The Constitution of Japan (Ⅵ)

—A Historical Survey—

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CHAPTER IX

THE DRAFTING OF THE CONSTITUTION

Section II

The Principles Established for the Drafting of the Constitution

(a) The Principles Cherished by Hirobumi Ito

From about April of the seventeenth year (1884) to December of the eighteenth year (1885) of Meiji, Ito occasionally told Kentaro Kaneko and others of his staff to consider with him the results of his study in Germany, so as to pave the way for the final decision upon the principles to be followed in the drafting of the Constitution. Ito's opinion may be summarized as follows:

"Under the present conditions of constitutional government in England, the House of Commons is the center of the country's politics, the House of Lords having a mere nominal existence. They speak of the king in Parliament, but that is simply for the sake of formality, the real power having long since gone from the king. After all, according to the English constitution, the real power of government is in the firm grip of the Lower House. Adoption of such a system would be incompatible with the national polity of our country.

"Nor can we adapt from the constitutions of such democratic countries as France, the United States of America and others."
"How about the constitutions of Germany, Prussia and Bavaria? The first cannot be taken as an example without careful examination since the constitution of the German Empire forms the center of the federal system. Rather those of Prussia and Bavaria may be worth adaptation. According to German constitutional jurists, the authority of the German emperor is supreme, and the people answer all inquiries made by the emperor. In other words, the Upper and Lower Houses center round the sovereign authority. This is the reverse of the English system, according to which the people, one and all, are given suffrage. Properly speaking, the extent to which the sovereign authority is restricted and that to which the political rights of the people are extended differ according to different countries, whose history is the chief factor in determining such extents, and not mere theory."

Ito was further of opinion that there could be no constitutional law capable of universal application and unchangeable under any circumstances. He thought it quite natural that different countries should have different constitutions. He concluded

that before drafting the Constitution, therefore, a thorough study should be made first of all of the national polity, the Imperial family, and the history of the government of the country from the enactment of the Daiho Laws up to the present, and that only upon the basis of the results of such a study should judicious adaptations be made from what might be considered the best in the constitutions of different countries.

Further he held

that, as to scope of provisions, there is no reason why ours should be on a par with other constitutions, that since our national polity is different from those of other countries, our country might well provide for, say, seventy per cent of the provisions of other countries; that seventy per cent the people's rights and thirty per cent sovereign authority in other countries might well be reversed in this country;
and that there was no need for our Constitution to be explicitly after, say, Italian or English fashion.

He also held

that the only way for the subjects to render their assistance to the Imperial rule was the opening of the Diet, whereby they might be made to deliberate on affairs of State, but that it was not necessary to confer upon them the power of impeachment, since the Diet without the power of impeachment might constitute a form of constitutional government just as well as one with it; that, however, for the Tenno to be a part of the Diet after the English principle of "the King in Parliament" would be a loss of respect toward His Majesty on the part of the subjects; and that in this country the spirit of support of the Imperial rule should above all be emphasized, in utter disregard of side issues and trifles, inasmuch as there has been in this country no precedent for the impeachment of a Minister of State nor any instance in history of the Sovereign forming a part of a Gikai.

General principles for the drafting of the Constitution were to be gathered from the above views of Ito, whose opinion on the Imperial authority and the people's rights may still be mentioned, thus:

"Generally speaking, scholars of Chinese classics in this country seem to entertain the idea that nothing short of autocratic rule is fit for our national polity; but this is a serious mistake. Indeed, there can be no objection to the proposition that there is no man and no land in the whole country but comes within the control of the Sovereign; still arbitrary power over life and property would only throw the subjects into confusion and lead to misery. Unless their lives and property are protected by law, the peace and order of the country cannot be hoped for. Without this guarantee, the Imperial rule would sooner be called tyrannical than autocratic.

"In the beginning, when the State was under the control of the divine right of the Sovereign, the Imperial Throne was the essence, the
centre of the State; and for this reason Imperial authority should be so dealt with in the forthcoming Constitution as to guard against its sinking into a mere name, by protecting the reality, that is, the effect of the Imperial Throne. In order, however, to achieve the desired results of constitutional government, protection should be extended to the honour, the liberty, and the lives and property of the subjects. To attain this end, the first requisite would be to lay various restrictions on the ways and means of the exercise of Imperial authority. Such will seem to be disrespectful toward His Majesty, but if the form of government is to be recast along the constitutional line, we cannot but resort to this step."

The above argument does immense credit to Ito; he is clear and straightforward, with no tincture of shallowness in his strain. Nay, considering the bigotry of the generality of the people as well as the officialdom of the times, when so many were prone to look askance at any criticism of the government policy, Ito may be said to have considerably changed his opinion for the better.

(b) Preliminary Investigations Conducted

As has been said, the study of different constitutions from the viewpoint of comparative jurisprudence seems to have given those concerned a certain amount of insight into the question as to which of them would possibly prove helpful in the drafting of our Constitution.

Now from the viewpoint of historical jurisprudence it was clear that those different constitutions had each its raison d'être, since the law of a country changes with the progress of its history, and cannot be replaced by that of another country. It was also clear that our Constitution should have its own characteristics, and that, therefore, the drafting should be conducted on the basis of our history and national polity. The first requisite was naturally a minute study of the history of Japan from its foundation to about the fifteenth year (1882) of Meiji, with special
reference to the changes in politics, laws, and institutions. It was upon the results of this historical study that the principles to be followed in the actual drafting of our Constitution were established.

To cite an instance: Even the three great principles concerning the enactment of the Constitution decided upon at the Imperial council prior to the promulgation in the fourteenth year (1881) of the Imperial Rescript on the opening of the Kokkai were not left to remain as such without historical endorsement. The principles were:

(1) That the bi-cameral system should be adopted.
(2) That the cabinet should be formed by an Imperial nominee, and the principle of direct Imperial rule should be adhered to.
(3) That the forthcoming Constitution should be one granted by His Majesty, incorporating provisions, all centring round the spirit of respect for the Imperial authority.

As to the first principle, an outsider might see little difference, even were the bi-cameral system replaced by the mono-cameral system, so long as the principle of direct Imperial rule persists, but still its propriety was seriously studied from a historical point of view in order to find sufficient ground for its adoption. The view held by the investigators was:

"In Europe and America, even a democratic country has the bi-cameral system. How is it to be accounted for, when sovereignty resides in the people alone? It is all because, by the two Houses being pitted against each other, one prevents the other from acting either rashly or radically. Sometimes the government and the Upper or the Lower House will seek to act in collusion, so as to carry through an arbitrary measure, when one of the two Houses restrains the other. In short, the existence of the two Houses, like the separate independence of the three powers, the Executive, the Judicature and the Legislature, is indispensable for mutual restraint among them and the government."

At the same time the actual conditions of the bi-cameral system in Europe and America were closely investigated. Then was taken up for
investigation the brief history of what might be called the embryo parliamentary government in this country, which had existed since the beginning of the Meiji era. It is recalled:

(1) That in the first year (1868) of Meiji, The *Giseikwan* was created in obedience to the Five Imperial Oaths. This was on the bi-cameral system.

The *Jokyoku* (Upper Bureau), composed of members selected from among the immediate retainers of the Court.

The *Gekyoku* (Lower Bureau), composed of the representatives of the different clans, with a view to getting at the popular feeling.

(2) That in the eighth year (1875) of Meiji the *Genroin* was established and the Gubernatorial Conference was called, and this in obedience to His Majesty’s command.

The *Genroin*, composed of members of the *Genroin*, officially appointed and in charge of all legislation.

The Gubernatorical Conference, held at intervals and attended, as the name suggests, by prefectural governors, who were instructed to consider themselves representatives of the people in their respective prefectures while attending the conference.

(3) That in the thirteenth year of Meiji (1880) the *Nippon Kokken An* was presented to His Majesty.

The draft contained a prospective provision on the bi-cameral system, which read: “The *Teikoku Gikai* (Imperial Diet) shall consist of the *Genroin* and the *Daigishiin*.”

(4) That in the fifteenth year (1882) of Meiji, Hirobumi Ito, in obedience to Imperial command, proceeded to Europe to investigate the constitutional system of government.

Among the many items for his investigation were two that read respectively, “The organization of the Upper and the Lower House”

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2 *Daigishiin* (代議士院). An older name for the House of Representatives.
and "The authority of the Upper and Lower Houses." This was clearly a presupposition of the adoption of the bi-caneral system.

Upon all this and other facts, and from the three angles of theory, comparison, and history, was the advisability of the system in question deliberated on by those concerned.

(c) The Establishment of the Principles for Drafting

All preliminary investigations being thus completed, Hirobumi Itō, Premier, invited the men on the drafting commission to his official residence at Nagatacho, Tokyo, in May of the nineteenth year (1886) of Meiji, and in his private study ordered them to set about the memorable work of drafting the Constitution. Reference has been made to the three main principles decided upon at the Imperial council. Besides these principles, the following were proposed by Ito to those present:

(1) That the Imperial Household Law should be enacted, and matters relating to the Imperial family should not be included in the Constitution.

(2) That the Constitution should be drafted upon the basis of the national polity and the history of Japan.

(3) That the Constitution should provide for only such main items as concern the politics of Japan; that the provisions should be brief and clear, and have elasticity enough for the future development of the country.

(4) That the Parliamentary Law and the Law for Election of Representatives should be enacted as separate laws.

(5) That the organization of the House of Peers should be determined by an Imperial ordinance, and that any future revision of this ordinance should have the approval of the House of Peers.

(6) That the territorial boundaries should not be mentioned in the Constitution, but should be determined by a law.

(7) That the right of impeaching a Minister of State should be abol-
ished, and that of addressing memorials to the Throne should be
given to the Diet.

Of these seven items, the second was the most fundamental, which
we need not specially explain here. As to the sixth, it was natural that
no mention should be made of our territorial boundaries in the Constitution,
which was to be the permanent code, as it was certainly supposed that
they might change in future with the development of the country. Whereas
in some countries, the constitutions clearly mention their territorial
boundaries, ours was not to have any such mention made. We may be
said to have been far ahead of other nations, thanks to the foresight of
Premier Ito. Then the seventh item, which may be said to be the natural
sequel to the second, was an expression of his pet opinion.

As to the Imperial House Law, in particular, it was considered a mark
of respect to the Imperial family to separate it from the Constitution,
which was within the scope of deliberation by the people. The third,
fourth, and fifth were closely interrelated. The reason for the proposed
separation of the Parliamentary Law, the Electoral Law, and the Organiza-
tion of the House of Peers from the Constitution, and above all the
proposition to have the last of the three promulgated by an Imperial
ordinance may be seen from the following views held by Ito:

"The Constitution should be made, in principle, to provide for main
principles only, to be applied in controlling and carrying on the
administration of the country. It is therefore enough that it contain
within its scope the Sovereign authority, the powers of the Diet, the
responsibilities of Ministers of State, and other essentials of govern-
ment. All provisions must be brief and clear; besides, for the sake of
their dignity, they should not be subjected to frequent revisions. It
is therefore necessary that they should be so worded as to have ample
elasticity, in order to adapt themselves to new circumstances possibly
to accrue from the development of the country.

"The Parliamentary Law, on the contrary, may receive revisions as
occasion requires, since it provides for the ways and means for the Diet in its participation in affairs of State, and unlike the Constitution, it has no permanency in its nature. It may be of immense advantage to make it stand outside the Constitution. Then the Electoral Law, which determines the extent of the franchise to be granted and the qualifications for electors, will have to be subjected to frequent revisions so as to be abreast with the times, and therefore it must be outside of the Constitution.

"Nor shall the organization of the House of Peers ever be behind the times. With future revisions on the Electoral Law, the organization will also have to undergo changes; and for this reason it is proper that it should be outside of the scope of the Constitution. The proposition that any revision to be made in the organization should have the approval of the House of Peers is to safeguard the position of peers as the bulwark of the Imperial family, since otherwise there would be no knowing when the government might think of revising it of its own free will, as in the case of other ordinances."

Now it was decided to set about the drafting of the four codes all at once. It seemed a mighty task, and it was thought convenient to parcel out the whole work to three men, Thus:

The Constitution and the Imperial House Law .................. Ki Inoue
The Parliamentary Law ........................................ Miyoji Ito
The law on the election of Members of the House of Representatives, the Ordinance on the House of Peers, the Regulations on Mutual Election among Counts, Viscounts, and Barons, and the Regulations on Mutual Election among the Highest Tax-Payers................................................ Kentaro Kaneko

Toward the end of May, in the nineteenth year of Meiji, they started their assigned work simultaneously. It must be remembered that the whole work was certainly parcelled out to these men; but whenever important
questions presented themselves, they never forgot to discuss them together, or sometimes consult the German, Hermann Roesler, and the Frenchman, Boissonade, finally asking for decisions of their chief, Ito.

Section III

The Draft Ordinance on the House of Peers

It may be noted incidentally that the three drafters, when the work was begun in good earnest, were invited by Ito, their chief, to Kanazawa, Kanagawa Prefecture, nearly every Saturday afternoon for a stay over Sunday. At Kanazawa they usually put up at the Adzumaya Hotel, where they used to discuss together the main points of the work in hand, and upon their return to Tokyo they each engaged in drafting his assignment. Whenever one of them had finished some provisions, they would meet together sometimes at Ito's official residence, at other times at his villa (now Baron Iwasaki's residence) at Takanawa, Shiba Ward, or at Adzumaya, and would discuss and study the fruits of their work, revising and correcting as the case might be.

The text of one of the draft codes thus produced, the Ordinance on the House of Peers, reads in rough translation:

The Join

(a) Organization

Article I The Join shall be composed of Members described below:

1 Princes of the Blood.

2 Persons over twenty years of age with the title of either Prince or Marquis.

3 Persons elected from among those with the titles of Count,

1 Join (上院). The Upper House.
Viscount, and Baron.

4 Members by Imperial nomination.

Article II  A Prince of the Blood shall have a seat in the Join at eighteen years of age, and shall participate in giving decisions at twenty years of age.

Article III  The number of members to be elected from among those with the titles of Count, Viscount, and Baron shall be fifty, and their term of office shall be four years. Their election shall be carried out in accordance with the regulations specially determined.

Article IV  The number of Members by Imperial nomination shall not exceed those with the titles of Prince, Marquis, Count, Viscount, or Baron. They shall be nominated by the Kotei from among those specified below; they shall remain in office during their lifetime, and shall be treated as Barons.

1 Officials of the Chokunin and Sonin ranks.

2 Members of the Kain who have been in membership for over ten years.

3 Persons who have rendered meritorious services to the State.

4 Persons of great erudition.

5 Persons who have promoted the welfare of the nation in the fields of agriculture, commerce, and industry.

(b) Privileges

Article V  The Join shall have special powers of its own besides those mentioned in the Constitution.

Article VI  The Join shall have the power to give decisions to all

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1 Chokunin (勅任) Choku, Imperial command; nin, appointment
2 Sonin (奕任), so, to report to the Throne. Appointment by reporting to the Throne.
3 Kain (下院). The Lower House.
bills relating to the Imperial family, the nobility and the titles of nobility, and to address memorials thereon to the Throne.

Article VII The Members of the Join shall, upon Imperial inquiry about affairs of State, hold a special session and submit to the Throne its views thereon.

Article VIII A member of the Join who deems that a grave situation is arising in the administration of the country, shall be permitted to seek the audience of the Kotei, and personally state his views to the Throne.

Article IX The Join examines the hindrances to election to its membership of persons with the titles of Count, Viscount, and Baron, and gives judgment for or against their election, in accordance with specified regulations.

Article X The Join shall establish regulations on the execution of its business, and press, reprimand, or punish those Members who have lost their dignity as such, who are neglectful of their duty, or who are guilty of criminal offences.

Articles XI No Member of the Join shall be made to retire from membership against his will, unless he has been condemned to a penalty above imprisonment, or has been adjudicated a bankrupt.

Article XII No Member of the Join shall be arrested except for a flagrant offence, whether serious or not. When it is necessary to examine him on a charge of a non-flagrant offence brought against him, the judge in charge of the case shall summon him to appear in court after giving notice to the President of the Join with the reasons for the summons.

(c) The Secretariat

Article XIII The Secretariat shall be composed of a President and a Vice-President.

Article XIV There shall be a President and a Vice-President, whose
term of office shall be four years each, subject to election by the Kotei from among the Members.

Article XV The President shall, in accordance with the regulations on execution of its business, report to the Join on matters concerning Members and see to their proper disposal; he shall, in accordance with the regulations on the Join procedure, arrange the proceedings, and maintain order in the House.

Article XVI The President shall have contact and communication with the heads of the different government offices, and supervise all the business in the House.

Article XVII The President superintends the officials under secretaries; he can, within the budgetary limitations, appoint and dismiss them, as well as direct the receipts and spendings of money within the House.

Article XVIII The President can attend all committee meetings and state his opinions. However he cannot join the Members in voting for a decision.

Article XIX The President shall inspect reports submitted to him by the chief of each division of Members, and when he finds it necessary to submit any of them to the committee of the said division, he shall transmit it to the chairman, submitting others immediately to deliberation by the entire House.

Article XX The President shall decide upon the order of the day, and shall distribute copies of the same among the Ministers of State and the Members.

Article XXI The Vice-President shall assist the President, and when the Presidency is vacant, or when the President is absent owing to some urgent affair, he shall act in his place.

Articles XXII There shall be a secretary attached to the Secretariat to supervise, under the direction of the President, all business concerning House proceedings, translations, minutes, finances, and
general affairs.

(d) Divisions

Article XXIII The Members shall, at the beginning of the annual session of the House, be divided by lot into five divisions, and each such division shall have a chief. A chief shall be elected by ballot from among the Members of each division.

Article XXIV Each division shall hold its investigation meetings concerning bills and others affairs, and each division-chief shall submit to the President the opinion of his division as a whole.

Article XXV Each division-chief can attend the committee meetings and state his opinion. However he cannot join the committee-men in voting for a decision.

Article XXVI When the post of a division-chief is vacant, or when he is absent, a senior Member of the division shall act in his place.

(e) Committees

Article XXVII The Members of each division shall, at the beginning of the annual session, elect by ballot the following committees: the Legislative Affairs Committee; the Financial Affairs Committee; the Administrative Affairs Committee; the Judiciary Affairs Committee; the Financial Committee; the Election Business Committee; the Memorial Business Committee.

Article XXVIII Each Committee shall be composed of less than seven Members. When, however, the House considers the number insufficient, it may be increased, subject to its approval.

Article XXIX The Members of each committee shall elect a chairman from among themselves by ballot, and make him report to the President and the House the decisions made by the committee.

Article XXX Each committee office shall have under the order of the President a secretary and other officials attached to it, and make
them keep the diary of the committee office and record the proceedings at committee meetings.

(f) Salary

Article XXXI The annual salaries of the President, the Vice-President and a member shall be as follows:

- The President .......................................................... ¥2,000
- The Vice-President ................................................... ¥1,500
- A Member ................................................................. ¥1,200

Article XXXII Members who are Princes of the Blood, Princes, and Marquises shall be without pay.

Article XXXIII The President, the Vice-President, and Members who attend the House from their places of abode shall receive travelling expenses at the same rate as a Chokunin official. They shall also receive daily allowances during the session of the House.

Article XXXIV The salaries of the secretaries and those under them shall be determined by the Join within the budgetary limitations.

The six chapters of thirty-four articles were later revised and made into thirty-seven articles called the Genroin Soshikiho which soon afterwards was changed into the Genroin Soshiki Kengenho.

This last name, however, failed to meet with general acceptance, as it gave the impression that by this law the then existing Genroin was to have yet another name. Ito suggested that the first part of the name, Genroin, might advantageously be changed to Kazoku or Kizoku, considering that the new draft explicitly mentioned the five titles of nobility, whereas the


3 Kazoku (華族). Lit. Flowery Class, meaning Nobility.

4 Kizoku (貴族). Lit. Noble Class, meaning Nobility.
word Genro simply meant elder statesmen. Investigations were started as to what name should be given to the sort of Upper House of which the draft law had just been completed. The result of the investigations showed that the name Genroin (Senate) originated in the days of Roman ascendancy, the Latin for it being Senatus. The Senatus was an assembly of elder statesmen of Rome, and carried with it no aristocratic meaning whatever. So was the Senate in America, implying of course no aristocratic meaning. Likewise the Japanese Senate, i.e. Genroin was simply an assembly of elder statemen who had rendered meritorious services to the State at the time of the Meiji Restoration, and accordingly there was no aristocratic meaning connected with it. In view, however, of the fact that with the forthcoming establishment of the bi-cameral system in this country, there was the imperative necessity of electing the members of the Upper House from among the peers, who were in duty bound to give heartfelt support to H. M. the Tenno, especially in that they were, one and all, the bulwark of the Imperial family, having been created peers by His Majesty, the veritable center of the Japanese State. Considering all that, it was proposed that the name for the new Upper House should be Kizokuin (House of Kizoku), as the real object and organization of it was thus easily understandable rather than if it had been Kazokuin, although the latter would be more exact.

Under such circumstances, the name Genroin proposed in the draft was changed to Kizokuin, and the draft itself was renamed Kizokuin Soshiki Kengengo.

(g) Why an Imperial Ordinance

The draft code of provisions on the House of Peers was, as has been said, intended for an Imperial ordinance. But why an Imperial ordinance instead of an ordinary law? In order to make this point clear, we must refer the reader to Articles XXXIV and XXXV of the draft Constitution,
which was in progress side by side with the former draft. The articles read:

"Article XXXIV The Kizokuin shall be composed of Princes of the Blood, peers, and Members by Imperial nomination in accordance with the provisions of the Kizokuin Soshiki Kengenho."

"Article XXXV The Shugiin shall be composed of Members elected in accordance with the provisions of the Electoral Law,"

From the first of the two extracts we see that both the Upper and the Lower House were intended to stand on the same level, at least in that the Members of both Houses were to be elected by law. There was apprehension that the Lower House would some day propose a revision of the Kengenho, which, so long as it was to be a law, could be revised by the Lower House exactly like all other laws. The status of the Kizokuin would thus be extremely enfeebled, and ultimately prevent the peers, who were the bulwark of the Imperial family, from doing their duty as such. So long as the Kizokuin was to be at the mercy of the Shugiin, the result would be a loss of dignity on the part of those Court nobles and ex-feudatories who had exerted themselves in the cause of the State administration as the bulwark of the Throne for more than twenty-five centuries. That was the reason why the decision was made in favour of an ordinance, by which means the Kizokuin would be placed beyond the reach of the Shugiin.

Various opinions were advanced before this decision was reached. Some proposed that Princes of the Blood should be excluded from the membership, on the ground that it would be disrespectful to seek the attendance of such exalted personages at House sessions. Some saw no adequate reason in determining peers only as qualified for the Upper House, nor did they see any need of Members by Imperial nomination. Then the idea of highest tax-payer Members was extremely averse to them. They would rather have all these kinds of Members dispensed with, and instead have the House composed entirely of those elected by popular
vote. Some were opposed to the proposed Members by Imperial nomination, on the ground that they feared these Members would not be amenable to the government's wishes. Others insisted upon cutting the number of Peer-Members by half, as there were too many. Still others were of opinion that the article on the organization of the House might advantageously be changed to something like the following:

"The Kizokuin shall be composed of Princes of the Blood, Nobles, and Members by Imperial nomination. Any revision of this ordinance shall be effected only after deliberation by the Kizokuin."

The second clause of the above, however, gave rise to some opposition, and in consequence was changed to the following:

"When in future necessity arises for revisions of or additions to any of the provisions of this Imperial ordinance, they shall obtain the approval of the Kizokuin."

Thus the draft was finally submitted for Imperial approval, not as a law bill requiring the approval of the Shugiin, nor as an Imperial ordinance subject to arbitrary revisions by the Cabinet, but as an unprecedented, and the only exceptional, draft ordinance, whose revision should obtain the consent of the Kizokuin.

(h) The Personnel of Both Houses

The fact that the status of the Kizokuin was strengthened in the above mentioned manner may be attributed to the general desire to enable it, in case of emergency, to maintain a fair and impartial position, neither overinfluenced by popular voice, nor currying favour with the government, but as an entirely independent legislative organ as well as the bulwark of the Imperial family. The constituent members were to be, as the name of the House suggests, all representatives of the nobility, Kazoku, the historically respectable class of society, neither elected by popular vote nor appointed by the government. These members were to transcend the government and the people, and, in that exalted position, to prevent the
arbitrariness of the government, restrain the radicalism of any Opposition
groups, and thus hold themselves responsible for the safety of the State.
As to the organization of the House, therefore, that of the Upper Houses
in other countries, especially of the House of Lords in England, was
studied with the keenest attention, side by side with the draft ordinance
on the House of Peers, to which reference has been made.

With the progress of the preliminary investigation, various questions
presented themselves. Among others, the question of the number of
Members of both Houses was eagerly discussed. The drift of opinions
advanced in this regard may be summed up as follows:

"The Members of the Shugiuin, if elected at the rate of one per 13,000,
will reach a total of 300. Thus the small electoral district system will
just suit this country, as that total will be supplied by the election of
one for a district of 13,000 people. To offset the Shugiuin, the House
of Peers should have the same number; but seeing that there are
about seven hundred Peers in all at present, not to speak of Princes
of the Blood, the number of candidates will probably reach twice that
for the Members of the Shugiuin. That is too big a number for the
House to seat. On the other hand, there can be no objection to all
Princes of the Blood having each a seat. As to the princes and
marquises, their number will not exceed twenty in all, eleven of them
being princes, and the rest marquises. These may be made hereditary
Members. Counts, viscounts, and barons, being very numerous,
should be made to elect from among themselves one for each five of
them; thus the number will reach approximatively 120."

After all, the titled Members, together with the Princes of the Blood,
were to number 150. Added to these, Members by Imperial nomination,
such as scholars, persons recognized for their services to the State, and
officials in long service, will make a total about equal to that of the
Shugiuin.

With regard to rich farmers, such as the Hommas, of Dewa and the
Nozakis, of Bizen and such wealthy merchants as the Konoikes, Mitsuis, and Mitsubishiis—these were, inspite of their status of common, untitled people, leading a life little inferior to that of a member of the nobility, for which reason it was considered desirable to give them a seat in the House, in order thus to make them render their share to the State on the one hand, and on the other hand, to make them stimulant examples for the people in general who engage in productive industries. Investigations were conducted regarding the institutions in other countries, the result of which showed

that the Italian constitution, in the chapter on the organization of the Upper House, provided for a similar instance, to the effect that “great landowners, influential industrialists, and rich merchants were that entitled to elect Members for the House from among themselves, and the Prussian constitution also had a similar provision.

On the basis of these instances, it was proposed that out of fifteen chosen from the highest tax-payers throughout a prefecture, one should be elected for a seat in the House as a Highest Tax-Payer Member, on condition that he become formally a Member only when he was granted the written Imperial command to appoint him as such “in accordance with the provisions of Article VI of the Ordinance on the House of Peers”, after his election has been reported to the Throne by the Home Minister. Such a step was considered necessary, because, inasmuch as the Kizokuin was destined properly for members of the nobility, a mere show of his election certificate to the chief secretary, as in the case of a member of the Shugiin, was not recognized as sufficient. As may be seen from the following extracts from the present Ordinance on the House of Peers (revised by Imperial Ordinance No. 174 of the fourteenth year of Taisho), Imperial appointment has always been the first condition for a Member to be admitted into the House of Peers.

Article I  The House of Peers shall be composed of Members specified as follows:-
6 (1—5 omitted) One or two Members elected from among the high
direct tax-payers in the fields of commerce and industry, in Hokkaido
and the different Fu and Ken.

Article VI One person out of a hundred, or two persons out of two
hundred, of the male high direct tax-payers over full thirty years
of age, in the fields of commerce and industry in Hokkaido and in
the different Fu and Ken shall be a Member or Members for a term
of office of seven years, provided he or they have been formally
elected and have secured Imperial nomination.

The regulations relating to the election shall be established by
an Imperial ordinance.

It is recalled in this connection that in the earlier Ordinance the
stipulation was “one out of fifteen”.

As to the question of eligibility of the heir, the second son and under
of a titled person, it was found in the English rule that they are not
eligible to the House of Lords as long as one of the parents remains the
head of the family, although they may be elected to the House of
Commons. In this country, too, the heir, the second son and under were
recognized as eligible to the Shugiin. Article VII of the Law on the
Election of Members to the Shugiin, however, has a provision, which
reads: “The heir of a Kazoku (peer) has neither the franchise nor is he
entitled to election”. It is all because eligibility of the head of a family
of peers, if recognized, would prove detrimental to the foundation of the
bi-cameral system, besides undermining the foundation of legislation whose
aim is to solidify the status of the Kizokuin.

Section IV

The Drafting of the Constitution

Article I

The Imperial House Law and Drafts A and B for the Constitution
To begin with, the draft Constitution was first produced by Ki Inoue, who simultaneously drew up the House Law. In executing this memorable task, Inoue received much valuable help from Hermann Rösler, government legal adviser, and Albert Mosse. It is said that he also obtained useful suggestions from such foreign scholars as Karl Rudolf Bibot, Boissonade, Paternoslro and Kurmeck; but we have reason to suppose that these were received only after Kentaro Kaneko (later Count) started deliberation on the draft point by point in co-operation with Hirobumi Ito (later Prince) and Ki Inoue (later Viscount), the chief drafter. Of the foreign names above cited, those of Rösler and Mosse are the most conspicuous in that they had directly a great deal to do with the drafting of the constitution. Especially Rösler may be said to have rendered meritorious services to the completion of the draft.

Rösler had given lectures on constitutional law to Inoue already in the fourteenth and the fifteenth year (1881, 1882) of Meiji; but Whenever the latter was confronted with complex questions while drafting the Constitution, he had them translated into English by Motosada Zumoto, who presented the translation to Rösler. Rösler then gave the necessary explanations to Zumoto, who again translated them into Japanese, and handed them to Inoue. Even then, when there was still anything requiring explanation, Inoue referred it to Ito. It was a troublesome process, but all went well until at last the draft was completed.

Of the two drafts, the Imperial House Law and the Constitution, we have reason to suppose that it was on the first that Inoue began to work. We understand that on March 20, the twentieth year (1887) of Meiji, at 10 a.m. Inoue, Miyoji, Ito and Kaneko met at the residence of Hirobumi Ito at Takanawa, Shiba ward, and started deliberation on the draft. At that time, the law was not yet named the Koshitsu Tempan, as it is now, but was tentatively called the Teishitsuho or the Koshitsuho. Deliberation lasted for many consecutive days and nights; and, as the nature of the
draft concerned the Imperial House, it was not seldom that the Imperial Household Department was consulted when some doubt was raised. Especially the ex-chief of the Bureau of Declarations, Maemitsu Yanagihara, who had long been in the service of the Department, proved a valuable treasury of information to those engaged in deliberation. Revisions, corrections, additions, improvements alternated with deliberations, until at last there emerged what could now be called the Koshitsu Tempan. According to the reborn draft, the law was to stand independent of the Constitution, and dignified beyond interference by the Gikai.

In all probability the draft was completed in May of the twentieth year (1887) of Meiji, for it is said that Hirobumi Ito, who was Premier and Minister of the Imperial Household concurrently, expressed his desire to resign the latter office on the 29th of the same month, perhaps partly out of a sense of responsibility for the complication of the treaty revision problem, and certainly partly to take advantage of the successful completion of the great task of compiling a law so closely related to the Imperial Household Department; but he was ultimately persuaded into continuing in his post.

It does credit to Inoue that by the time deliberations on the draft above referred to had been finished, he himself had already completed another draft, this time, for the Constitution. The draft, which may be said to have been one of a private nature, was called the Kempo Jogi. It embodied the results of his investigations on foreign laws and regulations on taxation, on the budget, the settlement of accounts, the national loan, local finances, etc., and carried with all important points such answers as he had obtained from Rösler and Mosse concerning his inquiries, so as to serve as logical grounds for such points. For convenience’ sake the draft was called “Draft A” as against another, which was called “Draft B”. The

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1 Maemitsu Yanagihara (柳原前光).
latter carried with each provision, for comparative purpose, such similar ones as were found in the constitutions of Portugal, Belgium, Spain, Italy, Prussia, Austria, Hungary, Sweden, Denmark, Luxemburg, Saxony, Switzerland, and some other countries.

Draft A contained seventy-two articles in seven chapters; Draft B, seventy-nine articles in eight chapters. The former provided in its seven chapters for the fundamentals, the subject, the Cabinet and the Sanjiin, the Genroin and the Daigiin, the judicature, taxation and finance, and national defense; the latter, in seven of its eight chapters, provided for the Imperial Throne and Sovereignty, the territory and the people, the Cabinet and the Sanjiin, the Ganroin, and the Daigiin, taxation and finance, and national defense, with one chapter for the fundamentals Considering that Draft B was a little better arranged than Draft A, we may fairly suppose that the latter was a production previous to the former. We quote below the first chapter on the fundamentals from each by way of comparison.

**Draft A**

**Chapter I General**

**Article I** The Empire of Japan shall be governed by a line of Tenno unbroken for ages eternal.

**Article II** This shall be succeeded to by Imperial descendants in accordance with the provisions of the Koshitsu Tempan.

**Article III** The Tenno holds the reins of government, and, according to the provisions granted by the Tenno in the present Consti-

**Draft B**

**Chapter I General**

**Article I** The Empire of Japan shall be governed by a line of Tenno unbroken for ages eternal. It shall be succeeded to by Imperial descendants in accordance with the provisions of the Koshitsu Tempan.

**Article II** The Tenno holds the reins of government, and, according to the provisions granted by the Tenno in the present Constitution, sees it administered.
Article III  The Tenno has the command of the Army and the Navy.

Article IV  The Tenno declares war and concludes treaties by the supreme authority appertaining to Him.

Article V  Appointment and dismissal of Ministers of State, officials and officers, and establishment of the organization of the different branches of administration appertain to the supreme authority of the Tenno.

However, special instances may be established by law.

Article VI  The Tenno confers orders, titles of nobility, and other marks of distinction.

Article VII  Regulations and disposal of affairs necessary for the enforcement of laws and for the maintenance of peace and order of the country shall be issued, or caused to be issued, by Imperial Ordinances.

Chapter II The Territory and the People

Article IV  The present territories, inclusive of the islands, constituting the Empire of Japan form its unified domain, and shall remain

Article VIII  The present territories, inclusive of the islands, constituting the Empire of Japan form its unified domain, and shall remain
undivided for ever.

The absence of a provision on the sacredness and inviolability of the Tenno may cause wonder to the reader; but the fact was that the drafter, Inoue, had a firm belief that while such a provision might be necessary in other countries, here in this country, which is ruled over and governed by a long unbroken line of Tenno profoundly revered by the whole nation, it was quite unnecessary; and, even if it were incorporated, would be meaningless. Then the provision on the boundaries of the territory in Article IV (or Article VIII) was struck out on the advice of Premier Ito. but was eventually inserted in some other law.

As to other parts of the drafts, space does not permit of treating them in detail; the reader is referred to the *Kempo Shiryo*, a book compiled by Ito. Below are given only those articles on national defense, Chapter VII, and the general rules, Chapter VIII, Draft B, as they were later subjected to thorough revisions, and as, otherwise, there would be no access to those parts in their original form.

(A, B) Chapter VII National Defense

Japanese subjects are amenable to service in the Army or the Navy.

Article LXVI The method of conscription shall be specified by law. The number of conscripts for each peacetime year shall be approved by the Giin, when there is to be any increase thereto.

Mobilization of militia in war-time shall be carried out according

(B) Chapter VIII General

Article LXXVI No provisions of a law or an ordinance intended for enforcement shall take effect unless promulgated through the legal formalities.

Article LXXVII No law shall be changed by an order.

Article LXXVIII All proclamations of the *Dajokan* and ordinances, issued previous to the present Constitution for the nation at large

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to an Imperial Ordinance.

Article LXVII The organization of the Army and the Navy shall be determined by an Imperial Ordinance.

Article LXVIII No foreign army shall be permitted to serve in the Japanese Army, unless according to law, or to station on Japanese soil, or to pass through it.

Article LXIX The standing army may be used, at the times specified by law and upon request by government offices, for the suppression of a civil disturbance and for the enforcement of law.

Article LXX No men in military or naval service, whether on duty indoors or outdoors, shall hold deliberations among themselves, nor shall they hold meetings, unless by order. They shall not make or attend political speeches, nor shall they make representations on political affairs.

Article LXXI The proclamation of a state of siege over the whole or a part of the country shall be

and for permanent enforcement, shall remain valid, provided they do not conflict with the provisions of the present Constitution, whether they are called horitsu, jorei, kisoku, or by any other name, until they are replaced by new laws.

Article LXXIX When in future necessity arises for amendment of the present Constitution, the original plan shall be granted by the Tenno.

Neither House of the Giin can give a decision on the proposed modification, unless with the consent of more than two thirds of the House, when more than two thirds of its members are present

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1 horitsu (法律), law.
2 jorei (条例). Lit. provision ordinance.
3 kisoku (規則). rule.
effected by an Imperial Ordinance. The particulars concerning a state of siege and the extent of powers to be delegated to military or naval commanders in the area under the siege. shall be determined by law. 

Article LXXII The courts-martial of the Army and the Navy shall, according to the provisions of the Army and Naval Laws on Trials, adjudicate criminal offenses of men in military or naval service, and all violations of military or naval laws.

Article II

From the Revised Draft A to the "Natsujima Constitution"

As has been said, it was in May of the twentieth year (1887) of Meiji that Inoue completed Drafts A and B. With the twenty-third year (1890), when the Diet was to be opened, but three years ahead, it was considered an urgent necessity to make haste with deliberations on the drafts, so as to promulgate the Constitution before the opening of the Diet, and thus have a year or two left for investigation on constitutional government.

It so happened about this time that Ito's villa, which had been building on the small island, Natsushima, a little way off shore of Kanazawa, was completed, and, on May 31 he moved into it for a short sojourn. The drafters of the Constitution and other laws, Inoue, Ito (Miyoji) and Kaneko, also went to Kanazawa, where they took up their quarters at a hotel, the Adzumaya, and every day went over to Ito's villa by boat. There they made it a rule to deliberate point by point on Draft A, consulting Draft B and the private one by Rösler.

The result of their labour emerged as quite a new draft, which we
shall call Revised Draft A. In many places the wording was improved or corrected, or replaced by other terms, which in English translation practically meant the same thing. The most noteworthy addition was then made, and that was a provision for the sacredness and inviolability of the Tenno. The third article was recast and expanded into ten articles, so as to itemize the supreme authority of the Tenno, thus:

The Tenno has the control of all the State rights, and in conformity with the principles of the present Constitution, administers government. The Tenno administers government with the assistance of the Ministers of State who shall be responsible to the Tenno, jointly and singly.

The Tenno exercises the legislative power with the consent of the Upper and the Lower House.

The Tenno gives sanctions to laws, and orders them to be promulgated and executed.

The Tenno, in case of an emergency, and in order to avert public calamities, issues Imperial Ordinances valid as laws, upon the responsibility of the Cabinet.

The Tenno confers titles of nobility, and grants orders and other marks of honour.

The Tenno organizes the Army and the Navy, has the command of them, and issues supreme commands in all military and naval affairs.

The Tenno exercises the powers of declaring war and concluding peace, and issues commands necessary for that purpose.

The Tenno, as the head of the Empire of Nippon, concludes treaties with foreign countries.

The Tenno convokes the Upper and Lower Houses, opens, closes, and prorogues them, postpones their functions, and dissolves them.

A Regency shall be instituted in conformity with the provisions of the Koshitsu Tempan. The Regent exercises the supreme powers of the

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1 Koshitsu Tempan (皇室典範). *tempan*, a dignified name for law.
Tenno in His name. However, no modifications shall be introduced into the Constitution or the Koshitsu Tempan during the time of a Regency.

Then the fourth article on the territory of the Empire was recast, and reads in translation:

The boundary of the Empire of Nippon shall be the territory, unified at the present time. No change in the boundary shall be made unless according to law.

We see in the above a much more simplified form of statement, as compared with the original, and this is but one instance of simplification. The seventy-two articles in seven chapters were after all subjected to a wholesale revision.

It is recalled that during the three drafters’ stay at Kanazawa, on August 5, at midnight, a thief stole into the hotel where they had taken up their quarters. In consequence of this incident, they apprehended that should their private meetings become known to those political enthusiasts among civilian circles, there would be no knowing when the secrets of their daily conferences might leak out, culminating in a grave situation. The drafters lost no time in deciding to leave the hotel to move into the villa of Ito.

Now the island where the villa was situated was originally uninhabited, reserved by the Army as the site for a battery, and rented by Ito with the consent of War Minister Oyama. The villa was naturally free from all fear of leakage of secrets; but being a one-storied wooden structure, hastily put up, it was not very spacious. Inoue alone arranged to stay at a hotel, the Nojimakan, from where he repaired every day to the villa, Kaneko occupying the three-mat room beside the entrance-hall, and Ito (Miyoji) another room a little larger on the verandah. All had to put up with the inconveniences attending such circumstances; yet they spent days and nights in assiduous deliberation on the drafts.

Deliberation, which was their daily task, was carried on in the Premier’s sitting room, the four working around a big table. Here it was that the
drafts were deliberated on point by point. Ito used to say to the others:

"You, gentlemen, should not stand on ceremony during our discussions because I am your superior. I will not ignore your opinions, although I may not always share them. Let all of us each fancy himself a full-fledged constitutional jurist, and thus, by setting forth our opinions without the least reserve, and by discussing with frankness of mind, strive to bring forth a most perfect Constitution."

As may be supposed, it was not seldom that arguments and counter-arguments lasted from early in the morning till noon. After lunch they used to retire to the next room for a rest. This was followed by tea served with some refreshments. Immediately after they again entered into deliberation as in the morning, and continued till five, when they usually closed. Then they regularly took a bath, followed by a leisurely dinner, which seemed quite proper after so arduous a day's work. The rest of the evening the friendly group spent in political and other talk, much to the solace of mind and body.

Thus was spent full two and a half months from June of the twentieth year (1887) to the middle of August. In the meantime the Premier was often called to Tokyo for Cabinet meetings and other official business, which meant repeated interruptions in the deliberations; yet, by the beginning of August, a new revised draft was completed, comprising eighty-nine articles in all. For convenience' sake we usually call it the "Natsujima Constitution" after the small island where it was completed.

The first chapter of the Natsushima Constitution carried the title, *Konpon Jorei* (Fundamental Rules). It consisted of the following three chapters:

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1 *Konpon Jorei* (根本條例).
Chapter I

Fundamental Rules

Article I The Empire of Nippon shall be reigned over and governed by a line of Tenno unbroken for ages eternal.

Article II The Imperial Throne shall be succeeded to by Imperial male descendants according to the provisions of the Koshitsu Tempan.

Article III The boundary of the Empire of Nippon shall be the territory unified at the present time. A change in the boundary shall be made by law only.

The second chapter, entitled “The Tenno,” reads as follows.

Chapter II

The Tenno

Article IV The Tenno is the head of the Empire, who is sacred and inviolable.

Article V The Tenno assumes control of the State rights, and administers government in conformity with the principles of the present Constitution.

Article VI The Tenno administers government with the assistance of the Ministers of State.

Article VII The Tenno exercises the legislative power with the consent of the Upper and Lower Houses of the Giin.

Article VIII The Tenno gives sanction to laws, and orders them to be promulgated and executed.

Article IX The Tenno issues, in case of emergency or in order to avoid public calamities, Imperial Ordinances valid as laws upon the
responsibility of the Cabinet. The Tenno issues Imperial Ordinances necessary for the maintenance of the peace and order of the country, and, in order to enforce their strict observance, appends thereto penal regulations and makes compulsory dispositions. The Tenno issues proclamations declaring the carrying out of martial law.

Article X The Tenno confers titles of nobility, and grants orders and other marks of honour.

Article XI The Tenno appoints and dismisses officials and officers, and determines their salaries, pensions, annuities, and other stipends.

Article XII The Tenno orders amnesty, pardon, commutation of punishments, and rehabilitation.

Article XIII The Tenno organizes and commands the Army and Navy, and issues supreme commands concerning military and naval affairs.

Article XIV The Tenno exercises the powers of declaring war and of concluding peace.

Article XV The Tenno concludes treaties with foreign countries. Treaties by which the nation is held amenable shall be promulgated through due formalities.

Article XVI The Tenno convokes the Upper and Lower Houses of the Giin, and opens, closes, prorogues, and dissolves them.

Article XVII The cases where a Regency is necessary shall be determined by the provisions of the Koshitsu Tempan. The Regent exercises the sovereignty of the Tenno in His name. However, no modifications shall be introduced in the Constitution and the Koshitsu Tempan during a Regency.

A moment's thought on the above draft will convince the reader that it is far better arranged than the Revised Draft A—the result of great pains taken in polishing it.

As to the third chapter, it carried the title, the Teikoku Gikai, in
which was incorporated practically all that was contained in the fourth chapter of the Revised Draft A, under the title, the Genroin and the Daigiln. This chapter consisted of twenty-nine articles, covering Articles XVIII-LXVI. The chapter contained also such provisions as ought properly to have been incorporated in the Ordinance on the House of Peers, the Law on the Election of Representatives for the Shugiin, and the Law on the Giin, presenting quite a disorderly aspect. Two of them are, however, worth the attention of the reader in these latter days. They read:

Article XXI The eldest male sons of Princes, Marquises and Counts, who have attained their twenty-fifth year, shall have a seat.

Article LXI The proceedings shall not be opened in default of the attendance of fifty members, in the case of the House of Peers, and of over half the total number of members, in the case of the House of Representatives.

One wonders what induced the drafters to think of qualifying counts for a seat as hereditary members, and what was the motive for determining on the number fifty instead of a majority.

The fourth chapter carried the title, the Rights and Duties of a Subject comprising sixteen articles, covering Articles XLVII-LXII. The first of these articles reads:

Article XLVII The conditions for the acquisition and loss of the qualifications for a Japanese subject and naturalization shall be determined by law.

A glance at the above will readily impress one with the studied solemnity of the strain, but it is followed by a provision, which is characterized by a tincture of democratism.

Article LXVIII All Japanese subjects receive equal protection from the government, and are equal before the law. In accordance with their qualifications they may equally be appointed officials, civil and military, and may assume other official duties.

A new departure from the traditional oppression of the people, which
had persisted from the feudal days to the early years of Meiji, was Article LX, which reads:

Article LX A Japanese subject may, by showing due respect, and conformity with the provisions of Law, present a petition to the Tenno.

As to the judicature, the provisions of the Natsujima Draft clearly confirmed it as follows:

Article LXIII The judicature shall be exercised in the name of the Tenno exclusively, in accordance with the provisions of law at the courts of justice organized by law.

Article LXIV The judges shall hold their office for life tenure in the name of the Tenno.

The conditions of the disciplinary punishment of the judges shall be determined by law. Their dismissal and suspension from office shall be ordered by sentence through trial.

The outstanding feature of the chapter, in which are found the above provisions, was the addition of the following, in order apparently to secure a thorough exercise of the judicature:

Article LXVII Disputes between an administrative office and a court of justice, and between a court of justice and the Court of Administrative Litigation, over their powers, shall be decided by a special court.

The organization and powers of such a court shall be determined by law.

In Chapter VI of the present Natsujima Draft, which concerned the executive, the third and sixth chapters of the original, i.e. the Revised Draft A, were mixed up, presenting quite a disorderly aspect. It was a mixture of provisions on the Cabinet and the Sanjiiin, Taxation and Finance. A few points should, however, be noted. For instance:

Article LXX The Ministers of State shall be responsible to the Tenno, either jointly or individually.
This was but to confirm strongly that the Ministers of State were responsible, not to the Gikai and the people, but to the Tenno alone. Then, as to the expenses of the Imperial family:

Article LXXVIII Imperial Household expenditure and other expenditures pertaining to the legal obligations of the government shall be mentioned in the Budget, but shall not necessarily be decided on each year.

By this it was clearly intended to make the expenses of the Imperial family stand independent of the right of approval by the Gikai, demonstrating thereby the essential nature of our national polity. In Article LXXX we read:

Article LXXX. The Budget shall be first laid before the Shugiin, and after obtaining its approval, shall be laid before the Kizokuin.

This right of previous decision by the Shugiin, as implied in the above, was but the realization of what Mosse, the German, had told Premier Ito in July, the fifteenth year (1882) of Meiji. Mosse said that matters concerning finance should first be deliberated on in the Lower House, inasmuch as there was reason to believe that it had more concern about them than the Upper House. Then, there was another article, which carried no number, thus:

"When one of the Houses of the Teikoku Gikai has not voted on the Budget, or when a perfect agreement has not been reached on it between the government and one of the Houses, the budget of the preceding year shall be carried on, subject to Imperial sanction, provided it has been approved by one of the Houses. When, however, neither House has voted on it, or when no agreement has been reached on it, the budget of the preceding year shall be executed upon the responsibility of the Cabinet, subject to Imperial sanction."

By this it was intended to empower the government to execute the Budget of the preceding year, preventing the Gikai from intimidating it in so far as the Budget was concerned. It may be recalled that Gneist
and Stein as well Wilhelm II had given Ito advice to the same effect, which was now faithfully followed.

The seventh and last chapter, which carried the title, National Defense, in the Revised Draft A, was changed in the Natsujima Constitution to a set of such rules as concerned the conditions of modification of the Constitution, in case it should become necessary in future, and laws and ordinances issued before the forthcoming Constitution.

The Natsujima Draft Revised.

Article III

From what has been said so far, one may suppose that there seemed to be no end to discussions and deliberations on draft after draft that was produced, and so it was indeed; for this Natsujima Draft, too, was revised, and emerged as still another draft, called the Kempo Soan. A clean copy of it was made by Ki Inoue in the middle of August, and laid before those concerned for further deliberation. The result was a third Natsujima Draft, now called the Nippon Kempo Shusei An, consisting of eighty-nine articles in seven chapters. With this draft the drafters returned to Tokyo from Natsujima toward the end of August of the twentieth year (1887). It was a time of intense friction and antagonism between government and people, civilian parties stirring up the people's minds by playing up the allegation that revision of land tax, freedom of speech and meeting, and revision of treaties were the three most urgent needs of the time. Then, again, the progress in strict secrecy of the drafting of a Constitution under Premier Ito and others raised a bogle to the effect that the coming Constituton would be characterized by despotism after the German fashion. Rumour after rumour was spread, agitating public feeling.

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1 Kempo Soan (憲法草案). soan, draft.
2 Nippon Kempo Shusei An (日本憲法修正案). shusei, revision; an, plan.
Amidst such turmoil prevailing throughout the country, not a day passed without Premier Ito and the drafters assiduously engaging in deliberation on the newly-produced draft, the *Nippon Kempo Shusei An*. They met sometimes at the official residence of the Premier and sometimes at his private residence at Natsujima where they stayed over the week-end, thus further to deliberate on the draft, keeping away from everyday affairs. When they met, it was not seldom that a divergence of opinions drove them into hot discussions, each sticking to his own views from a legal standpoint of his choice. Premier Itō and Kaneko differed in their opinions oftenest. At such times Ito was the first to lose his temper, and called the latter such names as “book-worm” “pettyfogger”, “weakling”, “fool”, and so on. Nor would Kaneko in any wise be conciliated, but instead would offer a counter-attack, demanding furiously, “How dare you call me a fool?” or “Am I a fool, sir?”. Now a chill falls on the Whole company; Inoue begins to set his papers in order and clear the table. Premier Ito stops him, saying, “What, when our meeting is yet in progress?” Ito (Miyoji) leaves with an abrupt parting shot, “Our Premier is displeased; it’s no use arguing any further”; the other two follow suit and take leave of the Premier, saying, “Inoue has left, and so let all of us leave off here.” Similar scenes of tangle among the conferees were of quite frequent occurrence; and yet their deliberations came to an end in the latter part of October. The *Nippon Kempo Shusei An* had now been completely revised.

**From the Second Natsujima Draft to the Final Draft**

**Article IV**

The revised draft, referred to in the preceding section, was not the final one. Although, as has been said, the Natsujima Draft had virtually been revised several times, the new revised draft is generally known as the Second Natsujima Constitution, and is characterized by the thoroughness of revisions.
The Natsujima Constitution, which now consisted of eighty-two articles in seven chapters, was taken up for careful deliberation by those concerned, as before, from January of the twenty-first year (1888) of Meiji. When we reflect that it was a product of all the time and labour spent by the drafters in an untiring spirit of service to the country, we cannot but suppose that it was the most ideal of all the previous drafts, not to speak of those civilian drafts that had appeared one after another before Premier Ito and the others took up the task. However, even the Second Natsujima Draft underwent countless corrections, improvements, and shiftings of articles throughout the eighty-two articles. The result was a further contraction of the draft into seventy-seven articles in seven chapters. For convenience' sake we call it the Final Draft.

The Final Draft was submitted to further deliberation by Premier Ito and the other drafters, and a clean copy made of it on the results of the deliberations was now called the Teikoku Kempo Soan, which was laid before the Constitution Enactment Council in April of the same year. But of this more later on.

(to be continued)

1 Teikoku Kempo Soan (帝国憲法草案). The Draft for the Constitution of the Empire.