Development of Election Law in Japan

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Chapter I

History of the Election System in Japan

Even in the distant past Japan had systems of election, if they were not election in the strictly modern sense of the word. For instance, people elected the heads of their neighborhood associations or villages in the framework of local autonomy even in the Middle Ages (the *Tokugawa* era 1603—1867). But it was in the early days of the new local government system after the Meiji Restoration (1868) that the Japanese election system was established in the strictly modern sense of the word.

The Meiji Government declared that it would make it the fundamental principle of its national politics and administration to hold conferences extensively and decide matters on the basis of public opinion. This served as a springboard for the movement among the people toward introducing into Japan parliamentary and election systems patterned after European and American advanced countries. This movement first blossomed and bore fruit in local government. In 1878, the so-called ≫three new laws≪ wer enacted as Government Decree No.17. One of these laws, i. e. the Prefectural Assembly Law, brought into being an assembly comprised of members elected publicly and separately for each prefecture[1]. This marked the first time that a nation-wide election law, in the strictly modern sense of the word, came into being. Under another one of the three laws, i. e., County-City-Town-Village Law, county, city, town and village administrations were established under the prefectural government. County head, city mayor, town mayor and village mayor were installed. Town and village mayors had to be selected by public elections, and at the same time, some towns and villages were allowed to establish assemblies comprised of publicly elected members, depending upon their local conditions. Then, in 1880, the Municipal Assembly Law was enacted to establish assmblies in all cities, towns and villages.

Having thus established publicly elected administrators and legislative members at the local level, the Meiji Government promised in 1881 to promulgate Constitution in 1889. The Government made good its promise by promulgating the Meiji Constitution (1889 to 1947). As a result, the imperial Diet came into being 1890. Worthy of note from the standpoint of Japanese history is the fact that the Meiji Constitution and its local government system were patterned after European and Ame-

1 Since 1878 the whole of Japan is divided in 46 prefectures (3 *Fu* 43 *Ken*). There are cities (*Shi*), town (*Chô*) and villages (*Son*) under each prefecture. Several towns and villages were administratively put into a county (*Gun*).

rican advanced countries, particularly the Prussian system. The parliamentary and electoral system in those days, led theoretically by L. v. Stein and R. v. Gneist, was established under the direct guidance of K. F. Hermann Roesler (1834-1894) and Albert Mosse (1846-1925)[2]. However, the electon system was largely based on the small district systm after the British pattern. This was attributed to the reason that Britain had adopted a law designed to curb corrupt practices, which made an ideal election possible, and that the lessons learned from experience in the aforementioned local elections in Japan were taken into account.

The Japanese electoral legislation is first characterized by the fact that both the Meiji Constitution and the new Cnnstitution (1947-) delegate almost all the rules governing matters relating to elections to the laws concerned. The old Constitution provided for the basic principle of public election for the members of the House of Representatives, but left all the rest to the provisions of the Parliamentary Election Law (Article 35). Likewise, the new Constitution provided for a limited number of basic principles, such as the equal election and the secret election, but delegates all the rest to the statutory provisions. Consequently, the detailed regulations are left flexible so that they can be changed according to the evolution of the society.

The second characteristic of the Japanese election law is that the bicameral system was and is adopted under the both old and new Constitutions of Japan and the election law for the Members of the House of Representatives, a lower house, has always constituted the main part of the Japanese election law since its inception. With the exception of the election of the Members of the House of Peers under the old Constitution, the elections of the Members of the House of Councillors, assembly members and chiefs of prefectures, cities and towns (new Constitution Article 93) and other public officers under the new Constitution are all based on the election law of the House of Representatives, which is applied mutatis mutandis, with certain rules established separately for each election according to its particular objectives. Now, let us trace the history of the Japanese election law with emphasis on the election law for the Members of the House of Representatives.

1. The election for the House of Representatives

As stated before, the modern, complete Japanese electoral legislation dates back to the Parliamentary Election Law, which was proclaimed along with the promulgation of the Constitution in 1889 and came into effect on July 1,1890. Subsequently, this

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[2] *T. Osatake*, Nippon Kenseishi Taiko (Outline of thc Japanese Constitutional History).

law was drastically revised in 1900, 1919, 1925 and 1945 respectively. For convenience sake, we may divide the history of the election laws in three parts in a chronological order : the first period characterized by limited suffrage (1889-1924) , the second period characterized by manhood suffrage (1925—1944) and the third period characterized by universal suffrage (1945).

First period

1. The law of 1889 : Ths law provided for a very strict limited suffrage on the principle of the sovereign power resting with the Emperor and the subjects supporting the Emperor. a. As regards the right to vote and to be elected : (aa) One had to be a male of at least 25 years of age (30 years to be eligible), and be a Japanese subject; (bb) one should have paid more than 15 yen direct national tax for more than one year, or an income tax for more than three years[3]. b. The number of House of Representatives members was fixed at 300, and the system of small electoral district with one representative was adopted, with the exception that some districts were allowed to elect two representatives (214 one-representative districts and 43 two representative districts). c. The open vote with single entry was adopted. In the case of electoral districts with two representatives, the plural entry and the majority representation was chosen. d. Election campaign could freely conducted in principle. However, the rules about punishment for election offenses were tightened up by the Imperial Orders of 1880 and 1898 respectively. Thus, under the law of 1889, elections were held six times.

2. The law of 1900 : The law of 1889 came in for criticism, from its very inception, from commercial and industrial circles on the ground that it was too heavily weighted in favour of the agricultural representation. Especially, since after the Sino-Japanese War of 1894—1895, the commercial and industrial circles grew in influence as a result of the development of Japanese capitalism. In view of the mounting pressures from the people for a revision of the election law, it was revised in 1900 so as to insure more extensive representation of the people. The major objective of this amendment was to expand the suffrage and to effect a drastic revision of the system of electoral district according to the changing conditions of the society. As a result : a. The tax requirement for the right to vote and to be elected was reduced from 15 yen to 10 yen. b. The fixed number of House of Representatives members

3 The direct national tax was comprised of land tax and income tax. The land tax constituted the major put of it. In those days, the land tax of 15 *Yen* was collected only from a middle-class land owner who had over 1,5 hectare of paddfield or 5,5 hectare of vegetable farms.

was increased to 370 and the system of electoral district was changed to the large-district system, with each entire prefecture used as a unit. However, every city was recognized as an independent electoral district (mostly with one representative), and this was designed to attach importance to commercial and industrial interests, as opposed to farmers (51 large electoral districts and 46 independent districts). c. As regards the method of voting, the plural entry is a standard practice for such a large electoral district, but the single-entry system was adopted under this election law. This measure was taken for the purpose of helping the minority representation in view of the arguments that the plural entry was unduly to the advantage of majority parties. d. The rules on election campaign and punishment for election offenses were revised, too. Generally, the revision was based on the principle of freedom. Incidentally, under this new law, the open-vote system was abolished in favor of the secret vote, which has since become a firmly established principle of the Japanese electoral system. Thus, under the law of 1889 seven elections were held.

3. The law of 1919 : The revised election law of 1900 had remained on the books for twenty years, although it underwent some partial modifications. The number of members of the Parliament representing the commercial and industrial circles sharply increased, as independent electoral districts grew in number. Since Japan took part in World War I and ended up on the winning side, its capitalism boomed. That brought about a drastic change in the social structure of this country, thereby sparking off pressures from the proletarian masses for universal suffrage. This eventually resulted in the *Hara* Government revising the election law for the purpose of expanding the suffrage and reforming the system of electoral district. This revised law of 1919 : a. relaxed the tax requirement for the suffrage by bringing down the required amount of direct national tax to 3 yen. b. increased the fixed number of House of Representatives members to 464, and reverted to the small-district system, with the excepion of some districts with two of three representative. Incidentally, the provision making an area incorporated as a municipality an independent electoral district remained unchanged (295 one-representative districts, 68 two-representative districts and 11 three-representative districts). c. The method of voting was based on the rule of secret vote with single entry. Even in the case of districts with two or three representatives, the same rule was applied. d. The election campaign and election offenses were regulated in the same manner as before. Thus, 24 elections were held under the law of of 1919.

Second Period

1. The Law of 1925 ; The 1919 revision ended up only as a temporary expedient

to compromise with the mounting pressure from the people for universal suffrage. It was reserved for the 1925 revision to put universal suffrage into effect. (a)There had always been pressure from the people for universal suffrage since the inception of the Imperial Diet. The Uuiversal Suffrage Bill was introduced to the Diet on several occasions since the 16th Diet session in 1901, the year after the first revision of the election law. Eventually, the Bill passed the House of Representatives at the 27th session of the Diet in 1911. In this connection, however, the real intention of this House was never clarified. The House of Peers not only unanimously vote down the Bills but also declared, under the leadership of Dr. *Hozumi*, one of its members, to bar a universal suffrage bill from it in the future. Consequently, the bill was not brought up again before the Diet for the next ten years.

As stated before, however, the rapid development of Japanese capitalism after World War I largely boosted the social influence of the proletariats and women, thereby stepping up the movement for universal suffrage. Consequently, the bureaucratic, non-party governments headed respectively by Prime Minister *Tomosaburo Kato* and *Gonbei Yamamoto* determined in 1923 to bring universal suffrage into being and referred the matter for counsel to the Legal System Investigation Committee. In 1924, the party government, headed by Prime Minister *Takaaki Kato*, and comprised of three parties of ≫*Kensei-kai*≪(Constitutional Government Association), ≫ *Seiyu-kai* ≪ (Political Friends' Association) and ≫ *Kakushin* Club ≪ (Progressive Club), all of which were dedicated to the defense of the constitutionalism drafted a revised election law on the basis of the recommendation by the Legal System Investigation Committee and introduced it to the Fiftieth session of the Diet in 1925. The Bill passed the House of Representatives with the support of the three parties. After some twists and turns in the House of Peers, it underwent some modifications. Finally the Bill was approved by the House of Peers in a compromise form and became law. (b) The 1925 revised law fixed the number of House of Representatives members at 466 and adopted the so-called ≫medium-district system≪, something like a cross between the large-district system using the prefecture as a unit and the small-district system with each district electing one Representative. As a rule it divided prefecture into several districts and apportioned three to five representatives to each district (53 three-representative districts, 38 four-representative districts and five-representative districts). (c) In spite of its nature as a large-district system, its method of voting was based on the secret-vote-with-single-entry system. This combined system of large electoral district and single-entry vote is quite characteristic of the Japanese election law. (d) Another characteristic

of this revised law is the fact that it established very detailed and systematic rules regulating election campaign on a comprehensive basis. Thus revised law of 1925 stood the test of three general elections, but in the process the immaturity and shortcomings of Japanese party politics revealed themselves.

2. The law of 1934: The fact that Fascism reared its head within Japanese politics after the outbreak of the Manchurian hostilities in 1932 resulted in criticism of the 1925 election law. The law was revised in 1934 to rid elections of all evils and thus put elections on a fair and square basis by enforcing severer rules regulating election campaign and election expenses as well as punishment for election offenses, but no mention was made of the right to vote, electoral district and the method of voting. Instituted for the first time under this revised election law was the so-called ≫public management≪ of elections. Thus, under this revised law, elections were held three times. The genearl election of 1942, the last one held during the last war, was such that only those candidates recommended by the *Taisei-Yokusan-Kai* (Imperial Rule Assistance Association) stood the chance of being returned.

Third period

1. The laws of 1945 and 1946: After Japan surrendered and accepted the Potsdam Declaration, her politics underwent revolutionary changes under the occupation by the Allied Forces. In December, 1945, the Japanese Government, on unofficial advice from the Occupation Forces, launched out on a drastic revision of the election law, with the result that complete universal suffrage came into effect and a number of sweeping changes took place in many aspects of the law. a. The right to vote and the right to be elected: The age requirement for the right to vote was lowered from 25 to 20 and for the right to be elected from 30 to25. And as stated before, women were granted the equal suffrage as men. b. The number of House of Representatives members was fixed at 466, and the electoral district system was changed, as a rule, to the large-district system using an entire prefecture as a unit. With the exception of the seven largest prefectures including Tokyo and Osaka, where a prefecture was divided in two electoral districts because its population was large enough to be entitled to the apportionment of 15 representatives, each of the other prefectures was made into an electoral district (39 four-to-ten-representative districts and 14 eleven-to-fourteen-representative districts). c. The method of voting was based on the limited-plural-entry system. The new law provided for a single entry for an electoral district with three or less representatives apportioned (and for a bye-election), entries of up to two for an electoral district with four to ten representatives apportioned and entries of up to three for an elec-

toral district with eleven or more representatives apportioned. d. The restrictions imposed on election campaigns under the old system were sharply relaxed and the rules concerning punishment for election offenses were alleviated, thereby insuring to a great extent the freedom of election campaigns.

This epoch-making revolutionary revision of the election law, particularly the large-district-and-limited-plural-entry system served the purpose of minority representation. The fact that this was instrumental in serving the political purpose of promoting newlydeveloping political forces at the time of political unrest in the post-war days was borne out by the outcome of the general election held in April, 1946.

However, the 1945 law was subjected to another revision in 1946 after undergoing the test of only one general election. This was due to the fact that the promulgation of the new Constitution necessitated readjustment of the election law. The transfer of the sovereignty from the Emperor to the people revolutionized the whole purpose and concept of the eleccion law, and also brought about an extensive change in the contents of the same law. It is worthy of note that the electoral district system and the method of voting reverted to the 1925 law, whch instituted the system of medium district and secret vote with single entry that provides for three to five representatives apportioned for each district. Simultaneously, a law was enacted to regulate electiotn literature and posters (Statute №16, 1947), thus subjecting the freedom of election, which had been insured under the revised Election Law of 1945, to severe restrictions with regard to literature and posters. This signalled the beginning of the reversion to the old system of restrictions imposed on election campaign. Thus, immediately before the coming into force of the new Constitution in 1947, a general election for the House of Represenaives was held.

2. The law of 1962 and 1964: Subsequently, the election law has been subjected to technical and partial modifications prior to almost every election for the House of Representatives and the House of Councillors, as incumbent House members saw fit. However, everytime an eletion was held there were more and more cases of corruption and increasing election expenses. That gave rise to pressures from the people for a drastic, sweeping revision of the election law. The Government reacted by establishing the Election System Investigation Committee and promising to abide by whatever recommendations the Committe might produce. It was on the first recommendation by the Committee that the sweeping revision of the law was carried out in(1962). The emphasis of this revision was placed on the management and execution of elections, the conduct of election campaigns and the enforcement of regulat-

ions concerning punishment for election offenses. The highlights of the revised law are: a. Steps forward were made toward a shift from the individual candidate-centered election to the political party-centered election. Thus, political parties are legally permitted for the first time to engage in election activities with some certain restrictions. b. Stricter restrictions are imposed on election campaign by a public-service employee, who can take advantage of the official position he holds. c. The system of public management of elections was strengthened. d. The restrictions imposed on the use of literature and posters, the transgression of which could constitute the so-called ≫formal offenses≪, were abolished, thereby liberalizing the use of them, while clamping down on the ≫substantial offenses≪ like bribery. Particularly, the provision for the ≫involvement rule≪ is worthy of note. However, this measure has come in for public criticism as being a legislation departing from the recommendation of the Election System Investigation Committee.

The election law for the House of Representatives was amended in 1964 with regard to the fixed number of the members on the second recommendation by the Committee. As a result, 19 members were added.

2. The selection of House of Peers members under the old Constituion

Those countries with the two-chamber system adopted as an organizational principle of the second chamber, the system of heredity, appointment or election. Adopted for the Japanese House of Peers was that which combined the qualities of all these methods, and it was typical of a selection method with restrictions because of social status or family origin. The House of Peers, as opposed to the House of Representatives, was established as a vehicle to ≫preserve the balance of a regime, check any excessively biased development of political parties≪ and ≫maintain the influence of the conservative forces≪. Its composition was ordained as follows by Article 34 of the Constitution and the House of Peers Ordinance (Imperial Ordinance No. 11, 1889). (1) Full-age Princes of the Blood. (2) Princes and Marquises over the age of 30. (3) 18 Counts, 66 Viscounts and 66 Barons elected by and from among the members over the age of 25 of their respective orders on a plural-ballot-and-open-vote basis with the term of office of 7 years, in accordance with the Counts, Viscounts and Baron Mutual Election Rule. (4) 125 Imperial nominees chosen for life from among men of national merit and erudite persons over the age of 35. (5) 4 members elected by and from among Imperial Academy members (2 each from the First and Second Departments of the Academy) on the basis of plural-

ballot and open-vote with 7 years' term of office. (6) 66 members elected by and from among high taxpayers over the age of 35 with 7 years' term of office at a rate of one or two from each prefecture according to the fixed number of the members established separately[4].

3. The elections for the House of Councillors under the new Constitution

Under the new Constitution which adopted the 2-chamber system as in the case of the old Constitution, the House of Councillors was established to replace the House of Peers. Unlike the House of Peers, however, its members are elected by popular vote (Article 43 of the Constitution). After the pattern of the British Upper House, the House of Councillors has less authority and fewer members than the House of Representatives. The former is described as representing ≫reason≪, while the latter as representing ≫numbers≫[5].

It has been a cause for argument since the new Constitution was promulgated what kind of method of election should be adopted for each of the two Houses, both of which are elected by popular vote, with a different ≫raison d'etre≪. Prior to the coming into force of the new Constitution, the House of Councillors Election Law was enacted as Statute No. 11, 1947, under which the first election was held on April 25 of the same year. As for the contents of this law, however, the right to vote and to be elected as well as the method of voting are very much the same as in the case of the House of Representatives. Major differences can be found only in the term of office and the electoral districts. The term of office on the part of the House of Councillors, which never undergoes dissolution, runs six years, with one half of its members elected anew every three years. Under the existing law, the House of Councillors is made up of 150 members elected from the national constituency and 46 local constituencies one for each prefecture. The number of members from the local constituencies is fixed according to the Table 11, attached to the Public Office Elections Law. As for the national constituency, the system is as unpopular as the national referendum on Supreme Court judges (Article 79 of the Constitution). This is because of the lack of personal contact

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4 *H. Ito*, Kempo Gige (Interpretation of the Meiji-Constitution); *T. Minobe*, Kempô Satsuyô (Compendium of the Constitution) , P. 316.

5 *Hôgaku Kyôkai*, Chûkai Nippon-Koku Kempô (Annotation of the New Constitution); *T. Miyazawa*, Nippon-Koku Kempô (Commentary of the Japanese Constitution), p. 321

between the members from the national constituency and the people. From the electors' point of view, the fact that they can select and vote for only one out of over 150 candidates detracts from their willingness to vote. From the candidates' standpoint, this system requires large campaign funds as well as extensive support from voters. This results in allowing only the representatives of political parties, organizations and unions to win seats in the House. This system can be regarded as playing the role of a vocational representation system. However, this system is also responsible for the growing trend toward increased partisanship of the House of Councillors to the point of degenerating into something a ≫pocket≪ House of Representatives, with the result that the object of the two-chamber system is being lost sight of. Under contemplation as a measure to reverse this trend, is a possible revision of the existing law which would bar any House of Councillors member from becoming a Cabinet Minister, reduce the present size of each electoral district or maintain nothing but the local constituencies by abolishing the national constituency. The proper answer is hard to find, however. In this connection, the vocational representation system often becomes a subject of debate. Despite some difficulties in properly dividing voters according to occupations and apportioning the seats in the House of Councillors among the respective occupations, this system is not interpreted as unconstitutional as long as it can preserve the essential quality of universal suffrage.

Chapter II

The present Constitution of Japan and the fundamental principle of elections

The modern bourgeois expanded their social influence by means of the Industrial Revolution. They rose in defiance of the absolutistic monarchy, affirmed the dignity of human rights of the individual, which had been buried under the totalitarian and abstract medieval concept of the state, and established modern democratic government by negating the privileges based on social status. This was backed up by the idea of natural law. What underlies the foundation of a modern democratic state is the idea of natural law which postulates the sovereignty resting with the people and fundamental human rights. The proponents of natural law in the early part of the modern era from Hugo Grotius to Immanuel Kant advocated the dignity of a free person and the social equality of each individual, and postulated ≫that all men are created equal, that they are endowed by their Creator with certain unalienable rights,

that among these are life, liberty and the pursuit of happiness≪. They held that men create a state by contract to promote their own happiness, that any authority of the state cannot originate without the consent of the people and that government is a sacred trust of the people. The thought of the sovereignty of the people based on this theory of social contract leads to the conclusion that an ideal form of government lies in that of direct and representative democracy. Thus, the suffrage, especially the right to vote, comes to take on the greatest importance.

Opinion is divided on the legal nature of the right to vote which all the modern Constitutions guarantee. The first to be mentioned is the individual-right theory, which regards the right to vote as a natural right of the people, as advocated by the proponents of natural law in the early part of the modern times. Secondly, there is the public-function theory, which was advocated by those students of law during the reactionary period in France and such German legal Positivists as P. Laband. It is postulated in this theory that an election is purely an action by an organization, and that an action by an individual, i. e., the exercise of his right to vote is an execution of public duty, thereby interpreting the exercise of his right to vote as a reflection of constitutional rules concerning the structural procedure of parliament. The third is the competence theory expounded typically by G. Jellinek. This is based on the public-function theory which postulates the functional nature of the right to vote, but unlike the latter, it does not regard the right to vote merely as a reflective right but recognizes its concomitant individual rights, such as the right to be registered on the electors list, to be allowed to vote and to have erroneous vote-counting corrected[6].

However, these theories are all too one-sided. These arguments concernig the substantial nature of the right to vote, indicating the complexity inherent in this right, cannot help but lead to the most rational theory of dualism in keeping with the thought of popular sovereignty and fundamental human right[7]. That is to say, on the one hand, the objective of the right to vote undoubtedly lies in the national

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6 *P. Laband*, Das Staatsrecht des Deutschen Reiches. pp. 296-298 ; *G. Jellinek*, System des öffentlichen Rechts. P. 136 ; *J. Hatschek*, Deutsches und preussisches Staatsrecht. S. 353 ; Stier-Somlo, Vom parlamentarischen Wahlrecht in den Kulturstaaten der Welt, SS. 18-36; *M. Duverger*, Institutions politiques. P.83 ; *G. Burdean*, Droit Constitutionnel et institutions politiques. P. 352

7 *Stier-Somlo*, op. cit. pp. 10-18 ; *H. Kelsen*, Allgemeine Staatslehre. p. 152 ; *L. Duguit*, Manuel de droit constitutionnel. p. 91 ; *M. Hauriou*, Précis de droit constitutionnel. p.566.

purpose of creating state organs, above all parliament, for the sake of the state, and therefore the functional nature of the right to vote can not be denied. On the other hand, however, the right to vote is a right, based on public law, enabling an individual to take part in the formulation of the will of the state, which has been won after a long and hard political struggle. The right to vote is a positive fundamentel human right that protects the liberties which are passive fundamental human rights. It is a subjective public right of the people guaranteed by the Constitution and in practice by the law under modern constitutional government.

The politics of Japan, which put an end to its feudalism of the past by promulgating the new Constitution two years after the end of World War II, are also ground on this universal principle of mankind, Under the old Constitution of Japan, which was referred to as a Prussian pseudo-constitutionalistic constitution, the Imperial Diet was nothing but a vehicle through which the will of the people was represented in the exercise of the absolute legislative power vested in the Emperor. The individual person, which was buried under the ideology of ≫regarding the people as a body of subjects (to the Emperor) on whom the Emperor's sovereign power is imposed≪, was considered from the standpoint of state law not so much as the subject of public rights but as the subject of public obligations. This is a unique fact which became unmistakably clear in the process of bringing the old Constitution into being and also in the course of the 60-year history of the constitutional government under it (1889-1947). Consequently, the right to vote then, as a means of supporting the political function of the Emperor, had peculiar and strong connections with the public-function theory from the academic, as well as political, point of view.

The new Constitution of Japan declares the sovereignty of the people and guarantees fundamental human rights (Articles 11,12,13 and 97). It also provides that the representative democratic government of the people, by the people and for the people is a universal principle of mankind (Preamble of the Constitution). Thus, the Diet is an organ representing the people, composed of members elected by the people with whom the sovereign power resides (Article 43). The Diet is the highest organ of state power and the sole law-making organ of the state (Article 41), Under the new Constitution, despite the fact that the ≫functional≪ nature of the right to vote can not be ignored, this right is accepted, more than anything else, as a fundamental human right to protect the fundamental human rights of the people.

The Constitution provides for some fundamental principles concerning the right to vote as a fundamental human right, and delegates specific rules for the laws concerned. These principles develop as follows.

1. *The basic principles of the Election Law(i)*

The principle that rules the modern election system is that of equality and freedom of election. Above all, the principle of equality is a fundamental part of the Election Law.

A. The principle of equality under the law [*Article* 14 *of the Constitution*]

This principle constitutes a fundamental theory upheld by the Constitutions of all nations of the world. Originally, this theory was a requirement of a constitutional state which was binding only on the executive power, i. e., the administrative and the judiciary. Today, however, it is generally accepted that this theory applies also to the legislative power. In other words, the principle of equality under the law, as a fundamental concept of democratic government, obviously means the general prohibition of enactment and application of any arbitrary laws which deny the social equality of any individual. It must be noted, however, that a mathematical and logical concept of equality is not generally accepted as a denial of the legal system itself. The propositon of equality is always value-relating (wertbeziehend) and what is meant by equality is to treat equally what is equal, and unequally what is unequal. In interpreting the proposition of equality, it is generally recognized that the distinction and classification which stems from the nature of things, and tellies with the evaluation found in the legal consciousness of a concrete branch of law does not constitute a breach of the equality principle[8].

It is also generally agreed that the provision of the Constitution concerning the equality of the right to vote (Paragraph 2,Article 44) may be interpreted as a concrete application of the general rule of the ≫equaltiy under the law≪.

B. *In the field of election, the principle of epuality develops as follows.*

a. Numerical equality of votes : This generally means the equality of qualifications for election. And the equality of qualifications for election is near to complete equality in many respects (Article 44, Paragraph 2 , Article 15). In this way universal suffrage, equality of votes and direct and free election are guaranteed. However, as

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8 Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehre, Heft 3 ; G. Leibholz, Höchstrichterliche Rechtsprechung und Gleichheitssatz, Archiv des öffentlichen Rechts, N. F. Bd. 19, 1930 ; *H. Heller*, Die Gleichheit in der Verhältniswahl nach der Weimarer Verfassung 1929, ; H. Bindewald, Der Gleichheitsgedanke im Rechtsstaat der Gegenwart, 1931 ; G. Leibholz, Strukturprobleme der modernen Demokratie, 2. Aufl., 1694, pp. 1-9; G, Pfeiffer, Die Verfassungsbeschwerde in der Praxis, 1959, p.67 f., p. 69 ff., p. 205 f,; F, Müller, Das wahlsystem, 1959, p. 23.

long as the refusal to grant the right to vote because of age, residence, and other reasons is admitted, no absolute equality shall exist with regard to elections.

b. Value equality of votes : The principle of equality in elections requires the value equality of votes. The equality principle takes on an enlarged significance by denying the majority representation and adopting the minority representation or proportional representation. This is referred to as the principle of ≫equality in counting votes≪. For instance, however, the differences in the use of quota and fractions found in various methods of proportional representation make the existence of absolute equality impossible, thereby causing considerable controversies, as is generally known.

Since the old Constitution of Japan delegated all the rules concerning election to the laws concerned, no legal case could be made out of the value equality of votes. Under the new Constitution, however, this can and does constitute an object of controversy. In other words, for the election for the House of Representatives, the number of representatives for each electoral district is fixed as per the Table attached to the Public Offices Election Law (1950), with the stipulation that the number be reviewed every five years for each district on the basis of the national census most recently taken so rectify whatever proportional lack of balance may exist between a representative and the size of the population he represents in the district. Despite this stipulation, no rectification had been made since the existing election law came into effect in 1952. In view of the increasing pressure from public opinion, however, such lack of balance was recently (in 1964) rectified by increasing the numer of the representatives by 19 on a tentative basis. The lack of balance in the number of those members for the House of Councillors elected from local constituencies is under scrunity by the Election System Investigation Committee, but at the time of writing, the number still remains unchanged. Such being the case, the election for the House of Councillors in 1962 was held under such unfair conditions from a proportional point of view that in some electoral district a House of Councillors member represented four times more electors than in the case of other electoral districts[9]. A legal case was made out of this on the grounds that this election had been conducted under the representative conditions and therefore constituted a violation of Articles 14 and 44 of the Constitution, which provide for the equality in election, thus making the outcome of the election in question null and void. The point at issue lies in the requirements of legal controversy (*jiken-sei*) and the unc-

9 Supreme Court decision of 5. February, 1964.

onstitutionality of the law concerned. As regards the requirements of legal controversy :

(a) The Supreme Court did not recognize the contention of the defendant that the election in question, based on the bona fide execution of the law, was not illegal, and that even if the Court ruled the illegality and nullity of the election at issue, it would be difficult at this point to have the law revised at the Diet and even if the election was done all over again, the same outcome would result. The Court rejeted this contention because its first half was counteracted by the power of the Court to determine the constitutionality of any law (Article 81 of the Constitution), and the latter half was negated in view of the nature and the function of a court of justice.
(b) The defendant contended that such a legal case belonged to an act of government or a political question and did not fall within the jurisdiction of the Court[10]. The Supreme Court, however, hesitates to adopt such a theory as this in dealing with cases often brought up and regarded usually in France and the United States of America as belonging to an act of goverment or as a political question[11]. This attitude of the Court is based on the provision of Article 81 of the Constitution[12] that provides for the power of the Court to determine the constitutionality of any law and the provision of §§ 3 of the Court Organisation Law that provides that a court shall try all lawsuits. When such a case as this is a matter for the Supreme Court to determine and is clearly unconstitutional, the Court shall declare it null and void.

As regards the unconstitutionality of the law, the Supreme Court stated its decision as follows. The fact that Articles 43 and 47 of the Constitution provide that the number of the members of each House shall be fixed by law is interpreted as meaning that matters concerning election are, as a rule, delegated to the discretion of the Diet, the legislative branch of government. The constitutional provisions of Articles 14 and 44 providing for the ≫equality in election≪ can not be interpreted as positively ordering the apportioning of the number of the members of the Houses in proportion to the population of electors for each electoral district. Therefore, granting that lack of balance has been caused by the fact that the Table attached to the current Public Offices Election Law has not been revised in true proportion to

10 Annuaire be l'institut international bu broit public, 1931 ; *H. Schneider*, Gerichtsfreie Hoheitsakte, 1951.

11 Supreme Court becisions of 8. June, 1960 and 16. December 1959.

12 ≫The Supreme Court is the court of last resort with power to betermine the constitutionality of any law, orber, regulation or official act.≪

the number of electors, the lack of balance in the case at issue only concerns the propriety of the legislative policy, and dose not constitute a question of unconstitutionality. Incidentally, what is meant by the case, as mentioned in the decision, where the number of electors a House member represents in his electoral district, is not truly proportionate, thereby making its unconstitutionality crystalclear? As to its criterion, the Supreme Court remains noncommittal in spite of the plaintiff's insistence on the ≫2-to-1 ratio≪ or other similar theories.

C. *Equality of political parties*

Hand in hand with the equality in the right to vote is the equality of political parties. Under a Constitution that recognizes freedom of speech, assembly and association, it is against the principle of equality and, therefore, unconstitutional to treat any party or faction unequally in enforcing the election law. Here again, however, no principle of absolute equality is recognized. Incidentally, what can be said of the election laws in recent years is the fact that the election laws in the people's democratic states, not to mention the Soviet Union, undoubtedly do not recognize equal rights with regard to elections for Conservative reactionary parties and by the same token, the election laws in West-European democratic countries tend to deny Communist and other similar parties equal rights in regard to elections. It is safe to say that the French, West-German and Italian Election Laws restrain Communist and other similar parties by adopting the election systems which tactfully and forcibly combine small-and large-district systems, or majority-and-minority-representation methods. It must be pointed out here that the election laws presented purely as technical laws are in fact serving political ends.

Now, let us take the case of Japan. It is axiomatic that as long as democratic government, whatever its ideals may be, is founded on the homogeneity of the people and the principle of majority vote, it can not help but take the form of party politics. In spite of this, political parties are often treated as extra-legal phenomena and are not properly taken into account in constitutions and laws. H. Triepel classified standpoints of the law vis-a-vis political parties into four historical stages : (1) the period of political parties being regarded with hostility, (2) that of political parties being ignored, (3) that of political parties being recognized and (4) that of political parties being ≫constitutionally≪ incorporated[13].

This classification can literally be applied to the history of Japanese constitutional

13 *H. Triepel*, Die Staatsverfassung und die politischen Parteien, 2. Aufl., 1930.

government. In Japan, political parties have constituted very important political factors since the time the Imperial Diet was first established. Nevertheless, the Japanese unique bureaucratic government interlocked in a peculiar way with the absolutistic Emperor system under the old Constitution treated political parties with hostility or ignored them, and always suppressed and restrained them. Worthy of note is the history of Japanese constitutional government under the old Constitution which was characterized mostly by the domination of bureaucratic regimes supported by the powerful political forces of the Privy Council, the House of Peers and the military authorities. Since the parliamentary cabinet system, with the sovereign power trusted to the Diet, was adopted under the new Constitution, political parties have finally become recognized. But the orientation of political parties in the intra-legal context still remains to be a matter for the future to decide.

II, Basic principles of the Election Law (ii)

As emanations from the maxim of representation of individual persons that rules the Japanese election law, there are four principles of universal suffrage, equality of votes, direct election and, as a symbol of free election, secret vote.

a. Universal suffrage

The universal suffrage has become a common principle of election laws in modern democratic states. The universal suffrage, as opposed to the limited suffrage, recognizes the right to vote for all adults as a rule. The history of the development of modern democratic government means the history of the acquisition by its people of universal suffrage, and the election law of a country serves as a barometer for its democratization. The new Constitution of Japan provides for ≫equality under the law≪ (Article 14) and guarantees universal suffrage (Article 15) and further provides in Article 44 that ≫there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income≪.

(a) Restrictions because of race and religion

For example, all the states in the United States of America did not give suffrage to negroes until 1870, when Amendment Fifteenth of the US Federal Constitution was adopted to abolish the discriminatory treatment of negroes from whites, thus granting suffrage to the former for the first time. Also in Germany before 1848, non-Christians were prohibited from voting in elections, and accordingly Jews were excluded from elections. These cases can be cited only as past examples ; today, no such practice seems to exist. That goes for Japan, too.

(b) Restrictions because of sex

As far as election is based on the principle of equality of individual persons, it goes without saying that any restrictions on account of sex are illogical. It was as a result of World War I that women, who had long been denied suffrage under the feudalistic family system, finally won it. In Japan, the movement designed to obtain suffrage for women had long since been launched, along with the campaign for universal suffrage. But it was not easy to win it. However, the coming into force of the manhood suffrage in 1926 sparked pressure for female suffrage. Thus, in the early part of the *Showa* era (1926-), the Government began to consider seriously recognizing the right for women to vote in local elections. This, however, suffered a setback, when the Manchurian War broke out and a state of emergency was proclaimed in Japan. That caused the plans for woman suffrage to become dormant. After World War II, the Japanese eletion law was revised in December, 1945 under the guidance of the Occupation Forces to grant suffrage to women for the first time in Japanese history. This was followed up by the new Constitution of Japan, which guaranteed the woman suffrage in its Artieles 14, 15, 24 and 44. Now that female suffrage has been granted, the number of women voters has surpassed that of men voters. Interested increasingly in political facts of life, they have elected a number of their representatives to the Diet to date.

(c) Restrictions because of social status or family origin

As an organizational principle of the second chamber, a constitutional monarchy adopted that of heritage, election or appointment. The House of Peers under the old Constitution of Japan was a case in point. Under the new Constitution, the House of Peers was abolished and replaced by the House of Councillors, which is elected by universal suffrage.

(d) Restrictions because of education

This also has a long history. As is commonly known, for instance, the French election law of 1831, the Portuguese eletion law of 1878 and the existing election laws of southern states in the United States of America make it the requirements for the right to vote and to be elected to have received general education and to be able to read and write the provisions of the Constitution. In Japan, such a rule of restriction has never been written into law, but the fact that the old election law made it mandatory for a voter to write the names of candidates by himself and did not allow him to ask someone else to write for him was interpreted as being based on the theory of excluding from voting those illiterates, who could not read and write names of candidates, which, in Japan, are not always easy to read and write. The existing election law allows an illiterate to ask someone else to write for him.

(e) Restrictions because of property and income

The bourgeoisie, who established bourgeois democracy by destroying the medieval feudalism, restricted suffrage among themselves by reason of qualification for voting chiely in terms of property and social status. The history of refusing to recognize suffrage for proletarians on the theory that ≫a man without adequate property has no adequate mind≪ goes way back, and limited suffrage based on property and income was a common practice in European and American countries until the middle of the 19th century. In Japan, too, the limited suffrage was practiced for a long time after the election law was first enacted, with only a limited number of taxpayers being entitled to the right to vote and to be elected. The first Japanese Election Law enacted in 1889 recognized suffrage only for those who had payed national tax exceeding 15 *yen* per year for over one year (in the case of land tax) or over three years (in the case of income tax) in the same prefecture. It was in 1925 that the election law was revised to abolish this requirement. Under the old Constitution, however, the House of Peers, which was the second chamber, had 66 seats set aside for high bracket tax payers over and above those for peers, and only wealthy bourgeoisie and landowners were granted the right to vote for and to be elected to this House.

To recapitulate, universal manhood suffrage was established in Japan as a result of the 1925 revision of the Houae of Representatives Election Law, which eliminated the tax requirements for the right to vote. However, this system fell short of the complete principle of the equality of personalities which should form the basis of modern election laws in that it recognized no woman suffrage aud provided for legal incapacity to vote on a large scale. It was not until after the last War that the Constitution and the election law were revised under the guidance of the Occupation Forces undergoing a revolutionary change, with the result that an almost complete universal suffrage was guaranteed for adults regardless of sex.

On this basis, the Japanese Public Offices Election Law provides nationality, age and residence as positive requirements for the right to vote and to be elected, and as disqualifications, which are passive requirements, the same law enumerates : (a) an interdict, (b) a convict serving his term and (c) one who is suspended from the right to vote and to be elected because of election offenses he committed. Only these are regarded as lacking the ability to perform a public function. Thus, the law keeps the legal incapacities for election to a minimum. The requirements for the right to be elected are a little severer than in the case of the right to vote, and the law has provisions stipulating age requirements (House of Councillors: 30 years and House of Representatives: 25 years) and barring persons engaged in some specified

occupations from the right to be elected. These requirements are very much the same as in the case of other countries.

* Ratio of Voters to the Population

(Prepared by the Ministry of Self-Government Affairs)

General election	Date of election	Number of voters		Population (Unit; 1,000)	Ratio of voters to the Population	Voter qualification
1	1890. 7. 1	450,852		39,902	1.13%	A male over the age of 25 who pays the direct national tax exceeding £15 per year (1889 Election Law)
7	1902. 4.25	982,868		44,964	2.18%	
14	1920. 5.10	3,064,590		55,473	5.50%	Revised to „A male who pays the direct national tax exceeding £3(1919)
15	1924. 5.10	3,274,585		58,350	5.61%	
16	1928. 2.20	12,405,056		62,070	19.98%	Tax requirement abolished (1925)
17	1930. 2.20	12,651,785		63,872	19.81%	〃
18	1932. 2.20	12,014,963		69,890	18.23%	〃
21	1942. 4.30	14,595,287		72,300	20.19%	〃
		male	female			Revised to „A person over the age of 20" (1945)
22	1946. 4.10	16,320,752	20,557,668	75,800	48.65%	
23	1947. 4.25	19,557,766	21,329,727	78,101	52.38%	〃
24	1949. 1.23	20,060,522	22,044,778	81,780	51,49%	〃
25	1952.10. 1	22,312,761	24,459,823	85,900	54.45%	〃
26	1953. 4.19	22,480,590	24,609,577	86,800	54.25%	〃
27	1955. 2.27	23,556,833	25,678,542	88,700	55.51%	〃
28	1956. 5.22	24,883,410	27,130,119	89,500	58.11%	〃
29	1960.11.20	25,962,162	28,350,831	93,490	58.09%	〃
30	1963.11.21	27,844,143	30,397,542	96,240	60.56%	〃

b. Equality of votes

The equality of votes is a system of election under which all the votes cast by electors are treated equally and under which the right to vote is equal. Another system of election, as opposed to the equal-votes ystem, is the unequal-vote

* According to the latest statistics, the average rate of voting is for the House of Representatives election 70%-75%, for the House of Councillors election 60%-65%, and for local election 85%-95%.

system. This system,as distinct from the limited suffrage, is not designed to deny any individual the rigiht to vote, but while recognizing the right to vote for him, it treats with discrimination the value of votes cast by elctors according to their respective qualifications. As a type of unequal-vote system, there is (a) plural-vote system, which allows an elector to cast two or three votes, instead of just one vote, according to his property, education, age, social status or family origin. In the past, there were such election systems in England, Switzerland, Belgie and the other states. Another type is (b) classified election system, which is designed to hold an election separately for each social class, according to property, education, age, social status or family origin. A good case in point is the Prussian Lower House Election Law, adopted on May 30, 1848, which divided electors in three categories according to the amount of taxes they pay. Electors in each category were allowed to elect Lower House members whose number was fixed by dividing the total number of the Lower House members by the number of categories (3 in this case).

Such unequal-vote system is nothing but a kind of restriction or unequal treatment of the right to vote. Therefore, it is not in force today as is the case with limited suffrage. Japan has never adopted a pluralvote system with regard to the election of House members. However, a classified election system was adopted in 1888 and 1921 respectively for local elections, and it was used also for the election of Court, Viscount and Baron members of the House of Peers until the end of World War II.

c. Direct election

The direct election is a system of election, under which House members are elected directly by voters. The indirect election, as distinguished from the direct election, is a system under which voters elect a specific number of intermediate electors, who, in turn, elect their representatives to the House, thus putting the voters in a position to take part in the election of their representatives only indirectly. As in the case of the election laws of many states in the German Empire, many countries in Europe adopted the indirect election system until 1848. The number of those countries which still adopt the indirect election system for their House members is on the decrease. In Japan, no indirect election system has ever been adopted in its history. The existing Costitution of Japan provides for the parliamentary-cabinet system, under which Prime Minister is elected by the Diet. In the eyes of voters in general, this system may seem to be a kind of indirect election.

d. Secret vote

This system, as opposed to the open vote, is symbolic of freedom of election. The

open vote is an effective means of election in order to get electors to assume full responsibility for their selection. Therefore, the open vote has been adopted since olden times. Included in this system are a show of hands, a rising vote, a clapping of hands, a viva-voce vote, a designation, a white-and-blue-ballot system, plus an open ballot, which is in common use today. It was not until the middle of the 19th Century that Britain, France and Germany adopted the secret voting in the form of the ballot-paper system. In Japan, the House of Representatives Election Law adopted the open-ballot system in 1889. This system is still recognized for use in voting within the Diet. Incidentally, when Counts, Viscounts and Barons elected their representatives from among themselves to the now-de-funct House of Peers, they always used this method. It is true, as stated before, that the open vote is an ideal form of election in the sense of getting voters to assume full responsibility for the votes they cast. But inasmuch as elections today are fraught with the danger of intervention, bribery, entertainment with intent to bribe and interference with freedom of election, it is the secret vote that makes it possible for electors to vote in the fairest manner. Cosequently, this system has since become the standard procedure for the election of House members. It is provided in Article 15 of the Constitution of Japan that ≫in all eletions, secrecy of ballot shall not be violated and that a voter shall not be answerable, publicly or privately, for the choice he has made≪. To ensure the secrecy of voting, the Public Offices Election Law provides for : (a) unsigned ballot, (b) maintenance of the secrecy of vote and penal regulations concerned (§ 227), (c) establishment of a booth in which to fill out ballot paper (§ 39), (d) maintenance of the secrecy of ballot box and penal regulations concerned and (e) the use of government-issue ballot paper (§ 45).

Incidentally, according to the principle whereby the voter is not answerable for the choice he has made, he should not be required to answer any questions by the authorities concerned (§ 52),and shall duly be able to refuse to make any statement as to voting as a defendant or witness at any trial. Even a voluntary statement in this respect is not allowed to be used as evidence in a trial[14].

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14 *T. Minobe*, Senkyo-hô Shôsetsu (Outline of Election Law), 1948 ; *T. Miyazawa*, Senkyo-hô Yôri (Summary of Election Law), 1930 ; *S. Moriguchi*, Senkyo-hô (Election Law), 1931 ; *M. Kawamura*, Senkyo-hô (Election Law), 1937 ; *S. Kiyomiya*, Kempô (Constitutional Law), 1957 ; *S. Ukai*, Kempô (Costitutional Law), 1957 ; *N. Ashibe*, Senkyo-seido (Electoral Institution) (Kokka Gakkai Zasshi, Vol. 71, No.4)1957.

Chapter III

The Public Office Election Law

Since 1889, the election of National Diet members and that of local government assembly members were provided for under separate laws respectively. This traditional system was retained even after the number of elections, including that of local public body heads and of administrative committee members as well as the national referendum on Supreme Court judges, drastically increased under the new Constitution. In 1950, however, the Public Office Election Law was enacted, consolidating these separate laws. In this sense, the Public Office Election Law is the basic law that governs the existing election systems in Japan. Its contents are : (1) General rules (2) The right to vote and to be elected (3) Electoral districts (4) The voters' list (5) The election day (6) Voting (7) The count of ballots (8) Election meeting (9) Candidate(s) (10) Candidate(s) elected (11) Election campaign and the public management of elections (12) Revenues, expenses and donations concerning election campaign (13) Political activities of political parties and other political organizations at the time of elections (14) Election disputes (15) Violation of election laws and penal regulations.

The principles of the universal suffrage, equality of vote, direct election and secret vote (freedom of election), which are provided for in the Constitution, form the keynote of this election law. The technical side of the management and execution of elections is almost the same among all kinds of elections. Let us take a ≫bird's-eye view≪ of the existing law by bringing the case of Diet member elections into focus by way of illustration.

1, *The organ for the management and execution of elections*

Under the old Constitution, the Minister of the Interior and his subordinates, i. e. Prefectural Governors took charge of the management and execution of elections with city, town and village mayors under their command and supervision. This system often gave a handle for unreasonable intervention and cast a shadow of doubt on the fairness of elections. Under the new Constitution, however, the Prefectural Governors have become elective by popular vote and at the same time an administrative committee called Election Administration Committee was created to manage and execute elections. The National Election Administration Committee, the Prefectural Election Administration Committees and the City-Town-Village Election Administration Committees were established under the 1947 revised law.

2. *The types of elections*

Elections for the House of Representatives, House of Councillors, prefectural assemblies, and city, town and village assemblies are generally divided into the three types of general election, re-election and by-election. A general election is held to elect all the members of the House upon expiration of their term of office (House of Representatives : 4 years, House of Councillors : 6 years) or in the event of a dissolution. (In the case of the House of Councillors, members are elected anew every three years.) A re-election is held to fill a vacancy or vacancies that arise after an original election is over and when the vacancies cannot be filled by the rectified determination of the candidate (s) elected or return by moving-up (§ 109 PEOL). A by-election is held to fill a vacancy or vacancies that arise as a result of the death, resignation, expiration or loss of the right to be elected of an incumbent member or members (§ 113 POEL). It is to be held within a specific period of time after vacancies have reached the number fixed by law.

3. *The election administration*

1. Voters' lists. The Japanese election law has always made it mandatory to prepare voters' lists. It is required by the existing law to defer the lists for one year. The lists are prepared ex officio as of September 15 every year. It is required to check the qualifications of those who have resided in the same city, town or village for over three months and by October 31, basic voters' lists must be prepared.

II. Candidature. An eligible person can qualify to become a candidate for the pubic office concerned and begin his election campaign only after having filed a proper report on his candidature by hilmself or by those voters who want to put him up as a candidate with his consent (§§ 68, 86 POEL).

III. Voting. The self-writing, government-issue-ballot-paper and polling-place-voting system is currently in force, besides the principle of secret vote with single entry. However, the self-writing system authorizes voting by proxy for physically-handicapped and illiterate voters, and the polling-place-voting system permits absentee voting for certain kinds of voters (§§ 48, 49 POEL).

IV. Counting of votes and election meeting. As a rule, votes are counted separately for each city, town or village. If necessary, however, a municipal area can be divided into several ballot-counting districts, or conversely several towns and villages can be consolidated into one district. The results of counting are reported to the election administrator, who in turn determines the return of candidate(s) elected at

an election meeting on the basis of the over-all results of the counting (§§ 80, 81 POEL).

4. *Prohibition and restriction of candidature*

For instance, a person who runs for a public office from a certain electoral district cannot run simultaneously for the same election form any other electoral district. Besides, no double candidature is allowed (§ 87 POEL), and no national or local public service employees are permitted to run for any public office during their incumbency, with the exception of Cabinet members and some other certain public officials (§ 89 POEL). Worthy of note is the restriction on the candidature of high government officials.

High government officals have varying degrees of chance to exploit their public positions to win elections. If they occupy a position to handle subsidies, grants-in-aid or issuance of permits and licenses, they are unquestionably in an advantageous position to run for elections upon resignation from the government service. In Japanese society, there persists a long and deeply rooted tradition of looking upon government officials as ≫superior≪ and looking down on private citizens as ≫inferior≪. To avoid evils arsing from such practices, every time the election law is revised, the question is brought up as to the propriety of placing restrictions on some high government officials running for elections and of banning incumbent Prefectural Governors from running for fourth or fifth consecutive term. However, there is a strong opinion that such legislation is unconstitutional as a discrimination based on social status. On the grounds that it is recognized in Articles 12 and 13 of the Constitution to impose the minimum restrictions needed to insure the public welfare in case where the rights of the people are clearly in jeopardy, the First Election System Examination Council came up with the recommendation that the imposition of restrictions be limited to the candidature of higher government officials for the House of Councillors from the national constituency for the first election after their resignation from the government service, and to that of the Vice-Ministers and Bureau Directors of the Ministries of Finance, Agriculture & Forestry, Construction and Transportation and some others who have proven to do the most harm to the fairness of elections. The legislation of this recommendation failed because of the objection from the Government and the Government party, however. Instead, the 1962 revised law tightened up control on any pre-election campaign by public service employees in a position to abuse their authority and made new provision for special ≫involvement≪ rule under which the return of a candidate elected who was a higher government official shall be invalidated if it is established as a result of

trial that their old subordinate officials have committed such offenses to a substantial degree (§ 251-3 POEL).

5. *The return*

The return is determined, on the principle of relative majority representation, in the order of the number of votes obtained from among the candidates who polled the legal number of votes (e. g., in the case of the House of Representatives election, the legal number of votes is fixed at ⩾the number of votes exceeding one-fourth the figure obtained by dividing the total number of votes cast within the electoral district concerned by the number of the seats apportioned for the same district). When a return contestation is and, as a result, invalidity of the return is irrevocably decided, another election meeting shall be held immediately for the rectified determination of a person elected, if it is possible to determine the return without a re-election (§ 96 POEL). If the person elected is dead, or he forfeits the right to be elected after the date of election, there occurs a vacancy. In such a case, an election meeting shall be held to determine the return by moving up one from among those who have polled the legal number of votes but failed to get elected. This method of return shall be employed to determine the elected when the initially elected dies within three months after the date of election, or when he forfeits his return because of election offenses(§§ 97,109 POEL).

Chapter IV

Electoral district system

1. *History*

1. The Japanese electoral district system has been revised six times to date since it was originally established in the form of a small-district system. The House of Representatives Election Law (1889) was adopted under the influence of the electoral district system widely in effect in Europe, particularly Britain, in those days. Electoral districts were established on the basis of county (or city) administrative districts, with each district made up of several countries (or cities) combined in such a way as to form a unit with a population of roughly 130000, and one representative being elected from each district. Exceptionally, in areas where such a combination was not possible, several additional counties were added to form a district with twice that population and two representatives were elected

from such a district. The whole country was divided into 257 electoral districts, with the single-entry-ballot system adopted for an electoral district with one representative and the plural-entry-ballot system for an electoral district with two representatives. (214 one-representative district and 43 two-representative districts)

2. In 1900, however, the election law was amended to eliminate the irrationality of the small-district system, which was to the advantage of large political parties, but to the disadvantage of small political parties, by adopting a large-district system, using the entire prefecture as a unit. The rate of one representative for a population of 130000 remained in force. As a result, some prefectures had 10-odd representatives apportioned. Most of cities were made independent electoral districts, with one-representative being elected for every 30000 citizens, thereby constituting a small district system of sorts. It goes without saying that the reason for making independent electoral districts out of cities was to rectify the representation being too heavily weighted with farmers and to attach more importance to cities so as to have greater commercial and industrial representation secured in the Diet in keeping with the development of capitalism in Japan. Foremost among the reasons for adopting the large-district system with the single-entry-ballot system were ; (a) to select men of high repute from all over the prefecture. (b) to alleviate the cutthroat competition resulting from the small-district system. (51 large districts and 46 independent districts).

It was only too clear that such a large-district system was unduly to the advantage of minority parties. This election law was intended to stabilize the bureaucratic Government through the balance of powers among the political parties, with the small parties (*Kensei-Kai* and *Kokumin-To*) rapidly growing in strength because of this election law. Despite pressures from the majority party (*Seiyu-Kai*), this system remained in force for almost twenty years.

3. It was not until 1919, the year after the end of World War I, that this large-district system was replaced with a small-district system again under the *Hara* Government, the first Party Government in Japan. Strongly reflected by this change of system was the fact that the *Hara* Government intended to crush the existing political forces which had long since been firmly entrenched under the large-district system, thereby making it possible to put into effect a Party-centered election law devoted to the development of capitalism. This small-district system was more or less similar in content to that of the 1889 law, but this election law, as in the case of the 1900 law, preserved the independent-district system for cities, a system under which there was one representative for every 30000 citizens

as against the ratio, for county electoral districts, of one representative for evrey 130000 citizens. Also, this election law made it possible to retain in special cases large electoral districts each of which was apportioned two to three representatives. Even in these large districts, the basic principle of single-entry ballot was applied. There were 295 one-representative districts, 68 two-representative districts and 11 three-representative districts. It was under this electoral district system, referred to as a kind of gerrymandering, that the *Hara* Government dissolved the House of Representatives, held a general election and controlled the overwhelming majority in the House by defeating the Opposition parties (*Kensei-Kai* and *Kokumin-To*), thereby laying the ground-work for the party politics in Japan, although it must be noted that these was a strict limit to what could be done under the old Constitution.

4. Subsequently, however, this electoral district system, only too advantageous to the Government party (a majority party), came under pressure from the Opposition parties again. Pubic pressure for its revision eventually developed. This resulted in a Cabinet made up of three parties centered on the *Kensei-Kai* devoted to the defense of the constitutionalism, which came up with the Universal Suffrage Law in 1925. As a result, the small-district system was abolished in favor of the reversion to the large-district system. This new large-district system, however, fell under the category of medium-district system. Under this law, independent electoral districts for cities were abolished, with the result that, regardless of cities or counties, representatives were elected at a rate of one for every 130000 citizens on the basis of secret vote with single ballot. (53 three-representative district, 38 four-representative districts and five-representative districts.)

5. This medium-district system remained in force for about twenty years before it was revised immediately after World War II. The election law amended in 1945 adopted a large-district system, generally making one electoral district out of the entire prefecture, with the exception of those prefectures with over 15 representatives apportioned, which were divided in two separate electoral districts. As under the old system, one representative was elected roughly for every 130000 citizens. Adopted under this law was a new system of limited-plural-entry ballot which made it possible to vote for up to two candidates in an electoral district with four to ten representatives apportioned and up to three candidates in an electoral district with over eleven representatives apportioned. (39 four-to-ten-representative districts and 14 eleven-to-fourteen-representative districts.) This system of voting was obviously advantageous to minority parties and proved instrumental in sending a surpris-

ingly large number of progressive party members and women representatives to the Diet.

6. However, as stated before, the 1945 Law was subjected to another revision in 1946. The electoral district system and the method of voting reverted to the system of medium districts and secret vote with single entry. (40 one-representative ditsricts, 39 four-representative districts and 38 five-representative districts.) The justification for the reversion is explicable and questionable. That is why the Opposition parties put up a desperate resistance against the Bill for the revision during the course of the deliberation of it at the Diet. This medium district and secret vote with single entry system remains in force.

II. System of medium electoral district and sinle-entry ballot

r. In Japan, by a large electoral district is meant an electoral district covering one whole prefecture or an even larger area. With the exception of some small prefectures, each of which constitutes one electoral district, all other prefectures are made up of several electoral districts, each of which has three to five representatives apportioned. This system is referred to as ≫medium≪ electoral district. The medium electoral district is a kind of large electoral district. Under this medium-district system, a single-entry ballot is used and the non-transferrable method is adopted. This election system was first adopted by the Hamburg Free City Ordinance of October 13, 1879 for the election of city council members and also, reportedly, by the Constitution of Brazil in 1881. In Japan, it was introduced under the House of Representatives Election Law of 1900, the 1919 Amendment of the same law, the House of Representatives Election Law of 1925 and the current election law (1946—). This system has thus stood the test of time for over half a century in Japan. What is intended by this medium-district system is the elimination of the weakness of majority representation in the small electoral district and single-entry ballot system and also in the large electoral district and plural-entry ballot system, thus making the most of minority representation through a large-district system. This is a kind of large electoral district and limited-plural-entry ballot system, and a kind of minority representation system. It prevents large political parties in any given electoral district from monoplizing representatives, and provides small political parties with an opportunity to have their candidates elected. For example, take an electoral district with three representatives. Of 55000 electors, 25000 support A Party, 20000 B Party and 1000 C Party. In this case, A Party could win two representatives at best. If B Party puts up one candidate in an atte-

mpt to win one seat, A Party will not be able to monopolize all the three seats.

Consequently, this is generally considered a system that combines the favorable qualities of the small electoral district and single-entry ballot system and those of large electoral district and plural-entry ballot. The question remains, however, as to whether this system is really so suitable. First of all this system is apparently better than the small-district system, but there are too many ≫dead votes≪. This was graphically illustrated by Tokyo's results in the House of Representatives Election held in 1963, which are cited below as a good case in point.

First District

Candidates elected :

1	Tanaka	(L.D.P.)	142,688 votes
2	Aso	(D.S.P.)	83,192 votes
3	Hara	(J.S.P)	77,481 votes
4	Shinomiya	(L.D.P.)	74,573 votes
	Total		377,934votes(A)

Candidates not elected :

5	Hirosawa	(J.S.P.)	67,614 votes
6	Kokunami	(J.C.P.)	41,670 votes
	⋮	⋮	⋮
20			
	Total		118,789votes(B)

Second District

Candidates elected :

1	Ohoshiba	(J.S.P.)	98,119 votes
2	Kikuchi	(L.D.P.)	77,854 votes
3	Utsunomiya	(L.D.P.)	72,836 votes
	Total		248,809 votes(A)

Candidates not elected :

4	Kato	(J.S.P.)	71,529 votes
5	Motojima	(L.D.P.)	38,697 votes
	⋮	⋮	⋮
17			
	Total		176,654 votes(B)

L.D.P.=Liberal Democratic Party ; J.S.P.=Japan Socialist Party ; D.S.P.=Democratic Socialist Party ; J.C.P.=Japan Communist Party.

There were so many ≫dead votes≪ that its ratio to ≫live votes≪ was approximately A : B=3 : 1 (Second District A : B=1.5 : 1, Third District A : B=1.7 : 1, Fourth District A : B=2.6 : 1, Fifth District A : B=2.6 : 1).

Furthermore, dead votes were found among the votes the successful candidates polled over and above what was required to get elected. Take the Tokyo First District for instance. The Droop-Quarter (Q) for the First District is 99,346 ($Q=\frac{V}{M+1}+1=\frac{496,723}{4+1}+1=99,344.6+1=99,346$. [V : Total of valid votes ; M : Number of representatives apportioned]). What is indicated by this that the candidate who was elected with the greatest number of votes had at least 43342 (142688-99346) dead votes. According to the example mentioned above, the number of dead votes was such that the ratio of dead votes to live votes was approximately A : B=2.5 : 1.

All this indicates the fact that the medium-district system with single-entry

ballot is not acting as accurate and rational minority representation. It is true that the purpose of minority representation is being served to some extent in that in the above mentioned electoral districts in Tokyo, the Liberal-Democratic Party, Japan Socialist Party, Democratic Socialist Party and Japan Communist Party won their respective numders of seats in the districts by polling votes from electors who supported the respective parties, thereby preventing any large political party from monopolizing all the seats. On closer examination, however, it is found that the number of seats won by the respective parties is not in proportion to the number of votes polled by the parties. Take the Tokyo Second District for example, the Liberal Democatic Party polled a total of 151700 votes, while the Japan Socialist Party polled 169648. Despite the fact that the JSP had 17948 more votes than the LDP, the latter won two seats, while the former got only one seat. In other words, a vote cast for the LDP was worth two cast for the JSP in this electoral district. In spite of the fact that the minority representation system has as its purpose the rational distribution of seats among the respective political parties, the irrationality in this respect exists more or less in each electoral district. This is exemplified in the following chart showing the national figures.

29th General Election (1960)

Party	Number of Candidates	Votes polled	Number of Seats won	Number of seats the respective partieswould win, if the seats were distributed proportionally according to the number of votes each party polled [15].
L.D.P.	399	22,740,271	296	(269)
J.S.P.	186	10,887,134	145	(129)
D.S.P.	105	3,464,147	17	(41)
J.C.P.	118	1,156,723	3	(14)
Splinters	34	141,941	1	(2)
Independent	98	1,118,905	5	(12)
(Total)	940	39,509,123	467	(467)
		30th General Election (1963)		
L.D.P.	359	22,423,915	283	(255)

15 To compare the total votes each party polled and the number of seats each party won, the L.D.P. and the J.S.P. won more seats than numbers of the votes they polled would justify, and on the other hand, the D.S.P., J.C.P., splinter parties and independents won proportionally fewer seats than they deserve in terms of the number of votes they polled. It demonstrates the fact the medium-district system with single-entry ballot is to the advantage of minority parties.

J.S.P.	198	11,906,766	144	(136)
D.S.P.	59	3,023,302	23	(34)
J.C.P.	118	1,646,477	5	(19)
Splinters	64	59,765	0	(1)
Independent	119	1,956,313	12	(22)
(Total)	917	41,016,540	467	(467)

Thus, to be able to achieve the purpose of minority representation completely through this eldctoral system, it is necessary for each party to be able to foresee accurately how many votes it can poll in each electoral district and, on that basis, to plan to run an appropriate number of candidates from the district. When a party puts up two or more candidates from one electoral district, it is necessary for the party to be able to arrange for each candidate to poll no more or no less votes than are necessary to get elected. Should the party fail in this, it will not be able to win as many seats as it should. On the other hand, if the party succeeds in this planning, it will be easier for the party to win an overwhelming majority by exploiting the unequality of the value of voting, which will now be discussed. Suppose the two major parties, Conservative and Progressive, are equally matched in all the electoral districts throughout the country : according to the existing election law revised in 1964, of the 123 electoral districts in the country, 43 are 3-representative districts, 39 are 4-representative districts, 40 are 5-representative districts and 1 is 1-representative district (Amami-Ohshima Island). If both parties succeed in their planning, in the 39 electoral districts with even-numbered representatives apportioned, successful candidates are equally divided between the Conservative and the Progressive parties, and in each of the 84 districts with oddnumbered representatives apportioned, the Government Party normally has one more candidate elected than the Opposition Party, and the candidate who tops the list of the unsuccessful candidates is usually one from the Opposition Party. Thus, the Government Party is ipso jure ahead of the Opposition Party by 84 seats in the House of Representatives, the membership of which numbers 486 [16].

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16 Incidentally, in view of the fact that the gap between the last successful candidate and the first unsuccessful candidate is so narrow, schould another election be held, these proportions could easily be reversed. This was quite characteristic of prewar elections when Japanese democracy was full swing and the two equally powerful parties *Seiyu-Kai* and *Minsei-Tô* were pitted against each other. At that time, a Minister of the Interior, who played his party's card so well, was apotheosiz as ≫God of Elections≪. In the frame of reference of such electoral practices prevailing in this country, it is very difficult to do away with the status quo under which the Conservatives outnumber the Progressives by 2 to 1.

This goes to show that the medium-district system with single-entry ballot is so powerless and irrational that it can not make up for the weakness of the majority representation system.

2. The medium-district system with single-entry ballot is characterized by the fact that candidates individually compete for seats and that each of them is obliged to carry out election campaign extensively to scrape up votes by himself. Under this system, it is candidates themselves, not political parties, that bear the brunt of elections. As stated before, Japanese political parties have a long history and they have come a long way. Nevertheless, they became distorted under the pressure of the unique bureaucratic government of Japan. It is an undeniable fact that they have lagged behind in the modernization of their organization, with the result that, organization-wise, they are not firmly established. This gives party leaders a chance to act on a factional and dictatorial basis. Such Japanese political parties have not yet gained their proper place in law as mentioned above. In other words, political parties were placed in the position of a ≫third person≫ in the candidate-centered elections, and their activities were treated through the medium of, and on the same basis as, campaigns carried out by individual citizens.

It was not until after World War II that political parties were legally given a special status, as distinct from that of individual citizens, in connection with political activities and election campaigns :

The 1945 election law prohibited, as a rule, political parties and other organization from engaging in political activities or election campaigns during the legal period of the election campaign (20 days for the House of Representatives election, 23 days for the House of Councillors election), with the exception of some specific elections in which some authorized political parties or other organizations are allowed to engage in some specific political activities or electon campaigns during that period. Originally, this exception was granted only in the case of House of Representatives elections, and subsequently extended to the elections of House of Councillors members, prefectural governors and city mayors. In terms of organizations, the application of this exception was limited to a political party or other organizations with over 25 candidates for the House of Representatives, and one with at least 13 candidates for the House of Councillors (referred to as ≫confirmed orgnization≪). In terms of form of activities, this system authorized political speech meetings, speeches on the street, use of motor vehicles, posters and handbills for publicity of party platforms. The frequency of speeehes and the quantity of vehicles, posters and handbills authorized were increased gradually as the years went

on. Thus, originally allowed under this system were only those political activities designed to give publicity to their policies, and any activities related directly to election campaigns, such as those designed to recommend or support particular candidates were prohibited. However, what with the fact such political activities were so similar to and hardly distinguishable from election campaigns and the propriety of switching over to the party-centered elections, the 1963 election law at length authorizd election campaigns by political parties, thus enabling them, though under detailed conditions, to recommed or support particular candidates and engage in other kinds of election campaigns beyond giving publicity to their platforms (S 201-5-201-13 POEL).

Consequently, until the election law was amended recently, the hard fact that an election is supposed to be a competition among political parties was completely ignored in the election law. Legally, candidates stand for elections as individuals, and they are not nominated by parties as candidates of the parties and electors do not vote for political parties, but for candidates. From the legal point of view, it has been pointed out that political parties had nothing to do with elections, and elections were competed for only among individual candidates. Organization-wise and policy-wise, political parties impose little control on candidates. Consequently, for example, after having been elected, they often alter their party affiliations. Candidates elected are regarded as ≫representatives of all the people≪ and not obligated to act as representatives of any particular parties. Despite the intrinsic significance of the House of Representatives elections, this, plus the fact that political parties were not well established in Japan, puts electors in two minds as to whether to vote for parties or for individuals.

In this respect, Japan differs in the character of its election system from Western countries [17]. Thus, it can positively be said that the lack of strict organization of political parties and their ≫extra-legal≪ orientation has distorted the essential nature of the House of Representatives election.

3. That has made it necessary for individual candidates to try to rake up as many votes as they can over the wide area of their electoral district, thereby causing inevitable cutthroat competitions. For lack of adequate party control, organization-wise and policy wise, all candidates have to fight for individual victory on a

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17 *G.Lewis*, Electoral Changes after World War II (Constitutions and Constitutional Trends since World War II, 1955) ; *W.J.M. Mackenzie*, Free Elections, 1957, p. 50 ; *H, Unkelbach*. Grundlagen der Wahlsystematik, 1956, p. 96.

no-holds-barred basis. Their electioneering is characterized by the saying that ≫the end justified the means≪. The fact that such election campaigns are carried on over a comparatively wide area by candidates on an individual basis has resulted in undue increase in campaign expenses, fighting among candidates from the same party, conspiring to unseat party leaders, an attempt to collect votes by unjust means, such as bribery, treating, favoritism and personal connections as well as intervention by political interests, all of which characterize Japanese elections.

III. Prospect

Despite the fact that the medium-electoral-district system with single entry is designed to combine the merits of both large-district and small-district system, it's also true that this system has some of the demerits of these two other systems as well. It leaves much room for power, money, favoritism and personal influence or connections, thus resulting in costly and unfair elections, in which votes are cast not on the basis of political philosophy but on the basis of personal influence on the part of candidates. It is true that what is needed to correct the situation is to educate the people on the urgent necessity of accelerating fair and square elections. But worthy of particular note is the lack of philosophy behind this election system itself which is a mere compromise between the large-district and small-district systems. It is strongly urged that the trend moves away from the candidate-centered elections based on personal and financial influence and toward the political party-centered elections based on policy debates.

To stabilize the political situation and to bring about party-centered elections by switching from the medium-district system to the small-district or the large-district system, or something that combines the qualities of these two systems, a further revision of the election law is urged upon. Such a new status being given to poiltical parties, strong voices are being raised for the imposition of tighter control on their handling of political funds, and also for their systematization and modernization which may well be expedited by enacting a Political Party Law. In fact, the Election System Examination Council as well as the respective political parties themselves have already begun to study the matter in earnest.

The foregoing arguments may sound too critical of the medium-election-district system with single entry. It must be remembered, however, that any system is a means to an end, and that the value of this means varies according to its users. It can't be ignored that not a few people recognize the merits of this election system, which has stood the test of time in Japan for over half a centunry, and that in

The number of votes each political party mustered and the number of seats each party won in the House of Representatives elections held after the World War II (exclude April 25,1946 election)

Year election held	Number of	Liberal-Democratic Party	Socialist Party	Communist Party	Splinters	Independents	Total	Remarks
23rd	votes mustered	16,111,914	7,175,939	1,002,903	1,490,057	1,580,844	27,361,657	Liberal-Democratic Party
	(persentage)	(58.9)	(26.2)	(3.7)	(5.4)	(5.8)	(100.0)	(Democratic Party,
April 25,	seats won	281	143	4	25	13	466	Liberal Party,
1947	(persentage)	(60.3)	(30.7)	(0.8)	(5.4)	(2.8)	(100.0)	Kokkyo Party
24th	votes mustered	19,260,500	4,736,634	2,984,780	1,602,496	2,008,109	30,592,519	L.D.P.(Democratic Party,
	(persentage)	(63.0)	(15.5)	(9.7)	(5.2)	(6.6)	(100.0)	Liberal Party, Kokkyo P.)
January23,	seats won	347	55	35	17	12	466	Socialist Party (Socialist
1949	(persentage)	(74.5)	(11.8)	(7.5)	(3.6)	(2.6)	(100.0)	P., Labour-farmer Party)
25th	votes mustered	23,367,671	7,768,061	896,765	949,036	2,355,172	35,336,705	L.D.P. (Kaishin P., Liberal
	(persentage)	(66.1)	(21.9)	(2.6)	(2.7)	(6.7)	(100.0)	P.) S.P. (Left-Wing-Socialist,
October 1,	seats won	325	115	0	7	19	466	Right-Wing-Socialist,
1952	(persentage)	(69.7)	(24.7)	0	(1.5)	(4.1)	(100.0)	Labour-farmer Party)
26th	votes mustered	22,717,348	9,553,321	655,990	152,050	1,523,736	34,602,445	L.D.P. (Kaishin P., Hatoyama-
	(persentage)	(65.7)	(27.6)	(1.9)	(0.4)	(4.4)	(100.0)	L.P., Yoshida-L.P.) S.P.
April 19,	seats won	310	143	1	1	11	466	(Left-Wing-S., Right-Wing-S.,
1953	(persentage)	(66.5)	(30.7)	(0.2)	(0.2)	(2.4)	(100.0)	Labour-farmer P.)
27th	votes mustered	23,385,502	11,170,517	733,112	496,614	1,229,082	37,014,837	L.D.P. (Democratic P., Liberal
	(persentage)	(63.2)	(30.2)	(2.0)	(1.3)	(3.3)	(100.0)	P.) S.P. (Left-Wing-S.,
February 27,	seats won	297	160	2	2	6	467	Right-Wing-S., Labour-farmer
1955	(persentage)	(63.6)	(30.4)	(0.4)	(0.4)	(1.3)	(100.0)	P.)
28th	votes mustered	22,976,846	13,093,993	1,021,036	287,991	2,380,795	39,751,661	
	(persentage)	(57.8)	(32.9)	(2.6)	(0.7)	(6.0)	(100.0)	
May 22,	seats won	287	166	1	1	12	467	
1958	(persentage)	(61.5)	(35.5)	(0.2)	(0.2)	(2.6)	(100.0)	

29th				Socialdemo-cratic P.		Democratic social P.		
	votes mustered	22,740,272	10,887,134	3,464,148	1,156,723	141,941	1,118,905	39,509,123
	(persentage)	(57.6)	(27.5)	(8.8)	(2.9)	(0.4)	(2.8)	(100.0)
November 20,	seats won	296	145	17	3	1	5	467
1960	(persentage)	(63.4)	(31.0)	(3.7)	(0.6)	(0.2)	(1.1)	(100.0)
30th	votes mustered	22,423,910	11,906,752	3,023,300	1,646,477	59,765	1,956,313	41,016,540
	(persentage)	(54.7)	(29.0)	(7.4)	(4.0)	(0.1)	(4.8)	(100.0)
November 21,	seats won	283	144	23	5	0	12	467
1963	(persentage)	(60.6)	(30.8)	(4.9)	(1.1)	0	(2.6)	(100.0)

1 In this table, political parties are divided into the Liberal-Democratic Party and its factions, the Socialist Party and itsf factions, the Communist Party, Splinter Parties and Independents. Further breakdown of factions within the Liberal-Democratic Party and Socialist Party is shown in the ≫Remarks≪ column. (Based on the data released by the Ministry of Self-Government.)

2 This table shows, as a national trend, that with a few exceptions, the number of votes the respective political parties polled and the number of seats they won in the eight general elections held thus far under the medium-district system with single-entry ballot seem to be roughly in line with proportional representation. It must be remembered, however, that this trend of proportional representation is an unstable phenomenon that has appeared under the aforesaid complicated conditions, and also during the limited period of time.

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view of its effectiveness in securing stabilized regimes, accomplishing the objectives of minority representation to some extent and keeping representatives and electors close together, they patiently wait for it to bear fruit, while tightening control on any flagrant violation of the election law.

Chapter V

Regulation on Election Campaign and punishment for Election Offenses

I. History

Elections, which constitute the basis of democracy, must be conducted under free and fair conditions. All kinds of distortion of the popular will attempted for private or party interests, whether by means of money, violence or power, must be banned from the election. The purport of the disciplinary regulations in the election law is to suppress these thus to secure the freedom and fairness of elections.

The legal provisions concerning election discipline has made remarkable progress chiefly malpractices and other kinds of practices that would possibly lead to these offenses and in Great Britain, the homeland of parliamentarism. Consequently, the disciplinary regulations for the elections in Japan have made their development under the strong influence of British law. Its history may be conveniently described according to the three stages of development as mentioned in the Chapter on the development of the Japanese election system.

The first stage

In the House of Representatives Election Laws of 1889, 1900, and 1919 the provisions we find are merely penal rules for such grave offenses as fraudulent registration, fraudulent voting, bribery, assault, undue influence, riot, entertainments, allurement with interest, breach of secrecy, false statement, etc. While in the present election laws we have detailed regulations concerning campaign practices, the only provision of that nature in the former law was the prohibition of the canvassing in polling places, and there were no restrictions on the methods or expenditures of electionering.

The second stage : However, the Election Law of 1925 which adopted universal manhood suffrage provided, after the example of the British ≫Corrupt and Illegal Practices Prevention Act≪, 1883, with two new chapters on ≫Election Campaign≪ and ≫Election Campaign Expenditures≪ consisting of detailed regulations on

the practices and expenditures of election campaign hitherto kept at large, as well as the punishment for the violation of those regulations. These were the restrictions on the campaign office and canvassers prohibition of the house-to-house canvass, restrictions on the election literature and pictures, limitation of the maximum amount of the expenditure, restrictions on payment, etc. In this way, in addition to the election offenses that qualify as criminal offenses (i. e. natural or substantial offenses) such as bribery, and obstruction, introduced for the first time in the law were those of the nature of administrative law offenses (i. e. statutory or formal offenses) purporting to prohibit acts and omissions which may effect the freedom and fairness of elections, even if not directly. This epoch-making strengthening of the disciplinary regulations was, on the one hand, an expression of the effort to ban the corrupt practices of election campaign that had been becoming worse and worse at that time [18], but, on the other, it was probably motivated also by the government policy intended to check the upsurge of a popular movement that would follw in the wake of the realization of universal suffrage. Such a conjecture is founded on the fact that, simultaneously with the passage of the Universal Suffrage Law, 1925, was enacted the Peace Preservation Law. This latter was an atrocious law which continued to repress the freedom of press, assembly, and association of the people for the two decades until the end of World War II. As a matter of fact, the disciplinary regulations were so severe and complicated that they more than ever provided governments and parties in power with opportunities and tools for interfering with elections and repressing progressive movements ; they served the purpose of intimidating candidates, canvassers and electors and thus putting an obstacle to a free and unrestricted expression of the popular will. The revised Election Law of 1934 further strengthened the restrictions on campaign practices and penalties for election offences, with the newly introduced prohibition of pre-election campaigning serving as an example. At the same time, the revised law did for the first time introduce the so-called public management system such as the public management of campaign speech meetings, publication of election bulletins, etc.

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18 When the bill was presented to the plenary session of the House of Representatives, the Minister of the Interior declared : ≫We have added new Chapters, that is : the Chapter X Election Campaign and Chapter XI Election Campaign Expenditures. These two chapters purport to guarantee the fairness of election by nipping election offenses in the bud and, as well, to put a limitation on election expenses.≪

The third stage

After the War, doing away with the extremely severe and complicated disciplinary regulations of the past, the new House of Representatives Election Law of 1945 relaxed or abolished various restrictions on election campaigning and withdrew certain kinds of penal provisions. As a consequence, except for the prohibition of house-to-house canvass and pre-election campaigning and the restrictions on the distribution of election literature and pictures, the freedom of election campaigning was recovered to a large extent. The penalty for the violation of the maximum limit of campaign expenses was also abolished. But this new election law failed to realize its ideal, confronted as it was with the reality of the abuses of their freedom by election campaigners : a reality aggravated by the social and economic conditions at that time that were characterized by an extreme shortage of commodities. As a result, the Law for Exceptional Cases of Election Campaign Literature, Pictures, etc. was enacted in 1947, which revived the restrictions on election campaigning as far as the campaign literature, etc. were concerned. This tendency became more apparent by the enactment of the Law for the Exceptional Cases of Election Campaigning, etc., 1948, which stipulated, in addition to the restrictions on the distribution, circulation, and posting of campaign literature, pictures, etc., restrictions on motor cars, loud-speakers, and vessels used for election campaign, those on speech meetings and street-side speeches, prohibition of repeated calling of the candidate's name and canvassing on the election day, and so on. The Public Offices Election Law of 1950, too, followed the same line, and through its revisions in 1952, 1954, and 1956, the effort for tightening the restrictions on campaign practices has been further continued, although it must not be forgotten that also the scope of the public management of elections has been at the same time expanded. Of these revisions, particularly that of 1954 aimed at the perfection of the disciplinary regulations and penal provisions by reviving punoshment for the violation of the maximum limit of campaign expenses, restrictions on the electioneering of political parties and other political organizations, strengthening of the so-called ≫involvement rule≪, etc. Besides, the Law Concerning Regulation of Political Funds and Expenditures, 1948 evidently followed the example of the American Federal Corrupt Practices Act, 1907, and Federal Public Act, 1910, in obligating the keeping of account-books and publication of financial reports and putting restrictions on donations, etc. not only for the campaign expenditures of candidates but also for the election funds of political parties, associations and other organizations. The part of this Law applicable to the candidates was later incorporated in the

Public Offices Election Law.

It is true that the reality of election campaigns in Japan, being still plagued with various corrupt practices, makes it necessary to take appropriate and effective measures for securing the freedom and fairness of elections. But the existing laws are often criticized that their provisions are stricter and more troublesome than necessary, especially concerning the campaigning by speeches and by literature. As a result, the Report of the First Election System Investigation Committee (1961) made a recommendation for a relaxation of the restrictions on election campaigning by speeches and literature, while it recommended, at the same time, a strengthening of the penalties for election offenses as well as an improvement of the public management of elections. A large-scale revision of the election law was made in this direction.

We shall now discuss our present disciplinary regulations on elections as stipulated by the Public Offices Election Law under the following two headings :

II. Restrictions on Election Campaign Practices

According to the courts, the word ≫election campaign≪ signifies the various kinds of acts that are favorable, directly or indirectly, to obtaining or making others obtain votes to secure the election of specific candidate.

A. Temporal Restrictions

Election campaigning is not allowed except from the day on which the official notification of candidacy is presented until the day before the election day ; in other words, the so-called pre-election campaign as well as the canvassing on the election day is prohibited.

B. Personal Restrictions

The Universal Suffrage Law, 1925 abolished the freedom of election campaigning for all persons, which had been practised until that time, by restricting the persons qualified for election campaigning to the Election Agent and Election Canvassers and by prohibiting, as well, other persons from engaging in election campaign by means other than by speeches and recommendation letters. After 1945, however, these restrictions have been abolished and the so-called ≫third party campaign≪ has been made free, with the exception of the following persons : (a) those related with election administration, (b) the special public service personnel, (c) national or local public employees in regular government service, (§ 102 National Public Service Law ; § 36 Local Public Service Law), (d) employees of the national or local government as well as officers of the public corpora-

tions, when making use of their position, (e) educational personnel, when making use of their position as educators, (f) infants, (g) those who have been disfranchised on account of election offenses (§§ 135—137 POEL). C. Modal Restrictions. (1) Regulations on the establishment, notification, number, and signboards of campaign offices (§§ 130—132 POEL). (2) Prohibition of the house-to-house canvassing (§138 POEL). Having been in effect since 1925, this is a unique provision we can not find in other countries. It is contended that, if left at large, the house-to-house canvass may interfere with the peace of electors' home life and moreover may easily become a hotbed of bribery or other malpractice. (3) Prohibition of signature-seeking campaign and the publication of popularity polls (§ 138 POEL). (4) Prohibition of entertainment with food and drink (§ 139 POEL). (5) Prohibition of demonstrations for election campaign and the repeated calling of candidate's name (§§ 140, 140—2 POEL). (6) Restrictions on the use of motor cars, loud-speakers and vessels for election campaigning (§ 141 POEL). (7) Restrictions on elecion campaigning by means of literature and pictures : (a) distribution (the distribution of materials other than the prescribed number of ordinary post cards is prohibited) (§ 142 POEL), (b) posting (§ 143 POEL), (c) number of posters and place of their posting (§§ 144, 145 POEL), (d) evasion of the regulations concerning the distribution or posting of campaign literature and pictures, (§ 146 POEL), (e) newspaper advertising (§ 149 POEL), (the expenses for a specified number of newspaper advertisements for the candidates running for both Houses of the National Diet and the Prefectural Governorship and paid from the public management funds). Aiming at securing freedom of expression, there is a provision for the freedom of newspapers and periodicals as to reporting and commenting on election. (8) Restrictions on election campaigning by means of speeches : The election campaigning by speech-making other than that sponsored by the public management programs (competitive speech meetings, and broadcasts of political views and the personal histories of the candidates) is put under the following restrictions : (a) prohibition of the speech meetings other than publicly sponsored competitive speech meetings and of private speech meetings over and above a prescribed number, (b) restrictions on street-side speeches (limitation on their method and their prohibition during night), (c) prohibition of the broadcasts for election other than those made under the public management program. D. Financial Restrictions. (1) Limitation on the amount of election expenses (§§ 194—196 POEL), The Japanese election law prescribes, after the Anglo-American example, a maximum limit of election expenses allowable for each kind of election. (2) Restrictions

on the method of receipt and disbursement for election campaigning (§§ 180—191 POEL). A candidate or his proposer must appoint an Accountant who is accountable for all receipts and disbursements related to the election campaign of the candidate. (3) Obligation of reporting and publication of the financial documents concerning election campaigns (§ 189 POEL). (4) Restrictions on donations made in relation to th election campaign (§§ 199—201 POEL). In spite of all these restrictions, however, the deplorable fact is that nowadays the regulations concerned have almost become dead letters. E. Restrictions on the Political Activities of Political Parties and Other Political Organizations during the Election Time (§§ 201—205—201—213 POEL). Political parties and other political organizations are prohibited, from the day on which the public notice of election is made until the election day, from engaging in such activities as mentioned in the foregoing paragraphs.

III. Election Offenses and Punishments for Them

According to the Japanese election laws, the election offenses can be classified, as discussed above, into two categories of criminal and administrative-law offenses. Under the legal system which is devoid of administrative regulations for election campaign, as for example the Japanese election laws prior to 1925 or the existing law of the Federal Republic of Germany [19], the election offenses written into the law are merely the criminal offenses as provided for in the criminal code.

On the other hand, in Great Britain, where the disciplinary regulations for election have developed satisfactorily, we find a clear distinction between these two categories of election offenses. Whether from the viewpoint of legal theory or in the framework of positive law, the malpractices concerning election are divided into the ≫corrupt practices≪ on the one hand and the ≫illegal practices≪ on the other, the distriction being made roughly corresponding to that of the criminal and the administrative-law offenses [20].

As for the present election laws in Japan, we have provisions for all kinds of election offenses in the Public Offices Election Law, including those belonging to the category of criminal as well as that of administrative-law offenses. With regard to the former, for the most part, the Chapter on Penal Rules stipulates their conditions (Tatbestände) together with the penalties for them. Regarding the

19 §§ 107, 107a, 107b, 108, 108a, 108b, StGB.

20 Cf. *A. Norman Schofield*, Parliamentary Elections, 2nd ed., 1955, p. 401 ff.

latter category, however, there is another chapter which gives specific dictates or prohibitions and then has a Chapter on Penal Rules providing for the penalties. Generally speaking, the penalties prescribed for the former are heavier than those for the latter, for which there is stipulation for imprisonment with hard labor. Further, unlike the British law, our positive law makes no express distinction between the two for different treatment of them.

Various types of election offenses as stipulated in the Public Offices Election Law are listed as follows :

A. Election Offenses as Criminal Offenses. (1) Bribery in elections. (a) bribery before an election, (b) bribery after an election, (c) allurement with interest, (d) acceptance of or asking for a bribe, (e) providing or accepting money or other valuables for the purpose of bribery, (f) procuring or inducing a person to bribery, (g) bribery of several persons for profit-making purpose, (h) contract of bribing several persons for profit-making purpose, (i) bribery of a habitual briber, (j) bribing a candidate or a candidate elected, (k) illegal use of newspapers and periodicals. (2) Obstruction to elections. These are the malpractices which interfere with the freedom and fairness of election with force to give an influence on the election result : (a) obstruction to the freedom of election, (b) obstruction to the freedom of election by the public service personnel through dereliction or abuse of authority, (c) breach of the secrecy of voting, (d) use of violence to or intimidation of the election administration personnel, rioting at the polling place, detention, destruction or seizure of ballots, ballot-box, etc. (e) obstruction by a crowd of election, (f) carrying of arms at elections. (3) Publishing false statements. This is the offense of publishing false informations concerning election, particularly concerning candidates, with the objective of misleading the electors' judgement. (4) Voting offenses. (a) fraudulent registration and false declaration, (b) voting when subject to a legal incapacity, (c) personation, (d) forgery of votes or addition or reduction of the number of votes. (5) Abetting the election offenses. (6) *Otori-zai* (decoying) (§§ 224—2 POEL). This is the offense of inducing or provoking the Election Agent or Accountant of a candidate to commit a bribery or a violation of the maximum limit of the campaign expenditures with the objective of nullifying the return of the candidate by applying the provisions about the invalidation of the candidate elected.

B. Election Offenses as Administrative Law Offenses.

The typical cases in this category are violations of various disciplinary regulations for the election campaign mentioned above and those of the maximum limit of

election expenditures through gross negligence (§ 250 II POEL).

As for the kinds of sanctions against election offenses, we have, in addition to ordinary penalties (imprisonment with hard labor, confinement, and fine), confiscation and forfeit specifically for bribery, and provisional custody and confiscation for the carrying of arms the following sanctions of secondary nature as consequential punishment for election offenses :

A. Invalidation of the Return of the Candidate.

If a candidate elected had committed an election offense in relation to the election concerned and was sentenced, the return of the candidate in question becomes null and void (§ 251 POEL). Likewise, if the Election Agent, Accountant or other important canvassers of a candidate elected were found guilty on account of certain kinds of election offenses, the return of the candidate becomes invalid. In this way, there are two kinds of invalidation of the return of a candidate : the first caused by an election offense committed by the candidate himself and the second by a person other than himself such as a canvasser. The latter case, in which the return of the candidate is invalidated by reason of the crime of another person, is called a case of ≫*renza-sei*≪ (involvement).

1. The conditions for the invalidation of a candidate elected by application of the rule of involvement are as follows :

The offenders to whom this rule is applied are: (a) Election Agent and Subagents, (b) certain near relatives of the candidate, (c) Accountant and the person actually in charge of accounting. Secondly, the types of election offenses to which the rule of involvement is to be applied are : (a)bribery, allurement with interest and obstruction to the freedom of election committed by the above persons (§ 251 I POEL) and (b) violation of the maximum limit of election expenditures committed by the Accountant (§ 251 II POEL). The case of the invalidation of the return of a candidate by application of the involvement rule is prosecuted by the public procurator after the judgement on the criminal case concerned becomes irrevocable ; and the invalidation takes effect by a court decision.

This rule of involvement has undergone several changes since it was first introduced in the election law in 1925, the latest revision (1962) having been made in response to the public opinion as reflected in the 1961 recommendation of the Election System Investigation Committee. As a matter of fact, the Committee's Report had proposed far heavier penalties than those actually enacted in the law : for example, it recommended to have the invalidation of the return of the candidate take effect as soon as the decision on the criminal case concerned becomes inevoca-

ble. The actual legislation was a marked retreat from the original recommendation of the Committee, and for that reason the government and the party in power were severely accused by the people.

2. Another cause for the invalidation of the return of a candidate on account of the involvement rule introduced in the revised law of 1962, concerns the former personnel of national or local government service or of public corporations who run for the first election for the House of Representatives or the House of Councilors that takes place less than three years after they left their offices. The return of such a candidate, if elected, becomes invalid, in case any person who had previously had certain official relations with the candidate was found guilty of an election offense such as bribery, allurement with interest, obstruction to the freedom of election, etc. This is called a special case of involvement (§ 251—253 POEL). Originally, the 1961 Report of the Election System Investigation Committee had recommended stricter restrictions on the candidacy of former public service personnel of higher ranks, but the government and the party in power preferred to adopt the present provision on the ground that the recommended revisions were thought to be unconstitutional.

B. Suspension of the Right to Vote and to Be Elected.

Although there have been various minor revisions, this provision has been const-

* Statistics of Election Violater Arrested as of December 21, 1964

Type of offenses	Number of cases and persons involved					
	Last Election (A) (21. Nov. 1963)		Election before last (B) (20. Nov. 1960)		Comparison (A—B)	
	cases	persons	cases	persons	cases	persons
Bribery, personal favors (80% of all cases	13,470	29,751	11,251	25,174	+2,219	+4,577
Interferance with the freedom of election	63	75	181	208	−118	−133
House-tto-House visits	1,160	1,143	999	1,244	+161	−101
Violation of restrictions on literature and posters	1,506	1,816	1,625	1,853	−119	−37
other	494	411	560	554	−66	−143
Total	16,693	33,196	14,616	29,033	+2,077	+4,163

antly in force ever since the enactment of the House of Representatives Election Law of 1889. Particularly, the revised law of 1962 has increased the kinds of election offenses for which the suspension of the right to vote and to be elected ought to be sanctioned ; and it stipulates that the court should not give a decision of non-suspension of the right to vote to be elected as far as the so-called ≫grave offenses≪ (offenses of bribery) are concerned (§ 252 POEL).

Incidentally, the special provision for a shorter prescription for election offenses in the former election law was abolished by the 1962 revision. In order to expedite the procedure, there is a provision obligating the court to conclude the criminal cases concerning the election offenses that would invalidate the return of a candidate within the period of a hundred days from the day on which the court takes cognizance of the case in question (rule of ≫hundred-day trial≪) (§ 253—2 POEL)*.

Chapter VI

Election Disputes (Election Petitions)

With the historical evolution of the Japanese election laws as the background, the procedure of settling election disputes, too, developed gradually [21].

Generally speaking, the examination of legal cases concerning electoral matters belongs to the judicial power in the material sense ; that is, it constitutes a kind of judicial action. However, it is a kind of public-law litigation as distinct from the trial of civil or criminal cases. Charged with the examination of these cases are, as a rule, such bodies as the Parliament, a Special Court, an ordinary Court of Justice, or an Administrative Tribunal. In the legal history of Japan, the judicial power concerning electoral matters on the local level has consistently resided, ever since the enactment of the Local Autonomy Law in 1889 and under the old Constitution, with following bodies : the Municipal Assembly, in the first instance, where the dispute concerned was about the validity of the election itself or that of the return of a candidate for the Assembly ; the Prefectural Assembly, in the second, where an objection was raised against the decision of the Municipal Assembly or the matter was related to the election of the Prefectural Assembly ; and the Administrative Tribunal, in the third, where an appeal was lodged against the decision of the Prefectural Assembly. Under the new Constitution, too, cases concerning local elections follow a similar type of three-instance syste-

21 *T. Minobe*, Senkyo-Sôshô oyobi Tôsen-Sôshô no Kenkyû (Legal Disputes Concerning the Validity of Election and Return), 1936.

m, with the difference that the Municipal Election Administration Committee and the Prefectural Election Administration Committee have taken the place of the Municipal Assembly or the Prefectural Assembly and the ordinary Court of Justice has taken the place of the Administrative Tribunal. As for the cases concerning the validity of an election or that of the return of a candidate on the national level, the Supreme Court was their court of first and last instance under the old Constitution. While, under the new Constitution, the High Court has taken its place (§§ 204, 208 POEL).

Although legal disputes concerning election fall, as stated above, under the category of public-law cases, it has been continuously questioned in the past exactly what is their true nature.

In the history of the Japanese election laws, the legal cases concerning electoral matters have been usually classified into : cases concerning the electoral list, those concerning the validity of an election, and those concerning the validity of the return of a candidate. Furthermore, the third category is divided into : (a) cases concerning the validity of the return of a candidate in general and (b) those concerning the invalidation of a candidate on account of his violation of election laws. All these cases are specifically called ≫popular actions≫ (Popularklage) and are distinguished from ordinary cases of public-law litigation. This distinction is made on the following grounds :

For example, a case concerning the elector list is an action demanding correction or confirmation of the invalidity of a register prepared by a Municipal Election Administration Committee as the authentication of the qualified electors. A case concerning the validity of an election is an action that contends the validity of an election procedure representing consecutive plural actions from the notice of election to the ascertainment of the candidate or candidates elected. Likewise, a case concerning the validity of the return of a candidate is, in its essence, an action demanding the correction of the error committed by the election administration body in the ascertainment of the candidate or candidates elected. Consequently, one who is qualified to institute a legal dispute on electoral matters does not necessarily have his personal rights infringed. One who is entitled to institute a legal dispute is always an ≫elector≪ (§§ 24, 204 POEL), that is, whoever has lawful interests in the lawful execution of election and the lawful ascertainment of the election result is qualified to take such an action (§§ 202—207 POEL). Exceptionally, in the case of Diet elections, only unsuccessful candidates can contest the validity of the return of the elected (§ 208 POEL).

In this way, cases concerning electoral matters are characterized by certain specific features which distinguish them from ordinary cases of ≫action for voidance≪ (Anfechtungsklage) or the legal actions instituted by a person who regards his rights to have been infringed by illegal use of public power for the purpose of nullification or alteration of the allegedly illegal administrative measure in question. Under the Special Law for Administrative Litigation of 1948 the distinction between these two kinds of public-law cases was not sufficiently clear, so that some scholars used to include the two in one and the same category while the other did not. To make a clear-cut distinction between them, however, has a substantial advantage in view of the differences in the application of procedural regulations to them, The New Administrative Litigation Law of 1962 has clarified this point by classifying the disputes concerning electoral matters as a kind of action for the voidance. Under the definition of § 5 ALL : ≫What is called ＞popular action＜ in this law signifies an action which demands the rectification of an unlawful action committed by a certain organ of the state or local public entity and which is instituted in the capacity of an elector or in any other capacities not concerned with personal legal interests of the plaintiff≪, the election cases are regarded as the actions demanding nullification or alteration of a measure in a wide sense taken by an election administration organ of the state or local public entity.

Consequently, under the new law, the defendant of the lawsuits concerning electoral matters is invariably the Election Administration Committee (§§ 24, 204, 208 POEL), and for such lawsuits, the provisions for action for the voidance are correspondingly applied as supplemented by specific provisions in the Public Offices Election Law. However, on the matters that are not stipulated in either the Public Offices Election Law or the Administration Litigation Law, these cases follow, just as under the old law, the rules of civil procedure(§ 7 ALL).

1. Action for the Invalidation of Election

1. It is characteristic of the Japanese system of election disputes to make a clear distinction between actions for the invalidation of election and those for the invalidation of returns. Action for the invalidaton of election is a legal action which disputes the validity of the whole or a part of an election based on the contention that there was a flaw in the electoral procedure (§§ 202—204 POEL). Here, the object of the legal dispute is the validity of an election as a complex procedure in a specific election district, polling district, ballot-counting district, election meeting, etc. In this kind of cases, the whole or a part of the election becomes invalid if the administration of the election concerned is ≫in violation of the regulations on

election≪, provided that such irregularities ≫may possibly alter the election result≪ (§ 205 POEL). The invalidation is divided into total and partial invalidation. The ≫total invalidation of an election≪ signifies the case where the illegality of election procedure has an effect on the election result as a whole, with the result that the election of an electoral district or a region as a whole becomes invalid. In this case, therefore, the return of all the candidates elected in the whole district or region concerned loses effect and, consequently, a bye-election is due. In the case of the partial invalidation, the illegality of an election affects only part of the election result and invalidates only that part of the election concerned. In such a case, a bye-election is held only for that invalidated part of the election. The partial invalidation of an election is again divided into the physical and the personal.

By the physical partial invalidation is meant the case where the electoral administration of a particular election district, ballot-counting district or election meeting was illegal, with the result that a part of the election that is separable in time or in place from the other parts loses effect, as for example : (a) when the election in a particular polling district was conducted against the provisions of the election law, (b) when the procedure of a move-up voting was illegal, or (c) when the procedure at a ballot-counting place or election meeting was illegal.

The personal partial invalidation represents the case where the invalidation of election affects only some of the candidates elected. A typical instance is the case in which the fact that ballots were cast by unqualified persons for unidentified candidates gives rise to the possibility of altering the election result. Although the handling of this sort of legal disputes has undergone several changes in that past, the present-day practice in Japan to treat them as a case of actions for the invalidation of return. Under the present Public Offices Election Law, the invalid ballots in this case (called ≫potentially invalid ballots≪) are to be divided in proportion to each candidate's total poll and subtracted from it (§ 209—2 POEL).

2. The condition for making an election invalid is : (a) a violation of election regulations, plus (b) the possibility of altering the election result. The ≫election regulations≪ signifies the procedural regulations regarding the administration of elections and do not include disciplinary or penal regulations concerning election campaigns. The word ≫possibility of causing alteration in the election result≪ points to the state of affairs in which the violation of the procedural rules concerning the election administration may have produced a result different from that which would have been obtained in case there was no such violation. Whether or

not the particular violation of election regulations can alter the election result is determined by examining whether there is a definite possibility cf producing a result different from the present one in case another election is held. It does not necessarily mean, therefore, that one is assured of a different election result from a new election.

The reasons for invalidating an election can be listed as follows : (i) Flaws in the eletors list ; (ii) Flaws in the methods of election administration, such as : (a) Flaws in the publications or notices concerning the election, (b) Flaws in the date of election (as in the case of a bye-election held while an action is pending for the invalidation of a return), (c) Flaws in the hour of balloting or the voting compartment, (d) Flaws in the area in which the election is to be held, (e) Flaws in the number of representatives to be elected, (f) Flaws in the administration of ballot boxes and (g) Flaws in the public management of an election. This last instance consists of cases where irregularities in the publication of bulletins of candidates' list or candidates' career by the election administration agency or in competitive speech meetings sponsored by it may alter the election result.

2. Action for the invalidation of a return

1. The action for the invalidation of a return is a legal dispute which contends the validity of the confirmation of the candidate or candidates elected. Under the premise that the election itself was carried out legally, it disputes the lawfulness of the determination of the candidate or candidates elected, or, to be more exact, that of the confirmation of the election result by the election meeting concerned. Consequently, the examination of this kind of dispute will lead either to the affirmation or to invalidation of the return of the candidate or candidates elected, in which latter case the return of the runner-up or runners-up will be simultaneously confirmed.

2. As for the condition for the invalidity of return, there are no specific provisions in the law. Therefore, the only way left for us is to assess the gravity of the illegality by examining the whole procedure of determining the candidate or candidates elected. The reasons for the invalidation of return can be listed as follows :

(a) Illegality in the counting of the votes ;

(b) Flaws in the recognition of personal qualifications of the candidate or candidates elected or not elected ;

(c) Flaws in the ways and means of the determination of the candidate or candidates elected. Any illegality in the organization (§§ 75, 76 POEL), date (§§

80, 81 POEL) and procedure (§§ 77, 78 POEL) of the election meeting in which the determination of the candidate or candidates elected took place makes the determination in question invalid ; of course, the invalidity in this case affects all the candidates elected.

3. Differences and Interrelations between Actions for the Invalidation of Election and Actions for the Invalidation of Return

As mentioned above, the action for the invalidation of election seeks to secure confirmation of the invalidity of a whole or a part of an election when the election was conducted in violation of the provisions of the law, and, as a result, may alter the election result. The action for the invalidation of a return, on the other hand, purports to contend the validity of the return of an individual candidate elected under the premise that the election itself is not null and void. As a consequence, in the case of an invalidated election, all or a part of the ballots cast in the election concerned invariably become null and void, with the result that a reelection becomes necessery, while, in the case of the invalidity of a return, what is nullified is simply the election of an individual candidate, with the result that the promotion of the runner-up (runners-up) or a bye-electin become necessary. Furthermore, according to the Public Offices Election Law, the cause for action, the defendant, the starting date of the time limit for bringing an action, etc. are different between these two categories of election disputes.

Although these two have, in this way, different purports and procedures, one often finds close and complicated interrelations between the two, inasmuch as they tend to be related to one and the same election.

1. First, from the standpoint of the parties in the dispute, these is the question of whether one can simultaneously contend both the validity of the election and that of the return.

But this question is answered negatively as long as we follow the proper interpretation of the existing law. Based on the theory of judicial precedents which rigidly distinguishes the action for the invalidation of an election from those for the invalidation of a return, it can hardly be possible to contend simultaneously both the validity of election and that of the return in one and the same lawsuit.

2. Secondly, from the standpoint of the body charged at the trial, in other words, the Election Administration Committee or the Court of Justice, it can not be permissible, in view of the principle of *nemo index sine actore*, to examine the validity of the return in a dispute that is concerned with the validity of an election. However, the body charged with the examination of the validity of a return

must, in the course of that examination, be invariably concerned, as a premise, with the question of whether the election concerned was valid or not. That Public Offices Election Law has resolved this question in a legislative way by stipulating that in the case of an administrative appeal or legal action the Elecion Administration Committee or the Court of Justice concerned should give a decision or judgement as to the invalidity of all or a part of the election in question in case the body concernd finds that the election deserves such a decision or judgement (§ 209 POEL). Therefore, in this cace, the principle of *nemo index sine actore* is not observed*.

* Statistics of Lawsuits Concerning the Validation of Election and Return
(those concerning the involvement system are not included)
31, December, 1963

	1960				1961				1962				1963				Total			
	Organs examining the cases																			
Kinds of elections	C	D	H	S	C	D	H	S	C	D	H	S	C	D	H	S	C	D	H	S
National election																				
House of Representatives		4	1											8				9	1	
House of Councillors (Local Constituencies)										7	4							7	4	
Total		4	1							7	4			8				16	5	
Local election																				
Prefectural Governor	2	2											33	7	1		35	9	1	
Prefectural Assembly members					3								33	5	1		36	5	1	
Total	2	2			3								66	12	2		71	14	2	
City, Town and Village mayors	17	12	5	2	21	18	8	1	28	17	5	1	100	65	17	-	166	112	35	4
City, Town and Village Assembly members	44	32	6	4	33	25	7	2	21	8	5	2	259	98	16	-	357	163	34	8
Total	61	44	11	6	54	43	15	3	49	25	10	3	359	163	33	-	523	275	69	12
GRAND TOTAL	61	46	13	6	54	46	15	3	49	25	10	3	359	229	45	2	523	346	83	14

(C=〔City, town and village election administration committee〕, P=〔Prefectural election administration committee〕, H=〔Higher Court〕, S=〔Supreme Court〕)

この論文は Jahrbuch des öffentlichen Rechts der Gegenwart, N. F. 15, 1966. 所載のものである。この論文の転載を快諾して下さった法政研究編集部の御好意に対し深謝する（林田和博）。