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Contributions should be sent to The Editor, *East Asian History*
Division of Pacific and Asian History, Research School of Pacific Studies
Australian National University, GPO Box 4, Canberra ACT 2601, Australia
Phone 06 249 3140  Fax 06 249 1839

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Saiga shokunin burui 彩畵職人部類
[Illustrations of different types of craftsmen], Edo, 1770
To explain the Emperor system of pre-war Japan requires a correct understanding of the Meiji Constitution as it operated in politics, but this is a surprisingly hard task. One reason is that Ito Hirobumi’s *Commentaries on the Constitution* did not carry much weight in government circles; practical politics gave rise to other interpretations necessary for the running of the post-1890 regime.² An example of this can be seen in the actual operation of emergency ordinances (kinkyū-chokurei) prescribed by Article 8 of the Constitution:

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 invalid for the future.

In May 1891, just after the formation of the 1st Matsukata cabinet, the Crown Prince of Russia while on a state visit was wounded at Ōtsu by a Japanese policeman. Home Minister Shinagawa Yajirō obtained an emergency ordinance requiring prior inspection of newspaper articles by the government to prevent “fickle rumours and speculative reports.”³ Next, in January 1892, the cabinet drew up an emergency ordinance (yokairei) providing for strict measures against disorderly conduct during general elections and presented this to the Diet during its 2nd session (May–June 1892). This Diet was dissolved while the ordinance was still under scrutiny, but the cabinet enforced it anyway in the ensuing general election. When the 3rd Diet opened in November 1892, the ordinance was presented for Diet approval; it was passed by the House of Peers but rejected by the House of Representatives, so the cabinet finally cancelled it.

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This is a modified translation of the first section of Masuda’s “Meijirikkenseitōnen,” *Shakai kagaku kenkyū* 41, no. 4 (December 1989): 61-74.


2 Although the Commentaries were intended to be definitive its drafters had their own views, which were often quite diverse. For the political skills deployed by the drafters of the Constitution in handling the first Diets, see Banno Junji, Meiji kempo tai sei no kaku ritsu (Tokyo: Tōkyō Daigaku Shuppankai, 1971). Also, for the discordant views of Inoue Kowashi, see Sakai Yukichi, Inoue Kowashi to Meiji kokka (Tokyo: Tōkyō Daigaku Shuppankai, 1983), p.207 ff.


Figure 2

Hibiya riots in September 1905
the next Diet met in December 1905, the cabinet itself cancelled this emergency ordinance with another one.

As one can see from these examples, emergency ordinances were issued by successive cabinets on their own volition, seemingly without any fixed principle. The 1st Matsukata cabinet did indeed seek the approval of both Houses of the Diet as prescribed in the second clause of Article 8. But the first party cabinet headed by Ôkuma declared an emergency ordinance to be invalid without consulting the Diet, as did the 1st Katsura cabinet. While the Ôkuma cabinet cancelled Itô's emergency ordinance on the ground that it violated Article 9 of the Constitution with its provision that "no ordinance shall in any way alter any of the existing laws," the Katsura cabinet took the different step of using one emergency ordinance to cancel another.5

According to Itô's Commentaries6 an emergency ordinance had the power to alter laws, but this infringed Article 5 of the Constitution, which states: The Emperor exercises the legislative power with the consent of the Diet. So the Commentaries declare that emergency ordinances issued under Article 8 must at all costs be restricted to "cases of urgent necessity." Chapter 2 of the Constitution on the Rights and Duties of Subjects guarantees individual freedom "within the limits of law."7 Why it was so necessary to seek approval for emergency ordinances in the next Diet if they were to remain in force becomes clear from the following:

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

And in addition:

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

The Commentaries, with a high respect for "the limits of law," firmly declare that "if the government fails to present emergency ordinances to the next Diet, or if it does not cancel them after the Diet refuses its consent, however justified, it must incur the blame for violating the Constitution."

So if the Commentaries are to be followed, both supra-party cabinets headed by the Sat-Chô leaders and the first party cabinet of Ôkuma had violated the Constitution. Especially in the application of Article 8, in as much as the emperor's prerogative to issue ordinances had "transgressed the boundaries"8 of the Diet's legislative rights, both kinds of cabinet were alike in ignoring the Commentaries. Emergency ordinances invading the rights of the people were handled without regard to principle: they were not only "expedients to evade the public deliberation of the Diet" condemned by the Commentaries but confirmed a legal procedure implying the emperor's autocracy and complete obedience by the people. At the same time, although successive cabinets sought to evade Diet deliberation, one cannot deny that the Diet had fairly strong powers of restraint. The Diet's unquestioning submission to the emperor was doggedly confined to "times of urgent

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5 Minobe Tatsukichi, Chikujô kempô seigi (1927; reprint ed., Tokyo: Yûhikaku, 1932), p.207. Also his "Kinkyû jôrei ni tsuite" in Kempô oyobi kempô shi kenkyû (reprint ed., Tokyo: Yûhikaku, 1908) criticized the interpretation of Article 8 and its application by Ichiki Kitokurô, head of the Legislation Bureau under the 1st Katsura cabinet at the time of the Hibiya Riots. This article is a digest of three essays Minobe wrote in controversy with Hozumi Yatsuka on this issue.
6 Ito Hirobumi's Kempô gïkai (Tokyo: Maruzen, 1940), pp.19-22, in its interpretation of Article 8 was a revision by Ito Miyoji and others of Inoue Kowashi's original draft. According to Inada (Meiji kempô seiritsu shi, p.885), this cut out a provision that "at times of urgency, the emperor decides whether it is appropriate to issue an emergency ordinance or not," and added provisions that the cabinet must submit them to the next Diet for approval if they were to remain in force; if it did not do so, or failed to cancel them when the Diet withheld its consent, the cabinet would be held responsible for violating the Constitution.
7 On the relationship between the rights of subjects and the emperor's prerogative to issue orders, see Okudaira Yasuhiro, "Senzen Nihon kempô ni okeru 'kichonken' no kannen," Shakaigaku Kenkyû 18, no.6(1967).
8 Minobe Tatsukichi, "Rippôken to meireiken to no genka o ronsu" and "Kinkyû jôrei ni tsuite," in Kempô oyobi kempô shi kenkyû.
necessity" as prescribed in Article 8, and his autocracy was by no means unbounded. It was also a fact that powers to bind the emperor's will and to restrain cabinets exercised by the Diet (House of Representatives) as the representative organ of the people were vital for a Constitutional regime to emerge.

That being so, one may ask to what extent the emperor's autocracy was limited by such powers. To answer this question let us take a leap forward to see how emergency ordinances were handled in the 1920s when party cabinets were firmly established.

In April 1927 the Wakatsuki Reijirō cabinet of the Minseitō party, less than twenty days after the closure of the 52nd Diet, resolved on relief measures to support the Bank of Taiwan. During that Diet session, after complicated deliberations, the cabinet had finally managed to pass a bill for the handling of Earthquake Bonds. Its aim was to redeem the Bank of Taiwan's bad loans to the Suzuki Trading Company which had brought it to insolvency; the cabinet then proposed to provide support by an emergency ordinance drawing on unsecured liquid funds of the Bank of Japan and, under emergency provisions of Article 70 of the Constitution concerning government finance, to guarantee the Bank of Taiwan's losses up to a limit of 200 million yen. However, by that time the issue of ordinances under Articles 8 and 70 had to be scrutinized and approved by the Privy Council; it ruled that the conditions prescribed in the first clause of Article 8 had not been met, so the cabinet had violated the Constitution. The Wakatsuki cabinet immediately resigned; its successor, the Tanaka Giichi cabinet of the Seiyūkai party, agreed with the Privy Council, then tided over the financial panic by the very same means, issuing an emergency ordinance for a moratorium without consulting the Diet.

The same cabinet in May 1928, one day after the closure of the 55th Diet, informed the Privy Council that it intended to issue an emergency ordinance to carry out the provisions of a bill revising the Peace Preservation Law debated but not passed by this Diet.

Some members of the opposition Minseitō party and the Privy Council protested that such an ordinance would violate the Constitution; but the demand for strict control over anarchists and communists was firmly rooted, and at the end of June an emergency ordinance revised the Peace Preservation Law to provide new regulations imposing the death penalty and life imprisonment. In the following 56th Diet (Dec. 1928–Mar. 1929) both Houses approved it, and the validity of this emergency ordinance was firmly established.

Cabinets of the two leading political parties had thus resorted to "expedients to evade the public deliberation of the Diet," while the Diet itself approved such invasions of the people's rights on the grounds of defending the "national polity (kokutai 国体). It is a fact that party cabinets of this time used the emperor's prerogative of issuing emergency ordinances to override...
the principle of Diet government, and succeeded in so doing. However, when one compares the use of emergency ordinances, in the Meiji era up till 1912 there was virtually no consistent principle, but in the Shōwa era of post-1926 the Privy Council had increased its authority and came to control decisions on the Constitution. Clearly, the earlier preponderance of imperial authority had attenuated. While weakening the principle of Diet government on one hand, the autocracy of the emperor had been reduced on the other. The 1920s era of party cabinets, one may say, operated on a delicate balance between shifting and contending political forces.

The problematical fact was the co-existence of two conflicting principles: imperial autocracy rejecting Diet government and Constitutionalism denying imperial autocracy. That makes it impossible to explain pre-war Constitutional monarchy solely in terms of either of these two principles. In the delicate balance described above, the relations between emperor, cabinet and Diet were tentative and variable, which is perhaps why the political trends of that time are so hard to explain. Sometimes the emperor and cabinet united to control the Diet; on other occasions the Diet and emperor came together to resist cabinet autocracy. Also, on several occasions the Diet and cabinets combined to exploit the emperor’s prerogative to issue ordinances. No wonder, then, that fresh interpretations of the Constitution arising from contemporary political forces differed from those of legal experts whose formalized theories were drawn from the Commentaries and other sources when the Constitution was first promulgated. The two representative theorists on the Constitution in pre-war Japan were Hozumi Yatsuka and Minobe Tatsukichi. But even they found it difficult to adjust their theories to political realities at a time when their respective views were widely accepted.

That being so, is it possible to come up with an accurate interpretation of the Meiji Constitution as it operated in politics? One method of approach is firstly to ask how to comprehend the startling changes that took place from time to time in the relationships between the three agencies of the emperor, the cabinet and the Diet. When describing these relationships, each agency must, of course, be weighed separately and impartially. In the emperor’s case, there were three sovereigns—Meiji, Taishō and Shōwa—each with his own character and role. Cabinets were also of three kinds: the supra-party ones of the 1890s, composite cabinets formed by a coalition between political parties and (military) bureaucrats after 1900, and those formed by one or other of the two leading parties in the 1920s. In Diet politics a broad division can also be made between the early 1900s when the Seiyūkai as the biggest party was opposed by smaller ones, and when the Seiyūkai competed on equal terms with the Kenseikai formed in 1916 and its successor, the Minseitō. If one grasps these three factors—emperors, cabinets and broad divisions—as important political turning points, taking them case by case and seeking new connections between them, then conflicting interpretations of the Constitution can be seen as having provided a rationale for these changes.


So let us consider the views of Hozumi Yatsuka, which diverged from the Commentaries in advocating imperial autocracy and rejecting Diet government, and compare them with Minobe Tatsukichi’s emperor-organ theory which refuted Hozumi, upholding Constitutional monarchy and rejecting imperial autocracy. The views of these two scholars were closely related in some points while completely opposed in others, so comparing them provides useful insights. Between them they set a scale for interpretations of the Meiji Constitution and a wide boundary for explanations of contemporary politics.

As a concrete example of this, we may take the Taishō Political Upheaval that followed the accession of a new sovereign after Emperor Meiji died in 1912, and how the controversy between Hozumi and Minobe took a new turn, later emerging in the attack on Minobe’s theories by Uesugi Shinkichi, all of them professors of law at Tokyo Imperial University. I would like to clarify the close connections between the political changes of this time and academic disputes about the Constitution.

The direct stimulus for the political upheaval was provided by the accession of Emperor Taishō, but earlier attempts to reduce imperial autocracy and to revise the Constitutional system pre-date the Russo-Japanese war of 1904-5. The Government Organization Ordinance (*kōshikirei* 公式令) of 1907 brought to fruition the plans of its framers, including Hozumi, to reformulate the Constitutional system. This ordinance regulated formal procedures for imperial sovereignty, but also contributed to Minobe’s emperor-organ theory and provided a legal base for advancing the system of party cabinets.

The First Movement to Protect Constitutional Government that took place during the Taishō Political Upheaval of 1912-13 gave impetus to a shift in emperor-cabinet-Diet relations away from imperial autocracy and towards Constitutionalism. Meanwhile, the army and navy continued to uphold the emperor’s “prerogative of supreme command” (*tōsuiken* 統帥權) under Article 11 of the Meiji Constitution, using this to assert their right to advise the emperor on strategic affairs without cabinet or Diet interference. So party cabinets also had to find some way to cope with a situation in which they had no control over the emperor’s prerogative of supreme command, with its implied threat to Diet government.

**The Taishō Political Upheaval and the Emperor-Organ Theory**

In just half a year after the enthronement of Emperor Taishō on 30 July 1912, this inexperienced sovereign who lacked all powers of decision found himself enveloped in various kinds of political strife.12

Seiyūkai president Saionji’s cabinet collapsed on 5 December 1912 after his army minister, angered by failure to secure troop increases, bypassed the prime minister and presented his resignation directly to the emperor. Army
commander-in-chief Yamagata Aritomo then refused to nominate a successor; since no qualified officer would join the cabinet without his approval, this left Saionji with no alternative but to resign. Yamagata's protégé, Katsura Tarō, concurrent holder of the two most important Palace posts of Lord Keeper of the Privy Seal (naidaijin内大臣) and Grand Chamberlain (jijūchō侍従長) after the accession of Emperor Taishō, suddenly withdrew from them after barely four months to set up his 3rd cabinet in the wake of Saionji's.

Katsura's first problem was to secure a navy minister. At this time the navy, like the army, had a virtual veto over cabinet formation, since by an imperial ordinance of 1900 the army and navy ministers in any cabinet had to be serving officers with the rank of lieutenant-general, vice-admiral or above. The top naval officers with Satsuma pedigrees were not well disposed towards a Chōshū army leader like Katsura, and were critical of army demands for troop increases that had brought down the Saionji cabinet. So Katsura obtained an imperial rescript (chokugo勅語) commanding Saionji's navy minister to stay in office despite his earlier refusal to do so, thus managing to form a cabinet.

His next problem was to control the Diet. He set out to form a political party of his own to overcome the Seiyūkai with its majority in the House of Representatives. When the Diet reopened early in 1913 after the year's end closure, Katsura used a succession of imperial ordinances to suspend it while he advanced his plans to muster a majority in the Lower House. When this ended in failure, during a third suspension Katsura obtained an imperial message commanding Seiyūkai president Saionji to persuade his followers in the House of Representatives not to support a proposed bill of no-confidence in the cabinet.

Thus Prince Katsura, as prime minister and army field-marshal, while a prominent leader of the Yamagata clique with its avowed opposition to political-party cabinets, now used money and influence to form a party of his own in order to dominate the House of Representatives. This aroused fierce opposition from academics, newspapers, and the existing political parties, sparking off a nation-wide Movement to Protect Constitutional Government. In Tokyo, a human tidal wave of several thousand demonstrators swamped the Diet compound in February 1913 clamouring for the overthrow of the Katsura cabinet, which resigned two days later. The principle behind the Movement to Protect Constitutional Government was Diet supremacy, in which ruling powers should be consequent upon electoral victory. In opposition to this, what was the objective of Katsura's "Constitutional principle"?

His adoption of party cabinets was certainly aimed at grasping power over the Diet. In demanding complete submission to imperial orders, he seems to have regarded the Diet's independence from the emperor as extremely limited. If the view of his opponents prevailed, there was a strong possibility that besides a share in legislative power they would demand Diet
control over cabinet ministers. So Katsura's political party also aimed to reject the principle of cabinet responsibility to the Diet. In order to prevent a transfer of government to the opposition parties at all costs, Katsura was very likely to carry out electoral interference by an excessive use of executive power; his pro-cabinet party would then rise to become a powerful organization controlling the House of Representatives, implementing what in fact would be one-party rule.

Itō Hirobumi, in contrast, when setting up the Seiyūkai party in 1900, adhered to the principle stated in the Commentaries that "cabinet ministers have a direct responsibility to the sovereign, while an indirect responsibility to the people." Nevertheless, Itō's breakaway from the Sat-Chō clique's supra-party principle and his recognition of cabinet responsibility to the Diet, bringing executive and legislative power together in one body, was simply a compromise necessary to carry out firm government. As a pragmatic realist, he adopted a party-cabinet system when recent revisions in the electoral law to the House of Representatives promised to make it more tractable, with members increasingly drawn from commerce and industry. On the other hand, when the House of Peers resisted his Seiyūkai party-cabinet, Itō forced it into submission by an imperial rescript under the emperor's own name and seal, without his countersignature as prime minister, in clear violation of his own Commentaries. This two-sided policy thus enabled him to overcome his difficulties.

Party cabinets of the kind visualized by both Itō and Katsura could not be established without the monopolistic use of the emperor's will. In Itō's case, he was the chief elder statesman (genrō元老) and a regular advisor to the emperor. What lay outside his calculations was the fact that huge sums of money had to be expended to manage a political party. Unable to provide this he lost control, and his 4th cabinet collapsed in May 1901 as a result of internal disunity. When Itō left office, he was appointed president of the Privy Council on the emperor's orders, passing on the presidency of the Seiyūkai to Saionji Kimmochi.

In contrast, although Katsura was not fully recognized as an elder statesman when he became prime minister, he was backed by plenty of money from wealthy supporters. His success where Itō failed does not seem to have required much effort. But in one point Katsura was much weaker than Itō: the sovereign supporting him was Emperor Taishō, not Emperor Meiji. To assist Prime Minister Itō in his difficulties Emperor Meiji often took political responsibility on himself, but in Emperor Taishō's case this was impossible, since everybody knew that he was completely under Katsura's control.

On 5 February 1912 the Seiyūkai proposed a bill of no-confidence in the cabinet to the House of Representatives. Seiyūkai member Ozaki Yukio, one of the leaders of the opposition Movement and acclaimed with Inukai Tsuyoshi as a "god of Constitutional government," made a speech in support
of the bill. This speech is famed in political history but, surprisingly, many people overlook the fact that it amounts to an interpretation of the Constitution, defining the position of the sovereign in Constitutional law and the responsibility of cabinet ministers to advise and assist him. It goes as follows:

My chief criticism is that Katsura, while holding the Palace posts of Lord Keeper of the Privy Seal and Grand Chamberlain, obtained a message of gratitude (yūshō 優進) from the emperor when preparing to become prime minister, then pressed the emperor to issue a rescript commanding the navy minister to remain in the cabinet. This is a confusion of the roles of palace and government. In his explanation to us, Prince Katsura maintains that he received an imperial rescript (chokugo), not an edict (shōchoku 紹勅), but these amount to the same thing. Our Constitution requires all imperial orders connected with government administration to be countersigned by a cabinet minister, as is spelled out in large letters. Whether called imperial rescripts, edicts, or whatever, they are all the same. If this is not so, when there is a mistake in an imperial order concerning government administration, who bears the responsibility for this? With the deepest respect, would this not lie directly with His Majesty the Emperor? In the case of imperial orders, as in all things, human beings are bound to make mistakes. Only the Constitution can provide a guarantee against such errors.

The fundamental principle that in all matters the emperor is sacred and inviolable depends upon the fact that cabinet ministers are appointed to take responsibility for this. But Prince Katsura’s explanation maintains that the imperial rescripts he received, both to leave his Palace posts and to become prime minister, were orders he had to obey. If matters are conducted in this way, Prime Minister Katsura can evade responsibility, leaving it all to recoil on the emperor. Why on earth should this be so?

A cabinet minister in order to evade responsibility puts the blame on someone else! Members of this House like myself can never believe that such an action is the proper duty of a subject. In particular, in his explanation just a moment ago, Prince Katsura said that he has no responsibility for imperial rescripts, claiming these differ from imperial edicts. That may be so to him and the literary sycophants among his followers in their interpretation of the Constitution, but the commonly accepted idea of loyalty and patriotism in this nation cannot permit such a view.

Take a look at what happens in Germany, the nation he and his followers often cite in order to defend their twisted explanations. The German emperor frequently trips around his country making speeches that arouse considerable controversy. When things become agitated, the princes, from among whom prime ministers are mostly appointed, publicly declare to the realm that the responsibility for this lies with them. In the case of such speeches, the prime minister’s responsibility is total. For Prince Katsura to evade responsibility even for imperial rescripts is an outrage violating the fundamental principle of Constitutional government.

People of his ilk, whenever they open their mouths in public, immediately intone “loyalty to the sovereign and love of the nation,” as if this was their monopoly. But if one looks at their actions they forever hide behind the throne, using it as a safe rampart from which to shoot down political enemies with imperial edicts as bullets. Is this not a fact?

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Probably no one else but Ozaki, who when education minister fourteen years before had been ordered to resign by Emperor Meiji, could have made such a bold statement. Prior to that, he had been among those branded as political agitators and banished from Tokyo in 1888 under the Peace Preservation Regulations. He knew very well how emperor autocracy cut at the root of parliamentary government. After the Diet opened in 1890, Emperor Meiji much disliked political opposition to the principle of supra-party cabinets; at the time of the second general election of 1892, he urged the cabinet to interfere in opposition to the political parties, an act unprecedented in Constitutional history.19

A few years later, in 1898, when the principle of supra-party cabinets lost its feasibility and Ōkuma formed the first party cabinet, Ozaki was forced to resign as education minister after public indignation erupted over the Republic-Speech affair; fomented by Katsura and other opponents this played a major role in the cabinet’s collapse.20 The 2nd Yamagata cabinet that followed then received a huge sum of money from the Imperial Household Department in order to manipulate the political parties and overcome resistance in the House of Representatives.21

After such experiences, Ozaki had no qualms when proclaiming that imperial orders “whether called rescripts, edicts, or whatever,” are just the work of human beings. On this point Ozaki had in mind Emperor Meiji and the politicians of the Sat-Chō clique who shielded themselves behind him. His rejection of autocratic rule was quite uncompromising, whether it was based on an emperor whose orders could not be questioned, or on cabinets evading responsibility to the Diet for their faulty actions.

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20 In a lecture to the National Teachers’ Association, Education Minister Ozaki had criticized the prevailing “money worship,” and speculated that in the very unlikely event of Japan’s becoming a republic, candidates for president would probably be put up by either the Mitsui or Mitsubishi combines, something that could never happen in Europe or America. Even to suggest such a possibility was taken as an insult to the emperor; Katsura and others of the Yamagata clique then spearheaded a movement to compel his resignation. After hearing Ozaki’s direct explanation, the emperor ordered him to resign. See Masuda, “Rikken Seiyūkai e no michi,” pp. 892–4, 900–1. Also, Kunaishō Teishitsu Henshūkyoku ed., *Meiji jenmō ki*, vol. 9 (Tokyo: Yoshikawa Kōbunshō, 1971), pp. 512–15.

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**Figure 8**
*Emperor Meiji granting the Constitution, December 1889*
When Emperor Meiji died, Ozaki naturally came forward to reject the autocracy of Prime Minister Katsura, whose party cabinet was a manipulative organization exploiting a weak and inexperienced sovereign, Emperor Taishō. In developing his principle of ministerial responsibility Ozaki quite likely drew on Minobe Tatsukichi’s emperor-organ theory.

Minobe’s *Discussions on the Constitution,* published two years previously, challenged the view that the emperor and the right to rule were unitary and inseparable. He split sovereignty into three parts: supreme authority as sovereign, the right to rule, and the role of the nation’s supreme “organ” (*kikan*). Supreme authority was the power “not to be restricted from outside against one’s personal will.” This, wrote Minobe, was possessed by the nation. Next, the right to rule meant “authority to exert firm control by giving orders to people.” This, too, was held by the nation, and was not an exclusive right “either of the ruler or of the people.” Finally, the supreme organ indicated in specific cases whether sovereignty lay in the ruler or the people, and this was the only role played by the emperor.

So what kind of ruling system emerged when the emperor was the supreme organ of the nation? In Minobe’s view, the activities of a nation were conducted by various kinds of state organs. In aggregate, they formed the “government system” (*seitai*). Such systems were of two kinds: monarchies in which a single ruler was the supreme organ, or republics ruled by a representative assembly of many people. However, it was certainly not the case that the supreme organ embodied all the power of the nation; even in monarchies there were assemblies outside the power of the sovereign which participated in government. On the other hand, in republics, where the president as the supreme organ has been entrusted by the people with power approaching that of a monarch, government was a fusion of both these systems.

As for the special characteristic of Japan’s monarchy, Minobe wrote: “I think it lies in the fact that the exercise of the nation’s supreme will is determined by a single person; or at least, that it must receive his sanction.” The “supreme will” was the *Constitution of the Japanese Empire*; the “single person” was the emperor. The Constitution-emperor relationship can be stated, in other words, as that existing between the supreme will and the will of the emperor as an individual. The important distinction here is whether the decisions of the supreme will are fully validated on the sole volition of the emperor, or whether the emperor’s “sanction” is simply a formality. In the first case, according to Minobe’s distinction, the regime was an “autocratic or despotic” monarchy; in the second, a “limited” monarchy. In Japan, limited monarchy was a historical fact; it had now adopted a “so-called Constitutional monarchy.”

Thereafter the question progressively became one of what the Diet’s role should be. To Minobe, the basic principle was quite clear: it was “the repre-
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To return to Minobe, in refuting Hozumi the aim of his interpretation of the Constitution was to legitimize two things: the Diet's powers restricting the emperor's prerogative and the responsibility of government ministers to the Diet, thus opening the way for party cabinets. Yet as he struggled to weld the principle of national assemblies onto the Imperial Diet as it really
operated, the task seemed too daunting. So in seeking to make a political breakthrough, Minobe concentrated on two articles of the Constitution relating to the emperor and cabinet ministers. Article 3 states that "the emperor is sacred and inviolable"; Article 55 that "the respective ministers of state shall give their advice to the emperor, and be responsible for it. All laws, imperial ordinances and imperial rescripts of whatever kind, that relate to the affairs of the state, require the countersignature of a minister of state," clearly demanding ministerial responsibility when advising the emperor. As it turned out, Minobe's interpretation of Articles 3 and 55 as "fundamental rules, intimately connected,"38 found full expression in Ozaki Yukio's speech to the House of Representatives.

Under an imperial autocracy, Minobe wrote, the emperor's non-responsibility was "in reality impossible to expect, and would make it hard to avoid damaging respect for the Imperial House";39 he insisted that this could only be achieved in a limited monarchy. For this reason, Minobe argued that "cabinet ministers of a Constitutional nation stand in a different position in respect to the laws (i.e. legal regulations) than chief ministers in an autocratic system."

Hozumi's view of emperor-minister relations was quite different: "advice and assistance means simply presenting opinions on the exercise of sovereignty and asking for them to be adopted. Needless to say, whether to do so or not is the emperor's free choice. The exercise of sovereignty does not, of course, require the sanction of ministers."40 Minobe's objection to this was total: "the reason why all imperial orders concerning state administration—whether in respect to laws, ordinances, treaties or other matters—must be countersigned is because "cabinet ministers assist in their execution, discuss them with the emperor, and corroborate that they themselves will bear the responsibility for them." Without such guarantees, imperial orders can have no validity.41

A further important point is that, to Minobe, ministerial countersignature implied simply a formal corroboration; it was enough for cabinet ministers "to have participated to any extent in discussions and given their agreement"; they must be fully responsible, in particular for the specific items listed in the cabinet regulations.42 On this basis Minobe rejected the common view that cabinet ministers advised and assisted the emperor as individuals; he insisted that they bore a joint responsibility.43

However, while a "sincere agreement" was implied by this, what happened when the emperor's will and that of cabinet ministers conflicted? If a cabinet minister could not gain the emperor's consent did this mean that his responsibility was nullified? If so, Minobe's refutation of Hozumi became meaningless. Minobe therefore formulated "advice and assistance" in the following way, while declaring that the responsibility of cabinet ministers was total:44

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38 Minobe, Kempō kōwa, p.96.
39 ibid.
41 Minobe, Kempō kōwa, p.133.
42 Article 5 of the Cabinet Official System ruled that the following matters must be discussed by it: bills for laws and budget estimates; treaties with foreign nations and important international treaties; imperial ordinances on the official system and the carrying out of regulations and laws; supervision of government ministries and disputes of jurisdiction between them; requests sent down by the emperor or petitions of citizens when passed on by the Diet; disbursements outside the budget estimates; the appointment, promotion and demotion of ministerial officials and local governors, and important administrative matters within the delegation of government ministries.
43 Minobe, Kempō kōwa, pp.131-4.
44 ibid., p.137.
When cabinet ministers think the emperor's orders violate the Constitution or the laws, or are disadvantageous to the nation, they must resist them without reserve and at all costs. Also, if a cabinet minister thinks an action should not be taken for the nation's sake, he must report this to the emperor and request his decision. If the action is nevertheless put to him as a mandatory order to be countersigned, this means that the emperor has no confidence in him, so he has no alternative but to resign. If the cabinet minister does not resign and the action is taken, then he must bear responsibility for it.

This view is permeated by the logic that the chief location of sovereignty is not in the ruler but in the legal personality of the nation. The will of cabinet ministers is subordinate to the nation's will, vested with sovereignty, and is not subject to that of the emperor, a state organ, even though he has the right to appoint and dismiss them. So it naturally follows that the responsibility of cabinet ministers when advising and assisting the emperor is to the nation. But since the nation as an impersonal force cannot in fact question the responsibility of cabinet ministers, under the prescriptions of the Constitution the Diet performs this role on its behalf. Accordingly, cabinet ministers have a prime responsibility to the Diet rather than to the emperor, notwithstanding his right to appoint and dismiss them.

It was characteristic of the cautious Minobe to skirt round this challenging conclusion and not to push too hard for his emperor-organ view; instead he defined "governmental responsibility" as the special role of cabinet ministers and firmly declared this to be owed to the Diet.45

Prior to Ozaki's speech, Seiyūkai member Motoda Hajime also put pressure on Prime Minister Katsura. Had he requested the emperor to give him a mandate to form the cabinet? Motoda asked, demanding a clear explanation of the matter.46 The speeches of Ozaki and Motoda indicate quite clearly that the Seiyūkai aimed to topple the cabinet on the grounds of Katsura's confusion and exploitation of two different kinds of responsibility: that of cabinet ministers to advise and assist the emperor under Article 55 of the Constitution, and that of the Lord Keeper of the Privy Seal under Imperial Household Order No.4, Katsura having held this latter post before his appointment as prime minister.

How did Katsura reply to Motoda's question? He evaded any mention of the requirement for imperial rescripts to be countersigned or whether he had petitioned the emperor to issue one or not. "I acted on direct orders from the emperor. . . . I do whatever His Majesty tells me,"47 Katsura replied, firmly insisting that he had obeyed the will of Emperor Taishō. Even so, Katsura must have realized that he faced a crucial dilemma when Ozaki's speech supporting the bill of no-confidence declared that whether called "rescripts, edicts, or whatever," imperial orders are all the same. If Katsura under Diet pressure admitted that cabinet ministers bore the responsibility for all actions deriving from the Imperial will, this would reduce the emperor to a mere figurehead.
Katsura asserted, therefore, that imperial rescripts “do not require countersignature under Article 55 of the Constitution,” and that “they are not always put up to the emperor as petitions from the cabinet.” This was to reinforce what Hozumi had clearly described as “the sovereign's right of sole decision.” Nevertheless, regarding the duty of cabinet ministers to advise and assist the emperor, Katsura had to admit that “people obeying the emperor's orders are of course bound to take responsibility for them”; it was not the giver of an order but the recipient who bore this burden. But if people who carried out orders were only responsible for the results, this in fact relieved them of prime responsibility. The “inviolability of the emperor” in Article 3 of the Constitution, embellished by Hozumi as “the sovereign's right of sole decision,” put the onus on Emperor Taishō, and was simply a cloak for Prime Minister Katsura's autocracy.

Immediately after this answer to his Diet critics, Katsura obtained an imperial order for a dissolution. Seiyūkai president Saionji Kimmochi was then summoned to the Palace and given the following imperial message (gosata御沙汰).48

For political strife to take place during the period of mourning for Emperor Meiji makes Our anxiety unbearable. [Last year] when you resigned as prime minister and left office, We clearly stated that you were to be ranked among the senior statesmen (jūshin臣) of this nation. Kindly accede to Our will in this matter.

That was to say, because Saionji was an elder statesman with a special duty to advise and assist the emperor, he was expected to order the Seiyūkai members in the House of Representatives to drop all opposition. Underlying this imperial message was a menacing injunction to withdraw the motion of no-confidence in the cabinet immediately, on the grounds that for the Diet to countermand the orders of the emperor was overstepping its powers and could not be permitted. Whether Saionji should submit to this message or not posed a decisive question about the powers of Constitutional monarchy. At issue was not only the Diet's power to compel cabinet ministers to admit their responsibility to it, but also its power to resist the emperor's will.

Saionji's response was neat and subtle. He called a meeting of the Seiyūkai Diet members and told them that he himself must comply with imperial orders, out of his “duty as the emperor's subject” (shinsbi no bun臣子の分). But it was quite proper for them, as representatives of the people, to hold fast to their opinions.49 Propelled onwards by the surging Movement to Protect Constitutional Government, the Seiyūkai members determined on policy and took the decisive step of resolving to proceed with putting the no-confidence bill to the vote. When Prime Minister Katsura learned of this he resigned with all his cabinet. As if taking the responsibility for failing to comply with an imperial order, Saionji gave up the party presidency and withdrew from active politics. However, he had made a major contribution

to widening the way for party cabinets, earning the complete confidence of most members of the House of Representatives. Thereafter he performed a leadership role as one of the senior statesmen, or *genrō*.

The Taishō Political Upheaval of 1912–13 thus redefined emperor-cabinet-Diet relations, fostered by fresh interpretations of the Meiji Constitution, opening up new lines for political development.

*(Translated by A. Fraser)*

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