COMMENTARIES

ON THE

CONSTITUTION OF THE EMPIRE OF JAPAN.

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In our country, the relations between Sovereign and subject were established at the time that the State was first founded. The unity of political powers was weakened, during the middle ages, by a succession of civil commotions. Since the Restoration (1868 A.D.), however, the Imperial power has grown strong and vigorous; and the Emperor has been pleased to issue decrees proclaiming the grand policy of instituting a constitutional form of government, which it is hoped will give precision to the rights and duties of subjects and gradually promote their well-being, by securing unity to the sovereign powers of the Head of the State, by opening a wider field of activity for serving (the Emperor), and by prescribing, with the assistance of the Ministers of State and the advice of the Diet, the whole mode of the working of the machinery of State in a due and proper manner. All this is in strict accordance with the spirit of the noble achievements bequeathed by the Imperial Ancestors, and all that it is proposed to do now, is to open the way for the ultimate accomplishment of the object originally entertained by the said Imperial Ancestors.

CHAPTER I.

THE EMPEROR.

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

ARTICLE I.

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

Since the time when the first Imperial Ancestor opened it, the country has not been free from occasional checks in its prosperity nor from frequent disturbances of its tranquility; but the splendor of the Sacred Throne transmitted through an unbroken line of one and the same dynasty has always remained as immutable as that of the heavens and of the earth. At the outset, this Article states the great principle of the Constitution of the country, and declares that the Empire of Japan shall, to the

end of time, identify itself with the Imperial dynasty unbroken in lineage, and that the principle has never changed in the past, and will never change in the future, even to all eternity. It is intended thus to make clear forever the relations that shall exist between the Emperor and His subjects.

By "reigned over and governed," it is meant that the Emperor on His Throne combines in Himself the sovereignty of the State and the government of the country and of His subjects. An ancient record mentions a decree of the first Emperor in which he says:—"The Country of Goodly Grain is a State, over which Our descendants shall become Sovereigns: You, Our descendants, come and govern it." He was also called "Emperor governing the country for the first time" (*Hatsu-kuni-shirasu Sumera-mikoto*). A Prince named Yamato-take-no-Mikoto said:—"I am a son of the Emperor Otarashi-hiko-Oshiro-Wake, who resides in the palace of Hishiro at Makimuku, and who governs the Country of Eight Great Islands." The Emperor Mommu (697–707 A.D.) declared at the time of his accession to the Throne:—"As long as Emperors shall beget sons, We shall, each in His succession, govern the Country of Eight Great Islands." The same Emperor also said:—"We shall reduce the Realm to tranquility and bestow Our loving care upon Our beloved subjects." Such in brief has been the principle, by which the Emperors of every age have been guided on succeeding to the Throne. Latterly, the phrase "the Emperor reigning over and governing

the Country of Eight Great Islands" (*Ōyashima-shi-roshimesu Sumera-mikoto*) came to be used as a regular formula in Imperial Rescripts. The word *shi-roshimesu* means reigning over and governing. It will thus be seen that the Imperial Ancestors regarded their Heaven-bestowed duties with great reverence. They have shown that the purpose of a monarchical government is to reign over the country and govern the people, and not to minister to the private wants of individuals or of families. Such is the fundamental basis of the present Constitution.

According to ancient documents, the dominions of our Empire, which went by the name of *Ōyashi-ma*, was composed of Awaji-shima (the present one), of Akitsushima (the main island), of Futanashima in Iyo (Shikoku), of the Island of Tsukushi (Kyushū), of the Island of Iki (the present Tsushima), of the Island of Oki, and of the Island of Sado. The Emperor Keikō (71-130 A.D.) subjugated the tribe of Ezo in the east, and in the west he subdued that of Kumaso, and the territory under him was brought to a state of tranquility. In the reign of the Emperor Suiko (593-628 A.D.), there were over a hundred and eighty Kunitsuko (Governors of Provinces), and subsequently in the Code of Engi,* the division of

*This code was compiled in the reign of the Emperor Daigo, and consisted of minor rules supplying the deficiencies of the Code of Taihō (*vide* foot note under Article X.). It was in the period of Engi (901-922 A.D.), that Fujiwara-no Tokihira was first commanded by the Emperor to compile it; but as he died while the work was still in hand, the honor of bringing it to completion fell to the lot of his younger brother Tadahira, who finished it in the 5th year of Encho (927 A.D.), that is, more than ten years after his elder brother had received the Imperial command for its compilation. (*Translator's note.*)

the country into sixty-six Provinces and two islands is mentioned. In the first year of Meiji (1868 A.D.), the two Provinces of Mutsu and Dewa together were subdivided into seven Provinces, and in the second year (1869 A.D.), eleven Provinces were established in the Hokkaido. The number of Provinces in the whole country was thus increased to eighty-four. The present dominions consist of the Hokkaido, the various islands of the Okinawa and of the Ogasawara groups, in addition to what was formerly designated by the name of *Ōyashima* or to the sixty-six Provinces and islands mentioned in the Code of Engi. Territory and a people are the two elements out of which a State is constituted. A definite group of dominions constitute a definite State, and in it definite organic laws are found in operation. A State is like an individual, and its territories, resembling the limbs and parts of an individual, constitute an integral realm.

ARTICLE II.

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

As to the succession to the Throne, there have been plain instructions since the time of the first Imperial Ancestor. In obedience to these instructions, the Throne has been transmitted to the sons and grandsons of the Emperors, and this rule shall

remain immutable for all ages. As regards the order of succession, minute provisions have been already made in the Imperial House Law, lately determined by His Imperial Majesty. This law will be regarded as the family law of the Imperial House. That these provisions are not expressed in the Constitution, shows that no interference of the subject shall ever be tolerated regarding them.

By "Imperial male descendants," is meant the male offsprings in the male line of the Imperial succession. The present clause and Article I. of the Imperial House Law are explanatory the one of the other.

ARTICLE III.

The Emperor is sacred and inviolable.

"The Sacred Throne was established at the time when the heavens and the earth became separated" (*Kojiki*). The Emperor is Heaven-descended, divine and sacred; He is preeminent above all His subjects. He must be reverenced and is inviolable. He has indeed to pay due respect to the law, but the law has no power to hold Him accountable to it. Not only shall there be no irreverence for the Emperor's person, but also shall He not be made a topic of derogatory comment nor one of discussion.

ARTICLE IV.

The Emperor is the head of the Empire,

combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.

The sovereign power of reigning over and of governing the State, is inherited by the Emperor from His Ancestors, and by Him bequeathed to His posterity. All the different legislative as well as executive powers of State, by means of which He reigns over the country and governs the people, are united in this Most Exalted Personage, who thus holds in His hands, as it were, all the ramifying threads of the political life of the country, just as the brain, in the human body, is the primitive source of all mental activity manifested through the four limbs and the different parts of the body. For unity is just as necessary in the government of a State, as double-mindedness would be ruinous in an individual. His Imperial Majesty has Himself determined a Constitution, and has made it a fundamental law to be observed both by the Sovereign and by the people. He has, further, made it clear that every provision in the said Constitution shall be conformed to without failure or negligence.

His Imperial Majesty has taken this step out of the high veneration, in which he holds His Heaven-bestowed functions, and with a view to the completion of a permanent system of government in harmony with the march of national progress. The combination of all the governmental powers of the State in one person, is the essential characteristic of sovereignty, and the carrying of those powers into effect

in accordance with the provisions of the Constitution, denotes the exercise of sovereignty. When the essential characteristic of sovereignty exists without its exercise in the manner just stated, the tendency will be towards despotism. When, on the other hand, there is such exercise of sovereignty without its essential characteristic, the tendency will be towards irregularities and supineness.

(Note.) According to the opinion of modern European writers on political philosophy, the powers of the State may be divided into two parts, the legislative and the executive. The judicial power is no more than a branch of the executive power. These three powers of State are carried into execution through the instrumentality of the organic parts appertaining to each; but the original source of activity traces back to the Head of the State. For unless the governmental powers of State all centre in the Head, which is the seat of the will of the State, it will be impossible to maintain the organic life of the State. A constitution allots the proper share of work to each and every part of the organism of the State, and thus maintains a proper connection between the different parts, and assigns functions to the same; while, on the other hand, the Sovereign exercises his proper functions, in accordance with the provisions of the constitution. It will thus be seen that the theory of absolute power, which once prevailed in Rome, cannot be accepted as a constitutional principle. It is also contrary to the just definition of State, to maintain, as it was done at the close of the 18th century,

that the three powers of State should be independent the one of the other, and that the Sovereign's proper share of control shall be confined to the executive. The theories that have been touched upon, contain various points of value in considering the principles that have been adopted into our Constitution, and for this reason, they have been alluded to as a matter of reference.

ARTICLE V.

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

The legislative power belongs to the sovereign power of the Emperor; but this power shall always be exercised with the consent of the Diet. The Emperor will cause the Cabinet to make drafts of laws, or the Diet may initiate projects of laws; and after the concurrence of both Houses of the Diet has been obtained thereto, the Emperor will give them His sanction, and then such drafts or projects shall become law. Thus the Emperor is not only the centre of the executive, but is also the source and fountain-head of the legislative power.

(NOTE.) In Europe, within the last hundred years, it has happened that the turn of events has tended to favor the prevalence of extreme doctrines; and legislative matters have come to be regarded as specially falling within the powers of Parliament, the tendency being to hold, that laws are contracts

between the governing and the governed, and that in their enactment, the Sovereign and the people have equal share. Such a theory arises out of a misconception of the principle of the unity of sovereignty. From the nature of the original polity of this country, it follows that there ought to be one and only one source of sovereign power of State, just as there is one dominant will that calls into motion each and every distinct part of a human body. The use of the Diet is to enable the Head of the State to perform his functions, and to keep the will of State in a well-disciplined, strong and healthy condition. The legislative power is ultimately under the control of the Emperor, while the duty of the Diet is to give advice and consent. Thus between the Emperor and the Diet, a distinction is to be strictly maintained as to their relative positions.

ARTICLE VI.

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

The sanctioning of a law, the causing of the same to be promulgated in a proper form, and the ordering of the taking of measures for the execution of the same—all these belong to the sovereign power of the Emperor. Sanction completes the process of legislation, while promulgation produces binding force upon the subjects. If the power of sanction belongs to Him,

it is scarcely necessary to remark that, as a consequence, He also possesses the power to refuse His sanction. Sanction is a manifestation of the sovereign powers of the Emperor in matters of legislation. Consequently, without the sanction of the Emperor, no project can become law, even if it has received the consent of the Diet. In olden times, the character 法 (law) was read *nori* and pronounced the same as the character 宣 (a term applied to the Sovereign and meaning "declared"). In a work entitled *Harima-fū-doki*, this sentence is found:—"Ōnori-yama (the Great Law Mountain, now called Katsubega-oka) has received its appellation from the circumstance, that it was upon this hill that the Emperor Shinafuto (otherwise called the Emperor Ōjin, 270–312 A.D.) delivered his great laws" (*Ō-nori*). Now language is a very important factor in historical studies for elucidating old traditions and customs. It thus appears that in olden times men generally understood by law the words spoken by a Sovereign, and no conflict has ever arisen as to the general meaning of the word.

(Note.) In Europe, various opinions have been propounded as to the power of Sovereigns to veto proposed laws. In England, it is held that this power is a part of the legislative power of the Sovereign, and is adverted to as proof of the equilibrium maintained between the three estates of the realm (the Crown, the Lords and the Commons). According to certain French writers, this power is regarded as being the check exercised by the executive upon the legislative. The so-called veto power is, in its principle, negative. The

legislative enacts laws, while the Sovereign only vetoes the same. It will thus be seen that this is an offshoot of principles, which aim at confining the sovereign power of a Ruler within the executive power only, or at least at allowing him only a part of the legislative power. In our Constitution, a positive principle is adopted, that is to say, the laws must necessarily emanate at the command of the Emperor. Hence it is sanction that makes a law. As the laws must necessarily emanate at the command of the Emperor, it naturally follows that he has power to withhold sanction to the same. Thus, although there may be some semblance of similarity between our system and the veto system above alluded to, the one is as far separated from the other as the heavens are from the earth.

ARTICLE VII.

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

The convocation of the Diet appertains exclusively to the sovereign power of the Emperor. Hence, the Constitution does not recognize a Diet which assembles of its own accord without summons, and the deliberations of no such Diet shall be allowed to possess any efficacy.

It will also appertain to the sovereign power of the Emperor, after the convocation of the Diet, to open and close its session, in order to exercise a

general control over the commencement and the termination of the respective Houses. In opening the Houses, the Emperor will either proceed in person to the Diet, or He will send there a special Imperial delegate to read His speech. Deliberations in the Diet shall be commenced only after this ceremony has been gone through. No deliberations, that have been held before the opening or after the closing of the Diet, shall be of any account.

By "prorogation" is to be understood the suspension of the deliberations of the Diet. In the case of prorogation for a stated length of time, deliberations will, on the expiration of that time, be resumed where they left off.

The dissolution of the House of Representatives is a mode of ascertaining the public opinion from the tone of the newly elected House. No mention is in this place made of the House of Peers, for the reason that that House cannot be dissolved, although it can be prorogued.

ARTICLE VIII.

The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law.

Such Imperial Ordinances are to be laid

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

When the country is threatened with danger, or when the nation is visited with famine, plague or other calamity, every necessary and possible measure must be taken for the maintenance of the public safety, for the prevention of such calamities, and for the relief of distress thereby caused. Should an emergency of the kind happen to arise while the Diet is not sitting, the Government will have to take upon itself the responsibility of issuing Imperial Ordinances in the place of laws, and shall leave nothing undone that may be required in the juncture; for such action is imperatively demanded for the defence and safe-guarding of the country. It will be seen that Article V, providing that the exercise of the legislative power requires the consent of the Diet, regards ordinary cases; while the provisions of the present Article, authorizing the issuing of Imperial Ordinances in the place of laws, refers to exceptional cases in times of emergency. This power mentioned in the present Article, is called the power of issuing "emergency Ordinances". Its legality is recognized by the Constitution, but at the same time abuse of it is strictly guarded against. Thus the Constitution limits the use of this power to the cases of urgent necessity for the maintenance of public safety and for the averting of public calami-

ties, and prohibits its abuse on the ordinary plea of protecting the public interest and of promoting public welfare. Consequently in issuing an emergency Ordinance, it shall be made the rule to declare that such Ordinance has been issued in accordance with the provisions of the present Article. For, should the Government make use of this power as a pretext for avoiding the public deliberations of the Diet or for destroying any existing law, the provisions of the Constitution would become dead letters having no signifiance whatever, and would be far from serving as a bulwark for the protection of the people. The right of control over this special power has, therefore, been given to the Diet by the present Article, making it necessary, after due examination thereof at a subsequent date, to obtain its approbation to an emergency Ordinance.

Of all the provisions of the Constitution, those of the present Article present the greatest number of doubtful points. These points will be cleared up one after the other, by presenting them in the form of questions and answers. *First:* Is such an Imperial Ordinance limited in its action to the supplying of the deficiency of the law, or can it also either suspend, modify or abolish any existing law? Since such an Ordinance possesses by virtue of the Constitution, the power of taking the place of law, it shall, as a consequence, be competent to affect any matter that can be affected by law. Should, however, the Diet not give its approbation to such an Ordinance at its next session, the Govern-

ment should promulgate that it shall lose its effect, while at the same time any law which it has abolished or modified shall regain its former efficiency. *Secondly:* When the Diet gives its approbation to such an Ordinance, what shall be the effect thereof? The Ordinance shall then continue to possess the power of law for the future, without having to go through the formality of promulgation. *Thirdly:* How is it that, when the Diet refuses to give its approbation to such an Ordinance, the Government is obliged to promulgate, that the Ordinance in question shall have no effect in the future? Because it is only by such promulgation that the people are freed from their obligation of obedience to it. *Fourthly:* On what ground shall the Diet be entitled to refuse its approbation? The Diet may refuse its approbation, when it has discovered either that the Ordinance is incompatible with the Constitution, or that it is wanting in any of the conditions mentioned in the present Article, or on the ground of some other legislative consideration. *Fifthly:* What, if the Government does not submit the Ordinance to the Diet at its next session, or if, after the Diet has refused to give its approbation to it, the Government does not notify that the Ordinance has been annulled? The Government shall then have to bear the responsibility of a breach of the Constitution. *Sixthly:* When the Diet has refused its approbation, may it demand the retrospective annulment of the Imperial Ordinance in question? As the Sovereign is authorized by the Constitution to issue emergency

Ordinances, in the place of law, it is a matter of course that such Ordinances should have effect as to the period of time they have been in existence. The refusal of approbation by the Diet is consequently to be regarded simply as its refusal to approve the future continued enforcement of the Ordinance as law, and such refusal can not reach the past. *Seventhly:* Can the Diet amend such an Imperial Ordinance before giving its approbation to it? According to the express provisions of the present Article, there are only two alternatives open to the Diet; either to give or not to give its approbation; so that it has no power to amend such an Ordinance.

ARTICLE IX.

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

The present Article treats of the sovereign power of the Emperor as to administrative ordinances. A law requires the consent of the Diet, while an ordinance holds good solely by decision of the Emperor. There are two occasions for the issuing of an ordinance: the first is, when it is required to regulate

measures and details for the carrying out of any particular law; the second, when it is required to meet the necessity of maintaining the public peace and order and of promoting the welfare of the subjects. All these matters may, without having been passed through the regular course of legislation, form the subjects of legal enactments having binding effect upon the people at large by virtue of the executive power of the Emperor. As to a binding effect upon the people, there should not be the slightest difference between a law and an ordinance, save that a law can make alterations in any of the existing ordinances, whereas no ordinance can alter any of the existing laws. In case of a conflict between law and ordinance, the law will always have the preponderance over ordinance.

The power of issuing ordinances is in all cases a consequence of the sovereign power of the Emperor. Those that received the personal decision of the Emperor and His Sign-manual are called "Imperial Ordinances." The issuing of cabinet or departmental ordinances is to be regarded as an exercise of the sovereign power delegated by the Emperor. The wording of the present Article, to wit, "The Emperor issues or causes to be issued," is intended to cover the above two different instances for the issuing of ordinances.

Emergency Ordinances mentioned in the preceding Article may take the place of law. But the administrative ordinances mentioned in the present Article shall take effect within the limits of law, and

although they can supply the deficiency of law, yet they shall have no power to either alter any law or to regulate those matters for which a law is required by express provision of the Constitution. Administrative ordinances are to be made use of under ordinary circumstances, while the aim of emergency Ordinances is to meet the requirements of a time of exigency.

(NOTE.) In Europe, many writers have propounded various opinions as to the scope of ordinances. *First:* in the constitutions of France and of Belgium, it is confined exclusively to the execution of the law; and the Prussian Constitution has exactly imitated their example. This has been merely the result of an erroneous opinion that has been entertained, that the executive power of the Sovereign should be confined within a circle of a very narrow limit. The so-called executive power is not confined to the execution of the provisions of law. Now, in private life a pre-determined purpose alone will prompt the general direction of an individual's actions; while, in facing the ever varying phases of life, it is necessary, if he is to be saved from falling into error, that he exercise his thinking faculties to meet the requirements of the moment. Similarly, though the law is competent to lay down general rules for guidance in ordinary matters, it can not be expected that it shall point out in every case the expeditious course to be taken in relation to every one of the multifarious forms of social activity. Were the executive confined to the execution of the law, the State

would be powerless to discharge its proper functions in the case of absence of a law. Accordingly, ordinances are not only means for executing the law, but may, in order to meet requirements of given circumstances, be used to give manifestation to some original idea. *Secondly:* those also who maintain that the preservation of the public peace and order is the only object of administrative ordinances, are mistaken in defining the limits of the executive. In olden times, in every continental state of Europe, the maintenance of the public peace was regarded as the highest duty of a government, and simplicity as the sole principle of its internal administration. But when the turn of events had brought about a high degree of political development, owing to the advancement of civilization, it was found imperatively necessary to promote the welfare and prosperity of the people, both materially and intellectually, by economical and educational means. It thus came to be recognized, that the object of the administrative ordinances is not confined to the negative measures of police, but that their object ought also to be to take the positive measures of promoting the material prosperity of the people by economical means and of cultivating the intellect of the people through education. The executive, however, ought not to interfere with the liberty of individuals guaranteed by law, but, on the contrary, it should contrive to develope it by encouragement and help, provided within proper limits. The executive ought to uphold laws by confining its action within the limits already established by law, and

ought, thus, to discharge its state functions within proper spheres.

ARTICLE X.

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

The Emperor in accordance with the requirements for the national existence, establishes the offices in the different branches of the administration, fixes the proper organization and functions of each of them, and exercises the sovereign power of appointing men of talent for civil and military posts and of dismissing holders of such posts. The first instance in our history of the appointment of officials dates back to the time of the Emperor Jimmu (660 B.C.), who, upon the completion of His ever memorable deeds, created the office of *Kunitsuko* (Governor of a Province) and that of *Agata-Nushi* (Magistrate of a District). The Emperor Kōtoku (645–654 A.D.) created eight Departments of State, and the organization of the Government was brought

to a fairly perfect state. At the time of the Restoration, the official organization, that had been established by the Code of Taihō,* was adopted with some modifications. After the introduction of successive changes, the Organization of the Government Offices and the Regulations of Salaries have been finally established. According to this system, the Ministers of State are appointed and dismissed by the Emperor Himself. All other high dignitaries of and below the rank of *Chokunin* are appointed upon the sanction of the Emperor at the recommendation of a Minister of State. There can be no appointment that does not derive its authority from the command of the Emperor. It is, however, to be noted that the organization of the courts of law and that of the Board of Audit, shall be enacted by law instead of by Imperial Ordinance, and that the dismissal of judges shall be consequent upon a judicial decision. These are the exceptional cases, for which provisions are specially made in the Constitution and in the law.

When the establishment of the different offices and the creation of official positions pertain to the prerogative of the Sovereign, the said prerogative is

* The Code of Taihō (*Taihō Ryō*) provides for the organizations of the different branches of the Government, and consists, besides, of certain legal enactments; provisions being made only for essential matters. It was compiled by Fujiwara-no Fuhito by Imperial command, in the 1st year of Taihō (701. A.D.) in the reign of the Emperor Mommu. Subsequently, in the reign of the Emperor Genshō, in the 2nd year of Yōrō (718 A.D.), the same personage was commanded by the Sovereign to remodel the wording of the code. Thus modified it was called the Code of Yōrō (*Yōrō Ryō*), and in that form it has been handed down to this day, though it is still called by the original name of the Code of Taihō. (*Translator's note.*)

necessarily accompanied by the power to give salaries and pensions.

(Note.) In Germany, in former times the appointment and dismissal of public functionaries were left to the will of the Sovereign or to the head of a Government office. In the 17th century, it was laid down that the judges of the Imperial Court (Reichsgericht) could not be deprived of their positions unless by process of law; and this principle was also adopted in the case of Imperial Court Councillors (Reichshofrath). In the 18th century, the opinion prevailed that administrative officials had a confirmed right to their official positions, and this principle was adopted into the law in several countries. It was in the beginning of the present century, that it was first propounded that, although an official has a confirmed right to his salary, he has no such right to his position, and therefore that an administrative measure is competent enough to dismiss an official, upon giving him his salary or a pension. This principle was first expressed in the Bavarian regulations as to the tenure of office (law of 1818), in which it is provided that, to suit administrative convenience, an official may, without the trial of a disciplinary court, be deprived of his employment, of his salary for service (dienst gehalt) and of his official uniform, while retaining his official position and the salary proper thereto (standes gehalt). The practice of England, however, is different from what obtains in the German states, and excepting certain special classes

of officials, the Sovereign still possesses, as he possessed formerly, the prerogative of appointing or of dismissing any civil or military official, at his pleasure.

ARTICLE XI.

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

The great Imperial Ancestor founded this Empire by his divine valor, in personal command of his army composed of several divisions known as *Mononobe*, *Yukiyebe* and *Kumebe*. Thenceforward all the succeeding Emperors have taken the field in person in command of their armies, in the cases of emergency that have arisen in either external or internal affairs. On some occasions an Imperial son or grandson was sent to assume the command of the army on behalf of the Emperor. The great dignitaries of state called *Omi* and *Muraji** served as generals assisting the Imperial personage in command. The Emperor Temmu (673-686 A.D.) created the office of Chief Commissioner of the Military Administration. During the reign of the Emperor Mommu (697-707 A.D.), great reforms

* *Omi* and *Muraji* (properly *Ō-omi* and *Ō-muraji*) were both appellations for Ministers of State. There was not much difference in the official capacity of each, though the former ranked the latter. Those offices were abolished in the 1st year of the reign of the Emperor Kōtoku (645 A.D.), when the offices of Ministers of the Left and of the Right were first created. (*Translator's note.*)

were introduced into the military system, and a Commander-in-chief was appointed whenever three corps of the Imperial army were led into the field. On each occasion of the Commander-in-chief's taking the field, the Emperor had to bestow upon him a sword of discipline, with which he had to enforce strict discipline in his army. All military authority and command were, even at that time, centred in the hands of the Sovereign. But after the usurpation of the military power by the military classes, the reins of government began to slacken.

At the beginning of the great events that achieved the Restoration by the present August Sovereign, His Imperial Majesty issued an Ordinance, proclaiming that He assumed personal military command for the suppression of rebellion, thus manifesting that the sovereign power was centred in Him. Since then, great reforms have been introduced into the military system. Innumerable evil customs, that had been long prevailing, were swept away. A General Staff Office has been established for His Imperial Majesty's personal and general direction of the Army and Navy. Thus the glory bequeathed by the Imperial Ancestors has again been restored to its former brilliancy. The present Article is intended to show, that paramount authority in military and naval affairs is combined in the Most Exalted Personage as His sovereign power, and that those affairs are in subjection to the commands issued by the Emperor.

ARTICLE XII.

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

The present Article points out, that the organization and the peace standing of the Army and Navy are to be determined by the Emperor. It is true, that this power is to be exercised with the advice of responsible Ministers of State; still like the Imperial military command, it nevertheless belongs to the sovereign power of the Emperor, and no interference in it by the Diet should be allowed. The power of determining the organization of the Army and Navy, when minutely examined, embraces the organization of military divisions and of fleets, and all matters relating to military districts and sub-districts, to the storing up and distribution of arms, to the education of military and of naval men, to inspections, to discipline, to modes of salutes, to styles of uniforms, to guards, to fortifications, to naval defences, to naval ports and to preparations for military and naval expeditions. The determining of the peace standing includes also the fixing of the number of men to be recruited each year.

ARTICLE XIII.

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

Declaration of war, conclusion of peace and of

treaties with foreign countries, are the exclusive rights of the Sovereign, concerning which no consent of the Diet is required. For, in the first place, it is desirable that a Monarch should manifest the unity of the sovereign power that represents the State in its intercourse with foreign powers; and in the second, in war and treaty matters, promptness in forming plans according to the nature of the crisis, is of paramount importance. By "treaties" is meant treaties of peace and friendship, of commerce and of alliance.

(NOTE.) According to the old usage of the middle ages in Europe, every Sovereign seems to have personally attended to his own diplomatic affairs. William III. of England took upon himself the functions of Foreign Secretary, and his special talents for diplomacy were greatly lauded at the time. But with the gradual development of constitutional principles in modern times, diplomatic affairs also have been merged into the functions of responsible Ministers of State, and the Sovereign's rights relating to these subjects have come to be exercised, like all other administrative matters, only by the advice of the Ministers. When Napoleon Bonaparte was First Consul of France, he addressed to the King of England a communication containing proposals of peace between France and England, but on the British side it was acknowledged and answered by the Foreign Secretary. In the diplomatic usage of the present day, it is a recognized principle in every country, that a Minister of State should be made the channel of communication of matters relating to diplomatic

affairs and to treaties with foreign powers, except in cases of the Sovereign's personal letters of congratulation or of condolence. The principal object of the present Article is to state that the Emperor shall dispose of all matters relating to foreign intercourse, with the advice of His Ministers, but allowing no interference by the Diet therein.

ARTICLE XIV.

The Emperor declares a state of siege.

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

A state of siege is to be declared at the time of a foreign war or of a domestic insurrection, for the purpose of placing all ordinary law in abeyance and of entrusting part of the administrative and judicial powers to military measures. The present Article expressly provides, that the conditions requisite for the declaration of a state of siege and the effect of the declaration shall be determined by law, and that, in pursuance of the provisions thereof, it appertains exclusively to the sovereign power of the Emperor, under stress of circumstances, to declare or to revoke a state of siege. By "conditions" is meant the nature of the crisis when a state of siege is to be declared, the necessary limits as to territorial extent affected, and rules needful for making the declaration. By "effect" is meant the limit of the power called

into force as the result of the declaration of a state of siege.

The exercise of the right of warfare in the field, or of the declaration of a state of siege as the exigency of circumstances may require, may be entrusted to the commanding officer of the place, who is allowed to take the actual steps his discretion dictates, and then to report to the Government. This is to be regarded as a delegation of the soveregin power of the Emperor to a General in command of an army, in order to meet the stress of emergencies, according to the provisions of the law (Notification No. 36 issued in the 15th year of Meiji—1882 A.D.).

ARTICLE XV.

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

The Emperor is the fountain of honor. It belongs to the sovereign power of the Emperor to reward merit, to requite services, to mark distinguished conduct and praiseworthy undertakings, and to confer conspicuous titular distinctions, other marks of honor and special favors. And no subject is allowed to usurp and trifle with this prerogative of the Emperor. In ancient times, when our Empire was in a state of primitive simplicity, certain distinctions existed to denominate classes of the people into high and low, by means of patriarchal titles. The Emperor Suiko (593–628 A.D.) established twelve

grades of rank, each grade marked by a special head-dress, and conferred them upon his courtiers. This system of rank was extended by the Emperor Temmu (673–686 A.D.) to number in all forty-eight grades. The Emperor Mommu (697–707 A. D.) abolished the usage of conferring a head-dress, and substituted therefor letters patent in bestowing rank. Thirty grades of rank were provided for in the great Code of Taihō * (*Taihō Ryō*), and this is the origin of the grades of rank now existing. Besides rank, orders of merit of twelve grades were bestowed upon those, who had distinguished themselves in military exploits, in filial piety, in brotherly love or in agricultural pursuits. After the middle ages, when the actual power of government had been usurped by the military class, it was never lost sight of that the formal ceremony of conferring titular distinctions ever appertained to the Imperial Court, though all authority connected with rewards or punishments was then under the sway of the Government of the Generalissimo (*Bakufu*). After the Restoration, in the 2nd year of Meiji (1869 A.D.), a new system of rank was established, with grades from the first to the ninth. In the 8th year of Meiji (1875 A.D.), orders of decoration were created. In the 17th year of Meiji (1884 A.D.), five grades of titles of nobility were established. All of these marks of distinction manifest the real motives for them, that merit and services are to be rewarded and publicly honored.

* *vide* foot note under Article I. (*Translator's note.*)

ARTICLE XVI.

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

The State gives equal and impartial protection to the rights of the subjects, in accordance with the principles of justice and of reason, by establishing courts of law and by appointing officers of justice. But the law is not comprehensive or precise enough to meet all the varied and complicated requirements of human life; and when, as it frequently happens, there are palliating circumstances in the case of an offender against the law, it is to be apprehended that no ordinary process of the legislative or of the judicature will be adequate to supply the deficiency of the law. Consequently, it is intended that the right of pardon may be exercised by the special beneficient power of the Emperor, to give relief when there is no hope of it to be looked for from the law; so that there shall not be one subject even, suffering under an undeserved punishment.

"Amnesty" is to be granted, in a special case, as an exceptional favor, and is intended for the pardoning of a certain class of offences. "Pardon" is granted to an individual offender to release him from the penalty he has incurred. "Commutation" is the lessening of the severity of the penalties already pronounced in the sentence. "Rehabilitation" is the restoration of public rights that have been forfeited.

In the thirteen Articles from Article IV. to Article XVI. of the present Chapter, the sovereign powers of the Head of the State are enumerated. These sovereign powers are operative in every direction, unless restricted by the express provisions of the Constitution, just as the light of the sun shines everywhere, unless it is shut out by a screen. So these sovereign powers do not depend for their existence upon the enumeration of them in successive clauses. In the Constitution is given a general outline of these sovereign powers, and as to the particulars touching them, only the essential points are stated, in order to give a general idea of what they are. The right of coining money, for example, and that of fixing of weights and measures, are not enumerated; still the very absence of any mention of them shows that they are included in the sovereign powers of the Emperor.

ARTICLE XVII.

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

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

A Regent shall exercise the sovereign powers of the Emperor. Excepting as to title, he is in every respect like the Emperor, and has to carry on the government in the name of the Emperor, and is not held

responsible therefor. The only restriction upon his power is that mentioned in Article LXXV. of the present Constitution. "In the name of the Emperor" means in the place of the Emperor: that is, a Regent issues his orders in the place of the Emperor.

The institution of a Regent is fixed by the Imperial House Law; but as the exercise of the sovereign powers by a Regent is connected with the Constitution, the provisions relating to the said exercise of sovereign powers are mentioned in the Constitution, while those relating to the institution of a Regent are contained in the Imperial House Law. The question whether it is or is not advisable to institute a Regent under any particular circumstances, shall be decided by the Imperial family, and the matter lies in a region that admits of no interference of the subjects. The extraordinary cases, in which the Emperor is incapable of personally taking the reins of power, are of very rare occurrence; still those rare cases not unfrequently give rise to national commotions. In the Constitution of a certain country, it is provided that both Houses of Parliament shall be convened and asked to vote upon the necessity of instituting a Regent. But such a practice is open to the objection that, as the decision of a matter of great importance to the Imperial family is thus delegated to the will of the majority of the people, there would be a tendency to bring about degradation of the Imperial dignity. It is for the purpose of respecting the character of the national polity of the country and of guarding against the opening of a way to such a tendency, that the disposi-

tions touching the institution of a regency mentioned in the present Article, have been left to the determination of the Imperial House Law, and that no further provision is made in the present Constitution on the subject.

CHAPTER II.

RIGHTS AND DUTIES OF SUBJECTS.

In Chapter II. are set forth, as a fit sequence to Chapter I., the rights and duties of subjects. The essential feature of the policy of the Imperial Ancestors was, that they loved and cherished their subjects, who were accordingly called "the great treasure." The following expressions were used by a *Kebiishi-no-suke* (Assistant Chief of Police) at the time that a pardon was issued:— "You must henceforth become the great treasure of the land, and must make ready to pay your taxes and pay them" (*Kōke-Shidai*). It has been the custom of our successive Emperors to assemble, on the day of their coronation, their relatives and the people of the country, and to address them in this wise:— "Imperial Princes, Princes, Ministers, Our different functionaries and the public treasure of the country here assembled, do you listen to Our words....." The word *kōmin* (the people), which is frequently used by our historians, is nothing more than the translation of the expression *Ō-mitakara* (public treasure). On the other hand, it is to be noticed that there have been instances of the people calling themselves the Emperor's treasures, as may be seen from the following poem, composed by Ama-no-Inukai-no-Sukune-Okamaro, in the 6th year of Tempyō (734 A.D.), at the command of the Emperor then reigning:—"Happy are we His Majesty's treasure to have an ample recompence for

our earthly existence, in having been born at an epoch so full of prosperity and glory." It will thus be observed that, on the one hand, the Emperors have made it their care to show love and affection to the people, treating them as the treasures of the country; while, on the other, the people have ever been loyal to the Sovereign, and have considered themselves as happy and blessed. Such is in short what appears from the study of ancient documents and of the customs of the land; and it is to this very same source that the theory of the rights and duties of subjects, as mentioned in the present Chapter, is to be traced. Under the military régime of the middle ages, warriors and the common people were placed in different classes. The former monopolized the exercise of every public right, while the latter were not only excluded from the enjoyment of these, but were also curtailed in the full enjoyment of their civil rights. The expression "public treasure" thus lost its meaning and such extension thereof has ceased to be attached thereto. Since the Restoration, the privileges of the military class have been abolished by successive Rescripts, and all Japanese subjects, without discrimination among them, can now enjoy their rights and discharge their duties. The provisions of the present Chapter are meant for the purpose of cherishing and of broadening the beautiful results of the Restoration as well as of bearing witness thereto to all eternity.

ARTICLE XVIII.

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

The expression "Japanese subject" is here used to distinguish a Japanese from a foreign subject or citizen. Every Japanese subject shall be entitled to possess public as well as civil legal rights. It is consequently necessary to settle by law the conditions for being a Japanese subject. There are two ways by which an individual can be a Japanese subject: one is by birth, the other by naturalization or by other effect of law.

The status of subject shall be settled by a special law. But care has been taken to state this fact in the Constitution, because the status of subject or citizen is necessary for the enjoyment of civil rights in whole and of public rights. It will be seen that the provisions of the said special law are framed on the authority of the Constitution, and that such provisions are essentially related to the rights and duties of subjects as mentioned in the Constitution.

Public rights are the right of electing, that of being elected, that of being appointed to office, and so forth. In every country, it is the common rule of public law, that public rights shall be determined by the constitution or by special law, and that they shall be enjoyed solely by native subjects or citizens, to the exclusion of aliens. But, as regards the

enjoyment of civil rights, the custom of making a rigid distinction between native subjects and aliens, is now-a-days a matter of history. At present there is a tendency in almost every country to enable aliens to enjoy, with one or two exceptions, civil rights equally with natives.

ARTICLE XIX.

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

At the present time, appointment to a civil or military post or to any other public function, is not regulated by consideration of family. This must be regarded as one of the splendid results of the Restoration. In former times, men were classified according to birth, and each office belonged to a particular house; and each public employment was hereditary in a particular family. Consequently men of inferior birth, however talented they may have been, were absolutely excluded from high positions in public offices. But since the Restoration, such baleful practices have been swept away, and the former custom of giving weight to family status, has also been done away with. The Constitution now guarantees by the present Article, that neither order of nobility nor degree of rank shall any longer be allowed to militate against the

equality of all men in regard to appointment to office. Still the proper qualifications established by law or ordinance, such, for example, as proper age, payment of taxes, the passsing of examinations, shall be the required conditions for appointment to an office or to any post of public trust.

As it is stated that "Japanese subjects may be appointed to civil or military or any other public offices equally," it follows that this right is not extended to aliens, unless by provisions of a special enactment.

ARTICLE XX.

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

Japanese subjects form one of the elements that make up the Japanese Empire. They are to protect the existence, the independence and the glory of the country. From time immemorial, the people of this land have always held that, to make sacrifice of home and life and to fight for one's country, whenever its need required it, was both admirable and manly. The spirit of loyalty, like the sentiment of honor, has come down to us from our ancestors; and gradually taking a firm hold upon the hearts and minds of all, this spirit has become the general characteristic of the nation. The Emperor Shōmu (724–748 A.D.) once said:—"As Ōtomo-Saiki-no-Sukune was

wont to say, your ancestors having been entirley devoted to the service of their Emperors, they used to sing this song:—

Does my way lead me over the sea,
Let the waves entomb my corpse;
Does my destiny lead me over the mountains,
Let the grass cover my remains;
Where'er I go, I shall by my lord's side expire;
T'is not in peace and ease that I shall die.

Such is what we have been told of your ancestors." These verses have been sung by our soldiery in every age, and have proved of powerful influence in developing loyal and martial feelings. Since the period of Taihō (701–703 A.D.), armies have been organized, and young people capable of bearing arms have been called upon to enlist. In the time of the Emperor Jitō (687–696 A.D.), one-fourth of the young men arriving at majority were enlisted. This is the origin of the system of conscription in this country. Subsequently, the assumption of the power of the State by military families, led to the isolation of the military from the farming class, and, all military affairs having been monopolized by the one class, the old conscription system was for a long while in a state of extinction. After the Restoration, the military class was relieved of their duties in the 4th year of Meiji (1871), and in the following year, the conscription law based upon the old system just alluded to, was promulgated. Under the new system, every male subject throughout the land on reaching his twentieth year is entered upon

the army and navy rolls, though the number actually called upon to serve each year is determined by the organization of the standing army and navy. Those between their seventeenth and fortieth years of age are all enlisted into the militia, and are liable to be at any time called out, upon the breaking forth of war. Such is an outline of the existing conscription law as it is now carried out. The object of the present Article is, that every male adult in the whole country shall be compelled, without distinction of class or family, to fulfil, in accordance with the provisions of law, his duty of serving in the army; that he may be incited to valor while his body undergoes physical training; and that in this way the martial spirit of the country shall be maintained and secured from decline.

ARTICLE XXI.

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

The payment of taxes, like military service, is one of the duties of subjects, as it meets one of the necessities for the common existence of the nation.

In ancient times, taxes were called *chikara* (strength), because they represent the strength of the people. For *to tax*, the word *ōsu* was used, meaning "to make the people bear the burden." As our Emperors have both reigned over and governed the

country since the time of the first Imperial Ancestor, and as they have always looked to the taxes of the whole country for supplies for defraying national expenditures, taxation has a long history in this Empire. In the reign of the Emperor Kōtoku (645–654 A.D.), the system of a triple mode of collecting taxes was inaugurated: taxes were payable in grain, in products (other than grain) or in textures. Since the Restoration the old system of land tax has been remodelled. These were the two great reforms in taxation. As to the particulars of these two reforms, no allusion is here made, as they are minutely described in historical records. A tax is the contributive share of each subject in the public expenditures of the State. It is neither benevolence paid in response to exaction, nor a remuneration for certain favors which have been received upon a mutual understanding.

(Note.) French writers have discussed the principles of taxation in the light of their one-sided views. M. Mirabeau says in an address to the French people exhorting them to contribute towards the national funds:—"Tax is the price paid for benefits received; it is an advance of money to obtain the protection of the social order." M. Emile de Girardin says:—"Taxes are a premium of insurance paid by all the members of a community called a nation, having for effect the assuring of the enjoyment of their rights, and the efficient protection of their interests." Doctrines like these have their source in democratic principles, and according to them, taxation is a sort of exchange of services by the

government for duties by the people. Such doctrines are very ingenious; still they are seriously erroneous, as taxes are for the public expenses of the State, and it is the duty in common for the members of it to pay them. Subjects, therefore, are to pay taxes not only for the needs of the existing government, but also on account of public debts contracted in times past. They are bound to contribute their taxes, not only when benefits are received in return, but also even when none are so received. That expenses shall be curtailed to a minimum and that taxes shall be as light as possible, ought to be the principal care of a government. Such is also the aim of the constitutional principle, that puts the finances under the control of Parliament and makes taxation subject to the vote of the same. When the duty of paying taxes is made a business question of exchange of services between the government and the people, making the consent or the refusal to pay them dependent upon the amount of benefits received, individuals may decline to pay them according to their own private calculations. The result would be impossibility to preserve the existence of the State. Modern scholars have, however, put forth exhaustive arguments to refute the false theory above mentioned, and taxation has at last found a true definition. A brief summary of the opinions of the new school is here introduced. Taxes are levied for the maintenance of the State, and are not a price paid in return for services rendered by the government; for taxes do not exist upon a basis of contract between the

government and the people. (M. Faustin Hélie of France.) The State has the right to impose taxes, and the subjects have the duty of paying them. The legal ground of taxation lies in the pure duty of the subjects. They, being one of the constituent elements of the State, ought to pay taxes, in order that the expenditures necessitated by the nature and object of the State, may be met. The nation as a body ought to supply the funds required for the discharge of its own functions. For individuals, being the elements of the nation, ought each one to pay taxes. That mode of defining taxation is, therefore, erroneous, which considers the nation and individual subjects as apart from the State, and which regards taxes as remuneration paid in return for the protection of property. (Herr Stahl of Germany.) These opinions have been here produced by way of reference.

ARTICLE XXII.

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

The present Article guarantees the liberty of abode and of changing the same. In feudal times, clans were separated from each other by distinct lines of frontiers, surrounded themselves with barriers, and forbade the inhabitants to fix their dwellings out-

side the locality where they were registered, to remove the same or to travel without permission, thus restricting their locomotion and traffickings, and reducing them, as it were, to the level of plants. After the Restoration, with the abolition of all the different clans, the liberty of fixing or of changing one's abode has been recognized, and every Japanese subject is now free to fix his residence either permanently or temporarily, to hire dwelling places, or to engage in business, at any place within the boundaries of the territory of the Empire. That it is provided in the Constitution that this liberty can be restricted by law alone, and that it shall be put beyond the reach of administrative measures, shows how highly the said liberty is estimated.

In this and in succeeding Articles, assurance is given for individual liberty and the security of the property of subjects. The liberty guaranteed by law is the right of subjects, and is, so to speak, the source of the development of their life and intelligence. People enjoying liberty are usually good, enlightened citizens, capable of contributing to the prosperity of the State. In every constitutional country, the individual liberty of the people and the security of their property are regarded as rights of great importance, and due assurances are given for their security. But liberty exists solely in a community in which order prevails. Now the law gives, on the one hand, protection to individual liberty, while, on the other, it defines the limits of restraints upon it, required for maintaining the powers of the State; and thus the

law establishes a proper harmony between the two. Within the limits allowed by law, every individual will have ample scope in the enjoyment of his liberty. Such is the liberty, for which guarantee is given in the Constitution.

ARTICLE XXIII.

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

The present Article gives a guarantee for the security of personal liberty. Arrest, confinement and trial can be carried out only under the cases mentioned in the law, and according to the rules mentioned therein; and no ill-conduct whatever can be punished but in accordance with the express provisions of law. Thus, and thus alone, can the security of personal liberty be maintained. There is a close connection between personal liberty and measures of police and of criminal procedure; and indeed the connection is so close, that there is scarcely a hair's breadth of difference, so to speak, between them. In a constitutional Government, it is a matter of the greatest importance, that the liberty of individuals be respected and that the enjoyment of it be free from the interference of power, while, at the same time, peace and tranquility must be maintained, crime and vice must be suppressed, and the promptness and certainty of the measures taken for

making searches and for conducting trial be secured. Accordingly any police or prison official, arresting or imprisoning any one, or treating him harshly, otherwise than in accordance with law, is liable to heavier punishment for so doing, than would be a private individual. (Criminal Code, Arts. 278, 279 and 280.) As to the process of trial, no case shall be brought before a police official, but before some judicial authority; defence shall also be permitted, and trials shall be conducted openly. Any judicial or police authority, that resorts to violence in order to extort confession of crime from an accused, shall be liable to specially severe punishment. (Criminal Code, Art. 282.) Punishments that are not in accordance with the express provisions of the law, shall have no effect. (Code of Criminal Procedure, Art. 410; Criminal Code, Art. 2.) Such is the extreme thoroughness of care taken for the protection of subjects. Torture and other methods resorted to in trials in the middle ages, are already things of the past, and will never be resuscitated. The present Article insures against the revival of such obsolete usages, and places personal liberty on a safe and stable basis.

ARTICLE XXIV.

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

The present Article is also a necessary provision for the protection of individual rights. The judges established by law shall deal impartially between litigating parties, free from the restraints of power; and every subject, however helpless and poor he may be, shall be able to contend in a court of law with the high and mighty, and giving his version of the case, defend against prosecuting officials. The Constitution, therefore, does not suffer encroachment upon the judicial power nor denial of the rights of individuals, by the establishment of any extraordinary tribunal or commission, other than by the competent court fixed by law. Individual subjects will in this way be safe in putting their reliance upon the independent courts of justice, and in regarding them, as it were, their fathers in possession of the control of justice.

ARTICLE XXV.

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

In the present Article, the inviolableness of dwellings is guaranteed. A house is a place in which subjects reside in security, and not only are private persons forbidden to enter the abodes of other people, without the consent of its occupants, but also any police, judicial or revenue official, who, in connection with either a civil or a criminal case or with an

administrative measure, shall enter the house of a private individual or make a search therein, otherwise than in cases specified by law and in accordance with the provisions contained therein, will be regarded by the Constitution as guilty of an illegal act, and shall be liable to be dealt with according to the Criminal Code. (Criminal Code, Arts. 171 and 172.)

ARTICLE XXVI.

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

The secrecy of letters is one of the benefits conferred by modern civilization. In the present Article, it is accordingly guaranteed, that violation of the secrecy of letters either by opening or by destroying them, will not be tolerated, except in matters of criminal investigation or in times of war or of emergency, or in cases specified by express provisions of law.

ARTICLE XXVII.

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

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

In the present Article, assurance is given of the

security of the right of property. The right of property is under the powers of the State. It ought, therefore, to be subordinate to the latter, and be subject to the restrictions of the law. It is indeed inviolable, but is not unrestricted. For instance, certain kinds of buildings are prohibited within a certain distance of the boundary line encircling a castle or a fortification, and no indemnity is due for such prohibition; minerals in the earth are under the control of the mining laws; forests are managed by regulations framed in accordance with the requirements of dendrological economy; the planting of trees within a certain distance from a railway line is prohibited; and wells are not to be dug within a certain distance from a cemetery. These are illustrations of the restrictions that are put upon the right of property; and they will be sufficient to show, that the property of individuals, like their persons, is under an obligation of obedience to the powers of the State. The right of property is one that falls within the domain of private law, and is not in conflict with the supreme right of governing the country, which belongs to the sphere of public law. (In Europe, Grotius of Holland maintained in his treatise on International Law, that a Sovereign possesses the supreme right of property in the land under his rule. Recent writers on the law of nations follow this principle, only replacing the expression "supreme right of property" by the term "territorial sovereignty.")

It appears from historical records that, in remote

antiquity, there were instances of private individuals voluntarily offering their land to the Government; of the domains of private individuals being confiscated by the Government; of private individuals selling their land and claiming for its price. In the 2nd year of Taikwa (646 A.D.), in the reign of the Emperor Kōtoku, the tendency to an undue accumulation of lands by one owner was checked by the suppression of *miyake* (land attached to public granaries) and *tadokoro* (large domains in private ownership), and lands were parcelled out among the people according to the number of members of each family, in imitation of the system which prevailed in China during the régime of the Zui (Sui) and Tō (Tang) dynasties. But later on, the baleful system of manors and of domains prevailed more than ever. This state of things favored the growth of feudalism. In the times of the Tokugawa Government, the agricultural population was in most cases reduced to a state of tenantry of the feudal lords. After the Restoration in the 12th month of the 1st year of Meiji (1868), a proclamation was issued, by which the land in each village was declared to be in the ownership of the farmers. In the 4th year (1871) all the clans voluntarily offered to return their domains to the Emperor, and thus the ancient system of feudal domains was at last completely abolished. In the 2nd month of the 5th year (1872), the prohibition upon the buying and selling of land was removed, and title-deeds for lands were issued. In the 3rd month of the 6th year (1873) a notification as to the classification of lands was

promulgated by which the land was divided into two classes called "public lands" and "private lands", but in the 7th year (1874), the expression "private lands" was changed into "people's land" (*min-yū-chi*). In the 8th year (1875), the names of the owners of land were inscribed upon the title-deeds of lands. (In the formula of the title-deeds, it was noted that every one in the Japanese Empire who owns land, ought to have a title-deed for the same similar to the said formula.) In Europe, this result was obtained in some cases by the overthrow of the despotic power of the feudal lords at the point of the bayonet, while in some cases the right of tenants to the land was redeemed for vast sums of money. In this country, the restoration of the land to the uniform administration and its subsequent bestowal upon the people have been smoothly accomplished by the voluntary abnegation of the different clans. Nothing like it has ever occurred in any country within historic times, and it is a glorious monument to the new Government of the Restoration.

When it is necessitated by public benefit, private individuals may be compelled *nolens volens* to part with their property, in order that the requirements of a given case may be met. This provision is based upon the right of sovereignty—the right of reigning over and governing the country, though the determination of the regulations concerning the matter in question is delegated to the sphere of law. With regard to a measure by which private property is sacrificed for the public benefit, the condition is, that a reasonable

indemnity shall be paid for the property taken. As to restrictions upon the right of property, the Constitution abundantly testifies that they must always be fixed by law, and that they are beyond the control of ordinances.

ARTICLE XXVIII.

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

In Western Europe, during the middle ages, when religion exercised an ascendant influence, it was mixed up with politics, internal as well as external, and was very often the cause of bloodshed; while in the countries of the East, strict laws and severe penalties were provided in order to suppress religion. But the doctrine of freedom of religious belief, which dates back four centuries, first received practical recognition at the time of the French Revolution and of the independence of the United States of America, when public declaration was made on the subject. Since then, the doctrine has gradually won approval everywhere, until at present every country, although maintaining in some cases a state religion, and in others favoring a particular creed in the organization of its society or in the system of its public education, nevertheless grants to its people by law entire freedom of

religious belief. The cruel treatment of those of a heterodox faith or the exclusion of them from the enjoyment of certain portions of public and civil rights, are already historical facts of the past, and now-a-days it is very seldom, if ever, that such absurdities are brought to our notice. (In the German states, political rights were denied to the Jews up to the year 1848.) In short, freedom of religious belief is to be regarded as one of the most beautiful fruits of modern civilization. For several centuries, freedom of conscience and the progress of truth, both of them of the most vital importance to man, have struggled through dark and thorny paths, until they have at last come out into the radiance of open day. Freedom of conscience concerns the inner part of man and lies beyond the sphere of interference by the laws of the State. To force upon a nation a particular form of belief by the establishment of a state religion is very injurious to the natural intellectual development of the people, and is prejudicial to the progress of science by free competition. No country, therefore, possesses by reason of its political authority, the right or the capacity to an oppressive measure touching abstract questions of religious faith. By the present Article, a great path of progress has been opened up for the individual rights of conscience, consistent with the direction in which the Government has steered its course since the Restoration.

Belief and conviction are operations of the mind. As to forms of worship, to religious discourses, to the mode of propagating a religion and to the formation

of religious associations and meetings, some general legal or police restrictions must be observed for the maintenance of public peace and order. No believer in this or that religion has the right to place himself outside the pale of the law of the Empire, on the ground of his serving his god and to free himself from his duties to the State, which, as a subject, he is bound to discharge. Thus, although freedom of religious belief is complete and is exempt from all restrictions, so long as manifestations of it are confined to the mind; yet with regard to external matters such as forms of worship and the mode of propagandism, certain necessary restrictions of law or regulations must be provided for, and besides, the general duties of subjects must be observed. This is what the Constitution decrees, and it shows the relation in which political and religious rights stand toward each other.

ARTICLE XXIX.

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

Speeches, writings, publications, public meetings and associations are the media, through which men exercise their influence in political or social spheres. In every constitutional country, full freedom is granted in all of these particulars, in so far as there is no abuse of them by way of commission of crime or of

disturbance of peace and tranquility; and it is hoped that in this way interchange of thought may be promoted, and that useful materials may thus be supplied for the advancement of civilization. But as every one of these edged tools can easily be misused, it is necessary for the maintenance of public order, to punish by law and to prevent by police measures delegated by law, any infringement by use thereof upon the honor or the rights of any individual, any disturbance of the peace of the country, or any instigatation to crime. These restrictions must, however, be determined by law, and lie beyond the sphere of ordinances.

ARTICLE XXX.

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

The right of petition is granted to the people out of the Emperor's most gracious and benevolent consideration, so that an avenue may be opened to His subjects, by which they may be able to make their wishes known. In the reign of the Emperor Kōtoku (645–654 A.D.) a bell and a box were hung out, through which the people might make their representations and complaints. After the middle ages, the successive Emperors were wont to listen to the representations of the people that were read to them

in their Court, and to deliver their decisions thereupon, with the advice of their Ministers and Advisers of State (*Na-gon*). (This usage has been abolished since the time of the Emperor Saga, 810–823 A.D.—*Gu-kan-sho.*) It is found in history that every monarch of olden times strove to give redress to the grievances of the people, by supplying them with the means of making their wishes known. In the ages when there was neither Parliament nor well regulated process of trial, that the Sovereign listened to the voice of the people, and thus opened a channel through which their condition might be made known to him, was not only an attestation to his gracious virtues, but was also a necessary political measure, that in this way the ideas of the multitude should be discovered, and that the interest of all should be promoted. At present, our political machinery is, in all its details, in good order, and an institution is shortly to be established for public deliberation. Still, the people shall have the right of petition, and every complaint of the poor and wish of the aged, may be addressed to the Throne, without let or hindrance, as it is the ultimate object of the Constitution to secure respect for the rights of the people, while tender love is borne them, and care is taken to see that no one is excluded from the enjoyment of any of these benefits. This may be regarded as the height of political morality.

But petitioners must observe proper forms of respect. They must not abuse the right granted them by the Constitution, and show disrespect to the Emperor, or engage in calumniously exposing the

secrets of other people. Such conduct is positively condemned by the rules of morality. It is necessary, therefore, to provide proper restrictions thereon by law or ordinance, or by rules of the Houses of the Diet.

The right of petition at first related only to representations addressed to the Sovereign, but its sphere has been gradually extended to those made to Parliament and to Government offices. No legal restriction is made as to whether a petition concerns individual or public interests.

ARTICLE XXXI.

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

All the provisions contained in the present Chapter give constitutional guarantees for the rights of the subject. It is a principle of every constitution that the duty of obedience to law is not confined to the subject alone, but that the powers of the State in authority over him, shall, in the exercise of their sway, likewise come under the restrictions of the law. In this way alone, can subjects be sure of their rights and property, and be free from the molestations of oppression and of illegalities. Such is the essential feature of the present Chapter. But the Constitution

has not neglected to make exceptional provisions to meet requirements of exceptional contingencies. For it must be remembered that the ultimate aim of a State is to maintain its existence. Experienced captains are sometimes compelled, for the necessity of averting shipwreck and of saving the lives of their passengers, to throw overboard the goods in the ship; while skilful generals do not hesitate, at a critical moment, to sacrifice a part of their army in order to avoid a total defeat of their forces. In like manner, in times of danger, the State will have to sacrifice without hesitation part of the law and of the rights of the subjects, in order to attain its ultimate aim, if it considers that such a course is the only available means by which it can save itself and its people and secure its existence. This is not only a right of the Sovereign, but also his highest duty. Did the State not possess this emergency power, it would be impotent to discharge its functions at the time of a crisis.

This principle is expressly declared in the constitutions of certain countries, while in those of some others it is not so declared; nevertheless the power of a State to thus secure its existence is in practice everywhere acknowledged. For, it is an undisputed fact that every country carries out extraordinary measures to meet necessities arising in times of war. By the Constitution of no country is it allowable, when it is difficult to say whether an occasion is an emergent or only an ordinary one, to trample upon the rights of the subjects on the excuse of this

emergency power, when the necessity of the moment does not call for such measures. Express provisions have been made concerning the emergency power, and mention has also been made of the conditions for the exercise of it, for that it has been thought undesirable that the Constitution should be left defective as to the requirements of a time of emergency. In a certain country, on the other hand, no mention is made of this power. There, emergency measures are put beyond the sphere of the constitution and the legalization of such measures is left to the vote of Parliament. Modern writers on public law praise the former method as being the more perfect.

ARTICLE XXXII.

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

The soldiery must observe military laws and commands while under the banner. Obedience is their first duty. Therefore, such of the provisions of the present Chapter relating to rights, as come into conflict with military laws and commands, shall not be applicable to those in the military and naval service. For example, those of them that are in

active service are prohibited from discussing either the military or naval system or political matters, forming themselves into associations or meetings for the purpose ; nor are they allowed freedom of public discussion, of writings, of publications and of petitions, on political matters.

CHAPTER III.

THE IMPERIAL DIET.

In Chapter III. are mentioned the essential features of the constitution and rights of the Imperial Diet. It takes part in legislation, but has no share in the sovereign power; it has power to deliberate upon laws, but none to determine them. The right of consent of the Imperial Diet has to be exercised within the limits allowed by the provisions of the Constitution, and is by no means an unlimited one.

That the Diet has its part in legislation is the reason why, in a constitutional government, it is an essential part of the political machinery. The Diet not only has its part in legislation, but indirectly it has also the responsibility of keeping a supervision over the administration. Accordingly in our Constitution and in the Law of the Houses, the following rights are recognized: *first*, the right to receive petitions; *secondly*, the right to address the Emperor and to make representations to Him; *thirdly*, the right to put questions to the Government and demand explanations; and *fourthly*, the right to control the management of the finances. If the Diet is guided by experienced and practical minds, and is able to make a proper use of these four rights peaceably and quietly, there will be no preponderance of one power over another, but a just balance and perfect harmony between the legislative and the executive will be secured. The Diet will thus be true to its function, as a good representative body of the people.

ARTICLE XXXIII.

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

The House of Peers shall be an assembly of the higher class of the community ; while to the House of Representatives, commoners shall be elected. These two Houses united together shall constitute the Imperial Diet, which represents the public opinion of the country. The two Houses shall therefore possess equal powers, excepting in certain exceptional cases, and neither House shall by itself alone be competent to participate in matters of legislation. It is desired by this, that deliberations be thorough and minute, and that public opinion be impartially represented.

The establishment of two Houses has long been followed in European countries, and the good results of the system are testified to by history, which has also proved that countries having but a single chamber have not been free from the evil effects of such a system. (French Constitutions of 1791 and of 1848, and Spanish Constitution of 1812.) In the very country that may be regarded as the mother country of the system of two chambers, some writers have of late declared this system to be an obstacle to the development of the community. Those who advocate the system of two houses base their tenets upon a set of well known principles that need not be quoted here. Still it must be remarked that the

object of the establishment of the House of Peers is not limited either to making it a bulwark for the Imperial House or to the preserving of conservative elements. Its establishment is demanded by the necessity of maintaining the organic existence of the State. The bodies of the higher organic beings are not mere aggregations of different elements, but incorporations of sets of different organs, the healthy cooperation of which is necessary for the activity of the mind. Were the eyes not located in separate positions, it would be impossible for them to obtain the right optical angle; nor could the sense of hearing be complete, were the ears not turned in different directions. So the Head of the State should be a unity, and neither one of the two media, by which the ideas of the people are collected, can be dispensed with any more than can one or the other wheel of a carriage be done away with. The aim of a representative system is to draw profit from the results of public deliberations. Now, when all the political forces are united in a single House, and are left to the influence of excited passions and abandoned to one-sided movements, with no restraining and equalizing power over them, that House may in the intemperance of biased excitement, overstep the limits of propriety, and, as a consequence, bring about the despotism of the majority, which may in turn lead to anarchy. Evils would be far greater under such a state of things, than they were in the days when there was no representative system at all. If no representative government is instituted, well and

good. If, however, there is one, it can never be free from the evil of partiality, without the provision of two chambers. The reason for this is to be found in the nature of things, and ought not to be lost sight of on account of the particular circumstances of the moment. It may be concluded that whether regarded from a theoretical point of view or considered in the light of mere fact, two chambers are indispensable organs in a representative system of government. The attack that has been made, in a certain country, upon the House of Lords as being indolent and imbecile and an impediment in the dispatch of business, may be valuable as a stricture upon the temporary evils of the moment, but has no weight in the consideration of the permanent policy of the country.

ARTICLE XXXIV.

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

The Members of the House of Peers, whether they be hereditary, elected or appointed ones, are to represent the higher grades of society. If the House of Peers fulfills its functions, it will serve in a remark-

able degree to preserve an equilibrium between political powers, to restrain the undue influence of political parties, to check the evil tendencies of irresponsible discussions, to secure the stability of the Constitution, to be an instrument for maintaining harmony between the governing and the governed and to permanently sustain the prosperity of the country and the happiness of the people. The object of having a House of Peers is not merely admittance of the higher classes to some share in the deliberations upon legislative matters, but also representation of the prudence, experience and perseverance of the people, by assembling together men who have rendered signal service to the State, men of erudition and men of great wealth. It is thus intended to enable them to maintain an intimate connection among themselves, and form a body of the upper classes, so that the benefits of the establishment of the House of Peers may be realized. The provisions as to its composition being fixed by the Imperial Ordinance concerning the House of Peers, they are not mentioned in this Constitution.

ARTICLE XXXV.

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

The Members of the House of Representatives are

to be elected by the people throughout the country, from among men having certain qualifications and for a fixed length of time. The provisions relating to elections are, as stated in the present Article, passed over to those of a special law, so as to make it easy, when the necessity for it arises in the future, to make additions or alterations in the mode of carrying out elections. It is, therefore, undesirable that the Constitution should enter into minutiæ on the subject.

The Members of the House of Representatives are all of them representatives of the people of the whole country. The object of establishing election districts for the election of Members is to make the election general throughout the country and also for the sake of convenience of election. Representatives, therefore, are to speak freely in the House, according to the dictates of their individual consciences, and are not to regard themselves as the delegates only of the people of their respective districts, commissioned to attend merely to matters entrusted to them by their constituents. The study of European history reveals the fact that, in former times, it frequently happened, that members of Parliament, considering themselves the commissioners of their electors, were devoted to the interests of particular districts, and neglected their public duty of taking a general view of the interests of the country, thus discarding the fundamental principle of the representative system that votes shall be taken for the sake of the majority of the nation at large. Such errors arise from ignorance

of the proper duties of a representative.

ARTICLE XXXVI.

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

The two Houses, though forming the parts of the Diet, are different in the elements composing them, and occupy towards each other equalizing and opposing positions. Therefore the combination in one person of membership of both Houses at one and the same time, is incompatible with the object of establishing two Houses.

ARTICLE XXXVII.

Every law requires the consent of the Imperial Diet.

The law is a rule of conduct emanating from the sovereign power of the State, to which it is necessary to obtain the consent of the Diet. Such is one of the fundamental precepts of a constitutional government. No bill, therefore, can become a law, that has not passed through the Diet; nor can one become so, that has passed through one House, but has been rejected in the other.

(NOTE.) As to the question, what sort of matters ought to be settled by law, no general enumeration of them can be comprehensive enough to cover the

whole ground. In a Prussian Royal Ordinance, by which an ordinary law was promulgated, it is stated that the said law comprised provisions defining such rights and duties of subjects, as are not determined by special laws. Article 2, Chapter VII. of the Bavarian Constitution, May 26, 1818, provides that no new general law that relates to the personal liberty or to the property of people can be enacted, and no existing law changed, authoritatively explained or repealed, without the advice and consent of the Parliament of the Kingdom. But most jurists are of the opinion, that the sphere of law ought not to be restricted to the consideration of rights and duties, or to liberty and property, and that it is futile to attempt, as is shown by constitutional experience as well as by scientific researches, to lay down distinctions between law and ordinance by reference to the nature of the subject matter. What comes within the sphere of law and what within that of ordinance, differ according to the condition of the political development of each country. These limits ought to be ascertained for each country by reference to its constitutional history. But there are two definite cases of limitation: *first*, when a given matter is required to be embodied in a law by an express provision of the constitution; and *secondly*, in case of the modification of a law, in which case nothing but law can effect the modification. Such is the universal practice of constitutional countries.

ARTICLE XXXVIII.

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

When the Government makes the draft of a law, and by order of the Emperor submits it to the two Houses of the Diet as a bill, they shall be competent to pass it with or without amendment or to reject it. When either House deems it necessary that such and such a law be issued, it may initiate a bill for the purpose. When a bill, initiated by the one House and passed in the other with or without amendment to it, shall have received the sanction of the Emperor, it shall become a law the same as in the case of projects submitted by the Government.

The Emperor shall have no relations with the Diet other than to order its convening, its opening and closing, and to give sanction to laws. He charges the Ministers of State, during the session of the Diet, with the drafting of laws and with public correspondence. Accordingly such projects are said "to be submitted by the Government."

ARTICLE XXXIX.

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

The submission to the Diet of the same project for a second time during the same session, not only infringes the rights of the Diet, but is likely to prolong the session for the discussion of a solitary matter. It has, therefore, been prohibited by the present Article. The Constitution prohibits the evasion of the provisions of the present Article, by the laying for a second time before the Diet, under a new title and in new phraseology, a project that has been already rejected by the Diet.

A project of a law, that has not been sanctioned by the Sovereign, can not be introduced into the Diet a second time during the same session. This must be so out of respect to the sovereign powers of the Head of the State, and needs no explicit enunciation. Still, as to representations, it is stated that the same representations can not be made twice during the same session. For, while, on the one hand, whether a project of a law be sanctioned or not, lies with the Emperor, the acceptance or the rejection of a representation, on the other, is in the power of the Government: so there is a distinction between the two as to their relative importance. It will, therefore, be observed, that definite provisions have been made in the one case to avoid all doubt on the subject.

ARTICLE XL.

Both Houses can make representations to the Government, as to laws or upon any other

subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

The present Article shows that the Diet has the right of making representations. But in a preceding Article, the right of initiating projects of law has been given to both Houses. What is then the object of the provisions of the present Article, that both Houses may make representations of their opinions concerning a law? It is that the Diet is in this way allowed the option of either one of two courses of action, either to make a draft of a law and then bring it in, or, instead of so doing, simply to make representations of their opinion to the Government, as to the enactment of a new law, or as to the amendment or abolition of an old one, and, if the representation be accepted by the Government, to leave to the latter the framing of the draft of the law. In Europe, the legislative assembly of every country (except Switzerland) possesses the right of initiating a project of a law. But were a legislative assembly to proceed to draw up clause after clause of a law according to the opinions of the majority, much delay would be very often caused in the progress of the debate thereon, while the draft itself would not be free from the defect of crudeness and lack of arrangement. It would be far wiser to rely for such work upon the skill and experience of the commissioners of the Government. Such is the general conclusion arrived at by political writers in every country, as

the result of their observation of facts.

The Diet has not only to take part in legislation, but it has also the duty of indirectly keeping a watch upon the administration. Therefore both Houses may also make representations to the Government as to the advantage or disadvantage, expediency or inexpediency of this or that matter lying outside the sphere of legislation.

But when the opinion of the one or the other House, as to a law or to some other matter, is not accepted by the Government, that House is not allowed to make a representation on the same matter twice during the same session, so that there may be no tendency to controversies and coercion on the part of the Diet.

ARTICLE XLI.

The Imperial Diet shall be convoked every year.

The convocation of the Diet belongs to the sovereign power of the Emperor. But the yearly convocation of the Diet has been expressly provided for in the present Article, to guarantee by the Constitution the existence of the Diet. But cases like those mentioned in Article LXX. are exceptional ones.

ARTICLE XLII.

A session of the Imperial Diet shall last

during three months. In case of necessity, the duration of a session may be prolonged by Imperial Order.

Three months have been fixed for the length of a session, so as to avoid the endless dilatation of deliberations. The prolongation of a session or the postponement of the closing of the Diet by reason of unavoidable necessity, shall be carried out by Imperial Order; and the Diet shall have no power to take such steps upon its own responsibility.

With the closing of the Diet shall terminate all the business of the session. No subject of debate, whether a vote has been taken upon it or not, shall be continued at the next session, unless special provisions have been made in regard thereto.

ARTICLE XLIII.

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

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

The Diet shall be convened once a year. This is for the ordinary session. No provision is made in the Constitution, as to the time of year of the ordinary session. But, it being necessary to give it time for the consideration of the Budget of the coming year,

it will usually be opened in the winter months. When there arises an urgent necessity therefor, an extraordinary session shall be specially convoked by Order of the Emperor.

The duration of an extraordinary session is not fixed by the Constitution, but is to be settled by the Imperial Order convoking it, according to the necessity of each case.

ARTICLE XLIV.

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

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

The House of Peers and the House of Representatives, though two distinct branches of the legislative, together form one Diet. Therefore a project, which, though it has passed through one House, yet has not received the consent of the other, cannot become a law. Nor ought the proceedings of one House, at a time when the other is not sitting, to have any effect. It is for these considerations, that the present Article provides that both Houses of the Diet shall be simultaneously opened and closed.

A portion of the House of Peers, consists of hereditary Members. Therefore, although it may be

prorogued, it cannot be dissolved, and when the House of Representatives has been ordered to dissolve, the House of Peers shall be ordered only to prorogue at the same time.

ARTICLE XLV.

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

The provision contained in the present Article gives permanent guarantee to the Diet. By it, it is intended to dismiss the old Members and to introduce new ones. Should the Constitution not have fixed the time for newly convoking the House after its dissolution, its existence would be left to the mere caprice of the Government.

ARTICLE XLVI.

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

When the number of Members present is less than one-third of the whole number of Members, no meet-

ing can be held. Therefore in such cases, deliberations shall not be opened, nor can any vote be taken.

The whole number of Members is that number of them, which is fixed by the Law of Election. As deliberations can not be opened unless more than one-third of the whole number of Members is present, neither can a House be organized unless more than one-third of the whole number has answered the summons of convocation.

ARTICLE XLVII.

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

It is the usual practice in deliberative assemblies to arrive at decisions by an absolute majority of votes. Absolute majority, in the present Article, means the absolute majority of the Members present. It is rational that, when for the two sides of a question, there is an equal number of Members, it should be decided by the voice of the President. But discussion on an amendment of the Constitution, as set forth in Article LXXIII., is an exceptional case. Again, in the case of an election of President or of a committee or in the proceedings of a committee, the term "majority" shall be interpreted according to the rules specially framed for the particular case, and with such cases the present Article has no connection.

ARTICLE XLVIII.

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

The Diet represents the people; consequently debates and voting therein should be carried on in view of the public. But exceptions should be made for certain affairs that require secrecy of deliberation, such, for instance, as foreign affairs, personal matters, elections of the Diet officers and of committees, certain financial matters, certain military affairs and administrative regulations relating to peace and order. In such cases, the session may be held with closed doors, either upon the demand of the Government or by resolution of the House.

ARTICLE XLIX.

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

To present addresses is to approach the Emperor by presenting to Him a certain writing. The meaning of the word "addresses," includes the reply to an Imperial speech in the Diet, addresses of congratulation or of condolence, representations of opinion,

petitions and the like. The writing may be transmitted or a delegation of the House may be instructed to ask for an audience, and present it to the Emperor. In either case, proper forms of respect must be observed. The dignity of the Emperor must not be infringed by any proceeding implying coercion.

ARTICLE L.

Both Houses may receive petitions presented by subjects.

Subjects are at liberty to directly petition the Emperor, a Government office or the Diet. In the Diet, petitions received from individuals are first examined, and then simply transmitted to the Government, or are transmitted with a memorandum containing the opinion of the Diet, with a request for a report of the Government thereon. But neither House of the Diet has any positive obligation to take petitions into consideration; nor has the Government a positive obligation to grant the prayer set forth in a petition. As to petitions relating to legislative matters, although they need not be taken as direct projects of a law, yet a Member may in the usual manner make a motion in the House relating to the opinion set forth in the petition.

ARTICLE LI.

Both Houses may enact, besides what is pro-

vided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.

By the "rules necessary for the management of their internal affairs," is to be understood, all those provisions relating to the election of the President, to the functions of the President and to the business of the Business Bureau, the establishment of the different sections, the election of committees, the business of the same, rules of debate, the minutes of the same, rules for the disposal of petitions, those for granting leave of absence to Members of the Diet, order and discipline, the business of the accountant of the Diet and the like. These rules are to be established by the respective Houses, within the limits allowed by the Constitution and the Law of the Houses.

ARTICLE LII.

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

The present Article recognizes the freedom of speech in the Diet. The management of the internal affairs of the Diet appertains to its autonomy; consequently violation of the rules of morality and personal defamation by an unrestricted licence of speech, are to be suppressed and dealt with by the Diet itself, according to its own regulations; and judicial authorities are not suffered to interfere in these matters. Moreover, the votes of the Diet become bases for future laws, and debates by the Members are the means by which the harmonizing of different conflicting opinions is to be brought about. Accordingly, Members shall be free from criminal or civil liability for expressions used in debate. The purpose of this provision is, in the first place, to insure respect for the rights of the Diet, and in the second, to give weight and value to the speeches of the Members. When, however, Members make public their speeches delivered in the Diet, and thus extend the freedom of speech they enjoy in the Diet, to the outside thereof, they cannot escape legal responsibility for the same, whether the matter made public relate to motions, or to refutation of statement.

ARTICLE LIII.

The Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, except in cases of flagrant delicts, or of offences connected with a

state of internal commotion or with a foreign trouble.

The two Houses of the Diet cooperate in the important affairs of legislation. Accordingly special privileges are granted to the Members during the session, so that they may maintain an independent position and be able to discharge their important functions. As to cases of flagrant delicts and to offences connected with a state of internal commotion or with a foreign trouble, no immunity can be claimed through special privilege of the Diet. A session comprises the time intervening between the convoking and the closing of the Diet. As to cases of non flagrant delicts or to ordinary offences, an offending Member may be arrested after communication has been held with the House, and its permission has been obtained so to do. In the case of flagrant delicts and of offences relating to a state of internal commotion or to foreign trouble, an offending Member may be arrested at once, and the matter reported to the House, of which he is a Member.

ARTICLE LIV.

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

To make explanations during debates in the Diet, is an important duty of the Ministers of State, who

must be open-minded to the multitude; they must state what they believe to be truthful and to appeal to public opinion; must accept ideas suggested by the course of the public opinion of the time and search for the most solid views on every subject whatever, so that nothing may be left neglected. In this way alone can the Constitution be made as useful as it ought to be. The right of the Ministers of State to be present in the Houses and to speak therein, is left to the option of the Government. The Ministers of State, therefore, may in person take part in debates, and make explanations or they may instruct Delegates of the Government so to do; they may too, when they think it necessary, decline at pleasure to do either the one or the other, either in person or by delegation.