DAVID SISSONS, POLITICAL SCIENTIST AND WRITER ON POSTWAR JAPANESE POLITICS: AN INTRODUCTION

Arthur Stockwin

When David Sissons joined The Australian National University in 1961 and became my doctoral thesis supervisor, from my point of view, he was a political scientist. I remember he told me that he spent every Thursday working on the history of relations between Australia and Japan, but this seemed much subordinate to his principal interest, which was contemporary Japanese politics. It was not until the late 1960s, during a period of sabbatical in Japan, that he definitely switched the focus of his interests towards the history of Japan–Australia relations, and became the great specialist in that area of international history for which he is known.

He spent the years between 1956 and 1960 attached to the Institute of Social Science (Shaken) of Tokyo University, in part funded by a Saionji Memorial Scholarship. During that period he researched a number of political issues then current. Japanese politics in the late 1960s was highly polarised, as the democratic and peace-oriented 1947 constitution was still in its early stages of operation, and the broadly conservative Liberal Democratic Party (LDP, only founded in 1955) was in power but confronted by the Japan Socialist Party (JSP), which at the time commanded wide support, mainly in urban areas. From 1957 the LDP prime minister was Kishi Nobusuke, grandfather of the prime minister at the time of writing, Abe Shinzō. Kishi, who was a major figure in Japanese wartime governments, as well as in the Japanese-run government of Manchukuo, was classified as a class-A war criminal.
by the postwar Allied occupation, but was never brought to trial. His appointment as prime minister in 1957 raised the political temperature and led eventually to the most serious political crisis of the postwar period, over-revision of the Japan–US Security Treaty in 1960.

In 1958 the Kishi government introduced into the National Diet a bill designed to strengthen the powers of the police to handle demonstrations and other activities that the government regarded as disorderly behaviour. This led to a major expansion of ‘disorder’, as opposition parties (particularly the JSP), labour unions and many other bodies, supported by much of the mass media, protested, sometimes violently, against the bill. David analysed the course of the conflict in his 1959 essay ‘The dispute over Japan’s police law’. The controversy was fought out with much reference to the arrogant behaviour of the police in the prewar period where, for instance, policemen had the right to enter inns in search of ‘undesirable elements’, engage in what David described as ‘peeping Tom activities’, and demand to be fed for their pains. The article bore the hallmarks of his meticulous research methods, often with a legal focus, including detailed comparisons of Japanese police powers with those in the United Kingdom. The political issue of police powers in Japan has not gone away in the period between publication of David’s article and the present time.

An article that greatly helped me and influenced me in my doctoral research on the neutralist policies of the JSP was David’s ‘Recent developments in the Japanese socialist movement’. This long article in two parts covered the period of the late 1950s that culminated in the Security Treaty revision crisis, which came to a head in June 1960. The 1950s were a period of deep division within the socialist movement but also, from 1955, of a coming together of the various factions, so that the Socialist Party was able to mount a serious challenge to the right-wing policies of the Kishi government. Even though they did not succeed in defeating him on the Security Treaty, that crisis ushered in a calmer period in the politics of Japan, which coincided with rapid economic growth. That growth itself, however, tended to undermine the appeal of left-wing agitation. David’s analysis of socialist factions and trends in the 1950s was prescient about what was to come in the 1960s.

The new constitution, introduced under occupation auspices, that came into force in 1947, has never been revised in the smallest particular, but it has remained a matter of endless controversy. The successive Abe governments from 2012 have regarded constitutional revision as their most important long-term political objective. Of all the articles of the constitution, article 9, the ‘peace clause’, has always been the number one target for revision. One of the relatively early and most informative articles on this subject was David’s ‘The pacifist clause of the Japanese Constitution:

1  Pacific Affairs, vol. 32 (March 1959), no. 1.
Legal and political problems of rearmament’. A highlight of the article was David’s analysis of the circumstances whereby article 9 was originally drafted, then revised, and subsequently gone through various phases of interpretation. He homed in on the ‘Ashida amendment’, officially meant to strengthen the pacifist content of the article but in fact cunningly designed to permit military activity for the purposes of self-defence (defence of Japanese territory), but not for aggressive activities overseas. On the final page of his article David drills down into this distinction with the ironic comment: ‘[T]hen, as now, it was also well known that there is no form of defensive potential that cannot be utilized for aggression’.

David continued his research into the Japanese Constitution well into the 1960s, as shown in: ‘Human rights under the Japanese Constitution’. This was then, and has continued to involve, a highly controversial set of issues dividing the right-wing government forces from their critics on the left.

He also wrote a lengthy article on a constitutional issue that remains highly controversial in the 2010s, namely whether a prime minister has the freedom to dissolve the House of Representatives at will, or whether conditions need to be met: ‘Dissolution of the Japanese lower house’. Once again, he highlighted the divisive character of this problem between left and right.

David published several political science articles in the 1960s as shown in his publication bibliography. While most of those in the major academic journals are now available digitally, the two articles mentioned above were published at The Australian National University as a collection of Japanese politics articles in two volumes. They are included in the following two chapters to showcase his academic contributions to the field of political science. In his work as a political scientist focused on political, and especially constitutional, issues in Japan, David combined great legal and technical expertise with an ability to pick issues that mattered centrally and would continue to matter over the decades to come.

4 ‘Human rights under the Japanese constitution’, *Papers on Modern Japan*, 1965, Research School of Pacific Studies, The Australian National University (reproduced in this volume).
HUMAN RIGHTS UNDER THE JAPANESE CONSTITUTION

HUMAN RIGHTS UNDER THE JAPANESE CONSTITUTION

by

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At the time of the Surrender in 1945, Japan was governed under the Meiji Constitution which came into effect in 1889 and had not subsequently been amended. Among the features of this constitution regarded as unsatisfactory by the Occupation authorities was the absence of an effective bill of rights; for although it conferred on Japanese subjects certain rights such as freedom of association and freedom of religion, it stated explicitly that such rights could be abridged by legislation.

It was well known that the Occupation authorities desired substantial constitutional revision. The period immediately following the Surrender saw the emergence of a number of draft constitutions sponsored by the major political parties (both ministerialist and Opposition) and by interested citizens. Some of these sought to provide judicial review and hard guarantees of fundamental rights. For example, the draft produced by the ministerialist party, the Nihon Shimpōtō, sought expressly to confer on the Supreme Court the power to examine the constitutionality of all laws and regulations, and to require that legislative restrictions on specified rights should be within the limits necessary for maintaining public order. Similarly the draft produced by the other conservative party, the Nihon Jiyūtō, although it did not expressly confer the power of judicial review, nevertheless contained a prohibition against legislation which arbitrarily restricted specified rights. The draft produced by the Japanese Government, however, followed the Meiji Constitution in these, as in most other, respects: it made such rights subject to abridgment by

1. 'Nihon Shimpōtō no Kempō Kaisei Mondai', (24 February 1946), a. 22.
2. Ibid., a. 12.
3. 'Nihon Jiyūtō no Kempō Kaisei Yōkō', (21 January 1946), Ch. 3, a. 1.
legislation and did not provide judicial review. The story is now well known how MacArthur, exasperated at the Government's lukewarm attitude to constitutional revision, then instructed his staff urgently to prepare 'for the instruction of the Japanese Government' the 'MacArthur draft' constitution which became the basis for the famous thirty hours' continuous 'negotiations' between the Japanese and the Americans from which an 'agreed' draft emerged which, with a few minor amendments agreed to by the Americans, was adopted by the Diet.

The Courts and Human Rights

One of the sections of the Constitution on which, during the negotiations with the Americans, the Japanese cabinet and draughtsmen attempted considerable resistance, was the section on human rights. They tried, unsuccessfully, to insert into practically every Article which established an important right, an express safeguard such as 'to the extent that they do not conflict with public peace and order', or 'as provided by law'.

With all written constitutions, one of the most difficult problems in interpretation is the degree of consideration to be given to public order and the public welfare when determining the constitutionality of

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5. The 'MacArthur draft' is reproduced in its original English in T. Miyazawa, Nihon Koku Kempō, Tōkyō, Nihon Hiyōron Shinsha, 1955, Appendices Volume, pp. 40-60.


7. See the 'First Government Draft of Constitution, 4 March 1946' which is reproduced in full in Political Reorientation of Japan, Appendices Volume, p. 625 ff.
statutes which would limit the exercise of rights and freedoms guaranteed in the Constitution. That in Japan this problem is even greater than elsewhere is partly the result of bad drafting. In the Constitution as finally enacted, a. 12 states that: 'The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavour of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare' (D. S. underlining). Article 13 states that: 'All the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs' (D. S. underlining). In the articles dealing with specific rights, however, only a. 22 (choice of residence and occupation) and a. 29 (property rights) are expressly made subject to the public welfare. This has led to controversy whether a. 12 and a. 13 constitute a general authority to legislate restricting, in the public interest, all the rights conferred by the Constitution, or whether they are merely hortatory, in which case only a. 22 and a. 29 would be subject to such restriction.

The courts were quick to decide that the Constitution does not prohibit legislation which restricts, in the interests of public welfare, other rights besides those provided in a. 22 and a. 29 - among them freedom of expression. Article 21 provides that: 'Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated'. Many famous cases have arisen involving this provision.

Take for example the following. In 1951 in trying to find the whereabouts of eight Communist leaders suspected of engaging in illegal political activities, the police installed a microphone in the room adjoining that occupied by another Communist (he was not a suspect; nor was membership of the Communist Party an offence) and overheard his private life for several days. Discovering what was going on, he removed the microphone; whereupon the police, instead of feigning ignorance, actually charged him with theft of the microphone. At a later stage, the Procurator, rather understandably, dropped the charge; but the Communist brought an action against the police for abuse of their powers as public officials. In deciding this case, the appeal court held that freedom of communication may be
limited in the public interest, and that where the police suspect crime they may, notwithstanding this constitutional guarantee, use any methods of enquiry which do not involve the use of force and which are not prohibited by legislation. This is a case where many had hoped that the courts would devise some proper standard to circumscribe eavesdropping of this nature.

The limits of freedom of expression became the issue in the Lady Chatterley case. The case arose out of the prosecution of the publisher and translator under the Obscene Publications Law. Here the Supreme Court decided (1957) that, although undoubtedly a work of art, the book contained passages which were 'bold, detailed and realistic beyond the limit permitted by the collective conscience of the community and which accordingly outraged the feeling of shame which distinguished mankind from the beasts and which acted as a brake on licence'. The maintenance of a minimum standard of sexual morality was, the Court argued, part of the public welfare. Hence freedom of expression could be restricted to restrain obscenity.

Next among the a. 21 cases let us deal with freedom of assembly. In 1945 all legislation restricting public meetings and demonstrations was repealed at the behest of the Occupation authorities. In 1948, however, some demonstrations by Korean residents turned into riots and the Occupation authorities began to encourage local government authorities to enact what are called 'Public Safety Regulations'. Such regulations require the local Public Safety Commissions to be informed in advance of processions and the like, and empower them to refuse permission in certain circumstances. By 1952 some hundred prefectures and municipalities covering most of the country had enacted such regulations.

In 1954 the Supreme Court had to rule on the constitutionality of the Niigata prefectural regulations which required notice to be given of processions and demonstrations on roads, and other public places where traffic passed, and which empowered the local Public Safety Commission to refuse permission where there clearly was a danger to public safety. The Court, in dealing with the case, laid down the following principles: (i) processions and demonstrations, to the extent that they do not use improper methods or do not have an objective

8. Decision of Tōkyō High Court 17 July 1953, Hanrei jihō, No. 9, 1 October 1953.

contrary to the public welfare, are part of the essential freedoms of the people, and therefore cannot be made subject to a general licensing system; (ii) they may, however, be made subject to a system requiring prior notification, or to restrictions based on a clear standard as regards place and method. On examining the Niigata Regulations in detail, the Court decided that they did not constitute an overall licensing system. In particular the Court laid stress on the provision in the regulations that stipulated that where, twenty-four hours before the procession was due to commence, no answer had been received from the Public Safety Commission permission could be assumed. 10

More recently in Tōkyō Prefecture, regulations were enacted which apply to meetings in public places, and to demonstrations in any place whatsoever, and which, unlike the Niigata regulations, contain no provision to the effect that permission can be assumed if no decision has been given by twenty-four hours before the procession etc., is due to start. In 1960 the Supreme Court handed down a decision in a case involving demonstrators charged with a breach of the Tōkyō regulations. In this case the Court held that demonstrations and the like differ from expression stricto sensu in that underlying them is potential force and in that they can always lead to violence. Hence it is inevitable, the Court argued, that the authorities should pass regulations to enable them to know of such activities in advance and take 'the necessary minimum steps to prevent unforeseen occurrences'. Somewhat surprisingly, the Court came to the conclusion that, although the Regulations apply to demonstrations 'in any place whatsoever', and although they contain no '24 hours clause' this nevertheless does not amount to a general licensing system. 11 Thus, in effect, the Court now threw overboard the standard it laid down in the Niigata case. And so, the situation has been reached where even people hiring halls for class reunions or film evenings apply for permission, to be on the safe side. This decision is very unpopular among Japanese academic lawyers. The basic objection to it is that, whereas the Constitution suggests that freedom of expression is so important that it should have special protection, the Court in the Tōkyō case has in effect decided that, because demonstrations involve expression, they are liable to special restriction. Moreover the Court, having said that the minimum restriction necessary is

11. Maki, op.cit., p. 84 ff.
permissible, then proceeded to permit the widest conceivable restriction.

Another important case involving the restriction, in the public interest, of a right guaranteed by the Constitution, arose in connection with the Passport Law and its relationship to a. 22 of the Constitution which provides that: 'Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public interest. Freedom of all persons to move to a foreign country or to divest themselves of their nationality shall be inviolate'.

In 1952 Hoashi, an economist and former Left-Socialist Member of the House of Representatives prominent in the movement in favour of trade with Communist countries, applied for a passport to attend the International Economic Conference to be held in Moscow. In reply, Hoashi was notified that the Minister had refused to issue him with a passport, by virtue of the powers conferred on him by a. 19 1 iv of the Passport Law which provides that 'Where the Minister deems it necessary for the protection of the person or the property of the bearer to prevent the journey, he may order the passport to be surrendered'. No one really thought that the Minister was worried about the safety of his Socialist opponent, but it probably seemed a safe clause to apply. Hoashi and his friends, however, drew attention to the fact that the Soviet authorities had guaranteed all travel and living expenses, as well as the personal safety of the delegates. At this, some bureaucratic faces must have reddened, for four days later Hoashi received a further communication from the Ministry informing him that, due to a clerical error, the previous letter had failed to notify him that the Minister was also acting under a. 13 1 v of the same law which empowered him to refuse a passport where he had reasonable grounds for considering that the applicant might act in a manner markedly and directly harmful to Japanese interests.

Human ingenuity and enterprise being what it is, Hoashi later in the year applied for and received a passport to visit Denmark. Although this was endorsed as not valid for the Communist countries, he nevertheless visited Moscow and Peking en route, though after the Conference had ended.

Subsequently Hoashi sued the State for damages for loss of professional opportunities in not being able to attend the Conference, and for loss of reputation resulting from the Minister's action which, it was contended, was contrary to the Passport Law and a. 22 of the
Constitution.

In evidence the reasons tendered on behalf of the Minister for his refusal were as follows: First - participation in the Conference would weaken Japan's bargaining position in the hitherto unsuccessful negotiations with the Soviet for a peace-treaty and the liberation of Japanese prisoners-of-war and fishermen. Secondly - the purpose of the Conference was to weaken the United Nations embargo on trade with the Communist countries, which was necessary to restrain Communist aggression in Korea; it was also aimed at sowing dissention among the nations of the Free World of whom Japan by signing the Peace Treaty was about to become a member. Thirdly - although SCAP had placed the issue of passports completely under Japanese control, Japan was still under U.S. Occupation; it would, accordingly, have been unwise to issue a passport when participation in the Conference was obviously inimical to U.S. policy. Lastly, for good measure, they added that in the light of the history of Japanese-Soviet relations the Soviet's guarantee of Hoashi's personal safety was quite unreliable.

The Supreme Court handed down its decision in 1958. Although in a. 22 the express provision safeguarding the public interest obviously applies only to the first sentence whereas the freedom to move to a foreign country is dealt with in the second sentence, the Court, nevertheless, held that freedom of foreign travel should not be interpreted as being permitted without limit, but subject to reasonable restriction in the public interest. The restrictions imposed by the Passport Law it considered reasonable. Many found this decision alarming in that, despite the constitutional guarantee of freedom of movement to a foreign country, this can be interfered with for no better object than strengthening the Government's hand in current diplomatic negotiations!

Last among the 'public interest' cases let us consider the courts' interpretation of a. 28: 'The right of workers to organize and to bargain and act collectively is guaranteed'. The volte face in labour policy is well known whereby General MacArthur, having initially conferred on Japanese labour the right to strike, in 1948 instructed the Japanese Government to legislate prohibiting strikes among Government employees. In 1949 at Hirosaki, engine-drivers of the Government railways went on strike and were accordingly charged

12. Maki, _op. cit._, p. 117 ff.

under this legislation. In deciding the case the Supreme Court held that it followed from Constitution a.13 (quoted supra p.52) that the rights guaranteed by a. 28 must necessarily be subject to limitation for the sake of the public welfare. 14

So much for cases where the courts have countenanced restriction of rights on the grounds of 'public interest', or 'public welfare'. Next let us consider 'equality under the law'.

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

The Supreme Court in 1947 in the Fukuoka Patricide Case rejected the contention that, by reason of this provision, the section of the Criminal Code is unconstitutional which provides a heavier penalty for infliction of bodily injury resulting in death on a 'lineal ascendant' than on others. 15 More recently it has, like the American courts in similar American cases, refused to upset, under this provision, electoral legislation under which there is a considerable discrepancy between the value of the vote in different constituencies. 16

The implications of the principle of equality for inheritance are made clear in a.24 (ii): 'With regard to property rights, inheritance, . . . . laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes'.

In Japanese law a person may bequeath only portion of his estate by will. For example, where he is survived by his wife or lineal descendants, half of his estate must be inherited according to the provisions of the Civil Code dealing with succession; 17 where he dies intestate (wills are uncommon in Japan), 18 the whole is inherited

16. Supreme Court decision of 5 February 1964 (Case "O" 422 of 1963.)
17. Civil Code (1947), a.1028
18. Wills are, however, becoming more popular. See the evidence of Professor Y. Nakagawa in Kempô Chôsakai, Kempô Chôsakai Dai 1 Iinkai Dai 27 Kai Gijiroku, pp. 12-13.
according to such provisions. The prewar Civil Code applied to this 'legally secured portion' of the estate the principle of primogeniture. The revised (1947) Civil Code, however, makes, in the first instance, the spouse and the lineal descendants the successors, the spouse receiving one-third and the lineal descendants two-thirds. 19

In conformity with Constitution a. 24 (ii), it further provides that where there are more than one successor in the same degree (e.g. sons and daughters) their respective shares shall be equal. 20 Since the typical farmer in Japan is the peasant 21 working a minimal family holding which is incapable of subdivision into smaller viable units, there was from the outset considerable apprehension that equal inheritance would ruin the peasantry - some 40% of the nation. In 1946 the Special Committee of the House of Peers appointed to report on the proposed legislation to revise the pre-war Civil Code resolved that 'Whereas we approve the system of equal inheritance required by the new Constitution, we nevertheless believe that the new Constitution does not prohibit the addition of suitable regulatory measures to maintain and develop agriculture. It therefore behoves the Government expeditiously to devise the legislative measures necessary to prevent arable land's being atomized by reason of succession'. 22 The Government in 1947 and again in 1949 introduced a bill 23 to provide that, in the case of succession to agricultural land, the agricultural capital should not be divided among the children but should pass to a single successor whom the testator, the successors jointly, or, in the case of disagreement, the courts, considered the most suitable for conducting agriculture. According to the 1947 bill this person would be obliged to pay compensation to the other successors only where the value of the agricultural capital amounted to more than half the estate plus an equal share in the remainder. The bill was not proceeded with, as it was unacceptable

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20. Ibid., a. 900 (iv).
21. According to a national survey carried out in 1950, as against 61,700,000 farmer households there were about 13,000 non-family units engaged in agriculture (Evidence of T. Ogura in Kempō Chōsakai, Kempō Chōsakai Dai 1 Jinbō Dai 31 Kai Giijiroku, p. 2.).
22. Quoted, Ibid., p. 2.
23. The title of the bill was in each case Nōchī Sōzoku Tokurei Hōan. For descriptions of each bill see Ogura, op. cit., p. 3-4.
to MacArthur's headquarters. 24 According to the 1949 bill, the inheritor of the agricultural capital would be obliged to pay compensation (over a long period at a very low rate of interest) to the other successors, equal to the amount by which the value of such agricultural capital exceeded what his share would have been if the estate had been equally divided. It further provided that in each case the amount of compensation should be fixed at a level that would not prejudice the stability of the agricultural operations of the inheritor of the agricultural capital, and that whereas non-agricultural assets should be valued at current market price, agricultural assets should be valued on the basis of yield (about 50-60% of market price). Although the 1949 bill managed to pass the Lower House, there was considerable opposition to it both among scholars and society at large on the grounds that it was unnecessary, that it might revive the evils of the prewar family system, and that it contravened the principle of equality as provided in Constitution a. 14 and 24. 25 In fact little subdivision has occurred as a result of succession: in many cases sisters and younger brothers renounce their succession, often receiving in exchange a trousseau or the cost of their higher education. 26

Articles 31 to 40 of the Constitution deal with safeguards in criminal procedure.

Article 37 (which in the drafting process the Japanese attempted to omit 27) guarantees speedy trial in criminal cases. In 1948 the Supreme Court handed down an interesting decision involving this

24. Meyer, Grajdanezo and Hughes, officers of MacArthur's headquarters, on 16 July 1947 handed to a meeting of the Permanent Heads of the Japanese ministries concerned a memorandum criticizing the bill. A Japanese translation of the memorandum is given in Kempō Chōsakai, Kempō Chōsakai Dai 1 Inkkai Dai 31 Kai Gijirōku, pp. 58-60. Note, however, the testimony of Professor T. Kawashima (who was closely associated with the revision of the Civil Code) that the Americans were not unsympathetic regarding the question (ibid., p. 41).

25. See for example the joint statement (11 April 1949) of various professors of law at Tōkyō, Waseda and Meiji universities attacking the bill on constitutional grounds (Hōritsu Jihō, 1949, No. 5, p. 55).


A prisoner had appealed against a conviction on the ground that there had been undue delay in hearing his case. The Supreme Court, properly, no doubt, dismissed the appeal on the ground that irrespective of the delay the verdict was correct. But it went on to say that there was little that it could do about delay since this was due to a lack of court staff and since the only remedy it could give - a retrial - would merely serve to increase the backlog of cases and delay justice even further. The answer to this line of reasoning is pretty obvious: if the courts were to order retrials in such cases the legislature would be forced to take action to provide the facilities for more efficient and speedy justice; but in the absence of such a prod from the courts they will, of course, do nothing. The situation today is much worse than in 1948. The first instance trial of participants in the May Day riots of 1952 has, to the best of my knowledge, not yet ended. A good deal of this delay appears to be due to a cumbrous system of detection and of preparing indictments by the police and the procurators. The delay in justice is also partly due to the slowness of the judges in making up their minds. For example, in the Sunakawa case the fifteen Supreme Court judges were reported to have conferred twenty-five times between the end of the hearings and the handing down of their judgments. The delay is also partly attributable to what many consider a violation of a. 39 - 'No person... shall... be placed in double jeopardy'. The courts have decided that the latter guarantee does not prevent the State from appealing against an acquittal (During the drafting the Japanese unsuccessfully tried to word the provision in this manner). But if it is not a safeguard against this, it is a safeguard against very little. Such appeals by the State against acquittals are in fact very common. This means that large periods of a person's life may be blighted by criminal proceedings.

Similarly the courts have undermined the guarantee which restricts entry and search. Articles 33 and 35 provide as follows: a. 33. 'No person shall be apprehended except upon warrant issued by a competent judicial officer which specified the offense with which the person is charged, unless he is apprehended, the offense being committed!'


a. 35. 'The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33 ...'. This is obviously an attempt to provide the principle to which we are accustomed, namely, that entry and search must be by warrant except at the moment of arrest. The Japanese Excise Offences Law is a prewar statute still in force. It authorises search and seizure by excise officers without warrant where an offence is occurring or has occurred. The court found such search constitutional even though made independently of an arrest. It held that 'except as provided in a. 33' did not mean 'except where a person is apprehended while he is committing the offence' but that it meant 'except where an offence is being committed'. In the case in question the mere presence of an illegal still on the man's property constituted the crime in process. He was arrested after the search, as a result of it.  

Article 34 of the Constitution provides that no person shall 'be detained without adequate cause' and that 'upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel'. In the words of Professor Walter Gelhorn (the celebrated U.S. constitutional lawyer) after his visit to Japan, this constitutional requirement has degenerated almost into a 'ceremonial formality', instead of growing into a strong bulwark against the possibility of oppression.

The Japanese Habeas Corpus Law of 1948 provides that a person whose physical freedom has been restricted other than by a lawful and proper procedure may apply for a writ of habeas corpus. Unfortunately the Supreme Court has, under its rule-making power, made a rule which gravely constricts this statute. Article 4 of the Habeas Corpus Rules provides that an application for habeas corpus may be made only where the restraint is either patently without authority or patently and seriously violates a form or procedure established by law. A rule framed in this manner badly undermines the effectiveness of habeas corpus as a means of discovering by judicial process whether restraint is proper. Restraint may often seem to be entirely lawful. But, as Professor Gelhorn says, 'when no other suitable appellate procedures remain available, an application for habeas corpus has in some other countries been the way to summon the courts to their historic mission of delving below the

In 1952 the Supreme Court refused to entertain a habeas corpus application made on behalf of war criminals who were held in Sugamo prison in accordance with the terms of the Peace Treaty. The applicants contended that the Treaty could not be enforced as against them, because it conflicted with the Japanese Constitution. The Court refused to consider the matter saying that since the Governor of the prison was acting in accordance with the Treaty and the related statutes he was not imposing obviously improper restraint on the prisoners. The dissenting judges pointed out very effectively that this all but nullified the Habeas Corpus Law. The prisoners had no means, other than habeas corpus, of testing the validity of their imprisonment.

A similar disinclination to give habeas corpus its proper breadth was evident in a deportation case in 1958. A three-year-old Korean child born in Japan was about to be deported to Korea with her mother. The deportation order against the child was alleged to be invalid. The Court said bluntly that invalidity was not patent and hence no further judicial examination of the matter was appropriate.

It would be unfair to give the impression of complete gloom regarding the judicial enforcement of rights guaranteed by the Japanese Constitution. Admittedly in its seventeen years of existence the Supreme Court has never once found a statute unconstitutional, despite what some people would consider the considerable temptation provided by the legislature. Nevertheless in the case of two articles, the Court has given some encouraging decisions. It has set aside convictions which rested on confessions made under duress (a.38). It has also, in interpreting statutes giving effect to a.17 ("Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of a public official"), bent the wording of the statute considerably in the interests


33. Saikōsaibansho Hanreishū (Minji), Vol. 8, No. 4, p. 848.

34. Ibid., (Minji), Vol. 9, No. 10, p. 1453 ff.

of the private citizen. Take, for example, the following case. A policeman, wearing his uniform, but not on duty, trumped up a charge against a person so that he might search him and in so doing rob him. During the search he collected all the man's belongings including his purse and then made as if to escort him to the police station. En route, he attempted to abscend. His victim pursued him shouting 'Stop thief' and was shot dead by the policeman. His widow sued the municipality for compensation under the State Compensation Law whereby it was liable for 'damage inflicted unlawfully by public officials, deliberately or by negligence, in the execution of their duty'. Although the policeman was certainly not acting in the execution of his duty the Court argued that his actions had the externals of an execution of duty and that compensation was therefore payable.

In the Case of acquisition of private property by the State, however, the courts have weakened the guarantee of 'just compensation'. Constitution a. 29 (iii) provides that 'Private Property may be taken for public use upon just compensation therefor'. In the land reform carried out in 1946 on the initiative of the Allied Powers whereby more than one third of the agricultural land was acquired and redistributed, the compensation provided was contemptuous - equivalent to about half the value of the annual crop which it produced. The Supreme Court sustained the legislation, reasoning that compensation was fair if it were 'a proper sum rationally calculated on the basis of a value which could be considered to exist under current economic conditions; it need not always conform completely to such value'.

**Administrative Machinery for the Protection of Human Rights**

In 1948 in the endeavour to ensure that the rights specified in the Constitution were not merely guaranteed, but also enjoyed, administratively...
trative machinery was set up, charged with the protection of human rights.

Presumably under the influence of MacArthur's headquarters, on 15 February 1948 (shortly after the new Constitution came into effect) a Human Rights Protection Bureau was set up in the Ministry of Justice. Although those responsible for this innovation were probably influenced by the existence of a Civil Rights Section in the United States Department of Justice, the matters the Japanese bureau deals with are somewhat different and include the investigation of violations of human rights, the collection of information on human rights problems, the promotion of the protection of human rights in the community, matters relating to the Human Rights Protection Commissioners (v. infra), habeas corpus, legal aid to the needy etc. 41 It has (1960) a central staff of 16 42 together with an additional 200 in the Human Rights Protection Sections in the regional offices of the Ministry. The head of the bureau is traditionally a lawyer from private practice.

Also dating from 1948 are the honorary Human Rights Protection Commissioners in cities, towns and villages. Their functions as described in the relevant statute 43 are roughly parallel to those of the Bureau. These Commissioners are nominated by the mayor (after consultation with the municipal council) from 'inhabitants entitled to vote at municipal elections (for which there is universal franchise - D.S.), of high character, knowledge and judgment, conversant with social reality, and knowledgable about the protection of human rights, who are social workers, educationalists, journalists, etc. or are members of a lawyers' association or of an association of women, workers youths etc. whose immediate object is the protection of human rights or which supports human rights'. 44 Selection is then made from among such nominees by the Minister after consultation with the respective Prefectural Governor, Bar Association and the Prefectural Council of Human Rights Protection Commissioners. Commissioners serve for a term of three years but are frequently reappointed. Their occupational break up (1960) is as follows: agriculture and fishery, 26%; religion, 14%; trade, 10%; civil

41. Homusho Setchihō, a. 11.

42. Cf. a central staff of 25 when originally established in 1948.

43. Jinken Yogo Insho 1949 (as amended by Law 319 of 1959), a. 11.

44. Ibid., a. 6
service. 9%; lawyers, 7%; educational, 7%; clerical, 7%; officials of organisations, 4%; journalists, 2%; others, 13%. Of these, women constitute only 7.5% but this proportion is on the increase. The Minister after consulting the appropriate Prefectural Council of Human Rights Protection Commissioners, may terminate the appointment of a Commissioner for action contrary to the responsibilities of his office, neglect of duties, physical or mental incapacity, or conduct unbecoming a Commissioner. 45

The Commissioners are grouped into some 300 Regional Councils which in turn are organised into 49 Prefectural Councils. There is also a national council of Commissioners which is convened by the Minister annually.

The finance provided for these activities is small in comparison with the task. For example, the amount allocated in the 1960 national budget was ¥332m (¥1, 000=£sg 1), of which ¥8m was for legal aid and ¥15m was for the activities of the Commissioners (mainly travel and out-of-pocket expenses). Many municipalities, however, provide some financial assistance for the activities of the Commissioners. Such local assistance probably amounts to more than that provided by the central government.

The Commissioners are very active in the field of propaganda, organizing meetings, lectures and discussions etc. on human rights problems.

Legal aid to the needy is administered by the Bureau. In the two years 1958-59 such assistance was given in 677 cases.

The Bureau is also in close touch with the Human Rights Committee of the United Nations Economic and Social Council to whom the Director periodically reports on Human Rights in Japan.

The types of complaints arising, and the manner in which they are brought to the Bureau and disposed of by it, are shown in the following table:

45. Ibid., a. 15.
### Activities of Human Rights Protection Bureau 1954-55

<table>
<thead>
<tr>
<th>Status of Accused and Nature of Violation Alleged</th>
<th>Allegations Received by Bureau</th>
<th>Origin of Allegations Received in 1959</th>
<th>Manover in Which Allegations Disposed of during 1959 (includes cases carried forward from preceding years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Citizens:</td>
<td></td>
<td></td>
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<tr>
<td>White slavery</td>
<td>225</td>
<td>228</td>
<td>272</td>
</tr>
<tr>
<td>Cruelty, driving people hard</td>
<td>208</td>
<td>247</td>
<td>482</td>
</tr>
<tr>
<td>Mra-nachibi (Village boycott)v</td>
<td>119</td>
<td>132</td>
<td>138</td>
</tr>
</tbody>
</table>

Consultations by citizens with the Bureau on matters involving their Human Rights

V. infra p. 67
Only two of the categories in the Table call for elaboration:

Mura-hachibu is a boycott by the village of one of their number for such acts as causing a fire, immorality, non-participation in village working parties or levies, breaches of village agreements or regulations, failure to accept arbitration by the village, reporting the crimes of villagers to the central authorities, engaging in litigation disadvantageous to the village, failing to vote for the hamlet's candidate in a village election, etc. The boycott may include withholding the offender's food ration, his supplies of fertilizers and seeds; refusal to sell him daily necessaries or to let him use communal tools and the communal rice mill; exclusion from the local youths' or women's society and from local ceremonials. The offender's family is also likely to be similarly treated.

'Violation established but no action taken' is defined as follows: 'The facts of a violation of human rights are established, but, taking into account the personality, age and circumstances of the offender, the lightness of the offence, and the circumstances surrounding it, and the offender's subsequent attitude of mind, the matter is disposed of without prosecution, warning or other action'.

In addition to the roughly 100,000 consultations per annum between individual citizens and the Bureau there would be about twice this number of consultations between individual citizens and Commissioners.

An interesting recent trend is that whereas the annual number of complaints against public officials is decreasing, those against private citizens are on the increase. Numerous among the latter are complaints of defamation and invasion of privacy by the press and radio, group violence attending labour disputes, and public nuisance. There are many instances where the local Commissioners have been able to solve public nuisance problems where all other approaches have failed. A good example of this occurred in the town of Bizen in Okayama prefecture. The smoke from a local factory was so bad that the inhabitants could not hang out their washing and were unable to open their windows even in heat of mid-summer. Complaints to the Department of Health, the police, and the municipality brought no relief. The local Human Rights Protection Commissioners then took the matter up with the owner of the factory and induced him to replace his existing coal furnace with an oil furnace, the Commissioners using their good offices locally to secure him a low interest loan to finance the conversion.
The Bureau has no power of compulsion in its investigations. On the other hand, there are no legal restrictions as to when it should institute an investigation. It acts mostly on the basis of individual complaints but also acts where it notices in the press or on the radio cases meriting investigation. Unlike the U.S. Civil Rights Division (which uses officers of the F.B.I. for its investigations) it relies solely on its own central and regional staff, frequently assisted by the Commissioners. As the above Table demonstrates, the object of the Bureau is not the punishment of offenders; it is rather the abatement of the violation, the prevention of its repetition, at the provision of relief. The Bureau claims that, for this reason, it generally receives the cooperation of those involved, and finds it much easier to arrive at the truth than in the case in criminal investigations. The prior consent of the Minister of Justice is required before the Bureau may issue a warning to, or prosecute, a public servant. It will be noted from the Table above that such action is rare.

The Bureau also frequently investigates violations of human rights at the request of Standing Committees of the Diet.

It is hard to assess the impact on the Japanese of the idea of human rights embodied in the Constitution. The words of the Director of the Human Rights Protection Bureau (1960) are, however, worth quoting:

As I see it from the Bureau, respect for fundamental human rights is as a concept widely diffused among the nation, as are the words, 'human rights' and 'respect for human rights'. Respect for human rights, however, cannot yet be said to have become part of people. I am afraid that among the intelligentsia and the classes which provide leaders there is a tendency for violation of human rights and human rights problems to be used as a stick with which to beat one's adversary or the organisation to which he belongs. One example of this is, as everyone knows, where in labour disputes, etc. one union is fighting another. In such circumstances, whereas one's adversary's violations of human rights are listed with neurotic precision, one is

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almost indifferent to the violation of human rights by members of one's own union. There is not yet a wide feeling that protection of human rights means that while protecting one's own human rights one takes care not to transgress another's. On the other hand, there are many people who are completely ignorant regarding human rights. We have a mixture of undue sensitivity to human rights on one hand and complete indifference on the other. 47

47. Evidence of S. Suzuki, pp. 11-12.
DISSOLUTION OF THE JAPANESE LOWER HOUSE

DISSOLUTION OF THE JAPANESE LOWER HOUSE

by

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'Dissolution' is considered a worked out lode by United Kingdom, Commonwealth, and European political scientists; the International Bibliography of the Social Sciences - Political Science lists only five articles on this subject over the period 1951-63 and two of these were by Japanese writers. As will become apparent from the present paper, these latter constitute but a small proportion of the spate of articles written by Japanese scholars on the subject during this period. Furthermore, the few United Kingdom and Commonwealth writers who find dissolution worth considering tend now, as in the past, to concentrate on the single question, under what exceptional circumstances if any may the Crown refuse a Prime Minister's request for a dissolution.¹ But in the Japanese articles and the political controversies which gave rise to them the discussion was much wider - the entire case for and against a power of dissolution on the part of the executive was argued in painstaking detail. Moreover, in Japan dissolution appears to be regarded, by observers and participants alike, as important politically.

As a case-study let us consider the most recent dissolution, that of 27 December 1966, as it appears in the pages of the Asahi shimbun newspaper (and hence, no doubt, as it appeared to the Asahi's four million daily readers). At some risk of tediousness we shall sometimes quote the Asahi and the principal participants in some detail; for we are dealing with a political culture which is strange to all of us and the atmosphere is often best conveyed by the actual words used.

The 'Black Mist' Dissolution, 27 December 1966

The House of Representatives had been elected on 21 November 1963 and in the absence of a dissolution the tenure of Members would have terminated by effluxion four years later. In Japan, as in Great Britain, it is customary to terminate a Parliament by dissolution rather than suffer it to end by effluxion and in recent years such end-of-term dissolutions have usually occurred at about the end of the third year. Accordingly by September 1966 the Asahi was reporting that 'the autumn wind of dissolution' was blowing daily through the political world, that Members had deserted the capital to electorate in their constituencies and, in contrast with other years, were not volunteering for junkets overseas. Despite statements by the Prime Minister and those close to him that dissolution was not contemplated, the Prime Minister was himself touring the country. According to the Asahi, the Ministerialist leaders were unable to decide whether to dissolve before the New Year or not. Some felt that if they delayed they would be adversely affected by the deterioration of the situation in Vietnam, by increased cooperation between the Opposition parties and by further increases in consumer prices. Others argued that a dissolution before the New Year would create a political vacuum at an inopportune time (The preparation of the annual budget is usually completed in December) and that more time was required for recent scandals to die down, for improving the Prime Minister's image, for coping with the price spiral and for the effects of economic recovery to permeate beyond big business.

In October the Socialists succeeded in organising a united front of the four Opposition parties, whose purpose was to force a dissolution by acting in concert in the Diet to keep the Government under constant attack for its responsibility for the 'Black Mist' (the rich crop of scandals which

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2. Four Japanese Parliaments have terminated by effluxion - in 1902, 1908, 1912 and 1942.
5. Asahi shimbun, 4 September 1966.
commenced with the prosecution of a Ministerialist backbencher, TANAKA Shōjoji, in August and the forced resignation of the Minister for Transport, Arafune, in September). The Government, accordingly, was faced with the prospect of mounting pressure from the Opposition parties — in the remaining Committee sessions of the current Session, in the forthcoming Session convened to pass a supplementary budget and in the regular Session commencing in late December in which the annual budget is brought down. The Asahi predicted that, since the Government, faced with such pressure, could not hope to weather the regular Session, the Prime Minister would reconstruct the cabinet immediately after his re-election as Party president at the beginning of December and go to the country later in December, or in January; the prospect of office in the reconstructed cabinet might restrain some members of the Party from voting for Satoo's rival in the presidential election.  

Activity in the constituencies had now reached such a height that the Prime Minister on November 2nd besought both the office-bearers and the rank-and-file of his party not to indulge in any statements regarding dissolution. On November 5th he replied to a questioner that he neither was, nor should be, thinking of dissolution.

In the Diet Steering Committees negotiations between the Government and the Opposition parties on the time-table of the forthcoming Session broke down. The Opposition parties required that the Session should be long enough to ensure adequate discussion of the 'Black Mist'. The Government, however, insisted that the Session should be short and that the supplementary budget must have priority. The Opposition then announced their intention to boycott the Session.

Satoo was re-elected as Party president on December 1st and on December 3rd reconstructed his cabinet. At a press conference on December 5th in answer to questions he stated that with the reconstruction of the cabinet the situation had changed since his previous statement and he had now to consider dissolution; he would not dissolve during the present session but would determine the timing of the dissolution before the term of Members expired the following November in the light of public opinion and the progress of Diet proceedings. He deplored the tendency to make dissolution a tool in the party struggle: 'The people are the sovereign. To say 'We shall

force a dissolution', or for me to say 'I will not dissolve' is likely to produce an argument in which from first to last the essence of the dissolution problem is misconceived'. When asked whether he was considering fixing the date of dissolution by agreement with the Opposition he replied that this would be improper and that dissolution must be carried out in an open manner (The Socialists had already stated that they would have nothing to do with any agreement to dissolve in January7). When reminded that the Opposition would try and prevent the passage of the supplementary budget, Satoo replied 'can't they wait ten days or a fortnight' [sc. for an announcement of the date of dissolution - D.C.S.S.].

The Asahi interpreted the Prime Minister's answers as indicating his feeling that 'depending on the attitude of the Opposition dissolution may take place this year and that, in view of the increasing demand of public opinion, if he does not dissolve this year he must do so very early in the New Year'. It saw in his remarks 'the feelings of a Prime Minister who is wrestling with the question how, in the midst of a very serious political situation, he can snatch an opportunity to dissolve on the basis of his own initiative'.

Although in the past the Socialists had contested the legality of measures passed by the Diet while they were boycotting proceedings, the Government calculated that they would not do so on this occasion, since the principal measure in the forthcoming Session was a supplementary budget to enable higher wages to be paid to public employees. The Government therefore opened Diet proceedings on December 15th. The Opposition did not attend. The following day the Speaker offered to mediate between the parties in order to 'normalise' Diet proceedings and a conference of the Secretaries-General of the parties was held on December 17th. The Asahi's report (18 December 1966) of this conference is as follows:

At this conference the Socialists and the Democratic-Socialists demanded that the date at which the dissolution would take place should be stated plainly. The Socialists in particular insisted that the Government should promise to dissolve the House, if not this year, then immediately the Diet resumes after the New Year recess at the latest.

The Liberal-Democrats on the other hand insisted that they could not state plainly when they would dissolve. They accepted, however, the position of the Speaker's mediation proposal which read: 'The Ministerial party shall carefully examine and take into consideration the contentions of the Opposition parties regarding resolving the political situation'. According to the Secretary-General of the LiberalDemocratic Party, Mr Fukuda, 'Our party does not regard this sentence as making it clear that we intend to have an early dissolution. The Opposition parties, however, are free to interpret it as suggesting an early dissolution. It can be interpreted either way'.

It is inevitable that it will be taken as suggesting an early dissolution.

At the conference some progress was made with a proposal to append as a confidential note to the Speaker's proposal the Speaker's opinion that: 'In my opinion it is a plain fact that dissolution will take place either when the supplementary budget is passed, at the beginning of the regular Session of the Diet, to be convened on the 27th, or just after the New Year recess (about January 20th). When, however, Mr Fukuda consulted the Prime Minister on this point, the latter instructed him to add the sentence 'The Opposition parties may interpret it in this fashion if they like'.

One can say therefore that the conference broke down because of the Prime Minister's firm resolve to preserve to the end his leadership in the matter of dissolution. Nevertheless one can say that in the course of the discussion between the parties the Liberal-Democrats did try to suggest that they were thinking of an early dissolution, although they would not say so directly.

Insofar as Diet proceedings, as a result of the breakdown of the conference, have become completely bogged down, the opinion has become strong in both the Ministerialist and the Opposition parties that, even though the present session of the Diet may somehow be weathered out with the Liberal-Democrats alone participating, there is almost no prospect of normal proceedings at the regular session and that in fact an early dissolution has become unavoidable.
The Asahi's explanation (17 December 1966) of the Government's attitude was that 'Among the Ministerialist leaders the view has been pretty firm that they should dissolve in January after the New Year recess when they had passed the supplementary budget and prepared the annual budget. But, even though it would achieve this result, they are strongly opposed to a dissolution in the form of a 'dissolution by agreement' or a 'dissolution forced on us'. Accordingly at this juncture they wish to avoid stating plainly the date of dissolution'.

The supplementary budget was passed on the last day of the Session, December 20th. For the first time in Japanese history, the Opposition had boycotted the entire Session. The following day, in response to a request by his colleague, Mr Fukuda, 'to tell us your intentions regarding dissolution as frankly as possible since members of the Party are on tenterhooks over the issue' (21 December 1966; evening edition), the Prime Minister made a long statement to a meeting of Liberal-Democrat Members of both Houses. The following extracts are from the summary of it which appeared in the Asahi (21 December 1966; evening edition).

What are the reasons for the Opposition parties' refusal to participate in Diet proceedings? They say that we should tell them the date on which we shall dissolve and that we should give them a definite promise regarding it. It is this demand by the Opposition and not the Session just ended that should be called 'extraordinary'. In the past there have been instances of dissolution by agreement between the parties. News and information about these, however, slipped out inadvertently. They were the outcome of behind-the-scenes deals. An Opposition has never before openly demanded an explicit statement of the date of dissolution. This is the issue ....

My attitude has been that after passing the supplementary budget we should begin to prepare the annual budget and that I should decide the question of dissolution in the light of public opinion and the progress of proceedings in the Diet. Yesterday (December 20th) I decided my basic attitude regarding the preparation of the annual budget. We have now come to the stage where I must think seriously about dissolution. Dissolution should be carried out after ascertaining public opinion - in accordance with the popular will, not as a result of the machin-
ations of the Opposition parties .... A dissolution is a serious matter. We should not yield before the plots and pressures of the Opposition parties. We have now reached the stage where we should think seriously about the question of dissolution together with and at the same time as the preparation of the annual budget. The time is drawing near when the Liberal-Democratic Party must stand at the bar and be judged by the people.

Most of this statement was, however, an attack on the Opposition for boycotting the Session: 'The way of parliamentary politics is to participate in parliamentary proceedings and appeal to the people by one's votes in the House'. The Ministerialists thereby sought to make this the issue for the election campaign.

According to the Asahi (22 December 1966) this statement appears to have been generally accepted as an indication that dissolution would take place at the beginning of the regular session of the Diet commencing on December 27th (In Japan to dissolve when the House is not in session would be unprecedented). It was greeted by a statement by the Vice-Chairman of the Socialist Party that 'the Satoo Cabinet has capitulated in the face of the contentions of the four Opposition parties centred on the Socialist Party, and in the face of public opinion'.

Satoo then asked the leaders of the Opposition parties for the 'normalisation' of Diet proceedings (i.e. the attendance of their parties) at the forthcoming Session. To this end they met on December 24th. The following is from the account of this meeting given in the Asahi (24 December 1966; 8).

8. It is a precedent unbroken to the present day that dissolution shall take place only when the Diet is in session. The dissolution of 1939, for example, was delayed until the Diet reassembled, because there were doubts as to the propriety of dissolution other than during session. This custom arose no doubt because dissolution, over the formative period, was regarded as the abnormal way of terminating a Diet - the result of a dispute; otherwise a Diet terminated naturally by efflux of time as happened in 1902, 1908, 1912 and 1942. Ex hypothesi such a dispute could occur only during session.

Compare this Saphire convention with Fox's assertion on 12 January 1784, in support of his famous Motion, that dissolution during a Session is unconstitutional (The Parliamentary History of England from the Earliest Period to the Year 1803, London, Hants, 1815, vol.24, p.281). Fox supported this assertion with a reference to a pamphlet by Lord Somers in which the latter 'supported his opinion on an Act of King Richard II'. I have not, however, been able to track down this pamphlet although reference was also made to it by Lord Holland and Lord Howick during the debate in Parliament on the dissolution of 1807 (Cobbett's Parliamentary Debates, vol.9, pp.687 & 690). Heam points out in support of Fox that for the eighty years before 1784 Parliament had died a natural death either by effluxion of time or by the demise of the Crown (W.E. Heam, The Government of England: Its Structure and Its Development, Melbourne, 1886, p.160).
evening edition) under the headline 'Understanding Reached that Dissolution will take place on 27th'.

Tsujii (Koomeitoo). Will dissolution be on 27th as reported?
Sato. It is unreasonable to expect me to speak clearly on this matter. Even within the Liberal-Democratic Party all I have said is that we have come to the time when we must think seriously of dissolution.
Sasaki (Socialist Party). The Prime Minister's utterance at the Liberal-Democratic Party caucus meeting has been accepted in the Liberal-Democratic Party and by public opinion to mean dissolution at the beginning of the Session. Cannot the fact that the Prime Minister doesn't deny this be taken to mean that he accepts this? Sato is not the kind of man who would do such a thing as dissolve by agreement with the Opposition parties.
Nishio (Democratic-Socialist Party). Even though he won't speak as clearly as that isn't it enough that he has said that there will be a speedy dissolution? The Prime Minister recently said that, as regards dissolution, he would watch and consider public opinion. The trend of public opinion is that there will be a dissolution on 27th and it accepts this. The three of us are certain that the Prime Minister has decided on 27th. As regards the dissolution, isn't this enough for us?
Sato. During the special Session it was remarks about dissolution that led to the breakdown in communication between us. This being the case, isn't it sufficient that I say no more than I have said now? I can't say clearly when. However, at yesterday's press conference with overseas correspondents, when asked the date of dissolution I said 'Almost all the Japanese newspapers say 27th'. Please judge from this.

The Prime Minister smiled at these remarks by the Socialist Party and Democratic-Socialist Party leaders but showed no particular disagreement with what they said.

After twenty minutes' discussion, the Prime Minister said 'We shall next meet on the battlefield' ....
The dissolution duly took place on December 27th.
To United Kingdom and Commonwealth readers the above case-
study may reveal some unexpected features.
It was Churchill who spoke of 'the odour of dissolution'
being in the air in the months preceding it.9 But the Asahi's
'autumn wind of dissolution' blowing daily through the politi-
cal world some three months before the event is something much
more pervasive. Indeed the 70% of the Members of the Lower
House whom, the Asahi tells us (30 October 1966), it caused to
return to their electorates and squander their campaign funds
in early October, call to mind those 'oozy woods' which, on
encountering a more celebrated West Wind of autumn, 'tremble
and despoil themselves'. It will be argued elsewhere in this
paper that, because of the high cost of electioneering in
Japan, once dissolution is in the air very strong pressure is
exerted on a Prime Minister to name the day by Members of the
Diet who have jumped the gun and whose pockets, accordingly,
are running empty. An indication of such pressure in the
present case was Fukuda's appeal to the Prime Minister on Dec-
ember 21st (v. supra, p. 96).

Another unusual feature is the great significance which
both the Prime Minister and the Opposition parties attached to
creating the impression that the dissolution was the product
of their initiative. In effect it appears to have been ex-
tracted from the Government by the Opposition parties under
the threat of continuing the boycott into the regular Session.
The Prime Minister availed himself of several devices to save
face: he suggested that he was dissolving because, the annual
budget having been prepared (It had not, in fact, been prepar-
ed) there was no urgent task outstanding; he did not actually
announce the date of dissolution until the day preceding it;
he made the somewhat surprising suggestion that the actual tim-
ing was in response to public opinion which, paradoxically,
wished for dissolution on December 27th rather than another
date but at the same time was satisfied with the Government's
record.10

10. Strange to say, Japanese public opinion pollsters do trouble the citizen with technical questions in such a
field. Probably the most recent information available to the Government would have been the poll conducted
by the Asahi on November 21st and 22nd (published on November 30th and December 1st). The results, as one
might expect in a poll of this nature, were rather strange. Although a plurality of 46% gave the Liberal-Dem-
ocrats as their favourite party, a plurality of 46% favoured a general election, a plurality of 44% (in answer to
a separate question) wished the cabinet to resign, and only 52% (in answer to a separate question) supported the
Satoe Cabinet (cf. 38% who did not support it)!
That on December 21st Satoo coupled his virtual decision
to dissolve with an attack on the Opposition for boycotting
proceedings is hardly surprising. Most Prime Ministers would
enjoy an issue of this nature, rather than just their policies,
on which to fight an election. Utilisation of an issue of
such a nature does, however, accord with the preoccupation of
Japanese Prime Ministers in recent years with the need for a
'just cause' for dissolution - a subject which we shall touch
on later in this paper.

Let us briefly trace these and other influences in the
history of dissolution in Japan since the inauguration of the
Diet in 1890.

**Dissolution under the Meiji Constitution**

The classic occasion where a unilateral dissolution of a
representative body by the executive is permissible in terms
of democratic theory is where a hostile majority in the former
is impeding the implementation of the latter's policies and
where at the same time there are reasonable grounds for believ-
ing that the electorate will support the executive. In such
circumstances it is a device whose function is to ensure that
the representative organ remains truly representative. A cor-
ollary of this function is that, should the election precipi-
tated by the dissolution return a majority hostile to the cab-
inet, the latter should resign: it should not be able to dis-
solve the representative body a second time. Nevertheless,

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II. A similar justification would apply to a dissolution carried out on the return to normalcy after a war (e.g. the Shidehara Cabinet's dissolution of 1945), on the adoption of fundamental constitutional changes (e.g. the 1st Yoshida Cabinet's dissolution in 1946 following the enactment of the New Constitution), or where cabinet appeals to the electorate in the face of obstruction by a non-elective upper house (In fact, however, the occasions when the Japanese Government and the Lower House were, together, at loggerheads with the Peers were such that the Government always chose to modify its policies and give way).

III. In the ferment of ideas preceding the drafting of the Meiji Constitution this was the stand of Okuma and some of the liberals (C. Fukase, 'Shingin no kaizen - Nihon no gosho shiteki koosatu' in J. Tanaka, Nihon-kokuseki to shisei: miyazawa shojo yoshi tensai kaseki kinen, 1962, vol.4, p.181). It was not, however, the philosophy of the officials who drafted and then operated the Constitution. Its spirit was not popular sovereignty but, as Professor Miyazawa has succinctly put it, 'A strong flavour of divine right, superimposed on the principle of constitutional monarchy characterising the nineteenth century German constitutions' (quoted ibid., p.186). ITCC Miyoyo, who as an assistant to his famous namesake Prince Itô was closely associated with the drafting of the Constitution, expressed himself at that time (1891) as follows:

In a constitutional monarchy the Diet is empowered to give its sanction in only one section of the task of administration. It follows that even though cabinet should not receive the assent of the Diet in this single sphere cabinet is not prevented, in its task of assisting the Emperor, from carrying out other tasks of administration. Bismarck, for example, continued in office for a long period without a majority in the Lower House and, having once dissolved the latter, he did not consider it inconvenient for the cabinet to remain in office even though the newly assembled House did not change its attitude. Moreover, for the reason stated above, there was no one in the whole country who denounced his conduct or considered it illegal. A fortiori in Japan if cabinet dissolves the Lower House because of a disagreement with the Diet on a financial matter, and cabinet knows that at the next election the people will agree with the outgoing Diet, then it can dissolve it again - two, three or four times. This is because the administration of this country comprises many things besides finance. Who, because of the part, would abandon the whole field of admin-
istration to the majority party in the Lower House? (Quoted ibid., p.186).
when Prince Itō in 1893 dissolved the Lower House (in order to silence discussion prejudicial to current treaty negotiations) and the resultant election returned a hostile majority, he dissolved again only nineteen days after the new House assembled. Again in 1898 he dissolved a newly elected House only twenty-one days after it had assembled, when it rejected a Government proposal to increase taxation.

Under the British system the Crown might well refuse a dissolution to a Prime Minister from whom the Lower House is withholding Supply: the Lower House can hardly be expected to make possible a dissolution by granting Supply to a minority Government if there is a potential majority Government available. In Japan, however, the situation was very different. Article 71 of the Meiji Constitution empowered the Government, should the Diet fail to pass the Budget, to repeat the Budget of the previous year. As the table on the following page demonstrates, only in one of the sixteen pre-War dissolutions (that of 1937) had Supply been voted. On the remaining fifteen occasions the Government acting under Article 71 repeated (or had already repeated) the Budget of the preceding year. In the absence of financial worries the Government was able to dissolve as early in the Session as it wished — usually in the first month.

The typical dissolution was a peremptory reply to a hostile House. With the single exception of that of 1919 all the pre-War dissolutions were performed by minority Govern-

13. Spencer Walpole considers that it would be a breach of convention for the Commons to withhold Supply in order to prevent a dissolution. He supports this with the claim that they have only once since 1784 acted in this manner [S. Walpole, Todd's Parliamentary Government in England (1892 ed.), vol. 3, pp. 227 & 218. For the means by which public moneys were expended in 1784 and 1807 see the Chancellor of the Exchequer's statement of 26 June 1807 in Cobbe's Parliamentary Debates, vol. 9, p. 631]. Nevertheless as recently as 1860 the Governor of Victoria refused a dissolution to a Premier who was unable to obtain Supply from a newly elected House (Round Table, vol. 40, 1860, p. 883). The Governor's action in this case was generally accepted as eminently proper. Note, however, in support of Walpole's contention, that the House of Commons in 1919 unanimously, by agreement between the Government and the Opposition, and deliberately enacted legislation renouncing an additional power to prevent dissolution by its control of the purse strings which had been inadvertently conferred upon it by a provision of the Representation of the People Act 1918 to the effect that the cost of returning Officers, which hitherto had been borne by the candidates, should be paid by the Treasury out of moneys provided by Parliament. In moving its repeal the Joint Financial Secretary to the Treasury criticized this provision as putting in the power of the House of Commons, by refusing the Estimate, to prolong its own life and to do away with the old constitutional practice in this country that the right of dissolving Parliament rests with the Crown on the advice of his Ministers' (Parliamentary Debates, Commons, vol. 174, col. 1934, 21 February 1919).

14. Higashi Senryō, Nihon no kokka kyōto, p. 161. The testimony on this point given before the International Military Tribunal for the Far East is misleading (See the testimony of C. Okada in International Military Tribunal for the Far East, Proceedings, p. 17716).

15. As mentioned in footnote 8, above, a dissolution when the Diet was not in session would be unprecedented.
<table>
<thead>
<tr>
<th>Elected</th>
<th>Session Began</th>
<th>Dissolution</th>
<th>Months Since Elected</th>
<th>Date and Method of Acquiring Supply</th>
<th>Cabinet</th>
<th>Circumstances of Dissolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/ 7/90</td>
<td>26/11/91</td>
<td>26/12/91</td>
<td>17</td>
<td>17/3/92* (a.71)</td>
<td>1st Matsukata</td>
<td>The Lower House had refused money for naval construction.</td>
</tr>
<tr>
<td>12/ 2/92</td>
<td>28/11/93</td>
<td>30/12/93</td>
<td>22</td>
<td>6/2/94 (a.71)</td>
<td>2nd Itō</td>
<td>To silence discussion in the Lower House which the Minister for Foreign Affairs considered prejudicial to current treaty negotiations.</td>
</tr>
<tr>
<td>1/ 3/94</td>
<td>15/5/94</td>
<td>2/6/94</td>
<td>3</td>
<td>Not applicable</td>
<td>2nd Itō</td>
<td>The Lower House had carried an address censureing the Government.</td>
</tr>
<tr>
<td>1/ 9/94</td>
<td>24/12/97</td>
<td>25/12/97</td>
<td>39</td>
<td>7/2/98 (a.71)</td>
<td>2nd Matsukata</td>
<td>To forestall a vote of censure by a hostile majority.</td>
</tr>
<tr>
<td>10/ 8/02</td>
<td>9/12/02</td>
<td>28/12/02</td>
<td>4</td>
<td>5/2/03 (a.71)</td>
<td>1st Katsura</td>
<td>To forestall the defeat of a Government proposal to increase taxation.</td>
</tr>
<tr>
<td>10/ 3/03</td>
<td>10/12/03</td>
<td>11/12/03</td>
<td>9</td>
<td>2/2/04 (a.71)</td>
<td>1st Katsura</td>
<td>The Lower House had passed the Address-in-Reply, not realizing that the President had inserted a phrase condemning the Government’s foreign policy. Since a hostile majority was forming, the Government used this as an excuse for a dissolution.</td>
</tr>
<tr>
<td>15/ 5/12</td>
<td>7/12/14</td>
<td>25/12/14</td>
<td>19</td>
<td>28/12/14 (a.71)</td>
<td>2nd Okuma</td>
<td>The Lower House had deleted provision for two infantry divisions in the Estimate.</td>
</tr>
<tr>
<td>25/ 3/15</td>
<td>27/12/16</td>
<td>25/1/17</td>
<td>22</td>
<td>20/2/17 (a.71)</td>
<td>Yosaka</td>
<td>A hostile majority had presented a motion of censure.</td>
</tr>
<tr>
<td>20/ 4/17</td>
<td>26/12/19</td>
<td>26/2/20</td>
<td>34</td>
<td>16/3/20 (a.71)</td>
<td>Hara</td>
<td>To expedite an election under a newly enacted electoral law advantageous to the Government.</td>
</tr>
<tr>
<td>10/ 5/20</td>
<td>27/12/23</td>
<td>31/1/24</td>
<td>44</td>
<td>28/2/24 (a.71)</td>
<td>Kiyoura</td>
<td>To forestall a vote of censure by a hostile majority.</td>
</tr>
<tr>
<td>10/ 3/24</td>
<td>27/12/27</td>
<td>21/1/28</td>
<td>46</td>
<td>15/3/26 (a.71)</td>
<td>Yanaka</td>
<td>To forestall a vote of censure by a hostile majority.</td>
</tr>
<tr>
<td>20/ 2/28</td>
<td>25/12/29</td>
<td>21/1/30</td>
<td>23</td>
<td>10/3/30 (a.71)</td>
<td>Hamaguchi</td>
<td>The Government was in a minority and clearly unable to face the Lower House.</td>
</tr>
<tr>
<td>20/ 2/30</td>
<td>26/12/31</td>
<td>21/1/32</td>
<td>23</td>
<td>14/3/32 (a.71)</td>
<td>Inukai</td>
<td>The Government was in a minority and clearly unable to manage the Lower House.</td>
</tr>
<tr>
<td>20/ 2/32</td>
<td>26/12/35</td>
<td>21/1/36</td>
<td>47</td>
<td>23/3/36 (a.71)</td>
<td>Ogawa</td>
<td>A vote of censure had been moved by a hostile majority.</td>
</tr>
<tr>
<td>20/ 2/36</td>
<td>26/12/36</td>
<td>31/3/37</td>
<td>13</td>
<td>29/2/36 (a.71)</td>
<td>Hayashi</td>
<td>The Government whose legislative programme had been obstructed by a hostile majority sought a mandate for non-party Government.</td>
</tr>
</tbody>
</table>

Post-war

| 30/ 4/42 | 27/11/45     | 18/12/45    | 42                   | 26/3/46 (a.71)                      | Shidehara | 'First G.H.O. Dissolution'. After the passage of SCAP-inspired legislation extending the franchise. |

* The maximum length of a Diet was fixed at four years by the Electoral Law.
ments confronted by an actively hostile majority. Only half the pre-War dissolutions provided the Government with a decided majority - 1894, 1914, 1917, 1920, 1932 and 1936. In 1894 the Government's success was partly due to patriotic feeling caused by the outbreak of war between the date of dissolution and the resultant election; in 1914 and 1920, to Government interference with the elections.

Though he did not abide by this in practice, Prince Ito in his semi-official Commentaries goes as far as saying that 'The dissolution of the House of Representatives is a mode of ascertaining the public opinion from the tone of the newly elected House'. To fulfil this role it is necessary that there be a clear issue presented to the electors for their decision and that the Opposition have the same opportunities as the Government to put its case. This requirement was not satisfied in the following dissolutions. In 1893 no reason was stated for the dissolution. In 1894 the reason given was so vague as to be meaningless. In 1897, 1903, 1917, 1920, 1924, 1928, 1932 and 1936 the Government gagged the Opposition by dissolving either to forestall a vote of non-confidence or before the Opposition could state its case. In fact the only occasion where a cabinet, having decided on dissolution, deferred this until the Opposition had had its opportunity to speak, was the Hamaguchi cabinet in 1930.

The first two post-War dissolutions (1945 and 1947) took place under the old Constitution. This was a revolutionary period and almost nothing was done except at the suggestion (or at least with the approval) of General MacArthur, the Supreme Commander for the Allied Powers (SCAP). Accordingly, they do not merit close study. The purpose of the 1945 dissolution was to replace the tainted wartime Lower House as soon as possible with new men elected under the SCAP-inspired legislation extending the franchise. The 1947 dissolution was

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16. It may be argued that the dissolutions of 1924, 1928 and 1936 could, in view of the age of the respective Diets, be more fairly described as 'eluxion of time' dissolution. More important, however, is the fact that they were peremptory, punitive acts by minority Governments.

The 1919 dissolution was purely tactical. The Government was keen to dissolve it, in order to reap the benefits of the newly enacted electoral law, the provisions of which could be expected to work to its advantage. It made the occasion of the dissolution an unacceptable Oppositor bill which it could easily have outvoted (T. Watanebe, Tochon no seiken, Kobunka, 1961, p.169).


18. It is somewhat ironical that SCAP, in delaying the resultant election after the 1945 dissolution so that its directive on 'Removal and Exclusion of Undesirable Personnel from Public Office' could be sufficiently implemented to exclude ultranationalist candidates, caused considerably longer periods (16 and 18 weeks respectively) to elapse between dissolution and the election and between dissolution and the convocation of the new Diet than had ever been the case previously. The supreme Allied body, the Far Eastern Commission, would have had SCAP delay the election even further. This delay also meant that on this occasion the Government had to resort to the notorious Article 71 of the Meiji Constitution for Supply.
carried out in compliance with General MacArthur's letter to the Prime Minister (Mr Yoshida) of February 16th instructing him to dissolve so that 'a new legislative body may initiate and synchronize with the introduction and effectivization of the new Constitution ...'.

Dissolution under the New Constitution

The Drafting of the Constitution

On 7 January 1946 a paper prepared in Washington entitled 'Reform of the Japanese Government System' was approved by the State-War-Navy Coordinating Committee and forwarded to MacArthur 'for his information'. This paper noted that although '... resolutions of no confidence by the Lower House prior to 1931 frequently led to the resignation of a cabinet or of ministers thus censured, such resolutions have also frequently led to the dissolution of the House and a new election which, although it supported the House against the government, was not followed by the latter's resignation'. It concluded that 'The Supreme Commander should indicate to the Japanese authorities that the Japanese governmental system should be reformed to accomplish the following general objectives: ... an executive branch of government deriving its authority from and responsible to the electorate or to a fully representative legislative body ...' If the Emperor Institution were retained a necessary safeguard was that 'the Ministers of State, chosen with the advice and consent of the representative legislative body shall form a Cabinet collectively responsible to the legislative body ...

The story is well known how in February 1946 MacArthur, dissatisfied with the Shidehara cabinet's half-hearted attitude to constitutional reform, caused the Government Section of his headquarters to prepare a complete draft constitution which, with minor amendments, they forced the cabinet to accept. This is known in Japan as the MacArthur Draft.

regards relations between the legislature and the executive it followed 'Reform of the Japanese Governmental System' fairly closely. Whereas the role that it gave to the Diet was 'the highest organ of state power', cabinet was merely the repository of the executive power. It reduced to seventy days the maximum period which could elapse between the end of one Diet and the convocation of the newly elected one (cf. seven months under the Meiji Constitution). It required cabinet to resign on the convening of a newly elected Diet, whereupon the latter would proceed to elect the new Prime Minister. This in effect would prevent the same cabinet's dissolving the House a second time. For, like 'Reform of the Japanese Governmental System', it did give cabinet the option of dissolution as an alternative to resignation. It enjoined cabinet within ten days of the passage of a resolution of non-confidence either to resign or dissolve.

On receiving the MacArthur Draft, the cabinet was required to prepare a Japanese draft embodying its essential features. Cabinet did so and these requirements stand part of the present Constitution which on enactment by the Diet came into effect on 3 May 1947. The Articles in the Constitution as finally enacted (and as it stands to-day) that are relevant to dissolution are the following:

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

Article 40. The Diet shall be the highest organ of State power ....

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

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

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

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23. This was one of the few points on which the Shidehara Cabinet had considered the Meiji Constitution required revision. PH. Appendices Volume, p. 597.
Under the new Constitution the following dissolutions have taken place:

<table>
<thead>
<tr>
<th>Elected</th>
<th>Session Began</th>
<th>Dissolution</th>
<th>Popular Nickname given by Japanese Press</th>
<th>Months Since Election</th>
<th>Cabinet</th>
</tr>
</thead>
<tbody>
<tr>
<td>25/4/47</td>
<td>1/12/48</td>
<td>23/12/48</td>
<td>'NAREAI' ('Collusion')</td>
<td>19</td>
<td>2nd Yoshida</td>
</tr>
<tr>
<td>23/1/49</td>
<td>26/8/52</td>
<td>28/8/52</td>
<td>'NUKIUCHI' ('Sudden Swoop')</td>
<td>43</td>
<td>3rd Yoshida</td>
</tr>
<tr>
<td>1/10/52</td>
<td>8/11/52</td>
<td>14/3/53</td>
<td>'BAKAYARO' ('Bloody Fool')</td>
<td>5</td>
<td>4th Yoshida</td>
</tr>
<tr>
<td>19/3/53</td>
<td>21/1/55</td>
<td>24/1/55</td>
<td>'TEN NO KOE' ('Vox populi vox dei')</td>
<td>21</td>
<td>1st Hatoyama</td>
</tr>
<tr>
<td>27/2/55</td>
<td>20/12/57</td>
<td>25/4/58</td>
<td>'HANASHIAT' ('Agreement')</td>
<td>37</td>
<td>1st Kishi</td>
</tr>
<tr>
<td>22/5/58</td>
<td>18/10/63</td>
<td>24/10/60</td>
<td>'YOYAKU' ('Promised')</td>
<td>29</td>
<td>1st Ikeda</td>
</tr>
<tr>
<td>20/11/60</td>
<td>17/10/63</td>
<td>23/10/63</td>
<td>'MUUDO' ('Mood')</td>
<td>35</td>
<td>2nd Ikeda</td>
</tr>
<tr>
<td>21/11/63</td>
<td>27/12/66</td>
<td>27/12/66</td>
<td>'KUROI KIRI' ('Black Mist')</td>
<td>37</td>
<td>3rd Satoo</td>
</tr>
</tbody>
</table>

* The maximum length of a Diet is fixed at 4 years by Constitution Article 45.

The 'Nareai' ("Collusion") Dissolution, 23 December 1948

The first dissolution under the new Constitution took place on 23 December 1948.

On 7 October 1948 the Ashida cabinet resigned. As a coalition of three parties (Democrats, Socialists and People's Cooperatives) it had from the outset lacked stability; it needed only the involvement of some of its members in the Shōwa denkō scandal to bring it down. Yoshida, the leader of the Democratic-Liberal Party, became Prime Minister. The coalition parties went into Opposition.

Yoshida, leading a minority Government, was eager to go to the polls while the Opposition's involvement in the Shōwa denkō scandal was still fresh in the minds of the electorate. He stated his intention to dissolve as soon as the amendments to the Public Servants Law should have been enacted (SCAP had required these amendments). The Ministerialists, with the support of eminent constitutional lawyers, claimed that cabinet

24. The nicknames used in these headings are the standard titles used by Japanese newspapers and popular histories.

25. Sixty-four officials, Members of the Diet and ministers including eventually Ashida himself were charged as a result of allegations of bribery and corruption by a firm which had received large-scale loans from a Government credit institution.

26. See for example the views of T. Miyazawa (Professor of Constitutional Law at Tokyo University) in the Asahi shimbun, 8 November 1948 and Y. Suzuki in the Nihon shimbun, 14 November 1948 and Yomiuri shimbun, 15 November 1948.
had this power by virtue of Constitution a.7(iii) (v. supra p.105) which, they argued, conferred on cabinet an independent power of dissolution. The Opposition naturally were equally eager to postpone elections for as long as possible. Assisted by the journalism of OZAKI Yukio (an independent, the doyen of the Lower House, who as early as 1891 had argued that punitive dissolution was unconstitutional), but with very little support from constitutional lawyers, the Opposition leaders Katayama (Socialist) and Tomabechi (Democrat) argued that the Constitution empowered cabinet to dissolve the House only in the situation described in a.69, i.e. on the passage of a motion of non-confidence (For Katayama at least, this argument was a volte face: while in office he had advocated a dissolution while the coalition still commanded a majority). Briefly their contention was that, since a.4 provides that 'The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government', a.7(iii) cannot confer a power of dissolution, since dissolution by its very nature is a 'power related to government'. Hence a.7(iii) is to be interpreted as conferring only the power to promulgate dissolutions.

Since a basic principle of the Constitution was that the Diet is 'the highest organ of state power' (a.41), representative of, and elected by, 'the people, with whom resides sovereign power' (a.1), any power on the part of cabinet, the servant, to dismiss the legislature, the master, must be expressly conferred. Only a.69 confers such a power - and to a limited degree.

27. Asahi shimbun, 14 November 1948; Jiji shimbun, 14 November 1948.
28. Osaki was first elected to the Lower House in 1890. His views appeared in substantially the same form in signed articles in the Daiichi shimbun, 3 November 1948, Mainichi shimbun, 10 November 1948 and Yomiuri shimbun, 3 January 1949. In his draft resolution of 11 November 1948 in the House of Representatives (v. Shungin gijii sooran, dai 3-kaai kokkai) and in his speech in the latter on 16 November 1948 (An English translation of the speech is available in the [English language] The Official Gazette Extra, House of Representatives, 3rd Session, no.10, pp.17-26). Osaki went further than the Opposition and argued that, a.69 notwithstanding, cabinet cannot in any circumstances dissolve the House, since the overriding principle of popular sovereignty must prevail.

His 1891 article arguing that punitive dissolution was unconstitutional appeared under the nom de plume Gakudoo in Kokumin no tomo, 13 July 1991.
29. Even as late as 1961, whereas numerous articles and textbooks gave cabinet a wide power of dissolution, only a single article by an obscure scholar could be found supporting the restrictive interpretation of a.7 (Dai 15-kaai kokkai: ryoin hoooi jinkai keigikoku, no.2, 6 November 1951). The latter view, however, prevailed when the subject was discussed at the periodic conference of the Nihon hookakukai (Japan Law Association) in November 1953 (Jichi kenkyuu, vol.39, no.4, pp.94-5). 30. Asahi shimbun, 15 & 22 August 1948.
On 11 November 1948 Katayama and Tomabechi visited Brig. Gen. Courtney Whitney (Chief, Government Section, SCAP), Col. Charles L. Kades (Deputy Chief) and Dr Justin Williams (Chief, Legislative Division) who supported their interpretation. In private the Americans gave their views in some detail to senior Japanese legal officials:

Kades. From the time the Constitution was enacted it has been our view that we should give neither the Emperor nor cabinet the power of dissolution. When the draft of the Constitution was being discussed in the room next to that in which we are now sitting, Lt. Esman argued that the power of dissolution should be given to cabinet. However, we said that this was wrong and did not accept it.

Should cabinet arbitrarily try to dissolve, the Diet need pay no attention to it - nay rather, the Emperor, being sensible, would well realise that he did not have such a power, and if the Government tendered such advice he would probably not accept it. Moreover in such a situation he would first call on General MacArthur.

Williams. The provisions of the Constitution relating to this matter are Articles 4, 7, 41 ("The Diet shall be the highest organ of state power ...") and 69. Anyone who studied the Constitution carefully would realise that the power to dissolve the House of Representatives is limited to the circumstances provided in a.69.

Since Kades was the chairman of the SCAP committee that prepared the original draft of the Constitution and since all amendments by the Japanese during the drafting were effected only with his approval, his views are of considerable interest historically. To the present writer, however, his argument is unconvincing on two grounds: (i) In the debates in the

32. 1st Lt. Milton J. Esman, who with Mr Cyrus H. Peake, and Mr Jacob I. Miller formed the committee within Government Section, SCAP which prepared the section of the MacArthur Draft relating to the Executive (PRJ, Appendices Volume p.819).
33. This account of discussion between the Americans and FUJISAKI Manri is given by T. Satoo (then a principal law officer) in 'Kaisanken rongi no kaiso', Jurinoto, no.217 (1 January 1961), pp.14-19.
Diet in the course of the enactment of the Constitution, the Minister-in-charge specifically stated that the power of dissolution was with cabinet as the executive organ and that dissolution was not confined to the situation described in a.69.34 (ii) The suggestion that the Emperor may refuse to perform an 'act in matters of state' the performance of which has been advised by cabinet, i.e. that he may withhold consent from a decision of cabinet, is patently at variance with the fundamental principles underlying the Constitution and with the interpretation given by SCAP elsewhere.35 Nor is it easy to sustain the suggestion that the Emperor has a role, as 'guardian of the Constitution', to restrain cabinet from committing unconstitutional acts: it was in order to fill such roles that the Constitution provided a Supreme Court. The consensus of opinion among Japanese constitutional lawyers is that the Emperor cannot refuse to carry out cabinet's advice.36

It is possible that this was a new interpretation on the part of the Americans, adopted opportunistically to meet the particular situation. It is doubtful whether they were at this time particularly enamoured of Yoshida and his party. Furthermore they did not wish the Session to end before the passage of the amendments to the Public Servants Law which they regarded as urgent.

Under SCAP's interpretation of the Constitution, dissolution could take place only when the Opposition parties chose to carry a resolution of non-confidence. The Opposition parties had no intention of obliging. They, moreover, proceeded to use their numerical strength to block the amendments to the Public Servants Law - possibly as a safeguard against SCAP's relaxing its interpretation on dissolution. Finally SCAP broke the deadlock by bringing about a compromise in which the Opposition parties secured a few weeks' respite and some other concessions in return for an undertaking to move a motion of non-confidence at the agreed time.37 These agreements were honoured and the vote of non-confidence was duly passed on 23 December 1948. At the ensuing election (23 January 1949) Yoshida's party was returned with an absolute majority.

35. E.g. PRI, p.114.
37. Asahi shimbun, 29 November 1948.
Leaving aside the wording of the Constitution, it is hard to feel great sympathy for Katayama and Tomabechi in the situation under discussion. It is the very situation where, most British writers would agree, it is proper that a dissolution should be available to a minority Government. The Opposition parties had proved that they could not carry on the government and had resigned office. That the Democratic-Liberal minority, were forced to continue in office on the Opposition parties' terms was patently unfair to it and deprived the community of effective government.

The question of dissolution came into prominence with the approach of the Peace Conference. On 29 March 1951 in the House of Representatives MIYAKE Masakazu, on behalf of the Socialist Party, moved that 'the Government promptly tender the advice that the House be dissolved'. The argument on which he laid particular stress was that public opinion should be consulted in advance of the Peace Conference which he argued was a vital issue which would determine the nation's destiny. His speech on this occasion indicates a reversal by the Socialists of their previous attitude towards dissolution. In 1946 their draft Constitution provided dissolution only by referendum. In 1948 they argued that dissolution could take place only in accordance with a.69. Now Miyake argued that the Government of the majority party can dissolve without waiting for a vote of non-confidence.

To someone brought up under the British system, a motion in favour of dissolution is hard to distinguish from a motion of non-confidence in the Government. No Government or Ministerial Member could regard it in any other light. Some

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38. It is interesting, however, that Ramsay MacDonald, when about to be commissioned to form a minority Government with the support of a third party in 1924, did not rule out of court the suggestion that in order to prevent too frequent dissolutions the power of dissolution in such circumstances should rest with the House of Commons (J. Ramsay MacDonald, *What the Three-Party System Involves*, The New Leader, 4 January 1924, p.8).

39. The Katayama-Tomabechi interpretation would have limited a minority Government's power to dissolve the Lower House to an extent not dissimilar to that of the power given by the Australian Constitution (Sect.57) to a Government with a minority in the Upper House to dissolve that House. Under Section 57 the Australian Government can dissolve the Upper House only when the latter has not agreed to a bill passed by the Lower House with a period of at least three months intervening. In neither case can the House concerned be dissolve without a specific concerted act or omission by itself (For examples of dissolutions in Australia under Section 57 see H.V. Evatt, *The King and his Dominion Governors*, Melbourne, Cheshire, 2nd edition 1967, pp.xxii-xxvii, 37-49).


42. At Westminster, the Opposition has on occasion (e.g. 1965 and 1969) chosen for its amendment to the Address-in-Reply a request for a dissolution (C.K. Wang, *Dissolution of the British Parliament 1832-1931*, New York, Columbia U.P., 1954, p.80). But like any amendment to the Address-in-Reply when the Government has a firm majority, this was mere window-dressing.
years later the following explanation was given of the use of such a motion on this occasion:

The first occasion on which the Socialist Party moved a dissolution resolution was March 1951. They had wished to move a motion of non-confidence, but there was a lot of the Session still to go and they wanted to keep a motion of non-confidence for a later opportunity.44

(Governments have sometimes taken the view that the principle that the same issue cannot be discussed more than once in a Session precludes more than one vote of non-confidence per Session).

The motion was defeated. The Socialists next demanded that there be a dissolution at least before the Diet ratified the Peace Treaty. This, however, was emphatically rejected by the Prime Minister on his return from the Peace Conference (September 1951). Opinion within the Ministerialist ranks was, however, by no means united. In particular, to those party veterans who had been released from the operation of SCAP's purge directive since the last elections, a dissolution was the only means of returning to the Diet. The leader of this group, Hatoyama, pressed strongly for a dissolution.45 On the other hand, there were influential Ministerialists who in their eagerness to avoid dissolution now cited with approval the precedent accepted by them with such reluctance in 1948.46

**Report of the Joint Legislative Research Committee**

It was in this situation that the Joint Legislative Research Committee of both Houses on 30 October 1951 embarked on a study of the provisions of the Constitution relating to

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43. This neglects the unsuccessful dissolution motion moved by the Socialists in company with the Kyoodoo minshutoo and Kokumin to on 17 December 1946 (before the new Constitution came into effect).

44. Statement by OZAWA Suets (Liberals-Democrat) in plenary session of House of Representatives, 3 February 1958 (as reported in Mainichi shimbun, 4 February 1969).

45. Yomiuri shimbun, 29 December 1951.

46. See for example the statement of Hirokawa in Asahi shimbun, 1 October 1951.

47. The Joint Legislative Research Committee was a device introduced at the suggestion of SCAP. It was modelled on the Legislative Councils existing in several American States. Its role as described in the Diet Law of 1948 was: (i) to single out specific problems relating to government and to make recommendations thereon to the House; (ii) to make recommendations to the Houses for new legislation or concerning existing laws and cabinet orders; (iii) to investigate and study the laws and regulations pertaining to the Diet and to make recommendations to the Houses for their revision. This device was later abandoned by the Japanese.
dissolution. Some seven months later, on 17 June 1952, after examining the relevant debates in the Diet, the published views of constitutional lawyers and the evidence of witnesses summoned before it, presented its report, the material part of which was as follows:

It is proper to interpret the Constitution as permitting dissolution not only in the circumstances provided in a.69 but also in situations where there are sufficient grounds for an objective judgment that it is necessary, from the standpoint of the operation of democratic politics, to seek afresh the general will of the people. We must, however, ensure that dissolution is not performed as a result of the arbitrary decision of cabinet. For example, it is desirable that some such convention be established as that, where the House of Representatives has passed a resolution on dissolution, cabinet shall respect this and give its advice and approval for dissolution under Constitution a.7. Moreover, should there be a suitable opportunity in the future, a democratic system of dissolution should be established by making express provision with respect to these fundamental matters concerning the dissolution system, and constitutional obscurities should be removed.48

Obviously a compromise between conflicting points of view, this report is hardly a breakthrough in political theory: the window-dressing in the form of pious aspirations for the future does little more than indicate how hemmed in the Committee was by the essential dilemma of the problem. They had to choose one of two paths and they did so with misgivings. Put more colloquially, their report would seem to amount to something like this: 'The Diet is the "highest organ of state power". Therefore, if we look at it honestly, we can't justify giving cabinet a wide power of dissolution. Nevertheless we must; for otherwise there is the likelihood of gumming up the system there would be no way out of deadlocks. We wish we could get around this inconsistency, but we can't'.

As has been previously remarked (v. supra p.110) the need specifically to grant the House a power to dissolve itself by

resolution seems, to British eyes, redundant. Be this as it may, there have been (and are to-day) numerous European constitutions which provide for dissolution by resolution of the House, independent of any vote of censure on the Executive.49

Perhaps the most significant thing about the Report (and about the evidence presented) is how hesitantly and apologetically the case for a wide power of dissolution was put, even by the majority who supported it. The abuse of executive power under the Meiji Constitution, stressed by their opponents, may not have been far from anyone's mind. The justifications advanced in favour of a wide power of dissolution were similar to those advanced in other countries (e.g. where in a coalition the Government is left in a minority by the defection of its partner; or where the Upper House has rejected a vital Government-sponsored measure approved by the Lower House and the Government wishes to increase its majority in the latter to the two-thirds required to override the Upper House50). Another popular argument was in terms of 'checks and balances': dissolution is necessary to prevent the tyranny of the legislature.51

The case against a wide power of dissolution was, however, more interesting because, in part at least, it appealed to Japanese history and conditions. It was stated in greatest detail by TAKAHASHI Eikichi, an influential Ministerialist back-bencher, lawyer and provincial newspaper proprietor. The gist of his argument (omitting his textual interpretation of a.7 which is similar to that of Ozaki and Kades) is as follows:52

(i) If a power of dissolution wider than a.69 were admitted, there would be no way of confining dissolutions to situations where they were, objectively, justified. Cabinet would dissolve in order to secure or increase a majority - i.e. for

49. Today the Austrian (a.29), Bulgarian (a.30), Yugoslavian (a.70) and East German (a.56) constitutions contain such a provision.

50. See for example the evidence of SEKIGUCHI Yasushi (President of Yokohama Municipal University), Dai-i2-kai kokkai ryooin hoooki (Japan Diet Record), no.4, 13 November 1951, pp.1-9.

51. See for example the evidence of KANAMORI Tokujiro (Minister-in-charge of the Constitution Bill during its passage through the Diet), ibid., no.5, 15 November 1951, pp.4 ff.

52. Ibid., no.4, 13 November 1951; no.5, 16 November 1951; no.6, 26 November 1951.
party, political advantage. In Japan the Ministerialists al-
ways stand to gain by dissolution.\(^5\) Hence the requirement in
the new Constitution that cabinet must resign after the new
House is convoked, is of much significance. Although to-
day Cabinet cannot resort to electoral interference to the ex-
tent indulged in previously, nevertheless with the present
trend towards the centralization of police and other powers
the re-emergence of electoral interference is to be feared.
(ii) When an important Government measure is rejected by the
Upper House and the Government does not possess the two-thirds
majority required to override this veto it should not be able
to dissolve; it should abandon the bill, since the latter ob-
viously has little support.
(iii) Where a coalition cabinet splits, the rump cabinet
should not have the power to dissolve; for this would mean
in practice that the minor partner, fearing dissolution,
would support proposals with which it disagreed and which,
accordingly, in conscience it should oppose.
(iv) The power of dissolution is unnecessary. It is merely
a convention or a product of the history of the countries in
which it exists. Japanese local government until quite re-
cently operated satisfactorily without any provision for dis-
solution.\(^5\) Similarly, government in the U.S.A. proceeds sat-
sfactorily without it. Dissolution is an attribute not of
the system of responsible government but of the monarchic
system - a system which under the new Constitution no longer
exists in Japan.
(v) Under the Meiji Constitution, even though the Emperor
dissolved only after hearing the advice of many besides the
Prime Minister, the results were nevertheless undesirable.
Should a wide power of dissolution now be admitted, it would
place greater power in the hands of cabinet, since the other
advisory organs have been abolished by the new Constitution.

Among the witnesses Takahashi's position received strong
support from Ozaki (v. *supra* p107) and ODADA Tomoo (Professor
of Jurisprudence, Tokyo University), particularly on point
(i). Ozaki argued that the master, the legislature, could

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50. This is not completely true, as we have shown in the case of some of the pre-War dissolutions (v.
*supra* p105).

51. What Takahashi means here is that under the pre-War local government system the local executives
had no power of dissolution. The Home Minister, however, had the power to dissolve any local govern-
ment Council (See for example Prefectural Code, Law 84 of 1898, s.161).
never be dissolved by the servant, cabinet, a.69 notwithstanding. He was influenced by the belief that bribery and intimidation on top of lack of political education and the survival of feudal thought patterns among the people (particularly the newly enfranchised women) produced a more subservient House at each election. Odaka feared that since democracy was not adequately developed in Japan, there was considerable danger of cabinet's abusing a wide power of dissolution. He noted that in Germany it was by dissolving and interfering with the subsequent elections that the Nazis came to power.55

These arguments and the Committee's abhorrence of dissolutions performed as a result of the arbitrary decision of cabinet are not surprising in view of the widespread hostility to the authoritarian government of the pre-War period, the low value traditionally accorded in Japanese society to decisions other than those achieved as a result of consensus, and the larger role played by the post-War Japanese Ministerialist back-bencher in policy-making and the legislative process than by his British counterpart. Nevertheless, as might be expected with a problem so difficult of solution, no action regarding the Report was taken by either House or by the Government.

The 'Nukiuchi' ('Sudden Swoop') Dissolution, 28 August 1952

On 28 April 1952 the Peace Treaty came into effect and the Occupation came to an end.

Dissolution was now, of necessity, becoming a practical question. The existing House had been elected on 22 January 1949. A dissolution therefore had to be held before 22 January 1953. Members were accordingly already deserting the House to cultivate their constituencies for the inevitable election. Among the Ministerialists the rift between Hatoyama and Yoshida was steadily becoming deeper. Whereas Yoshida insisted on postponing a dissolution until he had implemented his legislative programme and reconstructed the cabinet, Hatoyama advocated a speedy appeal to the people. Hatoyama's following proved strong enough to thwart Yoshida in his attempts to reconstruct the cabinet. In this impasse, abandoning his original plan of warding off dissolution until November, Yoshida dissolved, without warning, on the second day of

55. Dai-12-hai kokkai ryōin hōki (inshaigiroku), no.5, 16 November 1951, pp.7-12.
the Session, 28 August 1952. His reasoning presumably was that, since there was no chance of his reconstructing cabinet and going to the country with a ministry that was both favourable to himself and attractive in the eyes of the electorate, the longer the dissolution was delayed the more opportunity it would give to the rising Hatoyama group to woo the electorate. Moreover, the quicker the dissolution the less chance for Hatoyama to accumulate electoral funds.

This dissolution was the subject of litigation which dragged on until 1960 keeping the issues before the public eye and evoking numerous articles in learned journals.

In 1948 one of the leaders of the defeated Ashida coalition who visited GHQ and urged on their willing ears the view that the power of dissolution was confined to the circumstances provided in a.69 was TOMABECHI Gizou. A leading member of the principal Opposition party, he now once again emerges as a principal figure in the debate on the extent of the power of dissolution.

Tomabechi did not recontest his seat at the election brought about by the 1952 dissolution, but immediately afterwards went to the courts and sought a decision that the dissolution was unconstitutional. Presumably because there was a

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56. It is appropriate here to note that, admitting that a.7 of the Constitution does empower cabinet to dissolve the House contrary to the latter's wishes, there is one feature of the Constitution which affords a Japanese Government greater freedom in this respect than is the case under the British system: the Queen might well refuse a dissolution until the Government had secured the passage of such legislation (including financial legislation) as was necessary to see the country through the interregnum until the new Parliament could act. Article 64 of the Japanese Constitution was deliberately designed to allow provisional legislation to be enacted by the Upper House, acting alone, while the House of Representatives stood dissolved. Honoshichi on this occasion was able to dissolve even though there was a matter outstanding for which parliamentary approval had to be secured before the forthcoming election. Under Constitution a.79 the appointment of certain justices of the Supreme Court had to be reviewed by referendum at that election. The relevant statute provided that the members of a committee to supervise the referendum should be designated by the Diet. The Diet had not done so. Accordingly Yoshida, on the same day as he dissolved, applied to the President of the House of Councillors to convene an Emergency Session of that House. The House of Councillors duly appointed the Committee and dispersed. To British readers such a system would appear susceptible of abuse. For example, a cabinet at loggerheads with the Lower House could, provided it had a majority in the Upper House, dissolve without waiting for Supply, i.e., without settling grievances as required by the Lower House as the quid pro quo for granting Supply (This was the situation in Japan at the 1953 dissolution - see footnote 7b infra).

57. Tomabechi was first elected in 1946. He was Minister of Transport in the Katayama cabinet in 1947. The same year he became Secretary-General of Ashida's Democratic (Minshuto) Party. In 1948 he was Minister without Portfolio and Cabinet-Secretary in the Ashida cabinet. Later he became Chairman of the Executive (Sangyokaicho) of the party. He was a delegate at the San Francisco Peace Conference in 1951. He did not stand for re-election to the Lower House after the 1962 dissolution but was in 1953 elected to the Upper House. He died on 29 June 1959 (aged 78), before the Supreme Court had decided his suit.
strong body of opinion in the party that the dissolution was convenient, he placed his resignation with them, but it was not accepted.58

Counsel representing Tomabechi was YOSHII Akira who, in addition to relying heavily on an interpretation of Constitution a.4 and a.7 propounded by KOJIMA Kazushi (an associate-professor of Tokyo Municipal University)59 which is similar to, though more sophisticated than, that of Ozaki (v. supra p. 107) and Kades (v. supra p.108) argued as follows:60

(i) The Japanese Constitution does not adopt the British type of relationship between cabinet and legislature. By virtue of a.41 ('The Diet shall be the highest organ of state power ...') and a.70 (whereby cabinet must resign after a general election) cabinet is not the equal but the subordinate of the Diet. It follows that it cannot possess the power of dissolution unless specifically conferred by the Constitution (This again is reminiscent of Ozaki). This restriction of the executive's power of dissolution, he argued, accords with modern concepts and practice - e.g. the power of dissolution is rigorously circumscribed in the French Constitution (1946)61 and in the Constitution of the Federal Republic of Germany.62

(ii) The intention of the American authors of the Japanese Constitution was clearly that cabinet's power of dissolution be confined to the circumstances of a.69.

(iii) Admitting for the sake of argument that the Constitution does give the Emperor the power with the advice and approval of cabinet to dissolve in circumstances other than those provided in a.69, in the present case the essential elements of advice were lacking: although the Emperor's act received the (subsequent) approval of cabinet it was done without the (prior) advice of cabinet. Although at the meeting of cabinet on August 22nd there was agreement that a

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60. See the summary of the appellant's case which appears following the Supreme Court's decision in Siihoo siibana no muiji haneidhoo, vol.14, 1960, no.7, pp.1219-22.

61. Constitution of France (1946) a.51

speedy dissolution was essential, the formal cabinet resolution to dissolve was not made until the cabinet meeting of August 28th, the day after the Cabinet-Secretary had secured the Emperor’s signature to the (undated) dissolution proclamation.63

Tomabechi went direct to the Supreme Court seeking a declaration that the dissolution was unconstitutional. The Supreme Court, however, in an unanimous decision dismissed the suit on the ground that it possessed only appellate jurisdiction and then only ‘within the limits necessary for judgement in relation to a concrete legal dispute’.64 Mano J., however, while concurring in the decision on procedural grounds, indicated in a lengthy supplementary opinion his vigorous agreement with Tomabechi on the merits. Though largely a powerful reiteration of Yoshii’s (and Ozaki’s) arguments, Mano’s opinion is worthy of quotation on two points. He noted that a wide power of dissolution is incompatible with equality of electoral opportunity:

... elections under democratic government are based on the premise of equality of opportunity: they operate on the principle that all will compete for votes on a footing of equality and on the basis of fair play. Nevertheless, it is clear that surprise dissolution will give the Ministerial party an unfair advantage over the Opposition party. An election carried out under the conditions of such a handicap would be unfair and would make it impossible for the will of the people to be expressed correctly ....

Some British political scientists would consider Mano’s anxieties about the unfair advantage of a surprise dissolution somewhat unreal in this day and age. Some would deny that

63. Evidence of YAMADA Meikichi in the Tokyo District Court, 18 February 1963 [reproduced in A. Yoshii, Kaisankensin (privately published, Tokyo, 1953), pp.91-99]. Also the evidence of YAMADA Meikichi in the Tokyo High Court, 17 July 1964 [Korean benro chochosho (typescript, unpublished)]. To a foreigner it is somewhat surprising that a conservative Japanese Government should subject the Emperor, one of Bagehot’s ‘dignified parts’ of the Constitution, to the indignity of having to sign a proclamation with the date left blank for subsequent insertion by the cabinet. The same thing was done by the Ikeda cabinet at the 1960 dissolution - v. infra footnote 91).

such an advantage exists. One of my colleagues, for example, remarked that 'where public opinion can be well informed ... I find it difficult to understand "snap" dissolutions being described as "peremptory and punitive" except where the Government can manipulate the electoral system in its own favour or there are "Khaki" circumstances prevailing'. The fact that, in Britain and some other parts of the Commonwealth, Premiers have of recent years made less effort to achieve surprise goes some way towards supporting this view. Furthermore, in cases

65. It can, however, be argued that, irrespective of what other means of information are available, Parliament is both the proper and the best medium for informing the public on the issues to be decided at the election. This point was made in connection with the 1923 dissolution in Britain: I still believe that it is of importance that when a great issue is to be decided the fullest information should be in the hands of the people before they are called upon to decide. The importance of discussion in this House is that argument can be met by argument face to face. Speeches on the platform are always one-sided affairs. The importance and the value of this House in our constitutional arrangements is that honourable Members on opposite sides have the opportunity of making statements which can be met in argument and any false statements, arguments, or figures can be tested (Parliamentary Debates, Commons, vol.168, col.45, Mr Pringle, 13 November 1923).

This argument had particular force in Japan to-day where the Committee sessions of the Diet are televised. Some British writers, however, have gone further than my colleague and have attempted to justify entrusting to the Government the advantage of deciding the timing of elections. This, for example, the following: As part of the normal political process, a part of the normal mechanism for ensuring that governments can sometimes implement policies of change which they believe will be more popular in the long term than in the short, it should normally be the right of a Prime Minister to decide when in any five-year period a general election should be held. A Government in office is inevitably more likely to pile up resentments against itself than an Opposition which is basking in a pleasant lack of responsibility; the right to decide the timing of an election is a legitimate right to redress this imbalance, and to give governments the elbow room in which to govern instead of constantly to electioneer ... (Economist, 20 October 1989, pp.21ff-12.)

66. The following table indicates the tendency in Britain to give longer notice of elections:

<table>
<thead>
<tr>
<th>Announcement of Dissolution</th>
<th>Dissolution</th>
<th>Interval between Announcement and Dissolution</th>
<th>Election</th>
<th>Interval between Announcement and Election</th>
</tr>
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<tbody>
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<td>13/11/23</td>
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<td>3 days</td>
<td>6/12/23</td>
<td>23 days</td>
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<td>9/10/24</td>
<td>nil</td>
<td>39/10/24</td>
<td>20 days</td>
</tr>
<tr>
<td>24/ 4/29</td>
<td>10/ 5/29</td>
<td>11 days</td>
<td>30/ 5/29</td>
<td>36 days</td>
</tr>
<tr>
<td>4/10/31</td>
<td>7/10/31</td>
<td>3 days</td>
<td>27/10/31</td>
<td>23 days</td>
</tr>
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<td>2 days</td>
<td>14/11/35</td>
<td>23 days</td>
</tr>
<tr>
<td>23/ 6/36</td>
<td>10/ 6/36</td>
<td>23 days</td>
<td>5/ 7/36</td>
<td>43 days</td>
</tr>
<tr>
<td>10/ 1/50</td>
<td>3/ 2/50</td>
<td>34 days</td>
<td>23/ 2/50</td>
<td>44 days</td>
</tr>
<tr>
<td>19/ 9/51</td>
<td>5/10/51</td>
<td>16 days</td>
<td>25/10/51</td>
<td>30 days</td>
</tr>
<tr>
<td>19/ 4/65</td>
<td>6/ 5/65</td>
<td>81 days</td>
<td>25/ 5/65</td>
<td>36 days</td>
</tr>
<tr>
<td>8/ 9/69</td>
<td>18/ 9/69</td>
<td>10 days</td>
<td>8/10/69</td>
<td>20 days</td>
</tr>
<tr>
<td>16/ 9/64</td>
<td>26/ 9/64</td>
<td>10 days</td>
<td>16/10/64</td>
<td>20 days</td>
</tr>
</tbody>
</table>

In Victoria (Australia) since the amendment of the Constitution Act in 1961 to permit conjoint elections for both Houses to be held on the same date the Lower House dissolution has on each occasion been timed so that its elections will coincide with those of the Upper House which, since the latter House is not ordinarily subject to dissolution, are virtually 'fixed feasts' occurring triennially. This saves the Treasury about £80,000 at each election. In 1984 for example the Government announced on February 29th that the elections would be held on June 27th and in accordance with this the Lower House was duly dissolved on May 11th.

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where there has been little warning, this \textit{per se} has not drawn from the Opposition the howls of yesteryear.\textsuperscript{67} Some British writers, however, still consider that surprise can be a considerable advantage to the Government. Take for example, the following comment in the \textit{Observer} (20 September 1964) on the British Leader of the Opposition's position before the 1964 dissolution:

One politician at this time (April) was as certain as could be that the Tories would have to go for June ... He knew it would be June. This was Harold Wilson. Labour's powerful publicity was geared to June, as it was to March. Labour could scarcely afford to be wrong again, for funds were strictly limited. But Wilson, rearing to go, had made a crucial error.

Although the event proved that Wilson's error was not 'crucial', this does not necessarily invalidate the argument. Although the Japanese voter is as well informed as the British thanks to the press, the radio (and to-day television) and the distribution of the manifestos of each candidate to every voter by the Electoral Office at public expense,\textsuperscript{68} there are reasonable grounds for thinking that the decision when to commit campaign funds is as important to the Japanese Opposition as to the British. This would at first sight appear to be inconsistent with the provision of the Japanese Electoral Law which, under severe penalties, prohibits electioneering before the writs are issued.\textsuperscript{69} It is, however, notorious that this provision has been impossible to enforce effectively. Japanese commentators are agreed that campaign funds are very important indeed in Japanese elections.\textsuperscript{70}

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\textsuperscript{67} When Mr Gladstone dissolved without warning in 1874 his surprise tactics \textit{per se} were bitterly attacked: And why had all that indecent speed been exerted? He believed it had been purposely taken to give a great pull at the borough elections to the Liberal Members. The Minister well knew that the strength of the Liberal Party lay in the borough constituencies. He knew that possession was nine-tenths of the law. He knew that time and organization, as well as cash, were needed to put the man in possession. It was to prevent that time and organization from being applied that the election was hurried on (\textit{Hanard’s Parliamentary Debates}, vol. 219, col. 1711, Mr F.B. Smollett, 24 April 1874).

\textsuperscript{68} Kooshokunskyobo (Law 100 of 1960), a.187.

\textsuperscript{69} Ibid., a.129.

\textsuperscript{70} It has been calculated that in the mid-1960s most Liberal-Democratic candidates at election time received about $2 million ($3,000 Eng) from the Party and at least as much from their faction leader. This is in addition to annual grants of half a million yen from the Party and at least $1 million from the faction (Mr. Fukui, The Japanese Liberal-Democratic Party and Policy-Making, Canberra, Australian National University, unpublished Ph.D. thesis, 1987, p.178).
Mano also stressed that a fundamental purpose of the Constitution is to exclude dictatorial government; the power of the executive is strong and is in fact largely wielded by the Prime Minister (by virtue of his power of appointment and dismissal of ministers); a wide power of dissolution would make the Prime Minister even stronger:

It is as obvious as fire that the excessive powers given a single specific personality, namely, a Prime Minister, can easily be concentrated and as a result can lead readily to dictatorial and tyrannical government. It is well to reflect on this—calmly and dispassionately. Do not our people, who were plunged into the depths of destruction and who received a terrible baptism of fire during World War II, fear and detest the revival of dictatorial or tyrannical government more than anything else? I do not hesitate to declare solemnly that any interpretation of the Constitution ... that will permit the easy revival of dictatorial or tyrannical government and is without any firm foundation in positive law ... is the opinion of a near-sighted group that cannot truly comprehend the basic principles of the establishment of a democratic constitution ...

This, as we have seen, is a recurring theme in Japanese writing on the subject and is not surprising in view of Japan's pre-War history.

Defeated in his initial approach to the Supreme Court, Tomabechi then went to the Tokyo District Court suing for the wages due from the date of dissolution until the date on which his four-year term as a Member would otherwise have ended. The Court on 19 October 1953 found in his favour, holding that: (i) Article 7 conferred on cabinet a power of dissolution not confined to a.69, the pre-eminence of the legislature being sufficiently safeguarded by the requirement that the cabinet resign before the ensuing Session. (ii) In the case in question, although the Emperor's act had the (sub-

71. For the argument that the express power to appoint and dismiss ministers, which the Prime Minister (ōdōnor enjō) under the Meiji Constitution, has made the Prime Minister too strong, see the evidence of T. Yoshimura before the Commission on the Constitution (Kempoo choosakai, Kempoo choosakai dai-43-kai sookai gijidō, 1960, pp.7-24).
sequent) approval of cabinet, it was not done with the (prior) advice of cabinet - i.e. it failed because the Emperor's act was not preceded by a formal decision of the cabinet as a whole; if the Emperor were permitted to act without advice subject only to ex post facto approval this would give him initiative and personal responsibility inconsistent with the fundamentals of the Constitution.

The State's appeal against this decision was sustained by the Tokyo High Court on 22 September 1954. It held that the general conclusion of cabinet at its meeting on August 22nd that a speedy dissolution was essential constituted 'advice'. Tomabechi then took the case to the Supreme Court in its appellate jurisdiction. In its decision of 8 June 1960 his appeal was dismissed (Tomabechi had already died of cancer on 29 June 1959 at the age of 78).\footnote{Saikoo saibansho minji hanreishou, vol.14, 1960, no.7.} Of the fourteen judges comprising the Court, ten in a joint opinion did not proceed to the merits, arguing that it was 'beyond the power of the courts to examine acts of the State of a highly political character which directly concern the fundamentals of governing the State'. The remaining four judges, in three separate opinions, argued that:

(i) The Court can and should try such a case.
(ii) Article 7 confers on cabinet a power of dissolution not confined to a.69:

... Since ... a dissolution of the House of Represent- atives is an institution whereby the Government appeals to the people and asks their will, there are circum- stances other than the passage of a vote of non-confiden- ce in the cabinet or the rejection of a motion of confidence (e.g. the rejection of a vital Government bill or a budget) where it is equally necessary for the Government to seek the confidence of the people. There are also occasions where, by reason of such circumstances as changes in the size of the Parties, doubts have arisen as to whether the House of Repre- sentatives well reflects the wishes of the people whose representative it is. Furthermore new, import- ant developments at home or abroad may make it necessary to seek afresh the wishes of the people. These and other circumstances rendering a dissolution nec-
essay exist in large numbers beyond those covered by a.69 ... (Kotani and Okuno JJ).

This does not place cabinet above the Diet since cabinet must resign after the ensuing election.

(iii) The lower court was wrong in attempting to distinguish between 'advice' and 'approval' in a.7: in the present case the requirement of 'advice and approval' is satisfied.

This decision was a forgone conclusion, since the Supreme Court of Japan was unlikely in 1960 to reach a decision that would invalidate every official act performed and every statute enacted since 1952. Brig. Gen. Whitney and his subordinates were undoubtedly sincere in their intention that the Supreme Court should be an effective guardian of the Constitution. They should, however, have realised that it could discharge this role in cases of far-reaching consequence only if they established a system of procedure that enabled such cases to be dealt with as soon as they arose. One of the reasons why the High Court of Australia, for example, has been able to take a positive attitude to constitutional adjudication is that its procedure and the remedies available to it enable it to dispose of such matters urgently by injunction or declaratory judgment. Far from guiding the Japanese in such a direction GHQ insisted that the Japanese Prime Minister be given a power of veto over the issue of injunctions in administrative suits.73

Despite this legal victory subsequent Governments have, as we shall see, trodden warily in exercising this power.

The 'Bakayaro' ('Bloody Fool') Dissolution, 14 March 1953

At the general election of 1 October 1952 produced by the dissolution of 28 August 1952, the Yoshida and Hatoyama factions fought nominally as members of the one party. In reality, however, there were two separate campaign headquarters, fighting each other quite as vigorously as they fought the Opposition. Nevertheless, despite this disunity, they secured between them 240 of the 466 seats in the House (cf. 264 at the previous election). Finally on March 14th a number of Hatoyama's followers supported the Opposition's motion of non-confidence (occasioned by Yoshida's unparliamentary language74)


74. The Prime Minister had retorted 'bakayaro' to a Right-Socialist Member who was questioning him (Asahi shimbun, 1 March 1953). The nearest English equivalent is possibly 'You bloody fool!'
and formally resigned from the Party. As a result the Government was defeated 229-218. Yoshida dissolved forthwith (14 March 1953). 75

The Opposition naturally went through the act of deploring this 'repeated' dissolution as on a par with those performed by Itō and Katsura under the Meiji Constitution. They did not, however, labour the point; 76 they were in no position to form a Government, and they stood to gain by an election.

The election was held on 19 April 1953 with the Yatoyma faction operating as a separate party. The Yoshida Liberals failed to obtain a majority but secured 199 seats. The Opposition parties (Kaishintō 76, Left Socialists 72, Right Socialists 66, Hatoyama Liberals 35) were unable to work together and Yoshida formed a minority Government drawn solely from his own party.

The 'Ten no Koe' ('Vox populi, vox dei') Dissolution, 24 January 1955

By June 1954 the Hatoyama group had begun conversations with the Kaishintō to unite forces in a new party to overthrow Yoshida. This new party, the Nihon Minshutō, was duly formed on November 24th, commanding 121 seats in the House. Parallel defections among the Yoshida Liberals reduced the latter's strength to 165. Finally on December 6th the new party and the two Socialist parties joined forces to introduce a joint motion of non-confidence. Yoshida, as in the past, insisted on a dissolution should the motion of non-confidence be carried. The weight of opinion among influential members of his party was, however, in favour of resignation and he was forced to give way. 77 The cabinet resigned on December 7th before the motion of non-confidence was put to the vote.

On December 9th both Socialist parties voted with the Nihon Minshutō in electing Hatoyama Prime Minister and permitted him to form a Nihon Minshutō cabinet on condition that he would promptly dissolve the House when the Diet reassembled after the New Year recess.

75. As Supply and other legislation necessary to tide him over the election had not been passed, Yoshida thereupon convoked an emergency session of the Upper House which in a three days' session granted two months' Supply.

76. Asahi shimbun, 15 March 1953.

77. Ogata, the Deputy Prime Minister, was rumoured to have threatened that if Yoshida insisted on dissolving, he would not sign the necessary cabinet documents. Since unanimity is required for cabinet decisions, Yoshida would in such circumstances have been able to dissolve only after first dismissing Ogata (Asahi shimbun, 8 December 1954).
The Secretary-General of the new Ministerial party (KISHI Nobusuke, a later Prime Minister) announced that, insofar as they had criticised Yoshida for his undemocratic actions, they definitely would not dissolve 'nukiuchi' (peremptorily, without warning). He pointed out, however, that in the existing circumstances a dissolution in accordance with a.69 would be difficult to effect: if the Government introduced a vote of confidence it would require skilful management to ensure that it did not pass; there would be many Ministerialists, moreover, who could not in conscience vote against it. He therefore proposed that the House of Representatives should pass a resolution in favour of dissolution, in accordance with which cabinet would give 'advice' to the Emperor to dissolve78 (One of the factors disinclining the Ministerialists from a simple a.7 dissolution may have been the high position in their ranks occupied by Tomabechi whose suit was still pending79). The Government sought the cooperation of all parties to this end. Yoshida's Liberals, however, though now in Opposition, insisted that dissolution should be carried out under a.7 and that any accompanying resolution of the House would be unconstitutional (a view not shared by the Government's legal advisers).80 They felt, no doubt, that the new procedure proposed by the Government would attach even greater opprobrium to Yoshida's 1952 dissolution and might limit their freedom next time they formed a government. Similarly in the Socialist parties, although officially they proposed that the advice tendered by cabinet should be pursuant to a resolution of the House, there were men in high places (notably Kawakami, Chairman of the Executive of the Right Socialists, and Wada, Secretary-General of the Left Socialists) who favoured a simple dissolution under a.7 without an accompanying resolution.

Nor was there unanimity among the Ministerialists on this matter.81 The Government, therefore, abandoned the plan (One factor may have been the fact that in the past most proponents of dissolution by resolution had advocated either a unanimous or two-thirds majority decision, requiring the cooperation of the other parties). The Government then took the un-

78. Yomiuri shimbun, 9 January 1955.
79. This is the explanation given by Professor SATO Iiso (Yomiuri shimbun, 8 January 1955).
80. Nihon keisai shimbun, 8 January 1955.
81. Yomiuri shimbun, 6 & 9 January 1955.
preceded step of placing proposals for the time-table for, and manner of, dissolution, before the Secretary-Generals (and later, the chairman of the Parliamentary Tactics Committees) of the four principal parties (including the Yoshida Liberals in Opposition) and compromising until agreement was reached. A simple dissolution under a.7 was agreed to, the Socialists reserving their position as to constitutionality, and the Government, at the insistence of the Socialists and Yoshida Liberals, agreeing to extend the time devoted to questions to ministers, which was to precede dissolution. 82 The dissolution took place in accordance with this time-table on 24 January 1955. At the ensuing election (27 February 1955) the Ministerialists were returned as the largest party, but with 59 seats short of a majority. In April conversations began between them and the Liberals with a view to a merger. This was achieved in November, the new party (which commanded 298 seats in the House) being called the Liberal Democrats (Jiyuuminshutō).

The 'Hanashiai' ('Agreement') Dissolution, 25 April 1958

When the Diet was convoked in December 1957 for its 'regular', 150-day, budget session, a dissolution was predicted either towards the end of the session or, at the latest, during a session in the autumn. The reasoning behind this was as follows. As we have already noted, in Japan dissolution except when the Diet is in session is unprecedented. The term of Members of the House of Representatives would expire in February 1959. If the dissolution were left until the regular session beginning December 1958 this would gravely hamper the preparation and deliberation on the 1959 budget. It was amid such speculation that early in the New Year (1958) SUZUKI Mosaburoo, the Leader of the Socialist Party, when returning a courtesy call by the Prime Minister (Kishi), raised a suggestion made by Professor Miyazawa that the timing of the dissolution should be fixed well in advance by arrangement between the party leaders so that there might be avoided the illegal and expensive (but nevertheless widespread) electioneering which rumours of dissolution always provoked. Kishi after discussing this with the Secretary-General of his party (Kawashima) inclined favourably to some such arrange-

ment provided that there was a parallel agreement between the parties on the passage of government legislation. Similar overtures by Socialists in March were, however, rebuffed by the Prime Minister.

The passage of the Budget on March 31st led to widespread predictions that the dissolution would take place about the middle of April. These were strengthened by the Prime Minister's admission at a press conference on April 2nd that a dissolution within the month was a possibility.

On April 18th the Prime Minister, with the consent of cabinet and the principal officials of his party, approached the Leader of the Socialist Party (Suzuki) and said that now that Japan had a two-party system (established in 1955) he wished to establish a new precedent whereby the timing of an end-of-term dissolution would be decided in consultation with the Opposition party (He distinguished between end-of-term dissolutions such as the present and dissolutions to break a deadlock and go to the country on a particular issue). He proposed April 26th as the date for dissolution and sought Suzuki's cooperation in passing pending legislation with this in view. Factors disposing the Ministerialists towards 'dissolution by agreement' on this occasion may have included the following: (i) With the 'odour of dissolution' already in the air, Ministerialist Members were neglecting the Diet for their constituencies. It was therefore proving very difficult for the Government to manage the passage of pending legislation. The prevailing mood made a dissolution in the very near future inevitable: only with Socialist cooperation could important legislation be passed before the dissolution. (ii) The Government's 'magnanimity' in abandoning its 'traditional weapon' of unilateral dissolution might be favourably received by the electorate. (iii) Although a dissolution was desirable there was no 'issue' to use as the occasion. (iv) If the session were prolonged the Opposition might embarrass the Government in the face of the electors by raising more scandals like the recent Chiba Bank scandal. (v) If the Socialists withheld

83. Kawashima as quoted in Mainichi shinbun, 18 April 1958. One could argue that a prior announcement of dissolution might increase rather than restrict electioneering. Suzuki, Kishi and Kawashima, however, can be presumed to know what they are talking about when discussing matters of this nature. Possibly since funds are limited and since a prior announcement of the date of dissolution would remove the temptation to gamble on one's prediction and try and steal a march on the others, candidates would concentrate their resources on the final stages of the campaign.

their cooperation in passing legislation and moved a vote of non-confidence, there was not much the Government could do but dissolve. In such circumstances the electorate might be given the unfortunate impression that the Opposition had the initiative.

The Socialists were in a tricky position. They wished to take advantage of precise foreknowledge of the date of dissolution and to wrest what concessions they could in return for providing the cooperation in passing pending legislation which would make an agreed date of dissolution possible. At the same time, by agreeing to the date proposed by the Government, there would not be that degree of confrontation between the parties which an Opposition requires, and they would not be able to claim before the electorate that the dissolution was the outcome of their initiative. Accordingly a very Japanese compromise was reached. The Socialists refused to be associated with fixing the actual date, on the pretext that: 'The Government has the right of dissolution: the date should be determined by the Government'. But provided that some modifications were made to the Government's bill to amend the Criminal Code and Criminal Procedure Code, the Socialists would cooperate in passing the pending Government legislation. They would then, on April 24th, move a motion of non-confidence whereupon the Government would, after making only one speech in reply to the motion, dissolve without putting the motion of non-confidence to the vote (Such a vote would, of course, have been defeated and this would have been unfavourable to the Socialists' image.)

The dissolution duly took place according to this timetable on April 25th, on the advice of cabinet, under Constitution a.7.

The 'Yoyaku' ('Promised') Dissolution, 24 October 1960

The House elected on 22 May 1958 was dissolved on 24 October 1960.

From the beginning of 1960 it became apparent that a strong combination was forming within the Ministerial (Liberal-Democratic) Party to oust Kishi from the leadership. The dis-

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85. Asahi shimbun, 19 April 1958.

86. The Socialists rejected a proposal by the Ministerialists that at a quid pro quo for the motion of non-confidence the Prime Minister should be allowed to make a policy statement.

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sident factions capitalised on his discomfiture over the Revised Security Treaty issue.

When on 20 May 1960 Kishi used his majority to overcome the obstruction of the Opposition and secure the Lower House's approval of the Treaty, the press and elements among the Ministerialists lent their support to the Opposition's demand that cabinet resign and dissolve the House before completing ratification of the Treaty. Kishi, however, was resolved to see the Treaty through: it was only on June 23rd, the day ratifications were exchanged, that he announced his intention to resign.87

Kishi was succeeded by IKEDA Hayato as president of the party on July 14th, and as Prime Minister on July 18th. This 1st Ikeda Cabinet, however, was not a caretaker Government: the new Prime Minister, while admitting that a dissolution within the year was not unlikely, refused to commit himself.88 Obviously it was in the interest of Ikeda and his party to postpone the dissolution for as long as possible until the Treaty issue was a thing of the past and until an attractive catalogue of electoral promises could be prepared.

On September 2nd, the Cabinet Secretary (a minister) announced that a short Session ending in a dissolution was likely to be convoked as soon as possible after the conclusion of the Inter-parliamentary Union Conference (late September). He added that since it was well known that a dissolution was to take place, it was not proposed to discuss it with the Opposition.89 On October 8th cabinet determined to convokve the Session on October 17th to last a maximum of five days. The Socialists in reply demanded a longer session so that Ikeda's policies could be more adequately debated. As a compromise, a programme was agreed to in which proceedings would end on October 24th.90 Both parties adhered to this time-table and the dissolution duly took place on that date.91

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89. Asahi shinbun, 3 September 1960.


91. The manner in which the formalities preceding this dissolution were conducted resembles in some degree that of the famous Yoshihide dissolution of 1953 (v. supra p.313): (i) Cabinet's ultimate decision to dissolve was not taken at a cabinet meeting - the draft resolution was circulated to ministers individually for their signature on the morning of October 23rd; (ii) The Emperor being absent from Tokyo, an official was then despatched to him with the dissolution proclamation which the Emperor signed leaving the date blank so that the Prime Minister, in the words of the Asahi newspaper, could determine the time of the dissolution "after evaluating the Opposition's demeanour". Too much, however, should not be made out of the procedural resemblances to the 1953 dissolution. Circulation of papers for signature by ministers is not an uncommon method in Japan for avoiding a special meeting of cabinet on a non-controversial issue. Similarly, with the Emperor several hours distant from Tokyo, it would have been difficult to get his signature expeditiously on the termination of business. In Japan, as we have noticed, the custom is for dissolution to occur during a plenary session of the House: a day's delay to await signature, when Members are so keen to get to their electorates, might be unpopular.
At the ensuing election (20 November 1960) Ikeda's Liberal-Democrats increased their majority, securing 296 of the 467 seats in the House.

The 'Muudo' ('Mood') Dissolution, 23 October 1963

This took place on 23 October 1963 (thirteen months before Members' terms of office would expire). In explaining the date Japanese journalists have given weight to the following factors: (i) If the regular session (commencing in December) were held in an atmosphere of impending dissolution, Members might desert the Diet for their constituencies, and the Government's legislative programme might suffer accordingly. Moreover with electoral promises being bandied about, it would be hard for the Government to keep the size of the budget under control.92 (ii) With the economic situation deteriorating93 it could be argued that, the sooner the election, the better for the Ministerialists. (iii) The Prime Minister's chances of re-election as Party president at the July 1964 Convention would be influenced by his success or otherwise in controlling the House and carrying through his legislative programme in the regular session of the Diet. In the previous year's regular session the Opposition parties had been remarkably successful in using obstructive tactics to prevent the passage of such legislation as they disliked. They could be expected to repeat this performance. Hence the Prime Minister may have felt that it was desirable to face the next regular session with a new House.94

On the basis of this reasoning it was frequently argued by the press that the Prime Minister would dissolve before the end of 1963, provided that he could do so without alienating support in the Party and the financial world, and provided that he could devise a suitable occasion for so doing.95


93. The consumer price spiral was causing increasing discontent among the electorate and the United States Interest Equilibration Tax could be expected to exert a harmful effect on the Japanese economy in the New Year (Asahi shimbun, 24 August 1963; Nihon keizai shimbun, 4 September 1963, evening edition).


95. For my explanation of this dissolution I am indebted to an excellent series of articles 'Kaisan wo yobu mono' appearing in Asahi shimbun, 1-5 October 1963.
The Prime Minister's confidence in his ability to carry the Party with him was no doubt strengthened in mid-July (1963) when, at the periodic reshuffle of cabinet and the principal Party posts, the leaders of the main factions agreed to serve under him. Thus encouraged, on August 8th he deliberately injected into the body politic the virus of election fever: he announced that there was likely to be a dissolution within a year. This, together with activity in the constituencies by the Opposition, caused Ministerialist Members to step up their electoral activities and commit their campaign funds. From then onwards, the sooner the dissolution the better for the sitting back-bencher Member. 96 Though initially reluctant, the principal faction leaders (with the notable exception of Sato) had come on side by mid-September. 97

Initially there was considerable opposition to an early dissolution in the business world which as recently as April had been required to pour out considerable funds in support of Ministerialist candidates in the nation-wide municipal elections. 98 As time went on, however, business leaders appeared increasingly to take the view that a speedy dissolution was preferable to the uncertainty engendered by predictions of dissolution. 99

As we have observed above, the second prerequisite for an early dissolution was that a suitable occasion should present itself. Such Ministerialists, business leaders and newspapers as argued that dissolution should not take place before 1964, or urged the Prime Minister to delay dissolution until the Opposition could be inveigled into providing them with an occasion for dissolution, continually stressed the importance of being able to show the country that they had a

96. Tokyo shimbun, 8 September 1963, 2 October 1963.

97. This was interpreted partly as bowing to the inevitable, partly as an indication that they would support Ikeda's candidacy for re-election as president, and partly as an attempt to isolate Sato who was likely to be the rival candidate.


99. Nihon keizai shimbun, 4 October 1963. The Asahi, in tracing the genesis of the dissolution, lays stress on the strong currents of its favour expressed by the business community to Ikeda on his departure for his Asian tour at the end of September; the knowledge that the business world was firmly behind him, the Asahi argued, made him confident that he could face an election at any time (Asahi shimbun, 1 October 1963).
'just cause' for dissolution.¹⁰⁰ (This sounds a little quaint to someone used to British politics where nowadays there is no need for a Government to go to much trouble to justify a dissolution to the electorate, provided it does not follow too closely upon the preceding dissolution. As we have already noted, the advantage which the Government has in being able to decide the time hardly worries British theorists, or, indeed, British Oppositions).¹⁰¹

In the present case, circumstances which the Ministerialists seem to have felt would be considered a just cause were: (i) the proposal of a motion of non-confidence or a motion for dissolution by the Opposition,¹⁰² (ii) too vigorous an attack on the Government in Opposition questions in reply to Ministers' speeches,¹⁰³ (iii) obstructive tactics towards Government legislation.¹⁰⁴

This anxiety on the part of Ministerialist leaders that there should appear to be a 'just cause' for dissolution may well have stemmed from their feeling that Japanese public opinion regards dissolution as inherently aggressive (and therefore improper) unless in answer to provocation (in which case they feel that it is natural and hence permissible).

In the present case the Opposition seems to have been in two minds as to whether to provide the necessary provocation. As in previous 'end-of-term' dissolution they appear to have regarded it as desirable to be able to claim that it was they,

¹⁰⁰ E.g. Asahi shimbun, 8 September 1963 (statement by Sato); Asahi shimbun, 14 September 1963 (comment); Mainichi shimbun, 16 September 1963 (comment); Asahi shimbun, 21 September 1963 (statement by Miki); Asahi shimbun, 12 October 1963 (views attributed to Oono, Koseo, Fujisawa, Miki and Kawashima). The results of a public opinion poll conducted in Tokyo by the Asahi shimbun from 4-7 October 1963 suggest that at least as regards Tokyo citizens these people were right. Among the people polled, those who claimed to have heard that a dissolution would take place within the year were asked 'In case of dissolution, do you think that it should be brought about by initiating a "just cause"? - making an important political question the reason?'. The answers were as follows: 'A "just cause" is essential', 36.7%; 'The decision should be taken in the light of Diet proceedings and the demeanour of the Opposition', 9.7% (Asahi shimbun, 13 October 1963).

¹⁰¹ V. supra, p.119.

¹⁰² Asahi shimbun, 14 September 1963 (this is the view attributed to Maeno).


not the Government, who had caused the dissolution; that the Government was smarting under their blows to such an extent that the only way in which it could protect itself was to dissolve. Hence even before the adjournment of the 1962-3 regular session in July 1963, we have numerous statements from the Socialists that they would hound the Government into dissolution. When, however, the Government announced in its programme for the 'dissolution' Session the passage of a supplementary budget, the Socialists changed their tune: they were not prepared to run the risk of alienating the electorate by delaying the implementation of wage rises and disaster relief.

The Government had the initiative: it could introduce the supplementary budget or abandon it as it thought fit. In order that the Government should not have the excuse of provocation to dissolve before entering into budget proceedings, the Leader of the Socialist Party (Kawakami) in his questions in reply to ministers' statements on October 21st, adopted a mild tone. The Ministerialists, however, apparently decided that it would be more to their disadvantage to enter budget proceedings than to dissolve without a 'just cause'. On October 23rd the chairman of the Ministerialist Parliamentary Tactics (kokkai taisaku) Committee rejected a request by the Opposition to commence budget proceedings. He gave as his reason, that the Government was unable to accept the Opposition's assurances of smooth cooperation in such deliberations. The same day, at the end of the agreed period of questions in reply to ministers' statements, the Prime Minister dissolved under a.7 (On October 18th, at the close of Ministers' statements in the Diet, a cabinet meeting had been held at which all the procedures necessary for dissolution were completed).

105. The Opposition appears to have been fairly successful in creating this impression. In the Tokyo shimbun public opinion poll referred to in footnote 100 supra those who claimed to have heard that a dissolution would take place within the year were asked 'Why are things moving towards a dissolution within the year?'. The answers were as follows: 'it is convenient for the Prime Minister', 22.7%. 'The Opposition are trying to force a dissolution', 14.5%. 'Because electioneering has already become intense', 7.7%. 'Because it is desirable, by an early dissolution, to bring freshness into the Diet', 25.8%. Other answers, 23.2%. Don't know, 23.2%. Tokyo shimbun, 18 October 1963.


108. Asahi shimbun, 4 October 1963 ('Kaisen wo yobu mono').


111. Asahi shimbun, 19 October 1963.
The reason why the Ministerialists dissolved before proceeding with the supplementary budget is probably because in committee proceedings attending the passage of financial legislation, the Government is inevitably under Opposition attack - it is subject to more sustained criticism over a wider field and for a longer period than in the Opposition replies to ministers' speeches with which each Session commences.112 (To dissolve before Opposition replies to ministers' speeches would alienate public opinion as giving the Government the unfair advantage of going to the country having stated its own case and denied speech to the Opposition - the typical pre-War punitive dissolution.)

On this occasion only Nishio, the leader of the breakaway Democratic Socialist Party, challenged the legality of an a.7 dissolution. It is therefore probably safe to regard this once so vigorously debated question as now closed.113

That the Prime Minister had misgivings about dissolving without a 'just cause' is apparent from the defensiveness of his remarks on the subject. Take, for example, his remarks at a press conference on the second day of the Session (16 October 1963):

Q I imagine that the Prime Minister is considering the exercise of the power of dissolution?
A Has not dissolution become implicit in the trend of public opinion and the condition of the Diet? I have under constant consideration whether to exercise the Prime Minister's power of dissolution.
Q Do you think that there is a 'just cause' for dissolution this year?
A Has there ever been in Japan a case where Members have served their full four years? About two years is the average. Three years have already passed. Next year there are the Olympic Games and the IMF General Meeting. Hence there has developed a mood of 'dissolution this year'. Since three years have passed, my feeling is that 'dissolution this year' is the popular will. At this stage I am thinking about after-care for the income-

doubling plan and wish to consult public opinion. In this connection I do not think that historians at a later date will say that I did not act 'fairly and above board'. After three years have passed, to venture forth and seek the popular will is a possible course.\footnote{114}

We have already noted how of recent years Japanese Prime Ministers appear to feel it necessary to say that it is public opinion, not themselves, that is bringing about a dissolution\footnote{115}.

It will be observed that the precedent which Mr Kishi sought to establish in 1958 for fixing the date of end-of-term dissolutions by agreement between the leaders of the two parties was not followed. The Deputy Secretary-General of the Ministerialist party stated on September 4th that if there was a dissolution within the year it must be by confrontation between the parties in the Diet and not by agreement.\footnote{116} Initially the Socialists proposed what would amount to essentially the same system of consultation and agreement as the 1958 'dissolution by agreement', while denying that this would amount to 'dissolution by agreement'. For example, their Secretary-General (Narita) on October 12th, while emphasizing that they would not agree to discussions between the leaders of the parties on dissolution, continued that there would of course be discussions on the programme of Diet proceedings and that these discussions would probably touch on the time of the dissolution.\footnote{117} The following day, however, his leader (Kawakami) stated less equivocally that, if asked to participate in discussions with the Ministerialists on the timing of the dissolution, he would refuse.\footnote{118}

Finally, the Prime Minister on October 16th stated that discussions between the Secretary-Generals on the programme of the session would be acceptable but that he would not hold discussions on the subject of dissolution, because such would be a bad precedent.\footnote{119}

\footnote{114} Asahi shimbun, 16 October 1963 (evening edition).
\footnote{115} Mr Satoo in 1966 (v. supra pp. 96, 97 & 99).
\footnote{116} Asahi shimbun, 4 September 1963 (evening edition). See also the statement of the Secretary-General (Naoe) the following day, Asahi shimbun, 5 September 1963 (evening edition).
\footnote{117} Asahi shimbun, 13 October 1963. See also similar remarks by Narita in Asahi shimbun, 7 October 1963 (evening edition).
\footnote{118} Asahi shimbun, 14 October 1963.
\footnote{119} Asahi shimbun, 16 October 1963 (evening edition).
Conclusions

The once influential contention that the Constitution permitted dissolution only as an answer to a resolution of non-confidence is now almost dead: cabinet's constitutional right to dissolve under a.7 is generally accepted.

Nevertheless Prime Ministers when dissolving seem to feel constrained to put on record statements in which it is implicit that 'snap dissolutions' would be improper. Moreover, on such occasions, they find it necessary to state that they are not acting arbitrarily, but in accordance with the dictates of public opinion. This seems to have become part of the folklore attending dissolution. Against this background it might now be difficult for Prime Ministers to dissolve 'out of the blue'. They are evidently convinced that influential opinion is hostile to snap dissolutions. This hostility may be explained partly in terms of the following. There is the strong recollection of pre-War examples (which are universally condemned along with pre-War cabinets as totalitarian) and the 1952 dissolution by Yoshida. The new Constitution is regarded as sweeping away arbitrary government and archaic survivals. Moreover, experiments in the working of the new Constitution in its early years led to wide and detailed discussion and analysis of all political institutions and forms (including dissolution), in which these had to be justified against, not tradition, but new, democratic principles including the principle that 'the Diet shall be the highest organ of state power' (a.41) - a principle which even to-day few ministers are prepared overtly to assail. Against this background the consensus emerged that, although without a wide power of dissolution 'responsible government' might not be able to operate smoothly, nevertheless 'we must ... ensure that dissolution is not performed as a result of the arbitrary decision of cabinet' (Report of the Joint Legislative Research Committee v. supra p.112).

The pious hope of the Joint Committee, that Japan might succeed where others had failed and discover a mechanism which gave a wide enough power of dissolution and at the same time an effective safeguard against abuse, was not fulfilled.

In the light of the 1966 dissolution Kishi's attempt to make a precedent out of the 1955 and 1958 dissolutions in which the date was fixed in consultation with the Opposition parties cannot be said to have been entirely unsuccessful. In 1966 in spite of Satoo's refusal to countenance 'dissolu-
tion by agreement' his meeting with the Opposition leaders on December 24th seems to have succeeded in achieving this object.

Lastly, once Ministerialist back-benchers 'beat the gun' and begin to spend their limited electioneering funds in earnest, the leaders must bow to this and dissolve before these funds have vanished.