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and that government by party cabinets meant therefore government in the interests of one or another of the *zaibatsu*.

There was another respect in which party cabinets—when they did come to power—proved a great disappointment to Japanese liberals. In their disregard of civil liberties they were unsurpassed by any of the bureaucratic cabinets of the past. Under them books and other publications continued to be censored with great rigor. The Hara and Hamaguchi cabinets were formally charged by the newspaper profession with prohibiting the mention in the press of more news items than any of their predecessors had. The Higher Special Police were regularly used to spy upon the activities of political opponents. The home ministers of two party cabinets were forced to leave office as a result of their flagrant interference in general elections (1915, 1928). The greatest mass arrests of nonconformist thinkers in Japanese history were conducted under *Minseitō* and *Seiyūkai* cabinets. They also began the process of rooting "dangerous thought" out of the nation's school systems, and of course it was under a coalition party cabinet that the Peace Preservation Law of 1925 was enacted. This law made it a crime to advocate any change in either the national polity or the capitalist system. It was officially interpreted to mean that the public could not even discuss a constitutional amendment.

Perhaps this attitude toward civil rights was only to be expected of the party cabinets, for from its very beginning the political party movement had contained a strong dash of ultranationalism. Whether from conviction or from cunning, the founders of the early Meiji political societies (the *Aikokutō* and the *Rishisha*) had argued that a parliament would strengthen the State for its task of national defense and expansion abroad. They had exalted the emperor's sovereignty and asserted that a Diet would unify the nation and so facilitate the execution of the imperial will. In the 1890s the party politicians constantly berated the bureaucratic cabinets for not being aggressive enough in their foreign policy, and one of the shrillest voices was that of the liberal Ozaki Yukio. Nor should it be forgotten that it was the liberal Katō Takaaki, serving as foreign minister under the liberal Ōkuma who, against the objections of the conservative Yamagata, presented the infamous Twenty-One Demands to China. To all this must be added the prominent role played by politicians of every party in such ultranationalist organizations as the

*Kokusuiikai*, the *Kokuhonsha*, the *Seinendan*, etc. In view of these facts it is not surprising that in the 1930s the political parties offered such ineffectual resistance to the militarists.

It is obvious, then, that the Japanese liberal movement was beset with great difficulties. And yet its failure was by no means a foregone conclusion. In the 1920s there appeared a new crop of younger politicians who had come to maturity during the great upsurge of liberalism that had characterized the war and postwar period. These younger men had wholeheartedly accepted the liberal principles and dedicated themselves to creating a true parliamentary government in Japan. They were not backward about asserting the supremacy of the lower house of the Diet and attacking as anachronisms the Peers, the Privy Council, and the independence of the military services. When the Peace Preservation Law was presented to the Diet, it was they who in defense of civil liberties spoke out against the proposals of their own cabinet. If the world envisaged by the idealists of 1919 had come into being and achieved a degree of permanence, these young Japanese liberals might in time have brought the majority of the nation around to their view; for the Japanese are a people given to searching out and adjusting themselves to what they conceive to be the trend of world developments. In the 1920s the signs had seemed to read "democracy-capitalism-peace," and this was of inestimable help to the liberal movement. Unfortunately, by the early 1930s world political and economic events had produced a situation which both objectively and psychologically was unfavorable to the further progress of Japanese liberalism.

## DEMOCRACY AT HOME

### YOSHINO SAKUZŌ

#### *On the Meaning of Constitutional Government and the Methods by Which It Can Be Perfected*

Yoshino Sakuzō (1878-1933) was for many years professor of political history and political theory at Tokyo Imperial University. Shortly after receiving his appointment he went abroad for three years of study in Germany, England, and the United States. On his return in 1913 he began to write articles analyzing the problems of democratic government. For a number of years these articles

appeared periodically in *Chūō Kōron*, an important journal of opinion. "On the Meaning of Constitutional Government," one of the most significant of these articles, was published in January, 1916. It was a powerful reaffirmation of faith in the inevitable triumph of democracy and represented a reaction against the belief current in certain Japanese circles that Germany's successes had proven the superiority of the Prussian pattern. Yoshino sets forth what he conceives to be the most important characteristics of democracy. He carefully demonstrates that democracy is fully compatible with the concept of the emperor's sovereignty, a principle which had become so sacrosanct as to remain unchallengeable. Very detailed consideration is given to the special problems confronting democracy in Japan, and techniques are suggested for their elimination. All of the problems he touches on were extremely important at the time he wrote—political corruption, non-party cabinets, the rise of a plutocracy, universal suffrage, the need for popular education in the ways of democracy, etc.

[From Yoshino, *Mimpon shugi ron*, pp. 1-130]

PREFACE

Whether or not constitutional government will work well is partly a question of its structure and procedures, but it is also very much a question of the general level of the people's knowledge and virtue. Only where the level is rather mature can a constitutional government be set up. . . . However, since the trend toward constitutional government is world wide and can no longer be resisted, advanced thinkers must make the attempt to establish it firmly. They should voluntarily assume the responsibility of instructing the people so as to train them in its workings without delay. If they do not, constitutional government can never function perfectly however complete it may be in form. Therefore, the fundamental prerequisite for perfecting constitutional government, especially in politically backward nations, is the cultivation of knowledge and virtue among the generality of the people. This is not a task which can be accomplished in a day. Think of the situation in our own country. We instituted constitutional government before the people were prepared for it. As a result there have been many failures, failures which have caused those with high aspirations for government to feel that we have accomplished very little. Still, it is impossible to reverse course and return to the old absolutism, so there is nothing for us to do but cheerfully take the road of reform and progress. Consequently, it is extremely important not to rely upon politicians alone, but to make use of the cooperative efforts of educators, religious leaders, and thinkers in all areas of society.

The United States and Mexico illustrate how two countries with equally well-developed forms of constitutional government may be at opposite ends of the scale in its operation as a result of the different levels of knowledge and virtue attained by their peoples. [pp. 4-6]

I. WHAT IS CONSTITUTIONAL GOVERNMENT?

The word "constitution" invariably means a nation's fundamental laws. However, when used as a modern political term it has certain additional connotations. . . .

First, one usually assigns to a constitution greater force than to ordinary laws. . . . Since a nation's fundamental laws are of great importance, the idea has persisted from antiquity that there should be a distinction between them and ordinary laws. However, there is another reason why modern nations give such special weight to constitutions. The intention is to prevent the reckless infringement, at some later time, of the rights which have been laid down in them with great care. Whatever they may ostensibly be, modern constitutions have in fact appeared as a result of the long struggle for popular rights which was waged against those who in the past monopolized political power—those rightly called the privileged classes. [pp. 13-15]

Second, a constitution must include as an important part of its contents the following three provisions: 1) guarantees of civil liberties; 2) the principle of the separation of the three branches of government; and 3) a popularly elected legislature. . . .

1. The fifteen articles comprising Chapter II of the Japanese Constitution concern "Rights and Duties of Subjects." As the title indicates, some of these articles prescribe duties, but most of them enumerate those rights and liberties which are indispensable to the people's material and spiritual happiness and progress. . . . It is clearly provided that these rights and liberties may not be arbitrarily restricted by the government, but can only be limited by law, in the enactment of which the Diet participates. [pp. 16-17]

2. If it is defined theoretically, the principle of separation of powers becomes a very troublesome problem. Generally speaking, it means that the executive, judicial, and legislative powers are exercised by separate organs of the government. . . . It is true for all countries without exception that the purport of the principle . . . is best shown in the area

of judicial independence. However, nowadays its application to relations between the executive and legislative branches differs substantially from country to country. Of course, the executive and the legislature ought to be independent of each other, but if there is no provision at all for negotiations between the two, constitutional government cannot be expected to function smoothly. [pp. 18-19]

3. More than any other factor [provision for a popularly elected legislature] . . . is regarded by the public as the most important characteristic of a constitution. Indeed, there are many who think of it as the only essential characteristic of a constitution. . . . Why is this provision of such great importance? Because the popularly elected legislature is the only branch of government in the composition of which the people have a direct voice. The personnel of the other two branches are experts appointed by the government. The people have almost no direct concern in naming them. With the legislature it is just the opposite. Its members are directly elected by the people. Naturally, the people can exert influence upon it and thereby cause it to express fully the popular will. . . .

These are the [three] indispensable elements of a modern constitution. . . . If they are present, then there is a constitution. When such a constitution exists and is the guiding principle of political life, we have constitutional government. [pp. 21-22]

#### II. WHAT IS MEANT BY THE PERFECTION OF CONSTITUTIONAL GOVERNMENT?

Living as we do under a constitutional government we must work all the harder for its perfection. However we must not work blindly. The task requires a strenuous effort based upon the same . . . ideology that originally brought about the establishment of the Constitution and upon the fundamental spirit that lies concealed in its innermost depths. . . .

What then is the spirit of a constitution? No generalization is possible, for it varies from one country to another. . . . In some countries the privileged classes survive as relics of a bygone age and still continue to exercise their influence. Where this is so, even though the pressure of world trends has forced the promulgation of a constitution, there are many who try to implement it so as to do no injury to their antiquated political ideology. These people stridently emphasize the principle that their nation's constitution has nothing in common with that of any

other, but instead possesses its own peculiar coloration. We frequently see the like in our country, where there is a tendency in constitutional theory to assert as the basis for the political structure a peculiar national morality of our own, attempting in this way to avoid interpreting the Constitution in accordance with Western constitutional ideas. . . . Of course, each country's constitution is tinged with that country's peculiar coloration. It would be difficult to summarize the unique qualities of each country's constitution, but it is possible to infer from the history of modern world civilization the spiritual basis common to them all. . . . The common spiritual basis which I discover in all constitutions is democracy. [pp. 26-28]

#### III. THE SPIRITUAL BASIS OF CONSTITUTIONAL GOVERNMENT: DEMOCRACY

The Japanese word *mimpon shugi* (democracy) is of very recent use. Formerly *minshu shugi* seems to have been generally favored and even *minshū shugi* and *heimin shugi* have been used. However, *minshu shugi* is likely to be understood as referring to the theory held by the social democratic parties that "the sovereignty of the nation resides in the people." *Heimin shugi* implies an opposition between the common people (*heimin*) and the nobility, and there is the risk it will be misunderstood to mean that the nobility is the enemy and the common people are the friendly forces. By themselves the words *minshū shugi* are not liable to such a misinterpretation, but they smack of overemphasis on the masses (*minshū*). Since . . . the basis of constitutional government is a universally accepted principle which politically emphasizes the people at large but which does not differentiate between nobles and commoners nor distinguish between a monarchical and a republican national polity, I suspect that the comparatively new term *mimpon shugi* is the most suitable. [pp. 28-29]

I think [the Western word] "democracy," as used in the fields of law and political science, has at least two distinct meanings. In one sense it means that "in law the sovereignty of the nation resides in the people." In the other it is used to mean that "in politics the fundamental end of the exercise of the nation's sovereignty should be the people." . . . I should like to use *minshu shugi* and *mimpon shugi*, respectively, as the suitable translations for these two senses of "democracy." [pp. 30-31]

In our country many people are prevented by the "popular sovereignty"

aspect of *minshu shugi* from having a proper understanding of democracy. There has therefore been an unavoidable prejudice which has appreciably retarded democracy's development. Consequently, I believe that in order to have the people strive for the advancement of constitutional government with a correct understanding of democracy, it is extremely important to make clear the distinction between the two meanings of the word.<sup>1</sup> [pp. 31-32]

#### IV. THE DISTINCTION BETWEEN POPULAR SOVEREIGNTY AND DEMOCRACY

Even "popular sovereignty," if we examine it closely, is seen to be of two kinds. . . .

The first has been set forth in the following form: In the corporate body known as the nation the original and natural locus of sovereignty must be the people as a whole. This I call absolute or philosophic popular sovereignty. . . .

The second kind is set forth in the following form: In a specific country it has been decided by interpretation of the constitution that the sovereignty resides in the people. This I call popular sovereignty by mutual consent or by interpretation. . . . Both types, however, concern the legal location of the nation's sovereignty. Consequently, there cannot be the slightest doubt that the word "popular sovereignty" is inappropriate to a country like ours, which from the beginning has been unmistakably monarchical. Therefore, I believe it is very clear that while "popular sovereignty" and "democracy" are verbally similar, they differ a great deal in substance, for "democracy" raises no question of republicanism or monarchism and constitutes the fundamental spirit common to the constitutions of all modern countries. [pp. 32-38]

#### V. MISINTERPRETATIONS OF DEMOCRACY

Democracy is not contingent upon where legal theory locates sovereignty. It merely implies that in the exercise of this sovereignty, the sovereign should always make it his policy to value the well-being and opinions of the people. . . . There is no doubt that even in a monarchy this principle can be honored without contravening the established system in the slightest degree. . . . Nevertheless there are many who think

<sup>1</sup> Hereafter *minshu shugi* will be rendered "popular sovereignty" to distinguish it from the term Yoshino prefers for "democracy"—*minpon shugi*.

that democracy and the monarchical system are completely incompatible. This is a serious misconception. [pp. 38-39]

Most of the misconceptions about democracy arise from emotional arguments which have no theoretical basis. This is especially true of the small class that up to now has possessed special privileges and monopolized political power. . . . In the past the system made them rulers of the common people. In the new age they must yield this formal dominance to the people and be content with the substance of moral leadership. . . . As long as they alter neither their attitudes nor their motives to accord with the change in the times, no true progress can be expected in constitutional government. The public is prone to say that constitutional government has failed to develop as we had hoped because the thought of the people has not developed. Yet, whether or not the people's thought develops is really determined by whether or not advanced thinkers properly guide it. When the small class of leaders holds to its narrow-minded views, it is impossible to implant in the hearts of the common people sound constitutional ideas no matter how much the necessity of spreading constitutional thought is preached. In this connection I must turn to the small enlightened intellectual class in the upper ranks of society and express the hope that they themselves achieve a true understanding of constitutional ideas and become conscious of their duty to guide the common people. [pp. 39-41]

In addition to misinterpretations based on emotional arguments, there are also criticisms of democracy which have a somewhat theoretical basis, or what would outwardly appear to be such. First, there are persons who confuse democracy with popular sovereignty and see no clear difference between them. They therefore think that democracy is opposed in theory to the principle of the sovereignty of the emperor. . . . Second, there are some who look at the history of democracy's development, see that it has invariably gone hand-in-hand with popular sovereignty, and conclude from this that it is incompatible with the monarchical system. . . . Up to a point, this theory is true. Indeed, if we look at the history of the development of constitutional governments, we see that they have for the most part passed through a revolutionary stage. . . . But it is a mistake to conclude that because in its origins constitutional government came from revolutionary democratic thought it must always be dangerous. This is as illogical as to argue that since man is descended

from the monkeys he will always have the monkey's inferior characteristics. . . .

If we hesitate for fear of possible evil effects, progress and development will never be started. If something is necessary for the advancement of the nation and society, we must quickly search for a method to attain it. And we must strive greatly to prevent the abuses that we fear may result. We should not live in idleness, bound by our old established ways. Progress requires strenuous effort. As a people with constitutional government we must willingly throw open our doors to world trends and actively seek the greatest progress and development for our nation and society. Yet, at the same time, we must resolve to pause and fight to overcome whatever harm may attend on this. This is truly the glorious responsibility borne by the advanced thinkers in a constitutionally governed country. As long as they are determined not to shirk it, I believe we need have no fear whatever for the future of the nation under democracy. [pp. 41-44]

#### VI. THE SUBSTANCE OF DEMOCRACY: POLITICAL OBJECTIVES

Earlier I defined democracy as the policy in exercising political power of valuing the profit, happiness, and opinions of the people. On the face of it, this definition reveals two aspects of democracy. First, the object of the exercise of political power . . . must be the people's welfare. Second, the policies which determine how political power is exercised . . . are settled in accordance with the people's opinions. . . .

The first requirement of democracy, then, is that the ultimate end of the exercise of political power be the good of the people. . . . In ancient times the objective of government was the survival and prosperity of a small number of powerful persons or the preservation of their authority; it was never the well-being of the people as a whole. . . . To the feudal mind, the land and people of a country were no more than the personal property of the royal family. But in the feudal period it became quite clear that land and people were the foundation upon which the royal family stood, so the people gradually came to be valued. . . . In general, international competition further deepened the ruling classes' feeling of dependence upon the people. . . . Accordingly, the feudal state came to treat the people with a great deal of consideration. . . . From our point of view today, the people were in the final analysis like servants

happy under a kind-hearted master. They were not permitted to claim consideration for themselves as a matter of right. . . . Our democracy is opposed to placing the people in such a position. It demands that the ultimate goal of government must change and become the welfare of the people. It further demands that . . . [their welfare] absolutely never be used as a means to some other end. In modern politics it is certainly not permissible to sacrifice the general welfare to the interests of a small number. [pp. 44-48]

There may still be some who denounce democracy as contravening the idea of loyalty to the emperor, a sentiment which dates from the founding of our country. . . . There may be those who ask whether democracy would oppose setting aside the people's welfare even if this were to be done in the interest of the Imperial Family. In my answer to these criticisms I would make the following two points. First, there is absolutely no contradiction nowadays between the "interest of the Imperial Family" and the interest of the nation, [an interest] which stands at the very top of the people's well-being. . . . Since the Imperial Family is the unique head of the national family, it is utterly unthinkable that it should become necessary "in the interest of the Imperial Family" to disregard the interest of the people. Consequently, I believe the interest of the Imperial Family and the interest of the people can never conflict with each other. Second, let us yield the point and suppose such a conflict to have arisen between the two. Since democracy relates to the sovereign's way of using his powers, there is nothing to prevent him from establishing the basic principle that he will not arbitrarily disregard the welfare of the people. . . . It is the determination of the Japanese people willingly to go through fire and water for the sake of the emperor. However, if the state systematically exploited this devotion to secure the people's acceptance of acts which disregarded the people's welfare, might not a certain cheerlessness come to characterize the subjects' spirit of loyalty? I would therefore like to make it a principle that whenever the State demands from the people sacrifices beyond a certain level the choice of whether or not they are to comply should be left entirely to their moral judgment. . . . Our loyal people will never for fear of their own safety hesitate to strive for emperor and country. Loyalty to the emperor is a spirit which dates from the founding of our country; it is the essence of our national polity. Reinforcing it by erecting it into a

system would, I believe, lead to many evils but yield no advantage. [pp. 48-50]

Democracy does not permit the welfare of the people to be sacrificed for any purpose whatsoever. However, if we ask whether this point has today been completely realized in every country, [the answer is] most assuredly no. . . .

In our own country, unhappily, the people do not yet comprehend this problem and have not progressed to the point of insisting upon [the principle]. On the other hand, though in general the privileged classes have little by little come to understand the demands of the people and thus may be considered to be aware of the way in which to meet them, there are still narrow-minded persons in these classes who value themselves highly and are condescending to the people. . . . In order that the place of these classes in a democracy may be peacefully settled and a trend toward a healthy development of society thereby created, it is necessary that on the one hand we work for the development of the people's knowledge and that on the other we urge the upper classes seriously to search their hearts. [pp. 51-53]

In recent times there has been a trend in our country and others toward the appearance of certain new privileged classes in addition to the historic ones. Chief among these is the plutocracy. . . . It is contrary to the objective of democracy for economically superior and inferior classes to develop and as a consequence for profits to become the monopoly of a single class. Therefore, without touching on the fundamental problem of whether or not the organization of society should be basically reconstructed, it has of late been considered necessary in government to resort temporarily to moderate measures directed against these economically privileged classes. . . . To consider now the situation in our own country, in recent times capitalists have gained strength and with their huge financial power are finally on the point of wrongfully trampling upon the public interest. It is true that this tendency is not so strong [in Japan] as it is in America and Europe, but recently the influence of the capitalists has increased markedly. After the Sino-Japanese War and the Russo-Japanese War their power grew with especial rapidity. Wealth has never lacked a certain degree of power, but before the Sino-Japanese War the money power was in fact completely under the control of political power. In the early years of the Meiji Period, wealth bent the knee at the

door of political power and under the latter's shelter worked by degrees to increase financial power. . . . The Sino-Japanese War forced political power to beg aid from wealth for the first time. In this way wealth first achieved a position of equality with political power. With the Russo-Japanese War, the government of Prince Katsura kowtowed to the capitalists in all matters and sought their financial aid. Thereupon, wealth in one jump achieved strength sufficient to control political power. Bestowal of peerages on rich men dates from this time. . . . In this way the wealthy put pressure on political power and for the profit of their own class demanded the passage of various unfair laws. As a result there are in force today various kinds of financial legislation which are very disadvantageous to the general public and serve the interests of the capitalist class alone. Thus there has recently been produced in our country a new privileged class whose interests are unfairly protected by law. This kind of privileged class will in the future come into conflict with the demands of democracy; how the two will be harmonized is a matter which engages our most anxious attention. Since the moneyed class are concerned with things from a materialistic point of view, they do not readily listen to the voice of the ordinary people. Consequently, if there come to be great difficulties in solving problems in the area of [constitutional government], will they not in all likelihood arise from this problem of the financially-privileged class? If the plutocracy were by some chance to make common cause with the traditional privileged classes in confronting democracy, there could be no greater misfortune for the nation. In this connection I must incessantly arouse the attention of the intellectuals and entreat the reflection of the nobility and the plutocrats who are flouting the affections of the nation. [pp. 53-55]

#### VII. THE SUBSTANCE OF DEMOCRACY: DETERMINATION OF POLICIES

Democracy not only implies that the end of government is the welfare of the people, but also demands that in the final determination of policies the people's opinions must be valued highly. This certainly does not mean that in each individual problem the opinions of each individual person be heard. It is an overall principle according to which nothing is done in opposition to the views of the people and no political action is undertaken without their general approval—expressed or tacit. [p. 56]

However, one encounters quite strong criticisms of this second es-

sential of democracy. If one examines these criticisms closely, they are, I think, seen to be of three kinds.

The first is the idea that democracy is opposed constitutionally to the principle of imperial sovereignty. . . . Yet, democracy is a theory of politics, not of law. From the legal standpoint, sovereignty resides in the emperor. Democracy comes in when one asks what principle ought to guide the emperor in the exercise of his sovereignty. It is in no way inconsistent with monarchy. Of course, I too am agreed that in order to protect the imperial institution we should reject the dangerous theory of popular sovereignty. However, opposition on this account to the advance of democracy—so similar in name to popular sovereignty, but so different from it in substance—is a serious problem for the future of constitutional government. [pp. 57-58]

Another criticism is the notion that, even conceding democracy to be a political concept, if in the exercise of his power the sovereign must by custom always take into account the general will of the people, his sovereignty is thereby limited and free exercise of his authority is prevented. However, those who believe this ignore the fact that in a constitutional country the sovereignty of the ruler is always limited in some way. It is because the word "limitation" is used that the above impression is produced; how would it be if the word "Way" were used in its place? Assume that constitutional government is a system under which a sovereign rules not by arbitrary whim but in accordance with the "Way." Is not this "Way" a sort of limitation on the free exercise of sovereignty? Well, the "Way" manifests itself both legally and politically; in other words, constitutional countries make it a rule to limit the power of the sovereign both in legal theory and in political practice. . . . Practically speaking, there is no country in the world today in which the sovereign decides all the policies of state by himself. . . . [Thus] the real problem is: what *kind* of limitations should there be on the ruler's authority? Should he be limited by concern for the will of the people generally, or by the opinions of two or three of his intimates? Concern for the will of the people may or may not be a limitation of the ruler's sovereignty, but I find it a one-sided argument not to admit that other limitations exist even when there is no such concern. Let us assume, for example, that there has been a cabinet change, and that custom demands that responsibility for forming a successor cabinet must be left to the leader of the

political party that commands a majority in the parliament. It is objected that this practice imposes limitations on the ruler's sovereignty. . . . The ruler's complete freedom of action, if applied literally on such an occasion, would imply that without consulting anyone else he alone must decide who was to be the prime minister. . . . Yet, whether or not such a method would be practical, in fact the usual practice is for him to consult with two or three of the experienced ministers of his court. . . . As I see it, appointment of ministers according to party majorities in parliament and appointment on the advice of elder statesmen are both alike limitations of the ruler's authority. . . . The question which arises here is *which* sort of limitation should the ruler accept? Should he consult a small number of people, or should he consult at large with great numbers of people? Consequently, it is improper to reject democracy on the grounds that it limits the emperor's sovereignty and is therefore bad. If one wishes validly to reject democracy, one must go a step further and clearly demonstrate that it is always bad to take counsel with many men and always good to take counsel with a few men. Yet, in Japan since early Meiji it has been the fundamental national policy to take counsel with large numbers of persons. H. M., the Meiji Emperor, decreed at the beginning of the Restoration that deliberative assemblies should be widely established and all matters decided by public discussion. Thus the spirit of democracy, which consists in the just and equitable conduct of government in consultation with the majority of the people, has been our national policy since early in Meiji. Those who today deny this and advocate the principle of minority advice are moving counter to the general trend of political evolution. [pp. 58-61]

It is said that the enlightened are always likely to be a minority; that therefore the best government must be government by the minority; and that majority rule, on the other hand, deteriorates into mob rule. This . . . is partly true. However, one must not forget that minority rule is always government in a dark chamber. However splendid a person's character may be, when others do not observe him he is likely to commit excesses. . . . Some point to the corruption of the Diet and its members and say that there are bound to be evils in majority rule. . . . Yet in general, since government by the minority is secret government, many of its evils never come to the attention of the country; while since

majority government is open government, there is a tendency to magnify its minutest deficiencies. [pp. 65-66]

It may be mistakenly thought that in majority government no use at all is made of the enlightened minority, but this is absolutely not so. . . . [This minority] can most properly fulfill their function as truly enlightened people when they modestly identify themselves with the majority, ostensibly following the majority will and yet as the spiritual leaders of the majority quietly working for the public good. . . . In all formal respects, the majority form the basis for the exercise of governmental power and they must be the political rulers, but within their ranks they in fact have need of spiritual leaders. . . . If the enlightened minority are truly to serve the national society, they must resolve to use their wisdom to guide the masses spiritually. At the same time they must resolve to enlist themselves in the service of the masses and by making their own influence prevail work for the public good. . . . Only when these two groups work in cooperation can there be a perfect development of constitutional government. Seen politically, this cooperation means the country is ruled by the will of the majority, but seen spiritually, it means the country is guided by the enlightened minority. . . . It is government by the people, but in one sense it can also be called government by the best. Thus one can claim that constitutional government reaches its most splendid perfection when there is a harmonious reconciliation of political democracy with spiritual aristocracy. . . . In this respect, I am thoroughly disgusted with the attitude of Japan's elder statesmen and other bureaucratic statesmen. Though they enjoy the special favor of the Imperial House and the esteem of the nation, they sometimes use their exalted position to interfere irresponsibly in political affairs. They will not reach down from their eminent position to establish contact with the masses, but instead take a hostile attitude toward democratic influences. It is much to be regretted that they thus fail to understand the true meaning of modern political life, but one must say it is especially unfortunate for the nation that they neglect the social function of the enlightened minority by not assuming the responsibility of popular leadership. After all, the ordinary people, surprisingly enough, actually pay an excessive respect to honors and titles. When the aristocrats who inherit historical and social authority are at the same time highly

capable in point of actual ability and will jointly undertake the leadership of the people, the people gladly submit to this leadership. For the sake of the healthy development of constitutional government, nay, say rather for the sake of the future success of our society and nation, I entreat the enlightened minority to reflect deeply on this. We must hope that the aristocrats and plutocrats will respond to the handsome treatment they have received from the nation not only by giving great thought to how they should conduct themselves but also by giving serious attention to the education of their children and younger brothers. [pp. 67-70]

#### VIII. REPRESENTATIVE GOVERNMENT

In this section Yoshino argues the merits of representative government against those who claim that it does not go far enough toward meeting the demands of true democracy. Syndicalism and the popular referendum, he says, have been the two methods most commonly advanced for achieving more direct popular government, but both of them he feels to be impractical and unnecessary.

#### IX. THE RELATION OF THE PEOPLE TO THE LEGISLATORS

The most important point regarding the relation between the people and the legislators is that the people always occupy the position of master of the house, while the legislators are of necessity transients. The proper maintenance of this relationship is absolutely essential to the functioning of constitutional government. The abuses of constitutional government generally stem from the inversion of this relationship. And it is not just a question of the relation between the people and the legislators. The same truth holds as between legislators and the government. Whenever the legislators, who should supervise the government, are puppets of the government, many evils arise. Likewise, whenever the people, who should supervise the legislators, are instead manipulated by the latter, then the operation of constitutional government is replete with innumerable scandalous corruptions. If the government seduces legislators with offers of gain, if legislators also lead the people astray with offers of gain, then the proper relationships are inverted and the structure of constitutional government is filled with abuses. If we wish to clean up political life and see a normal evolution of constitutional government, the first thing we must do is to pay strict attention to rectifying the relationship between

the people and the legislators. There are at least three measures that must be adopted in order to accomplish this. [p. 87]

1. Inculcation of election ethics. . . . I do not think that the ethics of the Japanese are, broadly speaking, especially low. Yet, since elections are a new experience for them, they have, regrettably, greatly ignored morality in conducting them. I feel it is necessary for us to inculcate the principles of election ethics in the people of the nation.

This being the case, what points should the people be made especially to understand? One of them is that though a single vote seems to be of very little importance, it actually is of great consequence to the fate of the nation. It is too sacred to be subject to influence by bribes or intimidation. A second point is that one votes in the interest of the nation, not for the profit of a single locality. To vote with local interests alone in view is likely more often than not to result in sacrificing the interests of the whole nation. A third point is that voting is our prerogative, not something to be done at the solicitation of the candidates. It is up to us to recommend proper candidates to the nation. Nowadays it is extremely important to drive these three points deep into the minds of the people. [pp. 88-89]

2. The necessity of adopting and enforcing strict election regulations. When legislators manipulate the people, invariably corruption and bad government flourish. Only when the people control their legislators does the operation of constitutional government follow the proper course. Therefore, it is especially important to impose strict penalties on the corrupt practices which may be carried on between the legislators and the people. . . . In this respect, a rather strict election law has been adopted in Japan; the only thing to be regretted is that it has not been rigorously enough enforced, and that the government tends to be lax in dealing with the activities of its own party. [pp. 91-92]

3. The necessity of extending the suffrage as widely as possible. If the suffrage is limited, corrupt practices are carried on unreservedly. When the suffrage is extended to the limit, there can be absolutely no distribution of bribes and the like. Moreover, only when it has become absolutely impossible for candidates to fight one another with money and things of value will they compete by sincerely and frankly presenting their views and personal qualifications to the people. Consequently, the people will gain an opportunity of receiving a political education

through this means. When suffrage is limited, as it is today, there is a chance of winning a contest without presenting one's views and qualifications. Therefore the political parties pay little heed to the political education of the people. . . . There is no doubt that politically Diet members truly represent all the people of the country. Therefore, they should not be only the representatives of one class. It is logical then that the scope of the electorate should be as broad as possible. . . . Today as in the past the basic political consideration is to have elections which result essentially in the representation of the overall interests of the people generally. We think it proper on this ground that the suffrage should be extended as widely as possible. Naturally this is not to say that suffrage should be unlimited. We must admit that from the standpoint of necessity and convenience there are several kinds of limitations to be set if the objectives of elections are to be achieved. To begin with we must probably exclude infants, the insane, criminals, persons on public relief, bankrupts, etc. . . . Whether or not women should be excluded is, in the final analysis, a problem for the future. Today, suffrage is generally the exclusive possession of men. Of course there are some countries that do extend political rights to women. [pp. 93-95]

Nowadays the two ways that have actually been adopted to weed out those unsuited [to exercise voting rights] are educational qualifications and property qualifications. . . . However, these days formal education alone is not the thing which distinguishes between those who have and those who have not the training proper to humanistic [moral] cultivation. In a time like today when formal education is extremely widespread, I suspect that this standard is of little practical value. Making educational requirements an absolute qualification is behind the times. . . . Furthermore . . . limitation [on the basis of taxation or property] has become meaningless in the present age. Practically, it is impossible to use a fixed amount of property as a criterion for mechanically distinguishing between those who have and those who do not have steadiness of character. . . .

Most of the civilized countries of the world have seen fit to adopt universal [manhood] suffrage. The only civilized countries . . . that impose comparatively great limitations on suffrage are Russia and Japan. In all other civilized countries universal suffrage is already a settled issue and no longer comes up for political discussion. In Japan the

agitation for extending the suffrage has recently increased, but it will apparently take a long time before the idea becomes generally accepted. Recently when the Ōkuma cabinet introduced a temporizing bill which would have reduced the present ten-yen tax voting qualification to five-yen, there was violent opposition in certain political quarters. Hence, I cannot help feeling that the establishment of universal suffrage is a long way off. Among many Japanese intellectuals there is an incredible misunderstanding of and violent antipathy to universal suffrage. Of course, in the beginning it was mainly the Socialists who advocated the system. This is by and large the probable reason for the misunderstanding. It is not strange that the upper classes are not pleased with the system, but it is a very peculiar phenomenon that the ordinary people do not welcome it wholeheartedly. A bill for the adoption of universal suffrage passed the House of Representatives at the 27th Diet in 1911, but at the time it was said that it was passed in the firm belief that it would never be approved by the House of Peers. As had been expected, the House of Peers rejected it by a huge majority. If we do not dispel this misunderstanding of universal suffrage and instill in the people the deep, heartfelt conviction that constitutional government cannot possibly develop properly unless universal suffrage is adopted, then the prospects for constitutional government are indeed gloomy. As a consequence of our present suffrage limitations, no more than three per cent of all Japanese are enfranchised. In the general elections of March last year [1915] only 1,544,725 persons had the right to vote. [pp. 102-3]

Thus, the extension of the suffrage and the strict enforcement of electoral laws are the most pressing matters facing Japan. The history of other countries shows that these two actions have often effected a clean-up in political life. If they are neglected, the ideal of constitutional government cannot be realized no matter how much one preaches about election ethics and prods the conscience of the people. The argument for extending suffrage is a subject that we must study most earnestly and we must henceforth advocate it most fervently. In so far as there are misconceptions among the public, we must on the one hand appeal to the intellectuals to reconsider the issue and on the other dispel the confusions of the political world. We must work diligently at these two things so that in the near future universal suffrage may become a reality. [p. 104]

#### X. THE RELATION OF PARLIAMENT TO THE GOVERNMENT

It is the government that takes direct charge of state affairs. Only when parliament oversees the government can there be just and equitable administration. But since the government wields real power, it is likely to use its position to control and manipulate the legislators, thereby reversing matters and ordering about as it pleases the very persons by whom, properly speaking, it should be supervised. Many hidden evils spring from such a situation. . . . Therefore, it is quite essential to the healthy functioning of constitutional government that the government be kept in a state of strict subordination to the parliament. [pp. 107-8]

Hence we consider it essential to sharpen the moral conscience of officeholders as much as possible. . . . Fidelity to conscience and regard for integrity are the very life and soul of a politician. For a politician there is no greater crime than to change his opinion for the sake of dishonest gain. It is strange that such affairs should be problems in a constitutional country. It is more than strange; it is shameful. Under constitutional government, worthless individuals should not become legislators in the first place. Government is fundamentally a very exalted calling, one that can only be undertaken well by persons of high cultivation. Therefore is it not an insult to a politician merely to investigate his character? It is the practice in Western countries that men about whose character there is some doubt are never accepted as politicians in the first place. . . . The frequent occurrence of corrupt behavior among legislators is probably a peculiarity of Japan. With such a state of affairs it is absolutely impossible for constitutional government to progress in Japan. To prevent [corruption], as I have said again and again, it is necessary to keep the people from committing errors at the very start in the elections. Moreover, it is extremely necessary that the people inflict the severest punishments upon representatives who defile their offices. We must not only by means of law sternly punish any representatives who defile their offices; we must also resolve to employ the power of public opinion to bury them in political oblivion.

In this regard, one point I wish to emphasize most sharply is that the offense of one who tempts [an official] is far more serious than that of the one who is tempted. [pp. 109-10]

Making the legislators morally independent of the government is only

the first step. If we are to get the legislators fully to discharge their supervisory responsibility and thoroughly inquire into transgressions of the government, it is also essential that the government be made to fulfill its political responsibility to the parliament. . . . If the principle of responsible cabinets has not been firmly established in political institutions or usage, it is impossible to achieve the proper relationship between the government and the parliament. Consequently the requisites for democracy cannot be fully met.

In contrast to the responsible cabinet system there is also the principle of the nonparty cabinet. According to this idea, the cabinet should rise above the wishes of parliament and occupy a position of absolute independence. Under this system, no matter how much the government is opposed by parliament, no matter even if on occasion there are votes of nonconfidence [in parliament], the government unconcernedly continues in office. To put the theory in its worst light, it is a pretext which enables the government freely to perpetrate any kind of arbitrary misrule. Thus it is inconsistent with the principle that final decisions on policy should depend upon the views of the people generally. Therefore, the nonparty cabinet system is decidedly not the normal rule in constitutional government. Of course, under our Constitution theoretically the ministers of state are responsible to the sovereign alone, so it is not absolutely necessary for them immediately and as a matter of course to resign their posts when the Diet opposes them. That is to say, it cannot be called unconstitutional. However, it is clear from the foregoing that it is contrary to the spirit of constitutional government. [p. 112]

The usual method used nowadays for calling the responsibility [of the government] into account is the parliamentary cabinet system. In most countries it has recently become the practice for the government to be formed by the leader of the political party that has a majority in parliament. In this sense most governments are today party cabinets. . . . In countries where there are just two major parties, this system works well, but in those with many small parties, it does not. . . . In order that the wisdom of the party cabinet system may be demonstrated, it is absolutely necessary to encourage the establishment of two major parties. However, the coming into being of two major parties is a matter which is determined by the course of events, and cannot very well be controlled by a constitution's theory. As a result, the workability of the party cabinet

system always varies from one country to another. Hence the problem arises as to whether party government can really work smoothly in Japan. . . . Since I am interested in the progress of constitutional government in Japan, I should like to present to the nation the reasons why the natural trend toward a two-party system should be promoted and why the factors that stand in its way should be removed with the utmost vigor. Unfortunately there are a number of politicians who are in the grip of petty feelings and deliberately build up differences. These men are too narrow-minded to discard petty differences and form a union based upon greater common interests. They are sulky political malcontents who hide behind beautiful phrases such as "remaining loyal through ten years of adversity." The great misfortune of Japan today is the narrow-mindedness of politicians. . . .

I have explained why a fully responsible cabinet system must be adopted if constitutional government is to reach its most perfect development. However, in the West this matter was settled long ago and is hardly an issue any more. If there were a place where this became an issue today, that place would be unexpectedly showing itself to be way behind the times in the development of constitutional government. [pp. 113-20]

As I see it, Japan is, in general, on the right track in this respect. Though the responsible cabinet system has not been fully attained, today everyone seems to hold the firm belief that a vote of nonconfidence in the Diet should inevitably result in the resignation of the cabinet. Consequently it has become the practice for the government always to dissolve the Diet as soon as it sees that a nonconfidence motion is definitely about to be passed. Since December, 1885, when Count Itō . . . first instituted the present cabinet system, there have been about twenty cabinet changes. The great majority of them resulted from clashes with the Diet. Even in the beginning when the principle of nonparty cabinets was asserted, no cabinet could maintain its position in the face of parliamentary opposition. . . . At that time a nonparty cabinet seems to have meant a cabinet which stood aloof from the political parties in the Diet; it does not seem to have meant a cabinet uninfluenced by Diet decisions. Half-way through this thirty year period, Katsura and Saionji inaugurated the custom of alternating with each other as prime minister. Since that time, though the principle of party cabinets has not yet been fully implemented, it has become impossible for anyone to enter the cabinet without allying himself

in some fashion or other with the majority forces in the Diet. We should endeavor to promote this tendency and attain a more thorough enforcement of party government. From this point of view, I believe that even though good results might temporarily be achieved with a national unity cabinet, such as has been advocated from time to time, or with the cabinet of "talents" that some schemers have occasionally dreamed of, we must firmly reject these for the sake of the progress of constitutional government. Therefore in this area we must today struggle and contend on an even larger scale. If we are to have the Diet adequately supervise the government and thereby make the Diet in fact the central force in government, I believe it is absolutely essential that we should eradicate the bigoted views [that prevail about party cabinets].

It is essential to the operation of constitutional government that parliament should be the central force in government. This is why we have preached the principle of responsible cabinets. Yet, the West has gone ahead to a still further stage of development. Namely, in one or two countries it is no longer the government that is the powerful obstruction to making parliament, especially the popularly elected house, the central political force. If there is anything today that still somewhat stands in the way of the political supremacy of the popularly elected house, it is the upper house. Hence it has come to be advocated that the lower house should be made supreme over the upper house. . . . Originally the upper house [was established as a body whose] duty it was to give further consideration to the decisions of the lower house because it was felt that the people, whom the lower house represents, were not yet sufficiently well informed. Yet there are some among the masses today who are extremely highly advanced. Accordingly, from the practical point of view, no great harm would come if the restraining powers of the upper house were eliminated and the supremacy of the lower house recognized. [pp. 122-24]

The advanced nations of the West believe the popularly elected house is extremely important to the functioning of constitutional government. They believe this because the essence of constitutional government is, after all, democracy; and the complete realization of democracy, presupposing as it does the various reforms I have mentioned above, ultimately consists in making the lower house the central political force. Thus intellectuals in all countries are extremely anxious to give the lower house both in form and in fact a position of supremacy over the upper house

and the government. In Japan the meaning of a responsible cabinet is only now becoming clear. Though this is cause for rejoicing, we must at the same time regret very much that the authority of the lower house, which directly represents the power of the people, is not very important. This is partly because the legislators that comprise it are not as yet endowed with knowledge and dignity. No matter how important the lower house ought to be in the governmental system, the authority of the nation will never be vested in it if those who actually make up its membership consist solely of mediocre, unprincipled fools. Because able men are not attracted into it, it lacks the authority to deal with the upper house; and when a cabinet is formed the unseemly truth is that at the very least the prime minister must be sought outside of the lower house. As long as the lower house lacks able men, it will lack power; as long as it lacks power, men of promise will seek careers elsewhere. In this vicious circle the wisdom of the responsible cabinet system cannot be fully demonstrated. Under the present circumstances it is useless for the lower house to assume an air of importance. Screaming that the lower house should be respected will not endow it with any actual power. In this matter, we must on the one hand earnestly seek self-respect and strenuous effort from the legislators; on the other, we must ardently hope that the people will not go astray in elections, and that they will not neglect to spur on, indirectly and directly, the legislators whom they have chosen. As regards the Elder Statesmen and other upper class politicians, we must earnestly hope that they do not assume an attitude of detached loftiness, of useless disparagement of the lower house and of disdain for the power of the people's representatives. We must earnestly hope that as Japanese they too will, like us, cooperate for the sake of the nation in the task of strengthening the lower house. [pp. 128-30]

### MINOBE TATSUKICHI

#### *Defense of the "Organ" Theory*

("Clearing up a Misinterpretation of a Constitutional Theory")

Minobe Tatsukichi (1873-1948) was professor of constitutional law at Tokyo Imperial University from 1900 to 1934. As early as 1911 he had expounded his famous theory that the emperor was an organ of the State. At that time conservative scholars attacked his theory, but as a result of Minobe's vigorous

and effective defense, it became generally accepted among legal scholars. With the growing ultranationalism of the 1930s, however, the attack on Minobe was renewed. In February, 1934, General Baron Kikuchi Takeo denounced Minobe's theory in the House of Peers. The selection below is the refutation Minobe published a few days later in the *Imperial University News*. This answer shows very clearly what Minobe meant when he called the emperor an organ of the State. It also illustrates the principles of constitutional interpretation employed by him in his lifelong endeavor to give a liberal content to the forms of government devised by the Meiji oligarchs. Moreover, we have here a demonstration of the clever way in which Minobe was able to bring to the support of his arguments the hallowed symbols of the past. In addition, one sees with what devastating logic Minobe could hoist the enemy on his own petard.

Unfortunately, logic was not enough in the Japan of the 1930s. In February, 1935, Baron Kikuchi resumed his attack in the House of Peers. The following month both houses of the Diet passed resolutions demanding that the government "clarify the national polity." In April the Home Ministry banned all of Minobe's writings which had any reference to the organ theory, including the present selection. Minobe resigned his seat in the House of Peers and just barely escaped trial for lese majesty. (One might add just barely escaped with his life, for in February, 1936, an extremist assaulted and wounded him.) On October 1, 1935, the cabinet announced its determination to eradicate the organ theory and initiated measures which culminated in the publication of *Fundamentals of Our National Polity (Kokutai no Hongi)*.

[From Minobe, *Gikai seiji no kentō*, pp. 337-47]

In a speech . . . delivered on February 7 at a session of the House of Peers Baron Kikuchi Takeo touched upon the theories of constitutional law taught at the Imperial University. He did not mention me by name, but he cited one of my works and quoted a passage from it which he made out to be contrary to our national polity. He thundered that if such theories were not stamped out the future of the nation would be endangered. For a person with the slightest knowledge of constitutional law this attack does not require any refutation. However, a work of mine has been publicly cited at a session of the House of Peers and the whole Imperial University slandered. For the honor of the University, if for no other reason, I think it necessary to say a word about these irresponsible utterances.

As extracted from the minutes of the House of Peers the exact wording of that part of the Baron's speech which was concerned with my book is as follows:

"Nevertheless, there are books which today advocate this; among them one called something like *Kempō Satsuyō*, which is used at the Imperial University. . . . When you take a look at this book, you find that edition after edition has been published without there being eliminated from it the theory that the emperor is an organ of the State and other doctrines which are in contradiction to our national polity. Merely to think of our emperor as the same as the Chinese emperor or . . . any Western sovereign is, I believe, to forfeit the spirit of our national polity. If we do not stamp out the thought of scholars and politicians who think in that way, the future of the nation is threatened.

"This textbook emphasizes the influence of actual circumstances and vigorously expounds logic and the law of reason. It says that even though the words of the Constitution remain the same, the interpretation of these words may gradually come to be changed. . . . If possible, it would be preferable to change the problems on the Higher Civil Service Examination. The chairman or any other member of the Higher Civil Service Examination Committee who believes in this kind of idea should be thrown out. That is what I think."

These are his comments on my theory of the Constitution. He cited three points which he claimed were subversive of the national polity: 1) the theory that the emperor is an organ of the State; 2) the theory that the nation's law changes under the influence of actual circumstances; 3) the theory that even though the words of the nation's law are not altered there may be changes in its official interpretation.

I am second to none in my deeply rooted conviction that our unique national polity is our people's greatest glory and that therein partly lies the strength of the nation. The greatest duty of the people is to clarify the concept of our national polity and to support and uphold it.

However, I do not think the national polity is at all being upheld when a person who obviously has no understanding of scholarship arbitrarily rejects the theories of others, uselessly maintains narrow-minded opinions, and in the name of "national polity" tries to impede the development of serious learning. On the contrary, it is to be feared that such behavior will have an unfavorable effect upon the national polity.

As for the three points which, in a very fragmentary way, he cited from my book, it is simply his failure to understand my theories that makes him think them contrary to our national polity.

The scholarly validity of the theory that the sovereign is an organ of the State is an old chestnut which has already been under discussion for many years. Since the settled opinion of the academic world has already arrived at its foreordained conclusion, it does not seem at all necessary to discuss it again now. The idea that the theory is contrary to our national polity is a fallacy which arises, in the first place, from a misunderstanding of the term "organ" as it is used in jurisprudence.

To say that the sovereign is an organ of the nation merely expresses the idea that the sovereign governs not for his own private ends but for the ends of the whole nation. Article IV of the Constitution clearly states that the emperor is the "head of state." This means that if the nation is likened to the human body, the emperor occupies the position of its head. Prince Itō in his *Commentaries on the Constitution* says in this connection: ". . . just as the brain in the human body is the primitive source of all mental activity manifested through the four limbs and the different parts of the body." Needless to say, the brain is just one of man's organs, but it is the pivotal and paramount organ. In other words, the emperor-organ theory is identical in meaning with the Constitution's statement that the emperor is the head of state. It has no other meaning than that.

If it is denied that the ruler is an organ of the nation, how is the relationship between the ruler and the nation to be interpreted? There are only two interpretations possible: either the ruler is regarded as identical with the nation and therefore *is* the nation; or the nation is the passive object of the ruler's governing.

It is plain that the idea the ruler *is* the nation cannot be accepted in its literal sense. Since the foundation of the Japanese state there has been only one Japan; the one and the same nation has been in continuous existence. Yet from the Emperor Jimmu to the present emperor there have been 124 rulers. How then can one say that the ruler and the nation are identical? The nation is a community of the ruler and the people; both the ruler and the people are together the main elements which constitute the nation. If the people were all eliminated, how would it be possible for the ruler alone to constitute the nation? To come now to the idea that the nation is the passive object of the ruler's governing, this makes the nation something inanimate and devoid of energies and therefore is contrary to a completely sound national spirit. How is it possible to arouse a sense of patriotism if the nation is regarded as a dead object without

energies? The Imperial Rescript granted on the promulgation of the Constitution says: "We consider both the prosperity of the nation and the welfare of Our subjects to be Our foremost joy and glory."

Also in the Preamble to the Constitution there are the words: ". . . hoping to maintain the progress of the nation in concert with our subjects . . ."

How would it be possible for a lifeless object to prosper, to maintain progress? The idea of a nation prospering or progressing assumes as its basic premise that the nation is a vital, dynamic entity comparable to a living body. The emperor is its head and occupies the position of its paramount organ.

Baron Kikuchi says that those who advocate the emperor-organ theory regard our emperor as on a par with monarchs in foreign countries. How naively he argues! He seems completely incapable of differentiating between the assertion that two things belong to the same conceptual category and the assertion that two things are regarded as identical. This manner of thinking would lead to a person believing that because Japan is a nation and Russia is a nation, Japan and Russia are identical; or that because red is a kind of color and white is a kind of color, there is no difference between red and white. A person who does not accept this way of thinking will not be able to approve the Baron's argument.

As for his second point, one does not have to go to the length of studying foreign countries in order to see that a nation's law is transformed and changed by the influence of actual circumstances. A mere glance at a few pages of Japanese history shows it to be a fact no one can dispute.

To give just one example, it would be well to consider why the Taihō Code, the most complete set of laws in our medieval period, became invalid. To this very day it has not been formally repealed. That code gradually ceased to be enforced and finally completely died out simply as a result of changes in circumstances. In other words, the force of actual circumstances resulted in one of the nation's written laws crumbling of itself into decay.

If a second instance is required, the interpellation which the Baron himself made proves in itself the point. The Baron is probably aware of the reason for this. Section 48 of the Law of the Houses provides that in order to ask a question of the government a member of the Diet has to secure the backing of thirty or more members of his House, prepare a

statement embodying the substance of his question, have this statement signed by his backers, and then submit this document to the president of his House. However, the Baron made his interpellation of the Minister of Commerce and Industry individually and orally: he was seconded by no one, and he prepared no document embodying the substance of his inquiry. This clearly contravened the provisions of the Law of the Houses. The Baron might say that his speech was not an inquiry within the meaning of the Law of the Houses but rather a question directed to a minister's speech. However, his question was occasioned by no matter that appeared in any speech by any minister, and particularly not by the Minister of Commerce and Industry, who did not speak at all. It was nominally a question directed at a minister's speech, but in substance it was purely an inquiry to the government. And yet it did not meet the requirements for an inquiry laid down in the Law of the Houses. Thus, from the standpoint of the express provisions of the Law of the Houses, the Baron's speech was clearly irregular. On what grounds does the Baron think such a speech is permissible? It is only because among parliamentary precedents there has been established the tradition that under the guise of a question directed toward a minister's speech a Diet member may ask questions about any aspect of administration, even those not touched upon by the minister. In other words, under the influence of a precedent, i.e., actual circumstances, the provisions of the Law of the Houses have to this extent been changed. If it were not admitted that the nation's law changes under the influence of actual circumstances, the Baron would not have been allowed to make such an interpellation. In view of this, I wonder if he has the temerity to deny that the nation's law alters under the influence of actual circumstances?

The Baron also says that "the influence of actual circumstances is stressed to the utmost," but if he has reference to my text this is a falsehood entirely without foundation. I merely take into account that as an objective legal phenomenon there is the fact that a nation's law changes under the influence of actual circumstances. It is obvious to any one who reads my books that I am not one who emphasizes "to the utmost" actual circumstances.

In contrast, consider the following words which the Baron spewed forth in his speech: "Since they are soldiers, they may do something reckless; for those who believe they are acting out of patriotism may do any-

thing." Ought not such a remark be regarded as an incitement to use force to destroy the nation's law?

When it comes to the Baron's third point, there are abundant examples showing that even though there may be no alteration in its phraseology, the nation's law may change because the official interpretation has changed. For those who have some knowledge of jurisprudence and have investigated juridical precedents, this is axiomatic and needs no explanation.

I will give a few familiar examples. 1) Take the case where an emergency ordinance issued under Article VIII of the Constitution has been submitted to the Diet but when the Diet ends it has as yet been neither approved nor disapproved. Originally the government's interpretation was that the emergency ordinance continued to be fully effective. However, since the Ōkuma cabinet the official interpretation has been altered and in [such] . . . circumstances the cabinet is obliged immediately to proclaim that for the future the ordinance has ceased to be valid. [Example 2 omitted] 3) During the period of the Satsuma and Chōshū cabinets the purpose of a Diet dissolution was interpreted to be an alteration in the composition of a House of Representatives which was not properly discharging its functions. It resembled a kind of chastisement. Consequently, it was thought that there was no objection to the same cabinet's dissolving the Diet as many times as it wished. However, since the Ōkuma cabinet the official interpretation has been changed, and it is now held that a Diet dissolution is effected in order to ask the people for a vote of confidence. 4) . . . This is another example of how in connection with the same constitutional text there have been changes in interpretation.

Many more instances of this kind could be cited. After all, words are imperfect means of expressing thought. Frequently a given text is susceptible of a variety of interpretations. It is quite natural that through changes in interpretation alterations should be made in the nation's law even though the text remains the same.

The Baron denounced the fact that I expound the law of reason. This merely demonstrates his failure to reflect on the matter sufficiently. I hear that after his speech he discussed with his friends the possibility of offering a resolution to censure the Minister of Commerce and Industry. Since the Minister resigned, the matter ended without the resolution being introduced. However, several years ago the House of Peers did pass a resolution which censured an action of the then prime minister, Tanaka,

as being thoughtless and imprudent. I wonder what the Baron thinks are the legal grounds upon which such a resolution of censure is permitted? Nowhere in the Law of the Houses, nor, of course, in the Constitution, is there any provision which accords such a right to the House of Peers. It can be explained only through the law of reason. If the Baron does not recognize the law of reason, how can he defend himself against the criticism that such a resolution is not permitted by the Constitution?

To sum up, the Baron delivered in a public forum a speech which cited my book, criticized my theories, and even defamed the honor of my university and the Higher Civil Service Examination Committee. I think we can conclude that it was a thoughtless speech with absolutely no foundation in fact. It is all right to expound the dignity of our national polity. The advocacy of the Japanese spirit is also to be warmly welcomed. However, great harm will be done our nation and society if a person with bigoted views based upon a smattering of knowledge, thinking himself alone to be a defender of the national polity and a supporter of the Japanese spirit, makes out those who have opinions differing from his own to be traitorous rebels subversive of the national polity and lacking in respect for the Japanese spirit, and then proceeds under the shelter of the "national polity" to shackle their freedom of speech. One of the greatest merits of the Japanese spirit is the virtue of tolerance. One does not have to go far back into history to seek examples of a bountiful imperial clemency which, once peace had been restored, pardoned even those who had taken up arms against the Throne and thus been stigmatized as rebels. In the reign of the Meiji Emperor we find signal instances of this. Indeed, this act of the emperor in not hating even rebels against the Throne must be considered the very essence of the Japanese spirit. Even though they style themselves believers in Japanese principles, that gang which wantonly prides itself upon attacking and entrapping others is at great variance with the true Japanese spirit.

### PEACEFUL COOPERATION ABROAD

Baron Shidehara Kijūrō (1872-1951) is so closely identified with the peaceful and cooperative policies usually followed by Japan in the 1920s that they have come to be designated as "Shidehara diplomacy." From

1915 to 1919 he was vice-minister of foreign affairs. In 1921-22 he was a chief delegate to the Washington Conference, a gathering whose outcome typifies his diplomacy since it provided for naval disarmament, for security in the Pacific through international agreement, and for conciliation of China by a settlement of the Shantung Question. In 1924-1927 and again in 1929-1931 he held the post of foreign minister in the *Kenseikai* and *Minseitō* cabinets. Largely as a result of the high regard in which he was held by foreign opinion, Shidehara came to play a prominent role in the political life of Japan after the Second World War, serving as prime minister in 1945-1946.

### SHIDEHARA KIJŪRŌ

#### *A Rapprochement with China*

This is an extract from a policy statement which Shidehara made to the Diet on January 21, 1930. It is a good illustration of his conciliatory attitude toward China and his sympathetic regard for the problems created by the Nationalist Revolution.

[From *Documents on International Affairs*, 1930, pp. 180-82]

In China endless scenes of internal commotion and strife have in the past from year to year presented themselves. They have not only caused untold misery and hardships to the Chinese people themselves, but have also exercised a most harmful influence upon our political and economic relations with China. Nothing was more gratifying to us than to witness the measure of success which the Nationalist Government, through tremendous efforts, was able to attain in 1928 in the great enterprise of effecting a national unification. Having regard, however, to the historical and geographical background of China, and other conditions surrounding her, we are not blind to the many difficulties with which any attempt at the establishment of peace and unity in all parts of that vast country will necessarily have to grapple. As a matter of fact, the political situation in China began once more to show signs of unrest in the spring of last year. Recent indications are more reassuring, but the future alone can tell if the crisis has been averted once and for all.

We in Japan have only to look forward with sympathy and patience to the achievement of their task by those who have been devoting their attention and energy to composing China's existing difficulties. We can-