of the People — The rights of the people were guaranteed by constitutional provisions: liberty of abode; freedom from illegal arrest, detention, trial, or punishment; right of trial by a lawful judge; inviolability of the individual's home; inviolable right of property; freedom of religious beliefs, speech, writing, publication, public meetings, and association. But they could be abridged by laws enacted by the Diet.

Public reactions to the Meiji Constitution both in Japan and abroad are important when judging the value of the charter. In Japan there was first of all a sense of pride: the constitution had been obtained without a bloody revolution and Japan had been the first country in Asia to adopt a constitutional form of government. The constitution was heralded as a stupendous change in so far as it allowed real participation of the people in the affairs of state and prevented arbitrariness in the administration. The constitution's weakest point was considered to be its ambiguity concerning the responsibility of the cabinet. On the whole, there was a sense of cautious optimism. The constitution should be judged neither liberal nor conservative merely by its written provisions; it was the manner in which its provisions would be exercised that counted.

Many prominent European and American scholars of the time praised the Meiji Constitution as a charter best suited to the stage of social development in Japan. A more liberal constitution would have been too abrupt. They also pointed out that once a parliamentary system was established, no government could be conducted without the support of political parties; even under the Meiji Constitution, Japan might develop a party government. This was also the opinion of Ōkuma Shigenobu.

The Meiji Constitution can be considered as an attempt to arrive at a *modus vivendi* between the conflicting political forces of the age, the bureaucrats on the one hand and the people's rights movement on the other. In this sense the constitution succeeded, and there was never any serious attack upon it. Enough power, elections, representation in the Diet, and legislative and financial control had been given to the advocates of parliamentary government to satisfy their minimal demands. At the same time, enough privileges and powers had been reserved to the emperor and the cabinet to satisfy the bureaucrats. It was left to the leaders in the government and to the leaders of the political parties to develop either the authoritarian or the liberal potentials of the constitution. For a text of the Constitution, see below.

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Joseph PITTAU

PRESENT CONSTITUTION

The Constitution of Japan (Nihonkoku Kempō), successor to the Constitution of the Empire of Japan (1889), became effective on 3 May 1947. It was notable for its declaration that sovereignty resided with the people, its assertion of fundamental human rights, and its renunciation of war and arms. A thoroughly democratic document, it revolutionized the political system, which, under the preceding constitution, had been based on the principle that sovereignty resided with the emperor.

Enactment — Because the new constitution was formulated and adopted during the OCCUPATION (1945–52), it is generally believed to have been enacted under undue foreign influence. During World War II, officials in the US Department of State had formulated policies concerning the surrender and postwar occupation of Japan. They had decided that the governmental system of the defeated country would have to be drastically reformed to end the dominance of the military and to protect political liberties. They were unable to agree on whether or not the emperor should be retained and the extent of social and economic reform to be imposed, and they deferred final decision on these questions until after the Allied forces took charge in Tōkyō.

The Japanese surrender took the form of acceptance of the terms of the POTSDAM DECLARATION, which called for the removal of obstacles to democratic tendencies and the establishment of a peace-loving government in accordance with the freely expressed will of the Japanese people. The emperor and the government of Japan would be subject to the Supreme Commander for the Allied Powers (SCAP). The textual amendment of the imperial constitution was not explicitly mentioned in the Potsdam Declaration or the surrender documents. The emperor's surrender rescript of 14 August 1945 asserted that, in ending the war, the "structure of the imperial state" had been preserved, implying that the imperial institution had been saved.

In October 1945 General Douglas MACARTHUR, Supreme Commander for the Allied Powers, suggested to KONOE FUMIMARO, then deputy premier in the HIGASHIKUNI NARUHIKO cabinet, and a few days later to Prime Minister SHIDEHARA KIJURŌ the desirability of reforming the constitution. Konoe, whose advisers were in contact with the office of SCAP's political adviser, received from the emperor a commission to have the Office of the Lord Keeper of the Privy Seal (Naidaijin Fu) investigate the need for constitutional revision. His action was criticized both in Japan and abroad because of his alleged war responsibility (Konoe had been prime minister when the SINO-JAPANESE WAR OF 1937–1945 broke out) and because constitutional revision was a matter of state to be handled by the cabinet rather than by the Office of the Lord Keeper of the Privy Seal. On 1 November, SCAP Headquarters issued a statement denying its sponsorship of the Konoe effort, but three weeks later Konoe and his chief associate, SASAKI SŌICHI, made separate reports to the throne on their recommendations. These reports were not formally published and had no direct influence on subsequent constitutional drafts. Immediately after the reports were submitted, the Office of the Lord Keeper of the Privy Seal, which had become very powerful in the wartime government of Japan, was abolished. In December Konoe committed suicide on the night before he was due to be imprisoned by the Allies as a suspected war criminal.

Prime Minister Shidehara's initial publicized reaction to SCAP's suggestion of constitutional revision was that it was not necessary to revise the Meiji Constitution in order to democratize Japan. He believed that democratization could be accomplished without abusing that basic law by enacting appropriate legislation such as a new electoral law giving voting rights to women. However, in response to the demand of his cabinet, he appointed MATSUMOTO JŌJI, a prominent jurist and cabinet member, to head a committee to investigate whether the constitution needed revision and, if so, to what extent.

In January 1946 the interdepartmental State-War-Navy Coordinating Committee in Washington (which made American policy for the Occupation) adopted its policy on "The Reform of the Japanese Governmental System (SWNCC-228)," which was forwarded to SCAP Headquarters. SWNCC-228 made it clear that textual

changes in the constitution would be necessary in order to assure that the executive branch of the government would be responsible either directly to the people or to the people's elected representatives and that the military branch would be subordinate to the civilian branch of the government. The question of whether or not the emperor system was to be preserved was left open, but if the throne were retained, the emperor should be permitted to act only on the advice of the cabinet, which would be responsible to the legislature.

It was clear to SCAP officials from Matsumoto's published statements and from one of his constitutional drafts (made public by the *Mainichi shimbun*) that the Matsumoto group's ideas fell far short of SWNCC requirements. In the meantime, members of the newly formed FAR EASTERN COMMISSION (FEC), an Allied body set up to make Occupation policy, had shown keen interest in constitutional revision. MacArthur, aware that his freedom to act would be greatly inhibited by the FEC when that body began its work, directed his Government Section (GS) to draft a model constitution as a guide for the Shidehara cabinet. The Government Section's hastily drafted constitution was based in part on SWNCC-228 but owed much to the liberal democratic ideals of its American authors. It stated that the emperor was the symbol of the state and of the unity of the people and declared the principle of popular sovereignty and the renunciation of war and arms. On 13 February 1946, GS officials delivered the SCAP draft to the Japanese cabinet with the warning that failure to adopt its basic principles would make it difficult for SCAP to protect the emperor from trial as a war criminal.

After further high-level negotiation and an overnight session of close collaboration between GS and Japanese officials, a Japanese draft constitution based on the SCAP model was agreed upon. The only major concession to Japanese views was that the Diet be bicameral, rather than unicameral as provided in the GS draft. On 6 March 1946 the Shidehara cabinet published the text as its own handiwork, although in spirit and detail it differed radically from the previous Matsumoto proposals.

The publication of the draft constitution, together with a statement by the emperor indicating his sponsorship of constitutional revision, largely brought to an end the international debate as to whether or not the throne should be abolished or its occupant tried as a war criminal. The emperor had become invaluable to MacArthur in the governing of Japan. By renouncing his divinity in his 1 January 1946 rescript (see *EMPEROR, RENUNCIATION OF DIVINITY* BY) and by sponsoring constitutional revision, the emperor had emerged as a positive force in the democratization of Japan.

The 6 March draft was made the basis of the government's Constitution Revision Bill of 17 April, which was notable for being written in colloquial grammar rather than in the formal style traditionally used in legal documents. Prime Minister Shidehara submitted the proposed constitution to the PRIVY COUNCIL, which, under its organizational ordinance, was empowered to deliberate on laws relating to the constitution. Following emotion-charged discussions focusing on the location of sovereignty, imperial household finances, and the renunciation of arms, the Privy Council approved, although not unanimously, the draft constitution on 8 June. Following changes in the bill made by the Diet, the Privy Council again approved it on 29 October. (The Privy Council, which was not provided for in the new constitution, was abolished in 1947.)

During the Diet deliberations on the Constitution Revision Bill in the summer of 1946, Prime Minister YOSHIDA SHIGERU and Minister of State KANAMORI TOKUJIRO, who was charged with explaining the draft constitution to the Diet, emphasized that the enactment of the proposed new constitution would preserve the throne and would meet a principal Allied requirement for terminating the Occupation. The main points raised in the deliberations in the two houses were the principles of popular sovereignty, the new position of the emperor as "symbol of the state and of the unity of the people," the disposition of the property of the imperial household, and the renunciation of war and armaments. The Far Eastern Commission insisted in its instructions to MacArthur at this time that the provisions relating to popular sovereignty and the nationalization of imperial property be strengthened, and that provisions be inserted that all cabinet ministers be civilians and that the majority of them be appointed from the Diet. GS officers held secret conferences with government officials and with Diet members in order to ensure the adoption of the FEC desiderata.

The Constitution Revision Bill was passed almost unanimously by both houses of the Imperial Diet, so that the new constitution was enacted in the form of an amendment to the old constitution in accordance with article 73 of the latter document. Promulgated by

Emperor Hirohito on 3 November 1946 (the birthdate of Emperor Meiji), the Constitution of Japan became effective on 3 May 1947. Legal continuity with the old constitution was thus assured.

Because the democratic and pacifist provisions of the new constitution stood in such dramatic contrast to Japanese traditions and because of the belief that SCAP Headquarters had "imposed" it on the Japanese, many observers believed that the new constitution would probably not outlast the Occupation. In October 1946, shortly before the new constitution was promulgated, the FEC decided that both the Diet and the commission would, between 3 May 1948 and 3 May 1949, "review the situation with respect to the constitution." The commission stated that it might require a referendum or other procedure to ascertain Japanese opinion of the constitution. General MacArthur strongly objected to this policy, believing that it might undermine the legal status of the constitution even before it became effective and that it seemed unnecessary, since the Diet and the people were already free under the provisions of the constitution to make any changes. When he refused to inform the Japanese government of the FEC review policy, the commission threatened to make the policy public. (The general conveyed the FEC policy in a private letter to Prime Minister Yoshida.) All references to the FEC review policy were censored from the Japanese press by order of SCAP, and the Diet made no formal move to review the constitution. No referendum was held, and the FEC made only a very perfunctory review of the constitution in the prescribed period.

Popular Sovereignty — Chapter I, article 1 of the Constitution of Japan declares that the emperor shall be "the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power." According to some legal scholars, the transfer of sovereignty from the emperor to the people had already occurred before the enactment of the new constitution, when the Japanese government accepted the terms of the Potsdam Declaration. The emperor had renounced the concept of his divinity, thus denying the supernatural basis of his sovereign authority under the Meiji Constitution. The theory that the emperor was the politically sovereign ruler of Japan had originally been based on the Chinese model of imperial government, which had greatly influenced Japan in the 8th and 9th centuries, and this theory had been reaffirmed and modernized as the result of German influence during the Meiji period (1868–1912). Some legal historians assert that the present status of the emperor as symbol of the state and of national unity is more in harmony with indigenous Japanese tradition than was the theory of imperial sovereignty enunciated in the Meiji Constitution.

All acts of the emperor in matters of state now require the advice and approval of the cabinet, and the emperor has no "powers related to government." The emperor appoints as prime minister the person selected by the Diet and appoints as chief judge of the Supreme Court the appointee of the cabinet. With the advice and approval of the cabinet he promulgates constitutional amendments, laws, cabinet orders, and treaties; convokes the Diet; dissolves the House of Representatives; proclaims general elections; attests the appointment of cabinet ministers and diplomats; attests amnesties; awards honors; attests ratifications of treaties; receives foreign diplomats; and performs ceremonial functions. The throne is dynastic and is transmitted in accordance with the IMPERIAL HOUSEHOLD LAW passed by the Diet. (The old Imperial Household Law had been promulgated in 1889, simultaneously with the Meiji Constitution, and had existed independently of the latter document.) Under the Meiji Constitution, the Japanese bureaucracy and military had derived their authority from the fact of their direct or indirect appointment by the emperor. Under the new constitution, the civil service was placed under the control of the Diet and cabinet, representing the people, rather than the emperor. No mention was made in the new pacifist constitution of a military role for the emperor, whose military prerogative (TOSUIKEN) had formerly been used by the army and navy high commands to assert their independence of control by the prime minister and cabinet.

The authority of the emperor is so circumscribed and the people's sovereignty so emphasized under the new constitution that some writers assert that Japan is not a monarchy. It appears legally possible to amend the constitution so as to abolish the throne, just as it seems legally possible to restore the emperor to the position of head of the state, rather than symbol of the state. The role of the emperor in the Japanese political system is far more subtle and complex than is suggested by the terms of the new constitution. The unique privileges and responsibilities of the members of the impe-

rial family contradict the principle of human equality enunciated by the constitution. If one includes the emperor among the people, as do some commentators, the theory that sovereignty has been transferred from the emperor to the people is much less revolutionary than it might at first seem. Might there not arise emergencies in which the emperor, in the performance of his duties, would be unable to receive or to accept the advice of the cabinet? Does not the emperor's role as symbol of the state and of national unity imply in practice some degree, however vague, of substantive political power, which might prove decisive in crucial situations? Is it really possible for the emperor to be politically neutral? The emperor can scarcely make a public appearance without some group or another complaining about the use the government is making of his prestige.

The No-War, No-Arms Provision — The most famous provision of the Constitution of Japan is Chapter II, "Renunciation of War," which, in its entirety, reads:

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

(2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

General MacArthur asserted in 1951 that this provision had been suggested to him by Prime Minister Shidehara in January 1946, but some Japanese authorities doubt whether Shidehara intended that Japan should be permanently disarmed by the constitution. The precise interpretation of this clause has been widely debated, and it has been the basis of tests of the constitutionality of the SELF DEFENSE FORCES and of the UNITED STATES-JAPAN SECURITY TREATIES.

In 1959 the Tōkyō District Court decided in the *SUNAGAWA CASE* that the United States-Japan Security Treaty, which provided for the stationing of American forces in Japan, violated article 9 of the constitution. However, in the same year, the Supreme Court declared that unless a treaty were obviously unconstitutional (which was not the case with the Security Treaty), it was outside the scope of judicial review, and so the lower court finding was quashed and the Security Treaty was upheld. In 1973 the Sapporo District Court found in the *NAGANUMA CASE* that although article 9 did not renounce the right of self-defense, armaments even for defensive purposes were banned by the constitution, so that the 1954 laws establishing the DEFENSE AGENCY and the Self Defense Forces violated the constitution. The Sapporo High Court in 1976 reversed this ruling on the ground that the original plaintiffs in the case did not have grounds to sue. The issue was appealed to the Supreme Court.

The view of the Japanese government and most conservatives has been that paragraph 1 of article 9 does not renounce wars of self-defense and that the ban on armaments in paragraph 2 is qualified by the phrase "in order to accomplish the aim of the preceding paragraph," so that defensive armament is not forbidden. Furthermore, the government has asserted that the constitutionality of the Self Defense Forces is a "political question" beyond the scope of the courts' power of judicial review.

Public opinion polls have consistently shown that the majority of the Japanese people oppose any amendment to article 9. They also show that the public favors the continued maintenance of the Self Defense Forces, in spite of their debatable constitutionality.

The Bill of Rights — Chapter III of the new constitution, on the "Rights and Duties of the People," contrasts sharply with Chapter II, "Rights and Duties of Subjects," of the Meiji Constitution. The old basic law conferred the right of freedom of religious belief "within limits not prejudicial to peace and order, and not antagonistic to their [the people's] duties as subjects," whereas the new constitution flatly guarantees freedom of religion, forbids compulsory participation in any "religious acts, celebration, rite or practice," and prohibits the state from supporting religious education or any other religious activity. The old constitution provided that Japanese subjects should enjoy liberty of speech, writing, public meetings, and associations "within the limits of the law," whereas the new basic law does not authorize legal limitations on freedom of expression but explicitly bans censorship and protects the secrecy of communications.

Chapter III appears to reflect the political liberalism of the Americans who originally drafted it. For example, discrimination "in political, economic or social relations because of race, creed, sex,

social status or family origin" is banned. Suffrage is universal. Men and women have legal equality in choice of spouse, in property rights, inheritance, choice of domicile, divorce, and other matters pertaining to marriage and the family. Education is compulsory and free. Extensive rights of the accused in trials are elaborately spelled out. The constitution provides that the people have the right to maintain "minimum standards of wholesome and cultured living" and that the state will promote social welfare and security and public health. The Japanese constitution is far more progressive than the American in matters of ethnic and sexual equality. Despite its New Dealish tone, however, the Japanese document omits a long list of specific economic and social rights that were advocated by Japanese socialists and communists. The new constitution is not socialist, but it does not forbid the government to enact socialistic policies, except that "the right to own or to hold property is inviolable," subject to the state's right of eminent domain.

The National Legislature — In Chapter IV, on the DIET, that body is declared to be "the highest organ of state power" and the "sole law-making organ of the State." The framers of the new constitution were determined that the people's elected representatives, rather than militarists or bureaucrats, should prevail in the government of the nation. The Diet consists of a House of Representatives and the House of Councillors, often informally referred to as the lower house and upper house, respectively. The term of office of the representatives is four years, although it usually ends sooner than that, when the House is dissolved. The councillors' terms run for six years staggered, meaning that half the seats fall vacant once every three years. Qualifications for members of both houses and for the voters are to be fixed by law, but there must be "no discrimination because of race, creed, sex, social status, family origin, education, property, or income." Because of this nondiscrimination provision, it has been regarded as unconstitutional to enact any electoral law or Diet law that would make one chamber functional, that is, representative of various economic and social groups rather than geographic districts. The political composition of both houses of the Diet depends largely on the provisions of the electoral laws which the Diet passes. See ELECTIONS.

Bills (other than the budget or treaties) become law when passed by both houses. However, if the councillors defeat a bill passed by the representatives, the latter may override the councillors' veto by repassing the bill with a two-thirds majority. When a budget or treaty is passed by the lower house and the upper house defeats it or fails to act within 30 days, the decision of the lower house prevails.

The primacy of the lower house over the upper is not absolute. The government does not have the power to dissolve the House of Councillors. In the event that the government does not command the two-thirds majority in the lower house necessary to override an upper house veto, important government bills can be blocked by the upper house. The government may then have to accept the defeat of its bill or negotiate with the opposition, possibly bringing some opposition party members into a cabinet coalition, or in an extreme case, resign.

The Diet Law, enacted by the Imperial Diet in 1946, spells out in considerable detail the organization and functioning of the Diet under the new constitution.

The Cabinet — Chapter V of the constitution concerns the cabinet. The prime minister is designated by a resolution passed by the Diet. If the House of Representatives and the House of Councillors cannot agree on a choice, the decision of the representatives prevails. The emperor appoints as prime minister the person designated by the Diet. The prime minister selects and dismisses the other cabinet ministers, all of whom must be civilians and a majority of whom must be Diet members.

The cabinet is collectively responsible to the Diet. If the House of Representatives passes a resolution of no confidence (or rejects a resolution of confidence) in the cabinet, either the cabinet must resign en masse or the House of Representatives must be dissolved within 10 days. The emperor, on advice of the cabinet, dissolves the House of Representatives. A general election must be held within 40 days after a dissolution.

The constitution is unclear as to whether or not the cabinet may bring about a dissolution (art. 7) without there first being a vote of no confidence (art. 69). Obviously, if the cabinet may dissolve the lower house whenever it pleases, it can use the threat of dissolution as a weapon to intimidate the Diet, which the constitution calls "the highest organ of state power," and the cabinet can hold lower-house elections at times that are politically advantageous to it. In 1952 the Yoshida cabinet dissolved the lower house without a prior vote of no

confidence. A representative, whose term of office was thus shortened, appealed the matter to the Supreme Court, which found that although there were irregularities in the cabinet's procedure, the case was not justiciable and the court could do nothing. Since then, the cabinet has exercised full discretion in using the power of dissolution.

Since 1955 the LIBERAL DEMOCRATIC PARTY (LDP) has consistently held the majority of seats in the House of Representatives, so that a vote of no confidence in the successive Liberal Democratic governments would have had little prospect for success. The prime minister and cabinet have thus had little to fear from the Diet. The main threat to the cabinet has come from within the LDP. Rotation in cabinet posts occurs among the individuals and factions in the conservative party. If and when the Liberal Democrats lose their majority in either house of the Diet, the cabinet may be subjected to great control by the Diet. (See also PRIME MINISTER AND CABINET.)

The Courts — The judiciary is described in article 6 of the constitution. The SUPREME COURT consists of a chief judge, designated by the cabinet and appointed by the emperor, and such number of judges as determined by law, who are appointed by the cabinet. (The Court Organization Law of 1947 prescribed a total of 15 judges, including the chief judge in the Supreme Court.) At the first lower-house election after the appointment of a Supreme Court judge, the appointment is subject to review by the voters, and it is again reviewed at 10-year intervals thereafter. In practice, no judge has ever come close to being rejected by the voters. Judges of inferior courts are appointed by the cabinet from a list submitted by the Supreme Court. There are no local systems of courts in Japan; all the courts belong to a single national system. Perhaps the most notable power of the courts in Japan is the authority granted to them by the constitution to determine the constitutionality of laws, orders, regulations, and official acts. Thus the Japanese constitution explicitly delegates to the courts a power that is exercised by American courts without the explicit authorization of the US Constitution. (See JUDICIAL SYSTEM.)

Other Important Provisions — The treatment of finance in the new constitution (chapter VII) represents a radical break with the prewar financial system. The government is no longer able, as in the past, to enforce the budget of the preceding year if its proposed budget is defeated in the Diet. Under the new basic law, taxes cannot be imposed nor funds expended without the approval of the Diet. The imperial household property belongs to the state, and the expenses of the imperial household are appropriated by the Diet in the budget. The imperial household is thus no longer financially independent.

Chapter VIII, on local self-government, declares "the principle of local autonomy." However, the organization and powers of local governments are not enumerated in the constitution but are determined by law, that is, statutes passed by the Diet. Local governments, therefore, can perform only the functions that the Diet chooses to delegate to them. The new basic law does not establish a federal system like that in the United States or that which the Allies insisted be established in West Germany in 1949. However, local chief executives and the members of local government assemblies are popularly elected. (Before the war, prefectural governors were appointed by the central government.)

The new constitution may be amended when two-thirds of the members of each house vote for the proposed amendment and it is approved by a majority of the voters.

Interpretation of the Constitution — The Japanese government in its day-to-day decision making has had to apply the new constitution and laws to continually changing concrete situations, many of which were not foreseen by the authors of the basic law. The tendency of Japanese legal scholars has been to interpret the new constitution and laws very literally, relying on linguistic and logical analysis. This approach conforms with the European legal tradition established in Japan in the Meiji period. The majority of academicians have supported "progressive" and pacifist causes against the ruling establishment. In this situation it is not surprising to find the scholarly community frequently opposing the government in matters of constitutional interpretation. The most notable controversy, as noted, concerns the interpretation of article 9.

The conservatives have monopolized governmental power since 1948, and the progressives would like to see the judiciary actively check "reactionary" policies of the government. Organized groups of socialists, pacifists, and environmentalists have become involved in a number of highly publicized lawsuits in which the constitutionality of the government's acts has been an issue. The lower courts,

when staffed with progressive jurists, have occasionally given a sympathetic hearing to progressive causes, sometimes relying on the arguments of leading legal scholars, but the Supreme Court has exercised self-restraint and has given the government the benefit of the doubt whenever the constitutionality of the government's acts has been questioned.

Within the judiciary, personnel and procedural disputes concerning the tenure of politically active judges, alleged interference by senior judges in cases handled by their juniors, and the politicization of court proceedings have tended to obscure the purely legal aspects of constitutional cases.

The Sunagawa and Naganuma cases, concerning the constitutionality of the United States-Japan Security Treaty and the Self Defense Forces, have been described above. The tendency of the courts to avoid ruling on constitutionality in these and other cases raised doubts in the minds of some as to whether the courts could be relied upon to defend the constitution. In 1973 the Supreme Court for the first time found a law unconstitutional. In this instance, the court ruled that to make the penalty for patricide greater than that for other murders (art. 200 of the Criminal Code; see CRIMINAL LAW) violated the principle of equality under the law provided by article 14 of the constitution.

In 1975 the Supreme Court found unconstitutional the regulations that limited the number of pharmacies that might be established in a given area. The court cited in this case the freedom to choose one's occupation, protected by article 22 of the constitution. In 1976 the Supreme Court declared unconstitutional the gross inequality of representation between highly populated and underpopulated electoral districts in the 1972 House of Representatives election. The court, however, did not invalidate the election. In 1975 the Diet reapportioned the seats in the lower house, but suits were filed challenging the constitutional validity of the apportionment used in the 1976 election.

Other controversies involving constitutional rights have centered on the government's efforts to strengthen laws for the prevention of mob violence and the control of crime and pornography. The Ministry of Education's practice of "certifying" textbooks has been alleged by some to amount to unconstitutional censorship and has been the focus of suits by the historian Ienaga Saburō (see IENAGA TEXTBOOK REVIEW CASE). An emerging field of concern has been the protection of the people's constitutional right to "minimum standards of wholesome and cultured living" (art. 25) from industrial pollution and noise. The constitution is cited to protect the right of privacy, the rights of the poor and aged, the rights of minorities (Koreans and BURAKUMIN), and women's and consumers' rights.

The New Constitution in Practice — The new constitution consists of 103 articles, contrasted with the 76 articles of the Meiji Constitution. The Meiji document, although enunciating the theory of the divine-right sovereignty of the emperor, was less clear than the new constitution concerning the specific functions and mutual relationships of the organs of the state and could be applied very flexibly. Thus in the 1920s Japan's political system evolved from an oligarchy toward parliamentary democracy and in the 1930s became dominated by the military. The new basic law not only declares the principle of popular sovereignty but also spells out in some detail how this principle is applied in practice; how, for example, the cabinet is answerable to the people's elected representatives. Although the parliamentary-cabinet system of democracy was certainly possible under the old constitution, it was by no means legally assured, as is the case under the new basic law.

Shortly before and after the new constitution became effective (between January and July 1947), the Diet passed 45 laws to implement the provisions of the new constitution. As these laws were drafted by bureaucrats, Diet members, and SCAP officials in close collaboration, they may be said to reflect fairly accurately the intent of the framers of the constitution. The implementing legislation included the new Imperial Household Law, the Cabinet Law, the Diet Law, the FINANCE LAW, the Labor Standards Law, the Court Organization Law, the Public Prosecutors' Office Law, the Local Autonomy Law (see LOCAL GOVERNMENT), the Civil Service Law, the Police Duty Law, the Law Abolishing the Home Ministry, the Law Creating the Attorney-General's Office, electoral laws, amendments to the CIVIL CODE and Code of Civil Procedure, and a HABEAS CORPUS LAW. Thus the provisions of the new constitution permeate the entire legal system and will not easily be reduced to ineffectiveness.

With the end of the Occupation in 1952, a movement to amend the constitution arose in both conservative parties (the Liberal Party and the Kaishintō) as part of a nationalistic reaction against the Al-

lied-sponsored reforms. In 1956 the conservative-controlled Diet passed a law creating the COMMISSION ON THE CONSTITUTION to study the origins of the new constitution, its operation, and its possible amendment. When it completed its report in 1964, the majority of the commission held that the postwar constitution had been imposed on Japan by the Occupation authorities and that it should be amended to permit the adequate defense of the country and to restore the emperor to the position of head of state. (See also CONSTITUTIONAL PROBLEMS STUDY GROUP.)

The constitution revision movement was vigorously opposed by the People's League to Protect the Constitution, backed by the labor federation SŌHYŌ, the JAPAN COMMUNIST PARTY, and the JAPAN SOCIALIST PARTY. As the Liberal-Democrats gradually lost electoral support in the 1960s and their hopes receded for control of the two-thirds majorities in both houses of the Diet necessary to initiate constitutional amendments, the constitution revision movement lost its impetus. Notwithstanding the taint of foreign authorship, the new constitution has enjoyed from the beginning the support of liberals and progressives in Japan. Newly enfranchised or liberated groups, including women, academicians, labor unionists, journalists, and religious and ethnic minorities, have come to understand and cherish their constitutionally guaranteed freedoms and to defend the basic law against real or imagined attacks by conservatives. Since its enactment in 1946, no constitutional amendment has been proposed by either house of the Diet, nor has any law yet been passed specifying the procedure for a popular vote on a proposed amendment. For a text of the Constitution, see below.

■ —Government Section, SCAP, *Political Reorientation of Japan* (1947). Dan Fenko Henderson, ed, *The Constitution of Japan: Its First Twenty Years, 1947–67* (1968). Kempō Chōsakai, *Kempō Chōsakai hōkokusho* (1964). Kempō Chōsakai, *Kempō seitei no keika ni kansuru shoiinkai hōkokusho* (1961). John M. Maki, ed, *Court and Constitution in Japan: Selected Supreme Court Decisions, 1948–60* (1964). Miyazawa Toshiyoshi, *Kempō* (5th ed, 1974). Satō Tatsuo, *Nihonkoku kempō seiritsu shi*, 2 vols (1962, 1964). Takanagi Kenzō, Ōtomo Ichirō, and Tanaka Hideo, ed, *Nihonkoku kempō seitei no katei* (1972). Tanaka Hideo, *The Japanese Legal System* (1976). Wada Hideo, *Kempō to Saikō Saibansho* (1975).

Theodore McNELLY

TEXTS OF THE CONSTITUTIONS

CONSTITUTION OF THE EMPIRE OF JAPAN, 1889

Imperial Oath Sworn in the Sanctuary in the Imperial Palace (Tsuge-bumi)

We, the Successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy co-extensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of government.

In consideration of the progressive tendency of the course of human affairs and in parallel with the advance of civilization, We deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, to establish fundamental laws formulated into express provisions of law, so that, on the one hand, Our Imperial posterity may possess an express guide for the course they are to follow, and that, on the other, Our subjects shall thereby be enabled to enjoy a wider range of action in giving Us their support, and that the observance of Our laws shall continue to the remotest ages of time. We will thereby give greater firmness to the stability of Our country and to promote the welfare of all the people within the boundaries of Our dominions; and We now establish the Imperial House Law and the Constitution. These Laws come to only an exposition of grand precepts for the conduct of the government, bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors. That we have been so fortunate in Our reign, in keeping with the tendency of the times, as to accomplish this work, We owe to the glorious Spirits of the Imperial Founder of Our House and of Our other Imperial Ancestors.

We now reverently make Our prayer to Them and to Our Illustrious Father, and implore the help of Their Sacred Spirits, and make to Them solemn oath never at this time nor in the future to fail to be an example to Our subjects in the observance of the Laws hereby established.

May the heavenly Spirits witness this Our solemn Oath.

Imperial Rescript on the Promulgation of the Constitution

Whereas We make it the joy and glory of Our heart to behold the prosperity of Our country, and the welfare of Our subjects, We do hereby, in virtue of the supreme power We inherit from Our Imperial Ancestors, promulgate the present immutable fundamental law, for the sake of Our present subjects and their descendants.

The Imperial Founder of Our House and Our other Imperial Ancestors, by the help and support of the forefathers of Our subjects, laid the foundation of Our Empire upon a basis, which is to last forever. That this brilliant achievement embellishes the annals of Our country, is due to the glorious virtues of Our Sacred Imperial Ancestors, and to the loyalty and bravery of Our subjects, their love of their country and their public spirit. Considering that Our subjects are the descendants of the loyal and good subjects of Our Imperial Ancestors, We doubt not but that Our subjects will be guided by Our views, and will sympathize with all Our endeavors, and that, harmoniously cooperating together, they will share with Us Our hope of making manifest the glory of Our country, both at home and abroad, and of securing forever the stability of the work bequeathed to Us by Our Imperial Ancestors.

Preamble [or Edict] (Jōyu)

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 the State, to exhibit the principles, by which We are guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

The right 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 the 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.

CHAPTER I. THE EMPEROR

Article 1. The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.

Article 2. The Imperial Throne shall be succeeded to by Imperial male descendants, according to the provisions of the Imperial House Law.

Article 3. The Emperor is sacred and inviolable.

Article 4. The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.

Article 5. The Emperor exercises the legislative power with the consent of the Imperial Diet.

Article 6. The Emperor gives sanction to laws, and orders them to be promulgated and executed.

Article 7. The Emperor convokes the Imperial Diet, opens, closes, and prorogues it, and dissolves the House of Representatives.

Article 8. 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.

(2) Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said Ordinances, the Government shall declare them to be invalid for the future.

Article 9. The Emperor issues or causes to be issued, the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no Ordinance shall in any way alter any of the existing laws.

Article 10. The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon).

Article 11. The Emperor has the supreme command of the Army and Navy.

Article 12. The Emperor determines the organization and peace standing of the Army and Navy.

Article 13. The Emperor declares war, makes peace, and concludes treaties.

Article 14. The Emperor declares a state of siege.

(2) The conditions and effects of a state of siege shall be determined by law.

Article 15. The Emperor confers titles of nobility, rank, orders and other marks of honor.

Article 16. The Emperor orders amnesty, pardon, commutation of punishments and rehabilitation.

Article 17. A Regency shall be instituted in conformity with the provisions of the Imperial House Law.

(2) The Regent shall exercise the powers appertaining to the Emperor in His name.

CHAPTER II. RIGHTS AND DUTIES OF SUBJECTS

Article 18. The conditions necessary for being a Japanese subject shall be determined by law.

Article 19. Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any other public offices equally.

Article 20. Japanese subjects are amenable to service in the Army or Navy, according to the provisions of law.

Article 21. Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

Article 22. Japanese subjects shall have the liberty of abode and of changing the same within the limits of the law.

Article 23. No Japanese subject shall be arrested, detained, tried or punished, unless according to law.

Article 24. No Japanese subject shall be deprived of his right of being tried by the judges determined by law.

Article 25. Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent.

Article 26. Except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolate.

Article 27. The right of property of every Japanese subject shall remain inviolate.

(2) Measures necessary to be taken for the public benefit shall be provided for by law.

Article 28. Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

Article 29. Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meetings and associations.

Article 30. Japanese subjects may present petitions, by observing the proper forms of respect, and by complying with the rules specially provided for the same.

Article 31. The provisions contained in the present Chapter shall not affect the exercises of the powers appertaining to the Emperor, in times of war or in cases of a national emergency.

Article 32. Each and every one of the provisions contained in the preceding Articles of the present Chapter, that are not in conflict with the laws or the rules and discipline of the Army and Navy, shall apply to the officers and men of the Army and of the Navy.

CHAPTER III. THE IMPERIAL DIET

Article 33. The Imperial Diet shall consist of two Houses, a House of Peers and a House of Representatives.

Article 34. The House of Peers shall, in accordance with the Ordinance concerning the House of Peers, be composed of the members of the Imperial Family, of the orders of nobility, and of those who have been nominated thereto by the Emperor.

Article 35. The House of Representatives shall be composed of Members elected by the people, according to the provisions of the Law of Election.

Article 36. No one can at one and the same time be a Member of both Houses.

Article 37. Every law requires the consent of the Imperial Diet.

Article 38. Both Houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law.

Article 39. A Bill, which has been rejected by either the one or the other of the two Houses, shall not be brought in again during the same session.

Article 40. Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

Article 41. The Imperial Diet shall be convoked every year.

Article 42. A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by the Imperial Order.

Article 43. When urgent necessity arises, an extraordinary session may be convoked in addition to the ordinary one.

(2) The duration of an extraordinary session shall be determined by Imperial Order.

Article 44. The opening, closing, prolongation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses.

(2) In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.

Article 45. When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution.

Article 46. No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one-third of the whole number of Members thereof is present.

Article 47. Votes shall be taken in both Houses by absolute majority. In the case of a tie vote, the President shall have the casting vote.

Article 48. The deliberations of both Houses shall be held in public. The deliberations may, however, upon demand of the Government or by resolution of the House, be held in secret sitting.

Article 49. Both Houses of the Imperial Diet may respectively present addresses to the Emperor.

Article 50. Both Houses may receive petitions presented by subjects.

Article 51. Both Houses may enact, besides what is provided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.

Article 52. No Member of either House shall be held responsible outside the respective Houses, for any opinion uttered or for any vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any other similar means, he shall, in the matter, be amenable to the general law.

Article 53. The Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, except in cases of flagrant delicts, or of offenses connected with a state of internal commotion or with a foreign trouble.

Article 54. The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

CHAPTER IV. THE MINISTERS OF STATE AND THE PRIVY COUNCIL

Article 55. The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.

(2) 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.

Article 56. 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.

CHAPTER V. THE JUDICATURE

Article 57. The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.

(2) The organization of the Courts of Law shall be determined by law.

Article 58. The judges shall be appointed from among those, who possess proper qualifications according to law.

(2) No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment.

(3) Rules for disciplinary punishment shall be determined by law.

Article 59. Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear, that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provisions of law or by the decision of the Court of Law.

Article 60. All matters, that fall within the competency of a special Court, shall be specially provided for by law.

Article 61. No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the administrative authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by a Court of Law.

CHAPTER VI. FINANCE

Article 62. The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law.

(2) However, all such administrative fees or other revenue having the nature of compensation shall not fall within the category of the above clause.

(3) The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the Budget, shall require the consent of the Imperial Diet.

Article 63. The taxes levied at present shall, in so far as they are not remodelled by a new law, be collected according to the old system.

Article 64. The expenditure and revenue of the State require the consent of the Imperial Diet by means of an annual Budget.

(2) 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.

Article 65. The Budget shall be first laid before the House of Representatives.

Article 66. The expenditures of the Imperial House shall be defrayed every year out of the National Treasury, according to the present fixed amount for the same, and shall not require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.

Article 67. Those already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.

Article 68. 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.

Article 69. 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.

Article 70. 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.

(2) 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.

Article 71. When the Imperial Diet has not voted on the Budget, or when the Budget has not been brought into actual existence, the Government shall carry out the Budget of the preceding year.

Article 72. The final account of the expenditures and revenues of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board.

(2) The organization and competency of the Board of Audit shall be determined by law separately.

CHAPTER VII. SUPPLEMENTARY RULES

Article 73. When it has become necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order.

(2) In the above case, neither House can open the debate, unless not less than two-thirds of the whole number of Members are present, and no amendment can be passed, unless a majority of not less than two-thirds of the Members present is obtained.

Article 74. No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

(2) No provision of the present Constitution can be modified by the Imperial House Law.

Article 75. No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article 76. Existing legal enactments, such as laws, regulations, Ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

(2) All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Article 67.

(The above is the semi-official translation, which appeared in H. Itô, *Commentaries on the Constitution of the Empire of Japan*, tr M. Itô, 1889.)

THE CONSTITUTION OF JAPAN, 1946

Promulgated on November 3, 1946; Put into effect on May 3, 1947.

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

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

CHAPTER I. THE EMPEROR

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

(2) The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

(2) The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

- (i) Promulgation of amendments of the constitution, laws, cabinet orders and treaties;
- (ii) Convocation of the Diet;
- (iii) Dissolution of the House of Representatives;
- (iv) Proclamation of general election of members of the Diet;
- (v) Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers;
- (vi) Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights;
- (vii) Awarding of honors;
- (viii) Attestation of instruments of ratification and other diplomatic documents as provided for by law;
- (ix) Receiving foreign ambassadors and ministers;
- (x) Performance of ceremonial functions.

Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

CHAPTER II. RENUNCIATION OF WAR

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes.

(2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolable rights.

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

(2) Peers and peerage shall not be recognized.

(3) No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

(2) All public officials are servants of the whole community and not of any group thereof.

(3) Universal adult suffrage is guaranteed with regard to the election of public officials.

(4) In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Article 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters, nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19. Freedom of thought and conscience shall not be violated.

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State nor exercise any political authority.

(2) No person shall be compelled to take part in any religious acts, celebration, rite or practice.

(3) The State and its organs shall refrain from religious education or any other religious activity.

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

(2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

(2) Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23. Academic freedom is guaranteed.

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

(2) With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

(2) In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

(2) All people shall be obligated to have all boys and girls under their protection receive ordinary educations as provided for by law. Such compulsory education shall be free.

Article 27. All people shall have the right and the obligation to work.

(2) Standards for wages, hours, rest and other working conditions shall be fixed by law.

(3) Children shall not be exploited.

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

Article 29. The right to own or to hold property is inviolable.

(2) Property rights shall be defined by law, in conformity with the public welfare.

(3) Private property may be taken for public use upon just compensation therefor.

Article 30. The people shall be liable to taxations as provided by law.

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32. No person shall be denied the right of access to the courts.

Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

(2) Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

(2) He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

(3) At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article 38. No person shall be compelled to testify against himself.

(2) Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

(3) No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

CHAPTER IV. THE DIET

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article 43. Both Houses shall consist of elected members, representative of all the people.

(2) The number of the members of each House shall be fixed by law.

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

Article 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

Article 52. An ordinary session of the Diet shall be convoked once per year.

Article 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

Article 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.

(2) When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

(3) Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article 56. Business cannot be transacted in either House unless one-third or more of total membership is present.

(2) All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

Article 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

(2) Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

(3) Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article 58. Each House shall select its own president and other officials.

(2) Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

(2) A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

(3) The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

(4) Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

Article 60. The Budget must first be submitted to the House of Representatives.

(2) Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

(2) Matters relating to impeachment shall be provided by law.

CHAPTER V. THE CABINET

Article 65. Executive power shall be vested in the Cabinet.

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

(2) The Prime Minister and other Ministers of State must be civilians.

(3) The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

(2) If the House of Representatives and the House of Councillors disagrees and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made

designation, the decision of the House of Representatives shall be the decision of the Diet.

Article 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

(2) The Prime Minister may remove the Ministers of State as he chooses.

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved with ten (10) days.

Article 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

- (i) Administer the law faithfully; conduct affairs of state;
- (ii) Manage foreign affairs;
- (iii) Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet;
- (iv) Administer the civil service, in accordance with standards established by law;
- (v) Prepare the budget, and present it to the Diet;
- (vi) Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.
- (vii) Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

CHAPTER VI. JUDICIARY

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

(2) No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

(3) All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

(2) Public procurators shall be subject to the rule-making power of the Supreme Court.

(3) The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

(2) The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

(3) In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

(4) Matters pertaining to review shall be prescribed by law.

(5) The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

(6) All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

(2) The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82. Trials shall be conducted and judgment declared publicly.

(2) Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

CHAPTER VII. FINANCE

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

(2) The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

Article 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

Article 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

(2) The organization and competency of the Board of Audit shall be determined by law.

Article 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER VIII. LOCAL SELF-GOVERNMENT

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

(2) The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER IX. AMENDMENTS

Article 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the

people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

(2) Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

CHAPTER X. SUPREME LAW

Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

(2) The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Article 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER XI. SUPPLEMENTARY PROVISIONS

Article 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

(2) The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article 101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.

Article 102. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article 103. The Ministers of State, members of the House of Representatives, and judges in office on the effective date of this Constitution, and all other public officials, who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course.

constitutional litigation

Judicial decision-making concerning the constitutionality of public acts and actions. Article 81 of the 1947 CONSTITUTION confers upon the Supreme Court and all lower courts the power of JUDICIAL REVIEW. One of the most important functions of the courts is to review the constitutionality of public acts and actions. However, there is no special procedural code governing constitutional litigation, comparable to the civil, criminal, and administrative procedural codes. Upon being raised in criminal, civil, or administrative cases, all constitutional issues are presented to and disposed of by the courts. Case laws have developed to guide constitutional litigations.

The Japanese Supreme Court is not a constitutional court like that of West Germany, which can pass an abstract judgment on constitutional issues. The doctrine of standing to sue requires that a litigant who challenges the constitutionality of public acts or actions must show a direct and personal injury. Also, the principles of the ripeness for judgment and estoppel govern constitutional litigation.

Nakamura v Japan (1962) was the first case to declare the unconstitutionality of public policy. Involved in this case was a provision of the Customs Law authorizing confiscation of a third party's property used in smuggling. The Supreme Court held such a confiscation to be in contravention of constitutional rights to due process and property rights.

A declaration of unconstitutionality must be made by no fewer than eight justices of the 15-member Supreme Court Grand Bench. Not all constitutional issues can be justifiably litigated. The doctrine

of state governance (*tōchi kōi*) states that a highly political issue is not subject to judicial review. Under the 1889 constitution the GREAT COURT OF CASSATION did not have the power of judicial review, nor did the PRIVY COUNCIL, which was vested with such a function, ever exercise the power. Constitutional litigation under the present system has greatly advanced government by rule of law by ensuring the supremacy of the judiciary, the proper separation of governmental powers, and the protection of civil rights and liberties.

Hiroshi ITOH

Constitutional Problems Study Group

(Kempō Mondai Kenkyūkai). A private organization of leading liberal scholars of law and politics, founded in 1958 by MIYAZAWA TOSHIYOSHI and ŌUCHI HYŌE to counter the influence of the government's COMMISSION ON THE CONSTITUTION, which was seen as favoring a revision of the postwar constitution in a conservative direction. The group sponsored lectures and observances on Constitution Day (3 May), the anniversary of the new democratic constitution. The threat of revision having receded, the group disbanded in 1976. See also CONSTITUTION, DISPUTE OVER REVISION OF.

Theodore McNELLY

constitution, dispute over revision of

A continuing dispute, since the early 1950s, between opponents of and supporters of the CONSTITUTION of 1947, which was enacted under the Allied OCCUPATION (1945–52). Advocates of revision have alleged that the present constitution is not an ideal one because, first, it was "imposed" by an army of occupation and, second, as an imposed constitution it does not reflect the history, tradition, and customs of the Japanese people. Those opposed to revision argue that the constitution has served as the foundation for a new Japanese democracy which has been welcomed by the people.

Shortly after the end of the Occupation in 1952, leaders of conservative political parties began to urge the revision of the constitution, arguing particularly that the Occupation had prevented free expression of the will of the people in the enactment of the constitution. When the present LIBERAL DEMOCRATIC PARTY was formed through a merger of the two principal conservative parties in 1955, it placed major emphasis on constitutional revision and was responsible for the passage of the law in 1956 establishing the COMMISSION ON THE CONSTITUTION to make a broad study of all issues relating to the constitution. On the other hand, the opposition, especially the JAPAN SOCIALIST PARTY and the JAPAN COMMUNIST PARTY, vigorously opposed the revisionist movement.

During the seven years (1957–64) of investigation, deliberation, and discussion carried out by the Commission on the Constitution, many proposals for revision were made. Supporters of revision argued strongly that they wished to preserve the three fundamental principles of the constitution—the sovereignty of the people, the guarantee of fundamental human rights, and pacifism (as set forth in art. 9)—but they proposed a large number of revisions which their opponents feared would seriously undermine the three principles that are regarded as the foundations of Japan's system of constitutional democracy. Proposed revisions included the following: making the emperor the head of state instead of a symbol of the state and of the unity of the people; modification of the principle of pacifism; emphasis on the traditional family system; enumeration of responsibilities of citizens to the nation to balance the emphasis on individual rights and freedoms; limitation of the rights of labor to organize, act, and bargain collectively; and the modification of some provisions guaranteeing due process in criminal procedure.

Although the Commission on the Constitution made an exhaustive investigation into the process of the enactment of the constitution, it was unable to define precisely the roles of the Occupation authorities and the Japanese government in the process. Consequently, the revisionists remained convinced that the constitution had been imposed. Anti-revisionists, accepting the fact that the Occupation authorities had played a major role in the enactment of the constitution, argued that the Japanese role was important enough to provide a basis for the view that the constitution was actually the result of collaboration between the Occupation authorities and the Japanese.

During the long labors of the Commission on the Constitution two things became clear: first, in spite of the fact that a number of its provisions were open to criticism, the constitution had no serious defects and was functioning well as a fundamental law for Japan's

democratic system of government and politics; and second, the constitution did enjoy substantial popular support. Moreover, it also became obvious that if serious attempts were made to revise the constitution the result would be bitter controversy—particularly over such matters as a change in the status of the emperor and a modification of article 9, both of which were of special interest to the conservatives and potential sources of considerable political disunity.

The voluminous final report of the commission simply recorded the opinions of the commissioners on both general and specific revisions. A clear majority favored revision, but no formal recommendation by the commission acting as a whole was made. The cabinet received the report, but it was never forwarded to the Diet as called for by the law establishing the commission. Although constitutional revision is still the subject of minor attention by political parties, there has been no serious movement for it even by the Liberal Democratic Party since the mid-1960s. Revision seems unlikely as long as Japan maintains its economic, political, and social stability. See also RENUNCIATION OF WAR.

John M. MAKI

Constitution of 1868 → Seitaisho

construction industry

Japan's construction industry has grown tremendously since the end of World War II. During the period 1960-77, investment in construction increased at an annual rate of 17.3 percent, surpassing the average annual increase in the gross national product. In 1977 investment in the construction industry totaled ¥37.8 trillion (US \$140.8 billion).

One-third of construction investment is devoted to engineering works and two-thirds to building construction. About one-third of construction investment comes from the government, which has increased its construction investment since 1974, when the private construction industry experienced a decline.

Construction enterprises totaled 461,000 in 1978, about 1.5 times as many as in 1973. In the construction industry there are very large as well as exceedingly small enterprises, with the vast majority being of either medium or small size (enterprises with capital of ¥100 million [US \$500,000] or less account for 99.4 percent of the total). On a large project it is common practice for major enterprises to let the greater part of the work to SUBCONTRACTORS. A large subcontractor may in turn let the work to a smaller subcontractor and so on, sometimes reaching several levels. The number of workers in the construction industry is increasing yearly and reached 5,160,000 in 1978. This accounted for about 10 percent of the workers in all industries, placing construction among the major industries. In this age of low growth, the construction industry has two major goals. One is expansion overseas; in the late 1970s, overseas contracts accounted for 5 percent of the total amount of the contracts awarded to major enterprises. The other is the improvement of "soft" technology over a wide area, including the utilization of constructed objects, in addition to the "hard" technology of construction itself. Examples of the latter may be found in urban redevelopment projects.

MIHARA Takeshi

construction machinery industry

The heavy construction machinery industry in Japan began with the importation of machinery for the construction of dams after World War II. Shortly thereafter the necessary TECHNOLOGY TRANSFER and capital tie-up arrangements were made, and domestic production began. Today Japan ranks third in the world in construction machinery production, after the United States and the Soviet Union. The industry in Japan is characterized by oligopolistic tendencies, with a few companies controlling each product category. KOMATSU, LTD, and Caterpillar Mitsubishi, Ltd, for example, control the market in the production of bulldozers and crawler loaders. In recent years the emphasis in the industry has shifted from the production of bulldozers to that of hydraulic excavators. In 1979 turnover totaled ¥568 billion (US \$2.6 billion), 22 percent of which was accounted for by exports.

MATSUNAGA Seiji

consumer movement

(shōhisha undō). A blanket term applied to a broad range of activities on the part of organizations seeking to mobilize consumer power

to resist business practices harmful to consumers. Relatively unnoticed for many years, the consumer movement catapulted to national attention in the late 1960s and early 1970s as a result of several widely publicized consumer group campaigns. As a manifestation of organized citizen resistance to victimization by business, the consumer movement became identified in the media and by observers of Japanese society as a part of a general upsurge of citizen activism known as CITIZENS' MOVEMENTS (*shimin undō*).

In the first years after World War II, a consumer movement centered around women's groups and labor-affiliated CONSUMERS' COOPERATIVES sprang up in response to the scarcities of a war-devastated economy. Both consumer cooperatives and women's groups became active as mutual aid societies, and the women's groups, the most prominent of which was the Japan Housewives Association (SHUFUREN), also carried on campaigns against rampant black market profiteering and fraudulent merchandising. At times these groups were aided and encouraged by the Occupation authorities (see SCAP) and the Japanese government, which hoped to use them to help curb illegal and undesirable business activities.

During the decade after the war, consumer groups carried on a continuous battle against rising prices. By the middle and late 1950s, however, growing prosperity and ideological polarization of many groups in the society into leftist and conservative camps had drained away much of the constituency of the consumer movement and robbed it of its unity of purpose. The brief period of cooperation between consumer, labor, and left-wing women's groups in the late 1950s, which resulted in the founding of the National Consumer Group Liaison Conference (Shōhisha Dantai Renraku Kai), ended with the UNITED STATES-JAPAN SECURITY TREATIES crisis of 1960.

As the 1950s drew to a close, changes in the economic and social climate not only in Japan, but in Europe and America as well, introduced a new element into the consumer movement. Comparative product testing, consumer information, and consumer education emerged as the focus of transnational attention in the major industrialized nations. In Japan, these international currents were reflected in the creation of a new product testing and consumer education organization, the Japan Consumers Association (Nihon Shōhisha Kyōkai), sponsored jointly by business, government, and several women's groups. Other, already established, consumer groups also began product testing and consumer complaint management activities. The constituency of the consumer movement was substantially broadened as support for various types of consumer interest programs developed among women's groups, labor, and various government agencies never before concerned with consumer problems. With a few exceptions, these activities of the 1960s attracted little public notice, but the shift in the focus of consumer interest activities, as well as the development of new organizational expertise and communication networks during this period, created the basis for an explosion of organizational energy in the 1970s.

Two developments in the 1970s combined to turn the consumer movement from education to a more militant, activist orientation. Inspired by the aggressive style of consumer interest advocacy practiced by Ralph Nader in the United States, several new, male-oriented groups appeared whose activities centered around investigations and public denunciations of business wrongdoing, as well as the use of various types of legal action. At the same time, anxieties and mistrust toward business—aroused by increasing publicity concerning dangerous foods and drugs, deceptive advertising, and similar problems of immediate practical concern to housewives—began to have an effect upon the growing number of housewife-centered consumer education groups (see FOOD ADDITIVES AND CONTAMINATION). These groups, often encouraged and aided by scholars, consumer movement veterans, and other experts, worked actively for correction of problems which they had uncovered in the course of their investigations.

Landmark incidents in the development of this more militant style of mass movement consumerism were the boycotts of cyclamate foods and color television sets in 1969 and 1970, and the 1973 consumer group protest against use of petroleum protein in livestock feed. The boycotts were the first instance in which groups only recently recruited to the movement joined older, established groups in organizing mass protest campaigns. The petroleum protein protest, however, was spearheaded by a coalition of neighborhood groups acting independently of the larger, more experienced consumer groups and utilized Nader's device of threatening legal action to force companies to suspend their plans. The successes won in these campaigns helped establish the image of a consumer movement capable of successfully pressing for recognition of its demands, and encouraged other consumer groups to take up similar causes.