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Harry Emerson Wildes

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THE JAPANESE POLICE

HARRY EMERSON WILDES¹

Nowhere, perhaps, do the newer concepts of democratic control come into such sharp contrast with the older sanctions of divine origins and of traditional support than in the functioning of police control in an Empire which is slowly moving toward democracy. And nowhere is the process as clearly visible as in Japan, particularly in its post-earthquake period.

A legal system quite foreign to tradition, working through extralegal practices which are thoroughly in accord with popular ideas has striven to adapt its ancient Chinese methods of judicial action into harmony with statutes which are based on modern Occidental codes. The results, of course, have been unfortunate and, at times, almost disastrous, yet Japan today is seeking to assimilate still more revolutionary police forms into its system.

The recent introduction of the jury system, the revision of the antiquated criminal code, the permission to establish labor unions, and extension of the suffrage are providing problems which the statesmen of Japan, harassed by fear of revolution on the part of an oppressed town proletariat and of an exploited tenantry, seem ill-prepared to solve. The police, already over-burdened by a multiplicity of duties, are now expected to take on still graver tasks.

By Article 9 of the Constitution, the Emperor reserves the power to administer the laws, to maintain peace and order, and to promote the public welfare. Acting under this authority, the police business of the Empire has been assigned to the Home Office, and through it to the governors of the prefectures. Except in Tokyo, where, following the model of the European capitals, a Metropolitan Police has been created, the governors and the subordinate chiefs of police may issue ordinances effective in their territory or in any part of it, and may also summarily fine or imprison certain minor offenders. A Gendarmerie is also maintained, by the co-operation of the Home and Justice Ministries, to carry on the functions of a military police, but without the right to issue police ordinances.

Lacking a Cabinet Minister of Health, of Welfare, of Labor or of Charities, (in a land where all these functions are highly cen-

¹Former Professor of Economics, Keio University, Tokyo; Author, "*Social Currents in Japan*" (U. of Chi., 1927); Malvern, Pa.

tralized), the duties which might ordinarily fall to such officials have been delegated to the Police Bureau of the Home Office. The resultant complexity, together with a veritable passion for detailed statistical reports and, above all, the insistence on careful shadowing of all persons suspected of labor, liberal or unusual opinions, has been a certain factor militating against complete efficiency. Nor can the high standards of education, discipline, and scrupulous honesty expected of the men be easily maintained when the rate of wages seldom rises above Y45 to Y70 per month in the service of the Metropolitan Police, and when the salary, even of a chief police commissioner, ranges from Y900 to Y1200 per year. Japan's police force has seldom been accused of crude venality, nor have the courts been guilty of the sale of justice, but the unimpeachability of character must be in spite of, rather than because of, the low wage scales.

Too much reliance seems, to a Westerner, to be placed upon the use of spies and of stool-pigeons. Since the spies must justify their hire, and must please their masters, every opportunity may be expected to be used for "frame-ups," and for agents provocateurs to meddle in suspected movements. Revelations of the operations of one Tetsuo Toshima, a former convict, working for the Metropolitan Police in 1924, stirred opposition even in Japan, against the use of spies, but no improvement seems to have been made. As late as July, 1926, the Tokyo authorities were budgetting a sum of Y25,000 yearly for secret service operations, and other cities were using proportionate amounts. These sums were entirely separate from further large amounts expended secretly by the Army, Home and Foreign Offices, and by provincial secret services.

As recently as September, 1928, the government appropriated \$146,548 for spying on the universities. Each institution of collegiate grade will be supplied with one or more "independent supervisors to prevent the students from falling victims of dangerous thoughts," according to Jusaku Kawahara, of the Ministry of Education; and periodic reports must be submitted as to what the student body is thinking.

Much of this sum is evidently spent on protecting the existing economic system against possible attacks from revolutionists, and yet additional special appropriations have constantly been begged to guard Japan against ill-intentioned foreigners. The Korean border police are particularly nervous on this score because of their fear of Russian propaganda among the malcontent Koreans. A consignment of 640 books, sent from Moscow to the Waseda University Library by Pro-

fessor Noburo ("Shin") Katakami, was held up on the frontier on the ground that it was dangerous to have them passing through Korea even though in transit to Japan. One hundred and fifty-three copies of revolutionary poems and propaganda pamphlets were confiscated, and the remainder, deemed innocuous because published under the Romanoffs, were re-routed via Vladivostock. An exactly similar fate befell a further consignment of 250 books sent by Tomomaru Gunji, of the Japanese Consulate in Harbin, to the Tokyo School of Foreign Languages.

Alien visitors, particularly Russians, have been met at the docks by Japanese police, and closely surrounded by detectives during their entire stay in the Empire. Cordons sanitaire were drawn about the hotels in which a Russian labor delegation and in which Boris Pilinyak, a novelist, were staying, and visitors were cross-examined before being allowed to enter. Aliens who attend meetings of labor leaders find that the police place cooks and other native employes "on the grill" to find out why their master has made certain visits.

So much attention is devoted to the prevention of unrest that little time can be devoted to the more rudimentary duties of patrolling. It is a constant plaint that highway assaults, especially on women, have been increasing recently, and that police are not available to make arrests. As in Occidental lands, the growing crime wave is an object of increasing apprehension.

More glaring iniquities exist in the administration of the law. The French system of jurisprudence, transplanted to Japan, has not proved completely workable, in that the all-powerful procurator, attached to the court and thus invested with judicial as well as inquisitorial functions, has made use of Japanese tradition to exploit his prisoner.

To come within the reach of the law is even more uncomfortable than it is in Occidental countries. By their Oriental psychology, ingrained after generations of feudal values and but slightly modified by a recent and quite shallow Westernizing, the Japanese hesitate to bear damaging testimony against each other. They prefer to gloss and to suppress the truth rather than to cause discomfort by a disconcerting revelation. The codes of "saving face," while not so potent as in China, are still effective. Trials to be decided by a jury verdict are severely handicapped by the reluctance of material witnesses, and unless a prisoner himself confesses, uncertainty will rest concerning guilt.

By long tradition the legal practice has grown up that no punishment shall be inflicted, even in the case of proven guilt, until confession has been made. To satisfy this custom, born of feudalism, every pressure must be centered on confession before the prisoner is brought to trial, for, unless the suspect has admitted his own guilt by documentary proof in black and white over his sign manual, the procurator's charge may fail before a judge, and certainly will fail before a jury.

When once the prisoner has been detained, every opportunity is given to police and procurators to obtain these necessary documents. By cross-examination and by bullying, the prisoner is told that continued contumacy in the face of his "known guilt" can only serve to increase the punishment which will be visited. Torture and the third degree, officially illegal, are employed, even to the point of murder. Four deaths were reported, in July, 1926, alone, as due to police torture, while further charges were made freely in connection with the riots in Nagano a month later. The scandals in 1923 of the prison murder of ten members of the Laborer's Union because they "persisted in singing labor songs in jail," and of the killing of Sakae Usugi with a woman and a nine year old boy by a super-patriotic gendarme are not unusual under such conditions. No punishment whatever seems to have been visited upon the perpetrator of the former murder, while Captain Masahiko Amakasu, who killed Usugi, was kept in light imprisonment for two years and a half, and then released to be a national hero for his deed.

During the continuance of this "preliminary examination," the prisoner is held in strict seclusion. The safeguards that surround a suspect in an Occidental land are wholly absent. Cautions are not given him that any word of his will be employed against him, nor is he granted any opportunity for communicating with his friends. No private consultation is afforded with a lawyer, nor, in some cases, is the nature of his crime disclosed. A Kobe man, accused of writing Socialistic sentiments to another prisoner, using blood for ink, was re-examined, tried and sentenced, in May, 1924, by an entirely secret process. More recently, amendments to the law provide that lawyers may be present at the trial before the Preliminary Court, provided that the prisoner does not consult privately with his attorneys and provided that the lawyers act only as observers of proceedings and not as actual defenders of their clients.

Nor is this ordeal limited by law. Lengthy "examinations," prior to trial, may be prolonged for days, or even weeks—in the case

of certain Communists arrested in June, 1923, six months elapsed—until such time as the prisoner confesses, to escape a further badgering, or until police and procurator admit reluctantly that he knows nothing of the matter.

Frequently, of course, the pressure brought to bear upon the suspect is too great for him to resist successfully, and, perhaps responsive to police suggestions, the most fantastic revelations are secured. The *Osaka Asahi* told of a pyromaniac who had confessed to arson in the case of 563 houses, while a Kobe thief admitted having stolen 100 bicycles. In each case, curiously enough, the numbers corresponded exactly to the number of undetected crimes of similar nature since the last wholesale confession had been made. The police, by virtue of their fortunate arrest, cleared up their records and stood forth as models of efficiency. The practice of extorting such confessions drew forth a judicial reproof, in July, 1926, from Dr. Yokota, president of the Court of Cassation.

To those familiar with law upon the Continent, the Japanese addiction to the theory that the prisoner must prove his innocence is not as startling as to the ordinary visitor, but the Japanese have seemingly improved upon their model. By strict letter of the press laws, reports of preliminary examinations are forbidden, and all crime news, in theory, must be so toned down as to be neither sensational nor exaggerated. In actual administration these provisions protect only the police. By invariably assuming that the prisoner is culpable, an attitude which is, of course, entirely in conformity with legal principles accepted in Japan, the papers aid in building up a hostile public sentiment. Police theories, supplied with the connivance of the authorities, are printed as proved facts, and additional details may be invented to corroborate the theory. All this is against the law, but seldom is prevented and seldom punished. Expressions of sympathy toward a prisoner or suggestions of a possible false arrest result, however, in immediate suspension of the publication. Editors in Japan, as eager as their Western brethren for unusual crime news that may enhance the circulation of their journals, seldom fall into the error of suggesting that police may be mistaken.

When confession is secured, and when police and procurator are convinced that every loophole of escape has been blockaded, the prisoner is brought before preliminary court for further secret trial. Here, for the first time, his lawyer may be present, though in a mere observant role. Unlimited time is once more given for the preliminary judge to be convinced of guilt. His decision is almost

invariably given in the press as "guilty and held for public trial."

Practically, but not technically, the findings of the preliminary court are regarded, at the subsequent proceedings, as embodying the facts of the case which the accused, if he seeks acquittal, must disprove. Little new evidence, and little cross-examination are presented, for the confession is sufficient to procure ratification of the earlier decisions. The defence, accordingly, seldom seeks to overthrow the prosecution's structure, but throws itself upon the mercy of the court and seeks for clemency rather than acquittal.

The conduct of a trial, therefore, while outwardly resembling Western methods, is, in reality, based upon the ancient Chinese customs taken over by Japan and functioning in an Occidental garb. Occasionally, an attempt is made to disregard the prisoner's confession, as having been made under strong duress, but, for the most part, the trial is merely formal confirmation of the procurator's case. Seldom is his accusation overthrown. During the five year period 1919-23, a total of 2,187,063 criminal "searches" were undertaken. Rigid cross-examination by police and procurators resulted in the liberation of 1,319,364 prisoners, an average of 263,893 per year. Sufficient evidence was, however, found against a total of 867,699 suspected persons, and these were brought to trial. Less than 1% of these escaped conviction, 8,468 being dismissed by one court or another, chiefly on the grounds of insufficiency of evidence. The remainder were convicted by the courts. In more than 99% of all the cases brought to trial, the evidence produced by secret examination was sufficient to prove guilt. Under such conditions it is safe to say that virtually the whole course of justice lies in the care of procurators and police. The function of the judge today, and of the jury after the system is installed, is more to modify the procurator's plea for punishment than to try the prisoner.

By virtue of the low number of verdicts declaring a prisoner entirely innocent, much support has been accorded a proposal of the Department of Justice for compensating those subjected to false arrest. The Diet has not passed upon the bill, first suggested by Dr. Gentaro Suyehiro of the Tokyo Imperial University in 1924, but the department's plan is to set aside Y100,000 a year to reimburse the sufferers. The sum, of course, is insufficient to repay the losses of those dismissed for insufficient evidence, but would be ample to relieve the small number who may be completely exonerated by the courts. No recompense has been suggested for the vastly larger number detained and cross-examined, but not brought to trial. Nor

would the ¥100,000 requested by Professor Suyehiro match the sum of \$1,500 which North Dakota authorizes in such cases, nor the amounts which California and Wisconsin pay to victims of mistakes in criminal procedure.

The Suyehiro Bill, however, is of value as assisting in the remedying of an oversight in Japan's jurisprudence. Under their old code of criminal procedure the right to claim damages was recognized, and officials who offended grossly were required to recompense their victim where damage had been deliberately and inexcusably inflicted. Mere mistake, of course, brought no redress. Under the revision of the code, the clauses penalizing deliberate and inexcusable violation of a private right were temporarily held out for revision, on the understanding that proper readjustment would be made at some time in the future. No action has been made as yet.

Reforms in the Criminal Code are now recognized as being most imperative, and for nearly three years a special Imperial Commission has been at work preparing a revision. From a Western point of view, their task is rendered difficult by the necessity for yielding to the increasing public clamor that Japan has moved too far towards Occidental ways, and that the time is ripe for retracing steps toward purely Japanese ideals. The customs and habits peculiar to Japan must be maintained, and the revision of the laws must stress the family principle of filial piety and must deal sternly with offenses against loyalty, for on these principles, as interpreted by Japanese, rest all the sources of the national morality. It is, perhaps, unfortunate that revision must occur at just this time when reactionary views are in unchallenged prestige in Japan.

One certain outcome of this tendency is that the institution of banishment to certain zones of residence, perhaps in the Hokkaido or in the more remote island holdings of Japan, will be revived. This so-called "innovation"—really a return to feudal times—has been announced by the Commission as a measure to reduce the number of capital or life sentences. The types of convicts to whom it will apply are not yet known, although in probability offenders against Imperial sanctity will constitute the larger number.

Heavy penalties are also to be visited upon offenders who are guilty of violating against the privacy of government officials, or who resort to intimidation in the course of interviews. Japan has long been suffering from the rowdyism of a class, called "ronin," who attempt by violence to terrify officials. These thugs, paid and

protected by rival politicians, have been a source of worry to the government, and fruitless efforts have been made to curb their power. These, too, may now be banished if the politicians do not undermine the law.

Extension of the use of "stay of execution," now denied to those sentenced to less than two years penal servitude, will be made, so that the grace will be available to convicts who are fined, or whose public rights have been suspended. An indeterminate sentence, used now only for juvenile offenders, will be extended to adults, and, as a further step, the actual pronouncing of a sentence will be postponed in certain cases where probation is desired.

Political crises, twice resulting in the proroguing of the Diet, in 1927 and in January, 1928, have thus far prevented the submission of the Commission's revised code to the Diet. The new legislative body, elected in February, 1928, by the first full suffrage ever given to all men over 25 years old, is counted on to reflect a more liberal attitude, and will be given an opportunity to pass measures for reform.

Complete relief depends, of course, upon a reformation of the Criminal Procedure Law, but in the absence of this necessary step, the introduction of the jury system, authorized four years ago but never made effective, is counted on to modify the worst excesses of the legal system. Not less than ¥4,000,000 has been disbursed by the Department of Justice for preliminary preparation and for public information through motion pictures, radio, the press and platform speakers. Procurators will, undoubtedly, become much more insistent than before in their demands for verdicts proving the defendants guilty, for the natural impulse of any Asiatic jury would be to avoid judgment save in the cases where disloyalty might be involved, or where aliens have been accused by Japanese. But jury service will, in time, promote a higher concept of services and of public duty, and, if jurors have been carefully instructed in weighing evidence, more opportunity may be afforded for securing absolute justice. But years and years must pass before the feudal instinct can be sufficiently impaired for jurors to decide dispassionately and with perfect moral courage. If the system faces hostile fire in Anglo-Saxon lands, where long tradition has entrenched the jury trial, the opposition to the workings of the jury in Japan will certainly find ample grounds for criticism. In the attempt to forestall some of this, the eligibility of jury service is restricted to native-born and literate subjects of at least thirty years of age. (The voting age is twenty-

five.) They must pay at least Y3 national tax per year, must have lived at least two years in their districts, and must remain incommunicado while on service.

Meanwhile, a weakness in the penal system lies in the wholesale granting of amnesty on occasions of national jubiliations. For the enthronement exercises of November, 1928, as also when Taisho was enthroned in 1915, many death sentences were commuted to life imprisonment, life terms were reduced to 20 years, and minor sentences were cut in half. Reductions in term of imprisonment have previously been made on other national occasions.

More hope may be found in the growth of evidence that Japanese, hitherto almost stolid in their endurance of police autocracy and of distorted justice, are beginning to protest at maladministration. Fear of police authorities and of their extra-legal methods has, up until the present, been confined to private conversation, but, recently, despite a savage Peace Preservation Law in April, 1925, the tide of opposition has been rising. In April, 1926, the *Osaka Mainichi*, one of the largest papers of the Empire, denied that Japan could be regarded as governed by legal principles so long as the police exerted absolute authority, and the *Tokyo Asahi*, in July, 1927, wrote that the police fomented radical opinions by their illegitimate actions. *Yorodzu* had already dared to prophecy that continued strengthening of police authority would lead to revolution. Open criticism by the press, never before voiced in such a bitter and resentful spirit, nor in such volume as at present, will almost certainly be reflected, in the course of time, by deputies elected to the Diet by a wider electorate in which the liberals are, for the first time, represented. Autocratic government, operating through a despotic police force, is once more brought to grips with a weak but slowly strengthening democracy. Past history throws a revealing light on what may be expected in Japan.