

THE SHORT LIFE OF JAPANESE FCC:  
SOCIAL AND LEGAL ORIGINS OF  
THE RADIO REGULATORY COMMISSION

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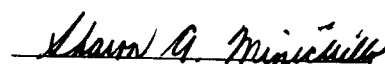
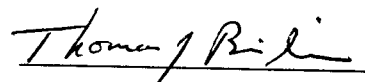
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## ABSTRACT

Despite strong resistance from Japanese officials, the Radio Regulatory Commission was established in 1950 by the order of the occupation force to free broadcasting in Japan from totalitarian and militaristic principles, and to realize democratic administration. The Commission, however, existed for only two years and two months. In my research, I have found two major explanations for the Commission's short life. Firstly, the system of public hearings clashed with the traditional way of managing conflict in Japan. Secondly, the system of having independent regulatory commissions as administrators was not easy for Japanese to accept. This thesis attempts to contrast Japanese broadcast administration with that of the United States, and to determine what freedom of expression means to Japanese.

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## LIST OF ABBREVIATIONS

CCS	Civil Communications Section (in occupation force)
CIE	Civil Information and Education Section (in occupation force)
FCC	Federal Communications Commissions
FM	Frequency Modulation (in broadcasting)
GHQ	General Headquarters (in occupation force)
GS	Government Section (in occupation force)
LDP	Liberal Democratic Party
LS	Legal Section (in occupation force)
Mc	Mega cycle (in broadcasting)
MPT	Ministry of Posts and Telecommunication
NBC	National Broadcasting Corporation
NET	Nippon Educational Broadcasting TV (it is now called TV Asahi)
NHK	Nihon (Nippon) Hôshô Kyôkai [Japan Broadcasting Corporation]
NNN	Nihon Television News Network (NTV's news network)
NTV	Nihon Television Network Company
RRC	Radio Regulatory Commission (Radio Regulatory <u>Council</u> and Radio Regulatory <u>Agency</u> is not abbreviated to avoid confusion)
SCAP	Supreme Commander for the Allied Powers (in occupation force)
TBS	Tokyo Broadcasting Station
UHF	Ultra High Frequency (in broadcasting)
VHF	Very High Frequency (in broadcasting)

## PREFACE

When Ezra Vogel's "Japan as number one: Lessons for America" was published, some Japanese were filled with deep emotion. Publication of this book was symbolic of the feat that the Japanese accomplished in rebuilding their country from the destruction of the war. For the Japanese, achieving this kind of economic wealth enjoyed by the United States was the country's ultimate goal for decades. Vogel's book explained how the Americans could learn from the Japanese.

Today, few people would deny that Japan is one of the richest nations in the world. However, some claim that Japan might have a prosperous economy but is lacking in other aspects. While *kigyô shakai* [corporation-centered society] flourishes in Japan, *karôshi* [death from overwork] occupies the people's attention. Watanabe, Kai, Hirowatari, and Komorida (1994) systematically analyzes how a corporation-centered society discourages people's respect toward legalism.

The question: "What direction is Japan and its people moving toward?" is asked mostly by *saraïman* [salaried workers], who are the driving force of the corporation-centered society. AERA, one of the Japanese leading news magazine, featured the salaried workers' disenchantment in "Is there any freedom of speech for salaried workers who live in the corporation-centered society?" (Shutô, 1993, May 4-11, pp. 30-31) In this article, an anonymous

Japanese office worker, who spent several years at the company's branch in the United States, became skeptical about the economic growth of his home country. In his observation, the corporation-centered society sacrifices democratic principles in exchange for the economic growth of the nation. In the same feature, AERA finds that many bank employees in Japan are afraid to demand their overtime pay because they might be relegated to an inferior position.

Watanabe et al. (1994) point out:

According to the governmental statistics of 1992, a Japanese worked 2008 hours/year in average. The same statistics estimated that the overwork by a banker was 8.6 hours/months in average. But it should be noted that hours of an infamous "sâbisu zangyô" [unpaid overwork] were not included in the number (p. 17).

Moreover, Terada Shigeya, who has worked for a Japanese bank for more than six years, told the author that his unpaid overwork averages about one hundred hours per month (S. Terada, personal communication, February 21, 1995).

In 1995, Japan reaches the fiftieth year since its totalitarianism was defeated, and set its course to democracy. One might then ask whether Japan has only achieved economic prosperity so far? It may now be the right time to review Japan's accomplishments.

This thesis mainly discusses particular issues that immediately followed the surrender of the imperial Japan, aspects that still remain a concern today. Through the arguments concerning Japan's adoption and rejection of a social system that originated in "the west" (hereafter,

"West"), the author attempts to see the origin of certain problems with which modern Japan is engaged.

The editorial style of this thesis follows the APA style, explained in the Publication Manual of the American Psychological Association (4th ed.). However, when the APA style conflicts with regulations of the University of Hawaii Graduate Division, the later takes precedence. (For example, figure captions are placed at the bottom of the figure while the APA suggests to place them at the top of the pages.)

Because of the nature of the topic, Japanese literature is also often cited. Standards dealing with the Japanese language should also be noted.

Citations from Japanese references, including quotations from the official proceedings of the National Diet Session and the records of the public hearings held by the Radio Regulatory Commission, were translated into English by the author.

Japanese names, titles, and places are romanized according to the modified Hepburn style. And, popular names such as **Fukui** and **Fukuoka** are spelled, although there is no "f" sound in Japanese. An English translation of commission names is noted in brackets whenever an official name is available, or whenever an appropriate interpretation is possible. For example:

The Denpa Kanri Iinkai [**Radio Regulatory Commission**] was one of Japan's independent regulatory commissions.

In addition, Japanese personal names are written in the traditional Japanese order. That is, the family name is followed by the given name. For instance:

**Yoshida Shigeru** was the Prime Minister of Japan.

Italicized words are Japanese terms with the exception of names, titles, and places. For example:

The Broadcast Law in Japan requires broadcasters to secure *huhēn hutô*, or political fairness, in their programs.

The symbol "ˆ" is used as a macron, indicating long vowel sounds, with approval from both the committee members and the Graduate Division. However, macrons are omitted from the names of familiar places. For instance, **Osaka** and **Tokyo** are spelled without macrons. The names of certain Japanese authors who write in English are also exceptions to this rule.

In addition, there are two ways to call the Japan Broadcasting Corporation in Japanese:

**Nippon Hôshô Kyôkai**  
**Nihon Hôshô Kyôkai**

Since newer publications often use **Nihon**, this spelling is used more frequently in this thesis. However, whenever references use **Nippon** for the publication data, this spelling is retained.

Following the modified Hepburn style, the Japanese word for "newspaper" is spelled "**shinbun**" except when a particular Japanese newspaper company frequently spells **Shimbun** as its romanized name.

CHAPTER 1  
PROBLEM & QUESTION

Introduction for Chapter 1

James White, a researcher from Australia, could not forget the response from a Japanese official during an interview with him. White asked: "Why there were so few FM (radio broadcasting) stations when Japanese companies were producing all this wonderful FM receiving equipment, which in America was used to receive such a wide variety of different kinds of music?"<sup>1</sup> The Japanese official brought up the cultural difference between Japan and the United States to explain the government policy concerning broadcast administration. The official answered that Japanese people did not want so many choices because Japan was a homogeneous nation.

Such a response is not surprising or unusual. When asked by foreigners to explain a situation in Japanese society, Japanese often refer to the peculiarity of its culture. In many cases, differences between Japanese society and the other society are explained in the name of "cultural difference."

For instance, until 1993, Japan successfully managed to exempt rice from the list of trade items. One of the tactics that Japanese officials utilized was "cultural difference." Most of the public representatives, whose votes depended on farmers, were pressured to keep the rice market closed. Farmers in Japan protested the import of

rice emphasizing that rice was not simply merchandise but the origin of ritual. They believe Japanese culture would be ruined if rice farming was endangered by imported rice.<sup>2</sup>

On the other hand, Egashira (1994, July 1), a journalist for the Nikkei shinbun,<sup>3</sup> argues that Japanese depends too much on the term "culture" to save the traditional social system and induce their respectful acceptance. Egashira thinks that instead, Japanese need to critically review social systems and determine whether there is a rationale for them to exist in the modern age that requires global perspective for economic, political, societal, and technological prosperity.

Egashira's warning is valuable for Japanese who tend to put too much emphasis on the uniqueness of their culture. In this thesis, the trap of cultural determinism should be avoided by informative literature and careful observations of the Japanese society.

### Purpose of the Study

The main purpose of this study is to examine Japanese social systems, not to justify differences but to understand them and evaluate their consequences. The thesis accomplishes this through a critical review of a particular system: Broadcast administration. More specifically, this study focuses on an independent regulatory commission that is based on an idea that was imported from the United States to Japan after World War II despite strong objections from the Japanese officials.

Here, "independent" means the independence from political influence. Since broadcasting is one of the vehicles for freedom of speech/press, its administration needs to be free from decisions advantageous to a small group of people who have power. Therefore, the mission of the independent regulatory commission was crucial for the United States in order to free broadcast media in Japan from authoritarianism, and also to democratize Japan.

Due to the nature of this thesis, Japanese broadcast journalism will often be described in contrast to American broadcast journalism. I will determine which aspects of society influences the regulation of broadcast journalism in Japan differently from the United States. However, it should be noted that the degree of freedom of the press among nations can also be determined by the infrastructural difference between nations. For instance, currently, over sixty percent of American households subscribe to cable television (National Cable Television Association, 1992), while only 4.5% of Japanese homes are wired for cable TV (Friedland, 1994, June 30).<sup>4</sup> This makes a considerable difference in the degree of press freedom between broadcast media in the United States and Japan. Multiple channels through cable systems eased the broadcast regulations in the United States and the so-called "scarcity rationale" (discussed later in Chapter 2) that justified broadcast regulations became less significant. As a result, American broadcast journalists became so free that some people even think that today's television enjoys too much freedom.



Under such different conditions, it might not be appropriate to compare two press system and hastily conclude that: "Japanese broadcast administrators should deregulate broadcasting in Japan immediately." The invalid comparison should be avoided through careful observations.

It is my hope that this thesis will contribute to enrich discussions concerning what is a better approach toward broadcast administration under democracy.

### Problem

On July 19, 1993, on its national news programs, one of the Japanese television networks, TV Asahi, described the result of a general election that was held a day before as "a disastrous defeat" for the Liberal Democratic Party (LDP). Other networks and most mass media in Japan reported the result of the election in a similar tone. After thirty-eight years of rule by the LDP, voters in Japan denied the LDP a majority in the lower house of parliament. Concerning their defeat, the LDP had to wait a while for an opportunity to put the blame someone else.

It was almost three months after the general election when TV Asahi faced a vital problem for their broadcast license. The headline that read: "*Henkô hōdō* [bias in reporting]" gathered attention in Japan on October 13, 1993. The Sankei shinbun, Japan's nation wide newspaper, ranked fifth in circulation, exclusively reported the problem with TV Asahi.

Sadayoshi Tsubaki, the news director of TV Asahi, "said he had 'directed' TV Asahi's correspondents to spin the political news so that the incumbent Liberal Democrats looked bad and the 'not-LDP' parties would win" (Reid, 1993, October 15, p. A31).

When Tsubaki was summoned to the national Diet session on October 25, 1993, he admitted that he addressed similar remarks, to the closed meeting of the Nihon Minkan Hôshô Renmei [the association of private owned broadcasting stations in Japan]; however, he did not admit that he actually directed his staff to produce the anti-LDP news show. In fact, Asahi Shimbun, the leader of the Asahi Shimbun group, determined later from attendees of the closed meeting that what Tsubaki actually said was not a directive to "spin the political news," but the observation that "there is a stable anti-LDP mood among people" (Kumamoto, 1993, p.8.) Moreover, none of TV Asahi's news staff admitted that they were "directed."

The points of the Tsubaki incident were: 1) whether Tsubaki actually "directed" his news staff to produce biased reportings and if he did; 2) whether Tsubaki's direction was reflected in the content of news. However, the issue went further than many journalists feared:

Officials at the federal Post and Telecommunications Ministry confirmed today that they have opened an investigation of TV Asahi, one of the major national networks, on charges of "bias in reporting" during the national election this summer (Reid, 1993, October 15, p. A31).

The Ministry of Posts and Telecommunications (MPT) is one of the Ministries that belongs to the Cabinet, the

executive branch of the Japanese government. The Minister, or the Ministry's head, was often from the LDP that had formed the Cabinet for nearly forty years. The LDP heaped blame on television news for their historical defeat of the 1993 election, leaving TV Asahi as the scapegoat.<sup>5</sup> The chief of the Ministry's Broadcast Bureau said that "deliberately slanted reporting would be a violation of broadcasting and election laws, with penalties ranging up to a loss of the network's broadcast license" (Reid, 1993, October 15, p. A31). The law, the MPT says, requires the content of the programs to be "fair and impartial."

Hashimoto Noboru, who majored in political science at Massachusetts Institute of Technology who is now an employee of TV Asahi, recalls how he felt when the accusation was brought against TV Asahi: It is impossible for Tsubaki to control the content of the news (N. Hashimoto, personal communication, December 7, 1994).<sup>6</sup> Hashimoto believes that one man's intention cannot be reflected on the news content even if he is a news director. Hashimoto insists that news programs are produced by too many people to enforce single biased view on the overall news content. Rather, Hashimoto's concern was that other broadcast stations and newspapers in Japan did not struggle jointly against such unjust pressure.<sup>7</sup>

Meanwhile, it is true that Japan's Broadcast Law requires broadcasters to secure *huhēn-hutō* or impartiality.<sup>8</sup> The official English translation of the General Provision in the Broadcast Law reads:

Article One. The purpose of this Law is to regulate the broadcasting so as to meet the public welfare, and to strive for the sound development thereof, in accordance with the principles as stated below;

- (1) To secure the maximum availability and benefits of broadcasting to the people;
- (2) To assure the freedom of expression through broadcasting by guaranteeing the impartiality, integrity and autonomy of broadcasting;
- (3) To make the broadcasting contribute to the development of healthy democracy by clarifying responsibility of those persons engaged in broadcasting (History Compilation Room, Radio & TV Culture Research Institute, Nippon Hoso Kyokai, 1967, p. 384, emphasis given).

Since the TV Asahi's incident, TV Asahi as well as other stations have started to create production guidelines about impartiality in news reports. Those guidelines were designed to avoid presenting "bias" in news programs. By doing so, station owners thought they could avoid the risk of violating the impartiality requirement in the Broadcast Law.

Nihon Television Network Company (NTV), the flagship station of the Nihon Television News Network (NNN), formed NTV Hôdô Gaidorain Kenkyû-kai [News Guideline Research Group] and created "Hôdô Gaidorain [News Guideline]" in February 1994. In the process of creating the guidelines, they found a major problem in the Broadcast Law. The problem concerns the subject of a sentence in Article One. NTV Hôdô Gaidorain Kenkyû-kai (1994) finds that Article One does not define who is the subject that "assures the freedom of expression through broadcasting by guaranteeing the impartiality, integrity and autonomy of broadcasting"

(pp. 24-26). NTV Hôdô Gaidorain Kenkyû-kai (1994) cites

MPT's argument:

"*Hôritsu = kuni* [law is equivalent to nation]." The MPT, the government, is responsible for the administrations of this nation (p. 24).

Although it is difficult to understand what the MPT wants to say from the above argument, NTV Hôdô Gaidorain Kenkyû-kai voluntarily interprets and concludes that the subject of Article One is the Ministry of Posts and

Telecommunications:

So, the article does not imply that broadcasters are the ones who protect impartiality. But the MPT, the nation, is the one who protects freedom of expression when there is unjust pressure from outside (NTV Hôdô Gaidorain Kenkyû-kai, 1994, p. 24, emphasis given).

This then, leads to the question: What is "outside?" If it means outside the boundary of the nation's legal power, another question is: Who is the one that protects freedom of expression when there is unjust pressure inside the nation? In other words, who will protect the freedom of expression when domestic authorities exercise unjust pressure? NTV Hôdô Gaidorain Kenkyû-kai does not have answers to these questions.

Matsuda Hiroshi, Professor at Ritsumeikan University in Kyoto, notes that the impartiality clause has been used several times by the authorities to challenge the content of television programs and broadcasters. According to Matsuda (1980-1981), the Cabinet, the executive branch of the Japanese government, held the first official discussion concerning bias in television programs in 1967. On the

grounds of reports from the Minister of Posts and Telecommunications, the Cabinet singled out two networks: Tokyo Broadcasting Station (TBS) and Nippon Educational Broadcasting TV (NET).<sup>9</sup> The discussion resulted in the investigation of an editorial chief of the Tokyo Broadcasting Station for producing a "biased" program (Inaba, 1985), a documentary about the Japanese national flag.

Since then, Tokyo Broadcasting Station has suffered at least three warnings (Matsuda, 1980-1981). The first warning came from the LDP in 1967 when TBS aired a documentary about the Vietnam war. The second warning was in 1968 when the U.S. nuclear aircraft carrier, the Enterprise, took a stop at the port in Japan, and TBS featured the citizens' protest. The third warning came directly from the Minister of Posts and Telecommunications in 1968 when TBS covered a citizens' protest against the construction of the new airport in Tokyo suburbs of Narita. Although the supreme law in the nation guarantees the freedom of speech/press, Japanese broadcast journalists have not fully enjoyed it when issues are related to political controversy.

#### Research Question

The Constitution of Japan declares one of the basic human rights in Article twenty-one:

1. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

2. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated (Beer, 1984, p. 151).

Japan's new Constitution was promulgated in 1947. Three years later, a set of three bills associated with broadcasting was passed at the national Diet. They were the Denpa hô, the Hôsô hô, and the Denpa Kanri Iinkai Setchi hô [the Broadcast Law, the Radio Law, and the Radio Regulatory Commission Establishment Law]. Among them, the Radio Regulatory Commission Establishment Law was particularly important for freedom of expression in broadcasting because the law defined the commission who had the supreme authority in broadcast administrations in Japan.

The "Powers" section of the Radio Regulatory Commission Establishment Law is defined as follows:

Article 4. The Radio Regulatory Commission shall, for the performance of its responsibilities provided for in this Law, have such powers as listed below...

...

- (17) To negotiate and conclude, within the limits as provided by treaties, international agreements relating to the radio wave regulation; to be in contact with the International Telecommunication Union and other various organs;
  - (18) To grant license for or approve the establishment of radio station;
  - (19) To inspect the radio station concerning radio equipment, the qualification and number of its operators, etc.;
  - (20) To monitor and regulate radio waves;
- (Denpa chô [Radio Regulatory Agency], 1950, pp. 155-159).<sup>10</sup>

The Radio Regulatory Commission (RRC) was designed to be a politically independent commission, and it was modeled after the Federal Communications Commission in the United States. The RRC was given birth on June 1, 1950, but was terminated on July 31, 1952. Hattori (1989, March) describes the abolition of the RRC as follows:

...the ongoing march toward democratization of broadcasting administration came to a halt, causing concern over the possibility of reversion to the prewar state control of broadcasting (p.47).

Since the abolishment of the Radio Regulatory Commission Establishment Law, several regulations in the other two laws have lost their original intention. In consideration of the TV Asahi case, it is not too much to say that the impartiality clause in the Broadcast Law was turned by the government as a means to intervene in the contents of broadcast programs.

Written sources do not give a satisfactory answer as to: "Why the Radio Regulatory Commission was abolished?" in order to convince people who believe in the watchdog role of broadcast journalism.

The dissolution of the Radio Regulatory (Commission)<sup>11</sup> was considered a matter of course because of the circumstances in which it was established by the strong demand of GHQ despite opposition of the Japanese Government (History Compilation Room, Radio & TV Culture Research Institute, Nippon Hoso Kyokai, 1967, p. 233).

Most of the relevant literature does not go further than pointing out that the abolishment of the RRC was totally



based on administrative purposes, giving no care to the freedom of speech/press.

Questions remain: Who made the final decision to abolish the commission? How was that decision made? Does the abolishment mean that the notion of "independent regulatory commission," that was originated in the United States, cannot fit in Japan? Or, does it mean the notion of "freedom of expression" itself cannot fit in Japan? To answer these questions the history of broadcast administration along with the history of freedom of expression needs to be reviewed. Specific research questions are raised and answered in each chapter in an effort to address the above questions.

In Chapter 2, freedom of expression and its status in broadcasting is discussed to answer two research questions: 1) Does governmental intervention of the means of expression contradict the idea of freedom of expression?; 2) what is the rationale for putting a restraint on broadcasters, such as requiring them to have a "license to communicate" and forcing their programs to keep impartiality?; and 3) what was the United States' approach toward this issue? This chapter provides basic information concerning the origin of freedom of expression and broadcast regulations, as well as the notion of independent regulatory commissions.

Chapter 3 provides a theoretical approach toward the situation of freedom of speech in Japan. It is followed with a brief history about freedom of expression, and the

birth of Japanese broadcasting is also reviewed to answer the research question: What was the Japanese approach toward the issue of freedom of expression? The history of broadcasting is traced back to the Taisho era, the mid-1920s, when radio broadcasting started in Japan.

Before entering the core of this thesis, I will give a general but critical overview of the post-war Japanese political and legal structure in Chapter 4. Through this chapter, readers learn which political and legal mechanism allows the executive branch of the Japanese government to carry a legislative role while under the principle of separation of powers. That is, this chapter will provide a key to the research question: How could the executive branch propose the bill that determined the abolishment of the Radio Regulatory Commission? In addition, this chapter reviews landmark cases concerning freedom of expression in Japan in an effort to understand the Japanese judiciary approach concerning the conflict between the public welfare and the individual's right.

The main discussion in Chapter 5 is about administrative activities by the Radio Regulatory Commission. By reviewing the performance of the RRC and comparing it to that of the present administrator, rationality/irrationality of the abolishment of the RRC is exposed. In addition, this chapter attempts to consider the consequences, had the RRC survived.

In Chapter 6, historical documents such as the official proceedings of the thirteenth session of the

National Diet are reviewed in an effort to understand what kind of discussion took place concerning the abolishment of the RRC.

Chapter 7 concludes the study with an assessment of the present situation. Limitation of the study are also discussed. In addition, the future prospect of broadcasting and suggested directions for telecommunication administration in the age of two way, inter-active media are given.

## CHAPTER 2

## FREEDOM OF EXPRESSION AND BROADCASTING-GENERAL OVERVIEW

Introduction for Chapter 2

Although freedom of expression is considered to be one of the basic human rights, people have not achieved complete freedom in communication. There can never be complete freedom where people form societies and orders. The goal remains, however, and a critique against social forces that make idealized communication difficult to realize leaves the door open for further discussions concerning freedom of speech.

According to the German sociologist Jürgen Habermas, rational societies can be achieved when true rationality emerges from conditions that correspond to an ideal speech situation. In the ideal speech situation, all actors have equal opportunities to engage in dialogue without domination by one actor, restriction, and ideological distortion. Habermas' (1970) early argument came from what he studied from communicative competence of those who suffered pathological speech disturbances. His study let him evolve a theory concerning rationality in communicative action for mutual understandings. Later, Habermas (1979) formulates something of "universal pragmatics" (pp. 1-68) that underlies any verbal communication. He sees all genuine attempts at communication have implicit in them claims to truth, appropriateness, and sincerity.

Thus, it was natural for Habermas to take a critical position against inundation of laws because they can intrude into and suppress peoples' autonomous decision makings. In principle, communicative action should be free from legal forces. Habermas (1987) argues that augmentative legislation and dependence on them is one of the pathological aspects of the modern society.

What Habermas suggests is worth considering in the age of electronic media communication. Pool (1983) points out that people have less freedom in the age of electronic media communication even though the technological reasons for regulations have become obsolete. In broadcasting, Pool continues, the United States could choose "a market in (radio) spectrum" instead of "regulations" (pp. 108-50):

It is hard to reconcile such governmentally imposed requirements with the traditional concept of the freedom of the press. The broadcast model assumes that the government has a positive role to play as licensor and regulator. The optimistic notion that government is to play that role on behalf of citizen freedom rather than against it is not persuasive to those who are skeptical about the power of good will in political processes to guarantee good results (p. 135).

In broadcasting, licensing practically limits free communication by examining the qualifications of applicants for licenses. In other words, people need to get some kind of authorization to communicate through the broadcast media. However, the idea of a "license to communicate" contradicts the principle of basic human rights. Moreover, licensing force communication flow to be one way: From the

people who have license to the people who do not have license.

Before getting into the discussion concerning specific restraints over freedom of expression in broadcast media, the origin of freedom of expression in print media and its related theories are reviewed.

### Freedom of Expression in Print Media

The birth of freedom of expression in the print media has close relations with modernization. According to Barrington Moore Jr. (1966), there are three main historical routes to reach the stage of a modern industrial society. He categorizes eight countries into these three types of routes:

- (1) parliamentary democracy  
West . . . England, France, and the United States  
East . . . India
- (2) totalitarian fascism  
West . . . Germany  
East . . . Japan
- (3) totalitarian communism  
West . . . Russia  
East . . . China

The earliest route to the "modern" world from the pre-industrial one is the combination of capitalism and Western democracy. Moore points out that the English Civil War, the French Revolution, and the American Civil War are the major stages in which the bourgeois-democratic revolution was developed. The development of bourgeoisie and democracy was the major force for the evolution in freedom of expression.

When the landed upper class such as "gentry" became economically independent in England, they started to demand their rights from oppressive rulers. An economic struggle between the rising middle class and aristocracy soon transformed into an ideological battle. While the Church of England attempted to silence dissenters, Puritans, who were mainly from the middle class, fought for their religious freedom.

Since the monarchy recognized the importance of the printing press in propaganda, censorship as well as the printing license were used to suppress all sorts of ideas that threatened the established order. However, this suppression inspired the political philosophers.

Among those philosophers, John Milton wrote "Areopagitica" in 1644 as an argument against government censorship that was legalized in the parliament. In his writings, Milton explained how the truth would emerge:

And though all the winds of doctrine were let loose to play upon the earth, so (t)ruth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and (f)alsehood grapple; who ever knew (t)ruth put to the worse in a free and open encounter? (Davis, 1963, p. 58)

Milton had a concept of some kind of marketplace where ideas clash in open debate and eventually lead to the truth. Milton's concept of the "marketplace of ideas" influenced philosophers who later stood for freedom of expression.

One of those following philosophers was John Locke. Locke advocated the existence of natural rights in his

"social contract" theory. According to the theory, people make a deal with the government, giving it the authority to govern in return for the government's promise to safeguard the natural rights such as life, property ownership, and liberty. Among those natural rights, freedom of expression was the most significant for Locke because people could not claim those natural rights without freedom of expression.

Locke's theory bore fruit in 1689 when the British Parliament defeated the oppression by monarchy and enacted a Bill of Rights. Parliament was no longer subject to arbitrary rulings by the established authority, but was based on a two-party system for debating controversial issues. Parliament, then, decided to terminate the licensing system for printing because of "the practical reason arising from the difficulties of administration and the restraints on trade" (Overbeck, 1992, p. 33).

Here, the basic characterization of free speech as the instrument of the search for truth was accomplished. The theory of a "marketplace of ideas" was inherited and refined by philosophers such as John Stuart Mill, Thomas Jefferson, Alexander Meiklejohn, and Zechariah Chafee and so on.<sup>12</sup> Restraints on the print media were abolished successively in the other part of western Europe and in the United States. Moreover, when people recognized the role of the press as a check system for the parliamentary government, they gave the status of "fourth estate" for the press. These important steps concerning freedom of



expression could not take place without the rise of capitalism and parliamentary democracy.

Later; however, monopolistic private ownership of media became the problem of a free market system. From growing awareness that the free market might fail to fulfill the promise of press freedom and to deliver expected benefits to the individual and society, the press began considered that they had an obligation to the public.

In the United States, scholars such as Frederick Siebert, Theodore Peterson, and Wilbur Schramm (1956) discussed four theories of the press. Those theories were derived from their observations of links between press and society.

(1) Authoritarian theory: The press is subordinated to state power and the interests of a ruling class. Media should do nothing that could undermine established authority or disturb order. Advance censorship and punishment are justified for deviation from the guidelines.

(2) Libertarian (free press) theory: The press is seen as an essential component of a free and rational society where an individual should be free to publish what he or she likes and is thus an extension of other rights—to hold opinions freely, to express them, to assemble and organize with others. The act of publication and distribution should be open to a person or group without permit or license.

(3) Social responsibility theory: The press should accept and fulfill certain obligations to society, and these obligations are mainly to be met by setting high or professional standards of informativeness, truth, accuracy, objectivity and balance. To meet these obligations, self regulations or intervention from the public is justified.

(4) Soviet media theory: The press should serve the interests of, and be in control of, the working class. Thus, censorship is justified by the agencies of the working class—primarily the Communist Party. There is an overlap between authoritarian theory and Soviet theory, especially in the strong emphasis in both on support for the existing social order.

A transition from Authoritarian theory to Libertarian theory could be observed at the evolution in freedom of expression that took place in Western Europe. Siebert et al. (1956) considered that there should be the next phase of press theories where the press had responsibilities to the society and the public.

Since the presentation of four theories of the press, an idea of free press has been critically reviewed. For example, American scholars such as Lee Bollinger (1991) justifies regulations that are purposed for fair media access because Bollinger thinks those regulations eventually support the self-disciplinary function of a "marketplace of ideas."

On the other hand, John Merrill (1989) does not put much value on the marketplace approach when arguing about ethics of the press. He sees "Platonic assumption" (p. 186) in the theory of the marketplace of ideas. For Merrill, it is too optimistic to believe that "when people know the good, they will do the good" (p. 186).<sup>13</sup> In fact, it is true that the highly educational and informative media do not always get people's attention and support while less educational media makes more money. Today, many scholars in the United States think freedom must rest on tolerance but "not on a mythical free marketplace of ideas" (Beer, 1989, p.77).

#### Freedom of Expression in Broadcast Media

Three hundred years have passed since the print media became free from the licensing system in England.

Broadcast media, however, are still subject to licensing mainly because of technological reasons.

Broadcasting uses a limited resource in the public domain, the electromagnetic spectrum. It is not a physical entity and cannot be held or traded like physical property. It exists to serve the entire nation--in fact the entire world--not just private commercial interests of station operators (Head and Sterling, 1991, p. 367).

The radio spectrum is a scarce resource. Since only a limited number of frequencies is available and the number of stations that may transmit at one time without causing intolerable interference is also limited, broadcasting is an object of regulation. This "scarcity rationale" is a globally accepted idea, and the International Telecommunications Union (ITU), one of the agencies of the United Nations, is getting consent from countries around the world to coordinate "the allocation of radio frequencies and registers radio frequency assignments in order to prevent interference" beyond national borders (Bernt and Weiss, 1993, p. 148).

At present, therefore, only a licensed person or corporation, who is allotted the particular radio frequency, is "privileged" to use it for broadcasting. Because of the scarcity rationale, licensing is justified in many countries. At the same time, the limitation of licensee's "privilege" is also accepted widely for similar reasons. That is, since the licensee is "privileged" to

use public resources, the licensee must serve the public good. However, the word "public good" is vague. It is difficult to measure "public good." Some countries enforce broadcast licensees to serve the "public good" by content regulations, while other countries try to solve the issue by government ownership of broadcast systems, with the government deciding what is "public good."

Under these conditions, freedom of expression based on a "marketplace of ideas" cannot exist within broadcasting. However, some scholars criticize regulations under the scarcity rationale because it has been routinely justified as the "technological reason." Ithiel de Sola Pool (1983) states that spectrum shortage is "no longer a technical problem but only a man-made one" (p. 151). According to Pool, broadcasting now dominates only two percent of the usable radio spectrum.

#### U.S. Approach to Broadcast Administration

The founding fathers of the United States considered how they could create a democratic country in a new nation. Thomas Jefferson, who adopted John Locke's natural rights and social contract ideas into the Declaration of Independence, believed that the key to success in democracy depended on the diffusion of knowledge among people. The free flow of information in the new land was Jefferson's wish. Jefferson said "our liberty depends on freedom of the press and that cannot be limited without being lost," and he even thought that he should have "newspapers without

a government" instead of "government without newspapers" if he had to choose one (Wagman, 1991, p. 11). The idea was reflected in the first amendment to the Constitution.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (U.S. Constitution).

At the time when the First Amendment was written, the only mass medium was print. Even if legislators wanted to include the freedom of reporting in all mass media, they could only describe it as "freedom of speech, or of the press" (emphasis given) in the Constitution. While some may interpret this expression as "only promising the freedom of speech in the print medium," American journalists considered the word "press" covers overall journalism in any media, and thus broadcast journalists' freedom should be also protected. Here, America's struggle between the "scarcity rationale" of broadcast media and freedom of speech/press originates.

On November 2, 1920, the first radio broadcast started in the United States. Before, the technique of radio transmission was used only for point to point communication, mainly for navigational purposes. A department store in Pittsburgh established its own radio broadcast station to create a demand for radio receivers and promote selling its merchandise. Because there were no competing signals, it has been said, broadcasting from KDKA

(call letters for this radio station) in Pittsburgh reached as far as Canada.

Various industries were fascinated by the ability of broadcasting to promote sales of their own products. In the spring of 1922, after only two years following the first broadcast, there were 200 radio broadcast stations in the United States. The number reached 576 early in 1923 (Head and Sterling, 1991). As the number of stations increased, signals started to jam each other because broadcasters picked their favorite radio frequencies at random.

At that time, the Radio Act of 1912 was the only rule for radio use. It only covered point to point communication. The concept of "broadcast" was not included in the Act. Although radio transmitters had to have a license according to the rule, qualifications were not strictly defined. Almost any one who wanted to be engaged in radio transmission could have a license.<sup>14</sup>

The secretary of commerce at that time, Herbert Hoover, dealt with the problem of the crowded broadcast market. The valid bandwidth of that time was so limited that people thought some broadcasters should give up entering the broadcast business. However, since Herbert Hoover believed in the free market system, he hoped that the broadcast business would discipline itself without the need of government regulation. However, when he held a series of national radio conferences in Washington D.C., he

found that broadcasters themselves were asking for "traffic control" in broadcasting.

Several Senators feared that one-man control of radio might endanger the freedom of speech (Cushman, 1941). The Senate Committee on Interstate Commerce in its report declared:

The exercise of this power is fraught with such great possibilities that it should not be entrusted to any one man nor to any administrative department of the Government. This regulatory power should be as free from political influence or arbitrary control as possible (Cushman, 1941, p. 305).

In order to prevent the direct influence of the Federal Government authority on broadcasting and to protect the philosophy in the First Amendment, the Communication Act of 1927 ordered the creation of an independent administrative organ. The Federal Radio Commission (FRC) was established in order to organize the "traffic" of radio communications in the United States. Robert McChesney (1993) cites what FRC member Eugene O. Sykes addressed in radio broadcasting on March 17, 1927:

Our hope is to interfere with the legitimate traffic as little as we can, and still eliminate the danger of accident. We are counting on the drivers, which means the broadcasters, to help us, because it is they who in the long run are the worst suffers from the accidents (p. 18).

It is notable that the FRC saw broadcasters as the drivers of the "traffic" of radio transmission. From this statement, it is interpretable that the FRC, the administer, had less intention to be the main actor in broadcasting in the America. The FRC defined the broadcast

band by allocating certain bandwidths for each radio station to avoid interference. Here, the United States gave birth to a broadcast licensing system as a compromise between the virtue of freedom and the practical need for order.

#### Federal Communications Commission (FCC)

Later in 1934, to integrate the administration of telecommunications (telephone, telegraph and broadcasting) in the United States, the Communication Act of 1934 established the Federal Communications Commission. Section 326 of the Communication Act of 1934 declares that:

Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication (Paglin et al, 1989, p. 951).

The basic assumption underlying the Federal Communications Commission (FCC) was that the creation of a politically independent commission would escape arbitrary rulings by the government on radio communications.

In the Communication Act, the FCC is given authority to enact regulations in a legislative role, to execute regulations in an administrative role, to interpret the Communications Act, to conduct hearings, and to decide disputes in a judicial role. This enormous authority is mainly for radio-spectrum management of civil use in the United States.



There are about 1,800 staff members in the FCC. They are permanent civil service employees. They are paid from FCC budget that is derived from the Federal Government budget. For fiscal year 1990, Congress appropriated about 100 million dollars for the FCC (Head and Sterling, 1991).

Creech (1993) explains how the commissioners are replaced in order to avoid the stagnancy of decisions:

(Every five representative commissioner) serve five-year terms. No more than three members may be from the same political party and terms are staggered so that no two terms expire in the same year (p. 7).

Some people question the FCC's independence from Congress because of the origin of the FCC's budget, since Congress has the control over the purse strings. Moreover, Hilliard (1991) explains that all appointed commissioners to any position owe a political debt to the President, the executive branch of the Federal Government, who appointed them. In most cases, the chair of the FCC is a member of the President's party, and is likely to come in contact with the President during his/her tenure (Hilliard, 1991, p. 6). It might not be a coincidence that the FCC promoted deregulations in the age of Reaganomics.

On the other hand, Patricia Paoletta, the Attorney Advisor for the FCC Office of International Communications, emphasizes the FCC's distance from both the executive branch and the Congress:

...We are sort of in between the Congress and executive branch. So we don't answer to, in our decision making, either the Congress or executive branch. Our decisions only have to answer to the

judicial system (P. Paoletta, personal communication, August 10, 1993).

It is true that the FCC does not always follow the philosophy that the executive office believes. For instance, the Cable Act of 1992, designed by the FCC to regulate cable industry, was vetoed by then President Bush but was overpassed by Congress.

#### Fairness Doctrine

One of the decision that tested the "independence" of the FCC from Congress was made in 1987 concerning an issue of freedom of expression in broadcasting. The FCC abolished the controversial "Fairness Doctrine," in direct opposition to the Congress.<sup>15</sup>

The idea of imposing "fairness" to broadcasters originally comes from the argument of the "scarcity rationale." Since radio spectrum is too scarce a resource to open frequencies to everyone who wants to broadcast, only the licensed person, who is allotted the particular radio frequency, is "privileged" to use it for broadcasting. If radio frequency is opened for everyone who wants to broadcast, jamming will occur.

So, the idea of limiting a licensee's "privilege" is widely accepted. That is, since the licensee is "privileged" to use a public resource, the licensee must serve the public interest. Many broadcast administrators come to the conclusion that by requiring broadcasters to be "fair" in dealing with social issues, particularly the

controversial ones, "broadcasters would serve the public interest and not just their own private commercial interest" (Overbeck, 1992, p. 340).

In 1928, the Federal Radio Commission discussed the implications of the limited radio-spectrum:

...there is no room for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether...Such ideas must find their way into the market of ideas by the existing public-service stations, and if they are of listening public, the microphone will undoubtedly be available (Carter, et al., 1993, p.259).

So, when the number of carriers was limited, people considered that carriers should be shared. Later in the Communication Act of 1934, several clauses that required broadcasters to provide time for other views on controversial issues were included.

In 1969, the court also supported the idea of the Fairness Doctrine. In the case of Red Lion Broadcasting Co. v. Federal Communications Commission (1969), the Supreme Court turned down Red Lion's rejection to provide airtime for opposing views, and declared that the First Amendment rights of the general public took precedence over the rights of broadcasters. So, fairness requirements for broadcasters in the United States were mandated by the "Fairness Doctrine." However, it became one of the most controversial broadcast regulations in the history of the United States. Dr. Thomas Cooper, Associate Professor of Communication Department at the University of Hawai'i, explains the Fairness Doctrine:

It protected the First Amendment in a way that no other broadcast document had done. But it threatened the First Amendment just as severely because it threatened the First Amendment right of broadcasters, but it protected the First Amendment rights of citizens.

...

So it's very complicated as to the exact relationship to the First Amendment, depending on whose rights you are looking at, broadcasters or the publics or the particular group that wanted to air its view that didn't have friendly hearing from the particular broadcaster (T. Cooper, personal communication, November 4, 1994).

The Fairness Doctrine in the United States had two aspects: Fairness in general and fairness in political campaigns. The general rule of the Fairness Doctrine required "commercial broadcasters to keep their public affairs programming reasonably balanced: When they covered one side of a controversial issue, they had to balance that presentation by seeking out and airing opposing viewpoints" (Overbeck, 1992, p. 340). Although the doctrine was abolished in 1987, rules concerning fairness in political campaigns, Section 315 of the Communication Act of 1934, remained in force (Donahue, 1989).

#### Pros and Cons of the Fairness Doctrine

The reason that the abolishment of Fairness Doctrine was supported by many broadcast journalists was based on arguments about reporters' objectivity. The standard of fairness is part of and in a way an offspring of objective reporting. Goodwin (1982) thinks objectivity in news should not be narrowly defined as "give all facts and all

views equal weight to the point of distortion." Such objectivity should be applied in political campaigns, but not in general controversies.

Goodwin (1982) introduces a critic's view:

...the many complexities in the world today require not neutral observers but journalists who educate themselves in the subjects they report so that they can interpret them from a point of view; only in that way can the public make sense out of the complexities (p. 13).

What broadcasters opposed in the Fairness Doctrine was the requirement to be mere "neutral observers" in general controversial issues.

Jack Kellner, Assistant News Director for KHON-TV, Honolulu, showed his station's one-page "Code of Ethics" that does not contain the Fairness Doctrine any more:

"Since the abolishment of the Fairness Doctrine, we approach fairness by our experience as journalists instead of depending on the written standards" (J. Kellner, personal communication, June 22, 1994).

In addition, television station managers such as Sharon Kanaley from KIKU-TV in Honolulu insists that people who make claims under the Fairness Doctrine should produce the programs themselves and send them to the station. "We will on-air it if they bring it to me" (S. Kanaley, personal communication, February 2, 1994). Kanaley argues that local stations just cannot afford to produce programs from view points that satisfies every audience.

On the other hand, there are people in favor of the Fairness Doctrine, including ordinary citizens, minority groups, and social activists. Sean McLaughlin, a member of

the Community Policy Advisory Committee for Oceanic Cablevision's public access/OLELO, thinks that opponents of the Fairness Doctrine do not try to see the real intent of the doctrine:

It's a very important distinction that the Fairness Doctrine actually promotes controversial programming

...

...it doesn't require any particular, it doesn't spell out for censorship, really. You cannot argue under the Fairness Doctrine any particular program should not be presented or should provide balance or anything like that. It's not the Fairness Doctrine. The opponents will tell you that the big problem with the Fairness Doctrine with their television newscast or documentary, they feel that they obliged to provide a balance within the program. But that's clearly not the intent of the Fairness Doctrine (S. McLaughlin, personal communication, November 7, 1994).

In fact, some politicians who put emphasis on the positive aspects of the Fairness Doctrine are advocating reviving the doctrine. Namely, Democrats such as Representative Bill Hefner of North Carolina and Senator Ernest Hollings of South Carolina are looking for the chance to revive the Fairness Doctrine (Snow, 1993, September 2).

#### Fairness Doctrine in the NBC News Guideline

In NBC News Policy Procedures Standards of 1978, the Fairness Doctrine and NBC's stance is explained:

- 1 If one viewpoint on a controversial issue of public importance is included in an NBC News broadcast, a reasonable opportunity must be given for the broadcast of contrasting viewpoints.
- 2 The broadcaster has the obligation to seek out the requisite diversity of viewpoints.

3 The manner in which a contrasting viewpoint is presented, including, for example, the broadcast in which it is included, the scheduling of the broadcast, the spokesperson utilized (and within reasonable limits) the amount of time devoted to it, is within the broad discretion of the broadcaster.

4 Contrasting viewpoints need not be included within the same broadcast. It is sufficient that reasonable opportunities be given, over a reasonable period of time, for the inclusion of significant, contrasting viewpoints in the various broadcasts made during that period (NBC, 1978, p. 17, emphasis given).

The first two guidelines actively declare that NBC will make the effort to realize fairness. That is, NBC reporters are asked to contribute to diverse viewpoints. In contrast, the point of guidelines three and four is to establish the discretion of NBC. In other words, the manner that broadcasters contribute to diverse viewpoints should be at the discretion of the broadcasters.

#### Decline of the Fairness Doctrine

Later in the 1980's, the Fairness Doctrine gradually lost its rationale for two major reasons. First, the rise of new technology such as cable transmission decreased the "scarcity rationale" of broadcasting channels. In 1980, over twenty percent of households in the United States subscribed to cable TV, and nearly thirty percent of those households with cable were enjoying thirteen or more channels (Head and Sterling, 1987, p. 107).

Second, the "chilling effect" theory became a problem for the principle of "marketplace of ideas." By requiring broadcasters to speak "fairly," broadcasters started to

distance themselves from controversial issues.

Broadcasters reached the conclusion that it was risky to deal with controversies while fairness complaints were possible against their editorial decisions. In other words, broadcasters gave up their opportunity to participate in the marketplace. According to Lashner (1984), the content of television news in the Nixon era was low in "vigorousness" compared to newspapers.

In 1987, the FCC decided to abolish the Fairness Doctrine while maintaining some other basic requirements on broadcasters. "Public interest and equal time obligations were unchanged, and rules on personal attacks and political editorializing remained in force" (Donahue, 1989, p. 168).

In explaining the commission's decision to abolish the Fairness Doctrine, Dennis Patrick, the FCC chairperson at that time, said:

"The First Amendment does not guarantee a fair press, only a free press" (Overbeck, 1992, p. 341).

#### Toward the Abolishment of the Federal Communications Commission?

One of the major duties in civil radio-spectrum management of the FCC is licensing for people who wish to broadcast. If there is a rival applicant for the same frequency, the FCC compares competing applicants and decides who should get the license. Weinberg (1993, October) explains that the FCC's decision is based on the following three factors:



- 1) The extent and size of the applicant's holdings in other media outlets.
- 2) The extent to which the station owners personally would participate in management (with bonuses to be added if they were local residents), had participated in local civic affairs, had experience in the broadcast field, or were members of minority groups.
- 3) The size of the audience that the applicant's proposed signals could reach (pp. 1116-1117).

Comparative hearings are held by the FCC to let applicants justify the above three points. The FCC chooses the applicant who can serve in the best "public interest." However, it should be noted that comparative hearings are sometimes criticized for its inconsistency and unpredictability of outcomes. Weinberg (1993, October) says the FCC's choices among competitors are "necessarily arbitrary" (p. 1118). Weinberg (1993, October) concludes that the FCC's broadcast administrations yield "incoherence" (1993, October, p. 1193). However, he does not clearly state the alternatives. Rather, Weinberg expresses his suspicion on the abilities of broadcast media as a way to enrich speech. He says he would rather utilize the ability of the alternative telecommunications service such as interactive communication via personal computers.

Meanwhile, Pool (1983) points out something fatal to the FCC. According to Pool:

Theoretically, the FCC has some say when the persons to whom it has once given away a frequency free, on the grounds that they are the best available licensees, sell their license to others, but in general, the approval so such sales is routine. Licenses thus end up belonging to people who were never reviewed but have the money to buy them. So a

market for spectrum does exist in resale, even though the initial grant of a frequency by the government is a political decision outside the market system (1983, p. 139).

Despite "scarcity rationale," according to Pool (1983), there is a radio-spectrum market. Although problems concerning monopolistic private ownership remain, one of the possible but controversial directions of the argument about freedom of expression in broadcasting is the regression to the "marketplace of ideas."

Newton Minow, the former chairperson of the FCC, quoted Jefferson's remark of "newspaper without government" and announced at an academic conference:

Were it possible to have broadcasting without any governmental regulation, I should not hesitate a moment to abolish the FCC. No one who believes in democratic ideals would hesitate... (Minow, 1961, p. 19).

Minow's opinion might be the extreme among alternatives; however, his view suggests that there is still a certain belief toward the marketplace of ideas in the United States.

#### Conclusion for Chapter 2

While scholars such as Siebert developed contemporary theories concerning the press, the "marketplace of ideas" is still important in parliamentary-democratic countries as a basic philosophy. That is, the theory of the "marketplace of idea" might contain something like a

universal law. The "marketplace of ideas" can be summarized as follows:

- 1) The pursuit of truth is best accomplished when the people are exposed to competing ideas.
- 2) In order for the marketplace to function, the government must play a minimal role in the trade of ideas.
- 3) The clash of ideas will result in the discovery of "truth."
- 4) The existence of a functioning marketplace of ideas serves the interests of individuals in the society and the good of the society (Cohen & Gleason, 1990, pp. 57-58).

The philosophy of "marketplace of idea" is inherited in the First Amendment of the United States Constitution. The First Amendment encourages disagreement among people. According to the Supreme Court Justice William O. Douglas:

A function of free speech under our system of government is to invite dispute... It may indeed best serve its highest purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger (Head and Sterling, 1991, p. 365, emphasis given).

The reason that an independent commission was created for broadcast regulations reflects people's compromise between freedom and the needs for regulations. The Federal Government cannot intervene people's freedom of speech/press. At the same time, broadcast media cannot always adequately serve the "marketplace of ideas" compared to print media. As "scarcity rationale" suggests, broadcast media have a special character compared to traditional mass media such as newspapers, magazines, and films whose scarcity vanished long ago.

There are voices insisting that each broadcaster should be ordered by the Fairness Doctrine to carry countering ideas on their assigned frequency so that "marketplace of ideas" will be enriched. Some claim that enforcement of the Fairness Doctrine violates the First Amendment. It seems like a debate over the Fairness Doctrine has not reached a conclusion.

Meanwhile, Arno (1984) explains the nature of discussions that surround news media:

The problem, then, is not to detail the circumstances in which the news media are repressed by political situations in which they operate, but to explain the strong tendency that they display to act as if they were free agents (p. 233).

Whether regulations order broadcasters to be fair, it is up to broadcasters themselves if they really want to realize fairness. So, an issue of fairness in broadcasting may not be solved by ordinances or laws, but may be solved by ethical judgments by the autonomous press. That is, broadcast journalists themselves ought to think of a better way to serve "public interest."

## CHAPTER 3

## FREEDOM OF EXPRESSION AND BROADCASTING IN JAPAN

Introduction for Chapter 3

One of the categorizations concerning the route of Japan's modernization is "totalitarian fascism" (Moore, 1966, p. xv). Barrington Moore Jr. observes that Japanese political institutions managed to avoid revolution from low or the peasant class while adapting capitalist principles. Bourgeois were kept weak and the peasant revolution was unsuccessful in Japan.<sup>16</sup>

Meiji Restoration was Japan's first opening to West, but there was never any opening to political liberalism. According to Moore:

Partly because she escaped these early horrors (of revolution from low), Japan succumbed in time to fascism and defeat...The price for avoiding a revolutionary entrance has been a very high one (1966, p. 313).

When the war with the United States was over, Japanese obtained their second occasion to modernize Japan. That is, while restarting its industrial development, Japanese were ordered by Americans to get rid of authoritarian elements from its social and political structures, and establish a democratic nation.

However, according to Nakane's (1970) observation, modern Japan's progress is founded on persistent social patterns that existed centuries ago, almost as if decades of modernization have had little if any effect on the core

of society. That is, although the names of social systems in modern Japan sound similar to the names of Western social systems, their operational meaning might differ. For example, *minshu shugi* [democracy] in Japan might mean the Japanese version of democracy and might not be equivalent to democracy in West.<sup>17</sup>

Nakane's findings suggest that there is a risk in explaining Japanese society with the Western notions without any empirical investigations. This thesis tries to clear several points before contrasting broadcast administrations in Japan and the United States. Theories concerning the speech situation in Japan, the definition of "freedom" in Japan, and a brief history of freedom of expression and the birth of Japanese broadcasting are to be reviewed in this chapter.

#### Theoretical Approach toward the Speech Situation in Japan

In the seventeenth century, people in Japan were separated into four distinctive classes according to their occupation. That was one of the strategies the Tokugawa shôgunate adopted in order to maintain feudalism for three centuries. The class was defined from the higher rank: *Shi* [samurai warriors], *nô* [farmers], *kô* [artisans], *shô* [tradesmen, merchant]. The vertical hierarchy was so firmly established for hundreds of years that there was hardly any mobility between classes. The difference of class justified the difference of rules, morals, and ethics.

Japanese sense of vertical hierarchy survived the years of liberalism during the Meiji Restoration<sup>18</sup> in the late nineteenth century, and was absorbed into the subsequent militarism in the twentieth century. Ruth Benedict (1946) finds that filial piety, or vertical tie, is the key to understand Japanese. She points out that Occidental authoritarianism cannot fully explain hierarchy in Japan:

Both those who exercise control and those who are under others' control act in conformity to a tradition which is unlike our own...Every greeting, every contact must indicate the kind and degree of social distance between men. Every time a man says to another "eat" or "sit down," he uses different words if he is addressing someone familiarly or is speaking to an inferior or to a superior (1946, p. 47, emphasis given).

Although it has been almost a half century since Benedict's findings, this principle is still evident so in the Japanese conversation style. Practice of *keigo* or the honorific expression is not dropped from requirements in elementary school education.

Nakane (1970) explains that the vertical principles of rank and hierarchy dominate all relationships in Japanese society, and analyzes the speech situation in Japan as:

...a junior takes every care to avoid any open confrontation with his superior. Such attempts lead to the point that a flatly negative form is rarely employed in conversation: One would prefer to be silent rather than utter words such as "no" or "I disagree." The avoidance of such open and bold negative expression is rooted in the fear that it might hurt the feelings of a superior and that, in extreme circumstances, it could involve the risk of being cast out from the group as an undesirable member (1970, p. 36).

Nakane says that the expression of opinion in a group is very much influenced by the nature of the group and one's status. Thus, the degree of freedom in the Japanese speech situation is determined by the relationships within the group to which he or she belongs.

Nakane's analysis is consistent with the typical way that Japanese speech takes place. In Japan, a person who is good at making a speech is the person who can quickly find out one's position in the group. One of the reasons that many Japanese face great pressure when making a speech in front of the public is: He/she finds it difficult to figure out one's position in an unfamiliar group. Many Japanese cannot decide the degree of freedom in speech that one can have if the public is unknown to them. If most of the members in the group that one faces appear to be older than him/her, the speaker might be expected to have a very limited degree of freedom in speech.

This is one of the reasons that non-verbal, face expressions ("Japanese smile," for example) have been developed well in Japan. Non-verbal expressions are often used to show tentative harmlessness to people while determining one's appropriate position in the group. So, it is not unusual to a Japanese to change his/her attitude (to be arrogant, in this case) toward people as soon as one finds his/her superior position within the group.

According to Goldman's (1988) typology, the contrast between Japanese communication and American communication are as follows:



In the eyes of Japanese, Americans appear to openly "like" to express disagreement. This is the anti-thesis of the Japanese way, as they greatly dislike to publicly disagree (p. 29).

It is a Japanese preference not to engage in argument for the sake of argument, or to argue and disagree as a kind of "game."

In social and business communication, Japanese most often do not prefer to engage in conceptual debates, attacks, and disputes with strangers. Such interaction has no point for them.

...

There are very few interruptions, contradictions, and disputes when Japanese interact in a dyad or group, socially, or in a business context (p. 45).

Goldman's findings indicate the reasons for the weakness of the concept of a marketplace of ideas in Japan.<sup>19</sup> Where people do not want to contest ideas through debate, the sense of marketplace of ideas would be difficult to grow.

As a Japanese proverb says, the ideal communication in Japan is by *ishin denshin* [communicate to the heart of others through one's heart] or "tacit understandings."<sup>20</sup> Tacit rules in human communication might increase efficiency to form a "consensus" and let business proceed. However, reliability of the "consensus" is not always high because it does not go through open and free discussion. Then, how can one get true consensus in Japan? Goldman (1988) continues:

Japanese communication within organizations utilizes what is called *nemawashi*, or root-binding meetings, where agreement, consensus, and solidarity is worked toward before any action is decided upon or taken (p. 45).

Communication at the face-to-face level precedes the group discussion in Japan. No one but the person who is being *nemawashi*-ed can argue freely because *nemawashi* is often informally conducted. A person who conducts *nemawashi* well is considered to be a person worth respecting. When an issue reaches the group discussion, the practical argument is already over and it leads to the stage of reconfirmation. In other words, the Japanese speech situation might be described as: "Closed but free."

Another aspect that should be explained about the Japanese speech situation is *uchi-soto* [in-out] and *omote-ura* [front-back] relations. "Closed but free" communication may be explained comprehensively with *uchi-soto* and *omote-ura* relations.

Ishida (1984) explains that two opposing views on conflict situations in Japan can be easily explained by the diagram that he theorized (See Figure 1). According to Ishida (1984), "(t)he first view, which emphasizes harmony within Japanese society, deals simply with the *uchi-omote* relationship; the second, which focuses on the militancy of the opposition parties and labor unions, pays attention only to the *soto-omote* relationship" (p. 16). Ishida continues that an accurate description of Japanese society requires an examination of the level of *ura* together with that of *omote* and to recognize the actual interrelationship between the two.

*Nemawashi*, that is mentioned earlier, belongs to the dimensions of *ura*. *Nemawashi* is a technique that enables

one to bring the opposition party into the temporal in-group situation. Since neither party should lose face in the *soto-ura* dimension, complete free speech is not yet achieved; however, by *nemawashi*, one can set a temporal *uchi-ura* situation in which no one will lose face because the conversation is closed and unofficial.

Ishida's *uchi-soto* and *omote-ura* theory will also be mentioned in the later chapter that reviews the official proceedings of the National Diet.

#### Confucian Influence on Diffusion of Knowledge?

Japan's tendency to limit the flow of information might have been due to feudalism, established in the seventeenth century by the Tokugawa shôgunate. Tokugawa Ieyasu, the first Shogun from the Tokugawa family, was interested in Confucian ideas because they seemed to support feudalism. According to Kang (1971):

For Confucius, politics is a mean to correct or regulate human behavior, or to bring order and harmony to society. Politics begins at home, and in that sense it prevails everywhere. Confucius intended to achieve this goal, that is, to solve human conflicts by allocating authority hierarchically; for example, father over son (p. 6).

Confucianism came to Japan from China along with Buddhism as early as the sixth century, but studies of Confucianism flourished in the Tokugawa era. The Tokugawa regime advocated a Japanese version of Confucian ethics in order to maintain its establishment. The diffusion of the Confucian doctrine was preceded through books and schools,

while other information considered to be dangerous to the regime was strictly controlled.<sup>21</sup> Among Confucian doctrine, Tokugawa ignored the "mandate of heaven" and its assertion of the right to rebel against corrupt government (McNeil, 1994, p. 90).

Moreover, the ninth lecture of the Book VIII in the Confucius Analects was translated into Japanese: "*Tami-ha yorashimu beshi, shirashimu bekarazu* " and understood as "people must not be informed, but made dependent on the government's authority" (Nester, 1989, Spring, p. 33). The interpretation of the ninth lecture describes Tokugawa's discipline so well that the phrase became a traditional cliché about the information policy by the Japanese government and bureaucrats (Clark, 1993, September 18).<sup>22</sup>

However, the original meaning in the Analects do not necessarily suggest what Japanese believe today.

According to Lau's (1979) English translation, the ninth lecture of Book VIII in the Confucius Analects says:

The Master said, "The common people can be made to follow a path but not to understand it" (p. 71).

Furthermore, Japanese scholar Morohashi Tetsuji (1973) translates the phrase "*Tami-ha shirashimu bekarazu* " as "it is difficult to make people understand why the leader set such path" (p. 170). Morohashi points out that it is a mistake to interpret the phrase as "people must not be informed." Moreover, Morohashi thinks that the Analects does not always contradict today's democratic ideas.<sup>23</sup>

One could therefore conclude that the miss-translation of the ninth lecture was an intention act by the Japanese feudal regime.

#### Definition of "Jiyû"

In Japan, "freedom" is routinely translated as "Jiyû." The word "jiyû" came from the old China. According to Nihon Daijiten Kankôkai (1974), the word *jiyû* appears in Japanese literature as early as the seventh century.

However, Japanese *jiyû* does not necessarily refer to equal freedom as in West. Doi (1973) points out that old Chinese and Japanese literature hold *jiyû* to a certain degree of criticism, while in the West it signifies respect for the human being and contains no trace of criticism in freedom.

According to Doi's (1973) analysis:

"Freedom" in Japan, in other words, has traditionally meant the freedom to *amaeru*, that is, to behave as one pleases, without considering others...the Western-style idea of freedom also serves as a basis for asserting the precedence of the individual over the group, in which respect again it affords a marked contrast with the Japanese idea of *jiyû* (pp. 84-85).

Doi explains that Western freedom originated when there was distinction between freeman and slave in ancient Greece. "Freedom, in other words, meant an absence of the enforced obedience to another implied in the state of slavery; it is precisely because of this distinction that in the West, freedom became tied up with ideas such as the rights and dignity of man, and came to be seen as something

good and desirable" (p. 85). So, while Western freedom contained a strong tendency toward political liberalism from its birth, Japanese *jiyû* carried almost none of that significance, presenting instead a negative image of selfishness.

In 1866, Fukuzawa Yukichi wrote a book: *Seiyô Jijô* [Things Western] after he visited Europe and the United States, and observed democracy.<sup>24</sup> In the preface of the second volume of *Seiyô Jijô*, Fukuzawa (1926) explains that there is no correct Japanese translation of the word "liberty" while people commonly use the word "*jiyû*" to describe political freedom.

Despite Fukuzawa's suggestion, Japanese added the notion of "liberalism" to the word "*jiyû*" in the nineteenth century. As a result, Japanese have not been accustomed to draw a clear line between mere selfishness and political freedom.<sup>25</sup>

"Freedom of expression" is usually translated as: *Hyôgen-no* [expression, of] *jiyû* [freedom]. Since freedom of expression is particularly significant in the political context, Japanese could create a new word for "political freedom." If the appropriate word for "liberty" was assigned when Fukuzawa imported the notion, there might be less confusion between political freedom and selfishness in today's Japan.

### Brief History of Freedom of Expression

The Tokugawa shôgunate gave up its reign and the new government addressed the imperial restoration in 1867. However, the new government had to go through some twists and turns before it set itself on track. And, freedom of expression emerged in Japan during this period of complications.

Until the Meiji Restoration, freedom of expression was not recognized among the people of Japan. It was Fukuzawa Yukichi, Nee-sima Joe,<sup>26</sup> and others who observed the West, and found that Japan needed to import the notion of democracy, liberty, and freedom in order to modernize their nation. Newspapers and magazines were published increasingly from the early 1870s, and those who led the movement: "jiyû minken undô" [movement for liberty and people's rights] (Minichiello, 1984, p. 11) gave birth to modern Japanese journalism.

Leaders of the movement created political parties and advocated democracy. McNeil (1994) points out that "John Stuart Mill was perhaps the most admired of foreign authors during the Meiji period" (p.106).

While the new but conservative government tried to restrict liberals' speeches, the grand design of the new system was proposed by Itô Hirobumi who studied the legal and political system in the German Empire. He introduced a constitutional legal system to Japan, and established Naikaku [Cabinet] in the new government. Parliament was also established but it was called in translation: "Diet,"

a Germanic term (McNeil, 1994, p. 106). As in the German Diet, the Japanese Diet did not originally allow political parties.

In 1889, Meiji Kempô [constitution], or the Constitution of the Empire Japan was promulgated. In Meiji Kempô, freedom of expression was defined as follows:

CHAPTER II. RIGHTS AND DUTIES OF SUBJECTS

Article 29. Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meetings and associations (Tanaka, et al., 1976, p. 19, emphasis given).

The clause reflected Meiji founders' views concerning freedom of expression. Beer (1984) cites Itô Hirobumi's commentary:

Speeches, writings, publications, public meetings and associations are the media through which men exercise their influence in political and social spheres...But as every one of these edged tools can easily be misused, it is necessary for the maintenance of public order, to punish by law, and to prevent by police measures, delegated by law, any infringement by use thereof upon the honour or the rights of any individual, any disturbance of the peace of the country, or any instigation to crime. These restrictions must, however, be determined by law, and lie beyond the sphere of ordinances (p. 54, emphasis given).<sup>27</sup>

It is interpretable from Itô's view that Meiji founders knew the power of freedom when it belonged to the people. Among them, Itô actually observed what political freedom is like in the United States and Britain. In contrast to Fukuzawa, Itô might not see those democratic nations of America and Europe as the goal of Japan. According to Kasza (1988), "the insertion of civil



liberties in the Meiji constitution was not based on theories of natural right, social contract, or popular sovereignty" (p. 10).

Hozumi Yatsuska, the constitutional scholar of the Meiji, probably provided an idea as to what Itô considered the ideal nation. Minear (1970) explains that Hozumi's definition of the state was in sharp contrast to that of the West. Hozumi argued:

"There are two types of group organization, egalitarian and hierarchical. The former is created by a social contract and is characterized by relations of equality among its members. The latter is a development of the family model and is characterized by relations of domination and obedience. Group life features common goals and common action, and groups can be distinguished by their goals. A political group is one aiming to control all society. Since power is involved, a political group is necessarily a hierarchical group with political goals" (Minear, 1970, p. 58, emphasis given).

While politics should also have ethical goals in Hozumi's definition, politics became an ethically neutral field in the West. For modern Western legal theorists, law and ethics are two separate worlds.

Before militaristic rule, there was a certain period of time when people enjoyed a democratic atmosphere in Japan. It was the first time in Japanese history that people became one of the variables in political decisions. The period was called "Taishô Democracy."<sup>28</sup>

The victory of the Russo-Japanese War eased the anxiety of Meiji government officials who wanted Japan to be one of the major powers. On the other hand, people were

frustrated with unsatisfactory compensation from the peace settlement that their government accepted. Activists such as lawyers, journalists, professors, and politicians of the opposition parties lead the people to create the democratic movement (Minichiello, 1984). Japan's first party cabinet, lead by Prime Minister Hara Takashi from the lower-house representatives that is mostly the commoners, took control of the government in 1918, and the bill for universal suffrage or "general"<sup>29</sup> election was passed in 1925.

Despite political democracy, Kasza (1988) argues, "(o)fficial ideology remained one of imperial rather than popular sovereignty" (p. 22). This might explain why media autonomy was restricted even in Taishô Democracy. It was in 1909 that Shinbunshi hô [newspaper law] or the Press Law was enacted. The law "set forth qualifications for publishers and editors and the conditions under which publication would be allowed (Emery, 1969, p. 483). Press law and Peace Preservation Law, that was passed in 1925, became fatal to Japanese journalism in the later years.

The political democracy did not last long. Despite the victory over the World War I, the Japanese army was frustrated by the Disarmament Treaty that was signed at the Washington Conference in 1922. Day by day, the number of people who advocated Japan's advancement increased. Unstablensness of the society caused by the Kantô [greater Tokyo-Yokohama area] earthquake of 1923 and the Great Depression also gave the Japanese army a chance to lead the nation.

Although the Peace Preservation Law of 1925 was in opposition to political actions by communist and radicals, there was the possibility of abuse from its start: The law gave the Home Ministry, through its police arm, the power to suppress anything that threatened "the peace and order of the nation" (Emery, 1969, p. 483). Asahi Shimbun, a critical national paper with over a million readers, and two monthlies, Kaizô [Reconstruction] and Chûô Kôron [Central Review], printing over 100,000 copies each, denounced the law for inviting abused of authority (Kasza, 1988).

In the same year the Peace Preservation Law was passed, broadcasting was launched in Japan for the first time. It had only been five years since broadcasting started in the United States. However, the development of Japanese broadcasting had to go through drastically different administrations in contrast to the United States.

#### The Birth of Broadcasting in Japan

Broadcasting in Japan started in 1925 by radio stations established in Tokyo, Osaka, and Nagoya. The main sponsors of each station were the regionally privately owned companies. Although each company wanted to start its own radio station in the belief that broadcasting makes money, the Ministry of Communications ordered those companies to form a coalition since the Ministry did not want plural stations within a single region. This integration policy, later called "*ipponka chôsei*"

[adjustment for integration], became the main character of the Japanese broadcast administration. *Ipponka chōsei* will be discussed more in the Chapter 5.

Until about 1920, researches and experiments concerning radio engineering were limited to government agencies. When any private research organization for radio communications was to be established, special authorization of the Minister of Communications was required on the bases of the Radiotelegraph Law enacted in 1915.<sup>30</sup> Although the law did not presume the birth of neither radio broadcasting nor private broadcasting company, "legal acrobatics" (Kasza, 1988, p. 78) gave jurisdiction over broadcasting to the Communications Ministry.

Kasza (1988) explains that civil operation of broadcasting was a trade off for the jurisdiction of the Communications Ministry while radio broadcasting management by civilians was considered to be difficult to justify because of Article One in the Radiotelegraph Law:

#### RADIOTELEGRAPH LAW OF 1915

##### Article One

The wireless telegraph and wireless telephone service shall be under the control of the Government.

##### Article Two

Subject to other regulations and to the authorization of the appropriate Minister, a wireless telegraph or wireless telephone station may be established for a private service in the following cases:

1. On vessels for purposes of the safety of navigation;
2. On vessels employed for a particular service of one and the same person, for purposes of using wireless installations for such service between the said vessels;

3. On land or vessel which is without the means of public communication by telegraphs, telephones, wireless telegraphs, or wireless telephones, for purposes of transmitting to or receiving from Japanese Government stations messages on the exclusive service of a person who equips wireless installations;
4. On land or a vessel for purposes of using wireless installations for a particular service of one and the same person between a point and another point on land or between land and a vessel, which is without the means of public communication by telegraphs, telephones, wireless telegraphs or wireless telephones, and which is considered unsuitable to conform to the provision of the preceding clause;
5. For purpose of exclusively conducting experiments relating to wireless telegraphy or wireless telephony;
6. In case other than those mentioned above, wireless installations the establishment of which has been considered necessary by the appropriate Minister (Nihon Hôshô Kyôkai, 1977, data vol., p. 41, emphasis given).<sup>31</sup>

On the contrary to the principle of state management, "ministerial interests won out over logic" (Kasza, 1988, p. 77).

When private petitions for broadcasting permits were filed to the Communications Ministry in 1921, the Ministry organized a study group formed by bureaucrats who had returned from a research trip to the United States. The Chôsa Gaiyô [Research Summary], submitted in 1923, reported that "state management was not mandatory because radio (broadcasting), despite its 'public character,' was not absolutely necessary to society" (Kasza, 1988, p. 74). The financial difficulties of the Japanese government caused by wars also discouraged the Communications Ministry to take a

risk of governmental involvement in the unknown business of broadcasting.

However, the Communications Ministry wanted the existing law, the Radiotelegraph Law of 1915, to cover broadcasting. Otherwise, stakeholders such as other ministries and local representatives might get a chance to interfere in the interests because the bill had to go through discussions at the Cabinet and the Diet for the new law to be enacted.

Emery (1969) points out the peculiarity of the Japanese government that the legislative power attributed to executive units made possible to include broadcasting under the existing law:

...in addition to acts passed by the Diet, the legislative branch, various executive agencies could, in effect, make laws. Thus, the interpretation placing radio under the rubric of the Wireless Telegraph Law was made by the Minister of Communication (p. 481).

Kasza (1988) also points out the Research Summary provided the Communications Ministry with "a farfetched interpretation of the existing law" (p. 77).

...as a matter based on the recognition of a special need for the facilities, they are not of course to escape the category of state-managed wireless telephone. However, considering further the relationship to the grand principle of exclusive (state) management of mass communications, broadcasting is not the sort of report generally sent and received among the masses. Consequently, it does not belong to the category of mass communications. Rather, since one must recognize it as a communication for private use, the approval of civil management (in this case) does not violate the (general) principle of exclusive state management (Kasza, 1988, p. 78,

emphasis given, see Appendix A for a Japanese reprint of the Research Summary).

By the above definition of broadcasting, the Ministry of Communications obtained jurisdiction over broadcasting in Japan.<sup>32</sup> Kasza (1988) argues that the contention was "not only absurd but irrelevant since article 1 of the law made no mention of 'mass communications'" (p. 78). Since the Radiotelegraph Law required license to facilities for radio communications, licensing for broadcasting stations was taken for granted.

As soon as the potential of broadcasting was recognized, Japanese broadcasting became a mere propaganda tool until the end of World War II. "From the viewpoint of administration and control," the Ministry of Communications drafted a plan in 1926 to unify three broadcasting entities (History Compilation Room, Radio & TV Culture Research Institute, Nippon Hoso Kyokai, 1967, p. 42).

The station in Osaka rejected the idea to centralize the broadcast management in Tokyo; however, in the same year, the three entities were merged into a single corporation: Nippon Hôshô Kyôkai (the predecessor of today's NHK, Japan Broadcasting Corporation). According to Emery (1969):

The corporation was a monopoly and its expansion was an extension of a single voice. Major decisions were submitted to the Ministry of Communications for approval...Thus, the prospect of a free broadcasting system was slim (p. 481).

As militaristic affiliations dominated the government, surveillance and control over citizens' life were strengthened in Japan. The single broadcasting entity was an efficient tool to force the governmental view and to precede totalitarianism in Japan.

According to Kasza's (1988) overview of state controls on broadcasting:

All programs had to be inspected and approved by officials before broadcast. The state could ban programs in whole or in part and could order a broadcast stopped in progress if it violated legal proscriptions. Extensive censorship guidelines were imposed on broadcasting, including both political and manners-and morals subject matter. Political argumentation was entirely forbidden except for addresses by state officials (p. 302).

It was unfortunate for broadcasting in Japan to start its history in such period of time.

### Conclusion for Chapter 3

In Japan, people's right to freedom of expression saw light in the late nineteenth century. Meiji Restoration and its complications resulted in the birth of Japanese journalism.

Those who worried about the future of Japan in a world of nations, such as Fukuzawa Yukichi, visited the West and brought back new ideas such as democracy, liberty, and freedom. Japan was modernized rapidly by those Meiji founders during "Japan's first opening to the West" (McNeil, 1994, p. 123). Moore (1966) describes the process as: The revolution from above.



In order to make Japan look like a modernized nation, government officials established a Parliament and a Constitution. In the Constitution, the people's right to freedom of expression was proclaimed for the first time in Japan. However, it was within strict limits of law. The people's freedom had to be limited because: 1) the Meiji founders wanted imperial sovereignty rather than popular sovereignty, 2) the Meiji founders considered that the state should also have ethical goals. While politics was an ethically neutral field in the West, distinction between law and ethics was not always important for some of the Meiji founders.

Soon after the democratic atmosphere in the Taishô era, the militaristic government used laws to limit and control speeches. Japanese broadcasting was born under such historical context. Radio "helped smooth the way for military rule" (Kasza, 1988, p. 73) while some print media became an obstacle. In other words, from the start, the broadcasting system in Japan was far from practicing freedom of expression.

Meanwhile, the negative view toward freedom compounded through centuries of use in the Japanese language might have also prevented the idea from gaining firm status. It was Japan's tradition, particularly since the Tokugawa era, to see freedom as selfishness. At that time, Confucian ideas were distorted and utilized to prevent liberal ideas from being diffused among the people. Social order was the priority over all individualistic ideas.

Some argue that Japanese society has shown basically no development since that era. Nakane (1970) argues that modern Japan's progress is founded on persistent social patterns that existed centuries ago. Ishida (1984) also sees such constant social patterns in conflict and accommodation. Through Ishida's theory of Japanese conflict management, the complicated speech situation in Japan can be explained comprehensively.

## CHAPTER 4

## LEGAL AND POLITICAL STRUCTURE UNDER THE NEW CONSTITUTION

Introduction for Chapter 4

In this chapter, readers will find what are the controversial issues in post-war Japanese political and legal structure in relation to freedom of speech and press. For example, the political and legal mechanism that allows the Cabinet, the executive branch of the Japanese government, to carry a legislative role despite the principle of the separation of powers will be explained in an effort to provide a key to answer the research question: How could the Cabinet propose the bill that determined the abolishment of the Radio Regulatory Commission?

Although some controversies look like post-war problems, most of the roots of those issues can be found in pre-war, as discussed in the previous chapter. Readers will see how the occupied government of Japan tried to resist changes that would be introduced by the Allied Occupation Force. In addition, this chapter reviews landmark cases concerning the freedom of expression in Japan in an effort to introduce the view of the Japanese court toward the clash between the public welfare and the individual's right.

Behind the Enactment of the New Constitution

Nihonkoku Kenpô, the present Constitution of Japan, was adopted on November 3, 1946 and went into effect on May

3, 1947. It replaced Dainihon Teikoku Kenpô [the Constitution of the Japanese Empire of 1889], commonly known as the Meiji Kenpô.

As Nishi Osamu (1989) points out, there were two written drafts for the present Constitution: Matsumoto, or Japan's draft, and the GHQ (General Headquarters of the Supreme Commander for the Allied Powers, see Figure 2 for its structure),<sup>33</sup> or the American draft. Since the Matsumoto draft changed only slightly from the Meiji Constitution, especially concerning the enormous power of the emperor, General of the Army Douglas MacArthur ordered the GHQ staff to write another draft, and insisted to the Japanese government that the new Constitution should be based on the GHQ draft.

There were several articles in the GHQ draft that stunned the Japanese. For example, Article nine of the GHQ draft said:

War, as a sovereign right of the nation, and the threat or use of force, is forever abolished as a mean of settling disputes with other nations. The maintenance of land, sea, and air forces, as well as other war potential, and the right of belligerency of the state will not be recognized (Nishi, 1989, p. 165).

Clauses such as ordering "complete disarmament" shocked Japan's occupied government officials, and they finally recognized that Japan's surrender was almost unconditional. Since Japanese officials' supreme task was to keep the Emperor's status as high as possible, they had to accept those clauses to seek chances for concession from the GHQ

concerning the status of the Emperor. In other words, Japan was ready to accept any modifications of its legal system if the Emperor remained untouched.

However, Nishi Toshio (1982) points out that General MacArthur already recognized that the Emperor was "most useful" in both negotiating with Japanese officials and controlling Japanese citizens (p. 54). Since MacArthur also knew that the Soviet Union, China, Britain, and Australia wanted the Emperor to be tried as a war criminal, he hurriedly drafted the new Constitution that saved the Emperor.

Article 1 of the Constitution of Japan became:

"The Emperor shall be the symbol (*shôchô*) of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power" (Tanaka et al., 1976, p. 3).

However, the word "*shôchô*" is vague. Although the Emperor is often recognized as the *kokka genshu* (head of state) from foreign countries, Article 41 of the new Constitution states that "the Diet shall be the highest organ of state power." So, it might be more accurate to say that Japan does not have any particular head of state after World War II.<sup>34</sup>

#### Two Controversies Concerning Freedom of Expression

There was a line in the GHQ draft of the new constitution that caused controversies concerning freedom of expression:

Article 20. All of the people shall have the freedom of speech, writing, press, assembly and association to the extent that they do not conflict with the public peace and order. No censorship shall be maintained except as specifically provided for by law (Nishi, 1989, p. 166, emphasis given).

Where did this idea of limitation on people's freedom come from? The original idea of imposing "basic human rights" on Japan can be observed in the Potsdam Declaration in which the allied force ordered Japan to surrender. Nishi Osamu (1989) found this origin of the "basic human rights" clause from the interview with Mrs. Beate Gordon, who was one of the GHQ staff and was in charge of "basic human right clauses" of the GHQ draft:

Nishi: There were some main ideas on which the Constitution was drafted--democratization of Japan, for instance--. What were you particularly concerned about at the time?

Gordon: The main ideas came from SCAP (Supreme Commander of Allied Powers). We worked with those as a base. We didn't think of them ourselves.

Nishi: Did they come from Potsdam Declaration and SWNCC-228 (The State-War-Navy Coordinating Committee document #228. Also called "Reform of the Japanese Governmental System.")?

Gordon: Yes, that's correct (p. 68).

In the tenth clause of the Potsdam Declaration, the Japanese government was ordered to:

...remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established (Nishi, 1989, p. 109).

Note that the Potsdam Declaration had no word that suggested the limitation of freedom. So, it is highly possible that the line: "to the extent that they do not conflict with the public peace and order" was added afterward in the GHQ draft.<sup>35</sup>

Later when the Constitution was enacted, the line was omitted from the clause. Article 21 of the new Constitution declared:

- 1) Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.
- 2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated (Tanaka et al., 1976, p. 6).

However, the similar line appeared in the other clause. The GHQ draft says:

Article 11. The enjoyment of the freedoms and rights guaranteed to the people by this constitution shall be maintained by the eternal vigilance of the people, and the people shall refrain from an abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare (Nishi, 1989, p.165, emphasis given).

This clause, later Article 12 of the new Constitution, should be treated as "merely declaratory of a moral obligation on the people and the government" (Beer, 1984, p. 152). However, the clause became more powerful than the GHQ expected. As will be discussed later, "*Kôkyô-no hukushi*" [public welfare] became a key word for courts to check and limit the degree of freedom in Japan.

Another controversy is the problem of the Japanese translation of the GHQ draft. Japanese officials translated "freedom of press" as "*shuppan-no jiyû*" [freedom of publishing]. This translation might have weakened the significance of broadcast journalism in Japan. The translation provided room to argue whether "freedom of publishing" covered the "freedom of reporting on broadcast media."

It is reasonable to assume that the word "press," for the staff of the GHQ, meant all the media that gathered and transmitted news. "Press" does not only mean "publishing" in the First Amendment. Walter Pennino, then News Chief of the Public Information Office that was in charge of public announcement of the GHQ's occupation policy, claims:

(Japanese) were violating an intent of the Americans when they wrote that (Constitution)...Either electronic media or the printed press, and that what's the intent was (W. Pennino, personal communication, December 22, 1994).

Whether this mistranslation was intentionally done or not, the significance of "freedom of press" under the new Constitution had a set back from its start.

#### Critique of the Separation of Powers

Just like the other modern democratic nations, the Japanese government follows the principle of the separation of powers. Legislative power is at Kokkai [Diet], executive power is at Naikaku [Cabinet], and judicial power is at Saibansho [Courts].



The separation of powers among branches is one of the basic features of the democratic government. It gives each branch the opportunity to check each other from the abuse of its power. It has been said that in Japan the separation of powers is weak, especially between the executive branch and the legislative branch compared to that of the United States (Okano, 1991).

The Constitution requires that the majority of Cabinet Ministers must be from among the members of the Diet. At the same time, Cabinet members must be approved by the Diet. So, the political party that dominates seats in the Diet would be able to have the influential power over both the Cabinet and the Diet. In other words, it is possible for a single party to have considerable administrative power if the party could dominate seats in the legislative branch.<sup>36</sup>

In addition to this, "the cabinet and behind it the higher bureaucracy dominates the legislative process" (Valeo and Morrison et al., 1983, p. 14). How is this possible while Article 41 of the Constitution declares that:

The Diet shall be the highest organ of state power and shall be the sole law-making organ of the State (Tanaka et al., 1976, p. 8, emphasis given).

Tanaka et al. (1976) states that "strictly, this (definition) is an inaccurate statement" (p. 37). In reality, the Cabinet is able to submit *gian* [proposal]<sup>37</sup> to the Diet under the stipulation of Clause 5 of the Naikaku

hō [Cabinet Law] (Roppō zensho, 1993, p. 167).

Constitutional scholars such as Tabata (1964) claim that Clause 5 of the Cabinet Law is unconstitutional "to the respect of the Article 41 of the Constitution" (p. 270).

But today, the majority of scholars interpret this legislative action by the Cabinet as not unconstitutional.

Here are their justifications:

1) The action of creating proposal is not equivalent to the action of legislation itself. The action of legislation takes place when bills go through *giketsu* (resolution). (Kato, 1993, p. 62; see also Oosuga & Urata, 1994, p.24).

2) Clause 3 in Article 66 of the Constitution says: "The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet." In order to take a responsible role, the executive office may be provided with some kind of power to submit bills. This is one of the characteristics of the Parliamentary system (Higuchi, Nakamura, Satō, and Urabe 1988, p. 846-7; see also Kato, 1993, p. 52; Oosuga & Urata, 1994, p.24).

In fact, the executive branch sends bills to the legislative branch in the British parliamentary (Kato, 1993).

Meanwhile, the number of bills that are originated at the Cabinet and passed in the Diet far exceeds the number of bills that are originated at the Diet. Kato (1993) explains the Cabinet's take over of the legislative role from the perspective of the bills that were originated:

80 percent of laws were originated in the Cabinet. In average, 85 percent of the bills from the Cabinet [Cabinet Act] pass the Diet while only 23 percent of bills from the Diet members [House of the Diet Act] pass (p. 52).<sup>38</sup>

On the other hand, the executive branch of the United States is not allowed to enact a bill. Section One of Article One in the Constitution of the United States of America declares:

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives (U.S. Constitution).

Instead, the President of the United States sends the President's message to Congress in order to claim what is the agenda for the administration.<sup>39</sup> That is, in a sense, the Congress shares legislative responsibility with the President to some degree paralleling the relationship between the Diet and the Cabinet (Valeo and Morrison et al., 1983). Then, what is the distinction between the American system and Japanese system? Valeo and Morrison et al. (1983) explain the difference:

...although the U.S. president is considered the nominal leader of his party, he is not the leader of the political majority in the legislature even when that majority is of the same party (p. 145).

In other words, the executive branch and the legislative branch is not necessarily in collusion even if both are occupied by the same party in the United States.<sup>40</sup>

### The Diet and its Standing Committees

The Diet is a bicameral legislature. It consists of *shûgi in* [the House of Representatives] and *sangi-in* [the House of Councillors]. The number of seats is as follows:

1) House of Representatives: The total number of seats is 512. All members should be aged 25 years and over, and the term is 4 years. The term ends automatically when the house is dissolved.

2) House of Councillors: Of the 252 seats of this House, 152 for prefectural constituencies, 100 for the national constituency, which employs a proportional representation system. All members should be aged 30 years and over, and the term is six years. Since the terms of councillors are staggered, half of the above numbers are elected every three years (The Japan Times, 1989, pp. 10-11).

In the process of drafting the new Constitution, General MacArthur ordered his staff to establish a unicameral parliamentary system for Japan. However, this plan faced objection from not only Japan's occupied government but also from the GHQ staff because:

The Japan's occupied government could expect the House of Councillors to function as "*Kizoku-in*" [House of Peers] (existed in the Meiji Diet) that could interfere democratic atmosphere created by the House of Representatives (Kato, 1993).

The GHQ staff could not find any written constitution as a model that made provision for a single legislature (Nishi, 1989).

Nishi (1989) points out that the plan was later changed into a bicameral legislature on the pretense of a compromise:

Kades (Colonel Charles Kades, who was one of the Steering Committee for the GHQ draft) may have said to his colleagues that alteration of the legislature into a bicameral system could be used as a bargaining chip in negotiations with the Japanese, the concession of

which would relieve GHQ from having to make concessions in regard to the more important articles (Nishi, 1989, p. 12, emphasis given).

Whether the issue of bicameral system later became the real bargaining chip, literature suggests that there were several negotiations between the GHQ and the Japanese government in the process of designing the new structure of the Japanese government.

Although Japan's occupied government expected its function of the House of Councillors as an "obstruction" against liberal policies that would be led by the House of Representatives, the new Constitution defined that the House of Representatives occupied a superior position (Nishi, 1989). That is, a decision of the House of Councillors could be overridden by the House of Representatives with a two-thirds majority in the case of the passage of a bill. For instance, a bill that is enacted and passed in the House of Representative but failed to pass in the House of Councillors can still become law if that bill receives two-thirds of agreement again in the House of Representative.<sup>41</sup>

Actual discussions take place in the smaller sized Standing Committees because it is unrealistic to gather and have discussion with all Diet members at one time. Each House has each equivalent committee. That is, the Committee on Communications exists in both Houses; however, there is a difference in the distribution of seats. Currently, there are thirty seats for the House of

Representatives and nineteen seats for the House of Councillors for the Committee on Communication. Principal functions of the committee system in Japan are:

- 1) to educate the public, since committee meetings are usually open and well publicized by the Press, and
- 2) to provide an arena for criticism and obstruction by the opposition (Bhuinya, 1971, p. 55).

#### The Cabinet and the Independent Regulatory Commissions

The Cabinet consists of the Prime Minister and the other twelve Ministers who represent each Ministry. They are the Ministries of Justice, Foreign Affairs, Finance, Education, Health and Welfare, Agriculture and Forestry, International Trade and Industry,<sup>42</sup> Transport, Labor, Construction, Home Affairs, and Posts and Telecommunications (MPT). Each Ministry has several *Chô* (Agency) as attached organs.

In addition to these Ministries, there are Agencies and *Iinkai* (Commissions) that belong to the Prime Minister's Office in order to provide the Prime Minister with coordinating power as the head of the Cabinet (see Figure 3). Among those coordinating organs; however, Commissions are originally designed to keep strong independence from the control and supervision of the Cabinet (Tsuji et al., 1984).

Among the commissions that have not survived, there were the Foreign Exchange Control Commission, the Local Finance Commission, the National Election Administration Commission, the Public Enterprise Commission, the Radio

Regulatory Commission, the Statistics Council, the Stock Exchange Commission<sup>43</sup>, and more. (See figure 4 for the date of their establishment and abolishment.) Those commissions were modeled after the independent regulatory commissions of the United States "which purpose was to realize democratic administration, with people of different backgrounds as committee members" (Tsuji et al., 1984, p. 31). Wada Hideo (1985) lists the commissions in the United States as of 1948 that became models for Japanese commissions:

1. U.S. Civil Service Commission
2. Interstate Commerce Commission
3. Board of Government of the Federal Reserve System
4. Federal Trade Commission
5. Securities and Exchange Commission
6. National Labor Relations Board
7. Atomic Energy Commission
8. Federal Communications Commission

Wada (1985) explains that the existence of those commissions, or "a headless 'forth branch of government,'" (p. 7) was interpreted as constitutional in the United States because: 1) The prefix "quasi" has given to the legislative and judicial role of these commissions in order to limit their authority, 2) there was a necessity for the organ that was capable of politically independent decision making.

Some Japanese commissions were abolished and others were scale-downed as Councils becoming attached organs to Agencies and Ministries in the 1950s.<sup>44</sup> Tsuji et al. (1984) give two major criticisms that have been taken for

granted as the reason for the abolishment of the commissions.

- 1) "(T)here were criticisms that these committees were inefficient...There was a demand for the simplification and rationalization of the administrative organs."
- 2) "(T)he principle of the Cabinet as a responsible body was hampered due to the unclear allocation of the responsibility for these commissions" (Tsuji et al., 1984, p. 31).<sup>45</sup>

On the other hand, the faculty of law at the University of Tokyo, Shiono (1989), introduces a view that the independence of the Radio Regulatory Commission should not be the argument of constitutionality but should be the argument of performance with regard to the character of the members of the Commission and its balance between the authority of the Cabinet (p. 83).<sup>46</sup>

Kôsei Torihiki Iinkai [Fair Trade Commission] is one of three Commissions that survived. Dokusenkinshi hô, or the Japanese Antitrust Law of 1947 modeled after the Federal Trade Commission Act in the United States defines the status of the Fair Trade Commission as follows:

- (i) The commission falls under the "jurisdiction" of the Prime Minister. ("Jurisdiction" differs from "control" or "management"; it does not imply control and supervision in the ordinary sense.)
- (ii) The Chairman and committee members handle their official power independently.
- (iii) The appointment of the Chairman and committee members requires the agreement of both Houses of the Diet.
- (iv) The term of office and of status of the Chairman and committee members are guaranteed.
- (v) For certain matters provided in the Antitrust Law, the commission has quasi-judicial power and makes decisions in accordance with judicial procedures.
- (vi) It has quasi-legislative power to enact regulations (Tsuji et al., 1984, p. 31).<sup>47</sup>



In theory, the Fair Trade Commission follows the principles of the independent regulatory commissions that "assure independence from the Cabinet when the nature of administrative affairs requires fairness and political neutrality and when quasi-judicial power is given to the commission" (Tsuji et al., 1984, p. 31). However, today, critics say that the commission is failing to keep a certain distance from the Cabinet because its chairperson often comes from the Ministry of Finance. In fact, nine out of fourteen chairpersons were from the Ministry of Finance until present from 1947 (Shindô, p. 127). Especially since 1977, all four recent chairpersons were from the Ministry of Finance. Shindô (1992) quotes a career staff of the commission: "After a while since our chairperson came from the Ministry of Finance, accusation against the financial institution under the Antitrust Law decreased" (p. 127).<sup>48</sup>

#### Court and Freedom of Expression

Among several levels of courts in Japan, the highest judicial power is at Saikô Saibansho [the Supreme Court of Japan]. Currently there are fifteen justices in the Supreme Court. By screening out unconstitutional laws created by the Diet and unconstitutional administrative actions taken by the Cabinet, the Supreme Court can "check and balance" the powers.

In the Meiji Constitution, "the principle of separation of powers was adopted, but in reality the idea

of checks and balances was rejected" (Hashimoto, 1963, p. 239). So, the process to screen out unconstitutional decisions became operational after the war. The new Constitution introduced the Anglo-American system of judicial review, or "the rule of law" to Japan. The Constitution declares:

Article 76. 1. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

2. No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

3. All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

...

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act (Tanaka et al., 1976, p. 11-12).

So, the Supreme Court was designed to be a guardian of the Constitution.

However, since judicial review was a new experience to Japan, "all courts are faced with many difficult questions in discharging their responsibility for protecting the rights of the people from illegal administrative action and guaranteeing the principle of legality of administration" (Hashimoto, 1963, p. 242). In fact, the stance that the Japanese Supreme Court takes, like its American counterpart, toward the constitutional validity of laws is evoked only when specific complaints are made to the Court. Moreover, The Japanese Supreme Court has a tendency to

refuse to review cases presenting *seiji mondai* [political questions]. According to Yokota (1968), "(its) rationale is that the Constitution itself places some questions solely under the competence of the political branches of the government" (p. 142).<sup>49</sup>

Concerning the freedom of expression, two cases: Koyama v. Japan (1957), and Ishii v. Japan (1969) are informative to understand the view of the Supreme Court.<sup>50</sup> In both cases, publishers who were prosecuted under the Penal Code for printing and selling "obscene" novels to the public made appeals to the final court because publishers thought that their rights for freedom of expression were violated. The former case was commonly called "Chatterley Case" because the published novel was the translation of D. H. Lawrence's "Lady Chatterley's Lover." The latter case is commonly called "Juliette Case" because the novel was the translation of Marquis de Sade's "Juliette." What made these cases famous was the fact that both novels were well known in the field of literature.

The following three clauses were the focus of arguments (Tanaka et al., 1976):

A. Article 21 of the Constitution: 1) Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. 2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

B. Article 12 of the Constitution: The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

C. Article 175 of the Penal Code: A person who distributes or sells an obscene writing, picture or other object or who publicly displays the same, shall be punished by imprisonment with labor for a term of not more than two years or a fine of not more than 5,000 yen or minor fine. The same applies to a person who possesses the same for the purpose of sale.

In Koyama v. Japan (1957), the Supreme Court defined the translated novel as an obscene writing and dismissed the case. The court ruled that the Penal Code does not violate the Constitution because it incorporates into itself only "the minimum morality" that possesses a considerable significance for the maintenance of the social order (Tanaka et al., 1976, p. 748). In other words, it was ruled that although law was not burdened with the duty to maintain all morality and good customs and those duties pertaining to the fields of education, "the minimum morality" should be included in "public welfare" that was declared in Article 12 of the Constitution.

In Ishii v. Japan (1969), the translated novel was also ruled as an obscene writing and the case was dismissed; however, there were five minor opinions from judges this time. Among those, Justice Tanaka's opinion might suggest a conversion in the Japanese court's view toward freedom of expression:

Freedom of speech, press and other forms of expression guaranteed under Article 21 as well as academic freedom guaranteed under Article 23 are different in nature from various other freedoms also guaranteed in the constitution, in that they are basic to democracy...Thus, these freedoms should not be restricted by policy considerations in the name of the "public welfare." They differ from freedom to choose and change one's residence and to choose one's

occupation which can be restricted by statutes if the public welfare so requires (Article 22 of the Constitution). If freedom of expression, or academic freedom, or more generally, freedom to read, hear, watch, be informed and learn, could be restrained easily by views held by the majority of the Diet or by the Government, it would be almost inevitable that the fundamental principles of democracy would be shaken from their roots, and development of culture and the search for truth would be suppressed (Tanaka et al., 1976, p. 756, emphasis given).

The opinions from the other judges share a view to some extent with Justice Tanaka: The vague definition of obscenity could dispirit the people's freedom of expression and thus some kind of modification and clarification should be made concerning obscenity (Tanaka, 1985, June).

Despite Justice Tanaka's concern, Japanese courts have not had a chance to present the clearer definition of "obscene writing" stated in the Penal Code. That is, obscenity has not been disciplinary determined, but has been determined from the view of social allowance and conformance. In other words, obscenity is not examined by laws in the strict sense, but is examined from the court's view of whether society would accept that particular expression.

Concerning a dispute between press freedom and public welfare, a landmark decision was made by the Supreme Court in 1969. It was a case that dealt with the special character of television broadcasting. In this decision, the Supreme Court upheld the court order of the Fukuoka district court that required four Fukuoka television

broadcasting stations to present all films in their possession taken during the Hakata Station Incident.

Lawrence Beer (1984) explains the outline of the Hakata Station Incident. On January 16, 1968, hundreds of students arrived at Hakata (in Fukuoka Prefecture, the island of Kyushu) railway station on their way from demonstrations protesting the visit of the nuclear-powered aircraft carrier, the U.S.S. Enterprise. When the riot police impeded student's way at Hakata station, a student was arrested for interference with the execution of police duty. Since there was no reliable witness for the Fukuoka district court to see whether the arrest proceeded legitimately, the district court ordered television stations to present news films to the court as evidence. None of the television stations submitted their news films to be used, and they appealed to the Supreme Court because they thought "the use of this film as court evidence might render free and impartial news gathering and reporting impossible" (Beer, 1984, p. 295). However, the Supreme Court squashed that appeal on November 26, 1969 (Ex Parte R.K.B. Mainichi Hôshô Co., 1969).

In the writings of the Hakata film decision, the Supreme Court admitted that the freedom of news gathering activities were included in the freedom of expression; however, that kind of freedom could be limited in this case to take the balance of the public welfare (Suzuki, 1985, June).

So, practice of fair trial was considered to be included in public welfare and thus it took priority over the freedom of expression. Beer (1984) cites media's claim:

...use of film for evidence--a purpose other than that for which it was intended. Such use would diminish the people's trust in the media and would lead to a loss of their cooperation and thus of the media's freedom in gathering news...If outside compulsion were allowed even once, they charged, full freedom of information would be impossible, and "the people's right to know" through full and impartial news coverage would be violated (p. 296).

It should also be noted that newspaper reporters cannot refuse to reveal the source of information in court since the Supreme Court ruled so in 1952 (Tanaka, et al., 1976, p. 744). Watanabe (1993) shows his pessimistic view concerning the possibility of enactment of the shield law for journalists in Japan in the future. He thinks that Japan lacking "*shakaiteki seijuku*" [social maturity] and is not ready to understand the benefit of the shield law (p.270).

There was a Supreme Court decision in 1968 concerning broadcast licensing.<sup>51</sup> The plaintiff in the original case at the lower court was an applicant for the television broadcast license whose application was rejected by the Ministry of Posts and Telecommunications (MPT), and the defendant was the MPT. The lower court decided that the claim from the plaintiff, the applicant of the license, was valid. The unconvinced defendant, the MPT, appealed it to the Supreme Court. However, the Supreme Court dismissed

the MPT's appeal. The significance of this case is discussed in more detail in Chapter 5 along with the hypothetical situation of the survival of the abolishment of the Radio Regulatory Commission.

#### Conclusion for Chapter 4

The occupied government of Japan tried to resist against waves of change from the Western philosophy of democracy. Compromises were inevitable for the Japanese government concerning the Constitution; however, several attempts for resistance were made.

Although the Constitution clearly states that "freedom of expression" is guaranteed and the court admits that freedom of news gathering is included in it, the fact that the Constitution only states freedom of "*shuppan*" [publishing] is guaranteed gives room for counter arguments concerning the status of Japanese broadcast journalism.

The Diet became the sole legislature of Japan; however, in reality, more bills are originated in the Cabinet. The Cabinet successfully enacted a bill to abolish most of the independent regulatory commissions as soon as the occupation was finished. Critics say that the separation of powers is weak between the legislative branch and the executive branch in Japan, while others say that it is the feature of parliamentary democracy.

The court in Japan had to deal with principles of Anglo-American common law and constitutionalism while its tradition was that of European civil-law approaches. This



might be one of the reasons that the power of judicial review has been preserved with caution and discretion in Japan. Scholars such as Beer (1989) expects Japan to be "a laboratory of living non-Western comparative law and a possible bridge for better mutual understanding between nations of civil-law and common-law legalism and constitutionalism" (p. 75).

CHAPTER 5  
RADIO REGULATORY COMMISSION

Introduction for Chapter 5

The Radio Regulatory Commission was modeled after the Federal Communications Commission of the United States. It was created in order to release Japan's radio communication from direct control by the Japanese government. The General Headquarters (GHQ) of the Allied Occupation Forces (see Figure 2 for the structure of the GHQ) wanted to let an autonomous organ regulate Japanese broadcasting so that freedom of expression in broadcasting would not be infringed upon by the government in a legal sense.

In this chapter, the establishment process of the Radio Regulatory Commission and its administrative activities are discussed. Public hearings and *ipponka chōsei* [administrative "unification coordination" (Weinberg, 1991, p. 664)] will be the focus of discussions. Ishida's (1984) *omote-ura* theory will be used to consider why the system of hearings faced difficulty and why the RRC inclined to *ipponka chōsei*. (see Figure 1 for Ishida's theory)

By reviewing the performance of the RRC, and contrasting it to the present administrations by the Ministry of Posts and Telecommunications, the rationality/irrationality of the abolishment of the RRC shall be revealed. So, it might be appropriate for this chapter to set a hypothetical situation: The survival of

the RRC. This will be attempted through arguments over the controversial case concerning broadcast licensing in competitive applications.

#### Establishment of the Radio Regulatory Commission

Taking account of the fact that all radio communications in Japan were directly controlled by the Ministry of Communications until the end of World War II, the idea to establish a politically independent organization and let it regulate the traffic of radio waves should sound like a drastic change to Japanese administration. The GHQ staff recognized broadcasting as a double edged tool that could efficiently diffuse either totalitarian ideas or democratic ideas. The Civil Communication Section (CCS)<sup>52</sup> of the GHQ was in charge of designing such an autonomous organ. According to Matsuda (1980-1981), politically liberal "new dealers" such as Brigadier General Courtney Whitney and Colonel Charles Kades were the main constituent of the CCS and the Government Section (GS), and they sometimes confronted occupational policies made by the Civil Information & Education Section (CIE)<sup>53</sup> and conservatives at the G-2 (General Staff-2, headed by Major General Charles A. Willoughby) (p. 114, in vol. I).<sup>54</sup>

On October 16, 1947, Clinton Albert Feissner, then Acting Director of CCS, stated at the conference concerning regulations for broadcasting in Japan:

The organization must be what is termed an "autonomous organization." It must be completely separate and apart from other executive branches of the Japanese Government...It must be completely separated from the Ministry of Communications, Ministry of Education, Finance and any other ministry and will not report to any ministry. It is the type of organization that is not to be dominated by any political party, by any governmental "clique" or any governmental group, nor is it to be dominated by any private corporation or group or association of individuals.

...

The organization might be compared to the TVA (Tennessee Valley Authority) or the New York port Authority in America. It is to be an organization to serve the public, to be controlled, idealistically speaking, by the people of Japan who make known their desires and wishes through their constitutionally and democratically elected government (GHQ-SCAP-CCS, 1947, emphasis given, see Appendix 2 for a photocopy of the full statement).<sup>55</sup>

Feissner says in a recent interview with NHK that the suggestion was not from the U.S. government, but solely originated by the GHQ (Konda, 1994, p.60-61). Feissner also makes clear in this interview that it was his idea to give an enormous power to the RRC because he knew the Japanese government would attempt to abolish the RRC as soon as Japan regained sovereignty.

The Japanese government strongly resisted creating an "autonomous organization." While the Japanese government kept refusing the idea of such an organ, the CCS created a more concrete image of it. According to Shô Hiroshi (1962), General George I. Back, then Chief of the CCS, gave *kankoku* [oral advice] on June 18, 1949 to the Minister of Telecommunications (see Figure 5 for its position) that

they should consider establishing an independent regulatory commission for broadcasting in Japan (p. 357).

Prime Minister Yoshida resisted the idea of the independent commission based on Article 65 of the Constitution: "Executive power shall be vested in the Cabinet" (Constitution of Japan). However, according to Uchikawa Yoshimi (1989), the former faculty at the University of Tokyo, Yoshida's resistance can be explained as "*seihu-no tōseiryoku-no moto-ni oiteokitai-toiu seijiteki kōryo-kara*" [a political decision that aimed to maintain the governmental power of control] (p. 324). In addition, the public hearing system of the commission was particularly disliked by Yoshida because it could limit the governmental influence on administrations (Matsuda, 1980-1981, p. 113 in vol. I).

The draft of the Radio Regulatory Commission Establishment Bill was created by the Ministry of Telecommunications, and it was sent to the Government Section (GS) of the GHQ on October 12, 1949. The GS returned the draft of the bill and ordered two major modifications: 1) Ministry of State (also known as Chief Cabinet Secretary) must not be appointed as a chair of the commission, 2) the commission should have the power to override the decisions of the Cabinet (Uchikawa, 1989). The first modification was to maintain the distance from the Cabinet, and the second modification was to clarify the independence of the commission.<sup>56</sup>

Prime Minister Yoshida tried to ignore those modifications; however, Yoshida was convinced that he could not resist any more when General MacArthur sent a "private letter" to him. In the letter, MacArthur overturned Yoshida's idea to give the Cabinet authority to reverse decisions of the commission:

...(your idea) completely negate the principle of independence and render the commission a mere advisory committee of the Cabinet (MacArthur, 1949, December 5, see Appendix 3 for the full statement)

MacArthur did not take the form of the official directive of the Supreme Commander. One source suggests that the GHQ did not want to issue an official directive because the occupation was almost over (Matsuda, 1980-1981, p. 119 in vol. I). It might suggest that the debate over independence of commissions was not yet settled even in the United States. At the same time, another possibility is that MacArthur might have confirmed the change in the occupation policy. It was around this period that the anti-communism atmosphere became distinctive in the GHQ and thus politically liberal "new dealers" lost their support.

For Yoshida, there was no choice but to take the letter as equal to an official order from the Supreme Commander.<sup>57</sup> The modified bill was sent to the seventh session of the National Diet on December 22, 1949. In the bill, the "Establishment" section of the Radio Regulatory Commission Establishment Law defines:

Article 2. In accordance with the provision of Article 3 paragraph 2 of the National Government Organization Law (Law No. 120 of 1948), there shall be

established a Radio Regulatory Commission as an external organ of the Prime Minister's Office (Denpa chō [Radio Regulatory Agency], 1950, pp. 155-189, emphasis given).

By the definition in this article, the RRC obtained clear independence similar to that of Kōsei Torihiki Iinkai [Fair Trade Commission] that was established earlier on July 1, 1947.

The bill for the establishment of the Radio Regulatory Commission, which conformed with GHQ instructions as embodied in General MacArthur's letter, passed the Diet without amendment on 24 April 1950. The three (radio) laws were promulgated on 2 May of the same year, to take effect from 1 June (Ito, 1978, p.17).

The Radio Regulatory Commission (RRC) was established in a set of three laws: Radio Law, Broadcast Law, and Radio Regulatory Commission Establishment Law. The three laws interrelated and constituted the overall foundation for radio administration. The Broadcast Law and the Radio Law provided the substance of administration, while the Radio Regulatory Commission Establishment Law provided for the organization, powers and jurisdiction of the RRC as the administrative organ related to radio waves, including broadcasting.

Under the Radio Regulatory Commission Establishment Law, the radio-wave administration "was entrusted to an organ independent from the government authorities and the democratization of broadcasting administration was brought about as a result" (Hattori, 1989, March, p. 47).

## Jurisdiction and Structure of the Radio Regulatory

### Commission

Although the life of the RRC was two years and two months long, its achievements are worthy of attention, as it paved the way toward establishing a new broadcasting system (Omori, 1989, March). In the "Responsibilities" section of the Radio Regulatory Commission Establishment Law, it defines:

Article 3. The Radio Regulatory Commission shall have the following responsibilities:

- (1) Decision of the basic policy for the establishment of radio stations; other matters related to the licensing of radio stations (including equipment utilizing high frequency; the same hereinafter), etc.;
- (2) Establishment of technical standards for radio equipment (including equipment utilizing high frequency; the same hereinafter), etc.;
- (3) The operation of radio stations;
- (4) The State examination for radio operators;
- (5) The licensing of radio operators;
- (6) The Broadcasting Corporation of Japan (NHK);
- (7) The hearing of the complaint lodged against the dispositions of the Radio Regulatory Commission;
- (8) In addition to those mentioned above, matters related to the regulation of radio wave and broadcasting (Denpa chô [Radio Regulatory Agency], 1950, pp. 155-157, emphasis given).

The RRC was given quasi-legislative power to establish the Radio Regulatory Commission Regulations, and was given quasi-judiciary power to hear complaints and make decisions.

The RRC was to consist of one chairperson and six commissioners, and they were appointed by the Prime Minister with the consent of both Houses of the Diet "from



among persons of wide experience and knowledge and who are capable of making fair judgment concerning the public welfare" (Article 6, the Radio Regulatory Commission Establishment Law, Denpa chô [Radio Regulatory Agency], 1950, p. 162).

Concerning the appointment of the chairperson and commissioners, the law screens out members of the Diet and staff members of political parties including any who had been such within one year before the date of the appointment. In addition, the law defines: "The appointment of the chairperson and commissioners should not result on such a state that four or more persons belong to one and the same political party" (Article 6, (4), the Radio Regulatory Commission Establishment Law, Denpa chô [Radio Regulatory Agency], 1950, p. 165). Issues of the RRC were decided by majority vote of the present commissioners; however, the decision was made by the chairperson if the vote was a tie.

There is one more position that should be mentioned concerning the decision of the RRC. Article 19, "Examiner" section of the Radio Regulatory Commission stipulates:

- 1 The Radio Regulatory Commission shall have not more than five members to hold the hearing provided for in Chapter VII of the Radio Law (Law No. 131 of 1950).
- 2 Examiners shall be appointed by the Chairman with the consent of the Radio Regulatory Commission. The same shall apply to the dismissal of examiners (Denpa chô [Radio Regulatory Agency], 1950, p 171).

Examiners were expected to impartially preside over hearings, but they were allowed to submit their opinions to

the RRC after the hearing. (See Appendix D for the chart of the Radio Regulatory Commission organization, and see Appendix E for the personnel of the commissioners.)

#### Public Hearings by the Radio Regulatory Commission

Among administrative activities of the Radio Regulatory Commission, public hearings were the most controversial because such a way of decision making did not exist in the past Japanese administrative scene. The Public Hearing was introduced by the GHQ to Japan for the purpose of "preventing unfair results arising from the self-righteous exercise of powers by the administrative offices of the government, as well as for arriving at impartial conclusions through discussions among interested parties and persons of learning and experience" (History Compilation Room, Radio & TV Culture Research Institute, Nippon Hoso Kyokai, 1967, p. 213). But it should be too difficult for the GHQ to anticipate the failure of public hearings at this point. Among several factors that made the system of hearings difficult to work in Japan, Ishida (1984) would point out GHQ's ignorance of *ura* dimension of the Japanese speech situation as the significant factor.

The RRC was required to hold hearings when the situation meets provisions under Chapter VII, "*chōmon*"<sup>58</sup> *oyobi soshō*" [hearing and action] in the Radio Law of 1950. Shō, Matsuda, & Murai (1950) briefly explain hearings would be held under the following situations: 1) When the RRC stipulates significant regulations such as the fundamental

standards for the establishment of wireless stations, 2) when the dispositions of the RRC result in depriving the people of their rights, e.g. revocation of license for wireless stations, 3) when the people lodge complaints against the dispositions of the RRC (p. 373).

Under Article 84 of the Radio Law, a person can lodge a complaint against the dispositions of the RRC. Article 97 stipulates that actions against the dispositions of the RRC belong in the competence of Tokyo Kôtô Saibansho [Tokyo High Court]. Article 99 says that the court is bound when the RRC has substantial evidence that can substantiate the dispositions of the RRC.<sup>59</sup>

The RRC held a total of nineteen hearings during its existence from June 1, 1950 to July 31, 1952. (see Figure 5 for the period of each hearing) In the year of 1950, all eight hearings were about the establishment of the basic standards and regulations in a prospect of the coming age of commercial radio broadcasting.

Among hearings in the early days, the second hearing for *hôsôkyoku-no kaisetsu-no konponteki kijun* [fundamental standards for the establishment of broadcast stations] provided assignments for the RRC and stakeholders concerning how to proceed with a public hearing. The hearing was stopped at the particular topic by the increased number of witnesses,<sup>60</sup> and could not go on to another issue. A confused hearing resulted not only because people knew less about the technical aspects of

broadcasting, but also because people were unfamiliar with the system of public hearings.

A month and a half after the hearing, the RRC regulations concerning the fundamental standards for commercial radio stations were proclaimed.

In December 1950, the Commission announced "A fundamental policy towards licensing of commercial sound broadcasting stations," "Fundamental standards for the establishment of wireless stations," and legislation and enforcement of "Radio Regulatory Commission regulations" (Omori, 1989, March, p. 15).

On the same day of proclamation, Chairman Tomiyasu Kenji made public that the RRC had the target of issuing two new licenses for the Tokyo area and one new license for each major city because of limitations in available radio frequencies.

The announcement was intended to bring about voluntary mergers of plural applicants in each city by clarifying the prospects for commercial stations in areas where there were large numbers of applicants (History Compilation Room, Radio & TV Culture Research Institute, Nippon Hoso Kyokai, 1967, p. 213)

So, it was a maneuver by Chairman Tomiyasu in hope that the large number of applicants would start negotiating and reduce their numbers by themselves before the official public hearing.

#### Ipponka Chôsei [Administrative Unification Coordination]

When Chairman Tomiyasu made his statement on December 2, 1950, he thought that the RRC could issue Japan's first commercial radio broadcasting licenses no later than the end of January 1951. From the *omote-ura* perspective,

Tomiyasu expected applicants to formulate *ura* dimension by themselves to resolve competition for licenses before the public hearing. As explained in Figure 1, no concession should be made in an *omote-soto* situation, and the public hearing is exactly the place that creates an *omote-soto* situation. Among fourteen regions that would have new radio stations,<sup>61</sup> Tomiyasu's plan worked well in most of the area. This is the origin of *ipponka chōsei* ["unification coordination"] (Weinberg, 1991, p. 664) a tradition that lasts in administration of broadcasting in Japan.

Despite success in most of the regions, Chairman Tomiyasu found that the RRC had to hold a competitive hearing for Osaka. According to *Nihon Hōsō Kyōkai* (1977), the RRC was directed by the CCS that licensing should be based on a neutral examination to seek which applicant best met legal and technical standards, and it was unjust for the RRC to advocate unification of applications (text vol., p. 309). Clinton Albert Feissner, then director of the CCS, decided to observe the public hearing in Osaka.

In Osaka, there were five applicants for one license. But the actual competition was between Shin Nihon Hōsō and Asahi Hōsō. The sponsors of those applicants had been in decades of rivalry. *Mainichi Shimbun* was for the former, and *Asahi Shimbun* was for the latter.<sup>62</sup> Although they once agreed to unify the applications after *ura* dimension talks mediated by big names, *Mainichi* reconsidered and concluded that they could not do business with *Asahi*.

They reviled at each other based on mere hypothetical reasonings during the public hearing that was held from March 16, 1951 (Nihon Hôso Kyôkai, 1977, text vol., p. 310). Borrowing Ishida's (1984) theory again, the situation was in *soto-omote* where no concession could be made. Six days of hearings ended inconclusively. So, the RRC had to change its original plan for the solution: give one more license to the Osaka area. Finally, sixteen preliminary licenses for commercial radio stations were issued April 21, 1951. Two days later, the RRC commissioners except Chairman Tomiyasu and Vice Chair Amishima Tsuyoshi left Japan and visited the FCC for study by order of the GHQ (Matsuda, 1980-1981, p. 200 in Vol. I).<sup>63</sup>

The next difficulty for the RRC was so-called "*mega ronsô*" [mega cycle dispute] (Nihon Hôso Kyôkai, 1977, text vol., p. 231-234). The dispute was between Shôriki Matsutarô's Nihon Television Network Company (NTV) and Nihon Hôso Kyôkai (NHK). Although television broadcasting was still at the experimental level, NTV submitted an application for a television license on October 2, 1951,<sup>64</sup> and NHK counter-applied for the license on October, 27 in the same year. Each applicant advocated different technical standards for television that was still in black and white. Before the hearing, Chair Tomiyasu notified in despair that he would resign from his position. Vice Chair Amishima succeeded him on February 6, 1952.

The public hearing was held from January 17, 1952 to January 19 to examine which standard would better serve the public interest:

(1) The American system (525 scanning lines, 30 picture frames per second, 6 Mc frequency band-width.)

(2) Provisional Japanese system (525 scanning lines, 25 picture frames per second, 7 Mc frequency band-width.)

(History Compilation Room, Radio & TV Culture Research Institute, Nippon Hoso Kyokai, 1967, p. 232)

Although the public hearing was not for the competitive application for a license but was for technical standards, it became more like a political dispute than a technical debate because advocates on both sides considered that the decision would influence who could get the first television license. Shôriki Matsutarô and his NTV strongly supported the former standard on the presumption that urgent import of TV sets from the United States would quickly stabilize the broadcast industry in Japan, while an alliance of NHK and the domestic wireless equipment industry advocated the latter standard in an effort to carry out NHK's technological research and encouragement for the domestic electronics industry.

According to Agawa Hideo (1976), there were some emotional statements during the hearing. It might be reflective of the militancy of opposition groups in Japanese conflict situations. For example, Witness Yagi Hideji, who claimed himself "a senior technologist," advocated 6 mega cycle frequency band-width and blamed the technologists who supported 7 mega cycle frequency band-width as the superior potential for color television in the

future. Witness Yagi said: "*Gijutsusha-no kuse ni 7 mega-de nakereba dekinai-nadoto nakigoto-wo iunoha gijutsuya-toshite nasakenaidehanaika*" [Isn't it shameful for technologists to complain that they cannot do (color television) if the bandwidth is not 7 mega cycle?] (Agawa, 1976, p. 149). Moreover, Agawa (1976) cites the actual discussions that took place in the public hearing, and points out that the hearing got people nowhere. Following is the English translation of discussions from the third day, January 19, 1951, of the public hearing (Agawa, 1976, pp. 151-152, the subject words and other words that can help make sense of the statement are added in parentheses):

Examiner: ...so, six reasons that tell 7 mega cycle is better than 6 mega cycle are raised...

Musen kogyô kai [people from the wireless industry]:  
 We are insisting for 7 mega cycle because bandwidth of 7 mega cycle is needed for the standard. It is out of discussion to argue that bandwidth of 1 mega cycle will be saved if 6 mega cycle is chosen. Please consider how can 1 mega cycle be advantageous, and then make a decision. (We) oppose the view that 7 mega cycle is not appropriate.

Examiner: Does the RRC have anything to say concerning the opinion from Musen kogyô kai?

RRC: Nothing particular.

Examiner: Does it mean the RRC approves the opinion from Musen kogyô kai?

RRC: No.

Examiner: Is there any difficulty seen by the RRC if 7 mega cycle is adopted?

RRC: (The RRC) never has said about difficulty of 7 mega cycle until now.



Examiner: So, doesn't it mean there is no difficulty?

RRC: It does not mean that there is no difficulty.

Examiner: So I am asking (you) now. What (I am) asking is whether there is difficulty or not.

RRC: Whether there is difficulty or not... (Are you) asking if there is any difficulty from any particular perspective?

Examiner: Total advantage and disadvantage of adding 1 mega cycle to six mega cycle and utilize 7 mega cycle; compare and analyze other advantage and disadvantage of using 1 mega cycle to another purpose if it is not used for television; if there is any better reason to give 6 mega cycle bandwidth for television...

RRC: (The RRC) thinks Examiner knows well about the purpose of today's hearing. (The RRC) regrets to point out that Examiner's question does not meet (today's) purpose.

pause

Matsushita Denkô [Matsushita Electronics Company]:  
Then, I would like to ask a question. Since we are insisting 7 mega cycle, we would like to ask a question (to the RRC) whether there is any difficulty with 7 mega cycle.

RRC (The RRC) thinks it is impossible to say that which (mega cycle) has difficulty from the perspective of the allocation of the frequency (because) it is before the final decision for the standard of television broadcasting...

On February 27, 1952, the RRC announced it would adopt six mega cycle bandwidth as the standard of television broadcasting. However, a complaint was soon lodged by the NHK against this disposition, and resulted in another eight days of hearings that started on April 15, 1952. The RRC dismissed the complaint on June 10, 1952, and the American standard was adopted. Although the hearing was not about the licensing itself, it was natural for Shôriki Matsutarô

to press the RRC to issue the first television license to NTV.<sup>65</sup>

While the RRC was busy with the mega cycle dispute, the existence of the RRC itself became an issue. It was decided at the Cabinet meeting on April 5, 1952 that: The administrative commissions other than those with judiciary functions would be abolished and the affairs of such defunct commissions be transferred to the Ministries concerned (Nihon Hôshô Kyôkai, 1977, text vol., p. 376). It should be noted that the RRC did have judiciary functions.

A bill that included the abolishment of the RRC was submitted by the Cabinet to the thirteenth session of the National Diet. Meanwhile, the RRC did not choose to hold the public hearing for the license applications from NTV and NHK.<sup>66</sup> On July 31, 1952, the day of its abolishment, the commissioners voted 4-1 in favor of NTV for the first television license in Japan.<sup>67</sup>

#### Present State and the Radio Regulatory Commission

From August 1, 1952, major administrative functions over communications in Japan were returned to the ministry. The Ministry of Posts and Telecommunication (MPT) took over the RRC's authorities concerning broadcast administrations. The MPT used the remaining two radio related laws to administer broadcasting in Japan.

Simultaneous to the establishment of the MPT, a new internal agency called Denpa Kanri Shingikai [Radio Regulatory Council] was created as a quasi-adjudicator of

the MPT. Councils are often called "*shimon kikan*" [an advisory organ, or a deliberation council]. However, in reality, the Radio Regulatory Council was designed to be a subordinate to the MPT, and was not expected to function as an independent regulatory organ. Borrowing Head's (1985) description, the MPT reduced "(organ's) jurisdictional scope much below the level of the FCC's" (p. 165). Although the system of public hearing was passed to the council, the following facts might suggest that the Public Hearing lost its original intention.

From 1968 to 1970, the newcomer Fuji Television network that had strong ties with the Liberal Democratic Party (LDP), grew rapidly and established the nation wide network consisting of thirty-three affiliate stations including newly issued UHF licensees, while Fuji had only six member stations prior to 1968. In contrast to Fuji's quick success, traditional NTV and TBS gained few new affiliate stations. Meanwhile, the content of television programs on NTV and TBS were critical of the Vietnam War that the Japanese government strongly supported. Weinberg (1991) argues that the coincidence is powerful enough to make an assumption:

The fact that MPT struck a strong regulatory blow against NTV and TBS during a period of intense government displeasure over those network's news coverage suggests that either the initial decision to license UHF, or the process of license coordination, or both, were influenced by the political realities of the day (pp. 688-689).

It has been said that Hideo Den, the leading news anchorperson of Tokyo Broadcasting Station of the 1960's, resigned his post to "protect" the station's license (Matsuda, 1980-1981, pp. 367-368 in vol. II).<sup>68</sup>

Would the situation be changed if the Radio Regulatory Commission survived? Would the broadcast administration be more tolerant of networks even if they took the opposite position to government policy? From the legal perspective, the RRC's decision was guaranteed to override the Cabinet's intention, and thus there would be more room for liberal but legitimate administrations. On the other hand, from the social perspective, it would be difficult for the RRC to endure considerable criticism toward the system of public hearings.<sup>69</sup>

The fight between applicants for a television license in the Tokyo area and the MPT in 1960's is informative to consider the survival of the RRC. Since the case was about the license for the VHF channel 12 of the Tokyo area, it was often called "channel 12 dispute."

Chûô Kyôiku Kabushikigaisha (hereafter: "Chûô Kyôiku Co."), that was interested in the plan for educational television broadcasting, applied for VHF channel 12 that was going to be newly allocated to the Tokyo area. However, on November 13, 1962, the MPT announced it would give the license to another applicant, in accordance with the report from the Radio Regulatory Council.<sup>70</sup>

Chûô Kyôiku Co. lodged a complaint against the disposition. Chûô Kyôiku Co. claimed that the Radio

Regulatory Council should have held a competitive hearing before advising the MPT because there were plural applicants for a license. The MPT dismissed the complaint on October 15, 1963 on the grounds that the Radio Law did not require competitive hearings. In the official writing to dismiss the complaint, the MPT said: The past and an only competitive hearing was voluntarily held by the Radio Regulatory Commission...Also, there has been no competitive hearing since the abolishment of the Commission...Therefore, it does not contradict the administrative custom even the Council does not hold a competitive hearing (Hidaka, 1970, p. 320, emphasis given).

Unconvinced, Chûô Kyôiku Co. sued the MPT, and the High Court of Tokyo ruled on June 1, 1965 that the claim of the plaintiff was valid. In the decision, the High Court of Tokyo said: If the administrative dispositions meet *hurieki shobun chômon-no gensoku* [a principle of hearing: when dispositions give disadvantage], the law requires hearing...In this competitive situation of four applications for one license, it was obvious that rest of three would suffer disadvantage...Therefore, hearing should be held (Hidaka, 1970, p. 326).

The defendant, the MPT, appealed the case to the Supreme Court. The Supreme Court upheld the high court's decision and dismissed the MPT's appeal on December 24, 1968.<sup>71</sup> On May 9, 1969, the Radio Regulatory Council started hearings in order to reexamine the complaint lodged from Chûô Kyôiku Co. However, five months later while

still in the hearing period, Chûô Kyôiku Co. gave up and dropped the complaint on October 27, 1969.

If the Radio Regulatory Commission had survived, how would the commission have dealt with this case? It is true that the commission considered there can be two types of hearing: One was ordered by the Radio Law, and the other was on voluntary bases. The RRC did hold a competitive hearing once; however, it resulted in the RRC's changing its original plan. In other words, the competitive hearing turned to be a stage for the RRC to expose its lack of leadership.

Since it can invite a confusion to the future frequency allocation plan if the RRC often changes the original plan, the RRC might avoid holding competitive hearings in the fear of endless dispute, and might depend on *ura* dimension of the Japanese speech situation for a competition solution. But in order to keep the principles of democratic administration, the RRC might establish another system of hearings that could suit the Japanese speech situation.

Another system could be like a closed quasi-hearing with limitations in the number of participants. The process of reducing competition might be similar to *ipponka chôsei*; however, the difference is in the fact that *ipponka chôsei* belong to *uchi-ura* where "conflict does exist but is usually solved implicitly" (Ishida, 1984, p. 17, emphasis given) while quasi-hearings belong to *soto-ura* dimension

where "negotiation is possible if neither party loses face."

So, a quasi-hearing has to clear two points simultaneously: 1) get rid of implicit in order to maintain legitimacy; and 2) employ well respected Commissioners and Examiners whose credit cannot be easily ruined. If the social status of the commissioners are high enough, their credibility can also save the faces of those disadvantaged by the RRC's decision.

#### Conclusion for Chapter 5

In order to democratize administrations, the GHQ introduced the system of independent regulatory commissions to Japan. For the broadcast administration, the Radio Regulatory Commission was created. It was modeled after the Federal Communications Commission of the United States, and the detail was designed by the staff of the Civil Communications Section.

The GHQ faced severe resistance from the government officials to give the RRC the power to: 1) override the Cabinet's decision; and 2) hold public hearings. General MacArthur convinced Prime Minister Yoshida, who particularly did not favor in the independence of the RRC.

The Radio Regulatory Commission was established in a set of three radio related laws: Radio Law, Broadcast Law, and Radio Regulatory Commission Establishment Law. Radio Law required the RRC to hold hearings when necessary. During its existence, the RRC held nineteen hearings, but

the lack of understandings toward radio technology and the characteristics of the Japanese speech situation made those hearings difficult. The RRC could have invented their own system of hearings that would suit Japanese communication style.

One of the constituents of the executive office, the Ministry of Posts and Telecommunication, succeeded the RRC in August 1, 1952. In other words, a part of the government body whose head (Minister) comes from the ruling political party, took over the position of an organ whose aim was to keep political independence. Although the rest of the two radio related laws premise the existence of the RRC, creation of an internal subordinate, the Radio Regulatory Council, helped the MPT to legitimate itself as a successor of the RRC.

This alternation from the RRC to MPT should have caused considerable influence on broadcast administration in Japan. Some pro-government networks were advantaged while the networks whose programs were critical learned that they better not counter argue the government policy too much.

As mentioned in Chapter 1, Article One of the Broadcast Law does not define who is the subject that "assures the freedom of expression through broadcasting by guaranteeing the impartiality, integrity and autonomy of broadcasting." The MPT believes that they are the one who protects freedom of expression when there is unjust pressure from outside (NTV Hôdô Gaidorain Kenkyû-kai, 1994,



p. 24). However, it might be too difficult for the MPT to protect freedom of speech/press when there is unjust pressure from inside the nation.

CHAPTER 6  
ANALYSIS AND DISCUSSIONS OF  
ABOLISHMENT OF THE RADIO REGULATORY COMMISSION

Introduction for Chapter 6

In September 1951, the peace treaty was signed in San Francisco between Japan and most of the countries that belonged to the Allied Occupation Forces. As a result, Japan regained its sovereignty while the GHQ lost its power to lead the Japanese.

While the Radio Regulatory Commission was struggling with its heavy burden with little experience, Prime Minister Yoshida Shigeru and his Cabinet started discussions concerning the abolishment of the commissions "to cut the number of offices and meet the financial power of the nation" (Hidaka, 1970, p. 129). It resulted in the abolishment of most of the commissions including the RRC.

The main discussion in this chapter concerns details of the abolishment process of the Radio Regulatory Commission. After reviewing the background of Prime Minister Yoshida and his *gyaku kôsu* [reverse course] policy, dialogue in the Diet session will be explained in an effort to see what was actually debated for and against the RRC's abolishment. (See Appendix G for the photocopies of the official proceedings in Japanese language.)

### Yoshida and Reverse Course

Yoshida Shigeru has often been described in several Japanese history literature as one of the key persons whose intention influenced the direction of Japan after the war. Yoshida was one of Japan's elite and diplomatic *kyûtei-ha* [Imperial Court group] politicians who considered *kokutai-goji* [the retention of the national polity] is important for Japan.

Yoshida became the Minister of Foreign Affairs in September, 1945, and later became in charge of negotiations with the GHQ concerning the draft of the new Constitution as the Prime Minister from May, 1946. Kataoka Tetsuya (1991) says that Yoshida went through a lot of concessions and hardships in return for maintaining the traditional status of the Emperor in the new Constitution.

As explained in Chapter 5, not only the creation of the RRC, but also RRC's power to override decisions of the Cabinet was against Yoshida's will. It was probably because those new systems seemed to ruin the traditional power structures of Meiji and Taishô that Yoshida eventually wanted to return.

Yoshida led the Cabinet as Prime Minister from May 1946 to April 1947, and also from October 1948 to December 1954. Yoshida resented his experiences of his first term while the second term of Yoshida's regime was described by the foreign press:

Yoshida Shigeru was chosen to be the leader. This indicates that the traditional powers of political bosses were not weakened enough, and thus the

reformation of Japan by the United States is incomplete (Shiratori et al., 1986, p. 101).

When the peace treaty was signed and Japan regained its sovereignty in 1951, Yoshida put Japan into *gyaku-kohsu* [reverse course]. It was the course toward "reconsolidation of the conservative hegemony-the nexus of big business, bureaucracy, and conservative politicians" (Dower, 1979, p. 275). Kataoka (1992) sees Yoshida's "bitter experiences" in the early days of occupation as a catalyst for this later reactionary policy (p. 68). In the reverse course, the GHQ's reforms that Yoshida believed "not in harmony with the nation's political and cultural traditions" were examined, modified, or completely withdrawn (Ishida & Krauss et al., 1989, p. 233). It might be natural for Yoshida to include the RRC as a subject of reverse course since the creation of the RRC was directed and enforced by General MacArthur.

However, it should be noted that Yoshida's reverse course was not intended to revive militarism in Japan. A historian John Dower (1979) points out that "Yoshida longed to return to the time of Versailles" where traditional diplomacy of Meiji and Taishô flourishes (p. 277).

#### Cabinet Bills and Sovereign Diet

As Figure 4 shows, a major decision went into effect on August 1, 1952. That was the next day when the thirteenth session of the National Diet [here after, "the

13th Diet"] was closed after five extensions of the session period.

According to Asahi Shimbun, the session was described as "*dokuritsu kokkai*" [the Diet of independence, or sovereign Diet] because it was the first Diet session for sovereign Japan since the end of the occupation ("*Dokuritsu*," 1952, August 1, p. 1). However, an editorial of Asahi Shimbun ("*Tenseijingo*," 1952, April 6, p. 1) was critical of Prime Minister Yoshida because he was pushing his reverse course politics in the name of a sovereign Diet. In other words, Asahi Shimbun thought Yoshida tried to go too far ahead of the people's considerations while holding the people's eye on the word "sovereign."

Prime Minister Yoshida let his Cabinet enact 249 *naikaku hōan* [cabinet bills] most of which were purposed to revise the GHQ's liberal reformation. Among those enacted 249 Cabinet bills, 236 passed the Diet while both Houses enacted 99 bills and 92 of those were passed. Since the Diet had to examine total of 348 bills, the 13th Diet lasted a historical record of 235 days.<sup>72</sup>

According to *Yūsei shō* (1961) the abolishment plan of the Radio Regulatory Commission "was first raised by Kimura Tokutarō *kokumu daijin* [the Chief Cabinet of Secretary, also called "Minister of State"] at the Cabinet meeting that was held on February 12, 1952" (pp. 15-16). Then, the abolishment plan of the RRC was included in two of the bills that were enacted by the Cabinet. The bills were numbered and named: Cabinet Act No. 210, "*Yūsei shō Setchi*

*hō-no ichibu-wo kaiseisuru hōritsuan*" [a bill for the partial amendment of the MPT Establishment Law], and Cabinet Act No. 211, "*Yūsei shō Setchi hō-no ichibukaisei-ni tomonau kankeihōrei-no seiri-ni kansuru hōritsuan*" [a bill for reorganization of related laws that follows the partial amendment of the MPT Establishment Law] (Sangi in & Shūgi in [House of Councillors & House of Representatives], 1990, p. 407).

Among several amendment articles, Article One of the Cabinet Act No. 211 stipulated the abolishment of the Radio Regulatory Commission Establishment Law and let the MPT take over the authority of the Commission. Although this bill was often explained: It was designed "in order to increase efficiency and fairness of broadcast administration" (Tanaka & Hirai, 1960, p. 202), it should be noted that the bill was enacted in the context of the "reverse course."

Meanwhile, the thirteenth session of the National Diet started from December 10, 1951. Cabinet Act No. 210 and No. 211 were submitted from the Cabinet to the 13th Diet on May 10, 1952, and they were first sent to the standing Committee on the Cabinet at the House of Representatives.<sup>73</sup> All bills are required to be discussed and voted upon in appropriate standing committees before the vote at the plenary session of the each House. The Committee on the Cabinet got the jurisdiction over Cabinet Act No. 211 because the act had something to do with reorganization of administrative body while bills for the amendment of the

Radio Law and the Broadcast Law were sent to the Committee on Telecommunications.<sup>74</sup>

The standing Committee on the Cabinet of the House of Representatives received and examined both Cabinet Act No. 210 and No. 211 and passed them on May 28, followed by a plenary session of the House of Representatives, where they were passed on May 29.

Then, Cabinet Act No. 211 was sent to the House of Councillors.<sup>75</sup> Just like the process at the House of Representatives, Cabinet Act No. 211 was examined by the standing Committee on the Cabinet, and was passed on July 22 with some revisions.<sup>76</sup> Next, the plenary session of the House of Councillors passed revised Cabinet Act No. 211 on July 23. Then, the revised Cabinet Act No. 211 went back to the plenary session of the House of Representatives where they approved it on July 31, 1952 (*Sangi in & Shûgi in [House of Councillors & House of Representatives], 1990, p. 122*).

Finally, Cabinet Act No. 211 became Law No. 280 on the closing day of the 13th Diet. *Asahi Shimbun* describes the day: *Ryô in tomo jikangire; heimaku-made konran tsuzuku* [time was up at the both Houses; chaos lasted until the closing] (1952, August 1, p. 2). It was almost six months since the abolishment plan was first discussed at the Cabinet meeting.

Dialogue in the Thirteenth Session of the National Diet

Concerning the abolishment of the Radio Regulatory Commission, dialogue in the proceedings of Denkitsûshin Iinkai [Committee on Tele-communications, later the name was changed to: "Committee on Communications"] is informative to see what was actually discussed. Although Cabinet Act No. 211 was not officially submitted to the Diet yet in March 1952, Diet members and relevant personnel already knew that the bill would be submitted sooner or later.

On March 26, 1952, Amishima Tsuyoshi, the Chairperson of the Radio Regulatory Commission, was appointed to be one of *seihuiin* [committee for the government]<sup>77</sup> and questioned by committee members of the House of Representative concerning the abolishment of the RRC. In Dai 13-kai kokkai shûgi in denkitsûshin iinkai giroku dai 14-gô [13th Diet, House of Representatives, proceedings of Committee on Tele-communications, No. 14]:

Hasegawa: ...for the future of Japan, broadcast administrations should be in the direction similar to that of the FCC in the United States even after the administrative revision. Wasn't this your opinion?

Amishima: ...the RRC will continue its business especially about the issue of television, whether or not there will be a change in the administrative structure... (Shûgi in [House of Representatives], 1952, March 26, p. 1).

...

Matsui: (I) can understand that the RRC will follow the decision of the Diet, whether or not the RRC's opinion concerning broadcast administration would be taken into account... However, what I wanted to ask you is that the Chair's opinion



concerning which system is better: The current system or the system based on Cabinet's decision?

Amishima: After the discussion with the other RRC members, I delivered the opinion to the Ministries: From our experience, the administrator for mass media might be better in the current committee system (Shûgi in [House of Representatives], 1952, March 26, p. 3).

So, debate did take place as to whether the abolishment of the RRC would be the right decision. From above discussions, it sounded like Chair Amishima was not in an easy position between the Cabinet's intention and the Committee members' opinion. Chair Amishima's uneasy position would be exposed more in dialogue in the later committee meeting.

On May 26, while Cabinet Act No. 211 was examined as a set with Cabinet Act No. 210 at the committee in the House of Representatives, Councillor Yamada asked several questions to Chair Amishima after Yamada could not get satisfactory explanation from Ministry of State at the Committee on Telecommunications in the House of Councillors. According to Dai 13-kai kokkai sangi in denkitsûshin iinkai giroku dai 25-gô [13th Diet, House of Councillors, proceedings of Committee on Telecommunications, No. 25]:

Yamada: ...I have a doubt that the revisions for administrative structure in radio administrations might not maintain the freedom of speech/press that is guaranteed in our constitution... (We) visited the United States and studied how America administrates broadcasting... Now, the bill that suggests the abolishment of the RRC is proposed. It is such a "gûtara-na" [good for nothing] bill that

embarrasses us. Chair Amishima, what kind of effort did you make as the responsible person (against the proposal of this bill)?

Amishima: ...I do believe that this kind of (independent) commission system is good. Since the RRC has existed only for two years, I want the Cabinet to wait a little bit longer for the final decision to abolish...However, we, the public servant will follow the decisions of the Cabinet and the Diet.

Yamada: Isn't Chair Amishima taking care of the politics, and carefully selecting the words since the Minister is attending this Committee?..

...

Yamada: I believe Chair Amishima should reconsider (your) responsibility. It is true that the revision of administrative structure is the will of the Cabinet. However, once again, we need to consider why the RRC was established as the independent (organ that takes distance) from the government...(Sangi in [House of Councillors], 1952, May 26, pp. 5-6, 10, emphasis given).

It seems like the point of Amishima's discussion was not clear for Yamada, and Yamada thought it was because Amishima would not like to confront the Minister by providing his own opinion. For Yamada, it was interrogative about Amishima to hesitate to confront the Minister about broadcast administration because the RRC supposedly had the power to override the Cabinet's decision. A question remains: Why Amishima could not escape to be appointed as *seihuiin* who are expected to support Ministries in explaining the Cabinet's intention.

Councillor Yamada Setsuo was the one who actively questioned the abolishment of the RRC. Yamada, as well as Amishima, had visited the United States to study the FCC in

order to prepare for the establishment of the Japanese independent commissions. Moreover, Yamada graduated from Oxford University before he became the member of Japan Socialist Party and was elected as Councillor from Hiroshima region. Therefore, it was natural for Yamada to deliver opinions based on his experience of observing not only the FCC and its broadcast administrations, but Western democracy and the significance of freedom of speech/press. However, Yamada's argument against the abolishment of the RRC could not attract the majority of the committee.

#### Conclusion for Chapter 6

Following are the significant political trends in Japan from 1945 to 1952 created by the Yoshida regime:

- 1) Preservation of the emperor and national polity.
- 2) Repression of the revolutionary potential within Japan.
- 3) Restoration of the old guard and traditional levers of elite rule, a task of structural reconsolidation rather than simply overturning the occupation's purge of personnel.
- 4) Economic reconstruction along capitalist lines, and in the zaibatsu [a giant financial family group]-dominated mold of the prewar era.
- 5) Japan's return to international stature as a partner of the Western powers (Dower, 1979, p. 277).

In this political context, most of the independent commissions including the RRC were abolished. As the third political trend above suggests, broadcast administration went back into the hands of bureaucrats.

Since the movement of the reverse course was rapid, there might be less opportunities for commissions to modify

and adjust Western systems into the system that would suit Japanese society. Chair Amishima's statement in the committee session also suggests that the RRC wanted more time.

In the thirteenth session of the National Diet, Councillor Yamada Setsuo was the one who provided crucial arguments in opposition to the Cabinet bill to abolish the Radio Regulatory Commission. For Yamada, it was Chair Amishima's responsibility to actively object to the abolishment plan in the early steps and protect the status of the independent regulatory commission. But it sounded as if Councillor Yamada could not get convincing explanations from Chair Amishima.

## CHAPTER 7

## CONCLUSION

Conclusion of this Study

Feldman (1993), who shares the view that the Japanese press is the least controlled by government in the Asian nations, describes Japanese broadcast media as follows:

...the broadcast media's role is not as significant as that of the print media, especially that of the daily newspapers (p. 11).

Statements such as this describe the position of today's broadcast journalism in Japan. Despite its enormous profit and considerable influence on the society, broadcast media cannot escape their relegation to a supplement for print journalism. A weaker function of "check system" against the misconduct of the government makes broadcast journalism as the second class press. But it should be extremely difficult for broadcast journalists to feel free to criticize the government while the government has an authority to revoke broadcasting licenses. The argument whether Japanese broadcasting achieved the position of so-called "fifth estate" should not be concluded without the power relationship between broadcasters and their administrator.

Over four decades ago, when Japan parted from totalitarianism, broadcast administration in Japan was engaged with the new laws: Wireless Law, Broadcast Law, and the Radio Regulatory Commission Establishment Law.

These three laws were deeply related to each other as if they were forming a three legged table: The table that could guarantee democratic broadcast administration.

The Radio Regulatory Commission was created as one of the independent organs. Its purpose was to realize democratic administration for broadcasting, with people of different backgrounds as committee members. When the nature of administrative affairs requires fairness and political neutrality, the independence of the Commission from the executive branch of the government was significant. Particularly for healthy journalism, that can check the abusive power of the public servant and thus help maintain popular sovereignty and democracy, these qualifications were a must for administrators.

However, the structure of the three legged table was soon destroyed from its base. The Radio Regulatory Commission was abolished in 1952. In the same year, many other independent commissions were abolished. Some argue that these independent commissions were "inefficient" and that the principle of the Cabinet as a responsible body was hampered due to the unclear allocation of the responsibility for these commissions (Tsuji et al., 1984, p. 31). It is also true that there was a demand for the simplification and rationalization of the administrative organs.

However, democracy is not necessarily a kind of goal that is accomplished with "efficiency." For example, the Western traditional "marketplace of ideas" is based on the

roundabout that follows the raising of various ideas. Any kind of ideas can participate in the "marketplace of ideas" if people see some kind of value within them. After various ideas are raised through discussions, each individual may pick his/her favorite idea in the expectation of "rational decision." Hasebe (1992) points out that government should not "anticipate" an individual's autonomous decision making under democracy (p. 18). People seek rationality in democracy in this "autonomous decision making" that is based on various choices of ideas and discussions.

Taking account that the Radio Regulatory Commission was in charge of maintaining fairness, "inefficiency" in administration, through hearing opposing views, was almost necessary. True fairness emerging without any "inefficiency" has eluded philosophers for centuries.

Today, some people describe how Japanese media maintain impartiality as follows:

The mass media is clearly not some monolithic block with one political viewpoint. The news magazines reflect a highly diversified readership and orientation. The television and radio stations operate under strict government guidelines that generally forbid any political slant while guaranteeing each candidate equally limited opportunity for appeals during Diet elections (Nester, 1989, Spring, p. 30 emphasis given).

However, if it is the government that enforces the guidelines, it is possible for the government to accuse broadcasters under "*hunen hutô*" [impartiality] clause in the Broadcast Law as discussed in Chapter 1. That is,

hypothetically, a network can have its license revoked if charged with "portraying the particular candidate or party negatively" while the network did allocate the same amount of air time for that particular candidate. Since conservative groups tend to consider the media too far liberal while liberal groups label the media as conservative, a governmental view of "negative" might not necessarily be truly negative. This is where the politically independent regulator is needed.

#### Limitation of this Study

Let this study review its limitation by considering whether the study provided enough evidence to prove the unconstitutionality of the abolishment of the Radio Regulatory Commission.

The study did make clear that the abolishment of the Radio Regulatory Commission was done in a lawful way. Although the court did not consider whether the Cabinet bill to abolish the commission was constitutional, the bill went through the legitimate procedure of the legislature.

But the study also made clear that the government abolished the commission with negligence toward *raison d'être* of the independent regulatory commissions. That is, it was highly questionable for relevant personnel to deeply consider the task of the Radio Regulatory Commission while there were strong criticisms toward the system of public hearings and the unclear allocation of responsibility.



However, the study has to conclude that there is not enough evidence in this research to prove the governmental decision to abolish the commission as unconstitutional. To prove its unconstitutionality, at least the evidence that the people suffered certain damage from decisions has to be submitted. This would require a quantitative research that could demonstrate how the current broadcast administration has discouraged broadcast journalism and thus has limited people's right to know. This could be a very difficult task; however, it should be noted that American scholars such as Lashner (1984) successfully provided evidence that the Fairness Doctrine under the Nixon administration discouraged and kept network news from covering politically controversial issues compared to newspaper.

#### Future Prospect

Today, futuristic terms such as "multimedia" and "information super highway" are flourishing in Japan. News magazines are filled with feature reports that forecast what those new media and home computers bring to society, with images of people enjoying hundreds of television channels. And, it is true that the Ministries are "now looking to cable to establish a broad-band, two-way communications network similar to that being constructed in the United States (Friedland, 1994, March 10, p. 46).

The author of this thesis thinks that the age of multiple channels can bring successful democratic development to Japanese society when the following three

future prospects are realized: 1) Establishment of "fifth estate" or the first class electronic press, 2) diversification of value system, and 3) exercise of lively debate.

What is the future prospect of "fifth estate" or the first class electronic press? When television programs are transmitted through virtually unlimited physical materials such as cable, scarcity rationale of radio frequency which is the basis of content regulations lose its meaning. That is, for news programs that are not mediated by radio frequency, the government cannot force them to keep "*huhē hutô*" [impartiality, or fairness] because the assumption of the fairness clause in the Broadcast Law is the scarcity rationale. In the age of multiple channels, the electronic press should enjoy the freedom of press similar to that of the traditional print press. But further study is needed concerning fairness in news programs based solely on a voluntary basis.

What is the future prospect of diversification of values? The question might sound strange to people in American society where diversification is one of its strong characters. Instead, American people might be aware of fragmentation of society. However, that is not the case in Japanese society. Japanese society has its tendency of unification. For a society like Japan, mere information from foreign countries is not enough to create the atmosphere of tolerance toward different values. Interpreters of foreign values are necessary. Without

efforts to create diversification in values, Japan might face difficulty in understanding other nation's policy.

Last of all, what is the future prospect of debate in Japanese society? One of the main characteristics of the age of computer networks, anonymity, might ease complexity of the Japanese speech situation and thus makes it easy to realize the Western style debate in Japan. In other words, while Americans can enjoy debate as a kind of game, it has been difficult for Japanese to enjoy debate because each idea is so heavily attributed to the person who provided the idea and thus the same person would be afraid to lose one's (and other's) face if his/her idea is defeated by the better idea. Anonymity of computer networks can release Japanese from such mentality. Computer mediated electronic bulletin board conceals attributes of providers. A provider of an idea to the electronic bulletin board is not required to tell who he/she actually is. If the anonymity of the electronic bulletin board is accepted and applied toward conferences and meetings in Japan, lively debate might be realized. However, further study is needed concerning the reliability of conferences and meetings whose debate is based on anonymity.

## ENDNOTES

1. This interview took place in the early 1980's when not so many radio frequencies were allocated for the FM broadcasting in Tokyo. Mr. White is currently a Ph.D. student at the University of Hawai'i at Manoa.
2. Japan agreed to import rice at the General Agreement on Tariffs and Trade (GATT) talks in December 1993.
3. Nikkei shinbun's status in Japan is similar to that of the Wall Street Journal in the United States. "Nikkei" stands for "Nihon Keizai" [Japan Economy].
4. The exact diffusion rate of cable TV in Japan is unknown. The Wall Street Journal reported that "fewer than 5% of all Japanese households are hooked up" to cable TV ("Soul-searching." 1993, September 29) while the Japanese magazine Nikkei Trendy says "around 3%, according to the Ministry of Posts and Telecommunications" ("Multimedia upside-down." 1993, January).
5. Shimizu Hideo, a professor at Aoyama Gakuin University, points out in an interview with Asahi Shimbun (1994, August 30, p. 22.) that there is no scientific evidence based on a comparative analysis whether TV Asahi was more biased than other broadcasters to lead its audience to an anti-LDP mood. Shimizu was the chair of the association of private owned broadcasting stations when the Tsubaki incident took place. Shimizu shows his concerns about the governmental investigation on an individual's speech in the closed meeting. See Hôshô Hihyô (1994, January, pp. 8-19).
6. Hashimoto and the author met at the public broadcasters' symposium that was held at the East West Center in Honolulu from December 6 to December 10, 1994.
7. At the symposium held by Hôshô Hihyô (1994, January), one of the participants cited the Pentagon papers incident in the United States and argued: "Japanese press tries to obstruct each other while American press struggles jointly against unjust pressure" (p. 12).
8. In Chapter I, Article 1, (2).
9. NET later changed its company name to Zenkoku Asahi Hôshô (TV Asahi). The name change was done in accordance with the completion of the nation wide network whose news productions are in cooperation with the Asahi Shimbun (Japan's second largest circulated newspaper). TV Asahi is a flagship broadcast station in Tokyo.
10. The document contains an official English translation.

11. This particular portion of the book originally translates Denpa Kanri Iinkai as "Radio Regulatory Agency." The Radio Regulatory Agency is the common translation of Denpa chô that existed from 1949 to 1950. See Figure 5 for the position of the Radio Regulatory Agency.

12. Meiklejohn advocated the distinction between "political speech" and "private speech," and Chafee counter argued that citizens gain understanding even from private speech: "He can get help from poems and plays and novels... (Carter et al., 1991, p. 42).

13. Merrill (1989) also criticizes the social responsibility theory because he thinks elitism of journalists is underlining the theory. Merrill believes that press responsibility should be solely based on individual's morality but not on journalists' sense of special obligation.

14. The licensing system at that time was designed mainly for radio operators on ships at sea.

15. FCC opposed the Congress concerning the policy of the Equal Employment Opportunity (Head & Sterling, 1991, p. 338).

16. The Japanese anthropologist Umesao Tadao (1990) advocates something called "an ecological approach to the history of civilization" and provides a different point of view concerning bourgeois in Japan: "The historical significance of the Meiji Restoration is being debated even among Japanese scholars, and some persistently refuse to recognize it as a revolution of the bourgeoisie. However, when considering Western history, it is impossible not to regard this occurrence as a bourgeois revolution, and as a model example of a successful one" (p. 23, emphasis given).

17. Ruth Benedict (1946) predicted that Japanese would not be comfortable with the Western political mechanism of democracy: "Japan will, of course, experiment with Western political mechanics of democracy, but Western arrangements will not be trusted tools with which to fashion a better world, as they are in the United States" (p. 302-303).

18. The name of the imperial era system was resumed from the next year of the Restoration in 1867. Meiji (1868-), followed by Taishô (1912-), followed by Shôwa (1926-), followed by Heisei (1989). The name of era was changed when the next Emperor ascended the throne.

19. Some might oppose this author's view because Japanese accept the free market system. However, it is debatable whether Japanese truly understand and respect the positive

aspect of the free market system: Competition and its benefits for consumers. In the author's observation, what hinders the break up of the giant Nippon Telephone and Telegraph (Japan's AT&T) is Japan's traditional belief in which there is a close tie with the negative aspect of the free market system: *Yoraba taiju-no kage* (if you must rely on someone, rely on someone big). In a way, this idea welcomes monopolistic situations in market.

20. Some might argue that the true intention of the proverb *ishin denshin* is not in tacit understanding but in human's heartfelt communication that would eventually obtain others' understandings.

21. The tradition might have survived. Nester (1989, Spring) cites: A Japanese reporter once anonymously said that "to maintain its power, the government restricts the 'right to know.' The government only releases information that helps it maintain power, but suppresses information which would hurt it politically" (p. 33). Nester also introduces the following survey result: "80.1 percent of all reporters do not think that the 'people's right to know' is fully guaranteed in Japan" (p. 33).

22. For example, scholars and economists criticized its closure policy of the Ministry of Finance with this cliché when the stock scandal was exposed in the fall of 1990. Many individual investors complained that the Ministry of Finance intentionally ignored information concerning the illegal dealings between stock brokers and large investors such as corporations.

23. In fact, Confucius described some kind of the marketplace of ideas in the Analects. Lecture 28 in Book VII can be translated as: "...I use my ears widely and follow what is good in what I have heard; I use my eyes widely and retain what I have seen in my mind..." Meanwhile, Merrill (1989) points out that "(Confucius) recognized a form of freedom of speech; he opposed only the speaking of bad words or empty words, that is, words without moral significance" (p. 236).

24. Fukuzawa defined Confucian learning as training, and he considered that Japanese should become educated instead. According to Kiyooka and Nakayama (1985): (Fukuzawa) distinguished between two categories of learning: "(r)real" learning and "false" learning. Real learning was the kind that helped people to attain their freedom and independence. The Western type of learning belonged to this category. False learning was the kind that taught knowledge and skills but molded people into disciplined subjects or vassals, useful to the state or lord. Confucian learning belonged to this latter category (p. ix).

On the other hand, Stevenson and Stigler (1992) insist that it is America's stereotype to see "Asian teaching methods stress rote learning, relying on endless, mindless drill of basic skills" (p. 21). Stevenson and Stigler argue that American educators should teach children more basic skills than creativity. The author agrees to their point that "(c)reativity in a domain depends on mastery of basic skills; it is not inhibited by their mastery" (p. 92). However, it is still debatable whether American children are truly lacking in "basic skills."

25. A Meiji educator Nee-sima Joe also might have a feeling that the word "*jiyû*" could not describe fully what he really wanted to teach. Nee-sima stated in his last words: "*Shinsei-no jiyû-wo aisû.*" [I am for the real freedom.]

26. Nee-sima graduated from Amherst College in 1870. In 1875, he established Doshisha Ei-gakkô [English School] in Kyoto. Despite the correct pronunciation of his name: "Nîjima," "Nee-sima" is spelled according to the official record of graduates from Amherst College.

27. In the same commentaries, Itô said: "In our country religion is weak. There is not one that could serve as a principle of state. Buddhism today has fallen into decline. Shinto is based on the precepts of our forefathers and transmits them, yet as a religion it has little power to move men's hearts. In our country, as a common principle, there is only the Imperial House" (Minear, 1970, p. 3). So, in the Meiji Restoration, the imperial mystique was combined with Confucian doctrine in order to unite the nation. Itô continued: "The Emperor is heaven-descended, divine and sacred...The Emperor is the state" (Minear, 1970, pp. 3-57). Consequently, the degree of freedom in the people's life should be a subject to the Emperor's discretion because "the emperor was the sovereign whose command is law" (Minear, 1970, p. 145).

28. "Taishô" is the era name that covers 1912-1926. During this period, philosophical arguments concerning the interpretation of democracy flourished in Japan. Yoshino Sakuzô, an intellectual of Taishô, made a distinction between *minpon shugi* [democracy under monarchy] and *minshu shugi* [democracy under popular sovereignty], and insisted that the Japanese version of democracy should be the former. See Oota (1990) more about *minpon shugi*.

29. Still, women had no right to vote until the end of W.W.II.

30. Although Kasza (1988) and Emery (1969) translate this law: The Wireless Telegraphic Communications Law (p. 77), the author follows what is said in The history of

broadcasting in Japan (1967) written by History Compilation Room, Radio & TV Culture Research Institute, Nippon Hoso Kyokai.

31. For an English translation, the author referred to The history of broadcasting in Japan (1967) written by History Compilation Room, Radio & TV Culture Research Institute, Nippon Hoso Kyokai.

32. Hôsô 50-nen-shi [a 50 year history of broadcasting], edited by Nihon Hôsô Kyôkai (NHK) in 1977, explains that the Japanese word "hôsô" was first used as a term for wireless telegraph but not for broadcasting. In 1917, a Japanese radio engineer described the telegraph whose sender was unknown: "Okurippanashi-no tsûshin" [telegraph that was sent but did not wait for any reply]. The Chinese characters that were assigned for "okurippanashi" could be pronounced *hôsô* in Japanese (p. 7). This is the origin of the word *hôsô*.

33. The Allies of the Pacific War was formed by the following nations: Great Britain, Canada, Australia, India, the Netherlands, New Zealand, the Commonwealth of the Philippines, China, France, USSR and the USA. See J. W. Gaddis (1950), Public information in Japan under American occupation (pp. 25-29) for the process that the United States got initiative in the Allied Occupy Force.

34. On the other hand, many Japanese "argue the need to have a clear provision that the Emperor is the head of the State" (Tanaka et al., 1976, p. 665).

35. The question: "Who added this line?" can be a good research theme for the future study.

36. That was the case for thirty-eight years until the Liberal Democratic Party lost the general election in July 1993. The LDP succeeded in holding a majority of seats in the Diet and appointing its party leader as the Prime Minister.

37. Note that *gian* and *hôn* are distinguished in Japan while their English translations are both "bill." Higuchi, Nakamura, Satô, and Urabe (1988) introduce some scholars' view that it is not unconstitutional for the Cabinet to create *gian* (proposal) because it is different from *hôn* (bill). However, in an operational sense, both are bills because they are both purposed to be laws.

38. Valeo and Morrison et al. (1983) reached similar conclusion in 1983 from the data that was gathered from the National Diet from 1975 to 1980.



39. Independent regulatory commissions such as FCC are allowed to enact federal regulations because they are considered the "creatures of the Congress," taking on the quasi-legislative roles (Head & Sterling, 1991, p. 331).

40. Meanwhile, Article 69 of the Constitution of Japan is purposed to keep check and balance between the Cabinet and the Diet: If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved with ten days (Tanaka et al., 1976, p. 11) .

41. However, the Japanese government, ruled by the LDP from 1955, did not have to worry about the superiority of the House of Representative because the LDP enjoyed *antei-tasû* [stabled majority] seats in both Houses until 1989. That is, in most of the years, the LDP dominated half or more seats in both Houses.

42. More famous in the name of "MITI."

43. This is different from the one that was newly recreated after the stock scandal of 1990.

44. In theory, the Radio Regulatory Commission was "reorganized" into the Radio Regulatory Council. However, the author uses the term "abolished" for the Commission because the main and significant authority of issuing of license was taken away from them. That is, from the view point of jurisdiction, the Commission was not just reorganized but it was terminated.

45. Aoki (1976), the former member of the House of Councillors, claims *Dokusen kinshi hô* [Antitrust Law] that orders the establishment of *Kôsei Torihiki Iinkai* [Fair Trade Commission] is unconstitutional because the law admits the existence of the independent executive office parallel to the Cabinet while Article 65 of the Constitution declares: "Executive power shall be vested in the Cabinet." The argument itself is worth further researching. However, Aoki's discussion is based on his belief that it was America's spiteful plot to create the Antitrust Law in Japan. According to Aoki (1976), "it was natural for Americans to set some kind of deterrence against Japan's economic recovery because of *zouo* (hatred) feeling toward Japanese" (p. 47). Moreover, Aoki and probably many Japanese in the 1970s believed that: Japan should be allowed to keep economic progress without any disturbance because the land is lacking natural resources. Ironically, afterward, other nations started to see Japan as "an unfair trade partner."

46. Shiono (1985, June) says some kind of a third party such as the Radio Regulatory Commission should be involved in broadcast licensing in order to reduce the possibility of arbitrary decisions by the politicians.
47. A good topic for future study is to research why the independent regulatory commission for economy survived as opposed to the commission for communication.
48. Shindô (1992) argues that the commission failed to take an active role in the stock scandal of 1990 because the commission had to face the Ministry of Finance.
49. Until now, constitutionality of neither the legislative role of the Cabinet nor administrations by the independent regulatory commissions has been determined by the Supreme Court.
50. On March 16, 1993, another informative supreme court case was concluded: It is not unconstitutional for the Minister of Education to censor school textbooks prior to publications. A former professor at Tokyo Kyôiku Daigaku [educational college] Ienaga Saburô, whose draft of the high school textbook for Japanese history was forced to be revised, had declared the unconstitutionality of textbook censorship since 1974.
51. Dai 73-gô terebijon hôsôkyoku-no kaisetsu-ni kansuru yobimenkyo shobun, dô-menkyo shinsei kikyaku shobun narabini kore-ga iqimôshitate kikyaku kettei torikeshi seikyû jiken [a case: a disposition for the preliminary license concerning the establishment of the television broadcasting station #73; a disposition that dismissed the application for the license; a claim for a repeal against the disposition that dismissed the lodging of complaint]. 22 (13) Minshû [civil law cases] 3254.
52. The mission of CCS was to "advise SCAP on use and rehabilitation of the postal and telecommunications organization in Japan including: A-postal and telecommunications systems, B-supporting communications manufacturing industries, C-broadcasting agencies, laboratories (CCS, year unknown).
53. The CIE was established "to help reshape the minds of the Japanese through organized information media, institutional education, religions and other sociological agencies" (Gaddis, 1950, p. 33).
54. The CIE insisted that the newly proposed Broadcast Law should include a clause regulating the content of news programs; however, the clause met objection from the Legal Section (LS) of the GHQ because it obviously contradicted

Article 21 of the new Constitution (Matsuda, 1980-1981). But it should be noted that the true intention of the CIE was to screen out totalitarian ideas from broadcasting. According to Matsuda (1980-1981), it was not the CIE but the G-2 that supported conservative policy by the Japanese government. The G-2 later obtained initiative in the GHQ and supported Prime Minister Yoshida's anti-communism policy while liberals left the GHQ (p. 114).

55. It was unknown why Feissner did not mention the FCC as a model in the statement. Taking account of the fact that the CCS later requested Japanese officials to visit the FCC and study broadcasting administrations in the United States, the question why Feissner did not mentioned the name of the FCC in this statement can be a good research topic for future study.

56. The original suggestion for modifications says: "The Cabinet may on demand from the Prime Minister review the decision of the Radio Regulatory Commission, and the Cabinet may request the Radio Regulatory Commission to review its decision. After the Radio Regulatory Commission has reviewed its decision, no further consideration or review shall be made by the Prime Minister or the Cabinet" (CCS-GS, 1949, November 10).

57. There was one more attempt by Yoshida on March 15, 1950 to ignore the modifications. But Yoshida gave up at last when he saw the GS got "*gekido*" [enraged] (Uchikawa, 1989, p. 364).

58. Some Japanese pronounce this: "Chôbun" (Tokuma, 1992, p. 40).

59. These sentences are not from an official English translation of the Radio Law of 1950.

60. The hearing was "heated" at the discussion over regulations concerning "blanket area" (Nihon Hôsô Kyôkai, 1977, pp. 306-307). Participants of the hearing believed that the increased number of stations would invite wider area of bad reception. New applicants for broadcast licenses complained that the RRC was in favor of existing stations. Two witnesses from the general radio audience were invited to the hearing and were asked several questions whether they would accept bad reception in trade off for the increased number of radio stations; however, mere hypothetical questions brought witnesses into a corner and made them say: "*Henji-ni komarimasu*" [I do not know what answer to make] (Denpa Kanri Iinkai, 1950, pp. 238-254).

61. Those fourteen are: Tokyo, Osaka, Nagoya, Fukuoka, Sendai, Sapporo, Kobe, Hiroshima, Kyoto, Kanazawa, Toyama, Tokushima, Kurume, and Fukui.

62. Murai Shûichi, then staff member of the RRC, says in the interview with Professor Uchikawa: The hearing was a "dorojiai" [mudslinging at each other] between representatives from Mainichi and Asahi. Some got up set during the hearing. One of the representatives from Asahi stated that he disliked the system of hearing (Hôsô Bunka Kikin, 1993, p. 75). However, this statement by the representative of Asahi might suggest that Japanese faces difficulty with the marketplace of ideas where low level remarks could also have room to exist.

63. A euphonic change in the pronunciation of Japanese can make "Amishima" into "Amijima." Matsuda (1980-1981) cites an news article from Shûkan [weekly] Asahi (1951, June 3 issue): A CIE staff suggested at the send-off party that the members of the RRC should study more about independence and management of commissions in the United States.

64. Shôriki Matsutarô, who was an elite staff writer for Yomiuri Shimbun, hurried his plan to start NTV after he became an acquaintance with the U.S. Senator Mundt. It was said that Shôriki wanted to join in Senator's plan to build TV version of the Voice of America in order to confront communism (Nihon Hôsô Kyôkai, 1977, pp. 372-373).

65. Amishima Tsuyoshi, the next Chair of the RRC, says in the interview with Professor Uchikawa: Shôriki was persistent... One day he came to the RRC office and told me that he met the former Prime Minister in the early morning and was encouraged to start television. I had to make clear to him that the decision would not be made by Chair alone but the members of the RRC would (Hôsô Bunka Kikin, 1993, p. 75).

66. The RRC interpreted Article 83 of the Radio Law that there could be two types of public hearings: One was ordered by law, and the other was held by the RRC's decision (Agawa, 1976, p. 143).

67. In the later years of the RRC, two more commissioners were not filled.

68. It should be noted that bureaucrats of the MPT tried to reduce the growing power of the ministry by themselves. According to Weinberg (1991): In 1965, three years after Tanaka (later became the Prime Minister) left the Ministry, MPT submitted to the Diet a legislative proposal designed in part to limit political influence in licensing...The bill proposed to limit the Minister's discretion regarding frequency allocation and license awards...(p. 689).

69. Actually, there are many criticism toward the state of public hearing in Japan. Tokuma (1992) introduces one of the citizens' voice: "*chômonkai-ha keishikiteki-na mono-de honto-ha kikumonkai-da*" [in reality, hearing is just one of the (administrative) formalities and thus the voices are not heard] (pp. 40-41).

70. Advise No. 88 from the Council (Yûsei shô, Daijin kanbôkikaku ka, Shingikai shitsu, 1992, p. 169). The licensee was Nihon Kagaku Gijutsu Shinkô Zaidan whose preparation was started in July 1960 with support from *zaikai* [big business and corporate world of Japan]. See Nester (1989, Spring, p. 30) for how "Ruling triad" of *seikai*, [world of politicians, namely the LDP] *kankai*, [world of high bureaucrats] and *zaikai* depended each other during 1955-1993 in Japan.

71. *Dai 73-gô terebijon hôsôkyoku-no kaisetsu-ni kansuru yobimenkyo shobun, dô-menkyo shinsei kikyaku shobun narabini kore-ga igimôshitae kikyaku kettei torikeshi seikyû jiken* [a case: a disposition for the preliminary license concerning the establishment of the television broadcasting station #73; a disposition that dismissed the application for the license; a claim for a repeal against the disposition that dismissed the lodging of complaint] 22 (13) Minshû [civil law cases] 3254. The plaintiff later dropped one of the complaints that sought the issued license to be invalidated (Shiono, 1985, June, p. 156).

72. The session was extended for 97 days. It is the third longest extension in the history of the National Diet.

73. The jurisdiction of the Committee on the Cabinet covers matters concerning imperial household, administrative organization, and public servant.

74. However, since the three radio related laws are interrelated, the Committee on Telecommunications also discussed the abolishment of the RRC.

75. The discussions over Cabinet Act No. 210 & No. 211 also took place in the House of Councillors on May 19, 29, and June 5 at the specially arranged unified Committee on Telecommunications, Posts, and the Cabinet. This kind of unified committee is specially arranged if the issue requires discussions from the broader perspectives.

76. Two proposals for revision of the bill, Hatano's proposal and Kurusu's proposal, were submitted and voted at the committee. The Councillor Hatano Kanae, who belonged to the Japan Socialist Party, proposed a revised bill that kept the RRC. On the other hand, Kurusu Takeo, who

belonged to Kokumin Minshutô [National Democratic Party], proposed a revised bill that gave up the RRC but strengthened the authority of the would be created Radio Regulatory Council. Since the result of the vote was tied, the Committee Chair Kawai Yahachi adopted Kurusu's proposal by the Chair's competence (Sangi in [House of Councillors], 1952, July 22, pp. 1-8). When vote is tie, Chair votes as the final means for the decision (Gikaiseido kenkyûkai, 1991, p. 104). However, Kurusu's proposal seemed to be too moderate before the fact that the MPT got the authority for the final decision concerning broadcast licensing.

77. *Seihuiin* is appointed by the Cabinet to assist the government side, namely the Ministers, in answering questions from the people's representatives. Amishima's conflict between being a *seihuiin* and being the chair of the RRC is well reflected in the dialogue at the Committee.

	<i>Omote</i> (surface or formal arena)	<i>Ura</i> (backstage or informal arena)
<i>Uchi</i> (conflict among in- group members)	No conflict should exist.	Conflict does exist but is usually solved implicitly.
<i>Soto</i> (conflict with outsiders)	No concession should be made.	Negotiation is possible if neither party loses face and both can maintain integrity.

Figure 1. *Omote-ura* and *uchi-soto* relations (Ishida, 1984,  
p. 17).

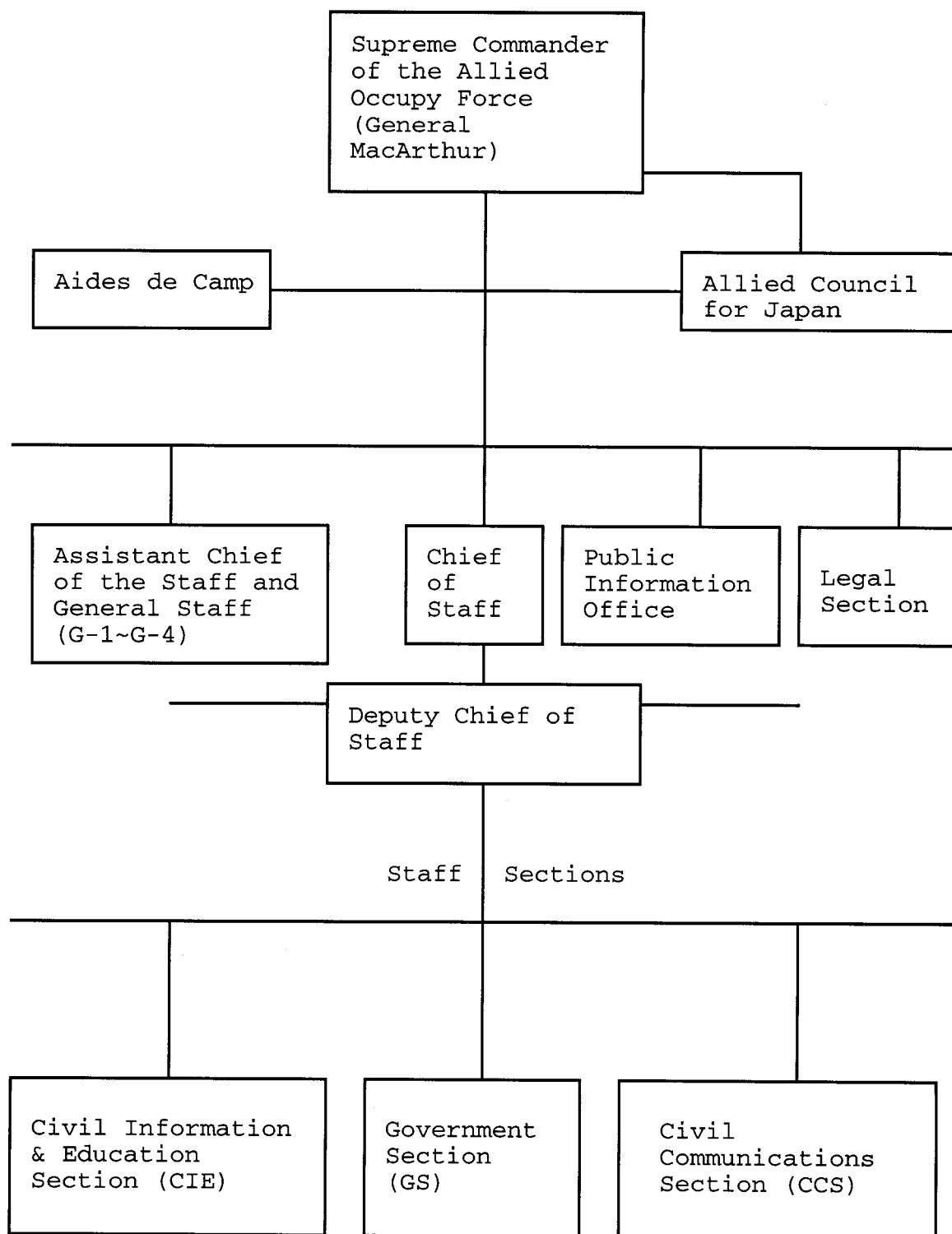


Figure 2. Structure of the GHQ/SCAP as of 1951 (Kumada, p.8).



Ministry	Commission	Agency
Prime Minister's Office	Fair Trade Commission	Imperial Household Agency
	National Public Safety Commission (National Police Agency)	Management and Coordination Agency
		Defense Agency
	Environmental Disputes Coordination Commission	Economic Planning Agency
		Science and Technology Agency
		Environment Agency
		Okinawa Development Agency
	National Land Agency	
	Hokkaidô Development Agency	
	Defense Facilities Administration Agency	
Ministry of Justice	Administration Commission of the National Bar Examination	Public Security Investigation Agency
	Public Security Commission	
Ministry of Foreign Affairs		
Ministry of Finance		National Tax Administration Agency
Ministry of Education		Agency for Cultural Affairs
Ministry of Health and Welfare		Social Insurance Agency

Figure 3. Ministries, Commissions, and Agencies (continued on the next page).

Ministry	Commission	Agency
Ministry of Agriculture, Forestry and Fisheries		Food Agency
		Forestry Agency
		Fisheries Agency
Ministry of International Trade and Industry		Agency of National Resources and Energy
		Patent Office
		Small and Medium Enterprise Agency
Ministry of Transport	Central Labor Relations Commission for Seafarers	Maritime Safety Agency
		Maritime Accidents Inquiry Agency
		Meteorological Agency
Ministry of Posts and Telecommunica- tions		
Ministry of Labor	Central Labor Relations Commission	
		Public Corporation and National Enterprise Labor Relations Commission
Ministry of Construction		
Ministry of Home Affairs		Fire Defense Agency

Figure 3 (cont.). Ministries, Commissions, and Agencies

(The Japan Times, 1989, PP. 4-5, and Tsuji et al., 1984, pp. 30-31).

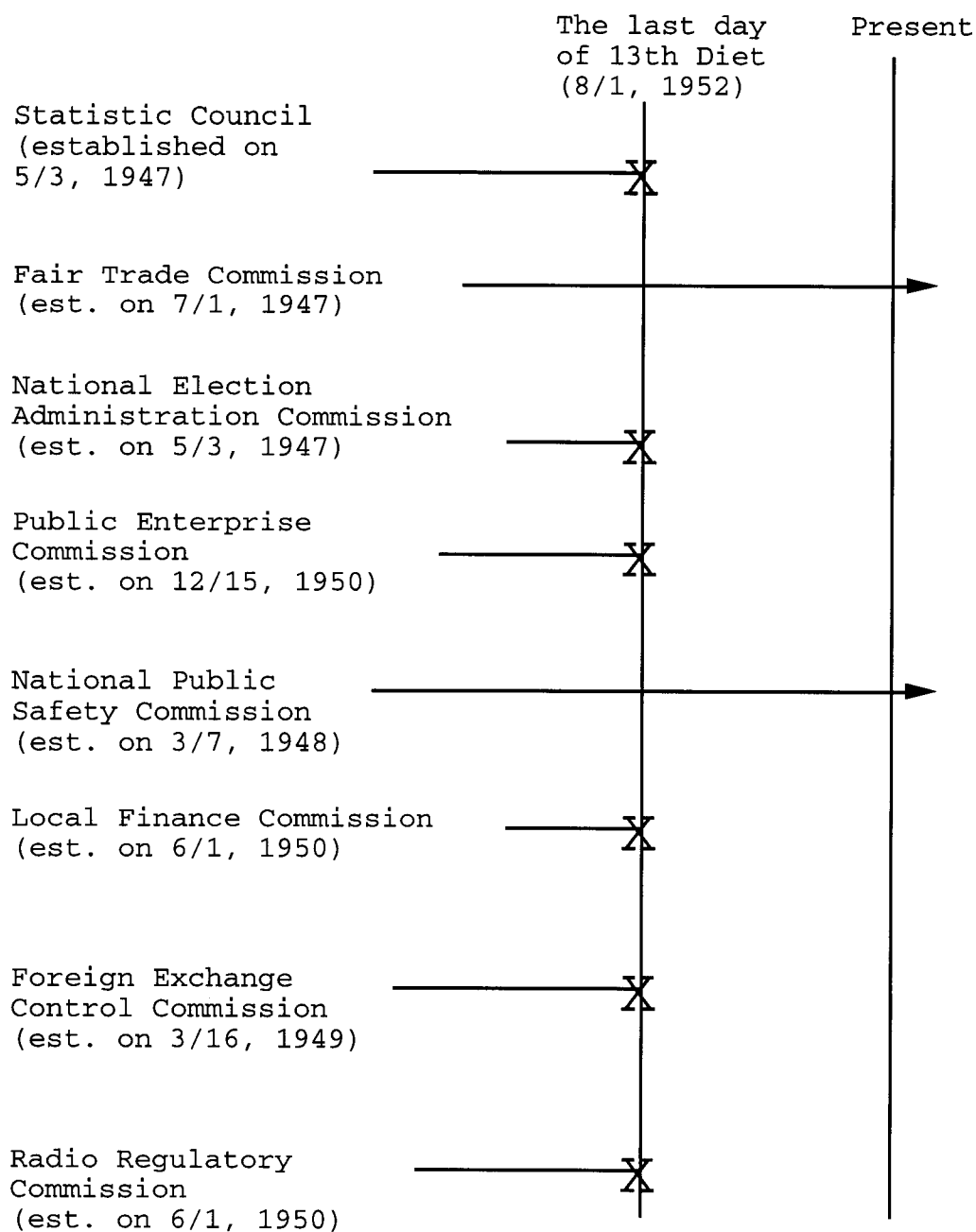


Figure 4. Rise & fall of major commissions (Naikaku Seido

Hyakunenshi Hensan Iinkai, 1985, appendix p. 31).

\*X indicates the abolishment.

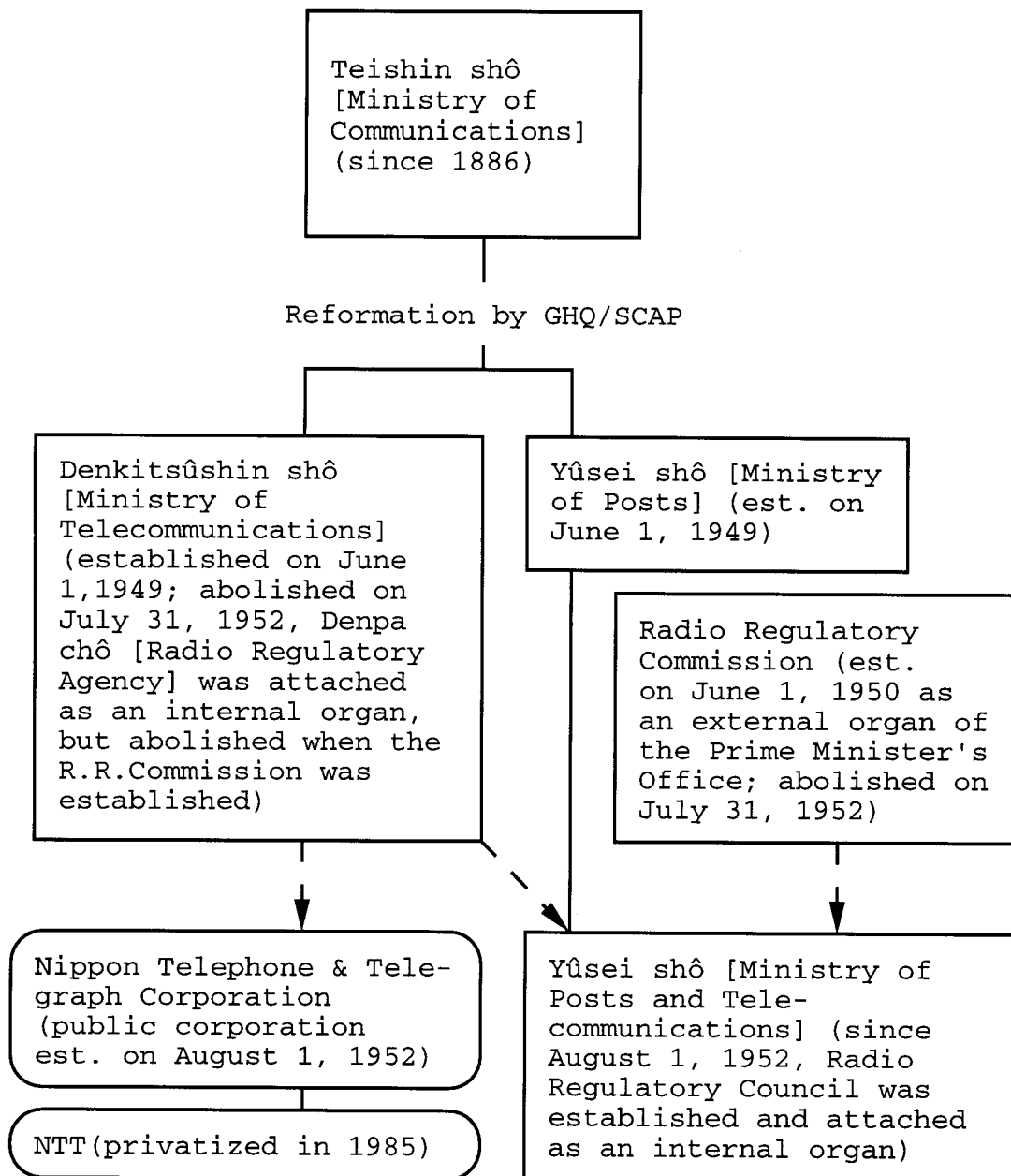


Figure 5. Regulators of telecommunications in Japan (Yūsei shō, 1972, p. 190-191).

No.	Issue	Period	No. of stake-holders	No. of witness
1	basic standards for establishment of radio stations	1950 8/18	13	2
2	basic standards for establishment of broadcast stations	1950 10/19,20, 23,24,25	40	13+11*
3	amendment of regulations for enforcement of radio law	1950 11/13,14	23	1
4	amendment of regulations for operation of radio stations	1950 11/15,16	17	2
5	amendment of regulations for licensing and state examination for radio operators	1950 11/17,18	15	0
6	amendment of regulations for procedure of licensing radio stations	1950 11/20	9	0
7	amendment of regulations for radio facilities	1950 11/21,22	24	0
8	amendment of regulations for type testing of radio equipment	1950 11/24,25	11	0
9	competitive hearing for the license of a broadcast station in Osaka area	1951 3/16,17,19, 20,22,23	24	11
10	partial amendment of regulations for enforcement of radio law	1951 10/16,17	31	1

\**Sankōnin* 13, *shōnin* 11: *Shōnin* is required by law to be a witness while *sankōnin* is on voluntary base.

Figure 6. Hearings by the Radio Regulatory Commission

(continued on the next page).

11	partial amendment of regulations for licensing and state examination for radio operators	1951 10/17	24	1
12	partial amendment of regulations for operation of radio stations	1951 10/16,17	24	1
13	technical standard of black & white TV broadcasting	1952 1/17,18,19	11	6
14	lodged complaint against the standard of black & white TV broadcasting	1952 4/15,16,18, 24,26,28, 5/1,2	14	29
15	partial amendment of regulations for establishment of broadcasting stations	1952 5/8,13	6	2
16	partial amendment of regulations for enforcement of radio law	1952 5/15	6	0
17	partial amendment of regulations for operation of radio stations	1952 5/15	6	0
18	partial amendment of regulations for radio facilities	1952 5/15	6	0
19	disposition that revoked the license of a radio operator	1952 6/14	1	4

Figure 6 (cont.). Hearings by the Radio Regulatory Commission (Yûsei shô, 1961, pp. 41-42).

## APPENDIX A

The research summary in the original language (Nihon Hôshô Kyôkai (NHK), 1977, Documentary Volume, p. 43).

## 1. 放送用私設無線電話に関する議案

(放送制度に限ることを述べ)

## 第2 基本的事項

## 1 放送事業ノ民営ヲ認ムル理由

放送事業ハ公共的性質ヲ有スルモノナルモ国民ノ生活上絶対的緊要ノ事業ニ非ス此ノ点ニ於テ一般電信電話ト趣ヲ異ニスルモノアリ且今日ノ如ク多種多様ノ官營事業ヲ存シ之カ整備発達ニ殆ト余力ヲ残ササル時期ニ於テ斯ノ如キ成否隆替ノ逆蹕ニ困難ナル新規事業ヲ政府ニ於テ經營スルハ策ノ宜ヲ得タルモノト稱シ難シ、加之運用ノ實際ヨリ見ルモ放送材料ノ入手、按排、気象ノ観測ノ如キ放送者ノ選定、雇用、報酬ノ決定等他ノ定則ニ從フ不変的通信事業トハ大ニ經營方法ヲ異ニスルヲ要シ官營ヲ不適當トスル点多シ、之ヲ各国ノ例ニ見ルモ独乙ノ半官半民のナルヲ除ケハ全部民営ニ委セリ

## 2 民営許可ノ法的根拠

放送無線電話ノ私設ハ無線電信法第2条第6号ニ依リ許可スルモノトス、即チ施設ノ特殊必要ヲ認定スルニ基クモノニシテ固ヨリ無線電話政府管掌ノ範疇ヲ逸脱スルモノニ非ス、而シテ更ニ公衆通信專掌ノ大原則トノ關係ヲ考察スルニ、放送ハ公衆ノ間ニ一般的ニ發受スル報道ノ類ニ非ス從テ公衆通信ニ屬スルコトナク寧ロ専用の通信ト認ムヘキモノトナルヲ以テ之カ民営ヲ許可スルモ專掌權ニ抵触スル所ナシ

## APPENDIX B (continued on the next page)

Photocopy of the conference record outlining SCAP's general suggestions with respect to a Japanese broadcasting law (CCS-GS, 1949, November 10, p. 3).

REPRODUCED AT THE NATIONAL ARCHIVES

**BASIC:** Memo for Record, dtd 17 Oct. 47, Subj. Conference Outlining SCAP's General Suggestions with Respect to a Japanese Broadcasting Law.

that have been made by the Ministry of Communications Legal Committee, by its Radio Wave Bureau and the Workers' Union, by the Broadcasting Corporation of Japan and the Advisory Committee and it is believed that after the conferees heard SCAP's suggestions they found much common ground among all the suggestions that had been made by the various organizations. On fundamental matters they are in agreement.

5. Mr. Feissner then made it clear that he would speak in general terms and discuss general but basic principles and that details would have to be discussed later, especially when the Ministry undertook the draft of the proposed law. He then summarized SCAP's suggestions and views toward the new broadcasting law as follows:

The first fundamental principle that SCAP suggests is that the law should provide a sound basis for the development of all techniques of broadcasting, meaning standard broadcasting, international broadcasting, frequency modulation, television and broadcasting facsimile.



## APPENDIX B (cont.)

Photocopy of the conference record outlining SCAP's general suggestions with respect to a Japanese broadcasting law (CCS-GS, 1949, November 10, p. 3).

Secondly, this basic legislation should reflect the following very general principles:

- (a) Freedom of broadcasting.
- (b) Impartiality.
- (c) Fulfillment of public service responsibility.
- (d) Observance of technical standards.

Next, the basic legislation must establish an organization to regulate all forms of broadcasting, that is, all techniques of broadcasting and to operate standard and international broadcasting.

The organization must be what is termed an "autonomous organization." It must be completely separate and apart from other executive branches of the Japanese Government. Whether it is created as an organ reporting to the Diet or not is not of importance at this particular point, but it must be an autonomous organization. It must be completely separated from the Ministry of Communications, Ministry of Education, Finance and any other ministry and will not report to any ministry. It is the type of organization that is not to be dominated by any political party, by any governmental "clique" or any governmental group, nor is it to be dominated by any private corporation or group or association of individuals.

The organization might be compared to the TVA or the New York Port Authority in America. It is to be an organization to serve the public, to be controlled, idealistically speaking, by the people of Japan who make

## APPENDIX C (continued on the next page)

Photocopy of the letter, Supreme Commander to Prime Minister Shigeru Yoshida (D. MacArthur 1949, December 5, p.

2).

1. Its membership should consist of citizens equipped by broad knowledge, background, experience and sound judgment to make wise decisions on the issues and problems involved, assisted by a professional staff of qualified specialists in the area of regulation.
2. Decisions of the commission should be reached by concurrence of a majority of members of equal standing after full discussion and deliberation; and
3. The commission should be insulated from direct control or influence by any partisan group or other agency.

The independence of such a regulatory commission is not, of course, absolute. The power of initial appointment of members and their removal for cause, the safeguards of required public hearings, by the commission and review of its acts by the courts, control over the commission's annual budget and, finally, the power of legislative investigation, all constitute powerful restraints and checks available to the executive, judicial and legislative branches of the Government to guarantee that the commission operate within the framework of national policy as established by law.

## APPENDIX C (cont.)

Photocopy of the letter, Supreme Commander to Prime Minister Shigeru Yoshida (D. MacArthur 1949, December 5, p. 2).

The plan of your Government incorporates fully the first two of these basic characteristics and also contains the necessary checks on the commission's powers. The requirement that the commissioners be appointed "from among persons of wide experience and knowledge and who are capable of making fair judgment concerning the public welfare," the provision for public hearings, majority decision and judicial review have been carefully provided. Internal control by any single partisan group is avoided. In one respect, however, the proposal is deficient in that the commission is not adequately safeguarded against direct control or influence by an outside partisan group or agency. Indeed, the requirements that a state minister be chairman of the commission and that the Cabinet have authority to reverse decisions of the commission completely negate the principle of independence and render the commission a mere advisory committee of the Cabinet. If these two provisions are removed the Government's plan will meet the essential tests of statutory independence and will further insure its free and impartial operation in the best interest of the public.

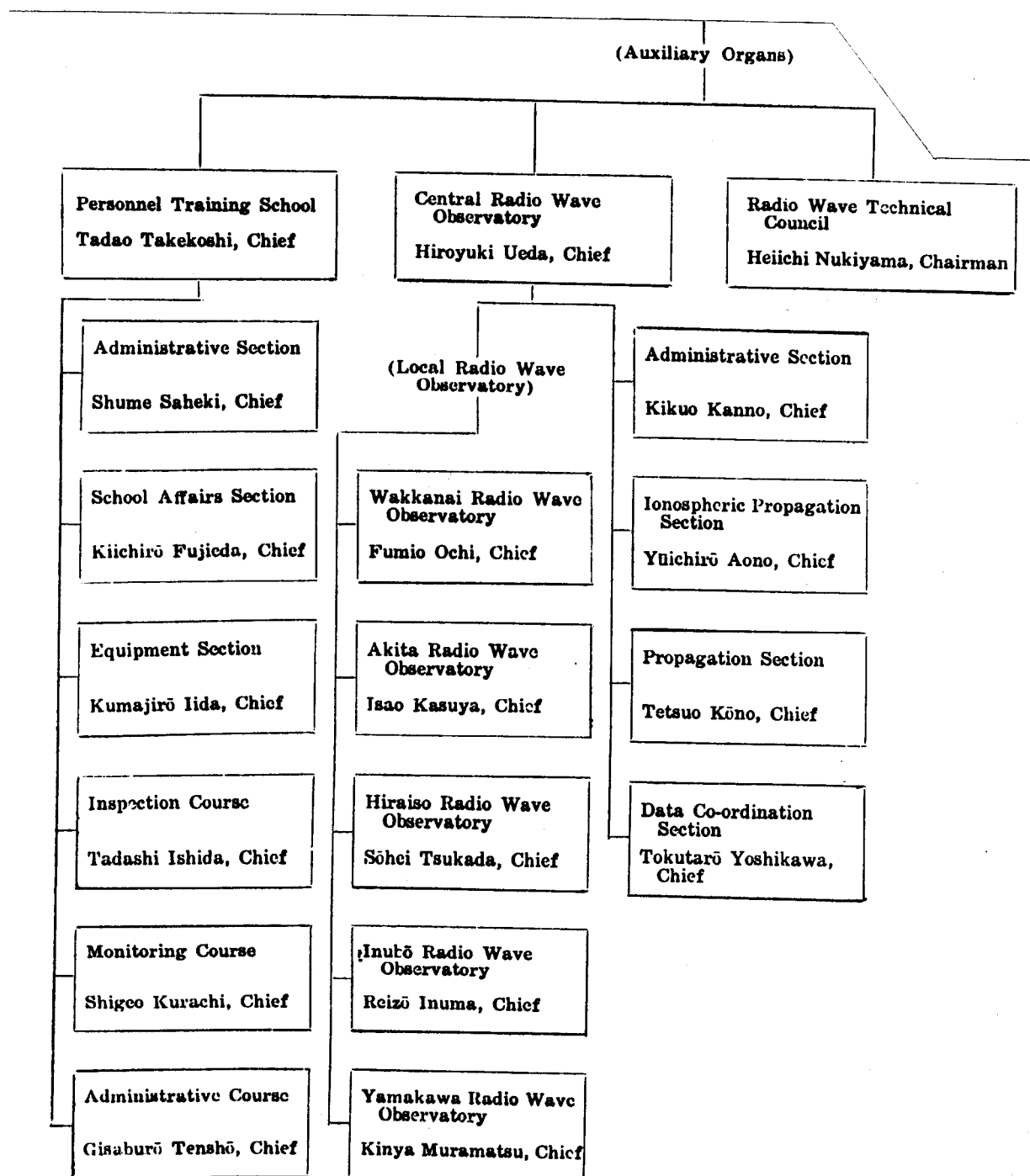
Sincerely yours,

The Prime Minister  
Tokyo, Japan

THOMAS MACARTHRU

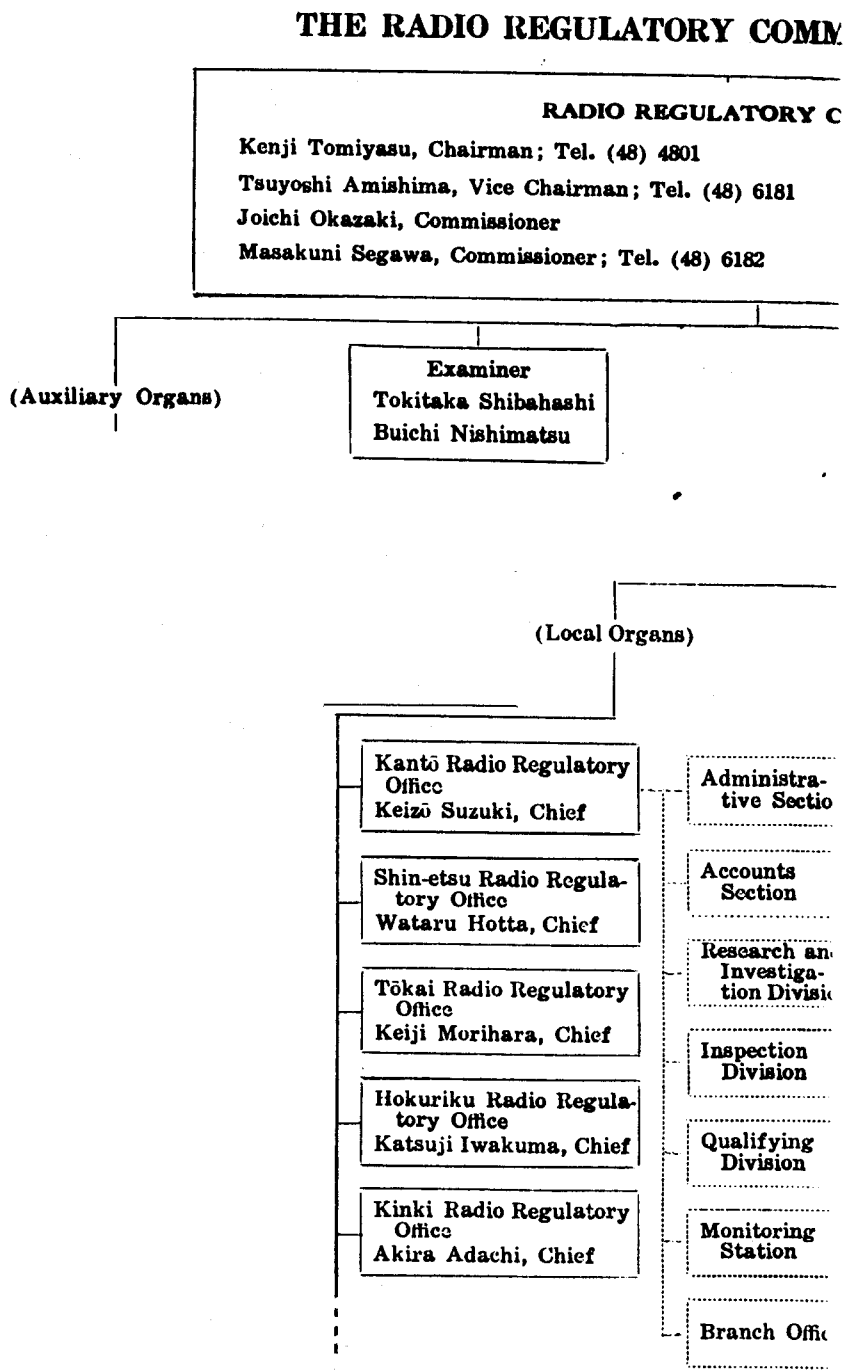
## APPENDIX D (continued on the next page)

Photocopy of the chart of the Radio Regulatory Commission Organization (Radio Regulatory Administrative Office, 1951, February 1).



## APPENDIX D (cont.)

Photocopy of the chart of the Radio Regulatory Commission Organization (Radio Regulatory Administrative Office, 1951, February 1).



## APPENDIX D (cont.)

Photocopy of the chart of the Radio Regulatory Commission Organization (Radio Regulatory Administrative Office, 1951, February 1).

**COMMISSION ORGANIZATION**

As of 1, Feb. 1951

**COMMISSION**

Naomichi Sakamoto, Commissioner  
 Heiichi Nukiyama, Commissioner  
 Shin-ichi Kamimura, Commissioner

Radio Regulatory Administrative Office

Shin-ichi Hase, Director; Tel. (48) 6183

(Internal Organization)

**Engineering and Monitoring Division**

Shōgo Amari, Chief;  
 Tel. (48) 4817  
 Hiroshi Shinkawa, Assistant Chief of Monitoring Activities  
 Hideo Seki, Staff Official

**Operational Division**

Yoshitomo Kiyota, Chief

**Engineering Section**

Shigetake Morimoto,  
 Chief; Tel. (48) 4827

**Standard Frequency Section**

Kijuro Matsumoto, Chief

**Maritime Section**

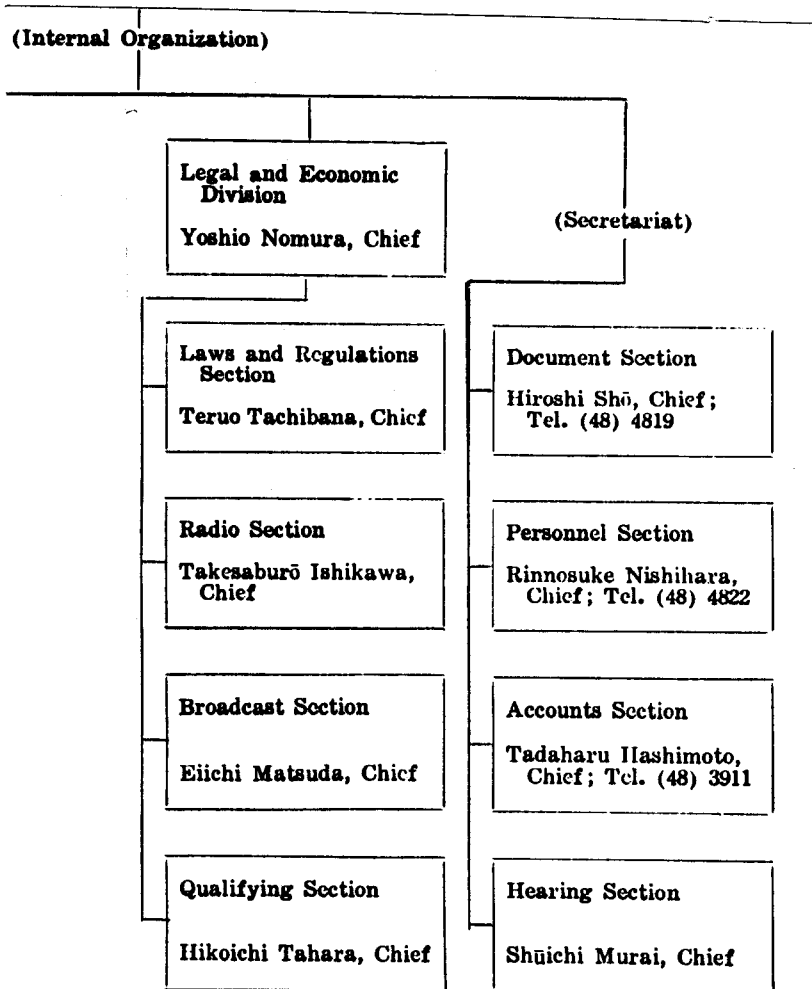
Hiroshi Akiyama, Chief;  
 Tel. (48) 4824

**Domestic Section**

Tarō Nishizaki, Chief;  
 Tel. (48) 4825

## APPENDIX D (cont.)

Photocopy of the chart of the Radio Regulatory Commission Organization (Radio Regulatory Administrative Office, 1951, February 1).



**Radio Regulatory Administrative Office**

4-1, Aoyama, Kitamachi, Minato-ku, Tokyo, Japan.

Tel.: (48) 3912-5, 3990 5, 4802, 4805,  
4806, 4815, 4816, 4818

## APPENDIX E

Photocopy of the list of the members of the Radio  
Regulatory Commission (CCS, 1950, May 6).

The List of the Members of the  
Radio Regulatory Commission

Post	Name	Age	Present Occupation
Chairman	TCHIBAYASU Kenji	65	Former Vice-Minister of Communication, President of Teishin Kyokai
Committee	KAMIMURA Shinichi	54	Former Director of Political Affairs Bureau, Foreign Ministry, Ex-Minister Plenipotentiary to Manchuria
"	SEGAWA Masakuni	55	Member of Management Council of Telecommunications Ministry
"	SAYALOTO Naomichi	58	Chief Director of Franco-Japanese Economic Conference
"	ANIJIMA Tsuyoshi	44	Director of Radio Regulatory Agency
"	CHAZAKI Jyoichi	49	The 1st Legislation Opinion Assistant to Attorney General
"	MUKIYAMA Heiichi	60	Tohoku Univ. Professor, Radio Engineering Council Member



APPENDIX F (continued on the next page)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Shūgi in [House of Representatives], 1952, March 26, p. 1).

(第一類 第十四号)

第十三回国会 電気通信委員会議録

昭和二十七年三月二十六日(水曜日)

午前十時五十七分開議

出席委員

委員長 田中 重朝君

理事 高塚 三郎君 理事 本庄 三郎君

理事 長谷川 四郎君 理事 松井 政吉君

石原 登君 井手 光治君

加藤 隆太郎君 福永 一臣君

椎熊 三郎君 島山 重勇君

石川 金次郎君 田島 ひで君

出席政府委員

電波監理委員会委員長 網島 毅君

電波監理委員長 岡咲 怒一君

電波監理長官 長谷 慎一君

電気通信事務官(事務局長) 田辺 正君

電気通信事務官(総務局長) 肥爪 龜三君

委員外の出席者

電氣通信 事務次官 飯 敏君

専門員 吉田 弘苗君

専門員 中村 寅市君

三月二十日

委員石原登君辞任につき、その補欠として飛騨繁君議長の指名で委員に選任された。

同日

委員飛騨繁君辞任につき、その補欠として石原登君が議長の指名で委員に選任された。

同月二十五日

委員庄司一郎君及び成田知巳君辞任につき、その補欠として島村一郎君及び猪俣浩三君が議長の指名で委員

に選任された。

同月二十六日

委員島村一郎君辞任につき、その補欠として庄司一郎君が議長の指名で委員に選任された。

三月十八日

郵務局長を奈良市局電話区域に導入の請願(水谷長三郎君紹介)(第一六一五号)

松江市にテレビジョン放送局設置に関する請願(山本利善君外一名紹介)(第一六一六号)

の審査を本委員会に付託された。

同月十九日

公共放送によるテレビジョンの実施に関する陳情書(敦賀市長川原孝作外二名)(第九五二号)

同(福井県敦賀郡委青年団文化委員長辻本利治外十六名)(第九五三号)

同(福知山市文化協会会長松山翠)(第九五四号)

同(八尾市榎松新日本婦人協会代表玉島照波)(第九五五号)

教育的テレビジョンの実施に関する陳情書(京都市地域連合婦人会東山連合会長小西てい子)(第九五六号)

同外十五件(京都府南桑田郡馬路村立小学校長川勝渡外三十一名)(第九五七号)

テレビジョン放送の銅路誘致に関する陳情書(北海道ラジオ技術協会銅路支部長高橋謙保外十七名)(第九五八号)

を本委員会に送付された。

本日の会議に付した事件

テレビジョン放送に関する件

電気通信事業に関する件

○田中委員長 それではこれより開会をいたします。

電波管理に関し調査を進めます。質疑の通告があります。長谷川四郎君。

○長谷川委員 電監の委員長に二、三お尋ねしたいのでございます。昨日参議院で首相の答弁の中で、電波監理委員会の行き方とまた首相の答弁とが、何か違つてはいないかというような感じがいたします。現在の電波監理委員会の考えていることは、首相の考えて答弁しておることと一致しておるかいなかということに対して、御質問を申し上げたいのでございます。

○網島政府委員 お答え申し上げます。ただいま御質問の点に対しましては、私も昨日速記その他で了解いたしましたし、またけき新聞でも了解いたしましたのでございますが、私たちの考え方と総理のおつしやつたことと違つておるのではないかということにつきましては、私もはそう考えておらないのであります。総理は、テレビジョンの問題はいろいろ影響するところが多から、慎重に考えなければいけないだろう、外国の機械の輸入の問題その他につきましても、目下電波監理委員会においていろいろ考えておるが、これを特に急がねばならないというふうなことは考へなかつたというふうな趣旨だと私も了解したのでございませうが、私もテレビジョンの実施と

APPENDIX F (cont.)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Shūgi in [House of Representatives], 1952, March 26, p. 1).

(四六一)

員 会 議 録 第 十 四 号

本日の会議に付した事件  
 テレビジョン放送に関する件  
 電気通信事業に関する件

○田中委員長 それではこれより閉会をいたします。

電波管理に関し調査を進めます。質疑の通告があります。長谷川四郎君。

○長谷川委員 電波の委員長に二三お尋ねしたいのでございます。昨日参議院で首相の答弁の中で、電波監理委員会の行き方とまた首相の答弁とが、何か違つてはいないかというような感がありました。現在の電波監理委員会の考へていることは、首相の考へて答弁しておることと一致しておるかということに対して、御質問を申し上げたいのでございます。

○網島政府委員 お答え申し上げます。ただいま御質問の点に対しましては、私も昨日速記その他で了解いたしましたのでございますが、私達の考へ方と総理のおつしやつたことと違つておるのではないかということにつきましては、私どもはそう考へておらないのであります。総理は、テレビジョンの問題はいろいろ影響するところが多から、慎重に考へなければいけないだろう、外国の機械の輸入の問題その他につきましても、目下電波監理委員会においていろいろ考へておるが、これを特に急がねばならないというようなことは考へなかつたというふうな趣旨だと私も了解したのでござい

という問題につきましては、十分慎重に考へて決定しなければならぬと考へております。ことに経営形態の問題につきましては、私どもも一層その点を深く感じておるのでありまして、今後各方面の御意見を十分伺つてきめて行かなければならないというふうに考へておる次第でございます。

○長谷川委員 そこでお尋ねしたいのは、首相の答弁と並行して委員会でも考へておいたような許可期限というものがある、遅れるような心配が出て来るわけでございますが、そういうふうなことはあるかをひとつお伺いいたします。

○網島政府委員 私どももいたしましては、電波法の条文及び精神にのっとりまして、現在誠心誠意このテレビジョンの実施に対するいろいろ準備を進めておるわけでありまして、先般決定いたしました標準方式に対しまして、最近異議の申立てが出て参りました。これに対しましては電波監理委員会といたしましていろいろ検討した結果、これは適法であるという解釈のもとに、異議の申立てを受理することに昨日決定したのでありまして、異議の申立ての審問会も開かなければなりません。また並行的に開設の根本基準、これは先般御参考までにお手元に御配付申し上げましたが、その根本基準をこれからやはり審問会を開いて決定しなければならぬのでありまして、従来私どもが考へておりました準備状況に照らしまして考へますと、若干遅れておるということをお尋ねしなければ

ならないことは残念であります。そういうふうな事情になつております。私どもも電波法の第七条の精神によりまして、できるだけ早くやりたいと考へておりますが、テレビジョンの問題にはなかなかむずかしい問題が多数介在しておりますために、漸次少し遅れるということはやむを得ないのじやないかというふうに現在考へておる次第でございます。

○長谷川委員 そこでお尋ねしなければならぬことは、行政改革に伴つて、私たちが希望として申し上げておいたように、たとえばアメリカのFCC式のような方向に進むべきである、日本の将来をお考えますならば、当然あのような行き方をするのが最もしかりであらうという強い進言をしておつた方のその意と反しておるようになり、満ち承つておるのであります。そこで心配になりますのは、行政改革と許可の問題であります。その改革に先行させて責任ということが心配になるわけでございます。その責任をあとに譲らなければならぬとしたならば、その間はいかなる方向に進むのか、また後任になるべき人はいかなる御連絡等をなして行くべきであるかという委員長の御意見を承りたいのでござい

○網島政府委員 ただいまお尋ねの機構改革との関連の問題でございますが、機構改革は大体七月一日を目途として、政府において施行したいという見解を持つておられるのであります。ところでただいま御質問のような問題が起るのであります。私どももいた

APPENDIX F (cont.)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Shūgi in [House of Representatives], 1952, March 26, p. 2).

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しましては機構改革の問題と何ら関連を持たせず、現在私どもの電波監理委員会に与えられた職責を遂行するという事で進んでおります。従つて現在私どもの進んでおる考え方は、機構改革のあるなしにかかわらず、とにかく電波監理委員会の職責としてテレビジョンの問題は、その在任中法律の条文の精神に従つて全うして行きたいという考えでございます。事務的に許可の問題まで進み得れば、私どもの責任の中でやつて行きたいと考えておる次第でございます。

○長谷川委員 私も同感でございます。すなわち現在の電波監理委員会は、この技術の面をあくまで貫徹し、後に譲ることはしないようにしていただきたいということを私は強く希望いたします。次第であります。

さらに首相の答弁と関連いたしまして、文化国家としてテレビジョンを持つようになしたいという衆議院の議決に対し、前電安委員長のお言葉は、国家的見地に立つてのテレビジョンの実施であるというように私は聞き入つております。従つてこれが自由かつてな企業の成立だけを期待するものとは思われぬのでありまして、委員もテレビの実施は文化国家としての立場で考えておられると思うけれども、その点についてさらに一段と委員長の意思の御発表をお願いしたいのでございます。

○網島政府委員 私ども電波行政を預かつておる者から考えますと、テレビの実施はわが国の文化を一段と高揚させるのに非常に必要であるということと、並びに技術的な点から見まして将来国策的に備へるであらう、あるいは

また日本としてもどうしても完成しなければならぬところのマイクロ・ウェーブの技術の中心がテレビジョンでございますので、テレビジョンを実施するということ、そういう技術を開発的に発達させる上に、ぜひとも必要であるというふうに考えておるのでございます。しかしながらこの問題は、何分にも多額の経費を必要とするものでございますから、ただ単に技術的な観点からのみこれを決定するわけには行かないと思つて、経済的な面あるいは社会的な面、各方面から考究しなければならぬ問題であります。従いまして私どもとしては国会及び各方面の御意見を十分お伺いして、最後の決定をしたいというふうに考えておる次第であります。

○長谷川委員 さらに首相の発言に対して御質問申し上げます。輸入の問題を電監に研究させておられるというお答えでございますが、輸入とはどんなことを意味するものでありましようか。たとえばテレビジョンを日本でやるという意味、機械全部を輸入するという意味、もつと具体的に申し上げるならば輸入か移入かということが問題となるわけでございます。その点につきまして委員長は輸入か移入か、これをはつきりお答え願わなければならぬと思つておるものでございます。

○網島政府委員 昨日吉田総理の申された言葉は、私直葉お伺いしておりますし、どういう意味でおつしやつたかよくわかりませんので、ただいまちよつとその御質問にお答えしにくいのでございますが、なお後ほどよく調査いたしまして、必要があればまたお答えしたいと思います。

○長谷川委員 それでは首相の答弁と関連しなくてけっこうでございますが、委員長としては輸入を目的とするか、移入を目的とするか、どちらがその目的であるかということをお明らかにしていただきたいのでございます。

○網島政府委員 輸入と移入の関係でございますが、もし一、二年の間に、わが国におきましてテレビジョンを実施するということに相なりました場合には、テレビジョン装置のある種の部分、ことに送信に関する部分につきましては、これは外国のものを持つて来なければ、現在のわが国の技術では全部まかなうわけには行かないということには、私かねてこの委員会でも申し上げた通りでございます。従いまして、その意味において、ある種の部分は輸入するということに相なるかと存じます。しかしながら私どもはそういう一部のものを除きまして、他の部分、ことに受信機の面に関しましては、これはわが国の工業においてつばにやつて行きますし、またやつて行かなければならないものと考えております。従いましてごく初期の一部分の輸入を移入という意味でただいまおつしやつたならば、あるいは移入ということになるかもしれませんが、ある種の部分は外国のものを入れなければならぬということは申し上げられると思つておる。

○長谷川委員 同感でございます。私は委員長のおつしやることは、輸入でなくて、すなわち移入と解釈するのでございます。

さらにお尋ね申し上げますが、技術標準と申しましうか、この方式を電監は事前に委員会に報告され、了解を

APPENDIX F (cont.)

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○長谷川委員 それでは首相の答弁と関連しなくてけっこうでございますが、委員長としては輸入を目的とするか、移入を目的とするか、どちらがその目的であるかということをお明らかにしていただきたいのでございます。

○網島政府委員 輸入と移入の関係でございますが、もし一、二年の間に、わが国におきましてテレビジョンを実施するということに相なりました場合には、テレビジョン装置のある種の部分ごとに送信に関する部分につきましては、これは外国のものを持つて来なければ、現在わが国の技術では全部まかなうわけには行かないということ、私かねてこの委員会でも申し上げた通りでございます。従いまして、その意味において、ある種の部分は輸入するということに相なるかと存じます。しかしながら私どもはそういう一部のものを除きまして、他の部分、これに受信機の面に関しましては、これはわが国の工業においてつばにやつて行きますし、またやつて行かなければならないものと考えております。従いましてごく初期の一部分の輸入を移入という意味でだいたにおつしやつたならば、あるいは移入ということになるかもしれませんが、ある種の部分は外国のものを入れなければならぬという事は申し上げられると思っております。

○長谷川委員 同感でございますが、私は委員長のおつしやることは、輸入でなくて、すなわち移入と解釈するのでございます。

さらにお尋ね申し上げますが、技術標準と申しましようか、この方式を電

求められております。この配付されておりますところの閉路整理の一部を改正する法案でございますか、これに対して、資料は提出されておりますけれども、まだ説明をしていただいております。申し上げるまでもなく、私どもは技術という面に対しては絶対無知でございます。ぜひとも納得の行くようなこれに対する御説明をお願い申し上げます。きょう御都合が整えれば本会でもけっこうでございます。これに対するところの一杯の御説明を要求申し上げる次第でございます。

さらに申し上げたいことは、私たちが国民として最も関心を持つておられるこの経営形態の決定につきまして、は、委員長初め各委員並びに長官はどのような御意思があるか、どのような意欲を持つて委員会でしゃべつておるか、さらに国民全般がいかなる意向であるか、懸念であるか、声なき声までも自分の身につけるのが委員長の絶対なる責任であろうと思うのでございます。その意味におきまして、私は特に当電通の委員長をお願い申し上げたいのでございますが、先ほど電監の委員長からも、皆様の御意見は私は十分わかつております。その意欲も十分察知しておりますから、そのように進みたいというような御意見がございました。そこで私は、願わくば決議として申し上げたいのでございますけれども、それまでも申し上げる必要もございません。なぜならば再三私が申し上げる通り、当委員会は各党派は違つておりますけれども、ほんとうに一体となつて、そうして日本の電通事業の発展をいねがつておる同志でございます。

す。そういうような観点から考えましても、委員長におかれまして、われわれの意思がどこにあるかということはおわかりであろうと思っております。その意のあるところを、十分委員長より電監の委員長に申入れをしていただきたいということを、当委員会の委員長にお願いを申し上げて、私のテレビに関するところの質問を打切りたいと思っております。

○公井(政)委員 関連して……。電波監理委員長に、テレビジョンの問題ではなくて、機構の改革についてお尋ねするのであります。要するに行政機構の改革とともに、電波監理委員会のシステムが改められるかのような報道がいろいろなされております。閣議決定等を見ましても、電波監理委員会がなくなつて、一つの省の外局になるか、あるいは内局になるかということがすでに発表されております。電波が国民のものであり、さらに国民のものであるという考えに立ちますならば、国家的立場において電波の管理をしなればならぬことは当然だと思いますが、そういう考え方からして、機構の改革について、どういふ考え方を持つておられるか、この点についてお伺いをしたいと思います。

○網島政府委員 機構改革の問題につきましては、もちろん私ども電波行政をお預かりしている立場といたしまして、いろいろ考えも持つておりますし、また研究もしたのであります。従いまして今般の機構改革の問題につきましては、私どもは私どもの持つてい

る考えを、政府の関係大臣その他の方方にもいろいろ御説明申し上げて参りました。しかしながらこの問題は、国

APPENDIX F (cont.)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Shûgi in [House of Representatives], 1952, March 26, p. 3).

としての、非常に大きな方針の問題でございます。政府がある一つの方針を定め、それを国会にお出して、国会がさらに国民の立場においてそれを御審議し、決定された場合には、私どもはその方針によつてやつて行くのが、最もその進むべき道だろうというふうに考えております。

○松井政委員 経過はなるほどその通りであります。電波監理委員会として、電波の監理についてはこういう組織でやるべきだという意見を具申して、さらにその意見の具申が通る通らないは別として、やはり国会の決定に服して行かなければならないというのには、その通りだと思います。ただ私がお伺いしたい点は、現在の電波監理委員会の組織で管理する方がよろしいのか、それとも報道等で発表されております閣議決定と称される機構にかえた方がよろしいのか、委員長としては、どのようなお考えで政府に具申をしておられるのかという点であります。

○網島政府委員 私どもが委員会においていろいろ相談して、関係各大臣あるいは行政監理庁方面に具申した意見と申しますのは、私どもの過去の経験からして、こういう放送とかあるいはまたテレビジョンとかいうような言論機関を担当する行政は、委員会行政というか、そういう行き方がよいのではないかという結論に到達いたしました。そういう意見は具申いたしました。なおこれは現在は内閣に所属しておるのでありますが、他の大臣、たとえば電通大臣あるいは郵政大臣の外局として存在した方がよいかどうかという問題については、どちらでもよいという見解をもつて、そういう意見は具

申しました。

○公井(政)委員 そういたしますと、具体的にはまだこまかくお答えできないかもしれませんが、電波監理委員会の組織の管理することと、一つの省の中の内局あるいは外局として管理の組織がきまる場合とにおける、放送、テレビ等の取扱いに対する考え方というものは、同じであるのか、それとも多少違つて来るという見通しをお持ちであるのか、その点をお伺いしておきたい。

○網島政府委員 その点については、今後どういふ形の行政機関になるか、私どもまだはつきり承知しておりません。従いましてもう少し具体化いたしましたら、研究してお答え申し上げます。

○長谷川委員 関連して御質問を申し上げます。行政改革に対して委員長の方から何か案が提出してあるというお話でございます。その案は当然出すべきものであり、また十分検討すべきものであると思うのでございます。特に私がつけ加えておきたいと思うことは、今世界をあけて、一つでも電波をよけいという競争的なものが展開されていることは、争われな

い事実であります。先般委員長が出席した国際的な問題につきましても、いかにそれを獲得するかというものがその使命であり、それは国家が発展するかないかという問題にまで大きく関連を持つて来ることでございます。その点については私は先ほども質問の中に申し上げておつたのでございますが、電波という問題に対して政府はお考えがなさ過ぎはしないか。はつきり言うならば、日本の産業、政治、あらゆる

ものの一環として獲得しなければならぬ事案が、すでに到来をしておるといふことに認識不足でありはしないかというところに、私は疑問を持つものでございます。委員長は政府の命令であるならばやむを得ないじやないかと、いふようなお考えでございますが、これはとんでもないことです。また、委員長の熱意が足りないのじやないか。もしそうであるとすれば、それこそ委員会の決議をもつて当然申し入れるべきである、私は強く主張したいのであります。従つて当委員長においても、電波問題に対しては行政改革にもつと強い意見を政府に披瀝してもらいたい。特にわれわれの決議が必要ならば、即時決議案をつくつて提出すべきであると思つておりますが、私の方の委員長にその御意見を承りたいと思つております。

○田中委員長 ただいま長谷川君の御質問にありました私に対する意見でございますが、順序といたしまして、先ほど御意見がございましたところの網島電波監理委員長に対するテレビジョンの今後の問題につきましては、かつてより当委員会におきましていろいろ意見がございまして、すでに十分御納得と存じますが、さらにわれわれ衆議院の電通委員会の意思を十分尊重の上、今後の御措置を願いたい、かようなこととでございます。どうかその点よろしくお願いしたいと存じます。なお、ただいまの御意見でございますが、これに對しましては私ども委員会といたしまして、電波の問題を非常に重要視いたしておるわけでございます。従つて長谷川君の御質問の点も十分尊重いたしまして、電波監理委員会と協議を

APPENDIX F (cont.)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Shūgi in [House of Representatives], 1952, March 26, p. 3).

もの一環として獲得しなければなら  
ない事態が、すでに到来をしておると  
いうことに認識不足でありはしないか  
というところに、私は疑問を持つもの  
でございます。委員長は政府の命令で  
あるならばやむを得ないしやないかと  
いうようなお考えでございますが、こ  
れはとんでもないことです。まだ  
委員長の熱意が足りないのじやない  
か。もしそうであるとすれば、それこ  
そ委員会の決議をもつて当然申し入れ  
るべきであると、私は強く主張したい  
のであります。従つて当委員長におい  
ても、電波問題に対しては行政改革に  
もつと強い意見を政府に披瀝してもら  
いたい。特にわれ／＼の決議が必要な  
らば、即時決議案をつくつて提出すべ  
きであると思うのであります。私の  
方の委員長にその御意見を承りたいと  
思います。

○田中委員長 だいま長谷川君の御  
質問にありました私に対する意見でこ  
さいますが、順序といたしまして、先  
ほど御意見がございましたところの網  
波監理委員長に対するテレビジョン  
の今後の問題につきましては、かつて  
より当委員会におきましていろいろ  
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得と存じますが、さらにわれ／＼衆議  
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今後の御措置を願いたい、かようなこ  
とでございます。どうかその点よろし  
くお願いいたしますと存じます。なお  
ただいまの御意見でございますが、こ  
れに対しましては私も委員会といた  
しまして、電波の問題を非常に重要視  
いたしておるわけでございます。従つ  
て長谷川君の御質問の点も十分尊重  
いたしまして、電波監理委員会と協

いたしたいと考えております。

○公井政委員 これは非常に重要な  
問題だと思つて、言うまでもなく電  
波監理委員会は、電波が重要である  
ということ、国際的な関係があるとい  
うことから、委員会には行政権を与え  
なければならぬといういろいろな角  
度からきた組織であります。これが  
行政改革の結果、一つの省の局になると  
いうことになりますと、われ／＼の考  
えからいいますとやはり電波の行政が  
縮小されて、それから来る電波に対す  
る考え方は、きわめて差展しない方向  
に向くのではないかという心配を持つ  
ものでありまして、電波に対する管理  
の方法について、局でいいという考え  
方にはわれ／＼は賛成できない。この  
種の問題について、監理委員会の委員  
長としてではなく、日本の電波の技術  
家として、行政機構の改革と合せて、日  
本の電波というものはこうあるべきだ  
という考え方を、私心を離れて披瀝し  
てもらいたいと思うのです。これは政  
府部内の各省とのいろいろの関係があ  
り行政機構改革の副産物の過程等にもあ  
るのでありますから、いろいろ答えられない  
部分もあるかもしれませんが、しかし  
この際できる範囲で率直にその意見を  
聞かしていただきたいと思うのです。

○網島政府委員 だいま松井委員の  
おつしやることはまことにごもつとも  
だと思つて、従いまして私もはお  
つしやつた観点に立ちまして最善の努  
力をしなければならぬし、そういう  
責任があると考えております。

○田中委員長 石原君。  
○石原(登)委員 私の質問はすでに論  
議し尽くされたことかもしれませんが、  
そういう点はお許しを願つて、ひと

お聞きしたいと思つて、電波委員  
は終戦後できた委員会であつて、これ  
には大きな行政権を付与せられてお  
ります。これはたしか委員の数は七名だ  
つたと思つて、現在何名になつて  
おりますか。それからその委員のお名  
前と大体の経歴、それから七名の委員  
はたしか法律で定めておられると思  
いますが、その法律のどの条項に明らか  
になつておりますか、お伺いいたしま  
す。

○網島政府委員 だいまお尋ねの点  
にお答え申し上げます。電波監理委員  
会は、電波監理委員会設置法という法  
律がございまして、この法律に基きま  
して委員は七名となつております。こ  
の委員は広く各方面の学識経験を持つ  
た者から、国会の承認を得てきめる  
ということになつております。昨秋の  
行政整理の結果、予算上では一応委員  
の数は、委員長を含めて五名というこ  
とになつておる次第でございます。二  
名欠員でありましたのを補充しないで  
おりますので、現在は五名でやつてお  
ります。その委員の名前及び経歴でこ  
さいますが、委員長は不肖網島が命ぜ  
られてやつております。私は過去二十  
何年運信省におりまして、初めから電  
波行政を担当しておつたものでござ  
います。先般二月に前委員長がおやめ  
になりました、そのおとを引継いだわけ  
であります。それから副委員長の岡崎  
委員は、長い間司法関係をおやりにな  
つた方でございます、裁判の経験もご  
さいます。それから委員になります  
前には、法務府の法制意見局長一局長  
をおやりになつておられた方ござ  
います。次に坂本委員、これは元清  
におられまして、長い間フランスに駐在

APPENDIX F (cont.)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Sangi in [House of Councillors], 1952, May 26, p. 5).

<p>やつておまして、そして電波通信 委員会が中心になつた。何と云います かインターナショナル・ラジオ・ア ンド・テレビジョン・エミッター、いわゆる I.R.A.C.というものを作つて非常 に苦心しておる。これは日本も独立 になりまして、将来再軍備ということ が実現された場合、或いは官庁の電波 使用というものが續いて来た場合、こ ういつまうな場合に、一郵政省の一 大臣くらいが、而もその諮問機関と して極めてステータスの低い電波監理 審議会あたりでこれをやるとするこ とは、これは公然不可能なことで す。私は、これはもう甚だ失礼な言葉 でなければ、野田大臣が今回の行政 改組に當つて、電波行政というものに 對するこれは私は認識が十分なかつた のじやないか、この改組の一半は、私 は電波監理委員会の委員長、ここにお られますが、電波監理委員会委員長或 いは電波監理局長の長官としても、これ はもうこの道に、最もそういう方面に 通じた人なんです。そういう人が野田 大臣に對して、これはもう十分、これ はまだ一委員会の廃止とかそういうけ わな問題でなくて、日本の将来とい うことを考へて、私はこういうでたらめ な、甚だ失礼でなければ、でたらめ な誠に不審な案が出されたということ に對しては、これは電波監理委員会の 委員長なり或いは電波監理局長の長官に もこれは責任があると思ひますが、私 は何としてこれは首肯できません。 この点は、私は野田大臣が自分の内閣 の公約を履行するためにやられたそのお氣 持はわかりますが、要するに私は美にこ れは大きな混乱と、國民にとつては非 常に損害、悪く申しますと、今の放送</p>	<p>法或いは電波法の最も重要な原則にな つておる一党一派に偏しないといふこ と、飽くまで國民の公共の福祉のため にやる、こういうふうなことから見ま して、私はあなたがこの行政改組の根 本原則としておつしやつた民主主義の 原則に基いてやつて行くということ、 又行政の能率化ということをお述べ になつたけれども、その趣旨と全く反 對の結果になつておる、この点を私は 誠に遺憾を感ずるを得ないのであります が、大臣としては極めてイージー・ マイニングにおつりになつて、非技術 的に御説になつておることもでありま すが、これは大臣としては、もう一度 この案に對しては、電波監理委員会の 一つ厳正な意見を聞いてやられること が、私は改組の能率化ということのた めに最もしいのではないと思ひます が、先ほど本橋委員から御説電波監理 委員会の委員長に質問がありまして、 それでこの介出でおるこの郵政省に統 合した電波監理局乃至は電波監理審議 会という組織をやつて行けるかどう か、こういう自信があるかという質問 がありまして、これに對しては、勿論 個人としてはこれはもう現在の委員会 でやつたほうがベターである。併しな がら行政機構を變えるということは、 これはもういわゆる時の政府、内閣の 政策であるからして自分らの論議すべ き主題とはならないという御説明があ つて、私はこういう意味は十分わかる のです。一行政官として政府のとつて おる政策を批判することはこれは許さ る、これは私当然然と思つておりますが、 併し或々閣外の意見を汲み、電波行政 の實際を見るとき、これは私は野田大臣 として御再考願うべきものだと感じ</p>	<p>ざるを得ないのであります。大臣と しては、もう一日こうしてお出しにな つた以上は、電波監理委員会の廃止は 覆さない、これが郵政省への統合も覆 さない、こういうふうな堅い御決心を お持ちになつておるかどうかが、これ を念のために伺つて置きたいと思いま す。 ○國務大臣(野田卯一) 私は率直に 申し上げますけれども、行政機構改革の 仕事に携りまして、いろいろと調べて おりました、電波監理の重要性とい うものを非常に痛感をしたのであり まして、只今山田委員は、電波監理に 關する認識が薄いためになつたこと になつたのじやないかというような御 意見でありましたが、絕對にさうい うことではないのであります。行政機構 の改革に關連いたしまして、電波監理 の重要性をますます深く認識したも のであります。それでどういふことにな るか申しますと、郵政大臣が電波監 理の全責任者になるのだということが 非常にいけない。私は印鑑を受け る御発言がありました。私は郵政大 臣という、閣内において有力な地位を 持つておられるものがこの仕事をしつ かり育てて行くのだという責任をとる ということは、電波監理のためには非 常にいいじやないかと思つて、勿 論郵政大臣もおれば、政務次官もおり ましようし、事務次官もおりましよう が、そういうものが結集いたしまして 電波監理の仕事に力を入れなければなら ない。予算も案計もなければなら ない。或いは更に日本全体の全行政にお ける科学的な全知能、これを動員して 甚大な電波監理をやらなければなら</p>
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APPENDIX F (cont.)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Sangi in [House of Councillors], 1952, May 26, p. 5).

ちるを得ないのでありますが、大臣として、もう一旦こうしてお出しになった以上は、電波監理委員会の廃止は覆さない、これが新政権への誠意も覆さない、こういうふうな堅い御決心をお持ちになつておられるか、これを念のために伺つて置きたいと思ひます。

**○國務大臣(野田外一書)** 私は率直に申し上げますけれども、行政機構改革の仕事に就きまして、いろいろと調べておりました、電波監理の専断性というものを非常に痛感いたしましたのでありまして、只今山田委員は、電波監理に関する認識が薄いためにこういうことになつたのじやないかというような御意見でありましたが、絶対にそういうことはないのでありまして、行政機構の改革に關連いたしまして、電波監理の重要性をますます深く認識したものであります。それでどうということになるかと申しますと、郵政大臣が電波監理の全責任になるのだということが非常にいけない、私は印鑑を受け御意見を承りましたが、私は郵政大臣という、閣内において有力な地位を持つておられますものがこの仕事をしっかり背負て行くのだという責任をとるということは、電波監理のためには非常にいいじやないかと思つたのです。勿論郵政大臣もおれば、政務次官もおりまして、事務次官もおりまして、が、そういうものが結束いたしまして電波監理の仕事に力を入れなければならぬ。予算も案計とらなければならぬ。人員も充実しなければならぬ。或いは更に日本全体の善行政における政策的な全組織、これを動員して立派な電波監理をやらなければならぬ。

い。こういうふうに入力するということが必要じやないか。閣僚の中におきましては、私は遺憾であります、電波監理に関する認識というものは比較的薄かつたのじやないかと思ひます。その一つの理由は、やはり閣僚が責任を持つておらなかつたということにも私は一つの理由があるのじやないか、離れてしまつておりますから、これは一種の獨立性を持つております。離れております。ですから次官会議でもあまり問題にならなければ、閣議でも問題にならないというふうなことが比較的多いのじやないか。それでこんな重要な仕事は、やはり一団のれつきとした大臣が全責任を持つてこれに當るといふことにして、そうしてそれが絶対に行われるようにするということが是非必要じやないかということを私感したのです。そういう意味におきまして、今回の行政機構改革に當りましては、これを郵政省に入れまして、郵政大臣がこれを行う、郵政省の仕事は郵政関係のことではありますが、これは大体におきましていわゆるレールに乗つておるのであります、電波監理という仕事は、私はその点では素人でありまして、これから大いに力を入れて、そうして大きなレールを敷かなければならぬ事業じやないかと思つたのです。そういう点におきまして、郵政大臣は電波監理にこれからうんと力を入れられるように、こういうふうに行かなければならぬことになるのじやないかと、こういうふうな感しておるのです。この点におきまして、私は決してこれを軽く見たとか何とかでそのしたのじやなしに、むしろ事の重きを痛感いたしました、郵政大臣以下

が結束して、全肩張つてこの事業をしつかりやつて行かなければならぬ、こういう意味において郵政省に置いたというふうには承を願ひたいと思ひます。

**○山田節男君** これは今私、大臣からのお言葉で解するのですが、例を最近公益事業委員会のまゝ非常な電気料金の値上げの問題について、総理大臣のどうも自由にならん。こういう最近の事例から、誠にこりて憤を吹く、こういう気分は私はわかるのです。併し今おつしやつたように、郵政大臣で以てよりよきレールへ乗りつけてやり得るといふ自信を持つておられるが、大体この郵政省へ電波行政をもくつつけられる、郵政事業は御承知のように特別会計です。電波というのはこれは監督行政を主としておるのです。これは一般会計であります。ですから技術的にも、仕事の性質からいつても非常に違つておる。そういう点を郵政大臣がやり得るか、郵政大臣が放送、テレビジョン、ラジオ、こういうものから電波法、放送法という大きな法律を掌つてやり得るか、而もこの電波監理の審議会を見ますと、これは任期を今度は三年にした。そして非常勤だというふうな場合で、そうすると全く電波監理局という郵政省の一内局が、今おなたのおつしやるように、レールへつけてほんやくするとおつしやいます。が、そうなつて来ると、悲しいかな日本の自由党を含む将来の政党政治を見ても、私は果してこの電波法政いは放送法が期待しておるような本當に不偏不黨な、又憲法で保障しておる言論の自由、こういうふうなものも、放送法、電波法の根本精神を守り得るか、ということの懸念、それから余りにこの

【委員長】





APPENDIX F (cont.)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Sangi in [House of Councillors], 1952, May 26, p. 6).

【委員長】

六

端に到着いたしました。私初め、関係大臣にお会いいたしました。いろいろ御説明申上げました。勿論行政管理局のほうにもいろいろ御連絡して、私どものやつておる仕事、それから今後の見通しの間題等を御説明申上げました。私は、各大臣及び行政管理局におきまして、電政行政の内容、その重要性等についてはよくおわかりになつて頂いたと存しております。併しながら先ほども私の考えを申上げましたように、内閣取組は行政管理局といたしましては、この行政改革の問題は、ただ単に電政行政という一つの枠と申しますか、一つの問題のみを考へるわけには行かないのだと思つて、いわゆる日本の国政全般の問題として、これを考へられるのだらうと思つておりました。いろいろな行政のやり方、或いは財政、いろいろな各般の状況をお考へになつて、おきめになつたことだと思つておりました。従つて私どもも電政行政という、全体の行政から見ますと、その中の一つの仕事のみを以て全体を律するということ、これは適當ではないということをお考へておるのであります。私どもの最善を盡して御了解願つた上で、国政全般からおきめになつたことに対しては、私どもはこれを承認すると申しますが、而かも内閣でおきめになり、国政がいろいろ国民の立場から審議され、おきめになつたことに対して、これの決定に従つてやるのが私どもも公務員の最善の途であるというふうに考へておる次第であります。

○山田節男 網島委員長は、大臣を前に置いて、政治的な考慮を拂つて、慎重な発言をしておられるが、その

るとこの郵政省の一部改正法案によつて、あなたが仮に電政監理審議会の委員長となり、又長官電政監理本官が郵政省の電政監理局長となつて、あなたがアメリカで調査になつたような、極めて公平な国民のための電政行政というものが来してやり得る自信があるかどうか。この法案を出すについて、十分に御研究になつたと思つて、この法案で、今までの電政監理委員会のおやりになつたことが百パーセントの趣旨でできるという御自信があるかどうか、委員長並びに専任局長からはつまり私は御答へ願つておきたいと思つておりました。

○政府委員(網島敬憲) 先ず私からお答へ申上げます。先ほど本橋委員の御質問にお答へした中になつたと思つておりましたが、行政機構の問題は、これは役員とか何と何とという問題と違ひまして、この機構でなければ絶対に行政はできない、ということは、何人も言えないと思つておりました。どちらがいいか、どちらがいいじやないか、いや、どちらがいいじやないかという問題は、これはその人の考へ方だつたと思つておりました。従つて今度の御質問に対しては、私は絶対できない、ということは断言できません。と申しますのは、今度の設置法の改正を拜見いたしますと、郵政大臣の諮問機関として電政監理審議会というものが附置されることに相成つておりました。が、この審議会は最善の申立というもののほかに、重要事項につきましては大臣の諮問を受けることになつておるのであります。従つて郵政大臣が、この問題は重要であるから審議会の意見を聞くこと、ということ、審

議会の御意見を徴される。審議会は御承知の通り一党一派に偏した人の集まりではできないようになっております。従つて、その審議会の意見というものを十分活用して頂くならば、現在の電政監理委員会がやつておりますいわゆる不偏不党という目的も達成できるのではないかと、要はこの審議会の運用如何にかつておると思つておりました。それは郵政大臣なり或いはその時のそれを担当する人の問題ではないかと思つておりました。そういうことになりまして、現在の電政監理委員会におきまして、やはり人の選定その他に要を得ませんと、同じ結果になるのであります。要は運用次第じやないかと私は考へておりました。

○政府委員(長谷川一孝) 只今山田委員から特に指名をされましたので、お答へ申上げますが、私の気持ちも只今網島委員長からお答へになりましたことと全く同様な考へを持つておるような次第であります。

○山田節男 私は何も名前にと泥するわけではございませんが、電政監理審議会は法律上でも語つてあるように、これは一つの諮問機関であります。従来審議会、例えば社会保障審議会というようなものが作られて、これが結論を出して内閣に出しなけれども、附されてしまつておる。これが一つ、行政機関の審議会、諮問機関というものは今網島委員長が言われたように、これはなるべく善意にこれがまじめに利用されたいですけれども、さて一、二の諮問機関というものは、これはもう申すまでもなく極めて弱いのです。私たちが問題にしておるのは、電政行政の重要性から見て、大臣

APPENDIX F (cont.)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Sangi in [House of Councillors], 1952, May 26, p. 10).

第十四部 電気通信委員会会議録第二十五号 昭和二十七年五月二十六日 【参事録】

<p>ので、そのかたを参考人と呼んで、御意見を聞いて頂くというふうな方法もあるかと存する次第であります。</p> <p>○小笠原三三郎君 そうしますと、機構改革のほうの関連法案については、政府委員として菅井乃至説明等に当られるように、委員を委員長にお持ちになつておられますか。</p> <p>○政府委員(網島鶴吉) 若し行政機構の改革につきましていろいろ御質問がございましたら、私は政府委員としてここに参つておりますので、その立場で御答弁するよりほかに仕方がないと思つております。</p> <p>○小笠原三三郎君 私は陸議院がおりますけれども、おつしやつたことだけは了解しました。</p> <p>○山田節男君 今の小笠原委員の言われることは、これは考えるのです。というのは、例えは公益事業委員会、それから公正取引委員会、これは成りますね。今度の行政組織の改組の過程において、これは電波監理委員長と田舎の同意を得て内閣総理大臣が任命しておられることになれば、大臣と同じ地位を持つておられるわけです。ステータスを持つておられる。今度の改組問題に對しても、電波監理委員会という特殊の行政委員会、任命もそういう過程を経ておられる。大臣と何ら異なる地位を持つておられる。そうすれば、先ほど野田大臣が説明されましたように、今度こういう電波監理委員会の廃止、それからそれを郵政省の一内局に事務を引継がして、電波監理審議会というような諮問機関にする、そういうことになれば、少くとも大臣のステータスを持つておられる、あなたとしては……。それは</p>	<p>政府委員には違いないけれども、先ほどから何回も言つておられるが、あなたは一つの行政、司法、立法を兼ねた特殊の委員会の委員長である。而も大臣のステータスを持つておられることになれば、これはあなたが責任を持つて、場合によつては委員会が総辞職するくらいな決意を持つて私はやるべき責任があるのじゃないか、この思ふ。これはほかの大臣諸君よりも、電波監理行政の重要性ということで、先ほど私が申上げた以上にあなたは認識しておられると思ふ。これは電波監理委員会の委員長ににしても然り、政府委員だから内閣の政策に従わなければならぬ、これはもとよりです。併し電波監理委員会とか公正取引委員会、或いは公益事業委員会、これらは一つの獨立の機関です。そこに存在の理由があり、存在の価値がある。そのものであるならば、その地位を持つた政府委員とすれば、野田大臣に對しても、或いは吉田総理に對しても、あなたは責任を持つて電波行政或いは放送行政を守るためには職を離してもやるのが當然じゃないか、それを單なる政府委員だからして、私は政府委員として今回の内閣のきめた行政機構改革については一言も触れることはできません。従わざるを得ませんというのでは、これは法律によつて與えられている権限を、むしろその権限の範囲に収めておられるということになるのじゃないか。そこを、小笠原君の真意はどうか知りませんが、私もそういう意味なら非常に電波監理委員会、殊に委員長としてこの点についての御努力が少し足りないのじゃないか、私はそう思ふのです。</p>	<p>○政府委員(網島鶴吉) 只今山田委員のおつしやることは非常に私どもよくわかります。電波法或いは電波監理委員会設置法によりまして、この仕事は電波監理委員会が処理すべき仕事である。而も何人からも制約を受けずに獨立して専ら公平にこれを考えてやるべき事柄であるといふふうにきめられた問題につきましては、只今お説のように、私ども委員が自分の地位、名譽をなげうつてその方針に従つて処理する覚悟を持つております。若し私どもの責任でありましてこの許認可の問題、その他行政の問題におきまして、外部から圧力が加わるというようなことがありましたら、私どもの力でもにもできないというような場合がありましても、私どもは職を離して御用意がござりますが、この行政機構の問題につきましては、これは私どもの職務外のことでありますので、陳念ながら私権限を持つておりません。従つてこの問題に對しまして、獨立委員会であるからいつて政府と全然獨立していろいろ行動するということば、私どもにはそういう権限は與えられておらずに思つております。併しながら電波行政を如何にこれをよくして行くかということは私どもの考えをめぐることであり、又行ふべきことでもありますので、私どもは内閣がこの郵政省設置法の改正をさきめになる前に、十分各関係の大臣のかたへ及び行政官理庁に説明をいたしまして、よく了解するように最善の努力をして来たつもりであります。なお、法案の提出権限は我々委員会にはござりませんので、これは閣議の決定が必要でございます。特にこの行政機構の問題につきましては、内閣</p>
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APPENDIX F (cont.)

Photocopy of the official proceedings from the thirteenth session of the National Diet (Sangi in [House of Councillors], 1952, May 26, p. 10).

【参事院】

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○政府委員(網島鶴彦) 只今山田委員のおつしやることは非常に私どもよくわかります。電波法或いは電波監理委員会設置法によりまして、この仕事は電波監理委員会が処理すべき仕事である。而も何人からも制約を受けずに独立して最も公平にこれを考えてやるべき責務であるという事なきがられた問題につきましては、只今お説のように、私ども各委員が自分の地位、名譽をなげうつてその方針に従つて処理する責任を持っております。若し私どもの責任でありまるところの許認可の問題、その他行政の問題におきまして、外部から圧力が加わるというようなことがありましたら、私どもの力でどうにもできないというような場合がありましても、私どもは職を離して強う用意がございしますが、この行政機構の問題につきましては、これは私どもの職外のことです。殊ながら私権限を持っておりません。従つてこの問題に對しまして、独立委員会であるからといつて政府と全然独立していろいろ行動するということは、私どもにはそういう権限は興えられておらずに思つております。併しながら電波行政を如何にこれをよくして行くかという事は私どもの考えるべきことであり、又行ふべきことでもありますので、私どもは内閣がこの郵政省設置法の改正をきめになる前に、十分各関係の大臣のかたへ及び行政機関に説明をいたしまして、よく了解するように最善の努力をして来たつもりであります。なお、法案の提出権限は我々委員会にはございせんので、これは閣議の決定が必要でございします。特にこの行政機構の問題につきましては、内閣

の方針として、内閣の責任においてお出しになつたのでありまして、私ども残念ながら直達国会とマツチいたしまして、いろいろ国会に考えて頂くという立場にないのでございまして、その遺憾であります。現在の体系がそういうふうになつておりますので止むを得ないと存じております。

○山田鶴男君 これ、私は委員長は自分の地位をもう少し再認識なくちやいけないと思ふ。成るほど行政組織の改革ということについては、これは内閣の方針かも知れない、併しもう何處も言うように、電波行政監理委員会の仕事になつたか、なす独立のものにしたか。こうなれば、これはあなたは政府委員とはいながら、この行政改革に對して使命を百パーセント全うできない。この電波行政の重要性というものはあなたが一番よく知つておられる。そういうふうになれば何れは総理大臣或は閣議でこういうことをしよう……と、これはいけません、こういう点があります。こういうことになつたら、私はせめすというくらい、委員長としてはそのくらいな頭張りが必要ならば私はこの大きな電波法、放送法、その他のものについて非常な権限を持たされておる人間としては、私は責任を棄したものは思えない。何故公益事業委員会が改るか、公正取引委員会が改るか、公益事業委員会などを見ると、あの副委員長、委員長代理は強い、頭もあれで残つた。これは政治力の問題である、政治力の問題というよりも熱意である。さつきの水橋委員の質問に對して、あなたは今度電波監理局にすべての業務が移る、それから電波監理審議

会を以て郵政大臣がすべて諮問をして審議するのであるから、これは大丈夫であろうと思ひますということをおつた。併しその半面、今のままで行つたほうがベターであるということもあなたは言つておる。それならば、ベターであるならば、政治力というものに負けないで、もう全責任的に考えよ、これではやつて行けない、国家のために、国民のために不利だとお思はせやめるくらいな気持ちでなければいけません。そこで私は思ひ出す、思ひ出すというほどではないが、テレビジョンの標準方式決定にしても第一回の……、或いは今までの審議過程においても、私は資料を見ると、どうも電波監理委員会は弱い、余りに外部的な政治的なものに支配される、これでは折角ここで国会が同意して、或いは最良なものに信任をされている我々としては甚だどうも情けない、これは今あなたのお委弁は必ずからの職を離るるに、腹ろには申しませんが、御認識が薄いのじやないか、あなたはもつと強く出なければならぬ。普通の政府委員と違ふ。その限りをあなたはつきり委員長として持つたならば、こういうことにはならない。これはあなたとしては、こういう法案は幾ら圧力があつてもお出しになることは甚だ国民にとつては迷惑であると思ふ。

○小笠原三三男君 私疑義のある点は次回にやろうと思つたが、山田さんもお話になつたので私申し上げておきます。誤解されては困るので網島さんに申し上げますが、私は委員会の委員のかたがたを追及したり、反対しないのが悪いと思つたのが悪いとか、如何うにならうともそういうことを私は申

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