

THE JUDICIAL SYSTEM IN JAPAN

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BY DR. G. E. UYEHARA, *University of Meij, Tokio*

In any autocratic government, the most precious and valuable power to the ruler of all the governmental powers is the judicial. There the legislative power is a very minor one and much depreciated, while the executive power is naturally held intact in the hands of the ruler with the aid of the judicial. It often happens that an autocratic ruler can exist and keep himself strong, because of his possession and control of the judicial power.

History demonstrates the fact that in the development of a constitutional system of government in any monarchical country, it is the judicial power that is carefully guarded and jealously kept in the hands of the ruler, until the last moment of the existence of his sovereign authority, while the legislative power is usually given up at an early stage of its development. This is true in the early period of constitutional history of England. Under the Norman kings the *Concilium Ordinarium* kept the executive and judicial powers intact, while the *Mágnam Concilium* was given legislative and financial powers; under the Tudors and the early Stuarts, the Star Chamber exercised certain judicial power until the last moment of its existence.

The reason why under an autocratic system of government, the judicial power is so jealously kept in the hands of the ruler is very clear.

It is in the last analysis the judicial power that controls the life and death of the people, makes them fear the authority of the ruler, and thus keeps the order of society. It is interesting to note that, at the beginning of the development of modern constitutional systems of government in the European countries, the greatest effort was made by the people to take the judicial power away from the ruling class, or, in other words, to make the judiciary independent of the executive. You know it was Montesquieu who first clearly conceived the necessity of the separation of the judiciary from the executive for a good constitutional system of government, and advocated his "so-called theory of the independence of the judiciary."

So influential and powerful was his theory that it was believed by almost all the publicists, statesmen, and politicians of the 18th century, though by some consciously, and by others almost blindly.

It is the curious as well as interesting fact that the framers of the Japanese constitution believed the doctrine that the independence of the judiciary is one requisite of good government, as did the framers of the Constitution of the United States. Thus, while the framers of our Constitution endeavored to subordinate completely every branch of government to the Emperor, they intended to make the judiciary

independent, as they thought it was. Prince Ito, the exponent of the framers of the Constitution, gives us the reason and says, "Though it is in the power of the sovereign to appoint judges, and though the courts of law have to pronounce judgment in the name of the sovereign, yet the sovereign does not take it upon himself to conduct trials, but causes *independent* courts to do so, in accordance to law and *regardless* of the influence of the administrative authorities." It is for us a matter of conjecture what Prince Ito really meant by "the independent courts." It seems to me that Prince Ito did not understand, or misconstrued the meaning of the independence of the judiciary. However, I shall not enter here into a discussion of that topic. I simply mentioned this, thinking that it may enable you to understand better our judicial system in relation to the executive and legislative branches of government, which is the main subject of my discussion.

The term "independence of the judiciary" is very misleading, though it is often used very carelessly in this country as well as in ours. In the United States, the independence of the judiciary means that the judiciary is in the last analysis supreme in all the branches of government, and independent of the legislative as well as of the executive, while in our country, it means nothing more than that judgment of the court is free from the direct control of the executive, and pronounced in accordance to the laws, which are really enacted by the executive with the consent of the legislative. In both cases, the judiciary is not quite consistent with the principles of sound democratic government. In a thorough democratic system of government the judiciary must be subordinated, not to the executive, but to the legislative branch of government, which is the representative body of the people. In fact, the judiciary of the United States is placed too strong in the constitution, whereas that of our country, too weak.

Now as to the Japanese court of law, it is not like the Supreme Court, or the District Court of the United States. The latter has power to pronounce judgment upon a dispute between an individual citizen and the administrative authority, and even power to declare an act of Congress null and void on the ground of unconstitutionality. But the power of the former is limited only to the adjudication of lawsuits, in which both disputants are individual subjects. It has no power to interpret the constitution—that power is left in our country in the Privy Council which acts in the name of the Emperor—nor to adjudicate a suit, in which the administrative authority is a party. The Constitution of Japan provides that "no suit at law, which relates to right alleged to have been infringed by the illegal measures of the administrative authorities, and which shall come within competency of the Court of Administrative Litigation specially established by laws shall be taken cognizance of by a Court of Law." Thus in Japan one of the most important judicial functions, i. e., the protection of rights and liberties of the people from the arbitrary rule of permanent officials, is left to the Court of Administrative Litigation, which is, though first established by law, *de facto* entirely dependent upon the executive branch of

government, which is really independent of the people and controlled by the permanent bureaucratic officials.

In fact, the Court of Administrative Litigation is organized with certain bureaucratic officials, and placed under the direct control of the executive branch of government.

The Courts of Law in our country are divided into four grades, the Court of Cassation, of Appeal, and the District Court and the Sectional. In the lowest, or Sectional Court, a single judge decides the case. In the District Court, three judges; in the Court of Appeal, five, and in the Court of Cassation seven judges sit.

Appeals against the judgment of the lower court in civil and criminal cases are made possible in order of precedence up to the highest court.

For the purpose of investigating criminal cases and for prosecuting same, procurators or, in your term, prosecuting attorneys, are attached to the court of justice. They receive the same treatment as judges.

Both the judge and the procurator are appointed only from those who have the qualifications fixed by law, and hold their office for life.

We have no jury trial in our country as in the United States, or as in England. Our judicial system was formed largely after the model of that of France, and the organization of the court of law therefore resembles in many respects that of the French court. In most criminal cases, preliminary trials are made, which are not open to the public; and those cases, in which all the evidences produced do not prove criminal act or conduct, are dismissed.

Now as to the different functions of the different courts. Both civil and criminal cases are treated in the Sectional Court. The civil cases which are to be dealt with in the Sectional Court are as follows: Cases that do not involve more than 500 yen; those pertaining to movable properties, such as houses, buildings, etc., and to their leases; boundary disputes between real properties; cases pertaining to the contracts which do not run over a year; and disputes arising between travelers and innkeepers, or common carriers. And the criminal cases which are to be dealt with in the Sectional Court are as follows: Misdemeanors and some criminal acts which are subject to fine or light imprisonment.

Cases to be tried in the District Court:—In the first trial of civil cases, all disputes which do not come under the Sectional Court, with the exception of those which are related to members of the Imperial family are tried in this court, and in the second trial, all cases appealed from the Sectional Court. In criminal cases, the first trial of this court is conducted for all cases which do not come under the trial of the Sectional Court as well as the Court of Appeal; and in the second trial, all cases appealed from the Sectional Court are to be dealt with.

Now as to the Court of Appeal.—As the name suggests, this is the court in which all cases, civil and criminal appealed from the Sectional and District Courts are tried. Here is no first trial except for the cases in which a member of the Imperial family is involved.

The Court of Cassation is the court which makes the final judgment and decision for all cases, either civil or criminal, which are appealed from the decision or judgment of the District Court or the Court of Appeal at the second trial.

This, I think, gives you a rough sketch of our judicial system. In conclusion, I should repeat that the judiciary of our country is not independent of, but quite subordinated to the executive branch of government, which is independent of the people and very little controlled by the legislature; and I believe that no matter of what form or organization the judicial system may be, the administration of justice can not be said to be on a sound basis, until the judiciary is completely subordinated to the legislature, which is the representative body of the people.