

CONTEMPORARY DEMOCRACY IN A PARLIAMENTARY SYSTEM*

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I

INTRODUCTION

Since recovering its independence in 1952, Japan has never experienced a change of government in a proper sense. Power has been held without interruption, first by the Liberal Party and then by the Liberal Democratic Party ("LDP"), which was formed in 1955 when the Liberal and Democratic Parties merged. It is often said that there is no democracy without a change of government. Does this mean that Japan has not yet established a democracy? I would not say so. No doubt the Japanese have succeeded in running their government in a democratic manner, at least compared to the prewar era. But democracy has different styles and qualities, and Japan has achieved a democracy that has never been tested by a transfer of power.

A change of government has two implications for the quality of democracy. First, a change of government confirms the existence of democracy. There is no better proof that democracy exists than the fact that a change of government takes place following a free popular election. Second, popular belief in the possibility of a change of government, supported and strengthened by actual experience, enables the people to make a real choice. Where there is no significant chance of altering government, elections lose their meaning. The people are forced either to accept the existing government or embrace uncertainty by rejecting it. But rejecting the government in power while not being able to conceive of an alternative is a hard venture. Hard as it may be, however, rejection is possible. And if the people choose to retain their leaders, the government can rightfully boast of having popular support; government in accordance with popular will is evident. But in this age of advancing democracy, we cannot satisfy ourselves with this stage of democracy. We want a democracy of higher quality, one in which we are offered more than one feasible alternative and in which the casting of a vote means a direct choice of policy. This will become possible only when the transfer of power becomes a normal governmental process.

Why has it been so difficult to change governments in Japan? This issue can be analyzed from various angles, but it should be pointed out that part of

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the responsibility must be borne by constitutional scholars. We failed to realize how important a change of government is to modern democracy. As a result, postwar constitutional theories have failed to explain governmental mechanisms to the people in such a way that they can grasp the importance of a transfer of power. Having not been given the correct image of the working of a cabinet government, the Japanese people have been misled in their efforts to bring forth a real democracy. For this, the constitutional scholars have to assume at least partial responsibility.

My purpose here is to elucidate deficiencies in our past explanation of the parliamentary system, to create a new and appropriate image of its working, and to consider accordingly the possible institutional and behavioral changes required for creating a genuine democracy in contemporary Japan.

II

PROBLEMS ACCOMPANYING THE TRADITIONAL EXPLANATION OF THE PARLIAMENTARY SYSTEM

When scholars try to explain the mechanism of cabinet government, they usually refer to a certain typology of governments. Therefore, if the traditional presentation of our system is in some way misleading, there is good reason to suspect that the flaw can be traced back to the typology that serves as our frame of reference. This article will start with an analysis of the traditional typology.

A. Brief Outline of Traditional Typology

The classification widely followed in characterizing the Japanese governmental system focuses on the allocation of powers between the legislative and executive branches. This classification distinguishes between two patterns: subordination and independence. The former pattern breaks down further into two types, depending upon which branch is subordinate. Because neither type is characterized by a separation of powers, this is usually referred to as the fusion-of-powers model. By contrast, the independence pattern is called the separation-of-powers model, with both the legislative and the executive branches retaining at least a minimum measure of independence and forming a relation of checks and balances on each other. This pattern also breaks down into two types, depending on how far the separation goes: the strict separation-of-powers type, which is usually called a presidential system, and the moderate separation-of-powers type, referred to as a parliamentary system or cabinet government.

In historical perspective, these patterns can be situated as follows: The starting point is an absolute monarchy, which is said to be exemplary of the fusion-of-powers model; parliament, if it existed at all, had only an advisory power with respect to legislation. When parliament conquered a part of the legislative power, a limited monarchy resulted, in which the parliament and the king shared the legislative power, the king exercising the power of sanction or veto. As we all know, Montesquieu's theory of the separation of

powers¹ was derived from his description of the British constitution at this stage. Accordingly, this system can be characterized as representing the strict separation of powers. As far as governmental structure is concerned, the American presidential system was originally a variation of a limited monarchy, transplanted into the republican framework with the president in place of the king.

The parliamentary system, or cabinet form of government, emerged gradually from within the limited monarchy. In a limited monarchy, parliament enacted legislation but had little control over day-to-day politics because there were few occasions for legislation. The daily politics were left to the king, who acted with the aid of ministers he appointed and dismissed at will. The king was sacred and inviolable; except in a revolutionary situation, there was no way of calling him to account. So the parliament tried to obtain control indirectly by forcing the ministers to assume responsibility for the king's politics. The success of this enterprise depended on the establishment of two rules. According to one, the king could not act without consent of the relevant minister (rule of countersignature); and according to the other, the king could appoint as ministers only those who had the confidence of parliament, and had to dismiss any minister who lost it. With the gradual acceptance of these rules by the king, ministers backed by parliament became increasingly independent of the king. They began to form a solid cabinet led by a prime minister, and finally became collectively responsible not only to the king but also to the parliament. Characteristic of this system is its dual-power nucleus, the king and the parliament, with the cabinet serving a conciliatory function between the two. This is why French constitutional scholars call this the dualistic parliamentary system. The fundamental mechanism for mediating conflicts between the two powers is a no-confidence resolution by the parliament against the cabinet, and a dissolution of the lower house by the king.

In this model, as democratic legitimacy attained wider acceptance among the people, the parliament strengthened its power at the expense of the king, thus transforming the dualistic power structure into a monistic one. The king's power to appoint and dismiss his ministers dwindled; the ministers came to be appointed and to stay in power, even without the king's confidence, so long as they had the confidence of parliament. But in the face of this powerful parliament, the cabinet wielded the power of dissolution, which nominally belonged to the king. Accordingly, the checks and balances that functioned between the king and the parliament were transplanted to a new arena, that existing between the cabinet and the parliament. This is what the French constitutionalists call the monistic parliamentary system. But as the parliament further increased its strength, the power of dissolution tended to be restricted or even denied, and the cabinet became more and more subordinate to the parliament. If this process of subordination is completed,

1. See Montesquieu, *De L'Esprit des Lois*, Part I, Bk. 11, ch. 6 (1748).

the result is what the French constitutionalists call the assembly system (regime d'Assemblée). Although it is not easy to draw a line between the monistic parliamentary system and the assembly system, one leading doctrine distinguishes between the two on the basis of whether the cabinet retains the right to resign.² According to this distinction in the monistic parliamentary system, at least in one of its manifestations, the cabinet does not have the power to dissolve parliament.

As the parliamentary system developed first in England and gradually expanded to many monarchies abroad, scholars began to dispute how to characterize it in terms of the separation of powers. It was not so difficult to consider the dualistic parliamentary system as one type of separation-of-powers system. It had developed within the framework of limited monarchy, which was itself the model of the separation-of-powers theory. In contrast, the monistic parliamentary system, no longer having such a dualistic power structure, required that the separation-of-powers theory be rethought. Generally speaking, those who thought the essence of the parliamentary system was the dualistic type tended to view the parliamentary system as belonging to the separation-of-powers model, while those who thought its essence was the monistic type tended to disagree. In any case, those who accepted the parliamentary system as a family member of the separation-of-powers system distinguished between two modes of separation: strict and moderate.

As already pointed out, the presidential system is a republican version of a limited monarchy. What happens if we transplant a parliamentary system into a republican state? We find an answer in the Third Republic of France. The pattern of government it adopted was a republican version of the dualistic parliamentary system, with a strong president in place of the king, who was confronted by the parliament, and with ministers to conciliate conflicts between the two. In the republican form of government, however, the legitimacy of political power rests solely with the people. Therefore, the president, elected by the parliament, could not maintain equal footing with the parliament, elected directly by the people. This led to the nominalization of presidential power, and the appearance in practice of the monistic pattern, which resembles the assembly system, with the parliament in a supreme position. Learning from this lesson, the Fifth Republic introduced in 1962 the popular election of the president, with the aim of maintaining a dualistic structure by giving the president equal political legitimacy.

B. Japanese System Viewed from the Traditional Typology

Article 55 of the Meiji Constitution provided that the ministers of state must give their advice to the emperor and be responsible for it. Additionally, all laws, imperial ordinances, and imperial rescripts of whatever kind that

2. Capitant, *Régime Parlementaire*, in MÉLANGES R. CARRÉ DE MALBERG 55 *passim* (1977). Cf. 1 J. CADARD, INSTITUTIONS POLITIQUES ET DROIT CONSTITUTIONNEL 448 (2d ed. 1979-1980); 1 M. DUVERGER, INSTITUTIONS POLITIQUES ET DROIT CONSTITUTIONNEL 175 (14th ed. 1975).

relate to the affairs of the state, require the countersignature of a minister of state. But the appointment of the ministers of state was left to the discretion of the emperor, and the Imperial Diet was not empowered to remove the ministers by a no-confidence resolution. The ministers were responsible only to the emperor, not to the Diet. The cabinet, comprised of the ministers, had no basis in the Constitution but was an institution created by imperial ordinance. The prime minister was but a *primus inter pares*, having no disciplinary power over other ministers. In short, ministers were to be responsible not collectively but individually to the emperor, and strong leadership on the part of the cabinet was not expected. Furthermore, the emperor had the power to dissolve the House of Representatives, while the latter lacked the corresponding power of a vote of no-confidence. We can conclude that the system adopted by the Meiji Constitution corresponded to a limited monarchy. But its value was demonstrated in the period of "Taisho Democracy" (a short period after World War I), where a dualistic parliamentary system emerged within this constitutional framework. The customary rule temporarily prevailed that the cabinet should be formed by the party holding wide support in the lower house.

The 1947 Constitution, currently in force, proclaimed popular sovereignty, and the emperor's power became completely nominal and ceremonial. Under Article 41 of the Constitution, the popularly elected Diet is now declared "the highest organ of state" and "the sole law-making organ of the State," and is expected to assume a central position in national politics. Under Article 67, the Diet has the right to designate the Prime Minister, who, provided with the right to appoint and remove Ministers of State at his discretion,³ is designated by Article 66 to lead the Cabinet as "its head." Article 69 grants the House of Representatives the right to a vote of no-confidence. In the event of such a vote, the Cabinet must resign en masse within ten days, unless the House of Representatives is dissolved.⁴ Under Article 70, if the House is dissolved, the Cabinet must resign upon the first convocation of the Diet after the general election of the lower house following the dissolution. Accordingly, this system conforms to the monistic parliamentary system. However, scholars disagree over which type of monistic parliamentary system it is: the equilibrium type (which allows the Cabinet to dissolve the lower house at will) or the predominant-assembly type (which restricts in time and manner the Cabinet's power of dissolution). This dispute stems from the fact that the Constitution does not stipulate clearly who should exercise the power of dissolution or under what circumstances that power may be exercised. Although the dispute still continues among scholars, practice has long since settled it in favor of the Cabinet. Accordingly, the Japanese system is functioning as an equilibrium type.

3. 1947 CONST. art. 68.

4. *Id.* art. 67.

C. Insufficiency of Traditional Thinking

So far, this article has sketched a brief outline of the traditional typology of governments from the point of view of the separation of powers. It should be noted that underlying this point of view is the judgment that whether powers are separated or not is of utmost importance to the guarantee of human rights. This judgment is true so long as the separation of powers is confronted with a fusion of powers. But the separation of powers is often invoked in various contexts, and it may have different implications depending on against whom it is claimed. For instance, a demand for the separation of powers against an absolute monarch historically represented a desire to advance the guarantee of human rights. In contrast, a demand for the strict separation of powers against a dualistic parliamentary system often concealed the intention of defending the king's declining power. The antidemocratic and conservative function of the separation-of-powers doctrine was far more apparent when it was invoked against the monistic parliamentary structure, since the move toward this structure was a result of the expansion of the democratic spirit. The same phenomenon could be observed under the monistic parliamentary system when the tendency to restrict the power of dissolution was criticized in the name of the separation-of-powers doctrine. As the power of dissolution is restricted, the monistic parliamentary system moves from the equilibrium type to the predominant-assembly type. Therefore, separatist criticisms amounted to a vocal preference for the equilibrium type over the predominant-assembly type. I agree with the result, but would ask the separatists this question: Isn't it more democratic to give the advantage to parliament on the grounds that parliament is more democratic than the Cabinet?

Generally, the separation-of-powers doctrine has a natural tendency to idealize the state of equilibrium. Therefore, from the separatist viewpoint, the predominant-assembly type looks like a kind of deviation. But if the autocratic intention of strengthening the less democratic executive is not being concealed in the form of a demand for the separation of powers, how can the separatists justify their preference for the equilibrium type in the face of a challenge from democracy? The real question here is whether the equilibrium type is less democratic than the predominant-assembly type. But so long as we approach the issue from the conceptual framework of the separation of powers, it seems difficult to say that it is not less democratic. We need to change our perspective. Instead of looking at democracy through the framework of the separation of powers, we should look at the separation of powers from the point of view of democracy. After all, separation of powers is but one component of democratically organized society. At the early stages of modern constitutionalism, democracy was but one small component of the separation-of-powers doctrine, which presupposed the existence of an elected parliament. But now the situation has changed. It is democracy that should play a leading role in our constitutional thinking, and the separation of

powers should be valued not in itself but only according to the contribution it makes to the achievement of democracy.

Democracy demands that the determination and execution of national policy be made in conformity with the popular will. Therefore, in order to establish democracy, we need to understand the mechanism through which this conformity can be assured. Patterns of separating powers come into consideration here as a constituent element of this mechanism. They should be valued according to how well they perform in advancing democracy. This is the critical difference between the foregoing two points of view. When we examine the process of effectuating the popular will from the angle of the separation of powers, we tend to analyze how and to what extent the legislative and the executive branches reflect the popular will. Next, we tend to measure how the process of interaction between the two branches reflects the popular will.

A typical example of this thinking is the argument indicated above: In a system in which the people directly elect members of the legislative branches, which in turn elect the executive, the legislature is more democratic because it is closer to the people. Therefore, the stronger the legislative power with respect to the executive power, the more democratic the whole system is believed to be. Accordingly, the assembly system is considered to be more democratic than the monistic parliamentary system, and within the latter the predominant-assembly type is considered more democratic than the equilibrium type. This thinking is closely associated with the classical conception underlying the separation-of-powers theory and according to which the legislature decides and the executive executes. If the role of the executive is only to execute what the legislature decides, then all that is needed to secure democracy is to keep the legislative power as much in conformity with the popular will as possible. The best way to achieve this goal, it is often claimed, is through an electoral system of proportional representation. But is it true that the executive does no more than execute legislative will? At least in contemporary politics, it is the executive that really conducts politics. Thus, democracy requires the executive to conduct politics in conformity with the popular will. Does the democratization of the legislative power necessarily result in the democratization of the executive? If so, the problem of democracy is reduced to the democratization of the legislative power. But we know through past experience that in Japan the Diet members sometimes designate a prime minister whom the electorate did not expect at all. We can develop a better understanding of this problem by comparing England and the Third and Fourth Republics of France.

In England, the will of the people expressed at election time is immediately reflected in the composition of the Cabinet, whereas in France the combination of parties participating in a coalition government often differs from what the people might have expected after the elections. If the reflection of the people's will in the Diet does not necessarily result in its reflection in the Cabinet, we are forced to choose between the two: Should

we give priority to the democratization of the Diet or to that of the Cabinet? The prevailing doctrine in Japan has consistently advocated the former.

Most important for democracy is that the people's will be reflected not in the Diet or in the Cabinet viewed separately, but in the political system as a whole. So, by exploring the pattern of relations between the two branches, we should ask from the beginning how and to what extent the people's will is reflected in the government as a whole. We need to formulate a new typology from this point of view and, accordingly, re-examine the system established by the 1947 Constitution.

III

NEW TYPOLOGY BASED ON DEMOCRACY

A. What is Popular Will?

Before we undertake a new classification, we need to stop and think about what it means to say that the popular will is reflected in politics. For the popular will to be reflected in politics, it must first be expressed. There are basically two methods by which people formally express their opinions. One is by directly voicing their opinions on the policies they want, a typical example of which is the referendum. The other is by expressing their views indirectly by electing or recalling representatives. Election is the most common means of expression; but, as the popular will is expressed only indirectly through an election, disputes may arise concerning how to interpret the expressed will. In the case of election results that allow for various interpretations of the popular will, representatives may make decisions different from those which the people might decide directly by referendum. How clearly the popular will is expressed depends largely on the way issues are raised, on the party system, on the electoral system, and so on. For the establishment of a democracy, it is of vital importance to strengthen institutions and practices that will assure a clear expression of the popular will.

But what is the popular will to be so expressed? We can think of the popular will at various levels, ranging from ideological and philosophical preferences to concerns about specific, immediately enforceable measures. The question is which level of popular will is relevant here. It goes without saying that at election time there should be a clearly expressed, coherent program of policies to be put into practice until the next election. The content of this program must be more concrete than mere ideological and philosophical preferences, and yet more abstract than specific measures, even though containing some feasible policies. When the popular will is expressed in this way, we can talk about government by the people's will.

Which system of election is best suited for this purpose? It depends on many factors that cannot be fully analyzed here, but I would like to note one thing about proportional representation. Despite the belief of many Japanese analysts, proportional representation is not necessarily the best system for

assuring a loyal reflection of the popular will in politics. True, it enables subtle differences in opinion to be represented, and so it is quite suitable for any governmental organ that requires such representation. But if the people are expected to express at election time not an ideological or philosophical preference but a choice in favor of a realistic program, we should be aware that the proportional system will often fail to attain this end.

We can distinguish two ways by which the popular will finds its way into politics. One way is through electing representatives in such a manner as to reflect various opinions as loyally as possible and then leaving the final decisions on programs and appointments to elected representatives. The other way is through demanding that politics be conducted according to the clearly expressed popular will about programs and those who will run them. The former is typified by the Fourth Republic of France and the latter by British politics. Professor Maurice Duverger, a French political scientist, calls the former mode "mediated democracy" because decisionmaking by the people is mediated by their representatives, and the latter mode "direct democracy" because the decisions are made, not legally or institutionally, but as a matter of fact, directly by the people.⁵ He says that an objective of contemporary democracy is to achieve direct democracy in this sense. This is precisely what I advocate in this article.

B. Typology Conceived from the Democratic Point of View

From the point of view of democracy, all governments are divided into two categories: those that adopt democracy as the principle of legitimacy and those that are based on some principle other than democracy, usually the principle of monarchy. To the former belong the monistic parliamentary system (England), the assembly system, the presidential system (the United States), and the dualistic parliamentary system on a republican basis (the Fifth Republic of France). I will analyze the characteristics of each of these systems,⁶ leaving for another occasion an analysis of the latter category, which includes systems such as the limited monarchy, the dualistic parliamentary system on a monarchy basis, and the emperor system.

1. *Equilibrium-Type of Monistic Parliamentary System.* We first take up the British model to see how the popular will finds its way into this system. The key characteristic of this system is the continuously operating pressure that makes politics responsive to the popular will, for the government and the parliament both possess a powerful weapon. That weapon is the power of dissolution, or the vote of no-confidence, and the best way to deter the opponent from using that weapon is to stand closer to the people than the opponent does. Therefore, the logic incorporated in this system pushes the government and the parliament to compete with each other to come closer to

5. M. DUVERGER, *supra* note 2, at 77.

6. I owe the analysis greatly to the works of Professor Jacques Cadard. See, e.g., J. CADARD, *supra* note 2.

embracing the popular will. Of course, in reality the system does not always function this way. Sometimes the popular will is not clear, and the government and the parliament may have different interpretations of it. Even when the popular will is clear, the government may retain policies that have lost popular support if it has control over a disciplined majority. But this situation cannot last for long because demands for a policy change and the threat of rebellion arising from within the majority party will continue to exert a pressure that cannot fail to bring about, in due course, a readjustment of policy to the popular will. So I do not think it right to contend that in a parliamentary system such as the one practiced in England, where the cabinet exercises strict discipline over a parliamentary majority, the fusion of the two branches is complete and the mechanism maintaining a balance between them has lost significance. True, the controls of dissolution and no-confidence shift between the majority and the opposition, or even within the majority party. But if they operate at all, it is due to the relation established between the cabinet and the parliament.

2. *Predominant-Assembly Type of Monistic Parliamentary System.* In this system the cabinet is deprived of all or part of its dissolution power. Let us examine the situation of a cabinet totally deprived of this power, which will demonstrate the problems involved in this type of democracy.

Since it has no fear of dissolution, parliament feels free to force the cabinet to submit to its policies or to resign, even when the policies of the cabinet are supported by the people. This coercion is effective if there is enough time before the next election to appease the people's complaints or to raise new issues with the aim of diverting people's attention. The result is that, unless it can resort to other sources of disciplinary power, such as party discipline, a cabinet deprived of its most effective means of disciplining the majority will have no other choice than to make concessions contrary to the popular will in order to stay in power. But in the case of a coalition government in a multiparty system, party discipline is of no help because dissenters are generally represented by a participating party, and so the absence of dissolution power may be decisive. In short, the predominant-assembly type of government lacks a mechanism for assuring a maximum correspondence between policy choices and the popular will.

From the point of view of the theory of separation of powers, it is worth noting here that the predominant-assembly type looks more democratic than the equilibrium type. However, from the point of view of democracy, the contrary appears to be true. The predominance type does not preserve the popular will through interactions between the cabinet and the parliament. The democratization of politics here depends solely on that of parliament; in this respect, it resembles the assembly system. Indeed, viewed from the perspective of relations between the executive and the legislature, in the assembly system, the assembly looks almighty, the executive being completely subordinated to the legislature. But viewed in terms of democracy, the whole system is constructed in accordance with the principle of direct democracy,

and is equipped with such institutions as initiative, referendum, and recall. Therefore, its logic is completely different from that of parliamentarism, which is based on indirect or representative democracy. In the predominance type, the parliament literally predominates over the whole governmental structure by subordinating the cabinet, on the one hand, and becoming independent of the people on the other hand. It is very difficult, if not impossible, to make this system function as a "direct democracy" in Duverger's sense.

3. *The Assembly System.* As mentioned above, this system is thoroughly penetrated by the logic of democracy as far as its institutions are concerned, but it is doubtful whether the institutions really function according to the ideal underlying them. I suppose that the validity of this scheme, according to which the people decide directly and the government executes their decisions, is limited to situations in which the population is small and homogeneous and the principle of small government can apply. Under other conditions, the rule that the people make decisions directly is invoked only to legitimize decisions that are in fact made by the government. Thus, the ideal performs the ideological function of camouflaging a de facto dictatorship at the top of the political pyramid. Considering the fact that neither the convention system at the time of the French Revolution nor the systems of socialist countries have functioned in accordance with their claimed democratic ideals, I am inclined to doubt their democratic functionings. Further, there is good reason to doubt that the Swiss system, often cited as a well-functioning example of the assembly model, really belongs to this category.

4. *The Presidential System.* One frequently cited characteristic of the presidential system is that the executive and the legislative branches are mutually independent—the president has no right to dissolve the legislature, which in turn has no right to a vote of no-confidence. But from the point of view of democracy, the popular election of the president is the most important feature of this system. If the executive and the legislative branches can confront each other on an equal footing, it is because both are elected directly by the people. In this system, the people choose a political platform and a person to be in charge, and in this sense a "direct democracy" is created. But once an election is over, until the next election, there is no commonly available means, at least on an institutional level, to exert pressure on the president to conform his policy to the popular will. Nevertheless, the president is obliged to seek public approval because he, needing legislation in order to effectuate his policy, has no effective means of pressure against the legislature other than popular support. In trying to obtain this support, the president frequently speaks to the people and explains his policy through the mass media. This method may involve the risk of public manipulation, but it is an indispensable method by which the president may rival the legislature. Against this danger of presidential manipulation stands the legislature, with its powerful investigatory right. But the most characteristic countervailing

power against manipulation is the tradition of a strong and independent mass media, which can reveal and defeat any manipulative intentions. Accordingly, under this system, the president's policy is brought into line with the popular will through interactions among the president, the legislature, and the mass media. This is, of course, a different mechanism from that of the equilibrium-type. The driving force is not incorporated into a formal institution, as it is in the equilibrium-type, but works only on a de facto basis. As such, the second-term president, free from re-election worries, tends to feel less obliged to respond to the popular will. But, at least at the outset, it is possible to form a more democratic executive in the presidential system than in the parliamentary system because in the former the people directly elect the executive, whereas in the latter the executive is elected only indirectly.

5. *The Dualistic Parliamentary System of the Republican Type.* The dualistic parliamentary system of the French Fifth Republic is a mixture of the presidential system and the equilibrium-type parliamentary system. But as each system has a different mechanism, the conditions required for the proper functioning of each system also differ. If the conditions for each system were compatible, the two systems combined yield a *sui generis* system with its own coherent logic and counterbalancing defects. For example, we can imagine a system that allowed the people to choose the executive directly and thus created a strong and stable government on the one hand, and on the other hand provided a mechanism for resolving otherwise irreconcilable conflicts that might occur between the executive and the legislative branches, such as a "censure versus dissolution" motion.

Yet we should not take lightly the different factors conditioning the relatively favorable functioning of the American and British systems. For instance, both countries have two-party systems, but while British parties are strongly disciplined and organized, American parties are not, at least on the federal level, and so, in reality, the American party system resembles a multiparty system rather than a two-party system. This difference is closely linked with how the governments actually run. It is thanks to their well-disciplined two-party system that the British can effect a direct popular choice of policy and of the prime minister by casting votes at election time. It is because in reality, the pseudo-two-party system functions as a multiparty system that the American president manages, by using his personal influence as well as the pressure of public opinion, to obtain favorable votes from a Congress whose majority may be from an opposing party. Therefore, if the fundamental structure of the French party system remains an extreme multiparty one, it certainly is not suitable to the parliamentary aspect of this system. If the party system shows a permanent tendency toward bipolarization, it will not be suitable to the presidential aspect of this system. The question is whether the current French system can succeed in establishing, somehow, an equilibrium between these two conflicting components and in bringing out in practice its own proper and coherent

logic. The possibility of such coexistence presents quite an interesting issue, but I shall leave any further analysis for another occasion.

C. Japanese System Viewed in Terms of Democracy

As stated above, with its incorporation of the doctrine of separation of powers, the governmental system laid down by the 1947 Constitution corresponds to the equilibrium-type monistic parliamentary system and, in this sense is similar to the British system. But viewed in terms of democracy, its actual functioning is far from the "direct democracy" practiced in England. We all know that the British people go to the polls to choose both a policy and a prime minister by voting for members of the House of Commons. But in Japan, a vote for the House of Representatives does not translate into any real say in the policies or who will be chosen as the prime minister. With respect to policy, the Japanese people have been offered only one program at election time, that of the party in power, and the only choice we have had is to accept or refuse it. Such a choice is not a real one, since real choice is premised on the offer of at least two feasible programs that have a reasonable chance of being realized. I do not regard as feasible those programs that can expect the support of only 20 percent or so of the voters. A choice among impracticable programs can mean no more than the expression of a philosophical or ideological preference, and that is exactly what the Japanese people have been obliged to do.

As for choosing a prime minister, the situation is no better. Even for those who have accepted the program of the LDP, their consent implies no say in the choice of a prime minister. Prime ministers have been chosen by the deputies of the LDP, independently of, and sometimes contrary to, the popular will. Thus, ours is no other than a mediated democracy.

A program and a person in charge should not be chosen separately. A contemporary welfare state needs a coherent and comprehensive program for running the society. Political leaders are expected to formulate and to present to the people the program that they believe society needs and, with the consent of the people, to proceed toward effectuating that program. The people decide who takes care of which program, but is it wise to separate the one who conceives of the program from the one who executes it? Can we say that as long as people select the program it does not matter who executes it? In my view it matters greatly. We should be careful about tolerating a dichotomy between the setting of policy and its execution in a contemporary complex world. I think the best way is to let the task of putting the program into action fall on those who formulate and propose it. This system will make clear who bears the responsibility for a program, which is very important for democracy. If a choice of programs does not imply a choice of a person in charge as well, the initial choice is not a genuine one. Those who vote for the LDP appear to be choosing the program proposed by the party, but in my opinion all they are doing is expressing their ideological preferences. There are different ideas among LDP members, and a given program must differ

according to whose interpretation of it governs. Therefore, the issue of determining the party's program cannot rightfully be separated from the issue of who will lead the party. The program and the candidate for the position of executive chief should be offered to the voters as a block at election time. Democracy, in the sense I am using it, requires that the program and the prime minister result automatically from the outcome of the election, instead of being determined after the election by faction leaders in a behind-the-scenes give and take session.

Why do the Japanese and British systems operate so differently even though both are equilibrium-type monistic parliamentary systems? A system and its functioning are so interwoven with factors such as national character, political culture, and traditions that it is imprudent to seek a few decisive reasons. But because differences in the party and election systems are most commonly looked to, I will restrict my analysis to those systems without implying, in any way, that they are decisive.

The British party system is basically two-party, and the programs each party proposes at election time are regarded as feasible. When this system is linked with an electoral system based on one-seat constituencies, the votes the British cast amount to a direct choice of a program and of a prime minister. In contrast, the Japanese party system can be characterized, using Duverger's classification,⁷ as either a multiparty or a dominant-party system. If we view each faction of the LDP as a kind of party participating in a coalition government, we see in Japan an extreme multiparty system consisting of more than ten parties. Under such circumstances, it is extraordinarily difficult to make a parliamentary system function as a direct democracy unless the parties tend toward some form of bipolarization, thus helping the people to manifest their will unequivocally. Such bipolarization would require, above all else, the cooperation, if not the unification, of the current opposition parties. Thus, the realization of a direct democracy under the current party system depends largely on a change in the behavior of the opposition parties.

On the other hand, if we see the LDP as a single party in spite of its intraparty factional conflicts, our party system appears to be a dominant-party one, the key characteristic of which is the existence of a dominant party in a multiparty structure. If the dominant party exercises strict party discipline, the whole system moves closer to a one-party system, producing a danger of dictatorship by the party, especially when there exists a concentration of power within the party. Fortunately, our dominant party, the LDP, has failed to establish such an inner structure of power concentration due to intraparty factionalism, although it does practice party discipline when it comes to casting votes in parliament. Even if the danger of dictatorship is minimal, this dominant-party system does not constitute an environment conducive to direct democracy. Under such a system, there can be only one, if any, feasible

7. See M. DUVERGER, *supra* note 2, at 162, 164.

program, and so the system is not at all suited for a clear expression of popular will.

This party system is closely connected with the electoral system. Our current electoral system for the House of Representatives is what we call a medium-sized constituency system, whereby people have single, nontransferable votes and elect three to five representatives from each constituency. Although this electoral system is not based on the principle of proportional representation, results have shown that the number of votes corresponds fairly well to the number of seats. However, viewed in terms of its functioning, compared with the proportional representation and the single-seat constituency systems under which electoral campaigns generally proceed on a party basis, this system has features completely different from not only the proportional representation system but also from the single-seat constituency system. Campaigns under the Japanese system tend to be more personal because in order to take charge of the government by securing a majority of House seats without having to resort to a coalition, each party must field more than two candidates in a single constituency. Since the total number of votes each party can collect does not change dramatically from election to election, candidates from a single party are forced to compete against each other rather than against opposing parties, which makes it difficult for campaigns to proceed on the basis of the programs each party proposes.

IV

CONCLUSION: PRESCRIPTION FOR REFORM

Democracy as practiced in Japan is mediated democracy. In order to achieve a direct democracy, what prescription do we need? Since the working of any political system is conditioned by many interacting factors, we should be careful about oversimplifying the issue by arbitrarily selecting a few factors and drawing premature conclusions on the basis of them. Being fully aware of this risk, I nevertheless focus my analysis here on three factors commonly accepted as the most important: the governmental, electoral, and party systems. My purpose is to consider if and how changes in these systems would contribute to the attainment of our goal.

A. The Possibility of a Presidential System

What if we changed the current parliamentary system into a presidential one? The people would be better able to manifest their will on issues of national policy by casting votes for the person who would be in charge of the policy. The choosing of the program and the choosing of the person would coincide. Under a presidential system, the ruling LDP might split into factions, each becoming an independent party because the party discipline, which is so indispensable in a parliamentary system to take over and maintain the government, would no longer be so necessary. But splitting the LDP would be a blessing because the more extreme the multiparty system is, the

more favorable it is to the presidential system. Besides, we are not totally unfamiliar with this system because we have experience with it on the local level. Of course, we should not make light of the danger that the executive might become too strong, accumulating strength not only from the popular election but also from our tradition of a strong executive deriving from a feudalistic and bureaucratic style of politics. In order to counterbalance this tendency, we would need to strengthen the Diet and local autonomy. But paradoxical as it may seem, we should not forget that in a presidential system the Diet may actually be stronger, because a president, who is not responsible to the Diet, will feel less need to contain free discussion and votes in the Diet through party discipline. The most worrisome question is whether the Japanese mass media are mature enough to resist a presidential attempt to manipulate public opinion. If the answer to this question is affirmative, I think the presidential system is a possible solution for our country.

B. Reform of the Electoral System

I have pointed out that the current system is not conducive to the clear expression of popular will in the selection of a national program or a prime minister, and that the single-member constituency system and the proportional representation system are better suited to producing a program-based election. But the introduction of the single-member constituency system without a change in the current party system could so drastically alter the existing relationships among the parties as to produce unexpected developments, such as a political upheaval of extremist movements. It is possible, to be sure, that under a single-member constituency system, the opposition parties would be forced to cooperate more closely with each other in order to get elected. If so, the multiparty system might be transformed, if not into a two-party system, at least into some kind of bipolar party system. So the question is how to attain this desirable change without too much risk.

This question brings us to the problem of reforming the party system. But before examining that issue in depth, we should look at the proposal to adopt proportional representation. I believe the majority of Japanese constitutional scholars support this proposal, which seems to be undergirded by three considerations. First, they believe the principle of proportional representation to be, theoretically speaking, the most democratic. I do not agree with this opinion. Democracy is government in accordance with the popular will. But the popular will at what level? If we mean the popular will at the level of concrete and feasible programs, then the popular will, if it exists at all, might well be dispersed, rather than reflected by a system of proportional representation. Second, these scholars argue that it is undemocratic for the LDP, which has long since lost more than 50 percent of the popular vote, to continue to hold power. I agree that this situation is not desirable, but, compared to that in foreign countries, I do not think it anomalous that the LDP, which continues to obtain more than 40 percent of the votes, remains in power. The third argument these scholars make is that

any reform that might produce a drastic shift in power should be avoided. Since past election results have been fairly proportional, the introduction of proportional representation would not bring about a drastic change in politics, it is argued, and yet it would succeed in establishing program-based elections and modifying the overrepresentation of the LDP.

To this extent, I agree with this opinion. If the LDP lost a majority in the Diet, it would be forced to seek a coalition in order to stay in power, which would be an improvement over the present situation of permanent one-party rule, with its inevitable periodic abuses and corruption of power. But in terms of direct democracy, the result would be short of satisfactory. As I have said above, proportional representation cannot be adapted easily to the parliamentary system because it tends to produce an extreme multiparty situation in which it is difficult for a parliamentary system to function in the manner of a direct democracy. Of course, politics depends on many other factors and I would not say that the proportional system necessarily results in a multiparty system, nor would I say that the parliamentary system never functions as well as a multiparty system. The real issue here is whether, despite this general tendency, proportional representation would produce satisfactory results if introduced under the current parliamentary system in Japan. Despite the fact that the LDP would not accept any reform that would damage its position, I can envision several scenarios: (1) The proportional system might tend to strengthen party discipline. If the LDP were to succeed in overcoming factional conflicts and become a strictly disciplined party, the characteristics of the dominant-party system might be strengthened, even exaggerated, and ours would approach a one-party system, which would not be a happy result for our freedom. (2) If, failing to resolve its factional division, the LDP were to split, the result would be an extreme multiparty system. (3) Of course, we cannot exclude the possibility that the party system might be restructured into a moderate multiparty system with five or six major parties, tending toward two or three coalitions. If this were to happen, we would have a good chance of establishing a direct democracy. The outcome would depend on the behavior of each party, but if new behavior is possible under the proportional system, why not under the current system?

C. Reform of the Party System

The current party system is the product of long-standing traditions in Japan, and it is far more difficult to alter it artificially than it is to alter legal systems, such as the governmental and electoral systems. My intention here is to propose not a change in the party system itself but a change in the behavior of the parties, which will, I hope, result in a change in the party system itself in the long run. For a direct democracy to work, parties must propose feasible programs so that the people can express a clear choice in an election. Parties that before an election propose programs having little possibility of realization, intending to determine the real policy after the election, are not contributing to the establishment of democracy. So the party in power should

adopt the following rule: It will tell the people at campaign time who will constitute the Cabinet for the next legislative term and what programs they will enact, and in the event at midterm of a major change in the promised program or in the Cabinet, the party will proceed to a new election as soon as possible. Of course, we should not expect the LDP of its own volition to improve on behavior that, after all, has guaranteed its success. If a change in its attitude takes place at all, it will be because the LDP is forced to do so. It is the mission of the opposition parties to force such a change. If the opposition parties really understand their role in a democracy, they will no longer talk about "the program of our party" to the people. They will feel it necessary to reach agreement among themselves on a common program that can attract at least 40 percent of the popular voters. I am aware of the difficulties that exist in negotiating such a common program. Some issues seem to make compromise impossible, such as the status of the Self-Defense Forces, nuclear energy, and foreign policy. But the opposition parties must find a solution somehow because democracy depends on it. And the first step is to understand that the most important role of the opposition is to help people make a real choice, and to be determined to assume that role. It should not be difficult for the opposition parties to decide to alter their behavior. Their behavior to this point has proven ineffective at winning power, and the future of such behavior is equally bleak.

In the last resort, it is the people who must push the opposition parties to conform their behavior to this new image of the parliamentary system. After all, the people are sovereign, and their representatives, under the pressure of re-election, tend to conform their behavior to what the people expect. However, what if the people misunderstand how their system should work? Who bears responsibility for that misunderstanding?