

◁論 說▷

CONSTITUTION AND REQUIREMENTS OF DEMOCRACY*

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(1) Establishment of Democracy in Japan

Democracy was established in Japan after World War II. It is sure that there were people's movements for democracy in the latter half of the 19th century, and in 1889 the first Japanese constitution named "the Constitution of the Empire of Japan" was promulgated. But, in reality, the essence of this Constitution was so-called "pseudo-constitutionalism." Representative democracy was, to some degree, realized in the first half of the 20th century under the 1889 Constitution, but it was crashed by the despotic military powers under the Emperor or Tennoh system. It was the military connected closely with Tennoh who plunged Japan into the reckless aggressive World War II.

In 1947 the Constitution of Japan was put in force and through this Constitution, democracy was for the first time guaranteed to the Japanese people. This Constitution adopted three principles, namely

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people's sovereignty, respect for fundamental human rights, and pacifism. It also prescribed a parliamentary cabinet system on the basis of people's sovereignty.

But, to our great regret, this Constitution was not established by the power of the people alone. While there had been many people's movements and political parties' movements which demanded democratic constitutions, and these movements had surely much influence upon the establishment of the new Constitution, they could not exert enough power to give birth to the new Constitution by themselves.

The new Constitution was, after all, proposed to the people by the conservative government, which had been associated with the old Tennoh regime, and which retained its power after World War II. The conservative government proposed the Constitution which compromised people's sovereignty and combined it with the Tennoh system. And, the government proposed it under the strong influence of the General Headquarters of the Occupation Forces. Without great pressure from the General Headquarters, the conservative government would not have accepted such a democratic Constitution. In summary, democracy was established in Japan through compromise with the old Tennoh regime and under the strong influence of Allied Powers, especially United States.

(2) Democracy and the Tennoh System

The present state of democracy in Japan is a result of problems associated with the Tennoh system. As mentioned above, the Tennoh system has survived World War II, although it was much changed and modernized. For instance, before World War II, Tennoh was regarded as having obtained the legitimacy of ruling Japan from God,

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and he himself was deemed to be a "living God." As such, Tennoh was the head of the state and had many Prerogatives, including war power and legislative power. But after the War he announced so-called "Human Declaration," in which he stated that he is not a "living God," and emphasized that the relationship between Tennoh and the people should not be formed by myth and legend, but through mutual trust and love. The sovereignty of the people was established under the new Constitution and Tennoh ceased being the head of the state, but only the symbol of the state. Most important, he had no powers related government.

But, when we examine the 44 years of the practice of this Constitution, we find that this new Tennoh system has not been put into practice exactly as the Constitution prescribes. For instance, the conservative government has consistently tried to treat Tennoh as the head of the state, and Tennoh has often accepted to play such role, especially in the field of diplomacy. Recently, when some papers in England denounced Tennoh as a war criminal and carried the article such as "Hell's waiting for this truly Evil Emperor," the Japanese ambassador to England protested on behalf of the Japanese government, saying that the English papers "verify our Sovereign, His Majesty, The Emperor of Japan." Such a phrase seems to be contrary to the principle of the people's sovereignty of the Constitution.

There is an even stronger and more recent example, showing how the Tennoh system of the Constitution was not respected and the principle of people's sovereignty was infringed. In 1989 Tennoh Hirohito died after a reign of 64 years, and a series of succession rituals took place during 1989 and 1990. What was characteristic about these succession rituals was that they were performed as if new Tennoh succeeded the Crown not from the sovereign people, but

from God and as if new Tennoh became a "living God." As a result of these rituals many doubts were raised concerning the principle of separation of religion and state, and people's sovereignty. For instance, in the autumn of 1990 the "Daijohsai" took place as an official ceremony, for which the government spent some 3 billion Yen. But, Daijohsai is the ritual by which new Tennoh receives the character of God, and becomes a "living God." This ritual was explained in the textbook at the primary school before World War II as follows;

"Daijohsai is the most divine and important ritual in this country. This ritual is the sacred one, in which Amaterasu-Ohmikami(*) and Tennoh become one body. And this crarifies that this Great Empire of Japan is the Land of God."

Of course, the government explained Daijohsai ceremony in another way. They explained that Daijohsai is the ritual, in which new Tennoh offers new rices and grains to God, and eats them with God. While it is true that Daijohsai does have this aspect, but it is only one aspect, and the most important aspect of Daijohsai is the one described above. It is therefore very difficult to harmonize this ritual with the principle of people's sovereignty and, as a result, I am convinced that in Japan people's sovereignty has not yet been fully established due to the existence and traditional influence of the Tennoh system.

(3) Democracy and Economic Development

Under the post war Constitution, Japan has attained remarkable economic growth. It may be significant to note first that Japan owes much of its economic development after World War II to the pacifism mandated in the Constitution. As a result of the pacifism of the

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Constitution, which renounced war and abolished military powers, Japan was able to use the greater part of its resources and money for the economic development with relatively small spending for military purpose.

Furthermore, the relation between economic development and democracy seems to be somewhat complicated in Japan. On one hand, economic development was surely promoted through the development of political democracy after World War II, but, on the other hand, it was achieved mainly through so-called "Japan Incorporated," which does not necessarily imply democratic structure or phenomenon of Japan. The word "Japan Incorporated" is usually used in order to characterize the ruling structure and business-oriented politics of Japan, in which the ever powerful LDP (Liberal Democratic Party) government and big business elites and bureaucrats have been closely connected with each others and this triangular alliance has pursued their own economic and political interests.

There are two important aspects of "Japan Incorporated." One is that this triangular alliance has existed due to the fact that LDP has controlled the government since 1955. The fact that there has been no change of government in more than 35 years is not normal for a real democracy. The second factor is that trade unions and the working class have not been strong enough to change this ruling structure of Japan and to realize their own interests rather than those of the companies. In reality, many trade unions and workers identify their interests with those of the companies, and therefore work exceedingly hard for the companies. As a result, Japanese economic development has been largely supported by the overwork of the laborers under poor and sometimes inhumane conditions.

Economic development has exerted both positive and negative

influences on democracy in Japan. On one hand, economic development has surely helped to maintain or even enhance democracy in Japan. It has raised the standard of living of the people, thereby enabling them to spend their money and time participating in politics, if they choose. Before World War II parliamentary democracy was turned over to the despotic military powers largely due to the severe economic depressions. Without economic development Japan could probably not have enjoyed even the present level of democracy.

However, on the other hand, this economic growth has brought various distortions to the sound development of democracy in Japan. First, as mentioned above, economic development has been brought about under the ruling structure of "Japan Incorporated" which is closely related to the powerful LDP government. Thus economic development has had the effects of continuing or stabilizing this ruling structure which has precluded a change of government from LDP to another party. Second, economic development connected with "Japan Incorporated" has brought about "money politics" in Japan. Because of money politics, many political corruptions, like the Lockheed-affair, in which former prime minister was accused of taking bribes, and the Recruit-affair, in which the incumbent prime minister was forced to resign, also on suspicion of taking bribes.

Third, under this economic development connected with "Japan Incorporated," companies have demanded that their workers show the loyalty to the companies even during elections. As a result, many workers were forced to take part in the election campaign, in which the companies mainly promoted candidates of the LDP. This phenomenon is referred to as "Companies-Involving-Elections" (Kigyō-Gurumi-Senkyō) and these elections have been often accompanied by so-called "Bureacrats-Involving Elections" (Yakusyo-Gurumi-Senkyō),

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meaning elections in which bureaucrats play the important roles under the strong influence of ruling LDP government. These phenomena seem contrary to basic principles of democracy.

Last, but not least, economic development through "Japan Incorporated" has not helped to foster the independent spirit of the people, but rather helped to make people more and more company-reliant or company-oriented persons (Kaisya-Ningen). In Japan, collectivism and conformity have prevailed since ancient times, and these attitudes have been one of the main reasons for the late start of democracy in Japan, and its reckless plunge into World War II. This was the very reason why new Constitution prescribed in Article 13 that "all of the people shall be respected as individuals." It is needless to say that this spirit of individualism is the foundation of human rights and democracy. But it is regrettable to say that economic development in Japan has gone hand in hand, not with individualism, but rather with collectivism or groupism. This seems to be very problematic from the view point of the sound development of democracy.

(4) Democracy and Electoral Process

The fact that there has been no change of government from LDP to other parties since 1955 is partly due to the undemocratic electoral process. There is the Act for Regulating Political Funds, which, at least in theory, prescribes the upper limits of the political donations companies and trade unions can make to the political parties. But the law never worked effectively and huge political donations, clearly exceeding the limits of the Act, have been given to LDP by big business, especially during elections. It is reported that during the

election of the House of the Representatives in 1990, some 20 billion Yen were offered to LDP by the big business circles. Besides, there is no law like Ethics in Government Act in the United States, which controls rigidly the incomes and expenditures of politicians and cabinet members.

Second, in contrast to the absence of strict control of political funds, there have been strict restrictions on the freedom of election campaigns. The Public Officials Election Act contains the following restrictions. ① Election campaigns by candidates are permitted only during the election period. Election campaigns before the notice of candidacy are prohibited as “pre-election campaign.” ② Door-to-door canvassing for votes is forbidden. No one shall conduct a door-to-door canvass with the intention of soliciting a vote for himself or another person. ③ Written campaign materials are prohibited except as explicitly allowed by law. The number and size of the campaign posters and hand-bills are strictly limited by law, as is the number of the campaign postcards. These restrictions, which have been held constitutional by the Supreme Court, make it more difficult for opposing parties to reach and influence a great number of voters. They have clearly contributed to the domination of Japanese politics by the LDP.

Third, there has been constant malapportionment of representation in the National Diet. Although in 1976 the Supreme Court declared unconstitutional the malapportionment of the Diet seats at the general election of 1972, when maximum relative difference between electoral districts in the value of each vote was 1 to 4.99. The Court, nevertheless, ruled that the election itself was valid, because of the great harm to the public interests which would result from invalidation of the election. Again, in 1983 the Supreme Court ruled unconstitutional the malapportionment of the Diet seats, under which maximum dis-

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parity had reached the level of 1 to 3.94, and yet declared the election itself valid.

It is true that the Diet has been forced by these decisions of the Court to revise the rule of apportionment, but it has done so only to a very limited degree and as a result malapportionment has not yet completely disappeared.

And, it must be stressed that malapportionment has functioned advantageously to LDP, because it favors the rural districts, and people in rural districts have, in general, voted more for LDP than for opposite parties. This is, of course, one of the main reasons why the LDP controlled Diet has not been eager to correct the malapportionment of representation in the Diet.

(5) The Future of Democracy in Japan

It is not possible to predict the future growth of democracy in Japan. But, one thing is certain; the democracy of Japan in the future will be strongly influenced by developments and trends of democracy in the world. The closer the relations between countries in the world become, the closer will be the interactions between countries not only in economy, but also in politics. So, the future of democracy in Japan will depend largely upon the sound development of democracy in the world.

As to the perspectives of domestic development of democracy in Japan, I would like to point out three important factors. First, the future of Japanese democracy depends largely upon how the Tennoh system will be practiced and evaluated by the people in the future. Public opinions polls indicate that the majority of the people support the continuation of the Tennoh system, so there is little likelihood

that the Tenuoh system will be abolished in the near future. The question is, therefore, whether the Tenuoh system will be practiced in a manner more consistent with people's sovereignty or in the more traditional and unconstitutional way. The government's support of Daijousai suggests that there is a real probability that Tenuoh will become more and more sacred and authoritative even though it would be contrary to the requirement of democracy. In order to make Japan more democratic country, it will be necessary for the Japanese people to be more rigid about the practice of the Tenuoh System.

Second, the sound development of democracy requires periodic changes of government between a diversity of political parties. Nevertheless, one can not see the possibility of a change of government in the near future. One reason is that the opposition parties are not strong enough to turn over LDP government. It will be necessary in order to take over the government for opposition parties to develop the abilities to make alternative policies clear and concrete, and to gain more confidence among the people. Another reason is that Japanese politics and the electoral process have been deeply influenced by "Japan Incorporated," and people are unable to break free from this structure. Unfortunately, not only business elites and bureaucrats, but also average voters are more or less included in this structure, in which money politics prevails. Therefore, the future of democracy in Japan depends largely upon whether people can get rid of money politics, establish individualism, and recognize the necessity of the change of government from LDP to other parties.

Third, the revision of the undemocratic electoral process is essential for the development of democracy in Japan. Recently, especially after the Recruit-affair, the government and LDP have promised to carry out "Reform of Politics," but the main aim of this "Reform of

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Politics” seems to be focused, not on the democratization of electoral process, but on the establishment of minor electoral district system, through which LDP would be able to gain the absolute majority and continue to hold the powers. If this happens, it would not be useful for the sound development of democracy in Japan. Rather than the LDP’s “Reform of Politics,” what is needed is true reform of politics, such as the enactment of the Ethics in Politics Act, the reform of malapportionment, and liberalization of electoral activities.

Lastly, Article 15 of the Constitution prescribes that the people have the inalienable right to choose their public officials and to dismiss them. Nevertheless, at present the only system of recall is at the local government level, not at the level of the national government. There are, of course, different opinions about the introduction of a recall system for Diet members, but I believe it would be worth introducing in order to clean up Japanese politics and to achieve the goal of democracy to a much greater extent than presently exists in Japan.

(*) According to Japanese mythology, Amaterasu-Ohmikami is said to be the God who created Japan. Tennoh is said to be the direct descendant of Amaterasu-Ohmikami and to have succeeded the Crown from Amaterasu-Ohmikami.