

# Mutsu Munemitsu and His Lecture Notes from Lorenz von Stein

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Mutsu Munemitsu is known for his “successful” manipulation of foreign policy during the Sino-Japanese war (1894–95). What most people do not seem to know is that he also sought to gain an understanding of the *Begriff* (concepts or essentials) of *Staatswissenschaft* (state-science) before he assumed his post as foreign minister. After having studied Jeremy Bentham’s utilitarianism by translating Bentham’s main work, Mutsu travelled to Europe for the purpose of attending lectures in international law, party politics, theory of constitution, and so forth. It was Lorenz von Stein’s lectures on *Staatswissenschaft* that impressed Mutsu most.

Lorenz von Stein (1815–90) was an authority on a number of subjects, among which *Staatswissenschaft* and *Verwaltungslehre* (administrative law) were his major fields. To find the most suitable theory for the new constitution, many members of the Japanese government, especially Ito Hirobumi, regarded Stein as the person from whom they could best learn the theories and other related concepts. In the 1880s Japanese officials and statesmen made constant “pilgrimages” to study from Stein. Mutsu was one of them, and he diligently took detailed notes of Stein’s private lectures in English, a point which differentiated Mutsu from the others.

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Using the lecture notes compiled by Mutsu, we can get an overview of Stein's theory. Stein observed his theory in a well-condensed manner and at the same time in much detail. In this sense it corresponds with Mutsu's earnest desire to get to the core of state-science. It seems that Mutsu became interested in the correlation between administration and legislation. He formulated the superiority of administration and at the same time the electability of a cabinet member to the Diet. The latter was to be realized at the first general election in 1890, when Mutsu, as a member of the cabinet, stood successfully for election.

Through these lectures Mutsu gained self-confidence as an elite statesman in the Japanese government and made efforts to grasp political power within the domestic arena thereafter.

## Introduction

Lorenz von Stein (1815–90) was one of the most famous late nineteenth century scholars in Japan. Stein was even better known in Japan for his talents and knowledge of social sciences than in Europe. Stein did not serve the Japanese government as an *oyatoi gaikokujin* (foreign expert hired by the Japanese government), but it can be said that he was most influential in the course of drafting the so-called Meiji Constitution promulgated in 1889.

Stein by that time had made himself renowned as a scholar in Europe whose major fields were *Staatswissenschaft* (state-science), *Soziologie* (sociology), *Verwaltungslehre* (administrative law), and so on. In the midst of the 1848 revolutions in Europe, Stein completed an exhaustive study on the social movement in France since the French Revolution, which was published in 1850 as *Die Geschichte der sozialen Bewegung in Frankreich von 1789 bis auf unsere Tage* (translated into English as *The History of the Social Movement in France 1789–1850*). At the outset of his career Stein seemed to have had similar interests as Karl Marx, namely the social movement and the

contradictions emerging as a result of the imbalance between the rich and the poor. But gradually Stein focussed on the study of administration, which he thought would be instrumental in resolving the problems created by such contradictions. It was at this very moment that the Japanese government was seeking a suitable model that would be applicable to its needs. In order to combine absolutism and conservatism with capitalism, the Japanese government found it necessary to understand the basic essentials of *Preussen's* constitution. Besides this, it realized that Stein's *Soziales Königtum* (constitutional monarchy, which implies the reformation of society "from above") was the very theory it wanted to implant into the Japanese Constitution.

Stein was a big name in Europe in the late nineteenth century. Therefore, it is strange that his name should have been so little known in the Anglo-Saxon countries.<sup>1</sup> More puzzling still is the lack of academic literature from that period on Stein in Japan, considering Stein's influence on modern Japanese constitutional history. It was in the 1880s that Stein was most popular in Japan. Hozumi Nobushige,<sup>2</sup> professor of law at the Imperial University of Tokyo, who in the 1890s was deeply committed to drafting many laws, observed that whenever someone tried to justify his opinion, he only had to mention Stein's name before his own speech. Hozumi wrote about a popular *senryu* (a short witty Japanese poem) at that time, "With Stein can one open the fossilized brain" ("*Stein*" is the German equivalent of the word "stone").<sup>3</sup>

Indeed, a long line of pilgrimages took place in the 1880s to learn from Stein, which saw many of his works translated into Japanese.<sup>4</sup> This popularity was due to the fact that a constitution would be newly inaugurated in 1889, for which the government had to prepare in various ways. As mentioned in the following section, it was firstly Ito Hirobumi who was impressed with Stein and who initiated the pilgrimages. In those days few Japanese could make themselves understood in German, which was the reason Ito had difficulty in attending the lectures of Rudolf von Gneist (1816–95). In contrast, Stein

was kind enough to deliver his lectures in English for the Japanese audience,<sup>5</sup> which partly explains why he was so popular among Japanese statesmen and bureaucrats. Among those who visited Stein, we find Mutsu Munemitsu (1844–97). He was as eager to understand the essence of the state and constitutional system as Ito and others. What makes Mutsu exceptional is that he left three lecture notes in English of the lectures given by Stein. For many years these lecture notes have been out of focus of the study of students of modern Japanese history.<sup>6</sup>

In this paper, the contents of the lectures delivered to Mutsu will be summarized, and through these lecture notes I intend to show the influence that Stein exerted upon Mutsu. It should be noted that Mutsu had read Jeremy Bentham's main works and translated *An Introduction to the General Principles of Morals and Legislation* into Japanese.<sup>7</sup> If we count Bentham as the first to have influenced Mutsu, Lorenz von Stein may be regarded as the second. This paper is organized in the following way: In the first section, the relations between Stein and Japan will be analyzed. The second section deals with Mutsu's career and the itinerary of his travel to meet Stein. The outlines of the lecture notes will be introduced in the third section, and in the fourth a number of important points upon which Mutsu placed particular emphasis will be discussed. In the final section, what lessons Mutsu learned from Stein will be summarized.

## 1. Lorenz von Stein and Japan

Stein kept up a permanent interest in Japan until he died. As early as 1873, he attended the reception for the Iwakura mission in Vienna.<sup>8</sup> Perhaps the first Japanese that studied under Stein's supervision was Kawashima Jun, who served in the post of secretary of the Japanese Legation in Vienna from March 1879 to June 1881.<sup>9</sup> When Stein gave private lectures to Ito Hirobumi, Kawashima served as translator. The second person

who met Stein and talked personally to him might have been Kitabatake Doryu, who was from Kishu (the Tokugawa domain of Kii, which was also the birthplace of Mutsu) and was personally acquainted with Mutsu. In 1881 Kitabatake began his travel, the main purpose of which was to meet Stein. In the summer of 1881 Kitabatake met Stein and exchanged opinions with him on religion, politics, and other matters. Since Kitabatake was a monk, he paid special attention to the relationship between religion and politics. According to Kitabatake, Stein emphasized that close relation between them were vital, condemning those who insisted on separating them.<sup>10</sup>

Considering the relations between Stein and Japan, the most important figure was Ito Hirobumi. Once the “Edict of Opening the Diet in 1889” had been declared, Ito hastened to Europe in order to look for proper model among the European countries. There he encountered Stein, from whom Ito finally grasped the bottom line of the should-be constitution in Japan.<sup>11</sup> In addition to Kawashima, Watanabe Renkichi served as interpreter for Ito. From July 1880 Watanabe had worked for the Japanese Legation in Vienna as third secretary and was in touch with Stein.<sup>12</sup> No wonder that Watanabe was instrumental in communicating between Ito and Stein. Fifteen lectures were carefully recorded by Ito Miyoji, a protégé of the former Ito.<sup>13</sup> After Ito Hirobumi’s return, Stein became a big name in Japan, and Ito himself urged those who prepared to visit Europe to meet Stein. Moreover, Ito felt it vital for the emperor to know something about the constitution. Therefore, he arranged for Viscount Fujinami Kototada, a study-mate of the emperor, to attend Stein’s lectures on his trip to Europe on another errand in 1885. It was a hard task for Fujinami to understand what Stein lectured. After coming back to Japan in November 1887, Fujinami began making briefs to the emperor, which lasted till March 1888.<sup>14</sup> Then in February 1887 Koma-tsu-no-miya (Prince) Akihito was given lectures from Stein.<sup>15</sup>

After Tani Tateki, Minister of Agriculture and Commerce,

made a short visit to Stein in the autumn of 1886,<sup>16</sup> Kuroda Kiyotaka met Stein in January 1887. Kuroda left a written record of his visit. It was to be published as *Kan-yu Nikki* (Diary of Wandering) in 1887.<sup>17</sup> Stein gave two-hour lectures to Kuroda every day for two weeks, although Stein said it would take three months to lecture about constitutions and politics.<sup>18</sup> Kuroda must have been impressed with Stein's lectures. Later, while he was prime minister, Kuroda addressed questions to Stein three times during the first half of 1889. Stein answered in considerable detail. The questions were related to the constitutions and the general circumstances in Europe.<sup>19</sup> Yamagata Aritomo, Home Minister in the Kuroda cabinet, also visited Stein during his trip from November 1888 to October 1889.<sup>20</sup>

Kaeda Nobuyoshi, a member of the Genroin (established in 1875 as an equivalent to the Diet, but in reality filled with high-ranking but almost retired statesmen and bureaucrats), also attended lectures of Stein from July 1887 to January 1888. Thanks to Ariga Nagao, who was to be professor of Waseda University later, Kaeda had little difficulty in listening to Stein and in making detailed notebooks of the lectures. He returned to Japan in June 1888 and then prepared his notebooks for publication. The publication, which was entitled *Sutain-shi Kogi Hikki* (Notebooks of Mr. Stein's Lectures), was made public in 1889.<sup>21</sup> This may be one of the most popular books of Stein's lectures written in Japanese.

The so-called Meiji Constitution was inaugurated in February 1889, a date signaling the end of the high time of pilgrimages to Stein. Needless to say, the Japanese government regarded Stein as quite important and useful to it. So it maintained contact with him, even after the inauguration of the constitution. In November 1889 Kaneko Kentaro, a faithful and capable protégé of Ito Hirobumi, went abroad to do research on the impressions of foreign countries concerning the newly inaugurated constitution. Quite ill as he was, Stein welcomed Kaneko, ignoring the doctor's orders, and advised him on several points for Japan's sake.<sup>22</sup> On September 23, 1890,

Stein died.<sup>23</sup> About a month later, on October 13, a memorial meeting was held in his honor, at which many of the statesmen and bureaucrats mentioned above were present.<sup>24</sup> The name of Mutsu does not appear on the list of attendants at the meeting, but this fact does not negate the influence exerted on him by Stein. The following section deals with Mutsu's trip to Vienna.

## 2. Mutsu's Travel to Europe

The main object of this paper is not to describe the life of Mutsu in detail,<sup>25</sup> but even so, a short survey is useful for the following presentation. Although Mutsu is famous for his "successful" manipulation of Japanese foreign policy during the Sino-Japanese war (1894–95), he never forgot about seizing power in domestic politics, either. Coming from Kishu, the Tokugawa domain of Kii, prevented him from being promoted as fast as those from either Satsuma or Choshu. Frustration caused him to join the antigovernment plot of the Tosa faction in 1877, which ended in failure. Mutsu was arrested and sentenced to five years' imprisonment. It was during this term of imprisonment that he translated Jeremy Bentham's *An Introduction to the General Principles of Morals and Legislation* into Japanese, a notably difficult task for him. After being released in the beginning of 1883, Mutsu remained out of the political arena, though others expected him to join the radical Jiyu-to (Liberal Party). His old friends from the time of the Meiji Restoration, such as Ito Hirobumi and Inoue Kaoru, urged Mutsu to study abroad, never failing to suggest that Mutsu should attend Stein's lectures. According to Mutsu, both Inoue and Shibusawa Eiichi (one of the most famous entrepreneurs in the Meiji era) accommodated him with the financial support for his trip.<sup>26</sup>

In April 1884 Mutsu left Japan for America, where he stayed for about a month. Contrary to the period during his imprisonment term, Mutsu kept writing to his wife, Ryoko, almost once a week, about his itinerary and so forth. Due to

these interesting personal documents, we can follow his trip.

After a month's stay in America, Mutsu arrived in London on July 8, from where he wrote to Stein. In that letter, Mutsu asked Stein if he could make a short visit to Vienna that year in order to confirm the promise to have private lectures from Stein. At the same time Mutsu wrote about his plan to visit Stein and to concentrate his energy on the lectures in the following year. With such confirmation, Mutsu said he would be much relieved. He also asked if Stein could spare a few hours a day for giving a private lecture to him for a few weeks.<sup>27</sup> However, about a fortnight later he changed his mind and gave up the plan of making a short visit to Vienna that year. Instead he decided to stay in England to finish his studies on the English constitution.<sup>28</sup> As it was, Mutsu remained in England till the following March, attending lectures at Cambridge and visiting the English Parliament, travelling around the country, and so forth. On March 30, 1885, he arrived in Paris. Before leaving London, he wrote to Ryoko that he was going to stay in Germany for a month or two but that she must keep his schedule a secret. As he told her, he left Paris for Berlin on the 14th of April. Reaching Berlin on the 17th, he got in touch with Stein. In the letter from Berlin, dated April 28, he wrote Stein that he would like to meet him at once by all means but that he would stay in Berlin, as Stein had directed him to do so. By this time Mutsu had made a promise with Stein to have private lectures. After spending two months in Berlin, he finally left for Vienna, where he arrived in the morning of June 20.

The letter dated July 2 found him attending private lectures from Stein. Perhaps the lectures were so instructive that Mutsu postponed his departure from Europe to Japan. On July 31 he wrote to Ryoko that in mid-to late August he would travel to Russia for a fortnight, and after returning to London in the first half of September, he would depart at the beginning of October. It was also in the same letter that he revealed his specific route, via the Indian Ocean, and the way to inform his family about his departure by telegraphing just "Today"

at the very moment of his leaving England and Hong Kong. Mutsu returned to Berlin from a two-week journey to Russia, then wrote to Stein on September 8. In that letter, Mutsu informed Stein that he had returned from Russia a few days earlier. Also, Mutsu kindly asked Stein if he could answer some questions about previous lectures. It seems that he had been eager to get some answers from Stein. Furthermore, he really wanted to pay his final greeting to Stein before leaving Europe.

On September 14 Mutsu arrived in London, where he received a request waiting for him from Furukawa Ichibei. Furukawa had adopted Mutsu's second son, Junkichi. Furukawa wanted Mutsu to investigate a mine in Spain. Due to this request, Mutsu had to postpone his departure. In November, with the assistance of Shiraishi Naoji, nephew of Nakajima Nobuyuki, whose wife was Mutsu's younger sister, Mutsu concluded the investigation and made up his mind to leave Europe for Japan. By that time he must have been homesick for his beloved wife and children. In spite of Shibusawa's advice that Mutsu should stay in England for another year, he made a reservation on a French ship leaving on December 20 from Marseille in France. While he must have been busy preparing for his departure, Mutsu wrote to Stein that he was quite grateful for Stein's correction of Mutsu's manuscript on Stein's lectures and that he really wanted to celebrate Stein's 70th birthday.<sup>29</sup> Leaving London on the 15th, he travelled to Paris, then to Marseille, where he went aboard. Precisely as he had told Ryoko, Mutsu sent a telegram from London when he left, stating simply "Today," and from Hong Kong, on January 25, 1886, telegraphing again just "Today," to his family in Japan. Mutsu arrived at Kobe on the 1st of February, 1886.

### 3. Outline of Lectures Given by Stein

As mentioned in the previous section, Stein gave private lectures to Mutsu from the end of June to the middle of August

1885. Though the lectures were delivered in English, it must have been difficult for Mutsu to make such bulky lecture notes within that short period. Mutsu really worked hard. Saionji Kinmochi, then a minister to Austria, who was to have close relations with Mutsu later, wrote to Ito Hirobumi on how diligently Mutsu studied under Stein's supervision and that it would be nothing but a great loss for the Japanese government not to hire Mutsu.<sup>30</sup>

These lecture notes are a part of the seven lecture notes made by Mutsu during his stay in Europe. The other four (No. 1—No. 4) are those of the English constitution and international law, which were taken in England before he went to Vienna.

The titles of the three notebooks are as follows:

(No. 5) *A General Sketch of German [sic] Constitution*

(No. 6) *The Plan of State Science by Prof. von Stein*

(No. 7) *Supplementary Notes on State Science*

(The numbers indicated before the titles are used hereafter for referential purposes.) While No. 5 provides the historical background in detail and minute knowledge about the local political system in Germany, No. 6 and No. 7 deal with theoretical themes in “state science”. In that sense, No. 6 and No. 7 are closely related. No. 6 is the most concise and condensed and the smallest in size. What is more notable is that the handwriting of the note No. 6 is quite different from the other two and similar to Stein's handwriting. Thus, it is possible that Stein himself wrote No. 6 as a framework and gave it to Mutsu either before or after the lectures. It is quite probable that Mutsu sent Stein his lecture notes for correction just before he left for Japan.<sup>31</sup> Chances are that both note No. 5 and note No. 7 might have been corrected by Stein himself. Some corrections and words inserted were done in the same handwriting as in note No. 6. In addition, Mutsu himself jotted down some comments in Japanese or drew red lines for emphasis in both No. 6 and No. 7, but in No. 5 there are no such comments written by Mutsu. Therefore, the focus should be put on note No. 6 and note No. 7 in the following analysis.

The outlines of note No. 6, which is the essence of note No. 7 as well as Stein's *Verwaltungslehre*, will be shown in the table of contents (see Appendix). Although note No. 7 is a supplementary to note No. 6, it does not completely correspond to the contents of note No. 6. Some contents are either abridged or omitted, while others may be tautologically observed. We can easily see that the contents interpret the main themes that proliferated in Stein's other works. The core of Stein's theory existed in the way he thought about state-science, that is, an organic theory that regarded the state as an organ like a human being.

#### 4. What Stein Lectured to Mutsu

In this chapter, the major points of Stein's lectures and those which interested Mutsu will be discussed. Citation in italics indicates the section for which Mutsu drew a red line at the top of the column for caution, and underlined sentences are originally jotted done in red by Mutsu. Capital and small letters are unchanged.

##### **State and State-Science:**

Stein begins by explaining the "Nature of Science." There are "two ways in which we may think of a State": "philosophically" and "practically," or "Idea" and "Knowledge," either of which will not be enough by itself (pp. 1-2).<sup>32</sup> "The combination of these two produces a proper intellectual conception." (p. 2) Such a way of thinking has much to do with Stein's general concept of a State:

"The true conception of a State is one that contains the proper relation of the ideal State with actual ones; and State Science has to show how and why the elementary or logical idea of a State appears in various different forms in existing States of which we obtain a knowledge by practical study and observation." (p. 2)

He specified the field of state-science as:

"(I) the absolute elements of the organization and (II)

the causes or powers by which the same elements become different in existing States.” (p. 3)

Other scholars also took the state as a form of organ. In that sense, Stein might not insist on originality, but the personification of a state is the main characteristic of his theory.

“A State is a Corporation of men forming one person, so that it must have all the elements necessary to constitute a personal being. The corpus of a State is land or territory, and the people is soul. . . . a State is almost like a person, and exists as a personality or in the unity of persons who [which] compose it.” (pp. 6–7. The word within brackets is deleted.)

At the top of this passage there is “+” marked by Mutsu in red, opposite to which Mutsu jotted down “state personality” in Japanese.

Such personification leads to Stein’s assertion:

“. . . it [=State] must be its own master; . . . This is what is called the sovereignty of a State.” (p. 6) Such sovereignty cannot dispense with “will.” “So a sovereign State must have its own will, and the organism by which this will is formalized [completed], be it [either] a Monarch, a President or an Aristocracy. . . . This will must have its action, and the organism by which this action is performed is Government.” (pp. 6–7. Words within brackets are deleted.)

### **Society and Community:**

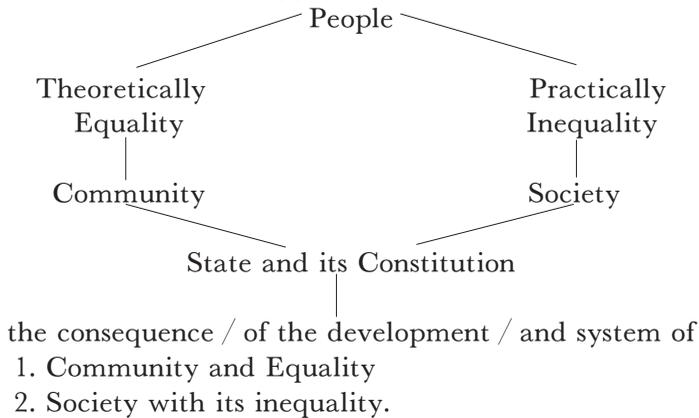
Society is also a key concept of Stein’s theory.<sup>33</sup>

“The distinction between Society and Community refers only to individual personalities; a State in itself is independent of such distinction; it stands above the Society and the Community which it contains. When all people are equal, they form a Community; when not, a Society.” (p. 10)

The idea of “development” seems to combine state and society, for Stein says that the development of a constitution depends upon “the development of society.” According to Stein, “the development of society depends mainly upon the

distribution of wealth.” (pp. 9–10) Between these lines there exists Stein’s realistic view that “equality is only a principle but not a fact.” (p. 4)

Stein provides the following figure to show the relations between state and society (pp. 11–12):



**Right:**

Right (in this case, we usually use the term in the plural, but Stein mostly uses the word “right” in the singular) is instrumental in grasping the nature of a state.

“When we treat of a State, we must understand the nature of its organisms. By the study of right we understand the functions of the organism which has that right, and from the understanding of its functions we learn its nature.” (p. 4)

Besides, the idea of right is related to that of will.

“The pure idea of right exists only in the mind of man [sic]. It may be defined as the principle in which every person must, by his own nature, conform to the will of the community wherein he lives.” (p. 4)

Stein also divides right into two dimensions: the natural right and the positive right.

“Right may be either one which is by the nature of personal relation, or one which is constituted by a third will. The former is natural right and the latter positive right.”

(p. 5)

At the top of this paragraph Mutsu wrote a mark “+” in red and on the opposite page “natural right and artificial right” in Japanese.

Putting it in a different perspective, “the natural right is determined by the nature of those persons who are able to avail themselves of it.” (p. 5) Stein considers that the latter “can be in contradiction to natural right.” (pp. 5–6)

“Positive right exists when the relation of persons is formed by the will of the State.” Therefore, “The great question is to find the harmony between natural and positive right.” (pp. 5–6)

### **State-Will and State-Chief**

Stein highly estimates harmony and unity and thinks “always, there must be a will before an action; but the will must be first . . . put in some sort of relation with the objects to which the action is to be directed.” (p. 87) As previously analyzed, state is a superior concept for Stein, so he focuses on state-will. Stein distinguishes the three stages of social development: (1) *Geschlechterordnung* or “The period of Patriarchal Order,” (2) *Standischeordnung* [sic] or “The period of Corporative Order,” and (3) *Stadtsbü rgerlicheordnung* or “The period of Municipal or Constitutional Order.” Stein says that in the process of development “the State-will was no longer the personal will of the King.” (p. 22) Before reaching the most developed stage of the Constitutional Period, “struggles between Kings and peoples” will occur (comments inserted by Mutsu in Japanese, in red) (p. 23). Thus,

“When the people found their power in the representatives whom they would elect as their legislators, the unity of the State-will first obtained its proper and real meaning.” (p. 25)

Incidentally, “the form of the *State-Chief is in itself not a cause but a consequence of the Social necessity.*” (p. 26) In other words, state-chief is identified by the state-will, and “in the forming of the State-will, every person must have an equal right, that is to say, the State-will must be formed by an organ through

which every person may contribute his will.” (p. 28) Although Stein took it for granted that “children, women and insane persons are unqualified and excluded from the right of election” (p. 39), such an organ “*consists of two elements: (1) The Press and Public Meetings, and (2) the election of representative members.*” (p. 28) Mutsu added to this passage, “Press and Meetings are organs of constitution” in red pencil.

According to Stein, the procedure of forming the state-will is fourfold:

“ . . . the individuals form their will and *choose their representatives accordingly, . . . . Then the representatives form their own will, and lastly the State will is formed in the Assembly by the concentration of the will of the representatives.*” (p. 29)

### **Constitution:**

The concept of constitution is also subdivided into two categories.

“What we call constitution in general differs from constitution in a narrower sense. The former means the entire organization of a State, and the latter, the organism by which the Will of a State is formed according to certain definite principles, especially, to the will of the majority of the representatives of the people. When we speak of a constitution in opposition to administration, we use the word in its narrower sense. But more abstractly considered, constitution may be taken as a simple being and administration as the activity of that being.” (p. 7)

At the top of the paragraph, there is a “+” marked in red by Mutsu, about which on the opposite page he wrote in Japanese, “There are two interpretations of constitution: narrower and broader.” Given such categories, Stein continues:

“*A constitution derives its matters from the nature of man as above mentioned, but the nature of man always changes; therefore two sorts of considerations are necessary viz., the organism as it exists, and that as it exists in different forms moved by its actual life.*” (p. 9)

Stein combines constitution with society by the idea of development:

“A constitution develops itself not by its own power, but by the development of society, and the development of society depends mainly upon the distribution of wealth.”  
(pp. 9–10)

**Legislation:**

As to the two sources of the state-will, Stein formulated his opinion as follows:

“History shows continually how often the two sources of the State will [sic], namely the legislature and the government came in conflict.” (p. 104)

In discussing the “Legislative Power,” Stein begins with “the house of the general assembly.” (p. 30) As a prerequisite of this argument, Stein takes two elements into account: character and interest.

“The various character [sic], in which the characters of the people are crystallized, will coerce one another and coalesce together in the house of the general assembly, till they form one compact character. . . . *The character of an individual cannot be greater than the condensed character of the whole nation. But the Sovereign may not accept it; in this case he must have some particular interest, for it is an interest alone that can balance a character.*” (pp. 30–31)

Because of these two elements, Stein asserts the necessity of “a two-character-system” (p. 33). Just as “every person has his character and interest” (p. 33), a state has them, which will be realized as the higher and lower houses of legislature, respectively. The two-chamber system is rationalized as follows:

“The Lower House of Legislature is essentially the representation of various interests. The resolution of *that Chamber might often depend upon some special interest, and therefore the judgment of a non-interested party becomes desirable and if there is an Upper House at all, such judgment should be given by it.*” (pp. 33–34)

And in order to defend the element of character from influences of interests, Stein says that “the Upper House must, as a rule, be nonelective,” with reservations that:

“The want of interest often causes the want of intelligence.

*Consequently, some and only some of its members might be returned in a certain manner of election, where interest plays its part.”* (p. 34)

In the left margin corresponding to the section in italic, Mutsu wrote in red in Japanese: “Only a small portion of the upper house should be elected through general election.”

There is no denying that Stein recognizes the importance of election.

*“Constitutional Government is self teaching: election is the School for making individuals. If you do not give your people the right of electing their representatives, they will never learn how to form their own will. It is a great principle of election, that the people shall become ‘self standing’, by their own effort.”* (p. 30)

Mutsu translated the underlined sentence into Japanese and jotted it down on the opposite left page.

#### **Administration:**

In the “Constitutional Period” people begin to recognize the existence of “inequality” created through the “principle of Society.” (p.27) As mentioned above, “Society” represents the fact of inequality and is formulated by the desires of people. In contrast, “Community” symbolizes theoretical equality of natural rights. Therefore, such contradictions should be adjusted in the “State and its Constitution.” By this reason Stein stresses the importance of the “link between the legislation and administration, and their necessary cooperation in a truly Constitutional Government.” (p. 32) To Stein’s regret, “Legislation alone was considered as the highest and greatest of all State affairs. Therefore, there existed only the science of legislation,” and “Executive Organization” remained as “a mere mechanical tool,” “but now, the science of government has begun to exist because of the important part taken by the executive body under its proper organization as an active Government.” (p. 76)

Administration forms a major part of Stein’s lectures. In his theory both administration and executive are synonymous and tautologically explained.

“The executive is a force whose nature is to realize what

the legislature determines to be done. In form, it may be considered as an organism, by which the State-will is turned to Action.” (p. 47) Or, “Administration begins there where constitution proceeds to activity, that is to say, turns itself to any positive relation of common life.” (p. 8)

The way of treating constitution and administration is different. In treating constitution, we “*only consider the organization of the will or freedom of man,*” while in treating administration, “*we have to take account of all these things upon which constitution is brought to work.*” (p. 8) In order to understand administration, various kinds of knowledge would be necessary, for “*administration . . . has to do with the whole nature of things as well as the whole theory of human relations.*” (pp. 8–9) Putting it differently, “The science of constitution must consider the nature of man and that of administration the nature of all elements as well as the human society.” (p. 9)

Although Stein assumes utilitarianism, humanitarianism, and communism as the basis of administration (pp. 137–138), he is more prolific in his specific account of administration. While Stein explains five ministries in detail (pp. 148–177), Mutsu does not seem to be very interested. What interested him more is the relation between administration and legislation. Stein observes the conflict between them: “It is indeed not possible for a constitution to have the two Sovereigns at once, one for legislation and another for administration.” (pp. 96–97) The best means of avoiding that conflict “*can be found in the possession of an idea of responsibility on the part of the government.*” (p. 104) Thus,

“*The Constitution is in a healthy condition only when the will of the Ministers is in harmony with the will of the representatives.*” (p. 104)

In other words,

“*When the united Ministry has a majority in the legislature, the spirit of the latter finds its way in the execution of the State affairs, and the result is a complete unity between the will and the action of the State; without this unity, no State organization can*

*be said perfect*” (p. 54)

In Stein’s theory, it seems that the administration or executive body holds priority over the legislature.

**Government and Responsible Ministry:**

As the executive and legislative power exist cooperatively and in unity, that is in the constitutional period, “*a Government properly so-called*” (p. 55) comes into reality. “*It begins to exist as the executive body gets a self-standing right against the King as well as the legislative body.*” (pp. 55–56) Thus, Stein emphasizes the government’s independence both of the king and of the legislature. He argues about the relations among government, king, and legislature:

“The King or the Chief of the State *gives the character of unity to the Ministry as a whole, just as well as to the whole State, but he has no right to order anything, on his own account, to the Ministers or to interfere with them in any degree. If such be the case, there will be no responsible Ministry. That the King has no power over the legislative body, is quite clear; the same rule should be applied to the executive, or more properly, the government body.*” (p. 73)

As the basis of this argument, Stein thinks that the government “must have its own will to some extent at least” (p. 103), and as for the reality of the will:

“A government in itself is a (dead) [an abstract] organization; it *cannot be responsible. Responsible are those persons alone, who think themselves to be its life and spirit. Thus, formal jurisdictions may be transgressed by the members of the government on their own responsibility in performing what they believe to be the will of the State.*” (p. 75. The word within parentheses is to be substituted by those within brackets; in front of this passage, there is a mark “△” and on the opposite page the phrase “The idea of” to be inserted in the place of this mark, both presumably directed by Stein.)

Also in front of the word “responsibility,” “+” is marked. On the left page corresponding to this mark there is a paragraph (also presumably by Stein):

“Responsibility for the counselling of doing the duty contained in the competence. Responsibility for its personal capability is knowledge and practice necessary for the realization of the law and its ideas; Responsibility for the integrity of the personal characters of those who are in office.”

Given the theory of government, it is little wonder that Stein thinks:

“. . . the government is obliged to make the legislative proposals, and the initiative act becomes its duty. . . . for the law to be proposed must be always in strict relation to the administrative affairs of the time, and these affairs are best understood by the body to which it is entrusted.” (p. 111)

But there is an exception: “*The financial control is, of course, always and directly exercised by the legislative body.*” (p. 51)

**“Amt” or Office:**

Originally the king’s servants as it was, “the ‘Amt’ or the Office properly so called is *a part of the State organization; the power of the State is realized by its instrumentality.*” (p. 58) Stein stands for the officials and guarantees their position as follows:

*“Perhaps the King might say that the State Officials are his servants, because he nominates them to their positions. But this nominating is no more than an Official duty of the King as a member of the State organization [sic] The Officials may be nominated by the King; but once nominated they are themselves the members of the same organization; and they must at least have the right that the King shall not dismiss them at his own pleasure.”* (p. 58)

The important thing is each “official ‘competenz’ [sic] which is formally documented.” (p. 77) The “competenz” guarantees the position of an official as well as clarifying his responsibility in the state service, and:

*“The ‘competenz’ of one and the same office may be altered in reference to the person who is going to be appointed thereto.”* (p. 77)

But at the same time the “competenz” circumscribes the officials’ activities. Stein never fails to clarify the reason:

“... we must always bear in mind that clear boundaries should be put around the rights of the executive function, in order to secure the individual freedom and safety against the executive interference of the government. . . . If the government were left in its own ‘willkur’ [sic] (caprice) there would be no end of its interfering activities.” (p. 86)

In order to maintain the harmony between the administrative and the legislative, Stein insists, “We should decline the Ministers who are not responsible or are not backed by the majority in the representative body.” (p. 104)

“... the fact that there is a great minority against a small majority in the legislative assembly, means that the Constitutional harmony is on the point of being broken.” (p. 125)

Therefore it would be no problem for a minister to get elected, but,

“In case an Official is elected Member of Parliament, he must obtain the Government permission to accept the seat; sometimes he would have to resign his Government position.” (p. 36)

In contrast, “in case a member of Parliament receives a position in the Government, he must give up his seat, or offer himself for reelection.” (p. 36) Thus, it is clear that in Stein’s view the state official holds superiority to the members of the legislative body.

## Concluding Summary

Judging from the sentences underlined or marked by Mutsu, it appears he was much more interested in the first half of the entire note No. 7. The most important as well as far-reaching interest of Mutsu is in the relations between the legislative and the executive body. Stein’s assertion that “the financial control is . . . always and directly exercised by the legislative body” (p. 51) came true in clauses 62–65 of the Meiji Constitution, which made it more urgent for the Japanese government to keep close

relations with the Diet. There is much probability that Mutsu recognized such relations through Stein. To put it in a nutshell, it was the concept of “responsible ministry” that counted.

Induced as first corollary is the electability of a cabinet member. If it is essential for the government to form a majority in the parliament, a cabinet member can stand for election without doubt. The first general election, which took place in 1890, found Mutsu as a successful candidate. Since he had assumed his position as Minister of Agriculture and Commerce in Yamagata Aritomo’s cabinet before the election, he became the first minister to obtain a seat in the Diet. Mutsu had prepared for this election while he was Japanese minister to the United States.<sup>34</sup> Needless to say, Mutsu regarded it as significant that “*the united Ministry has a majority in the legislature*” (p. 54), for “the Constitutional harmony is on the point of being broken” if “there is a great minority against a small majority in the legislative assembly.” (p. 125) While Mutsu was in the United States, he had been keeping in close contact with his comrade, Inoue Kaoru. Since both of them were well aware of the necessity of party politics, which would make it easier for the administrative or executive body to pursue their policies, Mutsu and Inoue proceeded shoulder to shoulder for their party, Jichi-to (Self-Governing Party), to compose the majority in the Diet. One of the letters from Mutsu to Inoue reads: “How many members do you intend to hold in the coming Diet? Which is your real intention, to hold the majority or to manage a minority even though it is a so-called strong minority to balance the Diet?”<sup>35</sup> After analyzing Stein’s lectures, it is easy to assume that the phrase “strong minority” has very much to do with the “great minority” in Stein’s lectures.

The second instruction is the highly estimated position of “Amt” and the administration. Especially, the administration should enjoy a position independent of the king and of the legislature. Perhaps Mutsu was encouraged by Stein’s assertion that “*formal jurisdictions may be transgressed by the members of the government on their own responsibility in performing what they believe to be the will of the State.*” (p. 75) He must have

felt all the more supported, neglecting the reason that Stein observed the limitation for the “competenz” [sic] of officials would be needed: “. . . in order to secure the individual freedom and safety against the executive interference of the government.” (p. 86)

The third instructive point is the eliteness of the members of the government. As Stein asserts that “*responsible are those persons alone, who think themselves to be its life and spirit*” (p. 75), such a self-confident and proud individual as Mutsu cannot but take himself as one of “those persons.” What is more, Stein recognizes the inequality of knowledge and experience between “the Government Officials” (p. 35) and “the ignorant bulk” (p. 36), as is typical with the German elite. Actually, Mutsu was born as a son of a *kanjo-bugyo* of Kii (who was supposed to be in charge of revenues) with an income of 800 *koku* (1 *koku* is grossly equal to 180 liter). That means he was a member of the higher class in the Edo period. Partly because of these facts, and partly because he really made the most of various chances to improve himself, Mutsu remained overconfident in himself until his death. His eliteness was to be supported by Stein and so did the belief in the executive body, which turned out to be most instrumental in controlling the state affairs.

As soon as he returned to Japan, Mutsu began to serve in the Japanese government as minister resident. This decision perplexed others, for they took Mutsu as a supporter of party politics and expected him to indulge in the antigovernment movement. But with Bentham’s utilitarianism and English constitutionalism in one hand and Stein’s *Staatswissenschaft* and German bureaucracy in the other, Mutsu was never at a loss what to do next and went on his way to power by joining the administrative sector without hesitation.

#### Notes

1. The scarcity of literature on Stein in English is surprising. See Pasquale Pasquino, “Introduction to Lorenz von Stein,” in *Economy and Society*, Vol. 10 No. 1, 1981, pp. 1–6. In spite of Pasquino’s regret, only a translation of Kästner’s article is in the same issue (Karl-Hermann Kästner, “From the Social Question to the Social State”, *Ibid*, pp. 7–26). Those referable in English are: F. W. Coker, *Organismic Theories of the State*, New York, 1910, pp. 66–72; William A. Dunning, *A History of Political*

- Theories*, Vol. III, New York, 1922, pp. 377–386; Herbert Marcuse, *Reason and Revolution*, 2nd ed., London, 1954 (reprinted in 1968), pp. 374–388; Kaethe Mengelberg, Translation and Introduction to Stein's *The History of the Social Movement in France*, 1789–1850, Totowa, N. J., 1964; ---, “Lorenz von Stein and His Contribution to Historical Sociology,” *Journal of the History of Ideas*, 22–2, 1961; Horace John Weiss, *Three German Utopian Socialists: Lorenz von Stein, Karl Marlo and Moses Hess*, unpublished Ph. D. dissertation to Columbia University, 1958; ---, “Dialectical Idealism and the Work of Lorenz von Stein,” *International Review of Social History*, 8–1, 1963.
2. In this essay, Japanese names are written in the traditional style, that is, family names first and given names last, whenever sources of citation are needed.
  3. Hozumi Nobushige, *Hoso Yawa* (Tales about Law), Tokyo, 1980, pp. 219–220 (originally published in 1926).
  4. Some of Stein's works translated into Japanese in this period are:
    - ① *Kokuriron* (『国理論』), 1882.
    - ② *Heiseigaku* (『兵制学』), Vol. 2, 1882.
    - ③ *Sutain-shi Jinko Seido Ron* (『スタイン氏人口制度論』), n. d.
    - ④ *Gyoseigaku Kyoikuhon* (『行政学教育編』), 1884.
    - ⑤ *Okoku Sutain-shi Zeiho Kogi Hikki* (『澳国スタイン氏税法講義筆記』), 1888.
    - ⑥ “Jichi Ron” (『自治論』), in: *Jichi Ronsan* (『自治論纂』), Tokyo, 1888, pp. 60–76.
    - ⑦ *Keisatsu Seigi* (『警察正義』), 1889.
 Except ②, all these are equivalent to the parts compiled from Lorenz von Stein, *Handbuch der Verwaltungslehre*, Stuttgart, 1887–88. ② is an abridged translation of Stein's *Lehre vom Heerwesen*, 1872.
  5. Suematsu Kencho, “Ito-ko no Oshu ni okeru Kenpo Torishirabe Tenmatsu” (An Account of Count Ito's Study about Constitutions in Europe), *Kokka Gakkai Zasshi*, 26–12, 1912, pp. 1874–1875.
  6. These lecture notes belong to the collection of Kanazawa Bunko in Kanagawa Prefecture, where Mutsu once served as governor after the Meiji Restoration. I am very grateful to Mr. Kinji Fukushima, who was kind enough to allow me to access them. The first contribution on these documents is Hagiwara Nobutoshi, “Mutsu Munemitsu Kiko” (Mutsu's Travel to Europe), an introduction to his *Nihon no Meicho 35 Mutsu Munemitsu*, Tokyo, 1973, pp. 7–52. But he just referred briefly to these lecture notes instead of making an in-depth analysis. See my “Mutsu Munemitsu Kogi Note” (Mutsu Munemitsu's Lecture Notes), *Kanazawa Bunko Kenkyu* (The Journal of Kanazawa Bunko), No. 291, 1993, pp. 1–15.
  7. I have argued about Bentham's influence upon Mutsu and Japan at that time. See my “Mutsu Munemitsu and Jeremy Bentham,” *Gendaishi Kenkyu* (The Journal of Contemporary History), No. 35, 1989, pp. 35–50.
  8. Joseph Pittau, *Political Thought in Early Meiji Japan 1886–1889*, Cambridge, Mass., 1967, pp. 132–133.
  9. Kawashima Jun Den Kanko-kai ed., *Kawashima Jun Den* (Biography of Kawashima Jun), Tokyo, 1981, p. 53.
  10. Kitabatake Doryu, “Tenjiku Koroji Shoken” (What I Saw on the Journey to the Far West), in Meiji Bunka Kenkyu-kai ed., *Meiji Bunka Zenshu 7 Gaikoku Bunka Hen* (3rd edition), Tokyo, 1968 (originally published in 1928), pp. 491–531.
  11. A letter from Ito Hirobumi to Iwakura Tomomi dated August 11, 1882, cited in Inada Masatsugu, *Meiji Kenpo Seiritsushi* (History of the Formation of the Meiji Constitution), Tokyo, 1960, p. 584.
  12. Watanabe Renkichi Denki Kanko-kai, *Watanabe Renkichi Den* (Biography of Watanabe Renkichi), Tokyo, 1934, pp. 49–53.
  13. Shimizu Shin, *Meiji Kenpo Seitei-shi* (History of the Establishment of the Meiji

- Constitution), Tokyo, 1971, pp. 351–445 includes that record.
14. Watanabe Ikujiro, *Meiji Tenno to Rikken Seiji* (Emperor Meiji and Constitutional Politics), Tokyo, 1935, pp. 71–73.
  15. “Sutain-shi Kogi Kikigaki” (A Memorandum of Prof. Stein’s Lectures). This is included in the archives belonging to Kensei Shiryoshitsu of the National Diet Library in Japan.
  16. A letter from Tani to Ito Hirobumi dated September 18, 1886, in Ito Hirobumi Kankei Monjo Kenkyukai ed., *Ito Hirobumi Kankei Monjo* (Documents of Comprehensive Letters to Ito Hirobumi), Vol. 6, Tokyo, 1978, p. 157 (hereafter cited as IKM, 6–157).
  17. Kuroda Kiyotaka, *Kan-yu Nikki*, 3 vols., Tokyo, 1887.
  18. *Ibid.*, Vol. 3, pp. 125.
  19. *Sutain Hakase Toshinsho* (Remarks of Dr. Stein), an archive of Kensei Shiryoshitsu.
  20. Shimizu, *op. cit.*, pp. 68–69.
  21. Kaeda Nobuyoshi, Ariga Nagao eds., *Sutain-shi Kogi Hikki*, Tokyo, 1889.
  22. Kaneko Kentaro, *Kenpo Seitei to Obeijin no Hyoron* (Establishment of the Constitution and the Comments of Westerners), Tokyo, 1937, pp. 217–220.
  23. It does not seem to be clear where he died. According to Carl Menger, “Lorenz von Stein” in *Jahrbücher für Nationalökonomie und Statistik*, 3–1, 1891, he died “in seiner Stadtwohnung,” but others regard the place as “seinem Landsitze in Weidlingau bei Wien.” For example, see *Allgemeine Deutsche Biographie*, Bd. 35, 1893, p. 662, written by Inama-Sternegg, K. Th.
  24. Shimizu, *op. cit.*, p. 72.
  25. To my chagrin, an authentic biographical study of Mutsu has not been published. Among English literature, Marius B. Jansen, “Mutsu Munemitsu,” in Albert M. Craig & Donald H. Shively eds., *Personality in Japanese History*, University of California Press, 1970, pp. 309–334, and Gordon M. Berger’s “Introduction” to the translation of *Kenkenroku* (Diplomatic Memoirs of Mutsu), Tokyo, 1982, pp. xi–xx, provide a brief survey about his life and career.
  26. A letter from Mutsu to Ryoko dated July 30, 1884, *Mutsu Munemitsu Kankei Monjo* (hereafter cited as MM) 55–II, III, belonging to Kensei Shiryoshitsu. Mutsu’s itinerary mentioned below is mainly based upon this archive, so it is not specifically indicated.
  27. A letter from Mutsu to Stein, dated September 27, 1884, Stein Monjo (hereafter cited as SM) of Kensei Shiryoshitsu. The original belongs to the Steins Nachlas of Schleswig-Holsteinische Landesbibliothek, Kiel.
  28. A letter from Mutsu to Stein, dated October 15, 1884, SM.
  29. A letter from Mutsu to Stein, dated December 7, 1885, SM.
  30. A letter from Saionji Kinmochi to Ito Hirobumi dated July 3, 1884, IKM, 5–47.
  31. Mutsu asked Stein questions at least twice after he had left Vienna (letters from Mutsu to Stein dated September 8 and October 1, 1885). Mutsu expressed his gratitude to Stein for correcting his manuscript (a letter from Mutsu to Stein dated December 7, 1885, SM).
  32. Hereafter pages indicated within the parentheses after a citation are those of note No. 7 (Sentences without commas and periods are original).
  33. For example, Gottfried Salomon, “Vorwort des Herausgebers,” in Lorenz von Stein, *Geschichte der Sozialen Bewegung in Frankreich von 1789 bis auf unsere Tage*, Bd. 1, München, 1921, pp. xxxviii–xxxix.
  34. See, my “Chu-bei Koshi Mutsu Munemitsu” (Mutsu Munemitsu, Japanese Minister to the United States), in *Tokyo Jogakukan Tanki Daigaku Kiyo* (Bulletin of Tokyo Jogakukan Women’s Junior College) 13, 1991, pp. 56–75.
  35. MM, 68–2.

# Appendix

The major contents of note No. 6 are shown in the following outline.

Titles in gothic letters indicate chapters. The mark “/” means that the next line begins after this mark. Both gothic letters and the mark “/” are mine, while all other parentheses and underlines as well as lacks of quotation marks are original.

*The Plan of State Science by Prof. von Stein*

## **The Plan of State Science**

### Part I The Nature of State Science

#### (A) Philosophy

Idea of State / Development of Personality / Elements of Organization / Chief—Will—Force {Constitution} / Administration

#### (B) Knowledge

#### (C) Science

- (1) Idea of equality: community of men
- (2) Idea of inequality: the society
- (3) Science

### Part II Right and Nature of Right

#### (1) (A) Idea of Right

#### (B) System of Right

#### (C) Elements of the system of Right

#### (2) Positive Right

#### (3) Science of State-right

### Part III State and its Science

#### (1) System of State-science

#### (A) Principle

This principle is to be reduced to those separate organisms which are contained in an absolute personal nature:

Head—Will—Force / Sovereign—Legislature—Executive.

#### (2) Historical Elements of Society

#### (A) “Geschlechter-ordnung” (Patriarchal Order)

#### (B) “Standische [sic] -ordnung” (Corporative Order)

#### (C) “Staatsbürgerliche-ordnung” (Constitutional Order)

#### (3) Science of State-right

#### (A) Sovereign in Patriarchal Order

“ “ Corporative “

“ “ Constitutional “

#### (B) Legislature in these three orders

#### (C) Executive Power and Government in these three orders of

society

## **Legislative Power**

### Part I Principles

- (A) In Patriarchal Order
- (B) In Corporative Order
- (C) In Constitutional Order

### Part II Organization

- (A) Question of the necessity of Upper and Lower House / Nature
  - (1) Upper House: independent of any personal interest, therefore, no election, but these three elements:
    - ( $\alpha$ ) Birth and estate
    - ( $\beta$ ) Location and public position
    - ( $\gamma$ ) Denomination by the Sovereign
  - (2) Lower House
- (B) System of election
  - (1) Right of Election
    - ( $\alpha$ ) Census
    - ( $\beta$ ) Universal Suffrage
    - ( $\gamma$ ) Majority
  - (2) Order of Proceeding:
    - ( $\alpha$ ) Electoral Classes
    - ( $\beta$ ) Direct Election
    - ( $\gamma$ ) "Scrutin de Liste"
  - (3) Distribution of Electorates
  - (4) Electoral Periods

### Part III Electoral Politics

- (A) Abstract [sic] Principle
  - (B) Party
  - (C) Higher Politics of the State / Principle
    - ( $\llcorner \alpha \llcorner$ ) Right of Crown to nominate peers: —How many?
    - ( $\llcorner \beta \llcorner$ ) Organization of Electorates.
    - ( $\llcorner \gamma \llcorner$ ) "Scrutin de Liste"
- Right of Minority / Principle

## **Executive Power**

### Introduction

### Part I Organization and general principles

- (A) Division
- (B) Unity in division of territory and labour
- (C) Organism as a public order of Right

### Part II Higher Nature of Executive Power

Idea of Government

Right of State-service

System of the Right of State service

- (a) Right of nomination—by the Chief of the State
- (b) Condition of nomination—study and examination for the call
- (c) Responsibility: —system
  - (1) formal and legal
  - (2) ethical
  - (3) Social—consequently, right of discipline
- (d) Right of destitution: Court judgment  
Right of dismissal: pension

**Functions of Government**

Part I First and Elementary Function: Execution of Law

Principle

Organization:

- (A) Executive will
  - (B) Executive organs
    - (1) For the State as a unity
      - ( $\alpha$ ) Public force
        - (a) Gendarmery
        - (b) Executive Police
      - (c) Obligation to every citizen to help the government (English constabulary)
    - ( $\beta$ ) Police of local self-government [sic]
  - (2) For each ministerial department
- (C) Right of actual Execution in relation to the Individual

Liberty

- (1) Generally:
  - ( $\alpha$ ) Threatening
  - ( $\beta$ ) Imposing fines
  - ( $\gamma$ ) Physical force
- (2) Specially: Executive authority in Houses

Part II Second and higher Function: Suspense [sic] Inspection

Idea

System:

- (A) Statistics
- (B) High Police

System:

- (1) Political police
- (2) Administrative police
- (3) Personal police

Principle / Organ

- (C) Government Instruction: Object /
  - ( $\alpha$ ) Statements of Officials

- ( $\beta$ ) Reports in particular questions (“Gutachten”)
- ( $\gamma$ ) Public “Euquete” / Form: /
- (1) Questioning
- (2) Hearing of answer and information
- (3) Publishing of the statements

### Highest and Legislative Function

Idea:

- (1) Will of Government: / System: /
  - ( $\alpha$ ) Executive ordinance {executive clause}
  - ( $\beta$ ) Provisory laws {administrative ordinance}
  - ( $\gamma$ ) Ordinance for public dangers:
    - (1) Suspension [sic] of laws
    - (2) Ordinance for need and distress
- (2) Government Initiative:
  - ( $\alpha$ ) Draught made by the ministry, presented to the Chief of the State, proposed with motives to the legislative body
  - ( $\beta$ ) Motives
  - ( $\gamma$ ) Acceptation of amendments proposed by the Chief of the State. —Form of law
- (3) Organization of Government / ordinance power:
  - ( $\alpha$ ) “Reichsverordnung” (ordinance or proposal of the whole ministry [Privy Council] under the presidency of the Chief of the State)
  - ( $\beta$ ) “Ministrial [sic]-verordnung” (Ordinance issued by the agreement of ministers in busines [sic] relation)
  - ( $\gamma$ ) “Verfügungen der Behörden” (Ordinances of special minister for their particular administration and “Kompetenz”)

### Constitutional Harmony

Principle

Part I Spiritual Element

Idea:

- (A) Love of country
- (B) Ethical
- (C) Intellectual

Part II Constitutional Element

System

Idea:

- (A) Constitutional right of the Chief of the State—King: — / Idea / Right
- (B) Constitutional Right of the Legislature and the Executives in Conflict: / Idea
  - (1) Spiritual or “Political” harmony:

(2) Harmony in the particular actions of Government

(⌋⌋ α ⌋⌋) Government in a unity

Idea

Principle

(a) Political responsibility

(b) Judicial responsibility: / Impeachment {Constitutional}

(1) Lawsuit against an action as a direct violation of the Constitution

(2) Court of impeachment—“Staatsgerichtshof” (state-court [sic])

(3) Procedure

(4) Crime

(⌋⌋ β ⌋⌋) The Particular Ministers

(⌋⌋ γ ⌋⌋) Right of Indemnification

### **Science of Administration**

Idea

Part I Principle of Administration

(A) Philosophical Necessity of the working State

(B) Harmony between Community and Individuals [sic]

(C) Limits of Administration

Part II System of Administration and Practical State-science

Idea

System and Principle:

(1) Mechanical force of the State: / Army and Navy: —and its administration

(2) Economical force: Finance

(3) Individuality of free individuals and their public and private rights: Justice, and its organization

(4) Foreign affairs

(5) Conditions of the individual development: spiritual, economical, and social

Practical Science of State:

Part III Right of Administration (“Verwaltungsrecht”)

Idea

System:

Difference between Constitutional Right and Administrative Right  
“Verfügung”—“Patent”—Kundmachung” (Lower Officials)

Different nature of ordinances according to the different parts of Administration

### **Divisions in Administration**

Part I Foreign Affairs

Idea

(A) Independence and Sovereignty

War:

System of this right

( $\alpha$ ) Right of combatant [sic]—warfare

( $\beta$ ) Right of international communication in time of war

(1) Reprisals—retorsion [sic]

(2) Neutrality

(3) Right of privateering—Contraband of war

(B) Unity of the life of States

Peace:

(a) Ambassadors—exterritoriality [sic]

(b) Consuls

(c) Alliance and treaties

(d) International right of administration

(1) Personal

(2) Spiritual

(3) Judicial

(4) Police

(5) Economical

( $\alpha$ ) System of duties and customs

( $\beta$ ) Right of foreigners in acquiring estates

Part II Military Power

Idea

(A) Constitution

Principle:

(a) Laws of recruitment

(b) Financial law

(c) Military justice

(B) Ordinances and Military Power (“Kriegswesen”)

Principle

Simple command

Principle:

(1) Military obedience

(2) King as commander in Chief

(3) Responsibility, subject to military court (“Kriegsgericht”)

Ethical Element

Part III Finance

Idea

Organization

(A) System of Finance

(a) Expense

(b) Revenue

(c) Budget

(1) Revenue from capital: Domains

- (2) Revenue from the labour of the State for individuals:
  - Taxes
- (3) Revenue from the incomes of citizens: Duties
- (4) The State credit and paper money
- (B) Budget and Constitutional Right
  - Idea
    - ( $\alpha$ ) Economical System of Budget
      - (1) All expenses and revenues as a whole
      - (2) Every part of administration has its own budget—budget of ministers
    - ( $\beta$ ) Constitutional System of Budget
      - (1) Vote for expense and extraordinary credit
      - (2) Vote for income
      - (3) Vote for Budget as a whole
    - ( $\gamma$ ) Constitutional Right
      - (1) Responsibility and liability of the minister of Finance
      - (2) No obligation to pay an unvoted subsidies

#### Part IV Justice

##### Idea

- (1) Laws which are realized by the administrative organism
- (2) The organism by which the laws are realized
- (3) Procedure, with its elements
  - ( $\alpha$ ) Claim and defence
  - ( $\beta$ ) Evidence
  - ( $\gamma$ ) Sentence [sic]
  - ( $\delta$ ) Execution

##### Historical development:

First Period: The people as court

Second Period: The jurist as court

Third Period: The principle of jury

##### System:

- (A) Constitutional Right and Its Violation:
  - State-Court (“Staatsgerichtshof”)
- (B) Administrative Right:
  - Violation of individuals by the Executive Power:
    - Court of Administration (“Verwaltungsgerichtshof”)
- (C) Penal Right:
  - Violation of individuals by the action of others:
    - Criminal Law and Court
- (D) Civil Right and Law:
  - Lawsuits in property and obligation:
    - Civil Justice
- (E) Military Law and Court: (“Kriegsgericht”)
- (F) International Right

Part V Home Affairs. (“Innere Verwaltung”) {internal management}

Idea

Elements

Historical Standpoint

First Period: No home affairs of State

Second Period: Administration by corporatives

Third Period: Development of the idea of working State in home administration:

- (1) Absolute Administration
- (2) Constitutional Administration with responsible ministers
- (3) Social Administration with the conception [sic] of differences and struggles between the classes.

System:

Scientific System (Science of Administr [sic].)

- (1) Physical Life: / Population. Health
- (2) Spiritual Life: / Church. Education
- (3) Economical Life:
  - ( $\alpha$ ) General: Power of nation in Communication
  - ( $\beta$ ) Special: Agriculture, Commerce, Industry, etc
- (4) Social Life:
  - ( $\alpha$ ) Poor Laws
  - ( $\beta$ ) Struggle between Capital and Labour

The End of the Plan / of / State Science / by Prof. von Stein