JAPANESE CULTURE
IN THE
MEIJI ERA

Volume IX

LEGISLATION

THE TOYO BUNKO
TOKYO JAPAN
Draft Constitution, Art. I, on the Emperor

The Same, Art. II, III, on the Emperor

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TRANSLATOR'S PREFACE

The present volume forms a part of the Cultural History of the Meiji Era (1868-1912) series, which has been published by Japan's Centenary Cultural Council in order to commemorate Japan's opening of relations with the rest of the world a century ago. Each volume in the series is a summing up, so to speak, of the major developments in a particular sphere of culture during the half century following Japan's repudiation of her long standing policy of isolation. This half century is very significant in that it forms one of the great reform periods of Japanese history and witnesses the emergence of Japan as a modern state.

In this volume, the author, Professor Ishii Ryōsuke, Faculty of Law, University of Tokyo, has endeavored to trace the important developments in both public and private law as reflected in Imperial edicts, government documents and pronouncements, and in the records left by important government officials. Public law, however, is the main concern of the book, and in this sphere of law the author has taken special effort to present a comparatively detailed account of the organization of the courts, the law of civil procedure, and the law of criminal procedure—all of which are little known aspects of early Meiji legislation.

In making the translation the translator has been obliged to alter the contents from time to time, though it is hoped that the alterations have not materially affected the substance of the original. Since a history of legislation, as written in Japanese, sometimes lends itself to a listing of laws, edicts, and quotations from government documents, it has been necessary wherever possible to summarize such entries so that they might appear to form a narrative. The translator regrets that Part One and a large portion of Chapter I, Part II does not make smooth reading, but, unfortunately this portion of the book could not be completely revised owing to the publication deadline.

Wherever it has been necessary to quote or paraphrase the texts of certain laws, rescripts, and other government documents
the translator has, when possible, made use of standard English translations that appear in the following books:


All dates in this translation, it should be noted, conform to the solar calendar system, even the dates prior to 1873, which in the Japanese original follow the lunar calendar.

In preparing this translation the translator has been assisted by a number of persons. He wishes first of all to acknowledge his indebtedness to Professor John W. Hall, Director, Center for Japanese Studies, University of Michigan, and to the U.S. Educational Commission for making a trip to Japan possible, during which time this translation was undertaken more or less as a subsidiary project. To Professor Hidaka Daishiro, Chairman, Centenary Cultural Council, for making the translation itself possible, and to the author and particularly to Miss Kanazawa Shizue for assistance in overcoming problems of translation the translator is more than glad to express his appreciation. Grateful acknowledgment is also made to Mr. Okano Takeo of the Centenary Cultural Council for preparing the index, and to Professor Kimura Michiko of Waseda University for reading the proof. And lastly the translator wishes to thank her for taking care of many tedious details relating to the translation.

**William J. Chambliss**
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INTRODUCTION

PERIODIZATION OF JAPANESE LEGAL HISTORY
AND THE DEVELOPMENT OF LAW
IN THE MEIJI ERA
CHAPTER I.

PERIODIZATION OF JAPANESE LEGAL HISTORY

The purpose of this book is to describe the development of legislation in the Meiji era, but prior to embarking upon our subject we must first make clear what position Meiji legislation occupies in the history of Japanese law. Though all manner of views concerning the periodization of Japanese legal history have been put forward, I should like, in this chapter, to suggest my own formal periodization of Japanese legal history from earliest times and then determine whether or not the development of Meiji legislation conforms to this general periodization scheme.

When giving thought to historical development one must invariably seek out the fundamental in the historical process and make it the substance of one's study. Since this is matter of historical being so to speak, the fundamental should follow a sort of biological development, beginning with the stages of formation, growth, and maturity. These stages should then be followed by decline, extinction and on certain occasions by vestiges of what has already passed from the scene. Barring any external or natural conditions that might arise to interrupt the course of development, this biological process of change should prevail. There is, however, an overlapping among these stages; the formative one overlaps with the historical period preceding it and the stage of extinction overlaps the period that follows it. Hence in describing the development process of two such periods it suffices to recognize only the three stages of (1) growth, (2) maturity, and (3) decline for each period; and for purposes of simplification these may be termed the early, middle and late phases respectively. Thus the early phase
of a given period corresponds to the dying phase of the distinguishing feature of the preceding period and the final phase of another period is identified with the formative phase of the basic characteristic of the succeeding period.

The question thus is how to determine the distinctive feature of each period. In surveying the overall development of Japanese legal history the answer seems to appear in the following institutional types. First in order come clan institutions. Next follow those associated with the eighth century Ritsuryô Code of penal and administrative law, after which private estate (shôen) feudalism emerges. Later there appears a further type of feudalism which is distinguished by a large number of partially autonomous domains which are supported economically by a host of villages; and finally Japan arrives at semi-feudal modern law. The high point or maturity phase of each of these historical periods, in the same order, occurs in the third to fourth centuries A.D., the Nara Period (702-810), the Kamakura Period (1185-1333), the first half of the Edo Period (1600-1742), and lastly in the years from the early Meiji Period to the early Shôwa Period (1882-1931). Each of these high points corresponds to the middle phase of its respective era which in like order may be designated as Remote Antiquity, Recent Antiquity, the Middle Ages, the Modern Period and the Contemporary Period. The era beginning with the conclusion of the Pacific War in 1945 is called the Present Age. (Arranged in chart fashion the periods appear on Page 3).

Briefly explained, Remote Antiquity's distinguishing feature lies in the fact that it is a family clan society governed by ancient indigenous law and in the fact that religion is closely connected with all spheres of social life. From the legal history viewpoint it is a period when law and religion are as yet unseparated and the power of law seeks reinforcement by religion. In the late phase of this period, however, law and religion do become separated. The Japanese Empire is divided up among each of the clans and these are united by the Emperor who
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enjoys a position superior to each clan's *uji no kami* or chief. However, it is a principle at this time for the Emperor not to rule in person. In comparison to Recent Antiquity and later ages, Remote Antiquity is scarcely influenced by alien law; there exists no written law and legal right is divided among the clans. In consequence, these early years may be summarized in terms of a society composed of decentralized clans which abide by an unwritten and native law.

Recent Antiquity begins after 603 A.D. with the creation of the twelve court ranks and the later enactment of the Chinese derived *Ritsuryō Code*, and although indigenous law does not cease to exist, the legal institutions of Japan become generally signified. The Japanese Emperor, like his Chinese counterpart, comes to assume direct personal rule in a government which claims jurisdiction over all the land and inhabitants of the Empire; and, supported financially by land revenue, public labor services and other taxation, this government is administered under the direction of the Grand Council of State through bureaucratic institutions and laws of Chinese origin. Since the ideal of the legal system is the realization of Confucian morality, the civil officials, who are encharged with the propagation of moral doctrines, and the system of official court ranks are both of great significance. Inasmuch as legal right is monopolized by the Court and as Chinese law is in the ascendant during this span of antiquity, we may regard this period as one of Court law or as the era of the signified *Ritsuryō Code*. In the early part of the era (Asuka Period) this legal system is in the process of growth, in the middle part (Nara Period) it reaches a point of maturity, and in the late part of the era (early Heian Period) the legal institutions fall into abeyance.

The Middle Ages, which follows the establishment of the office of Regent and Chief Councilor or *Sesshō Kampaku* as a permanent office in 967 A.D., is a period of feudalism based on private manorial estates (*shōen*) and a period during which the law of Remote Antiquity is revived to fill the vacuum left by
the decline of the institutions and laws originating in the eighth century. The resuscitated elements, however, are not exactly the laws of Remote Antiquity in their original form, for having been handed down through the momentous age when Japanese law was being molded into the *Ritsuryō Code*, the indigenous body of law is left bearing the imprint of Chinese influence. In fact it would not be unreasonable to say that the law of the Middle Ages, while regarded as feudal law, is created by the fusion of the law of Remote and Recent Antiquity, and thus might appropriately be labelled "ancient" feudal law. Though a bit incongruous, this term aptly reflects the conflict taking place in the Middle Ages between the estates under the authority of the "ancient" Court nobility residing in Kyoto and the estates under the feudal control of the nascent military aristocracy who have established their center of government, known as the Bakufu, at Kamakura. Incongruous also is the fact that the economic base of the new force of feudalism and the distinguishing feature of this era are the old private manors. For this reason, in characterizing the Middle Ages, it may be termed the "manorial period" or the "period of manorial feudalism". In terms of law it is an age of native law revival, as witnessed in the replacement of the *Ritsuryō Code* by an indigenous corpus of law known as the *Shikimoku Formulary*. Divided into its various stages, the early part of the Middle Ages, which corresponds to the late Heian Period, is the interval in which the bushi class and the manors grow in number; the middle part or the Kamakura Period is the interval in which the old manors and new feudal institutions balance each other; and the last phase or the Muromachi Period marks the general decline of manorial feudalism owing to the encroachment of the bushi on the estates of the nobles. The Modern Period, which follows the Ōjin Rebellion (1467), witnesses the emergence of the village or sonraku as the foundation of feudalism; and, while this period is an extension of the preceding one, with the passage of time the vestiges
of the ancient world that are visible in the Middle Ages are almost entirely wiped out, thereby clearing the way for the growth of uniform feudal institutions. Therefore, this period is an age of genuine feudal law. Shortly following the year 1467, the court is completely shorn of political authority; and the entire country finds itself in submission to the political supremacy of the Bakufu once Japan enters the Edo Period. However, in the administration of the daimyo possessions, which are little more than consolidated units of the dismembered fiefs of the Sengoku Period there is no direct interference, in principle, by the Bakufu, for it leaves their administration to the daimyo and limits itself to their surveillance. Nevertheless, the Bakufu reserves to itself the authority to exercise, for all of Japan, direct control over foreign relations, currency, weights and measures, communications, and similar affairs. The chief features of the Modern Period which set it apart from the preceding age are primarily two. In the first place, villages rather than manors become the substance of feudal grants, and, secondly, the daimyo are given far reaching administrative authority over their fiefs, or domains as they are sometimes called. The period is thus designated as “domain-village” feudalism. In respect to law it is a period of proclamation law in contrast to the preceding periods when Ritsuryō Code and Shikimoku Formulary prevail. And insofar as the Middle Ages tradition of law is continued, this is a time of indigenous law development. The early part of the Modern Era includes the brief Sengoku and Ando Periods, the former being noted for the fall of the Muromachi Bakufu and a protracted civil war which occasions the partitioning of the provinces; the latter being remembered as a period when the provinces are again consolidated. Also this early part of the Modern Period constitutes the formative stage for the new form of village based feudalism. Corresponding to the Momoyama Period and the early half of the Edo Period, the middle part of the Modern Era witnesses the ripening of the new feudalism which then declines during the late half
of the Edo Period, i.e., the last part of the Modern Era.

The Contemporary Period comes next, following upon the signing of the Japanese-American Treaty of Commercial Relations in 1858. After this date, in the wake of a collapsed feudalism, the Japanese are engaged in the early years of the period in the task of introducing Occidental law, especially the law of France, Germany and other continental countries. Despite the modernization of law in the Contemporary Period, however, the process remains incomplete and inevitably a large measure of feudal influences survives. For this reason it is designated as a period of semi-feudal modern law. A constitution is promulgated in 1889, it is true, but the prerogative to a great extent is reserved to the Emperor. The legislative sphere is characterized by the enactment of statutes and ordinances, but, in contrast to a constitutional democracy where matters pertinent to the rights and duties of citizens are determined by statute, this period is conspicuous for the large number of ordinances issued by command of the Emperor and by the government. The early part of the semi-feudal modern law period falls before the year 1881, by which time political feudalism has disintegrated; yet the collapse of the old order is not accompanied by any modernization in the existing body of law. In the meantime, while Japan is in the process of laying the ground work for the succeeding period through the assimilation of European law, revivalist type codes of Chinese origin are compiled by specialists in Chinese law.

The middle part of this modern law period, stretching as it does from the enforcement of the Old Criminal Code (1882) and the Code of Criminal Instruction (1882) to 1931, is typified by the implementation of modern codes and by enforcement of the Constitution. Another typical feature is the advance of capitalism which is encouraged by constitutional guarantees of freedom of contract, absolute ownership, and individual responsibility. The last part of the period, dating from the outbreak of the Manchurian Incident in 1931 and ending with the close
of World War II in 1945, is an emergency period during which society gradually becomes militarized, reactionary, and is placed under extensive economic controls. Moreover, as Japan turns away from the idea of national defense toward dictatorial tendencies, the rights of individuals are circumscribed and the Diet gradually parts with its functions. These years thus bear silent witness to the decline in function of the Meiji Constitution.

The Present Age has been ushered in by the conclusion of hostilities in 1945. Owing to the war’s outcome, the divine status of the Emperor has been repudiated, and the achievement of a completely democratic government is in progress or at least lies within the realm of possibility; therefore, the present era may be looked upon as one of constitutional democracy. Although law is still promulgated in the form of statute and ordinance, as in the preceding period, all matters concerning the rights and duties of the people are determined by provisions of law, which in contrast to the foregoing period makes present day Japan indeed a society governed by law. A further contrast with the earlier period is observed in the recent substitution of Anglo-American law for continental European law.

In looking back over the foregoing outline of Japanese law, it is apparent that the development of Japanese legal history has proceeded through such stages as the ancient law of family clans (Remote Antiquity), the ancient law of the Ritsuryō Code (Recent Antiquity), “ancient” feudal law (Middle Ages), feudal law (Modern Period), semi-feudal modern law (Contemporary Period), and modern law of the Present Ages. By combining both phases of antiquity together as one period of ancient law, Japanese legal history is thus divided into five periods. Furthermore, a brief glimpse at this formalized periodization indicates that ancient and feudal law are connected by a transitional period of “ancient” feudal law and that feudal and contemporary law are bridged in the same way by semi-feudal modern law. Nevertheless, every period can account for (1) an early phase of growth, (2) a middle phase of maturity and (3) a final phase
of decline. The fact that Japanese legal history may be categorized in just this fashion is due to the fact that Japan has never borne the brunt of excessive foreign influence and, even when quite powerful, the influence arrives close to the end of a period's final phase, thereby leaving the spontaneous development of history relatively undisturbed. It should also be recognized that law of alien origin, the *Ritsuryō Code* for example, does not bring the succeeding age to completion by its own continued development; but the succeeding period, to the contrary, emerges as an indigenous legal revival and development that is sequential to the disintegration of the alien corpus of law. To put it in a slightly different way, the geographical accident that for centuries allowed the Korean Straits to remain the sole means of contract with the Asian continent has made it possible for the Japanese legal tradition, with the exception of certain periods of time, to avoid all but slight influence from alien law. For this reason, too, Japanese law has demonstrated a peculiarly natural and in some respect a typical and rich growth, and it is entitled to a unique position even when judged according to the broader standards set by the legal annals of the world.
CHAPTER II.

INTRODUCTION TO THE DEVELOPMENT OF MEIJI LEGISLATION

According to the interpretation of the growth of Japanese law and its periodization, as mentioned in the previous chapter, the Meiji period must span the last and first half of the early and middle phase respectively of the Contemporary Period. But in relation to the entire scope of Japanese legal history the Meiji Period cannot be regarded as a complete era. This of course does not mean that a general description of Meiji legal history is by its nature impossible. The question is whether or not Meiji legal history constitutes a single unit by itself. For if we hold that it is too fragmentary there would be little meaning perhaps in treating it as a whole.

Yet if these years do have unity there can be no objection to presenting them as a history of Meiji legislation, even though in broader terms they do not go so far as to constitute an historical period. Believing, personally, that the Meiji Period does have unity, I would thus like to consider Meiji legislation as being divided into three phases. The first phase is a 14 years period from 1868-1881; the second is a 16 years period from 1882-1898; and the third is a 14 years period from 1899-1912. In regard to the relationship of these three phases, the first forms a transitional link between modern feudal law and contemporary law; the second phase, during which the effective dates of the modern codes fall due, represents a preliminary modernization of law; and the third phase is occupied generally with the enforcement of the codes without any further amendment.
An understanding of Meiji legislation may thus be obtained in reference to these three categories, of which the second is the most important. The first phase is treated as a period of preparation and the last one as simply a period of code enforcement. From this viewpoint the history of Meiji legislation seems to be a coherent whole and fit for a general description. Yet once passed the last phase of the Meiji Period, when the codes are applied by the letter of the law, the Japanese generation of the Taishō Period (1912-1925) view the intentions of the Meiji legislators in a different light and proceed to amend the codes or reinterpret them according to new principles. This shift in legal thinking, however, is not without connection to the economic and social developments then taking place. After all, during the middle part of the Meiji Period, under the guarantees of the Meiji Constitution, Japanese capitalism builds up a sound foundation on the principles of freedom of contract, absolute ownership and individual responsibility, and expands rapidly as a result of the wars fought with China (1894-1895) and Russia (1904-1905). Then after the close of World War I, at the same time that democratic thought becomes so strong in Japan, the capitalistic economy reaches its peak of prosperity. But following upon the heels of this hasty expansion of capitalism, certain problems arise which cannot be solved by mere reliance on the abstract principles of liberalism. Hence there are demands for all manner of social legislation as well as appeals for the introduction of current social concepts and the principles of good faith and honesty into interpretations of the law. Although present in the late part of the Meiji Period, these trends of the Taishō Period are not conspicuous and the codes are implemented without any major modification.

1. The Early Eras of the Meiji Period
1868 - 1881

The immediate outcome of the restoration of full political sovereignty to the Emperor in 1867 was the fall of the Edo
Bakufu and the creation of the Meiji government which, to all appearances, was a single and uniform source of authority within a few short years of its establishment. This process of unification was aided primarily by two events. One was the feudal lords' surrender in 1869 of their domanial land patents and population registers to the Throne, thus formally giving the Emperor direct jurisdiction over all the territory and inhabitants of Japan. The other was the abolition of the semi-autonomous domains and their replacement in 1871 by a centrally supervised prefectural system, which pronounced the death knell on the feudal institutions that had endured since the Middle Ages.

During this period the government's basic policy was prompted by the desire to place Japan in the ranks of the world powers, a feat that was to be accomplished by a program consisting of two major objectives. One called for the promotion of agriculture and industry and the other for measures that would make the country strong in a military sense. The advancement of industry and agriculture under strong and effective state protection was the only way for Japan to overcome the one hundred years handicap that separated her from Europe and America. This in turn made it necessary to create a centralized, or in common parlance, a totalitarian state. The centralization of the government, however, was not without a counter movement, for the idea of public deliberation as a basic element of government, a concept transmitted to Japan in the late years of the Bakufu, was being vigorously advocated by a stratum of dissident samurai. Hence in assessing the major currents in the political life of this period, one must recognize the conflict existing between the Japanese leaders who were creating a centralized government and their political opponents. It must be observed also that the liberal rights and parliamen-
tarian thought espoused by the government's opposition never produced any results until later in the second part of the Meiji Period.
The heart of the government's program in the early part of Meiji was focused on strengthening the administration's power so that the plans for the industrial and military sectors could be achieved. As a reflection of this centralizing process, mention may be made of Etō Shimpei's judicial reforms about the year 1872; the subsequent emergence of Satsuma and Chōshū as the central element of the government following the 1875 administrative reorganization; and the enactment of the Press Law (1875) and Libel Law (1875) for the purpose of suppressing popular movements. Another indication of the centralization was evinced by an Imperial edict of the year 1881. In announcing the coming inauguration of a national assembly, the edict declared that "if there should still be any persons who purposely clamor for speed and disrupt the public peace by creating disturbances they shall be punished by the law of the land. To ye Our subjects we expressly announce this declaration". However, aside from the concentration of political power in the hands of the government, the ultimate aim of Japan's policy to strengthen herself industrially and militarily lay in the achievement of equal status with the world powers. To accomplish this, Japan had to modernize herself as a state. In this undertaking the leaders of Japan modernized the revenue system through reform of the land tax, they encouraged local autonomy, they organized and equipped a nationwide educational system, and they brought about changes in the family as an institution. As part and parcel of these far reaching changes Japan also reformed her judicial system.

So rapid were the changes at this time that the period was one of a transitional nature, although the transitional aspect of public law was identified neither with the feudal nor modern age but with the strong influences of ancient institutions and the Ritsuryō Code. While the legislation of the new government was in urgent need of the introduction of European law, particularly French law with its liberal rights philosophy and English parliamentary law—both of which did to a certain degree serve
as the intellectual basis for reforms—the influence of ancient law, on the other hand, presented itself with bold force. Under the pretext of a return to the ancient form of direct Imperial rule, the law of the more recent Tokugawa feudal period was bypassed for the much older Ritsuryō Code and for other Chinese law of the same lineage. The resurrection of early institutions is best observed at the center by the formation of the Grand Council of State, the apex of the pyramidal administrative structure, and by the creation in the districts of prefectures that were placed under the jurisdiction of centrally controlled governors. For regulating the life of the people, the adoption of Chinese law is most clearly seen in the government's use of the legal tradition of the Ming (1368-1644) and Ch'ing (1644-1912) Periods in the enactment of the Outlines of the New Criminal Code (1870) and the Amended Criminal Regulations (1873).

In the realm of private law, laws and regulations were enforced as customary law, and reform was achieved by amending each of them with a special law. Much the same process obtained with respect to public law, if exception is made for the organization of central government offices and enactment of penal law; but in the world of private law the customary laws handed down from the Edo Period were more widespread in effect than ever before. As to the law of property, there was a gradual elimination of feudal restrictions, and the existing legislation was subject only to minor adjustments rather than being replaced in wholesale by various legislation suited to modern business transactions. In the matter of law relating to status, the distinction drawn between the Edo codes for the military aristocracy and for the commoners, a distinction based on stipend grants to the rank and file samurai, continued in existence even after the surrender of the land patents and population registers to the Emperor in 1869. Yet, generally speaking, when all stipends were converted to hereditary pension bonds after 1877, this discriminatory treatment between the two classes came to an end. Nevertheless, it is worth noting
that laws inherited from the code for the military aristocracy did not disappear at this time, rather they came to assume a position superior to those laws deriving from the commoners' code. In the sphere of criminal law it is significant that until 1881, which marks the end of the early Meiji Period, a distinction was still drawn between peers and commoners and between government officials and the ordinary people.

2. The Middle Years of the Meiji Period
1882 - 1898

In the year 1882 the Criminal Code and the Code of Criminal Instruction were put into force; and combined with the Imperial edict of 1881, which fixed the year 1890 for the inauguration of a national assembly, these enactments mark Japan's birth as a modern state. By this departure in legislation, Japan emerged from the cramped mold of ancient legal thought and the codes that had been formed in the previous decade under Chinese influence passed into oblivion. In their place now stood modern legislation based on French law. An outstanding example was the Criminal Code, which adhered to the principle of no punishment without a previous law and to the principle of justice without regard to social status. In connection with the heralded inauguration of the Diet, the Constitution was promulgated within the ensuing decade. Following close upon these legislative contributions and motivated in part by the desire to have the unequal treaties revised, a number of code compilation projects were successfully completed. To mention some of the principal enactments by name, they are as follows: the Law for the Organization of Municipalities, Towns and Villages (1888), the Law of the Constitution of the Courts (1890), the Civil Code (1890), the Code of Civil Procedure (1890), the Commercial Code (1890), the Regulations Governing Prefectural Organization (1890), the Regulations Governing Rural District Organization (1890), the Law of Administrative Litigation (1890),
and the Code of Criminal Procedure (1890). Except for the Civil Code and the Commercial Code, the remainder of these codes came into operation in 1890 or 1891. A portion of the Commercial Code came into effect in 1893 and the Civil Code was enforced in 1898. Thus most all of the law codes were promulgated at the same time during the middle years of the Meiji Era. For this reason the 16 years interval between 1882-1898 deserves to be remembered as a period in which the modern codes were being enforced and, therefore, it is clearly distinguished from the early part of Meiji when the only codes in existence harked back to the memories of the eighth century. A further point to bear in mind concerning the middle part of the Meiji Period is the fact that French law was retreating from the high position it had held earlier, and German law, particularly after enforcement of the Constitution, was now rising to the position of honor.

Although the codes may have been compiled with an eye to treaty revision, this in no way means that they were uneffect-
ed by the developments taking place within contemporary Japanese society. For this was a time of change within the economic sphere as well as the legal. Between 1880-1885 the government had embarked upon, and successfully carried out a stiff retrenchment policy designed to combat an acute inflationary spiral and ward off financial collapse. In the meantime the Bank of Japan, the new central banking organ for Japan, had come into existence. Through retrenchment the economy was placed on sound footing and the way was cleared for capitalist expansion. In turn, the growth of capitalism was given further stimulus in 1885 by the disposal of government sponsored enterprise. After this date, therefore, capitalism was firmly rooted and by 1890 Japan was even experiencing her first panic. Then following the Sino-Japanese War (1894-1895), Japan's light industry mushroomed, and with the adoption of the gold standard in 1897, thanks to the indemnity from China, Japan's economy was finally linked directly to the economy of the world. Thus
in considering the above codes, we should bear in mind that
the stirrings in Japanese society in the decade or so between
the establishment of the Bank of Japan and the adoption of
the gold standard served as a frame of reference for their
compilation.

Accompanying the expansion of the economy there was a
concomitant increase in private law legislation. Owing to the
organization of every variety of business company and to the
enactment of rules for marine transportation shortly after the
Restoration, even the government recognized the need for some
degree of uniformity in legislation, and, consequently, it com-
pleted drafts of the Japan Maritime Ordinance and Company
Regulations by the year 1878 and 1881 respectively. But these
two drafts never became law because of the government's deci-
sion in 1881 to draw up the Commercial Code. Nevertheless,
the Regulations for Bills of Exchange and Promissory Notes
were made public in 1882 and were followed in 1886 by the
passage of the Registration Law. The implementation of the
Commercial Code, drafted by Herman Roessler and passed into
law in 1890, was likewise postponed, although the most urgent
parts dealing with companies, bills and bankruptcy were slightly
revised and allowed to take effect in 1893. As control legislation
for ordinary banks, the first Bank Regulations were officially
announced in 1890.

3. The Late Years of the Meiji Period
1899 - 1912

Overshadowed by the previous period's achievements in the
output and enforcement of codes, the last part of the Meiji Era
was without incident insofar as codification of law is concerned.
Of course, plans to alter existing codes were not completely
lacking in this period, for the (Old) Criminal Code (1882) was
replaced by the New Criminal Code (1908) and the Commercial
Code was amended. In the case of the New Criminal Code, its
adoption was prompted by the particularly strong demands for a revision based on the new positivistic criminology which had made such notable development in Europe since the Old Criminal Code was promulgated in 1880. As to the Commercial Code, amendments for it were desperately needed in order to make the legislation governing capitalism the most up-to-date type possible. In either case, both the New Criminal Code and the amendments to the Commercial Code had become law by the end of the Meiji Period. In so far as the other codes are concerned, amendment proposals and draft proposals were prepared, but the only ones which came to fruition were the legislative acts governing the organization of prefectures, rural districts, municipalities, towns, and villages. Beyond this, the quickening pace of amendment activities was simply left to continue on its way in preparation for the future. Further amendments at this point were presumably unnecessary since Japanese social and economic development from 1899 to 1912 could be generally coped with by the existing codes. The opening of new vistas in these codes or in their interpretation as a result of the evolutionary changes in the social and economic order was a task to be performed in the Taishō Period. The last part of the Meiji Period may thus be regarded as one of scant change. Of course change was not totally absent. Even without considering the aforementioned amendment of the Criminal Code and the Commercial Code, a deep seated social agitation headed by a labor movement burst forth in Japan after the Sino-Japanese War, and it is worth noting that against this agitation the government created not merely repressive laws but also began to take an interest in social legislation.

Now, in summing up the legislative trends in the three phases of the Meiji Period, we may observe that the Meiji government worked out plans for the modernization of Japanese society and executed many modernizing programs for this purpose, yet it is important to remember that the efforts of the government could not be exhaustive in character. To explain
this, we must consider two factors. One is the restrained nature of the Japanese, or, put in another way, it is their inclination not to carry something through to its logical conclusion. From the beginning of history Japan has experienced a number of reforms. These include the Taika Reform, the creation of the Kamakura Bakufu and establishment of the Edo Bakufu. None of these great changes went to the bottom of things. Following the Taika Reform, society was governed ostensibly by the concepts of the Ritsuryō Code, but the reform was not radical and there survived a considerable degree of influence from the earlier clan society. As institutions associated with the Chinese inspired Ritsuryō Code degenerated in the course of the Heian Period, there was a revival, though in modified form, of social institutions dating back to Remote Antiquity. Similarly, the founding of the Kamakura Bakufu, which has tremendous importance as the beginning of rule by the military aristocracy, was not an attempt to destroy the manorial system of the court nobility. The manorial institutions were simply used as a foundation upon which to build a type of feudalism peculiar to the Middle Ages. Again, as in the past, the creation of the Edo Bakufu saw the same principles at work: the village system and the feudal relationships which had developed since the Sengoku Period were utilized in establishing the feudal institutions of the Edo Period. The reform closest in character to the Meiji Restoration was the Taika Reform. Both share a common characteristic in their endeavor to destroy institutions that date back to the preceding period. While the Taika Reform was an attempt to abolish the monopolization of aristocratic titles and positions by the clans, the Meiji Restoration was a struggle to destroy feudal institutions. But in neither case was there an escape from the vestiges of the past. The second factor is that the feudal society of the Edo period was a typical and firmly established feudal society devoid of influences originating in ancient times. Hence its destruction was not a simple matter. While the formal and political trappings of feudalism were eliminated, their continued
existence in the daily life of the people was unavoidable. Their effects are recognizable in all spheres of Japanese life, but they are especially conspicuous in social and family relations. This matter can be treated more fully perhaps in the chapter on private law.

In view of the foregoing factors, a considerable portion of the feudal usages continued on into the Meiji Period, but it should be noted that the reason they tarried so long in a world not their own is due to the conscious efforts of the government authorities to preserve them. Their preservation was beneficial to the government leaders, first of all, because it helped them to maintain their power. And secondly, they were preserved because of the need to employ extreme measures in overcoming the several decades handicap which separated Japan from the Western powers. For this reason positive use was made of the feudalistic personal relations which subordinated the interests of the individual to the group and bound the inferior to the superior by strong ties of loyalty and obedience.
PART ONE

INTRODUCTION
CHAPTER I.

THE EFFECT OF LAW IN REGARD TO PLACE

The restoration of full sovereignty to the Emperor in November 1867 by Tokugawa Keiki, the fifteenth Shogun, caused administrative authority to be vested once again in the Court, although it must not be assumed that the Imperial Restoration placed in the hands of the Court direct control over all of Japan. Keiki’s surrender of political power only gave to the Court the Bakufu’s traditional position with regard to the domains. This position, in effect, had only allowed the Edo Bakufu a limited supervisory power over the domains, each of which was under the rule of a different daimyo, but had not as a rule allowed the Bakufu any authority to issue laws or ordinances for their administration. As a result of the Court’s command to Keiki immediately after the Restoration, which ordered him to surrender his land possessions, the land held directly by the Bakufu, its direct vassals and by its lesser retainers fell under the immediate jurisdiction of the Court. Out of these territories the Court created a number of prefectures through which it could administer the newly acquired lands. Even so, the Court still exercised no more authority over the domains which were formerly independent of Shogunate control than did the Tokugawa Bakufu.

The Court’s position, however, was not exactly analogous to that of the Shogun during the Edo Period. For then it was a standing rule that tozama daimyo or the feudatories not directly allied to the Shogun could not participate in the Bakufu administration, though in the last years of the Shogunate this practice was discarded and influential tozama daimyo did enter
the councils of the Bakufu as well as the councils of the Court. Following this innovation, the newly created Meiji government allowed the daimyo as well as the Imperial Princes and Court nobles to become Senior Councilors (gijō) and permitted the retainers of daimyo and capable men, regardless of their background, to become Junior Councilors (sanyō). Thus while participation of the domains in the administrative affairs of the Court was discernible, it was clear too that the Court's influence was spreading to the domains. This is evidenced by the Regulations Governing Domain Staff Organization which were issued in November 1868.

At any rate, as soon as the daimyo restored their feudal possessions to the Emperor in 1869, the entire country fell under the direct control of the Court and the former daimyo, now become governors, ruled their domains as officials of the Court. As a consequence, law emanating from the Court became enforceable in all parts of Japan and there emerged a uniform national government. While this may be further attested to by the government's enactment in 1870 of the Outlines of the New Criminal Law, which was to be enforced throughout Japan, a unified national government was quite difficult of achievement in practice because the former daimyo, despite their new titles as governors, continued to adhere to the practices of the past. The basic problem, of course, was the government's weakness; but, in addition, the government lacked even the necessary organization itself through which national unity might be achieved. As we shall see later, the clamorous demands made by Etō Shimpei, from about 1870 onwards, for the urgent establishment of a civil code was an attempt to create institutions that would have a unifying effect on Japan.

To remedy these weaknesses the government disestablished the domains in 1871 and created prefectures in their place. In the course of this radical change the domain governors were ordered to make their residence in the new capital of Tokyo and the prefectures were placed under the administration of
local governors who were freshly appointed by the central government as civil officials. This done, all of Japan yielded to the direct authority of the Emperor and Imperial law was uniformly executed throughout the country. In reality, however, it cannot be forgotten that, even after the reorganization of local government, Kagoshima prefecture became an independent state, to all appearances, because of its disregard for the laws and ordinances of the central government and as a result of its unilateral actions. But the intransigence of Kagoshima was a unique exception, for, after the Southwestern Campaign (1877) to suppress the revolt in Kyūshū, this prefecture, like all the others, submitted to the rule of the central government.

Having dealt above with the changes in the effectiveness of law as it pertains to different localities during the transition of the domain system, our attention will now be turned to the limitation of the effects of public law in respect to Japan's newly acquired territorial possessions.

During the Edo period the Ryūkyū Islands seemed to belong to both China and Japan, because this island group was a tributary of the Ch‘ing dynasty and was also subordinate to Shimazu, the daimyo family of Satsuma in southern Kyūshū. However, in October 1872, a Ryūkyū emissary proceeded to Tokyo to present an address of loyalty to the Emperor from Shōtai, the Ryūkyū king. At once Shōtai was invested as King of the Ryūkyū domain and specially entered in the ranks of the Japanese peerage. In 1874 the Ryūkyū domain came under the jurisdiction of the Home Ministry. But, since the Ryūkyū Islands, even after this date, acted as if they were the tributary of both Japan and China, the Japanese government finally took decisive action in 1879 to convert the domain into a prefecture and ordered the King to reside in Tokyo. In April of this same year the Ryūkyū domain was replaced by Okinawa prefecture, with Nabeshima Naoakira as governor.

The Ogasawara Island, during the Tokugawa Period, was known in Japanese as Bunin Shima, indicating that the island
was practically devoid of inhabitants; and later, because of its mispronunciation in English, the island came to be designated as Bonin Shima. At any rate, the Bakufu had never taken any measures for developing the island despite the fact that in the past Japanese castaways had drifted there from time to time. Shortly before the Restoration, an English naval vessel rediscovered it and claimed it as an English possession, but Commodore Perry of America opposed this, expressing the view that it belonged under Japanese rule. Then in the year 1861 the Bakufu despatched Mizuno Tadanori, the official in charge of foreign affairs, to Bonin Island and also moved in some Hachijō Islanders to develop the desolate spot. But the development project was later abandoned and the immigrants were repatriated, leaving the island once again to foreign immigrants. Not consistent at first in its attitude either, the Meiji government eventually made a decision in 1873 to recover it. In November of that year the government thus sent an official on an inspection tour and publicly proclaimed Japan's intentions of regaining the island. Petitions were collected from the islanders and, at the same time, both England and America were informed of Japan's plans. Since no objection was raised by either country, the Bonin Island fell completely under Japanese sovereignty. For administrative purposes it was placed under the Interior Department in 1876, then together with the Seven Islands of Izu it became part of Metropolitan Tokyo in 1880, and finally by the year 1886 the Office for the Ogasawara Archipelago was established at Ōmura on Chichijima. To this archipelago, Iwo Jima and the islands known as North and South Iwo Jima were attached in 1891.

With regard to Karafuto, the southern part had been the scene of Japanese settlements for many centuries, and the northern part had become an area of mixed settlement only when the Russians moved into Karafuto in the late years of the Edo Period. Still when the Russo-Japanese Treaty of Friendship was concluded in 1854, certain provisions stated that for the
time being the mixed communities would not be separated and
that travel throughout Karafuto would be unrestricted; and it
was just in this inconclusive form that the situation on Karafuto
was inherited by the Meiji government. Although the Hakodate
Administrative Court and the succeeding Hakodate Office, both
created in 1868, included Karafuto under their jurisdiction, a
Russian military unit occupied Odomari in June of the following
year. Then in July, as soon as the Commissioner of Coloniza-
tion was established, Karafuto was included under its jurisdic-
tion. In 1870 an Agency called the Karafuto Commission of
Colonization came into existence, though in name only, for this
agency actually appears to have been subordinate to the Com-
mission of Colonization established in the previous year. Now
while Japan's attitude toward Karafuto was no more positive
than these formal gestures to include it under the jurisdiction
of Hokkaido, nevertheless, owing to the incessant disputes that
occurred in the area where Japanese and Russians intermingled,
a treaty was concluded in 1875 which transferred all rights
over Karafuto to Russia and made the Chishima Archipelago
north of Etorofu part of Japanese territory. A quarter of a
century later at the outbreak of the Russo-Japanese War, Karafu-
to was occupied by the Japanese Army and upon termination
of the war in 1905 the area south of the 50th parallel was ceded
to Japan by the Portsmouth Treaty.

Formosa and the Pescadores were Chinese territory before
the Restoration, yet they were occupied by the Japanese Army
during the Sino-Japanese War and then were ceded to Japan by
the Shimonoseki Treaty (1895). Ceded also to Japan at this
time was the Liaotung Peninsula, but it was restored to China
in the same year as a result of the Tripartite Intervention.

The Kwantung Province, in southern Manchuria, had been
leased by Russia from China in 1898, but the Portsmouth Treaty
in 1905 provided that the lease right should be ceded to Japan
with the consent of the Chinese government; and this was
obtained in the following year.
Korea, as provided by the *Japanese-Korean Agreement* of 1905, was transformed into a Japanese protectorate; the right to conduct her foreign affairs was received by Japan; and she was obliged to recognize the stationing in Korea of a Japanese Resident-General. Again, by the treaty of 1910, the Korean Emperor relinquished to the Japanese Emperor all sovereign power completely and for ever, whereupon the entire territory of Korea became a Japanese possession and the state's name was changed to Chōsen.

Though the foregoing observations have been concerned with Japan's territorial possessions, the force of law in respect to different localities may likewise be separated into legal zones. That is, even within one and the same part of Japanese territory there has been a time when specific regions have been distinguished from others and have become independent legal zones. As an example of this type of independent legal zone, we may cite the relationship existing between prefectures and domains in the two year period from the 1867 Restoration until 1869 when land patents and population registers were surrendered to the Throne. But having already alluded to this matter earlier, no further comment is required here, and our concern will now be directed to Hokkaido, Formosa, Karafuto, the Kwantung province and Korea.

1. Hokkaido

Hokkaido was known in the Edo period as Yezo. Toward the end of the 17th century Russia occupied Kamchatka and from there, moving southward down the Chishima chain, finally appeared with her ships off the Yezo coast in the last half of the 18th century. Keenly aware that defense measures were needed, the Bakufu placed Eastern Yedo under its direct control in 1799 and Western Yezo in 1807, and encharged the administration of that area to the magistracy of Matsumae. Following these events, Russia became involved in European issues and
the northern part of Japan became quiet once again, thus permitting the Yezo fief to be restored in 1821 to the Matsumae family. Nevertheless, after the Russian Admiral Putiatine’s arrival in 1853, Japan was for the second time beset by problems; so in 1855 the Bakufu placed the entire territory of Yezo, except for the Fukuyama and the Esashi vicinity, under direct Bakufu supervision. This time the Magistrate’s office of Hakodate was put in charge of the area and the domains in Tōhoku or Northeastern Japan were used as militia defense forces. The primary purpose of these innovations was obviously the defense of Northern Japan and not for colonization.

It was against this background of events that the Meiji government received the Yezo territory from the Bakufu, yet prior to April 1868 the government had already created the Hakodate Administrative Court, the Hakodate Office, and had wholly entrusted the colonization and development program to a Governor-General. Within a short while, however, the development project was discontinued owing to Hakodate’s seizure by Enomoto Takeaki and his group of Bakufu supporters. Nevertheless within two months after Enomoto’s group had capitulated in May 1869, the scope of the colonization program was enlarged, the Colonization Bureau was established, and its Chief and Vice-Commissioner were given equal rank with the full and Vice-Ministers of the central government. The name of Yezo was changed to Hokkaido, and for administrative purposes this large island was divided into 11 provinces and 86 districts. The central office was set up in Sapporo where the Chief Commissioner, who was in charge of railroads, industry and all other operations, proceeded with the enlarged development program. Besides these responsibilities, his other duties also included command over the militia guard that was organized in 1864 and jurisdiction over matters of a judicial nature. In February 1882 the Colonization Bureau was abolished, and the three prefectures of Hakodate, Sapporo, and Nemuro were organized and given administrations exactly like the other prefectures on
the main islands. But accompanying this administrative reorganization there occurred a loss of coordination in the development program and, consequently, the Hokkaido Office was set up in 1886 with its senior official under the direct jurisdiction of the Cabinet. It was not until 1890, however, that the senior official of Hokkaido was placed under the control of the Home Ministry and Hokkaido came to be treated in much the same way as the other prefectures.

2. Formosa

Formosa and the Pescadores were ceded to Japan as an outcome of the Sino-Japanese War. However, these newly acquired territories had many differences socially, economically and culturally from the Japanese mainland, and, because it was not considered suitable to administer them in the same manner as the homeland, they became independent legal zones distinct from the mainland. According to the Regulations for the Governor General of Formosa (March 1896), the Governor General either ex officio or by special mandate could issue ordinances relative to his duties and therein provide penalties consisting of imprisonment for a term not exceeding 25 days or fines not exceeding 25 yen. These regulations further specified that Imperial ordinances and department ordinances were not necessarily valid in Formosa. As to the validity of statute law in Formosa, the Diet passed a law (No. 63) in March 1896 which provided that Imperial ordinances must determine when Formosa was in need of partial or full enforcement of existing laws, or of laws, to be promulgated in the future. In other words Formosa constituted a separate legal zone. In addition, this piece of Diet legislation gave the Governor General of Formosa the power to issue ordinances having the effect of law within his territorial jurisdiction. This gave rise, however, to a political issue, since such a broad delegation of authority seemed to be a violation of the Constitution. The view that it was
unconstitutional was based on the premise that the Constitution was already in operation in Formosa the same as in Japan, a view which was even shared by the government. So provocative was the dispute over the issue that it became known as "problem 63". Nonetheless, Statute No. 63 eventually passed the Diet on the condition that it remain in effect for only three years. Later on, this law was renewed three times and then superseded in 1906 by another statute. By this 1906 legislation the enforcement of "all or part of a law" in Formosa had to be determined by Imperial ordinance, and the Governor General was authorized to use his ordinance power, as in the past, to specify "particulars in need of law". It also laid down the rule that his ordinance power could not violate laws put into effect on Formosa by Imperial ordinance, nor the laws or Imperial ordinances enacted especially for Formosa. This law was limited to a four year duration only, although it was later renewed twice and finally became a permanent law in 1921.

3. Karafuto

Southern Karafuto became Japanese territory as a result of the Russo-Japanese War. Inasmuch as the laws and ordinances for the mainland could not be easily applied here, Karafuto was regarded as an external territory and as an independent legal zone. In March 1907, Diet legislation provided that an Imperial ordinance must be used to determine when a law should be enforced in part or full in Karafuto. Unlike Formosa, there existed no unique culture so entrenched that it could withstand Japanese culture and there was no need to recognize, as in Formosa, a broad delegation of law making authority. Consequently it was only necessary to provide that special provisions could be enacted by Imperial ordinance relative to "matters concerning native inhabitants" and to three additional matters. In actual practice there were many laws designed for Japan proper which were put into effect on Karafuto without any modifications.
4. Kwantung Province

According to the Portsmouth Treaty, which concluded the Russo-Japanese War (1904-1905), the lease right for the area including Liaotung and Dairen was to be ceded by Russia to Japan on the condition that the Chinese government express its agreement to this transfer. The consent of the Chinese was later obtained. This area was given the name of Kwantung Province by Japan, but, not recognizing it as a complete territory, the Japanese government thought of it as distinct from both Formosa and Karafuto and as an area where the provisions of the Imperial Constitution should not be enforced. Thus it was only natural for it to be regarded apart from the mainland, and all matters deferred by the Constitution to statute law were accepted as matters to be dealt with in Kwantung Province by Imperial ordinance. In fact Imperial ordinances were so worded that they read, “with respect to such and such a matter such and such a law shall govern”.

5. Korea

In 1910 Korea was annexed by Japan and its name was changed to Chōsen. Like Formosa it was looked upon as external territory and was treated accordingly. Since the annexation of Korea took place after the statute governing Formosa had been put into effect in 1906, a law of similar nature for Korea was promulgated in 1911. By this law the Governor General of Korea was granted the same type of powers vested in his counterpart on Formosa. The ordinances that substituted for statute law on Formosa were called ritsurei whereas those in use in Korea were known as seirei.
CHAPTER II.

SOURCES OF LAW

Before treating written law, customary law, and reason as the three sources of law, it is desirable at this point, to first sketch a brief history of the sources of law as found in Japan.

The era prior to 603 A.D., i.e., Remote Antiquity, was of course an epoch of unwritten law, but after passing the threshold of Recent Antiquity (603-967) the Japanese did adopt a system of written law known as the Ritsuryō Code. This code, as we have noted, had its roots in China and it consisted of two major parts: 1) penal and 2) non-penal law. In putting the code together, the compilers had been guided by the principle that every item deemed important by the Ritsuryō tradition of legal thought should be included. Of course needed revisions of the code were effected by the enactment of extraordinary special laws or kyaku and enforcement of the provisions of the code was accomplished by the creation of detailed regulations called Shiki. But in any case, the principle of a written code as at this time was accepted. Thereafter, with the gradual abandonment of the code principle, the emphasis in the early half of the Heian Period was placed on amending and supplementing the code through the use of kyaku and shiki, and later still, after entering the Middle Ages (967-1467), the law of custom became the dominant source of law. Written law in the Middle Ages only served as a means to modify and clarify customary law and thus there was no semblance of a code at this time. Although the Goseibai Shikimoku or Shikimoku Formulary has been given the title of a code, it does not in truth deserve to be classified as such.
Following the Middle Ages comes the Modern Era (1467-1854). But even in this period the law of custom continued as the basis of law, though not so much as in the preceding period. For as early as the Sengoku part of the Modern Era, when the country was partitioned among contending magnates, codes, so-called, were being drawn up within every magnate’s territorial possession; and shortly afterwards, during the first years of the Edo Period, a number of minor codes (Regulations for the Imperial Court and Court Nobles, Regulations for the Military Houses, etc.) were prepared so as to preserve feudal institutions. Again, in the middle of the Edo Period the Regulations for Criminal Procedure, not to mention a vast number of special laws, were also issued. Thus when compared to the Middle Ages, the Modern Era represents a much closer step toward the idea of written law. But not, however, to the point of true written codes. In the Modern Period, to put it briefly, customary law and special law prevailed side by side.

The Meiji period succeeded to just this legacy of the Modern Period.

1. Written Law

During the Tokugawa Period the laws and ordinances of the Bakufu were issued as proclamations (on-furegaki) and notifications (tasshi). Proclamations were used when it was necessary to make general public announcements, and notifications when communications were sent to the offices within the Bakufu.

The first attempt by the Meiji Government to establish a definite written form for laws was made in September 1868. With the exception of the notice boards, to which reference shall be made later, it was decided at this time that the phrase “let it be decreed”, expressed in Japanese as ose-idasaru, ose-kusasaru, ose-tsukeraru and go-sata, would be generally employed only by the Central Administrative Council (gyōseikan); and
that the five Departments of Religion, Finance, Military Affairs, Foreign Relations and Justice as well as the prefectures would use the phrase “let it be proclaimed” (mōshitsuku, mōshitassu, etc.). It was decided, further, that if announcements of the five departments, the prefectures, and other central government offices were important enough to merit the use of the concluding remarks “let it be decreed”, such announcements would have to be submitted to the Central Administrative Council, and this Council would make them public after they had been passed by the Legislative Council.

In September 1871 the Regulations Governing the Organization of the Grand Council of State as well as the office regulations for the same body were enacted. Included in this legislation were the Central Chamber Office Regulations. Making a division of powers between the Council of State and the departments, these last mentioned regulations determined that all matters involving laws, regulations, orders from the Emperor, special rules, etc., that were to be decreed to the country at large, would be issued by the Grand Council of State and that any official instructions for general announcement which did not involve laws and regulations (seido, jōrei) would be directly proclaimed by the competent department. Although it would thus seem that the word “decreed” became associated with the Council of State and “proclamation” with the departments, such is not the case, for afterwards the legislation emanating from the central councils (kan) and departments (shō) also contained the word “decreed” in their text.

In the absence of any uniform classification terminology for the laws issued up to this date, the legislation was simply categorized according to the concluding word of the law such as ose, gosata, fukoku, tasshi or some other imperative word. It became a frequent occurrence, however, to use the tasshi or notification in sending orders to the government offices, as had been the practice in the Edo Period.

In the matter of affixing signatures to laws, a Council of
State decree of October 1872 required the proclamations posted by the prefectural offices within their jurisdiction to bear the name of the senior prefectural official rather than just the name of the prefectural office. And according to the *Central Chamber Office Regulations* (May 1873), laws, regulations, Imperial orders, and special rules to be decreed throughout the Empire would come from the Central Chamber (*Sei-In*) under the name of the Chancellor.

Apart from the proper signing of legislation, there was still confusion in 1873 as to the distinction between decrees and proclamations, since heretofore neither had been clearly labeled. But a ruling of the Council of State in August of this year, which changed the wording in the departments' announcements to the public, made it obvious that henceforth the decrees from the Council of State, the proclamations from the departments, and the intergovernmental notifications would each be distinguishable by the wording of their contents. Finally in January 1874, the distinction became unequivocal, since either the word "decrees" or "proclamations" was placed on each enactment and each was numbered according to its respective series.

In April 1875, the *Central Chamber Office Regulations*, to which reference has just been made, were amended so that laws, regulations, Imperial orders, and special rules were to be issued not simply "by the Council of State", but by order of the Chancellor.

In November 1881, the *General Office Regulations for the Departments* were formulated. By their provisions, laws and regulations belonged to the category of proclamations and those pieces of legislation pertinent to the duties of the Department Ministers were to be countersigned by them and subject to their enforcement; yet within a month the Council of State issued another notification to the effect that laws and regulations would be issued in the form of decrees and that all regulations hitherto proclaimed by the different departments would be issued as proclamations by the Council of State. This spelled the end
to the practice which allowed the departments to make proclama-
tions to the public. Apart from this, however, official announce-
ments of a temporary nature coming from the Council of State
and from the various departments took the form of notices
(kokuji), while the form of notifications from the Department
Ministers to the prefectural governors remained the same as
in the past. Consequently, the laws sent out from the central
government offices consisted of four different types: decree,
proclamation, notification, and notice.

At the close of the year in 1885, the Cabinet was created
and in February the following year, by Imperial ordinance, the
Formalities for Official Documents was promulgated. By the
latter, enacted law of the state was divided into statute law and
ordinance. In the ordinance category were included the Imperial
ordinance, the Cabinet ordinance and the Department ordinance.
Although both statute and Imperial ordinance required the per-
sonal sanction of the Emperor, they could be distinguished, once
the Diet was eventually established, by the fact that a statute
could not become law without passing the Diet while an Imperial
ordinance could become law without Diet deliberation. Statute
law enacted after the Diet's creation frequently included in its
title the Japanese word hō, indicating that it was a legislative
act, though sometimes other terminology as sei, jōrei, kisoku,
saisoku, and kiritsu, denoting one form or another of regulation,
were used instead. Cabinet and department ordinances were
issued ex officio or by special mandate by the Prime Minister
and by the state Ministers respectively within the limits of law
and Imperial ordinance in order to enforce law and Imperial
ordinance and to preserve public order. The word "decrees"
(fukoku) was used, according to the Formalities of Official
Documents, in the same sense as the later term "promulgation"
(kōfu).

On February 11, 1889 the Constitution as well as the Im-
perial House Law were enacted into law, and in the latter were
set forth the basic provisions concerning the Imperial House.
Although the Imperial House Law, according to the terms of the Constitution, could not alter the provisions of the Constitution, it was nevertheless placed beyond the limits of statute law. Furthermore, though consent of the Diet was required for amendment of the Constitution, the Diet could not share in the amendment of the Imperial House Law. Consequently, the law of the land was separated into two parts, one belonging to the Constitution and the other belonging to the Imperial House Law. The forms of written law fixed by the Constitution consisted of statute law and Imperial ordinance. The former was established by consent of the Diet and by sanction of the Emperor, and the latter became law simply by the sovereign power of the Emperor. The difference in formal effect between statute and Imperial ordinance was apparent in the fact that an ordinance could not contravene a statute. The Constitution also set forth provisions on the budget, treaties, and similar legal forms. In 1907, as a result of Military Regulation No. 1, recognition was given to the Military Regulation as a legal form concerning the affairs of the Army High Command. Enacted in the same year by Imperial ordinance, the Law Concerning Forms of Promulgation replaced the Formalities for Official Documents and established the forms for Imperial edicts and writs, and gave fresh recognition to the Imperial House ordinance. The Cabinet and department ordinances remained unaffected, however, by the new Law Concerning Forms of Promulgation.

Although it had been determined in advance that a variety of laws would be issued under the Imperial House Law, inasmuch as no definite form was fixed for them, they were sometimes established by Imperial ordinance. In 1900 the Imperial House Marriage Ordinance and again in 1902 the Imperial House Birthday Ordinance were enacted and promulgated under the counter signature of the Minister of the Imperial Household, but, being regarded only as writs corresponding to an Imperial ordinance, they were given no special title as a form of law nor did they
receive a classification number. Nevertheless a definite enactment form of public law, known as the Imperial Household ordinance, was fixed by the Law Concerning Forms of Promulgation in 1907. This law also required that amendments of the Imperial House Law, as any amendment for the Constitution, be published in the Official Gazette (kanpō). Before 1907, publication in the Official Gazette had been unnecessary since the Imperial House Law was regarded as a private law formulated by the Imperial House for its own needs. This was the view expressed by Itō in his Commentaries on the Constitution and because of this interpretation the Imperial House Law, unlike the Constitution, had not been promulgated in 1889.

During the Edo Period, as a means to make laws public, copies of them were delivered to every person concerned; and for those laws destined to be proclaimed to the public at large the village head (nanushi or shōya) was required to assemble the peasants and read the laws aloud to them. After the initial reading, their essential points were inscribed in the preface of the Five Man Group Register so that they could be read aloud to the peasants three or four times a year. Another way to insure broad dissemination of laws was to write the important ones on public notice boards that were placed at major points of travel.

As soon as the Meiji Government was formed, the notice boards heretofore in use in the various provinces were done away with in April 1868, and a new system consisting of the "three notice boards" (sadame sansatsu) and the "memorandum boards" (oboefuda) was instituted. The first of the three boards displayed the following provisions:

"1. All persons must faithfully observe the five cardinal articles of morality.
2. Compassion must be extended to the helpless and disabled.
3. No homicide, arson, theft or other evil deed ought to be committed."
The second board provided that:

"In any wrongful action whatsoever a prearranged agreement by a large company of people constitutes a conspiracy. Entering into conspiracy to coerce a petition constitutes a petition by force. To desert the village by prearranged agreement constitutes abscondence. The foregoing acts are positively forbidden. In case such offenses are committed they should be reported to the proper office; rewards will be granted."

And on the third board:

"Evil religions like Christianity are positively forbidden. Suspicious persons should be reported to the proper office. Rewards will be granted."

The first board corresponded to the notice board used by the Bakufu in the Edo Period to disseminate the Confucian virtues of filial piety; the second corresponded to the "conspiracy" notice board and the third to the "Christianity" board. All three of these boards were required to be permanently posted before the public's eye. However, as Christianity had been dubbed an evil religion by the third post board, there were protests from the foreign powers; but the government defended itself by explaining that the notice as written in Japanese consisted of two distinct parts, one referring to Christianity and the other to evil religions. To make this distinction clear the public notice was changed in May 1868 so that it read:

"1. The ban on Christianity will be strictly observed as in the past.
2. Evil religions are positively forbidden."

In contrast to the three notice boards, the memorandum boards were used to post proclamations that were issued for specific occasions and thus their notices were not of a permanent nature. By contrast to the notice boards which were three in number, there were only two memorandum boards. One stated that rela-
tions between different countries were guided by treaties based on international law, and the Japanese were admonished, therefore, not to slay foreigners without provocation nor to commit indiscreet actions. The other board forbid both samurai and commoner to desert Japan. The three notice boards were eliminated in February 1873 by order of the Council of State, presumably because their provisions were already well known. That no doubt is one of the reasons for their removal, but a direct cause stems from the strong protests against Japan's suppression of Christianity which were expressed to the Iwakura Mission in 1871 when it arrived in Europe and America. Having no alternative, therefore, but to tolerate Christianity, the three notice boards, including the ban on Christianity, were abolished on the pretext that they were familiar knowledge. Aside from the two memorandum boards just mentioned there seem to have been no others established, and in November 1871 the memorandum banning the exodus of Japanese from Japan was also taken down.

Before the above notice and memorandum board system was created, the government had planned the distribution of the Council of State Journal (Nisshi). This journal carried the Council's proclamations and other important matters, and, being published as of March 1868, was distributed in April to the Police and Administrative Inspectors (dō chinbushı) of the circuits and to the Domain Deputies (rusuban). The holdings formerly kept in custody by the Bakufu, and those managed by the Bakufu's deputy of local affairs (gundai) or district deputy (daikan) were placed under the control of overseer domains, and through these agents government instructions were relayed to the former Bakufu areas.

In regard to the distribution of the Council of State Journal a procedure for dispatching decrees to the domains was set forth in July of this year. The procedure worked in this way. Among the domains, twenty four were selected as proclamation chiefs (furegashira) and through them the decrees were trans-
mitted to other domains that were designated as falling within their zone of distribution. The relay arrangement existed even for the *furegashira* domains, for each month three different domains were assigned to the duty of receiving and forwarding the decrees to the other *furegashira*. This method of disseminating official announcements was based on a similar system practiced during the Edo Period by the Buddhist temples. Though it is difficult to say what happened to this system after the feudal lords surrendered their domains to the Throne in 1869, it is at least evident that this mode of official communication no longer existed after the replacement of the domains by prefectures in 1871.

In order to familiarize the public with official announcements, the Council of State in February 1873, directed the prefectures to post decrees, where communication facilities permitted, within thirty days after their issuance, and to continue, without change, the existing procedure for publicizing proclamations. Post board notices that had become common knowledge were ordered removed. In the following month the Justice Department sent out a notification which required both Council of State decrees and department proclamations to be posted verbatim before the gates of district courts and before the residences of village heads; and in districts where courts were not yet established, instructions were given that they be displayed before the gate of the prefectural office as well as before the residences of village heads. The gist of this notification had already been communicated earlier in February, but it was circulated once again because of the Council of State instructions later in the same month, mentioned immediately above, which also had dealt with the posting of official announcements. Other orders by the Council of State in June even required the posting in full of the bound multipage decrees and proclamations, and the period of time required for decrees to reach each prefecture was prescribed. For example, the shortest period of one day applied to Metropolitan Tokyo, while the longest period
of 21 days applied to Miyazaki Prefecture. When the document had been posted for a period of thirty days after its arrival, it was presumed to be common knowledge throughout the area concerned. Inasmuch as it was impossible to communicate rapidly with Hokkaido, which was under supervision of the Colonization Bureau, and particularly with Karafuto where mail was not delivered from late fall until early spring of the following year, it was determined on July 14 that the area under the control of the Colonization Bureau alone would report to the central government on the different periods of time required to dispatch public notices to each notice board location under its jurisdiction. Again in this month, as we have seen, a distinction was drawn between the official announcements to be communicated to the country at large and the instructions directed to the government offices, and only the former were posted in public.

As publication of the Official Gazette was decided upon in 1883 (first issue in July), it was made clear by the Council of State in May that entry of government notifications and notices into the Gazette would make them official and they would not have to be separately published. Further, with the exception of official announcements requiring immediate enforcement and those bearing a specific enforcement date, it was announced that the enforcement for decrees and proclamations would fall on the seventh day following their arrival in each prefecture; and the number of days required for their arrival in the prefectures was also fixed. Aside from Metropolitan Tokyo, official communications required the least time in reaching the prefectures of Kanagawa, Saitama, Gumma and Chiba and the longest period of time in reaching Kagoshima prefecture. For decrees and proclamations to become official, they only needed to be printed in the Gazette, according to a proclamation from the Council of State in December 1885. These particulars concerning the enforcement of documents continued in effect without much alteration even after the Formalities for Public Documents
was enacted in February 1886.

Afterwards, in February 1907 when the Law Concerning Forms of Promulgation came into effect, entry into the Official Gazette constituted official announcement for Imperial edicts, Imperial writs, amendments of the Constitution and the Imperial House Law, as well as for Imperial House ordinances, statutes and Imperial ordinances. International treaties, the budget, extra budgetary commitments incumbent upon the national treasury, Cabinet and department orders, and the Imperial Household Ministry ordinances were made official in the same way. The Military Regulation No. 1, enacted in the same year, also prescribed that any military regulations which had to be publicly notified must be carried in the Official Gazette. While the Gazette never formally announced the Imperial House Law when it was first completed, the Gazette did make an official announcement, as required by the Law Concerning Forms of Promulgation, when supplementary provisions were added to the Imperial House Law. Neither was the Law of the Houses promulgated by the Official Gazette, but this may be due to the fact that it concerned rules for the internal order of the Diet and was unrelated to the general public.

In regard to the fixed time limit for the enforcement of laws, the Law Concerning the Application of Laws, enacted in 1898, specified that a law was to come into force after the lapse of a full 20 days computed from the day of its promulgation, except where otherwise provided.

2. Customary Law and Reason

The position of customary law differs according to the particular part of the Meiji Period in which it is observed. In the early part, which ended in 1881, customary law occupied a major portion of the legal field, for the only purpose then of written law was to modify, clarify and supplement customary law.
Yet this is only a general appraisal, for upon closer investigation the relationship between customary and written law shows a marked difference in the two fields of private and public law. For example, in private law, the law of custom played the major role, while in the sphere of public law it seems undeniable that the significance of the written law loomed much larger. It is due to these circumstances, as we shall see later, that the law of custom became a special problem with regard to adjudication, particularly civil adjudication.

Because of the importance of usage, the early Meiji bench could not render decisions based solely on written law; it had no recourse but to apply the law of custom. This was portended on January 17, 1868, when an Imperial rescript announced in part that the "just practices of government and good laws" of the Bakufu would continue unchanged. As customary law had held an important place in civil judgments even in the Edo Period, so it would be in the Meiji Period until new legislation could be created. In July 1869, in a decree which alluded to the occurrence of conflicting decisions in the prefectures over cases involving land and pledges, the Department of Civil Affairs expressed anxiety over the popular distrust which might be occasioned in the absence of uniform judicial standards. The decree thus ordered compliance with existing laws until permanent legislation could be established. Noting further that local conditions might prevent any alterations of existing laws and thereby result in difficult decisions, the instructions concluded that such cases should be referred to the Department of Civil Affairs.

It was made obvious by this decree that civil judgments must follow the old law. And though it was the intention of the government to enact a civil code with all haste, since codification was not a simple task, amendments of particular aspects of the law were made one at a time by decree or notification. Still, generally speaking, the sphere controlled by old law was a broad one prior to the enforcement of the Civil Code in 1898.
To clarify the position of custom, the Justice Department, in response to a prefectural inquiry, directed in 1874 that, regardless of local custom, dispositions in all cases would conform to the text of decrees, although there would be no objection to the observance of local custom in cases not covered by law or not affected by decree. "Local custom" was hereby recognized as having a supplementary force in matters not specifically provided for in the law codes or in decrees. That custom was the secondary basis for forming judgments was made clear and definite in June 1875 by the now famous Art. 3 of the Rules for the Conduct of Judicial Affairs which reads: "judgments in civil cases shall be governed by custom in the absence of written law; and in the absence of custom, judgment should be based on rational deduction." This consequently made the problem one of defining the word "custom". A few days later, in a Justice Department reply to the courts of Osaka, Nagasaki and Fukushima, custom was clarified as "whatever has been enforced by the prefectural offices and law courts." Although the Justice Department had occasion later in this year to declare that "custom was not the customs and manners observed by the common people", by 1879 it had moved away from this interpretation. The change, indicated in a decree directed to the Shizuoka Court, defined custom as "popular custom, that is, the custom recognized by civil law as being traditional popular practice". This definition of custom, furthermore, was communicated in January 1879 to the Supreme Court and to the inferior law courts. This change in legal thought may perhaps be attributed to the jurists increased knowledge about popular custom which was drawn at this time from Western jurisprudence, where the term custom was broad enough to include popular custom, and also drawn from the Justice Department's publication in 1877 of the Minji Kanrei Ruiju (Classified Collection of Civil Customs). However, there was no reason to exclude from the concept of "custom" the hitherto recognized explanation of 1875 that "custom constitutes whatever has been enforced by the prefectural offices
and law courts”. Thus the Justice Department, in February 1879, modified its January directive to the Shizuoka Court so that custom was now defined as “those usages not contrary to reason which are recognized by civil law as popular practices and precedents heretofore in use between the government and the people”. The important point here is the idea that as long as custom is not “contrary to reason” it can be used by the courts. Reason means the logic of things (mono no sujimichi); being contrary to reason means, in the thought of the period, that something is wrongful or ought not to be (aru majiki koto). To elucidate further the ideas associated with wrongful and unreasonable, reference may be made first to the famous Emancipation Order for Licensed Prostitutes (1872) which reads in part:

“1. Whereas the sale of persons for a life time or for a fixed term of service, during which they are exploited according to the will of the employer, has been prohibited from time immemorial as a breach of human ethics and as wrongful conduct, there has existed in the past the practice of taking employees into the home of the master under the pretext of apprenticeship. In reality this is tantamount to purchase of the individual; and hereafter such outrageous practices are strictly forbidden.”

Next, an idea of what “unreasonable” signified in contemporary terms may be indicated by the contents of an inquiry submitted by a Saitama court in 1875. The case at hand concerned the payment of an I.O.U. in which children were entered as security. The court’s query was this:

“An appeal has been made in regard to the dunning of a loan . . . Upon examination of the appeal it is apparent that the contract, in default of the debtor’s ability to make repayment, requires the security, namely the children, to perform indentured services; and even though the fixed term of service expires upon termination of the liability, since the amount
and rate of wages during the period of service is no where stipulated in the contract it appears as an almost unlimited term of indenture. Consequently, we question if the case should not be rejected on the ground that it is contrary to Decree No. 195 issued in 1872 and because it is unreasonable.” And as a final example of the sentiment expressed by the government in cases where a conflict existed between custom and a sense of propriety, a Finance Department notification of 1872 relates:

“In the past, depending upon local custom, traditional practices have frequently become private law. In many cases persons whose forebearers have served a family for generations have been granted a plot of ground, their descendants have been referred to as hired hands of the family (ie kakae) and they have been treated as vassal like servents (kerai) without being accorded a social status equal to the other villagers. In other instances, outsiders who enter a village have been given the[disparaging]name of water drinkers and they also have been unable to associate with their village equals. To fix the status of a family by these and other old usages is a violation of the principle of harmonious relations and it is strictly forbidden.”

Old customs were thus prohibited, as the preceding three illustrations show, because they constituted a “violation of the principle of harmonious relations”, they were wrongful, and because they were contrary to reason. Nevertheless, a problem presented itself when Shiga prefecture inquired (October 1875) if it were necessary to apply an unreasonable custom and the Justice Department returned a directive stating that, “there are no rules which allow reason, arrived at by deduction in the absence of custom, to overrule custom.” In view of this response it must be concluded that reason was denied the right to violate custom, which seems to suggest also that custom, even though unreasonable, would have to be adopted by the court. This however is a faulty interpretation. Because, in contrast to Shiga
Prefecture's concept of custom, which included as a matter of course the "custom practiced among the people", the Justice Department's idea of custom consisted of "whatever has been enforced by the prefectural offices and law courts" and, therefore, there was no cause for the Justice Department's interpretation of custom to be "wrongful". Hence, granting the premise of the Justice Department, it would be impossible to set aside custom by the application of reason. Thus is explained the nature of the reply directed to Shiga Prefecture. The inconsistency in the two communications was due to the fact that "unreasonable" of the inquiry meant "wrongful" and the "reason" used in the directive indicated reason as a source of law.

The Rules for the Conduct of Judicial Affairs (June 1875), mentioned earlier, decreed that judgments would be based on reason in the absence of both written law and custom. Reason here, alongside written law and custom, constituted one source of law; it did not constitute the essential condition for determining the validity of custom in the same sense that not being "wrongful" was the basic condition of validity for the custom just alluded to in the previous paragraph. That reason was a process of deduction can be observed, as we have seen, in the aforementioned reply sent by the Justice Department in 1875 to Shiga prefecture. On an earlier occasion—over six centuries ago—reason and its relation to the written law had received comment when Hōjō Yasutoki, Regent of the Kamakura Bakufu, in defending the enactment of the Go-Seibai Shikimoku Formulary, explained in a letter to the Rokuhara Tandai (Bakufu official in Kyoto) that the basis of the formulary was reason (dōri no osu tokoro) and not the Ritsuryō Code. The reason (jōri) of the 1875 directive and the 13th century reason of Yasutoki are one and the same. In this sense, trailing behind written law and custom, reason constituted the third source of law. But the reason of 1875, unlike the reason of a military aristocracy as found in the Shikimoku Formulary, was beyond all question the reason of civilization and enlightenment.
It is undeniable too that natural law thought, then being introduced from the West, was influential in the formulation of this concept of reason. Furthermore, as the judges were obliged to arrive at this reason in a logical fashion, they were left with considerable latitude in which to actively exercise their intellectual judgment.

For the history of the sources of law in the Meiji Period, Article 3 of the Rules for the Conduct of Judicial Affairs is, therefore, of tremendous significance. In praise of Article 3, Hozumi Nobushige, the noted Japanese legal scholar, states in his Hōritsu Shinka-ron (Theory of the Evolution of Law) that, “this provision, truly deserving to be called a masterpiece of modern legislation, may be regarded as the ultimate in legislative evolution and forerunner to Article 1 of the Swiss civil code which commanded the admiration of the world a half century later”. The enactment of these Rules for the Conduct of Judicial Affairs occurred in June, only two months after the establishment of the Supreme Court had marked the completion of the first stage in the early post Restoration Europeanization of the court system.

Although Article 3 prescribed the basis for forming judgments, as we have seen, Articles 4 and 5 lay down provisions specifying what did not constitute the foundation for judicial decisions. Article 4, first of all, specified that determinations of the courts should not be relied upon in the future as general rules. Yet as the formulation of case law could not be avoided, even when law codes were accepted as the basic legal framework, case law undoubtedly served to a certain extent as a source of law prior to the enactment of the codes, at least in regard to civil actions. After all, the Supreme Court decisions handed down after 1875 in both civil and criminal actions were edited and published. Even in the sphere of criminal law, as well as in civil law, it was impossible to prevent the emergence of case law despite the existence of the Outlines of the New Criminal Law and the Amended Criminal Regulations.
Article 5, in the next place, instructed that, except for promulgated decrees and proclamations, the department directives to be issued as occasion demanded should not be observed by the courts as general rules. Hence such directives did not have a generally binding effect on the courts. This was because the years following the Restoration, despite establishment of a new political order, were a period of change for the most part, the contents of the directives were subject to alteration on short notice, and the directives which were issued in response to each prefecture's inquiries could not be immediately followed by the other prefectures even when their subject matter left no room for doubt about th action to be taken. Since each inquiry represented a specific problem, it was naturally impossible for the courts to rely upon these directives as general rules to be followed in rendering decisions. However, when a certain directive was repeatedly issued and became firmly established, it is easy to imagine that it gradually acquired the character of a law; and, in fact, it seems that the courts not infrequently did depend on such directives. Nevertheless, they did not bind the judges.

Although the role of customary law prior to the enforcement of the Civil Code was as described above, the general supplementary force of customary law was given recognition by the enforcement of the Civil Code and the Law Concerning the Application of Laws in 1898. And by the enforcement of the Commercial Code in the following year, the position occupied by the law of custom in the field of private law was made unequivocal. In the Law Concerning the Application of Laws, Article 2 specified generally "that customs which are not contrary to public order or to good morals have the same force as law insofar as they are recognized by the provisions of laws and ordinances, or relate to matters which are not provided for by laws or ordinances." Custom here fared considerably better than under the Napoleonic Code of France and the Austrian Civil Code, for when these two codes were compiled in the late eighteenth and early nineteenth
centuries customary law was overshadowed by the needs of the state and natural law theories. But Article 2 above was written after the historical school had overwhelmed the natural law theories, thus making it possible for the law of custom to regain recognition and even a supplementary legal force. The same influences which helped to form Article 2 were also reflected in Article 1 of the Meiji Commercial Code which specified: "where no provision exists in this code as to a commercial matter, the customary law of commerce shall apply; and where there is no such law, the Civil Code shall apply". Not merely does this provision show the high status of customary law, but it evidences the peculiar feature of the Commercial Code in that the customary law of commerce is allowed to take precedent over the Civil Code itself. Again, with respect to the validity of custom, a provision (Art. 92) of the Civil Code prescribed that wherever there was a custom which differed from provisions of law unrelated to public policy, namely adoptive laws and regulations, and where it was admitted that the individuals concerned had intended to conform thereto, the juristic act was bound to be interpreted in accordance with that custom. It is significant that in case of a loose construction of the essential condition, which reads "if it is to be recognized that the parties to a juristic act have intended to conform to such custom", the actual custom came to have an effect akin to customary law.
PART TWO

PUBLIC LAW

A line of distinction between public and private law was, of course, never drawn before the Meiji Era. But from Meiji onward, under the influence of Western jurisprudence, this classification came into prominent use. While the purpose of Part Two is to account for the history of public law in the Meiji Period, it is impossible from the outset to cover every one of its aspects, and thus the focus during this period shall be narrowed down to the modernization of Japanese society and to other related topics.
CHAPTER I.

THE EARLY PHASE
(1868 - 1881)

1. The Collapse of Feudalism

a. Relations Between Court and Bakufu in the Bakumatsu Period.

It goes without saying that political sovereignty did not reside with the Emperor during the Edo Period. The real power of Japanese government was held by the Bakufu. This fact, presumably, is recognized by all. However, in the legal interpretation of this phenomenon there do exist different viewpoints, though the usual interpretation put forward by legal scholars suggests that sovereignty, though vested in the Emperor, was exercised on his behalf by the Bakufu rather than by the Emperor himself. This arrangement goes by the name of delegated monarchy. Minobe Tatsukichi, a well known Japanese jurist, asserts in his Kempō Seigi (Commentaries on the Constitution) that “until . . . November 10, 1867 when Tokugawa Keiki was authorized to return political authority to the Throne, the Emperor did not personally exercise the sovereign power; it was exercised in his place by the Tokugawa Bakufu, thus making the form of government a delegated monarchy”. Another scholar, Sasaki Sōichi in his Kokutai no Mondai no Shoronten (The Crucial Problems of the National Polity) writes “that the Tokugawa Bakufu’s exercise of sovereign power should be interpreted as a general delegation of sovereign power by the Emperor. The rights of sovereignty were not combined in the Tokugawa Shogun.” These two views may be regarded as rep-
resentative. The view that the Shogun ruled only by a delegation of power had already existed in the Edo Period. Yamaga Sokō, for example, contends in the seventeenth century in his Buke Jiki (Chronicle of Major Military Events) that the Shogun had risen to power and assumed control over civil and military affairs throughout the realm only because he was allowed to rule on behalf of the Court. Nishikawa Joken, another Edo Period scholar of the eighteenth century and adviser to the Shogun, indicated in his Chōnin Bukuro (Tales of Townsmen) that the Shogun exercised power because he was a deputy of the Emperor; and Motoori Norinaga, one of Japan’s great national scholars of the 18th century, also adhered to the delegation theory.

But can the facts of history accept this delegation concept? This is the real issue. They cannot. It is historically untenable to suggest that Tokugawa Ieyasu was entrusted with the government by the Emperor. It is all right, however, to admit that Ieyasu acquired his position of leadership among the military aristocracy by subduing almost all of Japan through the Sekigahara campaign (1600). Put briefly, he obtained this position by force; it was not granted to him by a Court mandate.

Though Ieyasu was appointed by the Court as Seii Taishōgun (Generalissimo in Charge of Quelling Barbarians) in 1603, the appointment did not, however, signify a delegation of administrative power from the Court. This act on the part of the Court was merely a formal recognition of his leading military position and nothing more than the grant of a title suitable to it. It is a positive fact that the Court at that time did not have the real power to bestow the actual position of military leadership. Quite different was the Court’s position at the beginning of the Kamakura Period when it commanded enough power in substance to appoint Minamoto Yoritomo to the office of High Constable General (Sōshugo) and Chief Steward (Sōjītō). But it is inconceivable that the Court, which was completely impotent in the Sengoku Period, should abruptly acquire
political authority in the last decade of the sixteenth century or the first few years of the seventeenth, and delegate it to Tokugawa Ieyasu. Furthermore, there is no foundation in fact to support such a view.

Granting this, then, the origin of the idea by the early half of the Edo Period that the Shogun was the Emperor's political deputy is nothing more or less than an ideological fabrication to explain away the fact that the substance of administrative authority, exercised by the Emperor himself in the Ritsuryō Period, had in the Edo Period passed to the Bakufu. Yet in the last half of the Edo Period, when the concept of loyalty to the Emperor gained sudden currency, much stress was placed on the fact that the Emperor, at one time in the past, had actually exercised the reigns of government, and going one step further the argument demanded that the Emperor be restored to this position of political authority. To defend itself from the widespread idea that administrative power belonged to the Court, the Bakufu was compelled, personally, to contend that its authority was a legitimate grant from the Court. The line of reasoning used in this case was precisely the idea that the Emperor had entrusted the entire country to the Bakufu and it was thus exercising rule by virtue of this mandate. This sentiment appears in a memorial sent in 1788 by Matsudaira Sadanobu, a Senior Councilor of the Bakufu, to the Shogun Ienari. In part the memorial states, "since the sixty odd provinces were graciously entrusted to you by the Court you must not, even for a moment, regard them as your own." This suggests that the Shogun was simply managing the affairs of the country for the Emperor. Although there is no certainty as to when the term "Imperial mandate" (go-inin) first came into use, it at least appeared in 1858 when the Bakufu's signing of commercial treaties with the West roused an indignant Emperor Kōmei to personally draft a rescript to the Shogun. In this same rescript the Emperor referred directly to the mandate of administrative affairs granted to the "Kantō" area, meaning
the Shogun, and thereafter the phrase "Imperial mandate" appears to have been in frequent use.

Originally, Minamoto Yoritomo's establishment of the Kamakura Bakufu in 1185 was unrelated to the office of Generalissimo in Charge of Quelling Barbarians, an office to which he was appointed by the Court in 1192, three years after he had already quelled the "Barbarians". The barbarians in this case were the Fujiwara family whose stronghold was located in the Northeast part of the main island. Although Yoritomo had coveted the position of Shogun in the year he put an end to the Fujiwara, he was unable to obtain it owing to the opposition from the retired and tonsured Emperor Goshirakawa. It was only after the death of the latter that he was appointed to this high office. Therefore, in this instance, the office of Shogun was created specifically as a result of the conquest of the Fujiwara family. Nevertheless, as all of Yoritomo's successors were appointed Shogun, the same as Yoritomo, the title became a sort of synonym for the head of the Bakufu. But toward the end of the Tokugawa regime, the mandate for political authority and the one for expelling barbarians became distinct. The separation of the two is indicated by an Imperial message which was written in reply to Shogun Iemochi's report to the throne in 1863. The message states:

"Whereas it is our pleasure to continue, as in the past, the mandate of Generalissimo in Charge of Subduing Barbarians, [the Shogun] will be all the more diligent to ensure that His Majesty's wishes are obeyed and the cause of loyalty to the sovereign is upheld; [he] will assure that the entire country is united as one and the barbarians are successfully expelled; and [he] will be expected to take measures to win the confidence of the people. With regard to state affairs, Imperial notices will be despatched directly to the domains as circumstances dictate and, consequently, they shall be sent [to the Shogun] at the same time".

This message from the Emperor contained a temporary mandate
for Iemochi, including both the task of expelling the barbarians and of governing the country. But between the two there was a sharp distinction, and the task of ridding Japan of unwelcome aliens constituted a duty proper to the commission of Shogun. Here, in other words, by returning to its original meaning, the title of Shogun had become an office for punishing barbarians while political authority, on the contrary, had become a mandate to Iemochi as present head of the Tokugawa family. Both functions were thus clearly set apart. This division of roles apparently resulted from the efforts of the extremist faction of Court nobles who wanted to literally restrict the authority of the Shogun to the police duties of a barbarian quelling general so as to cut down his power.

Amid these circumstances, the Court’s pressure on the Bakufu gradually mounted. Traditionally, the Bakufu had never ventured to make inquiries to the Court about specific matters of government, not even after adopting the view that the sixty odd provinces of Japan were in custody from the Court; but when Commodore Perry arrived in 1853 and demanded a treaty of commerce, the Bakufu, appalled by the seriousness of the affair, turned its back on precedent and communicated with the Court. Again in 1858 when the Bakufu requested the Emperor to sanction the Japanese-American Treaty of Commerce, it was placed in the predicament of being unable to obtain it. Though the Bakufu eventually signed the treaty, this event marks the breakdown of the Bakufu’s traditional principle of carrying out an independent policy in political matters irrespective of the Court’s desires. Soon thereafter, in 1862, the Bakufu was compelled to recognize the Emperor’s order to expel the barbarians, and in the same year, moreover, it was obliged to make an official announcement throughout Japan that Hitotsubashi Keiki had been appointed guardian to Iemochi and that Matsudaira Shungaku had been appointed to the office of Chief of Political Affairs in accordance with the Emperor’s wishes. At the same time, the practice of consulting with the Bakufu in the appointment of
the Regent and the Chief Adviser to the Emperor was abolished. As a result of these events, it seems fair to say that the Court-Bakufu relationship had been reversed. Although the government was still in the hands of the Bakufu and though there is no doubt that the military strength and resources of the Bakufu at this time were far superior to the resources of the Court, an examination of the Court-Bakufu relations alone would indicate that their positions had made a complete turn about. Anticipating the logical conclusion of these developments we finally see Tokugawa Keiki’s return of full sovereignty to the Emperor.

In view of the above situation, it is not without reason that foreigners close to the Japanese scene thought that a dual sovereign existed in Japan. Conditions in the late seventeenth century had made it appear that the monarch ruled as a religious Emperor and the Shogun as a secular Emperor, but it became apparent to outsiders in the mid 1860’s, when the situation was shifting, that the Emperor was the Japanese sovereign and that the Shogun, obeyed by all the daimyo except Chōshū, was entrusted with administrative power and authority.

b. Restoration of Sovereign Power to the Emperor

There is no need here to describe the political developments of the last few years of the Tokugawa regime, nonetheless, the events leading up to the Restoration of the Throne do deserve a brief sketch. On June 25, 1863, the date fixed by the Bakufu for the expulsion of the foreigners, Chōshū domain, the first to advocate the political union of the Imperial Court and the Shogunate, bombarded an American merchant ship as it was passing through the Shimonoseki Straits and then followed this belligerent gesture with the shelling of a French Naval vessel. Although this attack received the approval of the Court, the Bakufu censured the unilateral opening of hostilities as a violation of its orders, and at once the relations between the Bakufu and Chōshū were severed. But the Chōshū bombardment of the foreign ships gave added impetus to the anti-foreign movement.
On September 25 of the same year an Imperial edict announced to the Japanese the plans of Emperor Kōmei to visit the Yamato plain to pray for the expulsion of the barbarians. While there he was expected to pay a visit to the tomb of Emperor Jimmu, the traditional founder of the Imperial house, and to the Kasuga Shrine which was associated with a major diety of war. Next, following a council of war to discuss his assumption of personal command over the crusading army against the foreigners, the Emperor, according to the edict, was expected to make a pilgrimage to the Ise Shrine, the holy site of Japan's ancestral goddess. For such an edict to be issued by the Court was an act of repudiation of the Shogun's authority as the officer responsible for quelling barbarians, and it may well be said that the anti-foreign movement at this juncture reached its zenith. In the meantime, however, the scheme of a rival faction that was supporting the political union of Court and Bakufu had been proceeding in secrecy and had finally brought about certain political changes on September 30 which prevented the anti-foreign element of the nobility from attending Court. The rival scheme had also caused the Palace guards from Chōshū to be relieved of their posts. This coup d'etat, originating in the plans mapped out by Prince Nakagawa and the domains of Satsuma and Aizu, was followed by the reappearance in Kyoto of Shimazu Hisamitsu of Satsuma whose avowed goal was to achieve a harmonious combination between the Court and Bakufu.

Although a victory was thus obtained by the unity faction, the relations between the Bakufu and the daimyo did not go well, and the latter departed from Kyoto. Catching the opposition off guard, the Chōshū army entered Kyoto in 1864 and fell to battle with the troops of Kuwana, Aizu, Satsuma and other domains that were guarding the Palace gates. Being defeated in the fracas, however, the Chōshū forces fled back to their own province. This was the so called Hamaguri Gate Incident. Obtaining an order from the Court to attack the routed enemy, the Bakufu availed itself of the opportunity to despatch troops
in pursuit, yet, owing to the forthcoming pledge of allegiance and apology from the Chōshū domain, the attacking troops were withdrawn.

Lenient in its first campaign to vanquish Chōshū, the Bakufu put its hopes in a favorable turn of events. Desirous of dealing a blow to the anti-Bakufu forces all at once, it requested aid from the French and busied itself formulating plans for the second campaign. However, following the 1863 hostilities between Satsuma and England, Satsuma developed an attitude strongly antagonistic to the Bakufu, and when even the staunch Shimazu Hisamitsu lost hope in his cherished idea for a combination of the Court and Bakufu, Satsuma moved into closer relation with Chōshū, aiding the latter in the purchase of weapons and in a number of other ways. Being impressed by these developments, Sakamoto Ryūma and Nakaoka Shintarō of Tosa worked out a plan for the alliance of Satsuma and Chōshū; and a pact was finally concluded between the two domains in early 1866 when Komatsu Tateki and Saigō Takamori of Satsuma and Kido Takayoshi of Chōshū joined together in common cause. News of the alliance reached the ears of the Emperor just at the moment the Bakufu had decided upon a plan to punish Chōshū.

Taking decisive action, the Bakufu pitted its forces against Chōshū in a second expedition, but failure was its lot, and, to make matters worse, Iemochi died midway through the campaign in the summer of 1866. Even though the Bakufu took advantage of the Shogun's death to withdraw its troops, the failure of the campaign had vividly demonstrated the Bakufu's loss of authority.

As a successor to Iemochi, Tokugawa Keiki was decided upon, although the Bakufu kept the former Shogun's death a secret and reported to the Throne on September 25 that Iemochi was critically ill. In reply, the Emperor instructed Keiki to "carry on the affairs of government as has been the practice in the past." On the following day the Bakufu announced the
death of the Shogun and proclaimed Keiki’s succession to the headship of the Tokugawa family.

Although Keiki now accepted the headship of the Tokugawa family, it is significant that he declined the office of Shogun.

This refusal shows, after all, that at this time a distinction was made between the position through which the head of the Tokugawa family—chief of the feudal barons—retained political power and the office of Shogun which carried with it the responsibility of expelling the barbarians. Therefore, at first, Keiki did not accept the position as Shogun, though he did finally take the post in January 1867 as a result of prompting by his close advisers. Later in the same month Emperor Kōmei passed from the world. Inasmuch as he had earnestly desired unity between the Court and Bakufu, his demise meant that the last support for this plan was now gone. Furthermore, as the alliance between Satsuma and Chōshū was completed, the Bakufu thus found itself with its back against the wall. Nonetheless, late as it was, Keiki did not throw aside his plans for reform of the Bakufu; he worked valiantly to renovate the Bakufu staff organization and defense forces, to appoint men of ability to administrative posts and to further new industries. Through his tireless efforts, the Chōshū incident and the issue of opening the Kobe port to Westerners—questions which had been pending solution—were resolved. Yet a country on the brink of ruin is beyond the saving powers of a single individual and the Bakufu, despite Keiki’s efforts, continued down the road to collapse.

About this time at the Court, his influence gathering strength, Iwakura Tomomi had contacted Sanjō Sanetomi in Dazaifu, a government office in Kyushu, and in league with each other they were in the process of plotting the Emperor’s restoration. But at the same time Satsuma and Chōshū’s plans to overthrow the Bakufu were moving forward, and on November 9 these two domains gained possession of a secret rescript calling for the Bakufu’s overthrow. On this very day, upon
the advice of Yamanouchi Toyoshige, the former head of the Tosa domain, Keiki petitioned the throne for permission to relinquish the reigns of government to the Emperor, a request which was authorized on the next day.

Although Gōto Shōjirō, a Tosa Samurai, was the person who suggested to Yamanouchi the idea of memorializing the restoration of sovereignty to the Throne, the real originater of the plan was Sakamoto Ryūma; for it was he who, in his so-called Eight Point Program, demanded that "political sovereignty over the empire be restored to the Court and official orders issue therefrom." On October 29, together with Kamiyama Satae, another Tosa samurai, Gōto Shōjirō paid a visit to Itakura Katsushizu, a Senior Councilor of the Bakufu, and presented to him the memorial from Yamanouchi.¹ In pointing out that only the foreigners pressing upon Japan would benefit by the continued difference of opinion existing between the Court and feudal aristocracy, the memorial declared that the moment was too crucial for Japan to indulge in heaping abuse on the Bakufu for the present dilemma. Japan's salvation could only be achieved by fundamental reforms and these would depend on the Bakufu's restoration of power to the Court. As an outline of the necessary reforms the memorial enumerated several essentials, the most important being concerned with the form of the proposed new government that would replace the Bakufu. First, there was a call for all administrative power to be vested in the Court and all laws to be made in a deliberative assembly (giseishō) located in Kyoto. Secondly, this assembly should have an upper and lower house whose members should include honest and good men of all strata from the Court nobles to the commoners. The remaining points of the memorial, to be mentioned only in passing, stressed the need for establishing town schools to teach science and handicrafts, for the Court and the domains to deliberate jointly on a reasonable treaty for the Kobe port, and not least, the memorial emphasized that old institu-

¹. See Appendix 1.
tions despite their venerable age—the Ritsuryō Code notwithstanding—should be pared down to the essentials in order to remove any obstacles that might jeopardise Japan's efforts to gain independence. Although the persons who delivered the memorial to the Bakufu official apparently did not include Sakamoto Ryūma, his ideas were nonetheless embodied in the part which advocated an assembly as a basic component of government.

Yamanouchi's memorial was not without company, for within three days after his was presented, Asano Shigenaga, lord of Aki domain submitted a similar petition calling for the Shogun to fulfill his vassalage relationship to the Emperor and to demonstrate the supreme obligation of loyalty to the Throne by returning political rule to the Emperor; and in this surrender of power the daimyo were bid to follow suit.

Upon receiving these memorials and giving them careful consideration, Keiki made up his mind to hand back the reigns of government to the Emperor. On November 7 he summoned the officials in Kyoto who ranked below Senior Councilor (rōjū) to the Nijō Palace to inform them of the decision. On the 8th, in order to ask their opinions, he summoned to the same place the chief vassals of the largest domains (over 100,000 koku) who were then residing in Kyoto. Among these vassals such important figures as Komatsu Teito of Satsuma, Gotō Shōjirō and Fukuoka Tōji of Tosa, and Tsuji Shōsō of Aki had nothing but praise for Keiki's courageous decision. The discussion was finally concluded on a note of agreement with Keiki's decision, and on the 9th Keiki sent Osawa Ukyodayu Motohisa as an emissary to the Court to present the appeal which would allow him to surrender the affairs of state to the Emperor. In the appeal Keiki confessed that Japan's present plight reflected his lack of virtue, an indispensable attribute of a wise ruler, and called attention to the fact that the government must have a single source of authority or perish. "If, therefore," he continu-

2. See Appendix 2.
ed, "old practices are reformed, and the administrative authority be restored to the Imperial Court, if national deliberation be conducted on an extensive scale and the Imperial decision be then invited, and if with a united mind we join together in giving protection to the Empire our country will stand with equal footing among all the nations of the world." This in part is the famous memorial which offered the return of power to the Emperor. The first important point to heed is in the phrase "if administrative authority is restored to the Imperial Court". So far as the Tokugawa family is concerned, this may rest on the idea that administrative authority was entrusted to them, however, since no facts exist to support this contention from a legal point of view, "restored" as here used should be interpreted actually as a transfer from the Bakufu to the Court. Furthermore, the argument supporting the restoration of Imperial authority did not originate here for the first time. Ōkubo Tadahiro, a Bakufu minister, for example, had already taken the liberty to propose this to the Shogunate. Even Keiki, according to statements made by him in later years, had at an early date considered surrendering the government to the Throne.

The second important point is that in the closing years of the Bakufu the administrative authority vested in the head of the Tokugawa family was distinguished from the office of Shogun, and in the above memorial the element that was "restored" consisted of the administrative authority. The office of Shogun remained unaffected.

The third point concerns the phrase "if national deliberation be conducted on an extensive scale and the Imperial decision be then invited, and if with a united mind and effort we join together in giving protection to the empire our country will stand with equal footing among all the nations..." With respect to this part of the memorial, Osatake Takeshi, the learned constitutional historian, believes that Keiki had no idea of making an unconditional restoration of government to the Throne; rather he intended, after the surrender of authority, to "join together"
in a government based on the principle of public discussion and give protection to the empire. Briefly, this means that Keiki assumed that once Imperial rule was inaugurated he would occupy a position like President of the Assembly in the new deliberative government. And he probably assumed the assembly would be composed of Court nobles, feudal lords and the like. Keiki at this time possessed considerable knowledge concerning a deliberative form of government and it can be easily conjectured, in view of the reference to this type of government mentioned in the above Yamanouchi memorial, that he had come to share such views.

On November 9 when Keiki made his petition to the Throne, a Court Council was called, and although the divergence of opinions made it difficult to decide whether to accede to the petition, the immediate circumstances left no alternative but to sanction it. On the following day Keiki was ordered to attend Court; there he was given the Imperial rescript which granted his request and enjoined him to unite with the country in preserving the Empire. Then as a tentative measure to deal with this transfer of power from the Shogun to the Emperor, an Imperial notice was issued. Though brief in content, it indicated that urgent matters of state and foreign affairs would be disposed of by a council of barons and their retainers assembled in Kyoto. This category of affairs would also include, of course, any inquiry from the Bakufu concerning the meaning of this Imperial notice itself. Other matters that were of a minor nature, including inquiries from the daimyo and orders from the Court, were left to the disposal of the two officials who during the Tokugawa Period had been encharged with the duty of transmitting official documents between the Court and Bakufu. Matters beyond their competence were assigned to the Council of barons. Lastly, the notice made clear that the territories under Bakufu control belonged to the Court, and though they would continue to be administered by the Bakufu for the present,

3. See Appendix 3.
their administration would be subject to Court orders. Later on the November 15, Keiki made further inquiry as to the manner in which state affairs should be conducted until the barons should assemble, yet he was ultimately informed by a message from the Emperor to carry on as in the past. And a few days later when he queried the Court about the conduct of foreign affairs, he received a similar directive bidding him to follow standard procedure of the past whenever dealing with ordinary matters in this field.

Judging by these enquiries and directives, it is clear that the restoration of sovereign power to the Emperor concerned Keiki's power as the leader of the feudal barons, but not the power of the Tokugawa family as one of the great daimyo.

Keiki, immediately following his request to restore power to the Emperor, petitioned the Court to permit him to return his Court rank, but this petition was rejected on the same day on the ground that such action was unwarranted. However, when he requested to be relieved of his office as Shogun ten days later, the Court informed him on November 23 that he would receive further notice after the domains had assembled in Kyoto, but until then he was to proceed with his duties as was customary.

Now, since it was the Court's policy after the Restoration to have the barons confer and agree upon policies in general consultation, the most influential daimyo (over 100,000 koku) were ordered to Kyoto on November 10 and those ranking less than 100,000 koku were summoned almost a week later. On the 19th the daimyo were again informed that they would have to come to Kyoto in December. In preparation for the baronial conference, at the instance of a State Affairs Councilor (kokuji goyō-kakari) of the Court, a number of leading figures were requested to give their views on certain problems relating to the establishment of a new government. First of all on December 10, Tokugawa Keiki, Tokugawa Yoshikatsu, and Matsudaira Yoshinaga, the leading representatives of the Tokugawa family,
were asked to give their opinions concerning a policy for consolidating the authority of the Court within the framework of the existing feudal system. Two days later, Keiki and the barons were sounded out about the revival of the Department of Shintō and the Grand Council of State together with their subordinate offices, which were to be staffed by officials appointed from the Court nobility and the feudal barons. In addition, the Court wanted to know what Keiki and the barons thought about the idea of making the supreme moral obligation of loyalty to the Emperor explicit to the Japanese without modifying existing feudal institutions, and it desired their views concerning the intention to administer a new government, so far as possible, without departing from standing practices. To this inquiry Keiki answered that, being an exceedingly grave matter, he would tender a reply after giving the matter proper consideration and after the barons had arrived in Kyoto. In other words, he thought it would be desirable to establish the fundamentals of state government after a public conference had been held.

However, the lords who had proceeded to Kyoto, aside from the lords of Satsuma, Aki, Owari and Echizen, were for the most part minor daimyo from the Kyoto vicinity and, whether still active or retired, they numbered only twelve or thirteen in all. This small showing was due perhaps to the plight of the daimyo who, confused by the rapid turn of events, did not know which course to take; but it also stemmed from the strong sense of deference that the daimyo paid the Tokugawa family, regardless of whether they were allied traditionally to the shogun or not.

Earlier when Yamanouchi Toyoshige had proposed to Keiki that he restore the Emperor to sovereignty, he mentioned then that the new government should be organized in such a way as to allow for public discussion of political issues, although his views, at the time, were in conflict with the anti-Bakufu plans being formulated by Satsuma and Chōshū. Nevertheless, it so happened at this point that Keiki was allowed to hand over
the reigns of government to the Emperor and, what is more, the daimyo were summoned to Kyoto to attend a general council, all of which was a cause of great jubilation for Gotō Shōjirō and the Tosa samurai who were actively seeking a union between the Court and Bakufu. Encouraged by these events, Gotō's group proceeded to expound their idea about the creation of a deliberative chamber to Komatsu Tateki of Satsuma, to Matsudaira Yoshinaga, former lord of Echizen, and to Ōgimachi-sanjō Sanenaru, a court official responsible for transmitting communications to and from the Emperor. Having explained their plans, they set out to accomplish the purpose to which they were so earnestly attached.

Meanwhile, however, the anti-Bakufu scheme of Satsuma and Chōshū had not been abandoned, even though these two domains had decided on November 16 to postpone the putting into effect of the secret Imperial rescript that had been forwarded to them earlier. By pausing, they had only intended to make the anti-Bakufu faction settle down for a while so that the attitude of the Shogunate could be made certain. In the interim it was apparent that the Tosa group was moving forward with its plans and that the Bakufu supporters for their part were actively engaging in intrigue. Even so, the anti-Bakufu movement, supported by the Court nobles under Iwakura's leadership and by the Satsuma-Chōshū combination, advanced steadily until it finally reaching a climax on January 3. On this day the Emperor proclaimed the Imperial Restoration Order, announcing the revival of the Emperor's ancient prerogative of direct personal rule over Japan. This turn of events reflected the decline of influence at Court of the "unity" party, headed by the Regent Nijō Naritaka, and it heralded the attendant rise of the anti-Bakufu faction which included Ōgimachisanjō, a Court Councilor, Nakayama Tadayoshi, a State Affairs Councilor, and Prince Iwakura Tomomi.

On January 2, 1868, the day before the announcement of the Restoration Order, the Princes of the Blood, the Regent Nijō
and other important Court nobles were called together at the Court. Summoned also to this gathering were Tokugawa Keiki (absent on pretext of illness), the barons resident in Kyoto and the chief vassals of the domains. When this gathering formed, the problem of punishment for the Chōshū daimyo, his son and their branch house was debated, though in the end they were acquitted and given permission to re-enter Kyoto; and the Court nobles who had been under house arrest since 1862 were all amnestied. This conference lasted until dawn of the 3rd. Although the Regent Nijō and other nobles retired from Court, there remained three Court Councilors (Nakayama Tadayoshi, Ōgimachisanjō and Hase Nobuatsu), Tokugawa Yoshikatsu, the former lord of Owari, Matsudaira Yoshinaga, the former lord of Echizen, Asano Shigekoto, the heir of Aki domain, and certain other important figures. Eventually, Iwakura Tomomi appeared at Court, followed next by Shimazu Hisamitsu and Yamanouchi Toyoshige, both of whom came in response to summons. Having entered Kyoto only the day before, Toyoshige was upset when he learned about the plans of Satsuma and Chōshū to invoke the secret Restoration order which bore the seal of the Emperor, yet there was nothing he could do so he took the news in silence and attended Court.

As soon as the summoned members of the Court and feudal aristocracy had thus arrived at Court, Emperor Meiji, then only fourteen years old, made his appearance in the Palace Library and read the so called Imperial Restoration Order. This order announced the Emperor's acceptance of Keiki's surrender of power and his resignation from the office of Shogun. Making clear that the ancient mode of government under the direct supervision of the Emperor was being re-established in order to recover Japan's prestige, the order declared first that the offices of Regent (sesshō) and Chief Adviser to the Emperor (kanpaku) as well as the Bakufu and other offices beneath Imperial Examiner were abolished. Secondly, to take their place,

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4. See Appendix 4.
the "Three Offices" of Supreme Head (sōsai), Senior Councilor (gijō) and Junior Councilor (sanyo) were created and encharged with the conduct of all government business. Although the personnel for the first two offices were specified, the majority of the posts for Junior Councilor were left temporarily unoccupied, but it was clear that they would be filled by a definite number of samurai from the domains of Owari, Echizen, Aki, Tosa and Satsuma. These samurai were appointed three days afterwards upon the recommendation of the respective domains, and, later still, Senior and Junior Councilors were even appointed from Chōshū. Thirdly, all matters of government were to conform to the original plans of Emperor Jimmu, supposedly the founder of the Imperial house in the seventh century B.C. With respect to this point, there had been intentions at first, before the Restoration Order materialized, of reviving the Imperial regime as it existed prior to the Kamakura period. Other views from persons like Nakayama Tadayoshi insisted on modeling the new government on the Kemmu Restoration of 1333 when Emperor Godaigo attempted to restore monarchical rule; however, Iwakura Tomomi, following the views of the Japanese classical scholar Tamamatsu Misao, advocated a return to Emperor Jimmu of antiquity, and in the end it was this view which prevailed. The fourth and final major point of the order declared that there would be no discrimination of rank among the nobility and barons in the carrying out of proper and far reaching public discussion of political affairs. This of course was based upon the concept of government by public deliberation, to which allusion has already been made. As a concrete expression of this fourth point, the Restoration Order appointed comparatively low ranking court nobles to the posts of Senior and Junior Councilor, placed daimyo or their heirs from Owari, Echizen, Aki, Tosa, and Satsuma in the office of Senior Councilor, and even appointed lower ranking Samurai to Junior Councilor posts.

On the evening of the 3rd when the Imperial Restoration Order was promulgated, the so called Little Palace Conference
was opened, and in attendance were the members of the three newly created offices of the Central government. The chief vassals of Owari, Echizen, Satsuma, Tosa and Aki were also present, despite the fact that, as yet, no appointments of samurai to the post of Junior Councilor had been made. First, Yamanouchi Toyoshige and then Matsudaira Yoshinaga, Goto Shōjirō, and others expressed the view that it was unjust to exclude Tokugawa Keiki from the Court council. But Iwakura Tomomi, Ōkubo Toshimichi and their group turned this argument aside and ultimately their opinion won out. In keeping with Iwakura’s proposal, they decided to issue an order calling for Keiki to resign his Court rank as Lord Keeper of the Privy Seal and to surrender his territories.

On the following day, Matsudaira Yoshinaga and Tokugawa Yoshikatsu went to the Nijō castle to inform Keiki of the promulgation of the Imperial Restoration Order and of the acceptance of his resignation from the post of Shogun. At the same time they communicated to him the fact that he had been reduced one grade in Court rank, and they also gave him the private instructions directing him to surrender two million koku of his territorial possessions for government expenses. To this, Keiki answered that he would make a reply concerning the resignation and return of his holdings after the situation inside the Nijō Palace and the confusion on the outside had quieted down. Departing from the Nijō Palace on the 6th, Keiki moved to Osaka; and thereafter the Court’s attitude toward Keiki became more lenient owing to the efforts of Tokugawa Yoshikatsu, Matsudaira Yoshinaga, Yamanouchi Toyoshige and three Junior Councilors from the domains. On January 18, 1868 it was communicated to Keiki that, in keeping with precedent concerning resignation of Court rank, he would be given the title of Former Lord Keeper of the Privy Seal, and that the portion of government expenditures required as a result of the Restoration would, upon survey of his holdings, be determined in a general conference representative of the realm. The members
of the conference were probably to be daimyo and their chief retainers. This was accepted by Keiki four days later, though he was hoping that the expenditures would be proportionately divided among all the daimyo on the basis of the *kokü* yield of their possessions. When these discussions concerning the fate of the Shogun were being held, no less a person than Iwakura was of the opinion that Keiki should be made a Senior Councillor as soon as he attended Court to resign his rank and surrender his holdings. But Satsuma and Chōshū, and particularly Saigō Takamori, had been thwarted in their anti-Bakufu plans by the smooth transfer of government to the Emperor; and, because there was no pretext to resort to armed force, their overzealousness caused them to unleash vagrant samurai upon the city of Edo in an attempt to create an incident. Enfuriated by their excesses, certain domains allied with the Bakufu were finally provoked into setting fire to Satsuma's official domain residence in Edo. Receiving news in Osaka on January 22 of the anti-Bakufu violence, the forces of the Shogun were overcome with exasperation, and at this moment war broke out at Toba and Fushimi near Kyoto, resulting in the Restoration Campaign of 1868.

Within two weeks of the outbreak of these hostilities, the Court posted at the Sanjō and the Kojinguchi bridges in Kyoto a decree declaring that, "the hitherto designation of Bakufu holdings as sovereign dominion is an outrageous offense. They herewith revert entirely to the status of Imperial Court dominion as in ancient times and now become sovereign dominion in substance..." By this action the question of the Tokugawa family's surrender of its possessions was settled by confiscation and conversion to Imperial dominion.

Following up this policy, the Governors General of the Imperial Gendarme, who were despatched to each locality in February 1868, confiscated along their way the former Bakufu holdings and those of the rebels. The confiscated holdings were placed either in the custody of former Bakufu vassals who had
switched to the Court's side or under the control of domains allied with the Court or under those domains located in the immediate vicinity. By the beginning of May, the barons, temples, and shrines throughout Japan as well as the former Bakufu possessions were ordered to submit an inventory of their land holdings and annual revenue to the government. In the following month the Imperial family, the Court nobles, the barons as well as the temples, shrines and other holders of land were ordered to surrender the writs which appointed them as fief holders. Again, in July, the direct vassals of the Shogun and the official Masters of Ceremonies (kôke) who were resident in Kyoto had to follow suit by turning in all writs bearing the red seal of the Shogun. Soon after the domains in the Northeastern districts of Japan had capitulated in the fall of 1868, the forces of the new government quickly confiscated over 9,300,000 koku from nineteen of them. These areas, including Aizu domain, were at first under the supervision of other domains, though their control passed next to a provisional official having jurisdiction over the Northeastern part of Honshū. Later yet, these areas which had reverted to the direct jurisdiction of the Court were divided into urban and rural prefectures.

In view of the Court's attempt to extend control over Japan with the fall of the Tokugawa forces, the position occupied by the Emperor during this interval should perhaps be clarified. There is no doubt of course that he was analogous to a feudal lord in respect to his traditional holdings as well as to the possessions newly confiscated from the Bakufu and other daimyo. But if his legal position in regard to each daimyo is considered in the light of his resumption of sovereignty, then it must be admitted that he, like the Tokugawa family, now stood as chief of the daimyo. This can be gathered from a brief perusal of two passages found in official statements. One forms a part of the document that announced the Restoration to the foreign diplomatic representatives. The document in question was pass-
ed by a conference of the three high government offices (sōsai, gijō, and sanyo) and it had received the Imperial sanction. The pertinent part declares that, "the entire government of Greater Japan, inclusive of all affairs internal and external, shall, following a conference of the united domains and upon a report by the authorities of the proceedings thereof, be determined by us." The other passage forms part of a drafted document originally written by Comte de Montblanc and revised by Terajima Munenori for the purpose of announcing the Restoration to the envoys of the powers in early 1868. It declares "We, as Emperor of Greater Japan, are the head of the united domains." The difference, however, between the new and old regimes is that, whereas the administration of the Shogunate was exercised arbitrarily and selfishly by the Bakufu, with only the participation of the daimyo loyally associated with the Tokugawa, the policy of the new government was to determine major issues by consulting a large number of the domains.

Although set up in this fashion, suitable institutions for the new form of government were by no means completed and ready for operation, therefore, it was necessary for a while to depend on the institutions which had served the Edo Bakufu. In consequence, the domains were instructed in February 1869 to maintain without change the commendable practices and worthy laws of the Tokugawa government.

c. Return of the Land Titles and the Population Registers to the Throne

The formal structure of the new central government came into existence on January 4, 1868 when the Imperial Restoration Order authorized the creation of the offices of Supreme Head, Senior Councilor and Junior Councilor. The government organization was formally completed in February by creation of the seven executive sections of state. But this in itself was not enough to secure the Emperor's position as the chief of the domains. Therefore, the government proclaimed the Charter
Oath of Five Articles on April 6 and made known to all the people the government's intentions of resolving all affairs of state through public discussion. Meanwhile the plans for attacking the Edo Castle had progressed smoothly, but, as we now know, owing to Tokugawa Keiki's oath of allegiance to the Emperor, the Castle capitulated and was evacuated without incident in May.

In view of Keiki's capitulation, which removed at one stroke one of the major obstacles facing the Kyoto government, the Court, as a gesture to mitigate the punishment of the Tokugawa house, decided to permit the Tokugawa family to retain its family name, though as yet no definite policy concerning this matter had been fixed. During Emperor Meiji's official visit to Osaka in this same month of May the questions concerning Keiki's punishment, his successor, and the amount of his stipend were put to a group of influential figures then present in Kyoto, including the Princes of the Blood, the Senior and Junior councilors, other members of the Court nobility, the daimyo, and the domain representatives (kōshi). The same question was asked shortly thereafter of a somewhat similar group who were in the Imperial entourage at Osaka. The answers, more than one hundred seventy in all, failed to agree on how generous or severe the disposition should be. With respect to Keiki's punishment, some of the answers demanded suicide by disembowelment, exile, and other harsh penalties; yet the majority accepted the view that he should be placed in house arrest at Mito. In the matter of a successor, the choice of Tayasu Kamenosuke, one of Keiki's distant Tokugawa relations, was almost unanimous. On the question of how much pension should be granted, the opinions were divided. The suggested amounts ranged at the most from three million koku all the way down to 10,000 koku, though most favored granting only enough to maintain the former ministers of the Bakufu. While the inquiry at Court thus revealed no objection to Tayasu's becoming the successor to the Tokugawa family name, inasmuch as the matter concerning the
amount of pension and property could not be easily settled and because the Shogun’s vassals and Edo populace were becoming apprehensive, the Assistant Supreme Head Sanjō Sanetomi was appointed Itinerant Inspector of Kantō and given full power to dispose of the issue. Traveling to Edo, Sanetomi conferred with the officials of the government forces who were in charge of military operations against the Tokugawa supporters. Together they decided to set the future stipend at 700,000 koku and to grant Keiki’s successor a castle in Sunpu, the original home of the Tokugawa family. But in consideration of the serious repercussion which such a reduction in stipend would have on the old retainers of the Shogun, the announcement in June simply stated that Tayasu was ordered to succeed to the Tokugawa family name and that the particulars concerning the castle, the land holdings, and the details of the stipend would be announced later. As a result of this news, a pronounced feeling of unrest was produced among Keiki’s vassals. Nevertheless, with the annihilation in early July of the Shōgitai (defenders of righteousness) rebel unit of Tokugawa supporters and the return to more tranquil conditions, Tokugawa Kamenosuke was made lord of the Sunpu Castle in the same month and granted a fief of 700,000 koku. This fief constituted the entire province of Suruga, plus some of the provinces of Totomi in central Japan and Mutsu in Northeastern Japan. However, as hostilities were not readily brought to an end in the Northeast, Mikawa, also located in central Japan, was granted shortly thereafter in lieu of Mutsu.

But even after the evacuation of the Edo Castle, the domains located in the Hokuriku and Tōhoku districts continued to put up resistance; and still later a pact was concluded among the domains located on the Japan Sea side, binding together the domains between the province of Echizen and the northern tip of Honshū. However, after the Aizu forces surrendered in the fall of 1868, the other diehard forces gradually gave up the fight and the districts in the Tōhoku region were once again
completely restored to peaceful conditions. With peace came
punishment for the rebels. The former lord of Aizu and his
son were sentenced to the permanent custody of another domain,
which was only one degree less than capital punishment, and
their fiefs were confiscated. The lords of Sendai, Shōnai, Na-
gəoka, Morioka, Nihonmatsu, Tanakura, and the rulers of other
domains were deprived of their fiefs and sentenced to domiciliary
confinement. On the ground that he was repentant and apo-loge-
tic, the lord of Yonezawa was simply retired and his fief reduced
to only 40,000 koku. Other feudal lords were retired and put
under house arrest, and they were either transferred to other
fiefs or had their land confiscated. Despite the effort taken to
mete out punishment to these magnates, they were suddenly
allowed to regain part of their former holdings in January 1869.
Yet the reduction in holdings suffered by the domains of Sendai
and Aizu was a severe one and, together with the vassals of
the Shogun, the treatment accorded their samurai created a
grave social problem.

On the land confiscated from the Shogun, his vassals, and
from different domains, the new government created rural pre-
fectures; and at the strategic centers of Kyoto, Osaka and Edo,
which constituted the largest cities, it set up urban prefectures.
All other land not coming under direct government control was
left, as in the past, in the hand of feudal lords, though not
without some interference. For example, the daimyo in pos-
session of Totomi and Mikawa provinces were compelled to
transfer to other provinces, since their holdings formed a part
of the territory granted Tokugawa Keiki's successor. Further
than this, the government categorized the domains in March
1868 into large, small, and medium fiefs. The domains having
no less than 400,000 koku yield were classed in the large cate-
gory; those from 100,000-400,000 koku in the medium group;
and those from 10,000-100,000 koku in the small category.

Prior to these developments, on June 11, 1868, the Seitaisho
or the first Japanese "Constitution" was announced to the pub-
lic. By its provisions, the districts were divided into urban prefectures, rural prefectures, and domains. The officials in charge of the urban and rural prefectures were titled as governors and those in charge of the domains were, as before, the feudal lords. As spokesmen for the districts, representatives (kōshi) from each prefecture and domain were to be sent to the Court as Assembly members. The Seitaisho further stated that the government in each of the prefectures and domains must be conducted in accordance with the principles laid down in the *Imperial Charter Oath of Five Articles*. The municipal law of one place could not be held binding on any other places. No rank could be bestowed, no money coined, no foreigners employed without authorization from the central government. Neither was it permissible for alliances to be entered into between neighboring domains, nor between a domain and a foreign power. This was to prevent any violation of the greater by the lesser authority, and to keep the constitution free of confusion. Though the prefectures were reminiscent of the centrally controlled prefectural system of ancient Japan and the domains were representative of the partial autonomy enjoyed in the recent feudal regime, the two, nonetheless, existed side by side. But the domain of 1868 was not the same domain of the Edo Period. The contrast lay in a much greater centralization of political authority that was clearly demonstrated by the feudal lords’ participation as Senior and Junior Councilors in the Court run administration and also by the participation therein of the domain representatives. In a formal sense, this centralization was manifest by the fact that the prefectures and domains stood on an equal footing with each other.

Confronted in early 1868 with the diversity of local government implicit in the continued existence of the domains, the government frequently stated the need for standardized regulations to cover both the domains and prefectures. Thus in July, the government removed the Domain Custodian office, replacing it with a government service post. To the new post, as spokes-

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man for local opinion, the domain representative or kōshi was appointed. In a similar move, to eliminate the differences in administrative organizations of the domains, which stemmed from the peculiar development of each feudal ruling house, the government enacted in November the Regulations Governing Domain Administrative Organization. Accordingly, there was created for each domain the office of Chief Administrator, though the number of persons to hold this post was left indefinite. The Chief Administrator’s duty was to give sympathetic and full recognition to the Court administration as well as to act as adviser to the domain head. A lesser official known as the Assistant Chief Administrator, likewise unspecified in number, was given the duties of assisting in domain government and exercising control over general domain affairs. The appointment of both these officials was to be governed not by family status but the individual’s capabilities. To govern the household affairs of the lord, a Household Administrator was separately created. The regulations provided, in addition, that a system for deliberation would be established in each domain; yet, distinct from this, a spokesman for domain opinion (now called kōginin) was required to be selected from the Chief or Assistant Chief Administrators and he was expected to act on Court orders. As a result of these innovations, a certain degree of uniformity was introduced into the domain organizations. In March 1869 another order was issued from the central government, this time requiring the domains to set up facilities for deliberation. This order became the legal basis for the domain assemblies to which reference shall be made again later.

The Court’s exercise of control over the domains, as the foregoing suggests, was similar to its control over the prefectures; that is, control from the center was more form than fact. The actual situation in March 1869 was more aptly described in a letter sent by Kido Takayoshi, a Junior Councilor, to Sanjō Sanetomi and Iwakura Tomomi who were then serving as the Assistant Supreme Heads. In Kido’s view, the domains
were far more extravagant than under the old Bakufu, and their high sounding phrases about the supreme moral obligation of loyalty to the Emperor, and morality in general, were for the most part mere lip service. Upon the Court the domains were pressing selfish demands proportionate to their influence, they were making grand utterances about complying with the spirit of the Restoration reforms and preserving the Empire for all ages to come, but there was only the slightest action on behalf of these goals. Because the majority were only concerned with acquiring gain for themselves, according to Kido, the situation on all sides had come to resemble "a collection of petty shogunates."

As a remedy for the weaknesses thus plaguing the government, the next move was to have the daimyo surrender their domain patents and population registers to the Emperor. Terajima Munenori of Satsuma, for example, had already proposed to the lord of Satsuma in late 1867 that, to make loyalty to the Emperor a complete reality, the fiefs and their inhabitants must be restored to the jurisdiction of the Court and everyone must accept the status of a common subject. Kido Takayoshi, in a similar vein, had suggested to Sanjō and Iwakura in early 1868 that the "three hundred barons should be caused to surrender their subjects all at one time," and, "immediately unitifying the energies of the Empire thereby, we must utilize the resources of the entire country, including naturally the armed forces and the government, to strengthen the nation." This suggests, apparently, that Kido was aiming at the establishment of a powerful centralized state.

Although Sakai Tadakuni, the lord of Himeji, had earlier petitioned in December 1868 for the surrender of daimyo holdings, the action that really paved the way for this undertaking occurred in March 1868 when the combination of Satsuma, Chōshū, Tosa, and Hizen, the four major domains in southwest Japan, presented a similar memorial to the Court. The person originating the proposal was Kido Takayoshi of Chōshū. He
had obtained the approval of Mori Tadachika, the former lord of Chōshū, after explaining the proposal to him and then he had reached an agreement with Ōkubo Toshimichi of Satsuma. Afterwards in February 1869, Ōkubo of Satsuma, Hirosawa Maomi of Chōshū, and Itagaki Taisuke of Tosa met in Kyoto, where complete accord was reached among the three domains. Shortly thereafter, Saga domain was also permitted to take part in the deliberations.

As a result of these joint consultations, the four daimyo (Mori Tadachika of Chōshū, Shimazu Tadayoshi of Satsuma, Nabeshima Naohiro of Saga, Yamanouchi Toyonori of Tosa) put their signatures to a memorial on February 2, 1869 which requested a return to the Court of the Feudal land grants and the attached populace. The memorial states that "the land on which your servants live is the land of the Emperor, and the people to whom they administer are his subjects. Neither the one, therefore, nor the other can belong to your servants. Here-with we respectfully beg to surrender to your Majesty the land patents and population registers." But this was not an unconditional surrender, for in the following words the four lords "beg that the court deal with everything as it may think fit, granting what should be granted and taking away what should be taken away. As to the lands of all domains we further entreat that such decrees be issued as will provide for their proper adjustment." Here it is important to note that they anticipated a readjustment of the fiefs and a regranting of them. In reply, the Emperor, complimenting their loyalty, informed them that once he had paid another visit to Tokyo, and had held a conference to discuss the matter, an order would be issued. At this point other barons also submitted similar petitions and they all received a similar reply. Though all daimyo based the surrender of their possessions on the ancient concept that all land and people belonged under the direct sovereignty of the Emperor, the daimyo of Echizen, however, was outstanding among the others, since in his petition he called
not merely for their surrender but also for the creation of a centrally controlled rural district and prefectural system. In a few words, the lord of Echizen did not look forward to a regrant of the fiefs. Besides Echizen, there were but few domains advocating a prefectural system.

Despite the presentation of these memorials, the achievement of the proposed undertaking was viewed as an extremely difficult task. For to reform or abolish the feudal regime would mean the fall of the bushi class, especially the lower orders, and there was a danger of incurring their fierce opposition. Thus if one step were made in the wrong direction the great achievement of the Restoration would possibly end in failure. It is for this very reason that the presentation of the barons' memorials was in most cases handled only by the domain lords or their chief vassals who were in Kyoto, and carried out without any consultation with the administrative officials of the domains.

While the memorials were being submitted to the government, Emperor Meiji made an official visit to Tokyo, the new name for the City of Edo, where, upon arrival on May 9, he commanded that certain government personnel and other important persons appear at his Court on June 30, 1869. All officials above the fifth rank who were employed in the Central Administrative Council, in the six departments, the University (predecessor to the Department of Education), in the Rescript Drafting Bureau, and in prefectural government were expected to be present, as were the retired Court nobles of the first three ranks and the daimyo whose rank entitled them to a seat in the Musk Chamber of the Edo Castle. When this group assembled in the Jōkyoku or Upper House on the prescribed day to discuss the surrender of the land patents and population registers, they were informed that there existed no alternative to a central government vested with indisputable authority. They were told, therefore, that the Emperor was considering the idea of appointing governors to the prefectures and domains as a
step toward unifying Japan. Then the assembled members were requested to freely express their views concerning the Emperor's plan. A similar inquiry was addressed again within three days to an extensive number of lesser ranking members of the feudal aristocracy. Certain daimyo, chief vassals acting as daimyo deputies, and different government personnel were included in this group, as were the middle and low ranking taifu and the representatives of the upper samurai. The so called taifu and samurai representatives were inclusive of the former Court-Bakufu liaison officials and an assortment of samurai ranging from 3,000 koku down to 100 koku in rank. In other words, this was a far reaching inquiry among the Court nobility, the barons and the chief retainers. The responses were various. Though most expressed agreement with the aim alluded to in the Emperor's proposal, still there were others who wished to have the feudal system retained a while longer. Even the reply of Iwakura, who was the central figure in this attempt to bring the domains under the direct authority of the government, stated that the entire country should be divided into provinces with the feudal lords appointed as domain governors; but that "for the time being these governors should be placed in charge of former holdings and the substance of the prefectural system should be embodied in the existing arrangement of fiefs."

In one of the sessions of the Upper House, and in the Lower House (kōgisho) as well, when the fief surrender problem was put up for debate, the issue was focused by a motion of Mori Arinori, an official in the Office of Laws, on whether to create prefectures and lesser administrative subunits known as rural divisions or to retain the existing domain units. Although views were evenly balanced between retention of the old and creation of the new, those in favor of a prefectural system did not argue for one in its full sense, for they retained many elements identified with the old fief system. This was perhaps a natural outcome of the fact that the members of the Lower House were representatives of the domains.
There being no clear cut decision for a new prefectural system, one faction of the government even proposed that the office of domain governor should be hereditary. However, this was opposed by Kido and eventually in late July and early August the lords who had previously memorialized for the return of the daimyo holdings were informed of the Emperor's decision to accede to their petitions. His decision, according to the Imperial notice, had taken into account the trend of the times and the desires for a unified government which were expressed in the recent assembly deliberations. Then the daimyo who had presented memorials were appointed as governors. Those who had not were ordered to submit their land and population registers to the Throne, and on the 1st and 2nd of August they were made governors. Thus by this first week in August, 262 lords had given up to the Imperial government the land and the people over which feudal rule had been exercised for many a long generation. For Mizuho Tadahiro, lord of Yamagata, and eleven other daimyo, the proceedings were delayed; they did not become governors until August the following year. The final figure of those who divested themselves of their former possessions numbeered 274, and the total assessment of their holdings amounted to 19,046,032 koku, though the actual amount of land tax collected from the inhabitants of all these holdings only amounted to 9,261,083 koku.

While it would have been ideal to progress immediately to the prefectural system upon the surrender of the baronial holdings, which in itself had been no simple matter, it was difficult at this time to replace the existing domains with prefectures at one sweep. Hence the surrender of feudal holdings constituted a significant first step toward establishment of the prefectural system.

As a consequence of the transfer of the feudal provinces to the government, the domains, though still retaining their traditional names, were, from a juridical point of view, placed on an equal footing with the different prefectures which had
already been formed from the territory confiscated from the Bakufu and its supporters. The domain governors, now appointed by the Emperor, had become officials of the central government. Thus all the district governments, be they rural or urban prefectures or still nominally called domains, were headed by centrally appointed officials. Thereupon, on August 2, the government forwarded an eleven point general reform program to the domain governors, ordering them to submit a detailed report on domain conditions, and also notified them that they would receive as a hereditary stipend one tenth of the koku revenue that had formally been delivered to them by the peasantry. All samurai, the notice added, inclusive of the governor on down to the ordinary samurai would henceforth be designated as shizoku, a term simply indicating a former samurai or a descendant of a samurai. Moreover, a week earlier, in order to conform with the Emperor's "desire for the unity and cooperation of all strata of the Court and feudal nobility" the titles of the Court and territorial aristocracy had been abolished, and replaced by the general designation of kazoku or peerage. Again, following upon these innovations, the government in August issued the Government Officials Order which brought about a reorganization of the central and local administrative structure. In fact this order led to the adoption of the ancient Council of State system of government which eclipsed the Western concept of a division of powers, as reflected in the Seitaisho. And it was through this eight century form of government that the centralization of the government was to be accomplished.

While the Seitaisho had contained no provisions concerning the functions of the daimyo as governors of domains, even though it had made provisions for the governors of prefectures, the Government Officials Order, on the other hand, did delimit the authority of the daimyo who were now serving as local officers of the government. By the provisions of the Government Officials Order, the domains were divided into large, medium,
and small categories, and, in addition to the domain governor, offices were created for his chief assistants who were officially designated as Dai Sanji, Gon Dai Sanji, Shō Sanji and Gon Shō Sanji. Included in the official duties of the domain governor were the registration of shrines and population, the promotion of the samurai and commoners’ welfare, the spreading of moral principles and encouragement of good conduct, the collection of taxes, assessment of public labor, as well as such duties as the administration of Justice, the registration of the Buddhist clergy and command of the domain militia. The functions of the domain governor only differed from those of the prefectural governor by the fact that the latter was to “foster the welfare of the common people” whereas the domain governor was to do this for the “samurai and commoner”; and, though the prefectural governor was to “supervise commerce and trade”, the domain governor was required to “command the domain militia.” The major point of difference between the powers of the two governors stemmed from the fact that the domains possessed armed detachments of samurai.

Under the new form of domain administration, complications arose on account of the existing arrangement of scattered splinter holdings. That is, the holdings of the domains were scattered around in different districts and often even one village was partitioned between two domains—a practice seen at its best in the Kantō area. Owing to the extreme inexpediency of this practice, the domains took a progressive step forward by occasionally exchanging land with other domains, a remedial measure that was also adopted by the government in consolidating the domains’ territorial jurisdiction. Hand in hand with these consolidation measures, another movement was advocating the destruction of anything that was outdated, which frequently led to the tearing down of castles.

Previous to the emergence of the domain as a nominal part of the centralized administration, the government, in July 1868, had already abolished the seating arrangements within the Edo
Castle for the different ranks of the bushi class. This arrange-
ment had corresponded to the ranks held by the feudal nobility
all the way from the rank of Master of Ceremonies downward.
In its place had been substituted a system of three ranks: chū-
taifu, ka-taifu and jōshi. The chū-taifu included the former
rank of Master of Ceremonies and a group of the former retired
bannermen or direct vassals of the Shogun who ranked over
3,000 koku and who attended the Bakufu on alternate years.
The ka-taifu included other former retired bannermen who
ranked over 3,000 koku and were under the command of the
Junior Councilors of the Shogunate; additional members of the
ka-taifu rank were the former Body Guards and Inner Guards,
and the former samurai who ranked over 1,000 koku. The jōshi
category included the former Body Guards and Inner Guards
and other samurai whose rank ranged from 1,000 down to 100
koku. However, following the surrender of fiefs and popula-
tion registers, the Council of State did away with these three
categories in January 1870 and all samurai were simply designat-
ed shizoku or sotsu, the latter being an indication of the common
foot soldier. Both the Shizoku and Sotsu categories fell under
the jurisdiction of the local government. The new classification
scheme for the samurai also brought other changes, for the
samurai who still held fiefs from their lords were required to
surrender these holdings and receive rice stipends in their place.
The stipend system was divided into a number of grades (twenty-
one at first; then eighteen in the following year), most of them
applying to the Shizoku, and they ranged from a maximum of
250 koku for the former 9,000-10,000 koku stipend recepients
to the minimum 8 koku for the former 30-40 koku recipients.
Those who had formerly received less than 30 koku continued
to obtain their traditional allotment. The stipend reduction,
computed at one-fourth the former allotment, was more severe
for the higher ranking samurai than the lower. Although each
domain adjusted the stipends of their former samurai according
to this system, some of the domains, without waiting for action
by the government, had already enforced a determined program of stipend reductions. Wakayama domain, as an outstanding example of local initiative, provided in March 1869 that the lord would receive a hereditary stipend equaling one-twentieth of the domain’s traditional yield in koku; samurai who previously ranked from 550 to 16,300 koku would be given one-tenth this amount; and those ranked from 25 to 550 koku would be allotted twenty-five koku. The samurai who had never received more than twenty-four koku continued to receive their customary allotment. Other samurai who occupied public positions were provided with an office allowance, while those having no public duties were permitted to become doctors, farmers, craftsmen, merchants and the like.

The next innovation brought about in the domains occurred in 1870 when an Imperial inquiry concerning domain organization was directed to the Lower House (renamed shūgiin). As a result of the House deliberations and reply to the Throne, the Regulations for Domain Organization were enacted by October of the same year. By its provisions, the domains were classified according to the amount of land tax collected from the peasantry rather than by the total registered koku yield of the domain. Thus those collecting over 150,000 koku in land revenue were classified as large domains, those having a revenue over 50,000 koku were termed medium sized and those collecting a lesser amount were placed in the small category. Additional provisions fixed the number of the major officials attached to the domain administrative office. That is, two or less Senior Councilors and five or less Junior Councilors were specified for each domain office, and deputies for these two councilors were created only when occasion demanded. In matters of revenue, one-tenth of the tax collection was singled out for the daimyo’s hereditary stipend or pension and nine-tenths were allotted to the domain office for its expenditures. But of this latter portion, one-tenth was to be supplied to the central government as defense funds and the remainder was to be used for the domain
office and for stipends to the ex-samurai. The domains were required to economize as much as possible so that savings could thus be diverted to military needs and official salaries could be kept within the means of the domain. Furthermore, the regulations prohibited the domains from granting an increase in stipends or from divesting persons of them; and the domains were not allowed to pronounce a death penalty without the sanction of the Imperial Court. It was also against the regulations to create any ranks among ex-samurai besides the standard categories of shizoku and sotsu. With respect to political ties between the government and the domains, the title of representative (kōginin) was abolished and the senior councilors of each domain were required to alternate with each other every six months in residence at the capital where they were to serve as members of the Lower House. The governors had the obligation to take part in a Court assembly once every three years, to reside at the capital three months in every year, and to submit at the end of each year a detailed account of annual revenue and expenses. Among other particulars, the regulations specified that the governor must prepare a plan for the redemption of domain loans by diminishing the stipends granted to the governor and the ex-samurai and by cutting domain office expenses. And lastly, the Regulations for Domain Organization obliged the governor to devise a method for converting domain paper currency.

The effects of the decisive action which caused the domains to be transferred from the local control of the daimyo to the central government were two fold. One strengthened the power at Court of the Satsuma, Chōshū, Tosa and Hizen domains, especially the influence of the samurai from this combination who had advocated the return of the daimyo holdings to the Throne. With their gain of power, the Court nobility, excluding Sanjō and Iwakura, were displaced at the Palace, and because of the sudden shift certain of the nobles were left with a feeling of resentment toward the Meiji government. The second
effect manifested itself in the dissatisfaction among the ex-
samurai over the reduction of their stipends, in growing disaffec-
tion in all parts of the country, and in the frequent occurrence of
violence in the domains.

Even after reversion of the daimyo possessions to the
Throne, there still remained to be settled the disposition of
temple and shrine lands which throughout the Edo Period had
been under the supervision of the daimyo and lesser fief holders
(jitō). A decision by the government in January 1869 had
allowed the religious organizations to remain, as in the past,
responsible for the management of their own holdings and free
of either government or domain control. But in view of the
action by the daimyo to surrender their holdings to the govern-
ment, it also became necessary to confiscate the lands of the
religious organizations. Thus in February 1871, issuing a decree
aimed at reform of the shrine and temple stipend system, the
government compelled the surrender of all tax exempt and
chartered land, except for the precincts of the religious insti-
tutions, and it announced that an appropriate stipend system of
rice grants would soon be established. The decree prescribed,
in addition, that if any of the arable land surrendered to the
government was not being rented out, but was being directly
cultivated or tenanted by the institutions, such land would re-
main in their possession if they would pay the land tax and
other services required of the ordinary peasant holder. By
August the new stipend arrangement was determined: one
quarter of the monasteries' former holdings was paid to them
in rice; their traditional religious orders were abolished; and
they were placed under the jurisdiction of the prefectoral gov-
ernments. Three months later the practice of having the Bud-
dhist temples conduct a census registration was also discontinued.
Stipend arrangements based on those for the Buddhist institu-
tions were likewise formulated for the Shintō shrines in the
summer of 1871, and, with the exception of ground where head
shrines and other buildings were located, all land was confiscated
without any regard to whether or not it was a part of the shrine precincts. In practice, however, half the amount of revenue gained from the surrendered lands between 1871-1873 was returned to the shrines and temples.

d. Abolition of Domains and Creation of Prefectures.

Although the domains occupied a position corresponding to that of the few existing prefectures, the former feudal lords still remained as the domain governors; and while many nominal reforms including the reduction of stipends had been effected, there were still a great many aspects of the old feudal order in evidence. Thus to sweep away the major vestiges of feudalism and bring to final completion the undertaking begun by the barons' surrender of their domains, it was necessary to do away completely with the domains and establish prefectures in their place.

Inasmuch as the transfer of daimyo holdings to the central government was in itself no minor achievement, the next move thus was all the more difficult. Yet because of certain acute financial difficulties in some domains, certain daimyo voluntarily requested their own disestablishment. For example, towards the end of the year 1869 Governors Yoshii Nobunori of Yoshii domain and Hōjō Ujiyasu of Sayama domain petitioned that they be allowed to resign their governorship. Acceding to their request, the government consolidated Yoshii with Iwabana Prefecture and Sayama with Sakai Prefecture. The two ex-governors, without forfeiting their hereditary stipends, were ordered to reside in Tokyo, while the ex-samurai and foot soldiers became members of Iwabana and Sakai prefectures. In 1870 the governors of Morioka, Nagaoka, Tadotsu, Marugame and others like them requested retirement; all were dealt with in the same manner. In other cases, branch domains were amalgamated with their head domains and both were abolished at once. Then in 1871 Hachisuka Shigeaki, governor of Tokushima domain, and Tokugawa Yoshikatsu, governor of Nagoya domain,
made a proposal to the government that a centralized prefec-
tural system be put into operation in all of Japan.

Despite the voluntary gestures of certain domain governors
to resign, a complete abolition of all domains through govern-
ment action was not this simple. First it was necessary for
the government to consolidate its power and authority, for in
1870 the central government found itself helpless before the
independence of the different departments of state. For the
purpose of bolstering the government, Satsuma, Chōshū and
Tosa had already in March concluded a tentative agreement
which committed them to provide counsel to the Court as well
as to protect the existence of Japan itself. But meanwhile,
with an eye to comprehensive reforms, the government had
perceived the utter necessity of setting up a powerful regime
supported by a Satsuma-Chōshū combination, and in February
1871 had sent an Imperial rescript to Shimazu Hisamitsu of
Satsuma and Mori Takachika of Chōshū, ordering them to visit
the capital. Although both agreed to comply, Shimazu, under
pretense of ill health, replied that for the time being he would
have his Senior Councilor Saigō Takamori come in his place.
The Imperial messenger who delivered the rescript was Iwakura
Tomomi; accompanying him were Ōkubo and Kido. At first it
was the plan of Ōkubo and Kido to obtain the cooperation of
Satsuma and Chōshū, but, after discussion with Saigō, Tosa
was also made a party to the group. Consequently, taking leave
of Iwakura, Ōkubo, Saigō and Kido proceeded to Kōchi where
they explained to Itagaki Taisuke, the Senior Councilor of Tosa
domain, and to others how the idea of support for the Imperial
government had come into being. There being no fundamental
differences among the parties concerned, the alliance of the
three domains was finally formed.

The representatives of the three domains then gathered in
Tokyo to confer with Sanjō and Iwakura; and by way of pre-
caution against incidents most likely to accompany the com-
prehensive reforms, it was judged necessary to furnish the
government with a unit of Imperial bodyguards. Therefore, a total of 10,000 troops from the three domains were ordered to the Capital, where they arrived between May and July.

On August 11, in an effort to consolidate the administration, sweeping changes were made in government organization. In a move that brought about a dismissal of all the incumbent Juniors of the Central government, only Kido was reinstated and he was joined by Saigō who was the only other Junior Councilor for the time being. Although these radical changes in government are attributed to Saigō and Kido, they were actually the work of a triumvirate, the other member being Okubo. Within a week, in the delivery of a decision against a counterfeiting case in the Fukuoka domain, the central government made a show of authority by replacing Governor Kuroda Nagatomo with Prince Arisugawa and by sentencing the Senior Councilor of the domain and five others to decapitation. Finally the three senior statesmen held a conference at Kido's residence on August 24 to discuss how the domains could be replaced by prefectures and how to organize the government once this was accomplished. After obtaining the approval of Minister of the Right Sanjō and also that of Iwakura, they took firm action on August 29 in issuing an Imperial edict which announced the abolition of domains and the creation of prefectures. According to the edict, this action was needed in order to achieve internal stability, uniform government and equal status with other nations. The domain governors, hereupon, received notices of dismissal and instructions to change their domicile to Tokyo. The governors who at this time happened to be in their domains were obliged to return to the capital by the middle of November, leaving affairs temporarily in the hands of the senior domain councilor and other officials; and the regular army forces of the domains, except for one platoon, were disbanded. To succeed th former daimyo governors the central government appointed new prefectural governors. This brought to an end in

5. See Appendix 5.
form and substance the old feudal institutions which had been in continuous existence as a political system for the past seven centuries.

There remained, however, in the wake of the defunct domain system a number of problems which still demanded a solution. For the destruction of the domains had placed the government in direct control of the ex-samurai in the different provinces and had burdened it with the obligation of paying their hereditary pensions; and not least, the government had fallen heir to the domains' financial responsibilities.

e. Abolition of Feudal Institutions and the Pension Settlement for the Bushi

Accompanying this collapse of political feudalism, the various fetters and restrictions which had been closely associated with the existing feudal institutions were banished from the scene. Their elimination was in process about the time the new prefectures were being set up in the place of the old domains, but with regard to the reforms carried out after creation of the prefectures the land tax reform and the discontinuance of hereditary pensions are of special importance.

The elimination of feudal institutions may be treated as having two different aspects. One concerns social status and the other economic matters.

In the realm of social status there was a leveling of the traditional class system with a view toward giving all Japanese a position of equality. Thus the bushi, the Shintō shrine attendants, and the Buddhist priests, who had enjoyed a special status in the Edo Period, were deprived of their privileges and were placed on a more nearly equal plane with the commoner. At the same time the despised status of the pariah group was done away with, allowing him to rise to the level of the commoner.

The titles of the Court and feudal nobility were discarded in 1869 when the feudal possessions were surrendered to the
Throne, and the members of the nobility were then ranked as peers. Likewise, in January 1870, the samurai were divided into shizoku (samurai descendants) and sotsu (descendants of common foot soldiers). While all other classifications for ex-samurai were later prohibited, the Council of State decreed in March 1872 that persons in the sotsu category who were truly sotsu by heredity would be made shizoku and continue to receive their hereditary pensions; those who had been elevated to the status of sotsu for only one generation would revert to the status of commoner, though continuing to draw their usual stipend. This amounted to the abandonment of the term sotsu. Hence there remained only three classes: peers, ex-samurai and commoners.

During the Edo Period the privileges of the bushi consisted of the right to serve as military and civil officials, and to these privileges others were attached. The privilege of holding civil office was part of the privilege of being a member of the military ruling class, although the bushi of different domains were not appointed as officials to other domains or to the Bakufu. By February 1868 the new government created a post known as Imperial Office (chōshi) to which samurai and other qualified persons could be appointed, regardless of whether they came from town or rural areas. The appointee could be made either a legislative official or put in charge of one of the lesser offices in the central government. The way was thus opened for the bushi to be commissioned as officials of the Court. Nevertheless, the higher government offices were the exclusive possession of the Imperial family, the daimyo, and the Court nobility until these restrictions were provisionally lifted by the Government Officials Order, which was promulgated in August 1869, after the daimyo had surrendered their feudal holdings. By this order, openings were created on an extensive scale for men of samurai stock to become state officials, but, since the road was open for commoners as well, it no doubt appeared to the bushi that he was being deprived of his privileges. The next innova-
tion that impinged on the prerogatives of the military aristocracy was heralded by an edict concerning national conscription, issued in December 1872, and by the *Conscription Order* which was announced in January of the following year. These two acts of the government, which abrogated the samurai's exclusive right to be appointed to the military, resulted in a system of universal conscription. Another privilege still enjoyed by the samurai in connection with his monopoly of military service was that of carrying a sword. Already in 1869, Mori Arinori, an important official of the Department of Foreign Affairs, had proposed to the Lower House that sword wearing be made optional to anyone other than civil officials and soldiers, and that the short sword even for civil officials should be made optional. Even though this proposal did not suggest the complete abandonment of the sword and was only an attempt to make sword wearing a matter of individual discretion, his motion was unanimously rejected. Nevertheless, in February 1870, the government did forbid commoners to carry swords. In September of the following year the restrictions on style of hair dress were removed for all classes and the individual samurai was allowed to decide for himself whether or not to wear the customary swords. Yet as the sword wearing custom among samurai was not easily overcome, a decree, based on an earlier proposal of Army Minister Yamagata Aritomo, announced a ban on swords, (Mar. 1876) except when they were worn as part of a full dress uniform or of the regulation uniform of police, civil officials, and the like. Furthermore the decree made it obligatory for violaters of this law to surrender their swords to the government. While this led to the complete abandonment of the sword, it is a well known fact that the proclamation of this *Sword Ban Order*, following immediately upon the heels of the *Conscription Order*, stirred up certain elements of the die hard samurai and became one of the causes for a number of revolts that occurred in the year 1876 in Kumamoto, Saga, and Chōshū. With respect to other privileges, the recognized practice of
the Edo Period that allowed the samurai to freely cut down a commoner on grounds of rudeness failed to be admitted in the *Outlines of the New Criminal Law*, and in October 1871 a precautionary decree to this effect was issued. In this same year persons wearing swords were prohibited from using, free of charge, the ferries in Metropolitan Tokyo. The privileges of riding a horse or of wearing gussets, dress skirts, and split tailed *haori* (Japanese style cloak) were abolished and even made permissible to commoners. In addition, the traditional practice among the bushi of having two names—a popular name and a dignified name given at birth by the father—was banned in June 1872.

During the Edo Period monks and nuns as well as Shinto Priests were considered to have a special status higher than commoners, and though they had a variety of privileges they also were subject to a variety of restrictions. Yet after the Restoration they lost their privileges and were restored to their liberties. In June 1872 the monks were permitted to eat meat, to take a wife, and to let their hair grow out. In January 1873 nuns were given similar rights, as well as the right to decide whether or not to return to the laity.

Beneath the commoners in status, there had existed in the Edo Period the *eta* outcast who had engaged in butchering animals and making bait for hawks and dogs. Another type of outcast besides the *eta*, known as *hinin* (literary "not human"), had traditionally engaged in vulgar entertainment, commitment of prisoners and burial of the executed. The abolition of these two categories had already been discussed on a number of occasions in the Lower House and approved by a majority in 1869, but it was through the special efforts of Ōe Taku, a Tosa samurai, that these class designations were formally abolished in October 1871, thus allowing the outcasts equality with commoners in both status and occupation. It should also be noted that several months previous to their elevation in social status, the *eta*'s privilege of disposing of animal carcasses
was repealed.

The privileged and despised social ranks of the Edo Period were thus raised to the level of the commoner; and the commoner, for his part, was given the right, in October 1870, to possess a surname. The possession of a surname in the Edo Period had been the exclusive right of the Court nobility, the bushi and Shinto priests; for, unless given special permission, commoners were not then allowed to have them. Going even further, the government decreed, in February 1875, that all commoners must without exception possess a family name. In matrimonial matters, whether the marriage was of the ordinary type or effected between a daughter and an adopted son, either type of union was now admissible between peer and commoner. Marriage was also possible between a foreigner and a Japanese, and a wife was even given the right to go so far as to demand a divorce from her husband.

In view of the foregoing reforms, the major differences between peer, ex-samurai, and commoner seem to have disappeared, nevertheless, they were not altogether out of sight. The discriminatory treatment between peer and ex-samurai on the one hand and the commoner on the other remained to some extent in the private law of social status; and the practice of leniency under criminal law for the peers and persons of samurai stock was preserved until the end of the year 1881. Neither can we overlook the fact that a distinct social status had been created for civil officials by various legislation. The Sword Ban Order (1875), for example, allowed the civil official to carry a sword when attired in full dress uniform; another order made government officials the equivalent of shizoku for the duration of their official tenure; and leniency in punishment for civil officials was given consistent recognition in all the early Meiji (1868), the Outline of the New Criminal Law (1870) and in criminal legislation including the Provisional Criminal Law the Amended Criminal Regulations (1873).

Turning now to the elimination of economic restrictions, the
peers, ex-samurai and ex-soldiers were permitted in January 1872 to engage in agriculture, industry, and commerce, except when holding public office. Previous to this date the samurai and foot soldier had been obliged to forsake their samurai status and register themselves as commoners in order to follow these occupations, but now this was no longer necessary. By the removal of these restrictions the feudal practice of identifying social rank with occupation was abandoned. Later in the same year the existing ban against the peasant's pursuit of trade as a subsidiary occupation was lifted and these activities were left to the discretion of the individual.

Although nothing extraordinary in view of the constant rush of reform proclamations, the ban against the permanent alienation of land was cancelled in March 1872. This act and the Land Tax Reform Regulations of the following year may be regarded as having brought about the modern rights of land tenure in Japan. Another important measure, and intimately connected with the above cancellation of the land alienation ban, was the government action earlier in 1871 which had removed the prohibitions limiting cultivation to certain types of crops.

In the sphere of free trade, the Outline of the Commercial Code, issued in July, 1868, rescinded the monopoly rights of wholesale agencies and other Bakufu licensed merchant guilds, thus giving sanction to a free market. In July of the following year the Central Administrative Council issued orders prohibiting the cornering of commodities by the quasi-government trading centers which were located in the three major cities, in the open ports and elsewhere. Originally these trading centers had been established to provide an outlet for local products but the officials in charge had used them for their own ends. In addition to these steps, it was also necessary for the sake of free trade to have unrestricted facilities in transportation and communications. To this end the private construction of barriers and guard stations on local roads had already been placed under ban in the previous year and by
March 1869 the so called official barriers were removed from Hakone and other points. In December 1871 the Official post horse system on the Tōkaidō, the coastal route from Tokyo to Kyoto, was done away with and permission for the organization of overland transportation companies was granted. Later on, similar dispositions were made for other highways. The post roads in the Edo Period had been available only for the daimyo and their retainers and the necessary requisition of local man and horse power had constituted a heavy economic burden on the nearby villages; but these practices were now abandoned and the right of travel and transportation, free of discrimination between samurai and commoner or official and private citizen, was based on the payment of a satisfactory wage suitable to the parties concerned. The ban on shipments of rice from one domain to another, in effect throughout the Edo Period, was lifted in October 1869. The removal of the different restrictions seems to have been much more thoroughgoing once the domains were replaced by prefectures. This applies not only to domestic trade but to foreign trade as well. It goes without saying that the policy of the new government was to open the ports to foreign trade, and by rescinding the ban on such exports as rice and copper all obstacles to foreign trade were consequently removed.

Aside from the removal of social and economic restraints, the other major measure taken to shake off the past was expressed in the government’s action to capitalize the pensions of the samurai class. The social rank above the status of commoner, as we have seen, was separated after the Restoration into the categories of peer, ex-samurai, and ex-foot soldier and to each had been granted the traditional stipend or pension. Granted also to certain members of this former military aristocracy were meritorious service pensions for distinguished action in war and for outstanding achievements in the Restoration. However, as the total amount of these pensions required a third or a fourth of the treasury’s annual expenditures, a
liquidation of the pensions was an absolute financial necessity. The first step toward liquidation of pensions came in early 1871 when the government decided to encourage the return of the sotsu to agricultural and commercial occupations by granting to the sotsu with permanent residence in metropolitan Tokyo a sum equivalent to a five years payment of their pension. Shortly afterwards, these grants were extended to the Tokyo shizoku and then to sotsu and shizoku classes in Osaka, Kyoto, and in the other prefectures then in existence. This action was needed since the restrictions preventing the rank and file samurai from entering gainful occupations were inducing them to barter away their hereditary pension rights to commoners. The samurai, that is, would make arrangements by a fiction to adopt the commoners if the latter would guarantee the samurai a satisfactory life income. However, as a remedial measure, the lump sum grants did not prove effective, for among the samurai who turned to agriculture and trade a large number met with failure and became even more impoverished. And besides, the government suspended the lumps sum payments on January 29, 1872, two days after making it legitimate for samurai to freely enter the occupations of their choice. But once the remaining domains were abolished and a prefectural system had been created for all of Japan, the government, finding itself in a better position to deal with pension problem, enacted the Regulations for the Commutation of Pension in December 1873. This enactment authorized commutation in cases where the individual’s regular and good service pension totaled less than 100 koku. A year later commutation was also authorized for pensions exceeding this sum. As potential capital to invest in industry the pension holder received six years income if he possessed an hereditary pension and a four years income if he had a pension only for life; the payment was made all at once by awarding the individual one half in cash and the other half in interest bearing (8%) government bonds. Even so, this was not a simple grant, for hereditary pension owners were assessed
a pension tax on the average of 33 percent. By commuting the
pensions, a third of the pension holders or about 130,000 persons
and about a quarter of the money (¥6,000,000) were disposed
of in 1874 and 1875. But on this occasion also, the business
ventures of the shizoku ended in a large number of failures,
and in July 1875 the Council of State suspended the commutation
of pensions. At the same time the Council of State, in Sep-
ember, ordered the discontinuance of the payments in rice of
the hereditary and good service pensions, requiring that the
rice payments be revised and paid in terms of currency based
on the average market price for rice between 1872 and 1874.

As a result of the government's commutation of pensions,
one fourth of the total monetary value of the pension liabilities
were liquidated; yet even this one quarter portion exceeded a
third of the administration's expenditures, so finally in August
1876 the government put an end to hereditary pensions by
promulgating the Regulations for the Issuance of Pension Bonds.
According to the terms of these regulations, all pension bonds
would be granted at one time beginning the next year. The
procedure for awarding the bonds differed according to the
amount of the pension and according to whether it was heredi-
tary, for a single lifetime or whether it was even more limited
in duration. But generally the samurai who held more valuable
pensions were subjected to a more stringent cut proportionately
than those with smaller pensions. At any rate the pensioners
were thus converted to mere bond holders totaling a little less
than 313,000 in number and having in their possession certifi-
cates valued in excess of ¥100,007,400.

So far as the Imperial family, the peers and others like
them are concerned, their portion of the bonds amounted to a
considerable sum, and while their holdings probably served to
preserve their way of life, the shizoku class received no more
than ¥548 on the average, most of which soon slipped out of
their hands.

But even after the pension bonds had been granted, there
were nonetheless a large number of persons who were dissatisfied with the government’s disposition of the matter, and consequently the government enacted the Law for the Disposition of Hereditary and Good Service Pensions (Nov. 1897). This law created a special commission for investigating capitalized pensions and a bureau of research, both being placed in charge of the pension inquiry. By 1905 they had finished sending directives in response to a total of 122,000 petitions.

2. Establishment of the New Government and the Organization of the Grand Council of State

a. Establishment of the New Government

By proclamation of the Imperial Restoration Order on January 3, 1868, the so-called “Three Offices” of Supreme Head (sōsai), Senior Councilor (gījō) and Junior Councilor (sanyo) were created for the first time. By mid January these central government offices were located temporarily in the residence of Minister of the Left Kujō Michitaka, since his residence was being used to house the Grand Council of State. Yet as the Three Offices were only established on the spur of the moment for temporary purposes, the creation of a more complete administrative organization for the Council of State was scheduled to take place within the near future.

The move to amplify the hastily created government followed within a month or so after the Restoration Order. The post of Junior Councilor was separated into higher and lower ranks with the Court and feudal nobility being appointed to the former category and the ex-samurai and other classes being appointed to the latter category. The post of Assistant Supreme Head was created and to it were appointed Sanjō Sanetomi and Iwakura Tomomi, both of whom currently held the position of Senior Councilor. And Kujō’s residence was formally designated as the substitute office for the Council of State. In addition to

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these innovations, the Three Offices were provided with the necessary subordinate administrative offices to carry out the requirements of government business. When these major changes were accomplished, the organization of the Meiji Government was temporarily completed. Under this new system of government the Supreme Head, who had to be a Prince of the Blood, was given supreme control over all state affairs and the power to decide on all official matters. The Senior Councilors, appointed from the Court and feudal nobility as well as from the Princes of the Blood, were charged with the duties of supervising the sections (ka) of state (early form of the later departments of state) and with making decisions in section affairs. The Junior Councilors were appointed from the Court nobles and domain samurai, and it was their duty to administer the different subdivisions of the sections and to give advice on matters within their official competency. In other words, the supreme adviser to the Emperor was the Supreme Head and all the other officers of state were merely his assistants. With respect to the Supreme Head, it is significant that he was authorized to "exercise supreme control over all state affairs."

Although this expression appears to be a visible trace of the traditional offices of Regent and Chief Adviser to the Throne, which were abolished when the Emperor returned to power, the high position of the Supreme Head was due as much, perhaps, to the youthful age of the Emperor who was only fifteen, and the Supreme Head thus had no choice but to wield such high authority. The seven sections of state consisted of Shintō Worship, Home Affairs, Foreign Affairs, Military Affairs, Accounts (finance), Justice and the Section of Laws. For each section there were more than one director and administrative assistant. The directors were selected from the Senior Councilors and the administrative assistants from the Junior Councilors. Only the Junior Councilors who were members of the Court nobility could become section directors. And only in the section of Shintō Worship could persons other than Senior and
Junior Councilors be appointed as director and administrative assistant; no doubt because they required specialized skills. Two Senior Councilors, Sanjō Sanetomi and Iwakura Tomomi, served concurrently as Assistant Supreme Head.

On February 20, the Council of State moved to the Nijō castle where the sections were renamed offices (kyoku); and the post of Supreme Head, precursor of the later Central Administrative Council, was charged with the task of coordinating the administration.

Immediately after the promulgation in June of the Seitai-sho, there followed a broad administrative reorganization which caused the offices of state to again be renamed as departments (shō). The reorganization, following the principles announced in the Charter Oath of Five Articles, consisted essentially of a tentative separation of the legislative, administrative and judicial powers, and in the creation of a system for appointing officials. Divided into three parts, the authority of the Council of State was parcelled out so that the Legislative Council was responsible for making law; the Administrative Council, and the departments of Shintō Worship, Finance, Military Affairs and Foreign Affairs were responsible for executing the law; and the Department of Justice was responsible for administering judicial matters. All power and authority of the Empire, according to the Seitai-sho, was vested in the Council of State to obviate the difficulties of divided government, and the three-fold division of powers was made in order to preserve a balance among the different branches of government. In this way the legislative branch could not possess executive functions nor could the executive branch possess legislative functions. These principles of the Seitai-sho stem presumably from the influence of the American concept of the division of powers.

In speaking of the organization of the Council of State it must not be thought that a particular office site was established for this agency of government, for the Council of State was simply a general designation used in reference to the seven
departments. Among the five departments in the executive branch, the Central Administrative Council was the office which exercised general supervisory control over the executive power. This office was staffed by two Chief Ministers of State (*hoshō*), ten executive officials known as Controllers (*benji*), and six Secretaries (*shikan*). The Chief Minister of State, a post held concurrently by a Senior Councilor, was expected to advise the Emperor, report on debates in the assembly, exercise control over home affairs, and to direct the administration of the Imperial Household. The position was filled by Sanjō Sanetomi and Iwakura Tomomi. The other executive departments of Shinto Worship, Finance, Military Affairs, and Foreign Affairs each had a delimited sphere of general administration and each department was headed by a single Minister who could be appointed from among Princes of the Blood, lesser princes, and the Court and feudal nobles. Besides the senior officer of the department, there were also the Vice and Assistant Vice-Ministers who were commissioned from among the Court nobles, or from any rank of the samurai aristocracy and commoners. With respect to its source of official personnel, the Department of Justice was governed by the same rules that applied to the five executive departments. Inasmuch as all petitions, inquiries and the like were submitted to the Controller of the Central Administrative Council until May 1869, it seems plain that this council occupied the leading position among the departments. Yet under this new administrative organization, there existed no department equivalent to the former Department of Home Affairs and thus no department to coordinate local administration. But as such a defect constituted a violation of the original plan to have all state power vested in the Council of State, the Department of Civil Affairs was organized in May and given general jurisdiction over prefectural affairs. As to the Legislative Council and the appointment of public officials, reference shall be made later.

With respect to the permanent location of the new adminis-
tration, different opinions were shared among the various important government officials. In February 1868, in opposition to the advice of Supreme Head Prince Arisugawa, Ōkubo Toshimichi, a Junior Councilor, first suggested that the Emperor's temporary headquarters be located in Osaka, and next he followed this suggestion with the proposal that even the permanent seat of government be transferred there. But the Court Council was unable to reach an easy decision, and thus the Emperor made nothing more than an official visit to Osaka to assume personal command of the anti-Bakufu forces. Opposed to making Osaka the capital of Japan, others argued for Edo as the new site of government. While the Edo advocates were still without any influence, Etō Shimpei, a Saga samurai who had become a Divisional Commander in the forces sent against the Bakufu, returned to Kyoto after inspecting conditions in Edo. In Kyoto he conferred with Ōki Tamihei, an Imperial Officer also from Saga. Following the meeting, Etō memorialized that the Edo Castle be made the Eastern Capital and the base of operations for governing Eastern Japan. Almost at the same time there were two other suggestions. One was made by Kido Takayoshi, a Counsel to the office of Supreme Head. Expressing the view that the seat of Imperial government should be located in Kyoto, he stated that Osaka and Edo should be the Western and Eastern Capitals respectively and that the Emperor should make inspection tours of East and West Japan as conditions warranted. The other proposal, from Ōkubo, was in favor of Edo as the Eastern Capital. But just at this time the military operations against the Bakufu were not making the progress that had been anticipated and, with this in mind, it was proposed that an Imperial progress be made to the East. In preparation for the Emperor's trip, Kido and Ōki were dispatched to Edo where they consulted with Sanjō and others, and, as all were in agreement on the projected trip, Kido and his party returned to Kyoto to report the results of the meeting. Thereupon, a council was held in the presence of the Emperor;
the outcome was the proclamation of an edict in September that announced the coming departure of the Emperor for Eastern Japan. The edict declared in substance that because Edo was the strategic center of Japan and his presence was required there to personally supervise the government, the name of Edo would henceforth be changed to Tokyo, that is, the Eastern Capital.

In October the Emperor was formally enthroned in an accession ceremony. The era name was changed to Meiji, and the Emperor departed from Kyoto in the following month to arrive in Tokyo on November 26, 1868. The government immediately changed the name of the Edo Castle to Tokyo Castle, and established it as the Imperial Palace. Next, the government created branch offices in Tokyo for the five administrative departments. After a short stay in the new capital the young sovereign returned to Kyoto, where, after the turn of the year in 1869, it was announced that the Emperor would go again to Tokyo in the early part of April. His removal to Tokyo was opposed by the people of Kyoto and a large number of persons elsewhere; nevertheless, notice was given on April 5 that the Council of State was moving to Tokyo, and shortly afterwards in the same month the Emperor also proceeded to the new capital. As a solace to the people of Kyoto, and others who shared their sentiments, an Office of Custodian was set up in Kyoto ostensibly on the principle that the Eastern and Western capitals were of equal status. However, as the government had intended to make a complete transfer of the capital to Tokyo, the Emperor’s return trip to Kyoto, which was scheduled for 1870, never came about. Likewise, the scope of the custodian’s duties was curtailed and in 1871 it was completely eliminated. By 1872 when the Emperor made an Imperial progress to central Honshū and to Shikoku, the transfer of capitals had become final. This was demonstrated by the fact that the tour to Kyoto was not officially designated as the “return of His Majesty” but simply as an “Imperial visit.”
b. The Antiquated Grand Council of State

Following the Emperor's second trip to Tokyo, the Daimyo surrendered their holdings in July and August 1869, and as this caused the entire country to be placed under the formal control of the central government there were demands for a new form of administration that would correspond to the new state of affairs. In response to the changed situation a new form of national government, consisting of eight major offices, was created on August 16, 1869. The Council of State and the Department of Shintō Worship, the two highest organs of state, together with the six Departments of Civil Affairs, Finance, War, Justice, Imperial Household, and the Department of Foreign Affairs, formed the major branches of the reformed government. A cursory glance at these departments makes it plain that the structure of government conformed to the ancient Taihō (701-3) and Yōrō (717-723) administrative organization, though there did exist in concealed form a division of powers which has been noted previously in the Seitaisho. It is clear also from the formulation of the Government Officials Order (Aug. 1869) as well as from the enactment of the Chart of Equivalent Court Ranks (Aug. 1869) that the reform was a revival of the ancient regime.

While it is no doubt true that this form of administrative system harkens back to an early period and was motivated by the revivalist currents of the time, it must be kept in mind, that the adoption of the eighth century Council of State represented an attempt to strengthen and centralize the government's authority. While the Seitaisho (June 1868) spoke of eliminating the difficulties of a disunited government by vesting all the power of the Empire in the Council of State, still the seven departments which then constituted the Council of State, were, from a legal point of view, equal in authority to it. Even if the Legislative Council is excepted, still the Chief Minister of State in the Central Administrative Council was only an official of the first rank like the other department Ministers
and he could not boast a position that would allow him to control the remaining six departments, which at that time consisted of the Legislative Council and the five departments of Shintō Worship, Finance, Military Affairs, Foreign Affairs and Justice. Iwakura admitted the Council of State's weakness in the spring of 1869 when, in a letter to Chief Minister of State Sanjō, he wrote that, "within the government the five departments neither unite in cooperation nor are there any laws; and as each official, nourishing his own doubts, lacks the will to assume the responsibilities of his office it is almost impossible to stave off complete collapse." Under these conditions it is only natural that the Meiji statesmen should have fallen back on the eighth century institutions, so thoroughly familiar to them, in order to strengthen the government. As a preliminary move in this direction, the leaders of the government, on June 22 and 23, 1869, invoked the Seitaisho, particularly its provision on the appointment of officials, in order to rid the government of sinecures.

But the basic legal framework for the reforms which were to shape the centralized Council of State came shortly thereafter with the promulgation of the Government Officials Order (Aug. 15, 1869). Accordingly, the Central Administrative Council was replaced by the Council of State, but the latter was far superior in authority to it. Within the Council of State there were created the Ministers of Left and Right as well as the Senior Councilors (dainagon) and Junior Councilors (sangi). The two Ministers of Left and Right were to advise the Emperor, exercise the supreme power of the Imperial government, and to suprervise all state business; the Senior and Junior Councilors were to take part in these duties, to state their views, and to issue Imperial orders. The failure to create a Chancellor was perhaps due to the original eighth century practice of not making the Chancellor a permanent position and perhaps also due to the desire to avoid the concentration of power in the hands of one person. The establishment of the Department of Shintō Worship as superior to the Council of
State was in keeping with the old mode of government. The six departments consisted of Civil Affairs, Finance, War, Justice, Imperial Household, and the Department of Foreign Affairs. The Department of Civil Affairs administered the census, taxation, the postal service, mines, poor and old age relief, and similar matters; the Department of Finance was in charge of money and cereal accounts, capitalization of pensions, coinage, construction and repair expenditures, etc. The functions of the other departments are generally apparent in their titles. A Minister, Vice-Minister, Secretary, Recorder, and other offices were created for each department and placed in charge of its affairs, though in some departments there were additional officials. The Department of Justice, for example, also included posts for Judge, Examiner, and an Arresting Officer. The Department of the Imperial Household had posts for Chamberlains and Physicians, and in the Department of Foreign Affairs there were official interpreters. Accompanying the Government Officials Order, the administration enacted the Chart of Equivalent Court Ranks, a piece of legislation that required government offices and Court ranks to correspond. The ranks fixed at this time ranged from one to eight, with a separate and final one designated as the Initial Rank; the first eight were divided into Senior and Junior grades and the Initial Rank was divided into Small and Great, thus making eighteen ranks in all. The eighth century system of dividing the Senior and Junior grades each into a further subdivision of Upper and Lower for the ranks from four on down were abolished. In September an additional rank having the usual Senior and Junior grades was added to the chart, increasing the total number to twenty. The equivalent court positions of the Ministers of Left and Right were Junior First Rank and Senior Second Rank respectively, the Senior Councilor was Junior Second Rank, the Junior Councilor was Junior Second Rank, the Junior Councilor was Senior Third Rank, and the Department Ministers were all Senior Third Rank, hence it seems quite evident that the Min-
isters of Left and Right considerably outranked the department Ministers. Further, inasmuch as only the Ministers of Left and Right were qualified to act as adviser to the Throne and since in their hands lay the control over the six departments, this meant that the concentration of government power was in large measure completed.

Though space here does not permit a treatment of the principal offices of the central government aside from the Council of State and the departments, brief mention in passing may be made of the Rescript Drafting Office, the Lower House, the Board of Censors, and the University (forerunner to the Department of Education).

The appointees to the crucial posts of the new administration were as follows:

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<tr>
<th>Position</th>
<th>Name</th>
<th>Position</th>
<th>Name</th>
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<tbody>
<tr>
<td>Minister of the Right</td>
<td>Sanjō Sanetomi</td>
<td>Minister of War</td>
<td>Prince Yoshiaki</td>
</tr>
<tr>
<td>Senior Councilor</td>
<td>Iwakura Tomomi</td>
<td>Vice Minister of War</td>
<td>Ōmura Masujiro</td>
</tr>
<tr>
<td>Senior Councilor</td>
<td>Tokudaiji Sanenori</td>
<td>Minister of Justice</td>
<td>Ōgimachisanjō</td>
</tr>
<tr>
<td>Junior Councilor</td>
<td>Soejima Taneomi</td>
<td>Vice Minister of Justice</td>
<td>Sasaki Takayuki</td>
</tr>
<tr>
<td>Junior Councilor</td>
<td>Maebara Issei</td>
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<tr>
<td>Minister of Civil Affairs</td>
<td>Matsudaira Yoshi-</td>
<td>Minister of the Imperial</td>
<td>Madenokōji</td>
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<td>naga</td>
<td>Household</td>
<td>Hirofusa</td>
</tr>
<tr>
<td>Vice Minister of Civil Affairs</td>
<td>Hirosawa Saneomi</td>
<td>Minister of Foreign Affairs</td>
<td>Sawa Nobuyoshi</td>
</tr>
<tr>
<td>Vice Minister of Finance</td>
<td>Ōkuma Shigenobu</td>
<td>Vice Minister of Foreign Affairs</td>
<td>Tarajima Munenori</td>
</tr>
</tbody>
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Although not included in the above list of government officers, preferential treatment was shown particularly to Ōkubo Toshimichi, Kido Takayoshi and Itagaki Taisuke by appointing them to the Rescript Drafting Office. By August, 30, Okubo as well as Hirosawa, the Vice Minister of Civil Affairs, became Junior Councilors. The names above make it apparent that Princes of the Blood, Court nobles and the feudal barons were appointed as Ministers of the Left and Right, as Senior Councilors, and as department Ministers. Though in all likelihood the real au-
tority in each department was already at this time in the hands of the daimyo retainers who were serving as Vice-Ministers, it is nevertheless significant that these higher offices were filled with the high ranking nobility.

Later, on September 16, the Departments of Civil Affairs and Finance were merged, although this did not mean the disappearance of the two department names. For the full, Vice-, and Assistant Vice-Ministers of Civil Affairs, namely, Matsumotodaira Yoshinaga, Ōkuma Shigenobu and Itō Hirobumi respectively doubled as the corresponding Ministers of the Department of Finance. But due to the overlapping of department functions, thus giving these Ministers of State control over finance, industry, transportation, communications and other important spheres of government activities, their authority was immensely expanded and the equilibrium with the other departments was destroyed. Besides producing a concentration of power, the merger also complicated administrative work and created a clannish atmosphere; therefore, in August 1870 the two departments were once again separated. But since the duties of the Civil Affairs Department, including supervision of mining, steel refining, light towers, railroads, and telegraphic communications were becoming more complex and because the industrial minded government placed special importance on these activities, it was decided to establish a special department to handle these affairs. Thus in December, the government created the Department of Public Works and Industry. Likewise, in order to give uniformity to judicial matters, the Justice Department and Board of Censors were combined in August 1871 to form a new Department of Justice; and in the following month the University was replaced by the Department of Education.

c. The Council of State: Organization of the Central Chamber

Following upon the abolition of the domains and the creation of prefectures in August 1871, the government offices were once again reshuffled in September. This time the Council of
State was divided into an imposing system of three chambers: the Central Chamber, the Right Chamber and the Left Chamber. The Central Chamber was the office vested with final control over the general administration. Presiding therein, the Emperor passed final judgment on all state matters, though in this capacity he was advised by the Chancellor and the Senior Councilors. In turn the Senior Councilors were assisted by the Junior Councilors. The Right Chamber drafted legislation needed by the executive departments and deliberated upon executive policy. The Left Chamber deliberated upon the legislation drafted by the Assembly.

The Central Chamber was the principal organ of the three, occupying naturally the most important position in the administrative structure, and it was here, as we have just noted, that the Chancellor and the various Councilors performed their work. Besides tendering advice to the Emperor and exercising supervisory control over the general affairs of state, the Chancellor had the right to direct Shintō worship, conduct foreign affairs, declare war and peace, conclude treaties and command the military forces. Second to the Chancellor was the Senior Councilor who became the deputy of the Chancellor in his absence. The Junior Councilor participated in the conduct of the administration, offered advice to the Chancellor and Senior Councilor and concurred in the general administration. The Junior Councilor in other words only assisted the Chancellor and Senior Councilors in a subordinate role, since it was the responsibility of these two latter officers to counsel the Emperor. Due to a change in titles the Senior Councilors were renamed Ministers of the Left and Right on September 24, 1871. As to the relation of the Central Chamber to the other two chambers, the Regulations for the Conduct of Business in the Central Chamber prescribed that all legislative, administrative and judicial matters would be submitted by the Left and Right Chambers to the Central Chamber for sanction. The right to decide upon the adoption or rejection of proposals from the
two lesser chambers and the right to determine the priority of legislative enactments was similarly the privilege of the Central Chamber. It was privileged, moreover, to decide upon the regulations governing the procedure of the Left Chamber, to open and close it, and to reorganize or create new government offices. On account of its powerful position, the Central Chamber was sometimes spoken of synonymously as the Council of State.

The Left Chamber was composed of Junior Councilors who served here and in the Central Chamber concurrently, of a Chamber President appointed from first grade Legislative Councilors, and of first, second, and third grade Legislative Councilors. Later on, a Chamber Vice President was created. The duty of the Legislative Councilors was to deliberate upon legislation. Although the Left Chamber was nominally a legislative organ, inasmuch as the selection and dismissal of its operation, and the acceptance of its proposals were subject to the sole decision of the Central Chamber, the Left Chamber was nothing more than an advisory organ pure and simple. In October the Office of Laws, one of the former major divisions of government which had been originally established in early 1868 for the purpose of compiling legislation, was incorporated into the Left Chamber.

Constituting the Right Chamber were the Ministers and Vice-Ministers of each department. As a rule, all reports submitted by the different departments to the Central Chamber and all inquiries directed by the Central Chamber to the departments were required to be submitted first to a conference of the members of the Right Chamber.

The departments of state numbered eight: the Department of Foreign Affairs, Finance, War, Public Works and Industry, Imperial Household, Shinto Worship, Civil Affairs, and Justice. Though not a new branch of government, the Department of Shinto Worship was now reduced from its original lofty position above the Council of State to mere department level. As
a regular department of state it retained its former responsibilities for conducting Shintō rites and propagating the doctrine, yet in April 1872 the duties connected with Shintō rites were transferred to the Board of Ceremonies in the Imperial Household Department, leaving it only the function of propaganda. And its name at this time was changed to Department of Religion. Its future as an independent department came to an end rather quickly, for it was combined with the Department of Education in January 1873 and finally abolished altogether four years later.

With respect to the official duties of the department Ministers and the Hokkaido Colonization Commissioner, certain provisions issued on September 24, 1871 made it clear that the Ministers alone were responsible for the conduct of their respective departments, and they would stand liable to reprimand in case they committed any blunders. In no instance would the Emperor be involved or reflected upon by such errors. In the absence of a Minister, his Vice-Minister was responsible. On the same day, in order to dispel any illusions about the right of the department Ministers to tender advice to the Emperor, other provisions made plain the fact that only the Chancellor, the Ministers of Left and Right and the Junior Councilors were designated as supreme advisers to the Throne; and their advisory role had to be performed in the Central Chamber. As a group the department Ministers, who occupied a subordinate position to the Central Chamber, formed the Right Chamber and it was through this Chamber that they were expected to keep liaison with the Central Chamber. However, this arrangement did not anticipate that a department Minister could be at one and the same time a Junior Councilor, thereby affording the department level closer contact with the Throne.

In the 1871 reorganization of the Council of State, Minister of the Right Sanjō Sanetomi was promoted to Chancellor, and Iwakura was made Minister of the Right without having to relinquish his ministership of Foreign Affairs. The other ap-
pointees and their posts are as follows:

Junior Councilor       Saigō Takamori       Minister of the Imperial Household
Junior Councilor       Kido Takayoshi       Vice-Minister of the Imperial Household
Junior Councilor       Itagaki Taisuke       Vice-Minister of Foreign Affairs
Junior Councilor       Ōkuma Shigenobu       Vice-minister of Shintō Worship
Minister of Finance    Ōkubo Toshimichi       Vice-Minister of War
Vice-Minister of Finance Inoue Kaoru       Vice-Minister of Public Works
Minister of Education  Ōki Takatō       Vice-Minister of Justice
Vice-Minister of Education Etō Shimpei       Sasaki Takayuki

Tokudaiji Munenori
Madenokōji Hirofusa
Terajima Munenori
Fukuda Yoshichika
Yamagata Aritomo
Gotō Shōjirō

It should be noted in the above make-up of the Council of State that the last four Vice-Ministers were in full charge of their departments, since there existed no full Ministers of those departments. It is also important to observe that among the twelve Ministers and Vice-Ministers there were three each from the domains of Satsuma, Chōshū, Tosa and Hizen.

Perhaps in an attempt to preserve the balance of power between these four domains, a twelve point agreement was concluded in late 1871 when Iwakura, accompanied by a number of high ranking government officials including Kido, Ōkubo, Itō Hirobumi, and Yamaguchi Naoyoshi, was preparing to set out on his diplomatic mission to Europe and America. The parties to the agreement were the Ministers of Left and Right, the Junior Councilors, and the senior and deputy officers of the Chambers, the departments and of the Hokkaido Colonization Commission. The agreement stipulated in part that there should be as little change as possible during the mission’s absence in view of the comprehensive reforms to be carried out upon the mission’s return to Japan. It was agreed too that in thir absence the heads of the top government offices would not be replaced; their responsibilities would simply be taken
over temporarily by Junior Councilors. The agreement, however, became a dead letter, for while the mission was abroad the caretaker administration split the Army and Navy into two departments and replaced the Department of Shintō Worship by the Department of Religion in April 1872; it increased the power of the Central Chamber in May 1873 during a Council of State shake up, and it also enacted in the same year the Regulations for Education, the Conscription Order, the Revised Criminal Regulations and initiated the Land Tax Reform.

Prior to the Iwakura Mission to the West, during the interval when the prefectoral system was being established, only Saigō and Kido had been made Junior Councilors, though soon afterwards with the appointment of Itagaki and Ōkuma to this post a balance of power had resulted between Satsuma, Chōshū, Tosa and Hizen. However, during Kido and Ōkubo's trip abroad, this equilibrium was destroyed by appointing Ōki (Hizen), then Minister of Education and Religion, Gotō (Tosa), President of the Left Chamber, and Etō (Hizen), Minister of Justice, to the office of Junior Councilor. These new appointments had come about as a consequence of Finance Minister Inoue Kaoru's opposition to the demands of the other department for large appropriations to be spent in prosecuting the government's defense and industrialization program. The Army Department, for example, was making preparation to issue the Conscription Order and to set up six corps area headquarters; the Ministry of Public Works and Industry wanted to expand communications and transportation facilities; the Education Ministry was about to enact the Regulations for Education and provide for a nationwide educational system; and the Justice Ministry was attempting to consolidate the power of the judiciary and secure its independence through the creation of law courts in every district of Japan. But such extensive planning was unacceptable to Inoue, since in his budget he was only giving consideration to Army related expenditures. Regarding Inoue's staunch opposition as due to the special relations he had with Vice-
Minister of the Army Yamagata, both of whom were fellow samurai from Chōshū, Etō Shimpei in a fit of exasperation tendered his resignation as Justice Minister. His resignation was accompanied next by the resignations of Fukuoka Kōtei, the Vice Minister, Kusuda Hideyo, the Secretary, and other important officials, thus leaving the Justice Ministry on the verge of collapse. To avert a catastrophe the government ordered Etō and the others to remain in office, and by appointing Etō, Ōki and Gotō to the Office of Junior Councilor in April 1873 it overturned the balance of power.

Together with these promotions, the government made changes in the administrative organization of the Council of State in May in a move to restrict the power of the Finance Ministry. The purpose of the change was to concentrate power in the Central Chamber, and, despite the Imperial order of June 7, 1871, it was necessary because the difficulties facing the administration could not be overcome as long as the August 1871 organization for the Council of State prevailed. Furthermore, since there was little cause to retain the Right Chamber it was not made into a permanent organ, and arrangements were made so that it would be convened only on specific occasions by Imperial command.

According to the new system for the Council of State, the Chancellor was to advise the Emperor, exercise supreme control over all state affairs, report memorials to the Throne, and affix the Imperial seal to whatever required the Emperor's sanction. The Chancellor remained generally the same as before, although his authority to exercise a unifying and coordinating effect over the government was summed up in clear cut and simple terms without an enumeration of each particular duty. The authority of the Ministers of Left and Right were also left unchanged. In regard to the Junior Councilors, their customary functions of sharing in the exercise of the supreme power of Imperial government, deliberating upon department affairs, advising the Chancellor and the Ministers of Left and Right, and concurring
in the general administration, were broadened to include the function of deliberation upon all affairs of state in their capacity as Ministers of the Inner Council (naikaku). It is true that they were previously vested with the power of deliberation, but this role was now emphasized, and it is especially significant that the Junior Councilors were designated as Ministers of the Inner Council. This Council, according to the Regulations for the Conduct of Business in the Central Chamber, was the central organ of the entire administration, and the Emperor specially appointed Junior Councilors to this body to deliberate upon legislative and administrative affairs. The regulations provided further that inasmuch as legislation was a privilege of the Central Chamber it would examine the proposals of the Inner Council for their merits and urgency, giving due consideration to the deliberations of the Inner Council Ministers. Actions worthy of enforcement would be submitted to the Throne for sanction and then they would be sent to the competent department Ministers for execution. This, in brief, meant that the Junior Councilors were the backbone of the Central Chamber and their decisions would determine the course of government. However, it should be kept in mind that these regulations pertained to matters only within the Central Chamber itself, for the one who advised the Emperor as representative of the Central Chamber was the Chancellor. As to the authority of the Central Chamber, it extended all the way from the task of deliberating on the priority of national policies and formulation of their objectives to the determination of revenue and expenditures, and to the location for railroads, telegraph lines, and light houses.

Following the May reorganization of the government, the Mission headed by Iwakura returned to Japan in September. At once the issue of punishing Korea flared into the open, but as the advocates of an attack on Korea failed to gain government recognition for their views Gotō, Soejima, Saigō, Itagaki and Itō finally resigned their Junior Councilor positions. Upon
their resignation the newly organized Inner Council decided that the Junior Councilors would serve concurrently as Department Ministers. Thus Ōkuma doubled as Finance Minister, Ōki as Justice Minister, Katsu Yasuyoshi as Minister of the Navy, Itō Hirobumi as Minister of Public Works and Industry, and Terajima Munenori as Minister of Foreign Affairs. As soon as the Department of Home Affairs was established, Ōkubo was appointed to it as a full Minister in November; Kido became Minister of Education in January 1874; and Yamagata, already Army Minister, was made a Junior Councilor in August. In this fashion it became a definite practice for the department Ministers to be Junior Councilors.

Slightly before this time, when the Department of Religion was combined with the Education Department in January 1873, Ōgimachisanjō, the hitherto Minister of Religion, retired from his office. With his retirement, the only members of the former Court nobility who retained their government positions were Chancellor Sanjō Sanetomi and Minister of the Right, Iwakura. Though a man of character, Sanjō had no real power as Chancellor, because this was wielded by Iwakura. Even so, in the final analysis, policy was determined by the Junior Councilors, particularly by the spokesmen for Satsuma (Ōkubo) and Chōshū (Kido), who overshadowed all the others in actual authority.

d. Completion of the Council of State

From the administrative reforms of 1873 there emerged a more centralized Council of State under the direction of Ōkubo and Kido, against whom loud and vociferous cries of “despotic officials” and “cliquish government” were raised by the opposition. Adding to the mounting criticism, a memorial calling for the establishment of a popularly elected assembly was presented to the government in January 1874 by Itagaki, Etō, Soejima and others who had quit the government earlier in defeat on the Korean issue. And even Kido joined the political “outs” when he resigned from his post as Junior Councilor in opposi-
tion to the Taiwan expedition and returned in May to Chōshū. This left Ōkubo, with the assistance of Ōkuma and Itō, to become the central pillar of government while bitter criticism directed against the "despotic authorities" became more and more vehement. In April Shimazu Hisamitsu, the major leader of the conservative faction, was appointed as Minister of the Left. But since his conservative views on the proper uniform for officials, the educational system, and his views on other matters went unadopted, he was profoundly dissatisfied with the government's way of doing thing.

Just when internal divisions were plaguing the government, a series of other disturbances served to further complicate its troubles. In Kyushu the government was harassed by the Saga Rebellion, elsewhere by the bold demands of the popular rights party, and abroad by the Formosa incident which was not being settled as smoothly as anticipated. Hence the government found it necessary in one way or another to reform the administration and strengthen it from the bottom up.

At this point Ōkubo had a meeting with Kido in Osaka in January 1875, but, as thy could not reach an understanding, Ōkubo summoned Itō to devise a detailed program that would impress Kido. Itō then drafted a plan consisting of four major points. The plan called first of all for the establishment of a Genrō-In or Senate to act as a legislative organ in laying the groundwork for the creation of a future national assembly; secondly, the plan called for creation of a Supreme Court to strengthen the authority and prestige of the law courts; thirdly, for establishment of a prefectural governors' conference; and fourthly it called for a separation of the Inner Council from the department Ministers. The Inner Council was to be composed of veteran statesmen, responsible primarily for advising the Emperor. Appointed from men of the next best qualifications, the department Ministers were to be exclusively concerned with department affairs. When this plan was shown to Kido, he expressed decided approval. It was then determined that
Itagaki should be let in on the matter; so the three held a discussion known as the “Osaka Conference”, which was followed shortly thereafter in March by reappointment of Kido and Itagaki to the government as Junior Councilors. In the following month the Council of State announced an edict which heralded the gradual establishment of a constitutional form of government.\(^1\) Asserting in the edict that he was enlarging upon the principles of his coronation oath to uphold the *Charter Oath of Five Articles*, the Emperor went on to say that a *Genrō-In* was being established in order to broaden the source of legislation, a Supreme Court was being created to secure the authority of the courts and that an assembly of district officials was being summoned so popular views and interests could be more easily known. The edict embodied Itō’s plan, though it excluded his fourth point concerning the Inner Council and department Ministers. On the same day of the edict, a separate decree announced the abolition of the Left and Right Chambers, and the creation of the *Genrō-In* and the Supreme Court.

These innovations, which took the government back to the system described in the *Seitaisho*, had as their objective the division of legislative, administrative, and judicial powers into separate organs of government. Though the *Genrō-In* did become the legislative branch, this does not imply that there was from the outset a division of powers in the true sense of the word. Inasmuch as mention will be made again later to the *Genrō-In* and the Supreme Court, attention here will be focused only on the Central Chamber.

With the disappearance of the Left and Right Chambers, there remained in existence in the Council of State only the Central Chamber, which was not disestablished until January 1877. As before, the Central Chamber was a body where supreme control was exercised over the administration. The Emperor was vested with the final sanctioning power in all matters of state and his supreme adviser was the Chancellor,

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1. See Appendix 6.
who in turn was assisted in his duties by the Ministers of Left and Right and the Junior Councilors. In contrast to the Chancellor's former role which allowed him to exercise supreme control over all government matters, it is significant to note that stress was now placed rather on his role as a supreme adviser who presented to the Throne the different views on legislation and administration. In 1869, according to the Government Officials Order, it had been the duty of the Senior and Junior Councilors to share in the exercise of the Supreme power of Imperial government and to present the conflicting views on legislative and executive matters, but as these duties had now become the function of the Chancellor, he was thus reduced to the position formerly occupied by the Senior and Junior Councilors. In principle, the Left and Right Ministers were scheduled to be appointed as the heads of the Genrō-In and the Supreme Court, a plan never realized in fact, yet, as their official duties required them to deliberate on general administrative affairs, their functions were exactly identical to the former duties of the Junior Councilors. The Left and Right Ministers were thereby reduced to Junior Councilor status, although there was one point of difference—they were entitled to substitute for the Chancellor when he was unable to perform his duties. The duties of the Junior Councilor, on the other hand, were now simply to take part in the conduct of general administrative affairs. Accordingly, the major portion of the deliberative function had moved to the Left and Right Ministers and the Junior Councilors did nothing more than participate in that function. Although it is not apparent just why this reorganization took place, it seems not unlikely that the purpose was to curtail the authority of the Chancellor as well as the power of the Left and Right Ministers. This assumption is not too far fetched, it seems, particularly in view of the fact that Kido, Itagaki, Ōkubo, and Itō, as members of a committee for investigating forms of government, were responsible for the draft of the original reorganization plan. At any rate, the use of the existing term
“Inner Council” to designate a conference in which the deliberation and decision making power belonged principally to the Left and Right Ministers and in which the Councilors only had a supporting role was perhaps considered inappropriate, for the term “Inner Council” does not appear in the Regulations Governing the Organization of the Central Chamber. Yet, as the Junior Councilors were substantially not different from those in the past, a conference of Left and Right Ministers and Junior Councilors was commonly referred to as “the old Inner Council”. The first formal mention of it as the Inner Council occurred in March 1879 when the “Inner Council Secretary” was created within the Council of State.

Now at the time of the “Osaka Conference”, the separation of the Inner Council from the departments, chambers, and the Hokkaido Colonization Commission was discussed as a tentative policy, but, in the government reshuffle just mentioned, the idea of separate organs was neither embodied in law nor in practice. After all, the department ministers were serving concurrently as Junior Councilors, and if they had resigned from their ministerial posts it would have been difficult to find suitable replacements. Being dissatisfied with the outcome of the shuffling of offices, Itagaki presented a secret memorial to the Emperor and in a similar move Minister of the Left Shimazu Hisamitsu petitioned the Throne to impeach Chancellor Sanjō; then both Itagaki Itagaki and Shimazu resigned from the government.

However, there was a formal separation of the Inner Council from the other major offices of government in 1880. In principle, the Junior Councilors and department Ministers were set apart on February 28, in accordance with the views of Itō. But despite this attempted separation of offices, a notification three days later announced the creation of six divisions (Laws, Finance, Military Affairs, Home Affairs, Justice, Foreign Affairs) within the Council of State, each being placed under the jurisdiction of a Junior Councilor. And as soon as Ōkuma Shigenobu and his followers were ousted from the administration in October 1881,
the earlier department set up, whereby Junior Councilors served concurrently as department Ministers, was reinstated and continued in existence until the Council of State itself was abandoned. Accompanying these changes in October, the six divisions were replaced by a semi-executive, semi-legislative secretariat known as the Sanji-In.

This Secretariat fell under the jurisdiction of the Chancellor, and, by order of the Inner Council, was charged with drafting and examining laws and regulations. Further than this, it was also required to try jurisdictional disputes between the executive and judicial branches of the central government, and the legal and jurisdictional disputes arising between prefectural assemblies and prefectural governments. Within the Secretariat were created an Intra-Departmental Bureau and the six above mentioned divisions; to each division was assigned a Councilor (gikan) and assistant Councilor. The Secretariat, under the headship of Itô Hirobumi, worked on the collegiate principle, conducting its business either in committee or general sessions.

In November 1881 the Rules and General Regulations for the Conduct of Business in the Departments were enacted; by their provisions each department Minister was authorized to preside over the administrative duties of his department. With regard to major alterations concerning the departments, the Department of Religion was abolished in October 1877 and the Department of Agriculture and Commerce was newly organized in April 1881.

Apart from the foregoing events, two other important developments of the early Meiji Period deserve brief comment. These are the Personal Adviser to the Emperor and the General Staff Office.

First, let us examine the Personal Adviser to the Emperor. Designed to provide constant personal advice and assistance to the young monarch, this office was the outcome of a movement within the Imperial Palace to have the Emperor play a more
positive role in exercising his personal authority in matters of government. The office was created in August 1877 just as the clamor over liberal rights was reaching a high point in agitation and just when the abuses of the "despotic government officials" were being publicized. But after Ōkubo was appointed as the principal official of this post, his assassination in the following year prevented the office from producing any results. Still, after his death, there were demands eventually that the Personal Adviser be in personal attendance upon the Emperor when he presided over the Inner Council and that the Adviser take part in the conduct of state affairs. Taking the view that the Imperial Palace and Inner Council should be separate, the government opposed these demands, and when the office of Personal Adviser again insisted on its claims the government took decisive action and abolished it in October 1879.

The General Staff Office, the other important development of early Meiji, was created within a branch of the government that was subject now and then to a series of rapid changes. This branch, originally known as the Navy and Army Section, was established in February 1868. Shortly thereafter its name was changed to the Office of Military Defense, then to the Department of Military Affairs in June 1868, and again in 1869 to the Department of War. With this last change, the Minister of the department was given jurisdiction over both military administration and military command. Again, in 1872 this department was split into the Department of the Army and the Department of the Navy. While military affairs were still handled by the Department of War, the Staff Office was established therein during the year 1871. But after the War Department had gained its independence as the Department of the Army, the Staff Office was renamed the Sixth Bureau and was made an extra-departmental organ. In 1878 it was designated anew as the General Staff Office and was given a supreme command independent of the Council of State. In consequence, jurisdiction over military command passed from the hands of the Army.
Minister to the Chief of General Staff, leaving the Minister of
the Army with control over nothing more than military adminis-
tration. The Chief of the General Staff was charged with the
duty of making reports directly to the Throne and of participat-
ing in planning insofar as these duties touched upon Army
command, while on the other hand the Army Minister was res-
ponsible for executing the plans sanctioned by the Emperor.
The proposal to make the General Staff Office independent of
the Army Minister was fashioned after German precedents by
Katsura Tarō, and the plan was adopted by Yamagata Aritomo
when he was serving as Minister of the Army. Yamagata was
also the Chief of Staff during the early Meiji Period. Created
almost at the same time as the General Staff Office was the
Inspector General's Office. This office was set up in Tokyo and
was responsible in peace time for exercising general supervision
over the inspection duties for the entire army and for the mili-
tary command's finance. Its commanding officer was known
as the Inspector General, the predecessor of the Inspector Gen-
eral of Military Training. The functions of the Army Minister,
the Chief of Staff, and the Inspector General were most clearly
set forth in Article 6 of the Regulations for the Inspector Gen-
eral's Office. By their terms, all matters relative to finance in
the military command, orders for all army movements, orders
for the despatch of units and all matters concerning peace time
and special training were required to pass through the Inspek-
tor General's Office for decision and the issuance of orders.
However, participation in the planning of strategy was the ex-
clusive responsibility of the Chief of Staff. The supervision of
all peace time army promotions, demotions, finance, etc., and
responsibility for supplies in war time formed the official res-
sponsibilities of the War Minister. The respective spheres of
responsibility were to be strictly observed so that one command
would not interfere with the other. As is well known, and
it needs no comment here, the independence of the General Staff
Office was very closely linked to the shaping of Japan's future.
Parenthetically, in Navy matters, the Navy Minister exercised general supervision over administration and command together.

3. The Growth of Public Assemblies

In Japan, even since ancient times, the concept of settling matters by group discussion has not been completely unknown. Leaving aside the discussion held at the meeting of the dieties at Ame no Yasu Kawara of Remote Antiquity, conferences or kaigi were held by the Council of State in Recent Antiquity, and were continued under the name of jingi in the late Heian Period. During the late Heian Period there was also a marked growth of the Buddhist practice of convocation, which traces its origin back to an Indian Buddhist concept. The settlement of issues in the convocation took place by a majority decision. Probably under the influence of the jingi and temple convocations, the councils (bundenshū, hyōjōshū) of the cloistered Emperors emerged at the close of the Heian Period. When these council practices were taken over by the Kamakura Bakufu, the institutionalized discussion of important political matters appeared in the form of an Administrative Council, where, interestingly enough, the order for expressing opinions was determined by lot. It seems too that the decisions of the Administrative Council were made by a majority. A similar procedure prevailed in the later Administrative Council of the Muromachi Bakufu. Likely as not the bushi were affected by the practices of the Bakufu and temples, for samurai families also settled important matters by a family council, and in turn this had an effect even on the village. For example, in the Edo Period the village head and other village officials were elected by a ballot of the village assembly and by other methods of a similar nature. At a higher level than the village, the Edo Bakufu even carried out certain business by the operation of councils. Representative of these Councils were the meetings held by the magistrates of towns, of temples and shrines, and by the magis-
trates of finance; but as a more striking illustration the censors of the Bakufu, limited to ten in number, determined by ballot the candidate to succeed to a censor vacancy. Since the censors were responsible for exercising surveillance over the direct vassals of the Shogun and for preserving order within the Edo Castle, it was probably deemed necessary to grant them a measure of independence.

In view of the different types of councils just mentioned, it is plain that for many centuries in Japan matters have been resolved by conferences. But there appears to be no direct connection between these practices and the ideas associated with public assemblies after the Restoration.

The first precedent for a conference of domains was prompted by the unexpected arrival of America’s Commodore Perry at Uraga Bay in 1853. After presenting his credentials to the confused Bakufu, Perry withdrew from Uraga with the promise that he would return the following year to receive a reply. The Bakufu, consequently, had to take a stand on the issue of opening Japan. Faced with an unprecedented decision to make, Abe Masahiro, a Senior Councilor of the Bakufu, summoned the daimyo then in Edo to the Shogun’s castle to have them state their candid opinions upon the matter. Since Perry’s arrival was the first major predicament to arise since the founding of the Edo Bakufu, Abe perhaps thought that the situation was too serious to be disposed of without assistance; and, secondly, regardless of whether the ports were opened or not, by soliciting the opinions of the daimyo, the responsibility could be shifted to them. But no matter what his personal intentions might have been, a precedent for a meeting of domains was created by his action. Although Western parliamentary thought had been introduced, albeit imperfectly, into Japan by a segment of Japanese intellectuals prior to Perry’s arrival, the conference of domains just mentioned was not immediately related to this trend of thought and should be regarded simply as a countermeasure invoked in the face of pressing circumstances.
In connection with the introduction of parliamentary thought during the late years of the Edo period, Aochi Rinsō had already in 1827 translated certain Dutch books under Bakufu orders. One of the books, entitled Yochi Shiryaku (A Brief Geography of the World), contained an explanation of the English Parliament and Commons. Expositions on deliberative assemblies appear also after this date in other translated versions of Western publications on geography and law.

While it was not easy for the Japanese to comprehend the Western ideas concerning deliberative assemblies, because their thought was governed by feudal concepts of loyalty to one’s superior and the exercise of government by wise rulers, the new ideas were assimilated little by little and there were a few Japanese who took the Western political thought seriously. The most noted example of Japanese receptiveness to such ideas was manifest in the parliamentary theory originating in Tosa. In Sakamoto Ryūma’s Eight Point Program (1863) is included an account of an upper and lower assembly, as we have seen, and this parliamentary concept was further expanded in the memorial that requested Tokugawa Keiki to return the reigns of government to the Emperor. Accompanying the text of this memorial, in a separate document, one of the major items of the petition called for the assembly to be divided into an upper and lower branch and the legislators to be honest and good men, with their selection ranging all the way from high ranking Court nobles down to rear vassals and commoners.

Persons from Tosa however were not the only ones at the very beginning who were pleading the cause of public assemblies. Similar views were being expressed in Satsuma, Chōshū and elsewhere. Especially in the domain of Echizen, where the influence of the visiting scholar Yokoi Shōnan had taken effect, Matsudaira Shungaku, the lord of the province, argued the need for a Parliament and Commons and he was even willing to include in Commons the peasants and townsmen.

In the Bakufu as well the idea of a public assembly found
supporters. Ōkubo Tadahiro, as one, had submitted to Matsudaira Shungaku, who was also the Bakufu's Chief of Political Affairs, a plan calling for the creation of a Grand Assembly, where national issues would be discussed by daimyo members, and for the creation of a Lower Assembly which would resolve issues of a local nature. But most prominent of all the advocates within the Bakufu who called for an assembly was Nishi Amane, a professor at the Kaiseisho (prodeccessor to Tokyo Imperial University). He submitted petitions to the Bakufu in 1866 and 1867 requesting both times that an assembly be created. The second petition, presented in November 1867 following the Restoration, urged Keiki to establish an upper and lower house. Appended to the memorial was an itemized proposal which distinguished the powers "to create law", "to execute the law" and "to protect the law"; and the proposal pointed out clearly that in the West "the three powers are independent and separate". In Japan's case, however, it was suggested that the power to protect the law (the judiciary) should for a short while be combined with the power to execute the law (the executive). The plan provided, furthermore, that the administration of the territorial possessions of the Imperial Court, the Shogun, and daimyo should be managed freely by the respective holders in the absence of specific legislation by the legislature, and to these different holders other special powers were granted. For the Imperial Court, Nishi Amane enumerated seven rights. The most important one was the power of Imperial sanction. This meant the Emperor should have the right to sanction resolutions formulated in the legislature and passed through the government to the Throne, although it was stated that with such resolutions the Imperial Court "ought not to have any disagreement". In another point the plan specified that the party to hold the power of government, i.e., the power to execute the laws, should be the head of the Tokugawa house. And last, the legislature was to be composed of an upper and lower branch. In the upper house,
daimyo possessing over 10,000 koku would be seated, and in the lower house, a single samurai from each domain would be returned to serve as a general deputy for all strata within his respective domain. This itemized proposal prepared by Nishi may be looked upon as one type of draft constitution. Another petition in the same year by Matsudaira Noritaka, a high councilor of the Bakufu, called for the establishment in the central government of an upper and lower house. Large daimyo would be selected for the former and both large and small daimyo for the latter. Each of the local districts likewise would be equipped with an upper and lower house. Large and small daimyo would be selected for the upper, and samurai as well as other persons would be seated in the lower. The petition also prescribed an election by ballot and declared that matters reported to the Throne after having passed the two houses of the central government "could not be easily contested by the Emperor".

In view of the pressure for a deliberative organ of government, Keiki created the Kōgishō (public assembly) as soon as he returned to Tokyo in defeat from the Toba and Fushimi campaigns. This assembly was divided into two houses. One was for the officials holding ranks higher than the sixth grade and for direct vassals having over 3,000 koku. The other was for officials beneath the sixth grade and for petty officials. To the lesser house it was admissible for samurai, peasants and townspeople to express their views. The rules for procedure were formulated and the assembly was inaugurated on March 3 within the Edo Castle outworks at the residence of the densō, a court official who was responsible for transmitting meassages from the Bakufu to the Emperor. But it seems that this assembly never went into actual operation, after all, owing to the castle's evacuation when the military forces of the Court descended onto the Kantō Plain.

a. The Charter Oath of Five Articles and the First "Constitution"

After the Restoration had taken place in November 1867,
the Court, in an effort to dispose of problems connected with the Court's assumption of power, opened a conference to be attended by the daimyo of the different domains, but because of certain misgivings the daimyo did not respond to the summons. At this point, in January 1868, Fukuoka Kōtei of Tosa submitted a petition requesting that an upper and lower assembly be set up in order to sound out public opinion and for the purpose of administering the government. In his plan the upper house consisted of the Emperor, the Imperial family, the Court nobles and the feudal lords, and the lower house was composed of the Imperial officials (chōshi), the domain representatives (kōshi) and other local figures from town or country. In keeping with this plan, a lower and upper chamber seem to have been created toward the end of January. On February 10, 1868, provisions were made for the appointment of Junior Councilors (sanyo) from among domain samurai and other capable persons. After appointment they were to be commissioned as Imperial Officers and assigned as members of the lower house or as heads of different offices within the major branches of government. The number of Imperial Officers was unspecified and they were to alternate every four years. It was also determined that the domain representatives, selected and returned to the lower assembly by the domain lord, would participate in the assembly proceedings, express public opinion and deliberate on public affairs. The number of representatives from each domain depended on its size: three from the large domains (400,000 koku or more), two from the middle category (100,000-399,000 koku), and one from the small domains (10,000-99,000 koku). On February 26, however, these arrangements were modified; the Imperial Officer was to be appointed to the post of bureau chief (hanji) and only the domain representatives were to be members of the lower assembly. On March 4 the domains were ordered to select and send "someone to represent local opinion". On the next day, with reference to the Imperial Officers, further instructions stated that from the day of their appointment to
office they must bear in mind their position as officers of the Court and toward their former domain they must be completely neutral. This probably meant they should not be partisans of domain opinion.

Despite having created in this fashion an upper and lower assembly, the Court still had not won the support of the domains. Having neither the power to conscript an army or to levy taxes, the new government could only live up to its position of "head of the allied domains", as it represented itself to the foreign powers, if the support of the daimyo was assured. And to obtain their support, particularly after the outbreak of hostilities at Toba and Fushimi when the ravages of war were extending toward Edo, the government was compelled to formulate a national policy. Faced with this necessity, the government leaders accepted the declarations originally drafted by Yuri Kimimasa, and used them to complete the *Charter Oath of Five Articles*. The *Charter Oath* was drafted, according to Yuri's biography, when a meeting was held on the night of February 2 in connection with the proclamation that had announced the Emperor's assumption of personal command over the anti-Bakufu forces. The meeting was to discuss what sort of public pronouncement should be made in order to rally the people to loyal support of the Throne and also to determine how to secure financial support for the government. Although another view suggests that the original draft was prepared by Fukuoka Kötei about a month earlier, this does not appear as reliable as the statements attributed to Yuri. The original draft composed by Yuri reads as follows:

The Essentials for Deliberative Proceedings

1. The common people must be allowed to fulfill their aspirations so that there may be no discontent among them.

2. The samurai and common people must unite in vigorously promoting the economy and welfare of the nation.
3. Knowledge shall be sought throughout the world and thus shall be strengthened the foundations of the Imperial polity.

4. The office of domain representative must be conferred, for a fixed term, upon men of ability.

5. All matters of state must be decided by public discussion and no discussions should be held in private.

In Article 1 above, the republican ideas of Yokoi Shōnan, Yuri’s teacher, are believed to be apparent, yet it was the second Article that received the most attention from Yuri. As Yuri was then in charge of the new administration’s finances he was probably very keenly aware of the need for cooperation between the upper and lower rungs of society in order to overcome the financial difficulties confronting the government. While the Japanese wording used in Article 2 in reference to “economy and welfare” (keirin) signifies public finance, political administration and public welfare, there is no doubt that Yuri had already considered issuing currency, namely, the Dajōkan-satsu, and this reference is therefore interpreted to mean that he was seeking the necessary cooperation to make this venture successful. The representatives mentioned in Article 4 are the same deputies, mentioned earlier, who were scheduled to be sent by the domains to the central government.

Fukuoka Kötei, a samurai and Junior Councilor from Tosa, made some corrections to this draft. He changed the title to “Council of Feudal Lords”; in Article 1, “common people” was changed to read “all civil and military officials and the common people as well”; in Article 2, “samurai and common people” became “all classes high and low”; in Article 4, “representatives” became “Imperial Officers”; and Article 5 was revised to read “an assembly of feudal lords will be established and all matters of state shall be decided by public discussion.” In Fukuoka’s fully revised version where the Articles have also been rearranged the following rendition appears:
Council of Feudal Lords

1. An assembly of feudal lords shall be established and all matters of state shall be decided by public discussion.

2. All civil and military officials and the common people as well should be allowed to fulfill their aspirations so that there may be no discontent among them.

3. All classes high and low shall unite in vigorously promoting the economy and welfare of the nation.

4. Knowledge shall be sought throughout the world and thus shall be strengthened the foundation of the Imperial polity.

5. The office of Imperial Officer must be conferred, for a fixed term, upon men of ability.

The appearance of "an assembly of feudal lords" in Article 1 may be attributed to the Tosa faction's strong attachment to the idea of a government dependent on open discussion and public opinion. The replacement of "representatives of the domains" by "Imperial Officers" was probably due to the idea that as deputies of the domains it would be unwise to have interference in their appointment, and to avoid this it seemed necessary to set up a system of rotation for the Imperial Officers who would be selected by the Court from domain samurai and other competent persons. The title "Council of Feudal Lords" came from the adoption of the term kai mei which was used in China during an age of civil conflict (722-481 B.C.) to denote a league of feudal barons.

When Kido Takayoshi, counsel to the office of Supreme Head, examined this draft, he cut out the entire Article concerning the Imperial Officer, changed the sequence of Articles 2 and 3, and added for the first time the following Article: "base customs of former times shall be abandoned, and universal reason and justice shall be followed" Inasmuch as the regulations governing the domain representatives and the Imperial Officers were set forth on February 10, specifying clearly that, "Imperial
Officers . . . will retire upon completion of four years tenure. The position shall be available to capable persons at large”, it was presumably unnecessary to repeat such provisions in the Charter Oath draft. In referring to “base customs of former times”, Kido was alluding to the seclusionist and anti-foreign thought; and “universal reason and justice” was a reference to international law. The extent of Kido’s efforts at this time to eradicate the seclusionist and anti-foreign sentiment may also be gathered from views, exclusively devoted to these topics, which he expressed in April in a memorial concerning foreign policy.

Having been modified a number of times, the general outline of the Charter Oath was finally completed. Further additions, however, were made at the head of the draft where proceedings for the ceremonial formalities were included under the caption of “Oath Taking Ceremonies”, and at the end of the draft to which was appended the text of the oaths to be taken by the Emperor, the Supreme Head, the Senior Councilors, the barons and others. But as the Emperor was required to swear an oath with the barons in connection with a clause that singled him out as the foundation of the new government, an argument arose that the oath taking as such was a violation of the Japanese tradition of supreme power of the Imperial Throne. Thus Kido changed the wording to clearly indicate that the oath taking ceremonies would not be contracted with his subjects, and the word for pledge was substituted by another word signifying that it was to be a vow to superhuman beings. Then in the aforementioned April memorial, Kido requested the Emperor to place himself at the head of the Court nobles, the barons and the government officials in swearing an oath to the National Dieties of Heaven and Earth for the “future course of the Empire”.

After all the changes in the document had been made, the Charter Oath of Five Articles was proclaimed within the Shishinden, the hall for state ceremonies, in Kyoto. In full the
text reads:

1. An assembly widely convoked shall be established, and all matters of state shall be decided by public discussion.
2. All classes high and low shall unite in vigorously promoting the economy and welfare of the nation.
3. All civil and military officials and the common people as well shall be allowed to fulfill their aspirations so that there may be no discontent among them.
4. Base customs of former times shall be abandoned, and all actions shall conform to the principles of universal justice.
5. Knowledge shall be sought throughout the world and thus shall be strengthened the foundation of the Imperial polity.

In Article 1 "an assembly widely convoked" is a revision of the original "assembly of feudal lords". It is sometimes contended that even though the "feudal lords" were eliminated from the revised form of the text the assembly was still designed to be composed of feudal lords due to their original mention. But in the author's estimation, the elimination of the "feudal lords" from the original text suggests that the revision should be taken literally to mean that an assembly widely convoked would be established. Even the Seitaisho, which postdates the Charter Oath, gave recognition to a lower house comprised of domain representatives and to an upper house which was composed of Senior and Junior Councilors. Other provisions of the Seitaisho provided, moreover, that the governments in the prefectures and domains must be conducted according to the principles laid down in the Charter Oath. Hence the assemblies that were established in the domains were all based on this first Article of the Oath.

The Charter Oath was proclaimed on April 6 to coincide with two major events that were planned for the following day. One was the attack to be carried out against the Edo
Castle and the other was the proclamation announcing the Emperor’s departure in personal command of the anti-Bakufu expedition. The Charter Oath was thus an attempt to set forth the new government’s policy and to strengthen the bonds among the domains giving support to the Emperor. Made public on the same day as the Charter Oath was another message from the Emperor which followed the essentials of the Oath and called for the elevation of Japan’s prestige, yet this message was a definite warning to the people not to be misled even though the Emperor himself would be exercising personal rule over Japan.

On April 14 the Emperor departed from Kyoto for Osaka, but owing to Keiki’s apology and pledge of allegiance the Emperor returned to Kyoto on May 29 without commanding an expedition against him.

Despite the proclamation of the Charter Oath, the ideas it expressed were merely an abstract outline and there was a need to present them in more concrete fashion. For this purpose the Seitaisho, as it is commonly known, was formulated. The Seitaisho originated in a memorial presented to the Throne by Fukuoka Kōtei, Assistant Vice-Minister of the Laws Office, and after its acceptance by the Emperor it was given final form through the joint efforts of Fukuoka and Soejima Taneomi, a fellow official of the same office. Placed before the Emperor once again, it was finally proclaimed on June 17. In form, the Seitaisho is regarded as Japan’s first written “constitution”. Its drafters, supposedly, were influenced indirectly by the contents of a book on world geography authored in 1838 by Eliajb C. Bridgman, an American. That is, Bridgmen’s book had been translated into Chinese and from the Chinese version the portion on America was republished in 1861 as a separate work entitled Rempō Shiryaku (A Brief Account of the United States). This publication, it is thought, was used as a reference for the Seitaisho.

The Seitaisho placed all power and authority in the Council
of State in order to prevent confusion in the administration of the government; and it divided the Council into legislative, executive and judicial branches. The executive branch was denied any legislative power and the legislative branch was denied executive power. But there is no need to describe once again the formal structure of the government as it existed under the Seitaisho, hence our attention here shall be focused on the Legislative Council (giseikan) and the appointment of officials by ballot which are two important aspects in the development of a national assembly in Japan.

By providing that each prefecture, urban and rural, and each domain would furnish representatives (kōshi) to be members of the assembly, and by clearly specifying that the object of establishing a deliberative body was to obtain prevailing public opinion and open discussion, the Seitaisho proclaimed to all Japan the role that public opinion would play in the government. It also replaced the existing two house assembly (gijisho) with the Upper and Lower Houses (jōkyoku, kakyoku) of the Legislative Council which was vested with the legislative power. The members of the Upper House consisted of Senior and Junior Councilors (gijō, sanyo); and two of the Senior Councilors served concurrently in the Central Administrative Council as the two Chief Ministers of State (hoshō). Qualified to become Senior Councilors were the Princes of the Blood, lesser princes, Court nobles and the feudal barons. The Junior Councilors could be selected from the Court nobles, the feudal barons and their chief domain councilors as well as from samurai and commoners. The functions of the Upper House included the establishment of the basic structure of government, the enactment of legislation, the determination of policy, the selection of men for the three highest grades, the administration of justice, the conclusion of treaties and the declaration of war and peace. The Lower House was composed of domain representatives and of two presidents who served simultaneously in the Central Administrative Council as executive officials known
as Controllers (benji). Under order of the Upper House, the Lower House was to deliberate upon revenue regulations and thirteen othr items of business. Needless to say these two houses did not form an elected assembly in the modern sense of the word. Although the Seitaisho forbad any connection between the legislative and executive branches, the separation was incomplete, for two of the Upper House members were the Chief Ministers of State, i.e., senior officials of the Central Administrative Council, and the presidency of the Lower House was held by two Controllers who were also officials of the Central Administrative Council. It is possible however that this arrangement was modeled after the dual role of the American Vice President who also serves as President of the United States Senate.

The Lower House of the Legislative Council, composed of domain representatives, was located in the house of a noble. Yet the creation in each domain of a representative to serve in the Lower House meant that an additional official, besides the existing Domain Custodian, was brought into being; and since this only complicated matters, the government on July 16 combined the two into a single new form of representative known as the kōmuin. The duties of the kōmuin, however, were again divided in October between a representative (kōginin) and a custodian like official (kōyōnin). Shortly afterwards, in November, the Legislative Council itself was provisionally discontinued. The Legislative Council was probably done away with because the legislative officials in the Upper House were exercising executive powers which could not be easily or clearly separated from legislative functions, but also because the discussions of the representatives in the Lower House were viewed as idle talk conducive to little in the way of results.

The other important feature of the Seitaisho in connection with the development of a deliberative assembly was its reference to appointment of officials. According to its provisions, government officials would be changed upon completion of four
years service and they must be appointed by ballot. The method of changing incumbent officials upon expiration of the first period of tenure required that half the officials be retained in office for an additional two years for the sake of continuity in government business. Persons who could not be conveniently dismissed, because they had won public confidence, were to be retained for an additional period of years. Although this sort of arrangement was not without precedent in Japan, it is nevertheless believed that this part of the Seitaisho followed the method for electing the President of the United States. Whether or not this procedure was used in 1868 is uncertain, but a ballot carried out in 1869 in two separate votings is famous as an election of major government officials. At the first voting, the officials of the third and higher grades assembled to vote on June 22, electing the Chief Ministers of State (hosho) as well as the Senior and Junior Councilors; then in the presence of the Emperor the votes were tabulated. At the second voting, held on the following day, the same high officials elected the Ministers and Vice-Ministers for the six departments and the Minister of the Imperial Household. Among the officials elected to office, the Chief Ministers of State, the Senior Councilors, the six Department Ministers and the Minister of the Imperial Household had to be elected from the Court nobles and feudal barons; the Junior Councilors and Vice-Ministers could be elected from any social class regardless of status. The reason for having an election at this time was perhaps, as stated before, to rid the government of sinecures and to follow up the barons' surrender of their feudal holdings with the completion of the basic form of national government. Afterwards, with the promulgation of the Government Officials Order in August, no further appointment of officials by ballot was made. But apart from the central government's restricted application of the ballot, this type of voting was in occasional use elsewhere in Japan at this time. In early 1869, for example, a Commander and Deputy Commander were elected for the Shōgitai rebel
unit; a Supreme Head and his Assistant as well as two chief officials for the Army and Navy were chosen by the group which had fled to Hokkaido under the leadership of Enomoto Takeaki; and in many instances the two chief administrative officials of the domains were appointed by ballot in accordance with the Regulations Governing Domain Administrative Organization.

b. Changes in the Assembly System: Jōkyoku Kaigi, Kōgisho and Shūgi-In

As we have just seen, the Upper House vanished as result of the tentative abandonment of the Legislative Council. And yet, the government decided at the close of 1868 to summon the feudal barons and even the lower echelons of the samurai class to a meeting in the spring of the next year in order to obtain a cross section of opinion upon which to base the broad outlines of a national policy. This proposed meeting, however, was ultimately postponed until June and then opened as an upper house assembly known as the Jōkyoku Kaigi. It lasted but for a short time, being done away with in August.

With respect to a lower house, this body was actually inaugurated as the Kōgishe on March 27, 1869. Prior to its opening date, a draft of the Lower House Regulations had been drawn up in December, making it clear that the primary purpose of the Kōgishe was the enactment of legislation. Other provisions in the regulations stipulated that a member’s term of office was four years, election for half the members would take place every two years, and members must be at least 25 years of age. The assembly members were forbidden to hold additional government posts. Sessions of the kōgishe were to be held every fifth day, and a quorum for a session or for resolution required three fifths of the members. The membership of the assembly consisted of local representatives who, according to the Regulations Governing Domain Administration (November 1868), were to be appointed by the Court from among the two chief administrative officials of the different domains. The principal domain
officials had been singled out as local spokesmen in order to remedy the inadequate representation of domain views provided by the former representatives who had been appointed from among second and third rate personnel.

Having completed its preparations, the Kōgisho opened its first session in Tokyo on April 18, 1869 at the mansion of the lord of Himeji. One representative was returned from each domain regardless of its size. Representatives should have come from the rural and urban prefectures as well, but, owing to the incomplete assembly arrangements, those who desired could simply address the assembly by sending a memorial. In order that the delegates could give exclusive and thorough attention to separate problems they were divided into seventeen committees; their subject matter included the promotion of agriculture, revenue, post stations and similar problems. However the adoption or rejection of a resolution made by the Kōgisho was determined by Imperial sanction.

The proceedings of the Kōgisho covered all manner of items. Although it is true that conservative influence was made quite apparent by the greater support given to the old domain system over the proposed prefectural system, and by the unanimous opposition to Mori Arinori’s proposal to ban sword wearing, there were nevertheless in evidence certain progressive views.

The Jōkyoku Kaigi and the Kōgisho were both disestablished on August 16, 1869 during a radical government reform which followed immediately upon the daimyo’s surrender of their territorial holdings to the Emperor. Both houses were replaced by the Shūgi-In, which was simply another name for a lower house. The biggest change came in the manner of presenting bills. Formerly the Kōgisho members had the right to present bills and even non-assembly members could request the house president or some other member to make a proposal, but in the Shūgi-In the proposals had to be introduced as a rule by the Council of State. Thus the Lower House came to resemble an advisory organ more than it did a legislature. Despite
the change, the members of the Shūgi-In continued to be referred to as members of the Kōgisho until October 1870 when the domains underwent reorganization. Thereupon it was specified that one of the senior domain councilors in each domain would alternate every six months as a "member of the Shūgi-In" in Kyoto. Proceedings in the Shūgi-In were held on two occasions: from October 1869 to January 1870, and from June to October 1870.

As for local legislatures, the central government ordered the domains to create assemblies on a number of different occasions. Instructions were sent out first in June 1868 when the Seitaisho was announced; next, in December when the Regulations Governing Domain Organization were issued, and, again, in March 1869 when the Yōgisho was opened in Tokyo. As a consequence of these various directives, assemblies appeared in the domains under a great variety of names. The majority were equipped with an upper and lower house, and in some cases members of the lower house were appointed from commoners. In this sense the domain assemblies may be regarded as having a truly enlightened character, but it must not be forgotten that they were all purely advisory organs.

c. The Left Chamber and the Genrō-In

As soon as the domains were replaced by prefectures in 1871, a reshuffling of offices occurred in September. This resulted in the emergence of the Central Chamber, the Left Chamber and the Right Chamber. To the Left Chamber, control over legislation was given. While the Shūgi-In, as an assembly basically composed of domains were abolished, it was not immediately discontinued. For ever since September 1869 the Shūgi-In had been receiving petitions which in the past had been directed to the Rescript Drafting Office, and thus until disestablished in June 1873 the Shūgi-In continued in existence, although in a subordinate position to the Left Chamber.
The membership of the Left Chamber consisted of a president and of first, second, and third class legislators of Junior Councilor rank. In contrast to the Shūgi-In which was expected to represent domain opinion, the Left Chamber was an organ where the legislators, as civil servants appointed by the government, merely discussed legislation. The Left Chamber owed its existence primarily to the efforts of Etō Shimpei who became its vice president. To the post of presidency, Gotō Shōjirō was later appointed. Though the Left Chamber, as pointed out above, lost its significance as a body to represent local opinion, its political prestige was considerable because the most outstanding men of the domains were included among its legislators. But as it gradually became separated from general legislative duties, great stress came to be placed on it as a body responsible for enacting a constitution; and by June 1873 the duties of the Left Chamber were prescribed as the “compilation of the Assembly regulations, the Constitution, the civil code and the drafting of legislation upon order of the government”.

The Left Chamber, however, was not long lived. It was replaced by the Genrō-In or Senate in the year 1875 when an Imperial edict proclaimed the gradual establishment of constitutional forms of government. Formally opened in July at the same location previously occupied by the Left Chamber, the Genrō-In was to be headed by a President and Vice President, and its other members included a Secretary and a number of Councilors. There was a proposal at first to make Minister of the Left Shimazu Hisamitsu the President, but due to the many protests against his exceedingly conservative character, Gotō Shōjirō was elected by the Genrō-In Council members as the Vice President instead. The Councilors were all ranked as first grade Court officials.

The Genrō-In Councilors then drafted the Regulations Governing the Organization of the Genrō-In; and in the process it was suggested that a clause be inserted to prevent any resolution from becoming law without this body’s approval. The
government stood opposed to this suggestion, and for a while there was great confusion until a concession by the Genrō-In allowed a solution of the issue. In the first Article of the regulations, the Genrō-In was distinguished as a body of legislative officers whose duties were to deliberate upon new legislation, to revise existing laws, and to receive petitions. By the terms of another Article, all bills had to be sent down to the Assembly by the Emperor; the Genrō-In was forbidden to send them directly to the Assembly despite the fact that it had drafted them. In December the regulations were modified and the Inner Council was allowed to place the bills before the Assembly by command of the Emperor. In addition, bills were classified into those subject to the decision of the Genrō-In and those subject only to its inspection; it was up to the Inner Council to determine the category of the bills. When a bill was marked for inspection only, the Genrō-In could neither pass upon its merits, revise it, nor discuss the bill in detail. Even if a bill prejudiced or conflicted with existing laws, or different clauses of the bill were inconsistent, were defective or in some way ambiguous, the Genrō-In could do nothing more than notify the Chancellor in an attempt to have the necessary corrections made. Further than this, measures demanding urgent action could be decreed by the Inner Council at its own convenience and submitted, after the fact, to the inspection of the Genrō-In. Thus the Genrō-In's authority as a legislative body was greatly restricted. Abusing this decree power, the government on frequent occasions ignored the Genrō-In.

In this fashion the arrangements for a deliberative assembly in the central government were discarded little by little, while in the districts the existence of local assemblies was being made possible by enactment of the Prefectural Assembly Regulations (1878) and by enactment of the City, Town and Village Law (1880). Concerning these local developments, comment shall be reserved here, for they shall be treated more fully, later,
under local government.

d. Arguments for a Constitution and the Different Constitutional Proposals.

The Japanese word for constitution (kenpō) is, in the case of Shōtoku Taishi’s (574-622 A.D.) Constitution of Seventeen Articles, a euphemism for two Japanese words that denote a “strict law”, and does not mean the fundamental law of the state. In the Edo Period the use of kenpō in such instances as Kenpō Ruijū (Classified Collection of Basic Laws) was simply a fancy way to designate Bakufu laws.

In the transitional years between the Edo Period and the early Meiji Era when Western legal thought was being introduced into Japan, there were a variety of terms used as equivalents for our present day kenpō. But still another term—kokken (national constitution)—became popular after being used in 1868 by Katō Hiroyuki in his Rikken Seitai Ryaku (Outline of Constitutional Government). In the next decade, however, since a host of different terms continued to be used, neither kokken nor any other one term for constitution was given exclusive recognition. The first usage of kenpō as we understand it today is attributed to Mizukuri Rinshō, who used it in 1873 for the title of his translation of the French Constitution. As is apparent in its usage to denote regulations for the Lower House (giin kenpō) it has not been vested from the beginning with the meaning of fundamental state law, although later it did take on this meaning after replacing the term kokken.

As documents akin to a constitution, allusion has been made to Nishi Amane's proposal to the Shogun in 1867 for the separation of the legislative, executive, and judicial powers, and reference has also been made to the first written “constitution” of 1868, that is, the Seitaisho. Another move in the direction towards a constitution is represented by Etō Shimpei's petition in 1870 for the enactment of a “national law” that would regulate the “relations between the government and its subjects”. As the principal subjects to be provided for, he listed such topics

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as the land, the people, the Court, legislators, local assemblies courts of justice and more than a dozen other topics. Judging by the final item of his list, which concerned "reform of the constitution (seinin)"; he must have intended to refer to the written constitution with the Japanese word seinin which indicates basic legislation for administration of government and justice.

Three years later another proposal came from Kido Takayoshi. Though already possessed of enlightened constitutional ideas, Kido was astonished to find such advanced institutions and civilization in the West during his trip to Europe and America with the 1871 Iwakura Mission. After he had observed a destroyed Poland at close hand, he was sharply impressed with the idea that the very existence of a state is dependent upon the degree to which the laws of that state are developed. Thus after returning to Japan in July 1873, he presented a memorial to the government requesting the enactment of fundamental legislation that would be in accord with the principles of the Charter Oath. His views, however, were not accepted by the government. Kido's memorial called first for the framing of a constitution that would allow for an absolute emperor, and then for the organization of popular assemblies once the state were unified and the people were better informed. His draft, which is attributed to someone else's pen, also used in its title the word seinin to mean constitution.

Although Kido's proposal was unacceptable, the administration did, nevertheless, intend to make innovations in the government with proper consideration being given to Western institutions. Hence in November, Itō Hirobumi, the Minister of Public Works and industry, and Terajima Munenori, the Minister of Foreign Affairs, were placed in charge of research concerning the basic organization of the national government. When Itō, in connection with his research activities, sought the views of Kido, the latter voiced the opinion that the Department of Justice and the courts of law should be separate. It was also
his view that a bicameral institution should be created nominally, inasmuch as a Genrō-In and a lower house would someday have to be established; and he thought that the "fundamental law of the state must be despotic". Okubo Toshimichi also had a constitutional plan that was distinguished by an extreme concentration of power in the hands of the Chancellor.

In January 1874, the now famous memorial that called for the creation of a popularly elected assembly was presented to the Left Chamber. It was presented by a group of ex-Junior Councilors, including Soejima, Gotō, Itagaki, and Etō, who had left the government the preceding year in defeat over the Korean issue. Yet even before this date, some plans had been formulated within the government concerning the enactment of a constitution or at least concerning the creation of a popularly elected assembly. This work as we shall presently see, had been performed in the Left Chamber and represents the first official attempt to compile basic legislation for the state.

Already in 1872 Miyajima Seiichirō, a member of the Left Chamber, had proposed to Gotō, the Chamber's President, that the "substance of constitutional monarchy invested in autocratic forms" be used as the basis of a constitution. Standing opposed to this proposal was Etō Shimpei. Etō was the Vice President of the Left Chamber, though he was soon transferred to the post of Minister of Justice and was succeeded by Ijichi Masaharu, a person who shared in Miyajima's view. With this meeting of minds, a memorial calling for the creation of an assembly subordinate to the Left Chamber was then presented to the Central Chamber. Orders came back, directing the Left Chamber to conduct an investigation of regulations concerning the appointment of representatives and management of an assembly. As a consequence of the investigation, a report on the Procedure for National Assembly Members and a separate volume of research findings were completed, though they were never presented to the Throne. In the next year the Shūgi-In was disestablished in June and its business was turned over to
the Left Chamber. The Left Chamber's business, as we have noted before, was redefined in this same month so as to include the compilation of assembly regulations, a constitution, a civil code and the drafting of legislation when so ordered by the government. Somewhere about this time the Left Chamber completed its preparation of the *Provisional Regulations for Elections and the Assembly*. These are sometimes considered as a constitution and sometimes as parliamentary procedure, although they combine the characteristics of each. Only the draft form of these regulations remains; the year they were compiled is not clear. However, it is believed that there is direct connection between these regulations and the aforementioned volume of research findings which accompanied the *Procedure for National Assembly Members* prepared by the Left Chamber in 1872. At any rate, after the preparation of this half constitutional and half procedural body of rules, the legislative activities in the Left Chamber bogged down. But when the government opposition presented their demands for an assembly in January 1874, the Left Chamber was again stimulated to action. Drafting work on basic legislation was resumed in May when Matsuoka Tokitoshi, Ozaki Mitsunaga and Yokoyama Yoshikiyo were placed in charge of drawing up a constitution. This project came to an end, however, in 1875 when the Left Chamber was abolished. But as soon as both Kido and Itagaki were reappointed as Junior Councilors, following the 1875 Osaka Conference, they were ordered to form a committee together with Okubo and Itō to discuss basic government reforms. By March 28 they had formulated their ideas and submitted a report to the Emperor.

The report began by stating that a compromise should be made between the Western forms of autocracy, constitutional monarchy, and republicanism so that a modified system of government suitable to Japanese conditions could be created. This would require the Council of State to be organized with a Central, Right and Left Chamber. In the Central Chamber
the Emperor would preside, and with the advice of the Chancellor and the Left and Right Ministers he would exercise supreme control over all state affairs. In the Right Chamber the Chancellor should preside, and there the Ministers of Left and Right, the Junior Councilors and the Department Ministers would deliberate upon general administrative matters. In the Left Chamber either a Minister of the Left or Right or a Junior Councilor should be the presiding official, and the duties of this chamber would be legislative in nature. Making allusion to the separation of powers in Europe, the report continued that this arrangement should also be adopted in Japan, but definite reservations were expressed with regard to the indiscriminate acceptance of foreign practices. Nonetheless, the report concluded that it was desirable to create an upper and lower house for the time being. The former, standing as a legislative chamber, would be composed of the nobility, distinguished statesmen, and learned men. The latter, as an assembly of district officials, would serve as the beginning of a popularly elected assembly. For the most part this report followed the views of Kido, and it may be considered a concrete expression of his constitutional thought.

The suggestions in the report were accepted by the Throne, and, on April 14, 1875, an Imperial edict proclaimed that constitutional government would be gradually established; but at the same time it cautioned the people against seeking rash reforms.\(^1\) Besides referring briefly to the creation of a legislative Genrō-In and Supreme Court for consolidating judicial authority, the edict also declared the establishment of an assembly of district officials so as to obtain a better understanding of popular sentiment. This meant that such an assembly would function as a lower house. Perhaps it was intended that the district officials should represent the interests of the area under their control. But this was not the first time arrangements

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1. See Appendix 7
had been made for an assembly of district officials. On two occasions before 1875 a meeting of local officials had been planned, although no tangible results had been produced. On the first occasion the Finance Department had sponsored an assembly. Being a powerful branch of the government and sprawling out in all directions, from finance to home affairs, industry, transportation and communications, the Finance Department had desired a meeting of district officials in order to devise means of liaison with them. Thus it had drawn up a rather extensive set of Rules for Conduct of Business. According to these rules, when the executive officials of the bureaus, the prefectural governors, and prefectural councilors engaged in assembly business they ceased to be district officials and were "solely legislative officials who deliberate upon general district affairs". However, when the assembly was opened in April, it was accused of exceeding the bounds of executive authority and its Rules were revoked by the Central Chamber. The assembly at once came to a standstill, and with the resignation of Vice-Minister of Finance Inoue Kaoru and his following the assembly soon died a natural death. Next, the Left Chamber decided to conduct the assembly and for this purpose prepared some of its own rules to govern assembly business, but as these were never brought up for discussion the district officials returned to their prefectures.

On the second attempt to hold a conference of district officials before 1875, the Council of State, inspired perhaps by the abortive attempt of the Finance Department, laid the groundwork in May 1874 by formulating the Parliamentary Procedure and other rules for the conduct of assembly business. When these procedural rules were promulgated, an Imperial message announced to the public that representatives from all over Japan were going to assemble in order to create legislation based on public opinion and open discussion. In this way they were expected to learn how to shoulder grave political responsibility. But the message indicated that only the prefectural

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governors were being summoned to participate in the first assembly and it enjoined each prospective assembly member to faithfully observe the Parliamentary Procedure. The limiting of the conference to prefectural governors was rather a contrast to the assembly rules prepared the year before by the Left Chamber. These had stated that "deputies of the people throughout the country should be called to give a full presentation of their views". But fearing that immediate execution of this plan would create trouble for the government, it was probably an accepted view among the government leaders that there would be no break in continuity with the Left Chamber's rules if the government first summoned to a meeting in that chamber the sōnin rank officials (appointed with the Emperor's approval) from the different prefectures and departments. It seems also that this assembly of local officials was regarded by the government authorities as a lower house. Despite the fact that a president, Itō Hirobumi, was selected to preside over the assembly and a decision was made to open it in September 1874, at the Yushima Library of Confucian classics in Tokyo, the meeting failed to take place because of the Formosan Incident and because of other considerations.

Notwithstanding these two failures by the Finance Ministry and the Council of State, an assembly was finally held in June 1875, only a few months after the Emperor had proclaimed the gradual creation of constitutional forms of government. Kido Takayoshi was appointed chairman of this assembly. The Assembly Procedure and assembly regulations devised by the Council of State were revised and distributed, and the first session was opened at the Asakusa Honganji, a large Buddhist Temple in Tokyo. Five items were proposed for discussions: 1) local police, 2) public works and expenditures, 3) district assemblies, 4) relief measures for the needy and 5) organization and maintenance of elementary schools. Most of the time was spent on the first two items and not a few days on the question of district assemblies, thus the session was prolonged
an additional three days. Before the meeting eventually closed, a final decision determined that the prefectural assemblies would be composed of district (ku) heads and the district assemblies would be composed of town and village heads. During this session the Genrō-In demanded that the assembly forward its decisions to the Genrō-In for examination, after which they would be submitted to the Emperor for his sanction; and this procedure was eventually accepted. While on the one hand, the government had gone so far as to hold a conference of district officials, on the other hand, it also enacted the Press Code and Libel Law to suppress the liberal rights movement which had reached such a peak of agitation at this time under the leadership of the disaffected samurai and other elements associated with them.

The principle of gradualism having been proclaimed by Imperial edict, it was now only natural that another order be given to the Genrō-In directing it to begin work on a constitution. Therefore, in September 1876, Prince Arisugawa, President of the Genrō-In, received an Imperial rescript instructing the Genrō-In to draft a constitution suitable to Japanese conditions with Foreign legislation as a guide. On this occasion Prince Arisugawa received from the Emperor a copy of Todd's Parliamentary Government In England which had been presented to the Throne by Yoshii Tomozane.

On the following day, four Genrō-In Councilors (Yanagihara Maemitsu, Fukuba Yoshikiyo, Nakashima Nobuyuki and Hosokawa Junjirō) were put in charge of the constitutional research activities. They were assisted in their work by three Genrō-In secretaries, namely: Kawazu Sukeyuki, Yokoyama Yoshikiyo, and Yasui Shūzō. Two years later in June, the Nihon Kokken’an (Draft Constitution of Japan) was completed and presented to the presiding officer of the Genrō-In. The primary purpose of the draft constitution was described in an accompanying memorial as the distribution of power between sovereign and subjects, and the further division of the sover-
sions concerning the Emperor’s oath to be taken upon enthronement or by the Regent upon assuming office; and although the provision concerning legislation was changed in its wording to indicate that the Emperor, the Genrō-In, and the House of Representatives would jointly exercise the legislative power, this changed version did not differ greatly in substance from the draft presented to Prince Arisugawa in June 1878. As there was no need for the revised draft to receive Iwakura’s approval, the Genrō-In intended to send it directly to the Throne, but in the end this was never done. According to Kaneko Kentarō, an outstanding statesman of the Meiji Period, this draft constitution was fashioned in the English tradition. Another view by Miyazawa Toshiyoshi, a leading legal scholar of present day Japan, contents that it is more in line with the Belgian and Prussian models.

The Imperial edict of April 1875, which announced the principle of gradualism in achieving constitutional government and which was based principally on the views of Kido, drew the disfavor of Iwakura. He disapproved of it out of fear that basic changes would be produced in the traditional ideological and political framework of government which depended on the unquestioned supremacy of the Emperor. In spite of his apprehension Iwakura was obliged to consent to the edict. Nevertheless, he disapproved of the draft constitution also. Growing anxious over the increased liberal rights agitation and the number of memorials demanding establishment of a national assembly, Iwakura petitioned the Throne in 1879 to order the Junior Councilors to report their views on a constitution so that those most suitable to the traditional Japanese patterns of government could be singled out by the Emperor as the basis for a constitution. The constitution of course was to be granted by the Emperor. Iwakura wrote in the petition that the matter was urgent and the Throne accepted it. As a result, the views of Yamagata Aritomo, Kuroda Kiyotaka, Yamada Akiyoshi and those of other Junior Councilors like Inoue Kaoru, Itō Hirobumi
eign's power into the executive, legislative and judicial branches so that each branch would have specific functions and responsibilities. The hope was expressed that a government so constituted would bring great benefits not merely to a well disciplined administration but to the nation at large. With regard to changing the order of Imperial succession, the draft required both houses (Genrō-In and House of Representatives) to give their consent; and at enthronement ceremonies the Emperor was to take an oath to the gods to maintain the constitution before an assembly of both houses. Upon the Regent's taking office he was likewise required to appear before both houses to swear an oath to faithfully serve the Emperor and to observe the constitution. But this did not end the oath taking procedure. Once more, and this time in the presence of the Genrō-In alone, the draft constitution required the Emperor and the Regent to make their pledges. The legislative power of the constitution was divided between the Emperor and the Imperial Diet, with the Emperor having the authority to initiate bills and the Diet having the right to discuss and return them to the Throne with its decisions. But before this draft constitution ever reached the Throne the presiding officer ordered its revision. Since an agreement had been reached between Prince Arisugawa and Iwakura to the effect that the draft would first be shown to Iwakura upon its completion and then reported to the Throne, it is believed that the draft's rejection was perhaps due to Iwakura. Returned to its drafters for changes, the constitution was presented the second time in July 1880 to Oki Takato, the new President of the Genrō-In. In this draft, simply titled Kokken (Constitution of Japan), the provisions requiring the consent of both houses for changes in the order of Imperial succession, the provision specifying that the Emperor take an oath on the day fixed for enforcement of the constitution, and the requirement of the Genrō-In to hear the oath of the Emperor and the Regent were all stricken from this version. Despite these changes no other modifications were made in the provi-
and Oki Takato were presented to the Emperor in the interval between December 1879 and May 1881.

Commenting on the alienation of the people from the government and the necessity of revising the treaties, Yamagata expressed the view in December 1879 that the position of the government should be consolidated by making a more strict division between the legislative, executive and judicial branches. While not looking upon this division of powers as a difficult matter, he did view with serious concern the distribution of power between sovereign and subject. Since assemblies in the prefectures, districts and cities had already been opened, it was only fair, he thought, to proceed in one step to a popular assembly. Though as this would entail the parceling of power between the ruler and the ruled, caution should be exercised in its establishment. Recognizing that a popular assembly would be arrived at sooner or later, Yamagata believed it best for time being to open a single assembly composed of men selected from the prefectural assemblies on the basis of their learning and virtue. The first duty of this assembly would be to discuss the provisions of a constitution and the particulars of legislation. After several years trial, when it had become clear that the grant of the legislative prerogative would be suitable, a popular assembly should be organized. Such were the opinions of Yamagata.

Next, in February 1880, Kuroda stated that establishment of an assembly was premature. It should be preceded first of all by the completion of basic legislation, improvement of the educational system, and industrialization.

Four months later Yamada phrased his thoughts on the basic issues of government. While he saw no reason why the people should demand a voice in government, the alternative evils of despotism were so great, in his estimation, that the people at the start should be allowed to take part in deliberating upon laws which affected their general rights, in the auditing of revenue collections and expenditure reports, and they should
have the right to participate in the audit of the budget and in the changing of local boundaries. In consequence, a provisional constitution approved by the Emperor should be given a trial and error test for four or five years by both the Genrō-In and the conference of prefectural governors. After an investigation of the achievements made under the constitution, Yamada believed that the constitution should be given definite form and promulgated.

Inoue's suggestions, made in July of the same year, called for compilation of a civil code, enactment of a constitution and, afterwards, in accordance with the trend of public opinion, the establishment of a popularly elected national assembly. To accomplish these tasks, the Genrō-In would have to be replaced by an upper house of peers whose members would be appointed directly by the Emperor or appointed by a restricted ballot. The power of the upper house would extend from budgetary matters to all kinds of legislation. The preliminary work on the civil code and the constitution would be performed by certain members of the Inner Council and later decided upon by the upper house. The parliamentary procedure, according to Inoue, must be established by government order as a temporary law and subject to revision at the time of the constitution's enactment, but it must not be submitted to a deliberation of the lower house.

The views of Itō, tendered in December 1880, consisted essentially of three points. First, he did not think it advisable to establish an assembly on the spur of the moment. On the contrary, the Genrō-In should be enlarged and its members should be selected from the peerage. Second, extraordinary members for the Board of Audit should be selected from among members of the prefectural assemblies in order to enable a public discussion on finance. And for the third point, Itō desired the policies of the Empire to be determined by the Emperor.

The final advice came from Oki in May 1881. He sug-
gested a division of the constitution into two parts. One part, the law for the Emperor, should contain those matters touching upon the very foundation of the Empire, the Emperor's position as fountainhead of peace and happiness for the people, and it should contain the charter for the Imperial house. The other part was to clarify the division of powers and the essentials of administrative organization as well as the general principles of the assembly. The law concerning the Emperor, in Oki's view, must be hard and fast admitting of no change, while the other part could be modified according to circumstances.

By the end of the year 1880, all of the Junior Councilors but Okuma Shigenobu had submitted their proposals. As Okuma was the only one among them who had not tendered his opinions, he was urged to do so in March 1881 by Prince Arisugawa, who was then Minister of the Left. Okuma took this opportunity to request that he be allowed to present his views in person to the Emperor, but, denied this wish, he finally committed them to writing. In all there were six propositions central to his thinking; the seventh and last item was of a general nature. It is supposed that these propositions originated with Yano Fumio, a noted liberal publicist.

The first Article required the date for the inauguration of the national assembly to be announced. Although all the other Junior Councillors had simply stated that an assembly was premature, without mentioning an opening date, Okuma petitioned for a definite schedule. (This article should be read in conjunction with Article five).

The second Article provided that persons who enjoyed the confidence of the nation should be appointed to high position in the government. This was a demand for party government. In this respect, the petition clearly expressed a plea for the English style of constitutional government. That is, Okuma advocated that the Cabinet be organized by the head of the political party having a majority in the national assembly and that the
Cabinet must either resign or dissolve the assembly on a non-confidence vote.

The third Article urged a separation of party officials from permanent officials. That this is also modeled on English precedent is clearly stated. Party officials were defined as parliamentary secretaries and the permanent personnel as executive officials. Besides these officials, Okuma listed other permanent but neutral officials including military, police and judicial officers, and the three top ranking ministers (Chancellor, Ministers of Left and Right). He was trying to give the three high ranking ministers an advisory position like the lord Keeper of the Privy Seal.

Article four declared that the constitution should be established by Imperial sanction. This of course was also mentioned by the other Junior Councilors, but Okuma did not stop here; he pointed out two other matters of importance. One called for the greatest attention to be given to the organization of the upper house, the suffrage qualifications for the future electorate of the lower house members, and the election qualifications of the lower house members themselves. Secondly, he wanted the constitution to set forth in clear terms the locus of sovereignty and the rights of the people.

Article five stated that assembly representatives should be elected at the end of 1882, and the national assembly should be convoked at the beginning of 1883. Being identified with the notion of rapid progress, this Article particularly invited the opposition of the Junior Councilors. While Okuma himself was opposed to opening the assembly prematurely, on the ground that it would lead to political confusion, he saw nothing wrong at least with an early announcement of its inauguration. But at any rate, he did not consider it a “grave error” to open it in 1883. To this way of thinking the other Junior Councilors were absolutely opposed.

Article six required that the principles of the administration be defined. Under the party and cabinet system, accord-
ing to Okuma, each cabinet was required to define its policies and make them public. Hence, if the present Inner Council should form a political party and make public the date for establishing the national assembly, it should immediately define its administrative policy.

Summing up his views in the seventh and last article, Okuma stressed that constitutional government depended on a contest of political principles between different parties; and the party supported by the majority of the people deserved to administer the government.

As is well known, Okuma's proposal brought about a rift between himself on the one side and Itō and the Junior Councilors on the other. Though the difference was patched up for a brief time, it finally burst into the open when Okuma was purged from the government. He was ousted for accusing the administration of scandalous behavior in the disposal of government owned property under the control of the Hokkaido Colonization Commission.

After these memorials of the Junior Councilors had been submitted to the Throne, they formed the basis for a discussion held between Chancellor Sanjō, Minister of the Left Prince Arisugawa, and Minister of the Right Iwakura. Then later, in July 1881, when Iwakura had gone to the Arima Hotsprings for recuperation, he sent to Sanjō and the Prince the procedure to be followed in drafting the constitution and also a document entitled General Principles, requesting that this material be transmitted to the Throne.

The drafting procedure allowed for three alternatives in drawing up a constitution. The first suggested that the work be done by a constitutional research committee whose members would be known to the public. The second recommended that the constitution be drafted in secrecy by two offices to be set up ad hoc within the Imperial Palace under the direction of the Chancellor or one of the Ministers of Left or Right. When, completed the draft should be placed before the Council for
deliberation. The third alternative prescribed that the Emperor appointed three or four persons from the top Ministers and Junior Councilors to draft the constitution in secrecy, after which the draft should be submitted to the assembly for debate. Iwakura hoped that one of these alternatives would be decided upon.

In the *General Principles* Iwakura set forth the essential points he considered indispensable to the constitution. After initially stating that the Emperor must sanction the constitution and then mentioning that the law of Imperial Household could be treated separately in an Imperial Household law, the outline proceeded to vest the Emperor with the power: (1) to exercise supreme command over the Army and Navy, (2) to declare war and peace and to conclude treaties, (3) to mint the currency, (4) to appoint and dismiss the Ministers of state and other important civil and military officials, (5) to confer ranks, decorations and titles of peerage, etc., (6) to grant amnesty, and (7) to open, close and dissolve the assembly. Briefly stated, the other points of the outline are these:

1. The Ministers of state shall have a grave responsibility to the Emperor.
2. Laws and ordinances must be countersigned by the Ministers of state.
3. A *Genrō-In* and a popularly elected assembly should be established for the purpose of dividing the legislative power.
4. The *Genrō-In* should be composed of members specially selected as well as from members elected from among the peerage and ex-samurai.
5. The election law for popularly elected assembly members should adopt property qualifications.
6. Whenever the administration and assembly cannot agree on the annual budget, the administration shall carry out, in its entirety, the budget of the previous year.
7. The general rights and obligations of the subjects should be defined.

In conclusion, the outline indicated that the competence of the assembly and the courts of law should also be covered by the constitution. Inasmuch as all the principles enumerated above were embodied later in the Meiji Constitution, it is clear that Japan's fundamental law conformed to the essentials of Iwakura's General Principles. Aside from the procedure for framing the constitution and the General Principles, which were to be forwarded to the Emperor, Iwakura sent to Sanjō and Prince Arisugawa a Summary of explanatory comments to serve as a guide in the drafting of certain crucial provisions of the constitution. Sent at the same time were several suggestions and observations by Iwakura, which, for the sake of simplicity, shall not be treated separately here, because, to a certain extent, they overlap with the contents of the Summary. In his general observations on European constitutional government Iwakura distinguished two major types. One was the English system where Parliament was superior to the king. The other was the Prussian system where the king controlled the administration and appointed ministers irrespective of the wishes of the assembly and political parties. Expressing fear of the potential dangers of splinter parties in Japan and the difficulty of obtaining a different set of qualified Junior Councilors and department Vice-Ministers each time a new Cabinet was formed, he stressed the need for gradualism and singled out the Prussian constitution as the most suitable example of this in Emperor. With respect to the Emperor's personal selection, promotion, and dismissal of major state officers, Iwakura made it clear that appointment of the Premier and the length of the tenure should be governed by the Emperor and not the Assembly. Neither must the ministerial line-up in the Cabinet be left to the discretion of the Assembly. The responsibilities of the state Ministers should be limited to the duties within their own respective competence without binding them to a system
of collective responsibility. The ministers were also to countersign all laws and ordinances. In the matter of the election law, the peerage should be exempt from the property qualifications applying to the popularly elected house. In presenting new legislative proposals, only the government should have the initiative. And Iwakura wanted the government to have the power to carry out the previous year’s budget whenever the administration and the Assembly failed to agree on a new one, or whenever the Assembly was dissolved, adjourned or lacked a quorum. In the last of his comments in the Summary, he urged that proper consideration be given foreign constitutions in the task of defining the rights of Japanese subjects. It is interesting to note that, with the exception of the idea that only the government could initiate legislation, all the tenets of the Summary were incorporated in the Meiji Constitution.

In one of his suggestions, Iwakura admitted that the call for gradualism and the Prussian type of royal control over cabinet appointments ran counter to the political principles espoused by advocates demanding immediate enactment of a constitution. These latter views were expressed in the draft constitution of the Genrō-In and in the one drafted by the Kōjunsha, a social club of business men organized by Fukuzawa Yukichi. Realizing, therefore, the momentous change implicit in the act of adopting a constitution, Iwakura anticipated unbounded confusion unless the Court council rendered a final decision on the constitutional question. Considering it wiser to brook the ephemeral dissatisfaction of public opinion in favor of gradualism, he looked forward with hope for the unerring decisions and planning by the Emperor and his principal Ministers of state. The drafter of Iwakura’s Basic Outline, Summary, and suggestions, incidentally, was Inoue Kowashi.

This conflict between the gradualists and the advocates of haste was thus present within the government, and as soon as the 1881 scandal over the disposal of government property in Hokkaido became public, there were heated charges that this
affair was the doing of the despotic government. Its reprehensible action in Hokkaido was decried as the very reason why organization of a publicly elected assembly was necessary. Obliged to decide upon the creation of an assembly when confronted with such strident opposition, the government dismissed Okuma from office on October 11 when the Emperor returned to Tokyo. After his dismissal, the remaining seven Junior Councilors presented a memorial to the Throne concerning constitutional government. Its contents expressed the need to fix a date for opening the Assembly and the need to frame a constitution that would preserve the admirable aspects of traditional Japanese concepts of government. In order to strengthen the foundation of the constitutional monarchy the memorial suggested that the Genrō-In be composed of the Imperial family, the peerage, and ex-samurai; and that the Army and Navy be placed under the personal command of the Emperor. On the very next day, recounting the establishment of the Genrō-In (1875) and the inauguration of the prefectural assemblies (1878), an Imperial proclamation instructed the public that an assembly would be established in 1890. The proclamation indicated that the national assembly was part of the comprehensive and systematic reforms then being undertaken, and disclosed that in due time another proclamation would lay down the composition and the powers of the assembly. In closing, the public was explicitly warned to refrain from any intrigue or attempt to hasten the assembly’s creation because such action on their part, according to the proclamation, would bring about the failure of the Emperor’s far sighted reforms.

But already prior to this attempt to mollify public opinion, the fear that the extensive agitation for a national assembly would throw Japan into turmoil had led the government, in April 1880, to enact the Regulations for Public Meetings as a measure to suppress political discussion. This enactment forbid liaison among the political parties and the making of political

2. See Appendix 8.
speeches before the public, thus depriving most of the political association of their freedom of action. Being driven underground as it were, the political organizations in each locality began to conduct theoretical and specialized studies on the subject of national assemblies and constitutions, and eventually these studies led to the appearance of privately drafted constitutions. Roughly these may be categorized into three groups: (1) those having something in common with the drafts produced in the Tosa school of constitutional thought, (2) those related to the Köjunsha, and (3) those connected with government quarters.

The drafts in the Tosa tradition are especially distinguished for their French civil rights orientation. They are identified with the name of Tosa for convenience, since this was the home of the Risshisha political party which influenced most of them. The constitutional draft representing the Risshisha party, known as the Nihon Kempō Mikomi-an (Constitution of Japan—A Prospective Draft), was drafted in 1881 by Sakamoto Namio, Ueki Emori and others. The major chapters of this draft dealt with the territory of Japan, the people, the Imperial Household, the legislative, administrative and judicial branches, and with local government. On account of its proposal for a unicameral system and its recognition of the unconditional rights of the people, this draft was strongly democratic in tone. Yet still more thoroughly democratic in tenor was another one by Ueki, who is believed to have been a member of the Rikken Seitō (Constitutional Government Party) of Osaka. In this one, called the Tōyō Dai Nihonkoku Kokken-an (Draft Constitution of Oriental Greater Japan), the federal system was adopted, executive authority was vested in the Emperor, and state revenue could only be disbursed after deliberation by the legislative branch. But more than this, it clearly demonstrated a popular sovereignty point of view by specifying that the "supreme power of the Japanese state shall be vested severally in all the Japanese people". A third draft drawn up in northern
Kyushu by the Chikuzen Kyoaikai belonged also to this line of thought, although it provided for a bicameral system.

The second category of constitutional drafts, associated with the thought of the Kōjunsha club, was conspicuous because of the adoption of English constitutional practices. The Shigi Kempo-an (Private Draft Constitution), framed by the Kōjunsha club, represented this group. It provided for a bicameral system, a qualified franchise, and the rights of the people were restricted by certain conditions. There were no stipulations concerning the law of Imperial succession; and in tax bills the lower house was given supremacy. Though there is no need to mention their titles here, other constitutions, differing in certain respects, were prepared in the Kōjunsha tradition. Some of them were drafted by newspaper publishers. Broadly speaking, this group should include the Nihon Kokken-an (Draft Constitution of Japan), although it was slightly peculiar because of its incorporation of a federal system.

As illustrations of constitutional drafts bearing the imprint of government influence, mention may be made of the drafts belonging to Inoue Kowashi and to Yamada Akiyoshi, both of which look to the Prussian constitution. Similar in style was the Kokken Iken (A Suggested Constitution) put out by the Tokyo Nichi-Nichi Shimbun press. This latter draft stood for the preservation of Japan's peculiar national polity and for making the Imperial Household the leading institution of the state.

None of the aforementioned drafts, except the two prepared by Inoue and Yamada, accepted the idea of a constitution bestowed upon the people by the Emperor. Instead they were based on the concept of social contract. It is worth noting that even the Tokyo Nichi-Nichi Shimbun press, despite its adherence to the principle that sovereign power lay with the monarch, confirmed the propriety of a constitution by social contract. Almost all other newspapers argued that sovereignty resided in the people.
4. The Land Tax Reform and the Conscription Order

The abolition of feudal institutions and the creation of a new government were accompanied by a great abundance of reforms, among which the Land Tax Reform and the Conscription Order enactments are outstanding. The former is important since it was an attempt to modernize traditional agrarian institutions that formed the material foundation of feudalism. The latter commands our attention as an endeavor to set up a universal conscription system after destroying the privileges of the bushi, the living soul of feudalism. By the implementation of these two measures, the abolition of political feudalism may be regarded as completed.

a. The Land Tax Reform

The basic framework of the land system which prevailed in the Edo Period had originated with the cadastral surveys begun by Toyotomi Hideyoshi in the late sixteenth century and finished by the Bakufu in the Seventeenth century. The purpose of the cadastral survey was to measure the land acreage and its standard yield or taka which formed the basis of the land tax as well as the basis of fief grants. In the case of a single village, its total yield was known as the village taka. For example, if a village were surveyed and found to produce 500 koku (1 koku: 5.11 barrels) of unhulled rice, its total yield would be set at 500 koku. In granting a fief to a retainer, the lord calculated its size in terms of the total yield of the area granted, whether the area was less than one village or included several. Since fiefs granted to samurai of daimyo status were no less than 10,000 koku in yield, they were quite extensive in area. The largest fief in Japan, held by the Maeda house of Kaga, had a total yield of 1,020,700 koku, which represented the gross total of all village yields registered for the villages under the jurisdiction of the Maeda family.

The tax collected from the land during the Edo period was assessed according to this same village yield. However, the as-
essment was not imposed on the individual villager, but levied on the village as a whole. Hence if the tax rate allotted sixty percent of the village yield to the lord and forty percent to the villagers, then a village with a 500 koku yield would deliver 300 koku of it to the lord. The registered village yield usually remained unchanged over a period of years because the expense incurred in carrying out cadastral surveys and other factors prevented frequent measurements of the actual land yield. But to assess land revenue over a period of years on the basis of a formal and unchanging yield was unrealistic due to the possibility of bumper crops or failures in any given year, and because of improved cultivation techniques, or natural disasters that might remove the land from cultivation altogether. Therefore, after 1733, the Bakufu began to allow its district official to inspect crops shortly before harvest. This inspection system, in reality a partial survey of a village’s crops, provided the necessary data for averaging the total yield of the village and for determining the amount of land tax to be collected. Yet even before this system was adopted, it had been possible, by reason of crop failure or damage, for the peasant to request a crop inspection and thus obtain a reduction in his normal tax obligations. Still an inspection of the fields each year was too cumbersome to be practical and eventually a method devised earlier in 1721 came into widespread use. By this method the land tax was levied according to a fixed rate (jōmen). That is, upon village request, its tax rate for the past several years was examined and an appropriate revenue standard was established. Thereafter, each year, the village yield was subject to this assessment, with deductions being made in case one third or more of the crop was a failure. The above description applies to the taxation of paddy land. Taxation of dry farming plots initially followed the annual inspection system, though after 1733 this type of land was governed permanently by the fixed rate method. The annual land tax on dry land fields was paid in gold, silver, and copper as a substitute for payment in kind.
In the plain area around Edo and in the Tōhoku region all such payments were in the form of a copper coin called *Eiraku*, while in the Kyoto-Osaka area villages which had both paddy and dryland fields paid a third of the tax in silver.

Although this is only a brief glimpse of the Edo Period tax structure as it related to the land, and while it fails to take into account local variations, it nevertheless depicts the general situation at the time of the Restoration. As these entrenched practices were not readily susceptible to reform, the government decided in September 1868 to respect existing practices for a year or two on the pretext that it would be contrary to public sentiment to set up new tax laws for the districts without taking local conditions into consideration. This decision applied primarily to the newly established prefectures under the direct control of the central government, though it also affected other areas indirectly, for the decision required the fiefs confiscated from former vassals of the Shogun to be placed under the management of neighboring prefectures and domains. But working steadily toward a reform of the land tax system, the government issued a series of orders between 1869 and 1872 that were designed to prepare the way for converting the traditional tax in kind to tax payments in specie. The first of these orders in January 1869, confirmed that all land in villages and towns, except gift land, shrine and temple land and other tax exempt land, belonged to the holding farmers and townsmen. Then in 1870, the Finance Ministry established a procedure for inspecting crop yields; though a year later in March the Council of State announced that uniform tax legislation for all of Japan would soon be enacted and ordered the domains to abstain from unilateral action in fixing the tax rates. Following the issuance of these directives, the customary practices of paying certain land revenue one-third in rice, one-tenth in soybeans and in silver were discontinued in April; and, excluding the principal rice tax for paddy land, such surcharges as the *kuchimai*, *rokushakumai* and *komonari* were ordered converted to a cash pay-
ment based on the average November price of high grade rice. Like rice, other deliveries in cereals were to be converted to cash payments in the same fashion. Two other legislative measures allowed the villages taken from the control of shrines and temples to convert their taxes to money payments under certain conditions, and gave the peasants at large the right to cultivate whatever crop they chose. Finally, in September 1872, the Council of State removed all qualifying conditions on cash payments and made them optional.

By these preliminary measures the traditional deliveries in kind were being gradually replaced by payments in cash, yet it was the mission of the Land Tax Reform of 1873 to carry this policy to completion on a nation wide scale. Inasmuch as the major portion of the government's revenue was derived from the land tax, the government viewed with serious concern the problem of collecting a sufficient amount with regularity. The crux of the government's problem lay in the difficulty of exchanging the rice collections for currency without falling victim to the fluctuating market prices for rice, and in turn, suffering from financial instability. To remedy this situation and to guarantee the treasury an uninterrupted supply of funds, the government decided to assess the tax according to the value of land and to collect it in specie.

The first proposal concerning these changes in taxation was made in July 1870 by Kanda Kōhei. He could anticipate the difficulties of controlling illicit activities on the part of officials that were likely to arise from the complexities of conducting cadastral surveys, crop yield inspections, and from the deliveries of land revenue to the government. Furthermore, foreseeing the hardships and disadvantages that tax payments in rice would work upon the tax payers, he thought it preferable to permit sale of land and to base taxation on the value of the deed. This system would circumvent the evils of having too many official involved in the collection of revenue, though on the other hand it would be necessary to authorize the sale of
land and have a deed made out for each single plot. The value of the deed was to be determined by the landowner. Although there might be a danger that the landowner would inscribe a price on the deed that was below par, this could be avoided by compelling the owner to sell the land to anyone willing to purchase it for any sum exceeding the face value of the deed. If he refused the face value, Kanda believed that the price listed on the deed should be revised in accord with its real value. Perhaps influenced by this proposal, the Council of State questioned the Civil Affairs Department at this time in regard to making a standard and uniform procedure for assessing the land tax; and, in the fall of 1871, Finance Minister Okubo and his Vice-Minister Inoue Kaoru petitioned for the removal of the ban forbidding the sale of land, and also requested legislation that would assess a tax on land at one tenth its value. Again, shortly thereafter, they directed an inquiry to the Central Chamber concerning the issuance of land titles within metropolitan Tokyo.

Deciding, therefore, in February 1872, to issue deeds for land and to collect the land revenue, the government did away with the distinction which had traditionally separated the areas occupied by the bushi class and the tradesmen in Tokyo; and by April had announced a number of basic laws to govern the transactions in land. This legislation included the Regulations Governing Issuance of Land Titles and Collection of Revenue, the Abrogation of the Ban Prohibiting the Permanent Sale of Land, and the Regulations Governing the Delivery of Land Titles in Land Sales and Transfers. These last regulations required that deeds be acquired in the future whenever any land was sold or transferred. The ban on land sales, in effect ever since 1643 by order of the Bakufu, had been duplicated by most of the domains during the Edo Period, yet with its nationwide repeal the sale of land not only became legitimate but deeds as well now reached even the land of the peasant.

The next petition concerning reform of the land tax came in June 1872 from Mutsu Munemitsu, the governor of Kanagawa
prefecture. Though almost identical in content to the views of Kanda Köhei, Mutsu suggested that the land value should not be based on a declaration filed by the landowner, but determined according to the quality and fertility of the land. His views on this point were the ones accepted at the time of the reform. Becoming Chief of Revenue soon after presenting his petition, Mutsu notified the districts in August of the government's intention to create a uniform tax procedure that would be fair and impartial for all of Japan; and the Finance Department revised the *Regulations for the Sale of Land* so that it became obligatory for land titles to be granted to all persons then in possession of land. In June of the following year the Council rescinded the use of the term *Kokudaka* or crop yield in connection with both paddy and dry land, stating that taxation, in all cases, would be based on the *tan*, a unit of land approximately equivalent to a quarter of an acre.

Having made the preparatory arrangements, it was time now to initiate the reform itself, thus Okuma, the Chief Secretary of the Finance Department, addressed an inquiry to the Central Chamber in May 1873. This inquiry, which had been passed by the prefectural governors' conference, sponsored earlier in the same year by the Finance Department, recommended that land be taxed at three percent of its value and that a separate commodity tax be created at a future date. At this early date it was difficult to make a distinction between a land tax and a tax on land products, since heretofore the two had been combined; but the inquiry advised that, after the commodity tax was established and had developed as a revenue source, a distinction should be made so that the land tax could be reduced to one percent of the value of the land. Accompanying this inquiry was a request for the tax reform to be proclaimed in an Imperial edict, like the *Conscription Order*, because it was felt that the reform would bring in its wake one of the most comprehensive changes in the centuries old customs of Japan. Accepting the proposals, the government promulgat-
ed the *Land Tax Reform Regulations* on July 28. Proclaimed simultaneously, an Imperial edict informed the public that the Emperor desired to carry through this reform in order to eliminate the diversity and inequities of the old system.¹

The substance of the reform regulations indicated that the government would not implement the tax changes prior to making a thorough investigation of the tax potential, nor would it seek to enforce the reform immediately in all the districts. The law could be put into effect in a single rural division (*gun*) or lesser district (*ku*) as soon as these limited subdivisions had been surveyed; it was unnecessary to wait until the entire prefecture was ready for application of the law. The reform regulations also made no allowance in the regular three percent tax rate for bumper crops or crop failures. However, for natural disasters, tax exemption could be granted after an on-the-spot inspection; and the tax immunity, depending upon the degree of damage, was to remain in effect until the land could be returned to cultivation. The distinction between paddy and dry land was discarded and all land in crops was simply designated as arable land. All other land was classified as pasture, forest, waste land, residential land, or the like. With respect to the future establishment of a separate commodity tax, the regulations stipulated that as soon as taxes on tea, tobacco, lumber and other items exceeded two million yen there would be a proportionate curtailment of the land tax; and as this new source of revenue increased the land tax would finally be reduced to one percent. No grievances concerning heavy tax impositions, except for extreme cases, would be admitted until the tax reform was accomplished. As to the land still receiving the annual preharvest inspection, the regulations prescribed that such land would be governed in the meantime by the fixed rate or *jōmen* system of the Edo Period.

Essentially, this covers the high points of the *Tax Reform Regulations*. The significance of the reform is found in the

¹ See Appendix 9.
fact that the land revenue was not levied on amount of production but on land value, and in the fact that it had to be paid in specie rather than in kind. The three percent figure for the tax rate was decided upon because this coincided roughly with the amount of the crop (about half of it) which the peasant had been accustomed to paying in taxes prior to the reform.

The actual work of the tax reform commenced in 1873, and, though paddy land, dry land, and residential land were dispensed with for the most part by the year 1876, forest and waste land posed special problems and were thus not completely disposed of until 1881. Hence the course of the reform was stretched over a nine year period. In August 1872, at the beginning of the reform, the Land Tax Reform Office was created within the Bureau of Revenue to take charge of the undertaking. But later in March 1875, the Executive Office for Land Tax Reform, which stood between the Departments of Home Affairs and Finance, was given full responsibility for all matters pertaining to the reform, and this office remained active until closed down in June 1881. Under the direction of the central government, the actual work required by the reform was performed primarily by the prefectural offices with the participation and cooperation of the representatives of each district (ku), town and village. In consequence of this large scale operation, the expenditures of the central government, that were demanded by the Executive Office for Land Tax Reform and by the prefectural offices, amounted to ¥8,010,000 by the end of 1881. Local expenditures totaled ¥29,090,000. The Amount of Land affected by the reform is as follows:

<table>
<thead>
<tr>
<th>Chōbu (acres)</th>
<th>Value in Yen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arable and Residential Land</td>
<td>4,840,000 (11,900,000)</td>
</tr>
<tr>
<td>Forest, Waste Land, Misc</td>
<td>77,470,000 (18,675,000)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>82,310,000 (30,575,000)</strong></td>
</tr>
</tbody>
</table>
Insofar as the government had decided beforehand on the matter of cash payment and on the three percent rate, the most important business of the reform was to conduct a survey in order to determine the value of the land. But first, government owned land had to be differentiated from privately owned land, since the tax was levied only on the latter. It is unlikely that this caused many problems where paddy, dry land, and land located in towns were concerned; this however, was not the case with forest and waste land where many private holdings were reputedly incorporated into land held by the government.

To determine the value of private land, the villages first surveyed every parcel of land within their boundaries and then submitted the estimated value to the government for inspection. If they coincided with the values independently computed by the government in accordance with a fixed standard they were provisionally approved, provided they were not more than ten percent lower than the authorized process. When the estimates of the village were ten percent higher than the government standard, they were to be approved only when there was a justification for the higher values. If values which were below the proper government standard could not be justified a resurvey was ordered.

The next step taken was a direct inspection of the land to determine the correctness of the provisional decision. This was achieved by measuring each plot of ground and its yield, and by entering the data of this survey (plot location, acreage and owner) into a land register. At the same time that the village officials compiled this land register, they also prepared a map register in which they sketched the configuration of each plot. When this was completed a tax reform official visited the village to compare the two registers with the land itself in order to make certain that there was no overlapping or omissions of land. In practice, however, this inspection by the official was usually limited to only a few places within the village.
In formally setting the value of land, the yield of a quarter acre of land was calculated first in terms of a cash equivalent. From this sum the fertilizer expenses, the villages expenses (one-third of the land tax), and the land tax were deducted, and the remaining amount was divided by a fixed rate to obtain the land value. For the land held by independent cultivators, the entire rice yield was immediately computed in terms of cash; and for land held by tenants, the rent paid in kind (rice) was the basis for calculation. This procedure, incidentally, was used by the government in forming the provisional decision on land values. But because it was impossible in practice to apply this method to each strip of ground, a system of land grades, determined by the land's location, fertility and access to communications, was established for the sake of fairness. By the method just outlined, the value per quarter acre of each grade of land was set and the value of every parcel of land belonging to each grade was thus readily evident.

The above procedure, however, only presents the formal method of determining land values. For the government intended to collect about the same amount of revenue as collected before the reform, and consequently it fixed the total value of the land for Japan as a whole and then apportioned this sum among the different prefectures according to its own discretion. It is not difficult, therefore, to envisage the conflict between the results of this tax scheme and the results of the direct survey. In apportioning the land value among the prefectures, the government had tried to equalize the tax burden by diminishing taxation where existing rates had been too high and raising taxes where they had been too low. Yet there was still a discrepancy with the findings of the direct survey, and, although there were probably no complaints where the tax obligations were lessened, grievances were voiced in those localities where the obligations were augmented. But the persons who expressed their dissatisfaction were exposed to the charge that "opponents of the government are traitors to their country," and, on oc-
cision, they were forced into acquiescence. For this reason each district experienced some outbreak of violence in connection with the tax reform, the most famous for this being the prefectures of Mie and Ibaragi.

So fierce was the opposition to the tax reform that the government, in January 1877, lowered the tax rate from three to two and one-half percent. But even before this action was taken, the Council of State, in May 1874, had added another provision to the Land Tax Reform Regulations. This provision specified that, irrespective of any fluctuation in sales value for a period of five years subsequent to the reform, the tax would still be assessed according to the land's value as initially determined during the tax reform. In 1880 the life of this clause was extended another five years.

In consequence of this tax reform it is important to remember that a modern right of ownership was established in Japan, a subject to which more attention will be given later when ownership is treated.

b. The Conscription Order

During the Edo Period, military service was an exclusive function of the bushi class; it was not a matter of concern to commoners, nor were they allowed to concern themselves with it. According to the reminiscences of Itagaki Taisuke, he was astonished during the attack upon Aizu, in 1868, to find that no one but bushi were entrenched in the castle, and it was surprising to him to see such complete indifference about the attack on the part of the general populace. Their lack of patriotism, he thought, was essentially due to the gulf existing between the governing class of samurai and the common people, and also because the samurai kept all the amenities of life for themselves without allowing them to be shared. For Japan to achieve its goal of industrial and military strength, and for the sake of social accord and pleasures for all, Itagaki felt that the samurai should be relieved of their professional military and
political prerogatives for a system of social equality and universal conscription. But no matter what he thought on this question, it was bushi class in the Edo Period and they alone who engaged in affairs of a military nature. To abolish their profession and enforce universal conscription in its place required the enactment of the *Conscription Order*.

Following the formation of the Meiji government, it possessed no army that could be called its own. The government attacks on Edo and against the domains in the Northeast as well as the attacks against those on the Japan Sea side were all carried out with the use of troops obtained from a number of different domains. To acquire a position superior to that of all the domains, the new government was obliged to be preeminent in both military affairs and finance. But without taking up the question of finance here, the possession of a powerful armed force was an utter necessity. For this reason Ito Hirobumi, then governor of Hyogo prefecture, petitioned in November 1868 that the domain troops which had returned victorious from the campaign in the Northeast be formed into a regular army for the Court. But of course this was impossible due to the government's straitened financial circumstances.

In the early months of 1868, an official with direction over the Imperial Body Guard had been appointed within the Office of Military Defence, although at that time the military force under direct Court command was very small, consisting chiefly of rural samurai from Totsugawa in Northern Kyushu. Then in June the Office of Military Defense was renamed the Department of Military Affairs, receiving Omura Masujirō as Assistant Vice-Minister. From the domains, he requisitioned sixty troops for every 10,000 *koku* registered, assigning 10 of them to the Kyoto-Kinki area and the other fifty to local duty. Being impossible in fact, however, to obtain compliance with the requisition order, these troops were exempted from service in April 1869 when Omura was placed in charge of restoring order to the Northeast.
In October 1868, the government denied the prefectures the right to act independently in formulating regulations for conscripting troops, and in May 1869 this restriction was made more strict. Shortly thereafter, when the domains were surrendered to the Throne, the Department of Military Affairs was renamed the Department of War, though Omura continued as the Vice-Minister. His contributions to the establishment of the Japanese Military system were substantial and many, but before the arrangements for universal conscription were made his life was cut short in December 1869 as a result of an attack by an assassin. The details of the conscription system were left to his successor Yamagata Aritomo.

About the time Omura was assigned to bring order to the Northeast in April 1869, Yamagata had been ordered to Europe to study the military organization of both Prussia and France. Upon return to Japan in September the following year, he was appointed Assistant Vice-Minister of the War Department. But Yamagata resigned from his office on account of the diversity of military organization and the extreme disunity that it caused, as well as for the fact that there was no one with any influence in the War Department. To cite a few illustrations of the diversity that hampered Yamagata, the French military practices prevailed in the Osaka Military Academy, the English in Satsuma, the Prussian in Kishū domain, and the Dutch and other methods governed elsewhere. When Iwakura acquiesced, however, to his condition that unification of the military be firmly carried out and that Saigō Takamori be commissioned to head Army Administration, Yamagata accepted the office.

In October, after taking office, Yamagata first set the number of regular troops for each domains at 60 per 1,000 koku. Then, in connection with the decision to follow the English in organizing the Navy and the French in organizing the Army, he ordered each domain to gradually modify its military organization along French lines. In the course of the reorganization, the Prussian defeat and occupation of the French in the Franco-
German War made Yamagata desirous of adopting the Prussian Army system, but he was obliged by circumstances to forge ahead with his original plans. Even so, the predominance of French influence disappeared, without resort to special measures, owing to the adoption of military practices from a number of different foreign countries.

The next step in revolutionizing the military came in December 1869 with the government's enactment of the Conscription Regulations. As the first step in universal conscription, the regulations ordered Hokkaido, the prefectures, and the domains, as of February the following year, to select men without regard to family origin who had a sturdy physique and would be fit for service as common soldiers. Five men per 10,000 koku were to be sent to the Osaka branch of the War Department. The age limit was set between twenty and thirty years, and the period of service at four years. However, the regulations exempted anyone who was head of a household, or who was the sole son of aged or disabled parents. Broadly speaking, this enactment certainly amounted to conscription, though the levy on each domain according to its koku yield and the fact that the central government did not directly conscript the individual were two factors which made the new system resemble the old. Nevertheless, the explicit statement in the regulations which pointedly disregarded the samurai, the footsoldier or the commoner background of the draftee signaled the first step toward the Conscription Order's principle of universal training. Yet this attempted conscription of troops did not produce any visible results, for the government apparently lacked the real power to carry it out. In January, following upon this ineffective legislation, there appeared regulations directing the formation of a regular army in every domain.

Now as we have mentioned, before Yamagata would accept appointment as Assistant Vice-Minister of War, he demanded that Saigō Takamori be welcomed by the government as head of Army Administration. The government, impressed by the
need for a strong central authority and just then endeavoring to have the lords of Satsuma and Chōshū as well as Saigō come to Tokyo, immediately met Yamagata’s condition. With this basic agreement made, Yamagata accompanied Iwakura in early 1871 on the latter’s mission as Imperial emissary to Kagoshima. In the discussions at Kagoshima, Saigō pointed out that the Imperial guards were composed of only two battalions of Chōshū troops, and he proposed that the guards be augmented by troops from Satsuma and Tosa. This was agreed upon by Yamagata.

Saigō thus proceeded to Tokyo where the government resolved to have the three domains despatch a total of 20,000 troops. The troops detachments arrived between May and July.

Proceeding with plans to build up the military, the War Department, in May 1871, established a corps area headquarters garrison in Ishinomaki (now Miyagi) prefecture for the Tōzandō area, which stretches north through the mountainous area from Kyoto to the northern tip of Honshū. It established another garrison at Kokura in northern Kyūshū to serve the Kyushu area. Later in August when the replacement of the domains by prefectures gave birth to a new centralized form of national government, the War Department was placed in charge of castles, cannons and other arms located in all parts of Japan. Therewith the domain army units were disbanded, corps area headquarter garrisons were created in Tokyo and Osaka, and the detachments in Ishinomaki and Kokura were redesignated as the garrisons for Northeast and Western Japan respectively. To provide military personnel for the different corps area headquarters, the War Department conscripted the old domain military units.

When these arrangements had been made and the time had come to create national defence forces, a petition bearing the names of Yamagata and his two Assistant Vice-Ministers (Kawamura Sumiyoshi and Saigō Tsugumichi) was presented to the government. Whereas it defined the immediate objectives of the War Department as being concerned with internal problems,
and future ones with matters external to Japan, these were admittedly inseparable and the War Department was advised to proceed to shore up the defences against the foreigners. For if these defensive measures proved effective, there would be no cause to have fear of any domestic developments. The petition then outlined three objectives for Japan: 1) defense of the Japanese interior; 2) defense of coastal waters; and 3) the acquisition of funds for the Army and Navy. To achieve the first aim it would be necessary to create a regular and a reserve Army, with special attention being paid to the reserves. Noting that the recent defeat of France was due to the effectiveness of the Prussian reserves, the petition called for the immediate adoption of the Prussian system. At the age of twenty, men unimpeded by family responsibilities or physical defects were to be put in the ranks without concern for their social status, and they were to be returned home upon completion of service. In this way, argued the petition, every man in Japan would have army experience and no home would be without defense.

In the same year, Tani Tateki, a Secretary of the War Department, also submitted a memorial calling for universal conscription. But in his plan the different social strata were not to serve in the military on an equal basis. He wanted all youth of samurai descent to be drafted into the army first, and then have conscription extended to the commoners. After all, the national form of government for Japan was not yet settled, and until the real and present distinctions existing between samurai and foot soldier disappeared it would be difficult to impose equality on the four social classes of samurai, artisan, merchant, and peasant. Thus Tani suggested that superior individuals from among the commoners be selected and entered individually into the units composed of ex-samurai, and that the other commoners drafted from each district be formed into units composed of ex-foot soldiers. While Yamagata and others of his bent believed that equality in universal conscription should
be accepted, still even Yamagata was of the belief that the ex-
samurai should be the first to submit to military service. Hence,
the call for equality in conscription was no doubt heavily colored
with concepts of feudal status.

In April 1872 the War Department was divided into the
Departments of the Navy and the Army, with Yamagata be-
coming Vice-Minister of the latter.

Later in the same year, on December 27, in order to prepare
public opinion for conscription, an edict from the Emperor and
an announcement from the Council of State were issued to the
public. The edict pointed out that conscription had existed in
ancient Japan under the Imperial government and that the
dichotomy between commoners and samurai had only developed
since the Middle Ages; and now because of the exigencies of
the time and the needs of national security Japan would have
to revive the essential features of the ancient military system,
with certain allowances being made for foreign practices.
Though somewhat similar to the edict, the announcement by the
Council of State stressed that recent reform had liberated the
commoners from the traditionally overbearing and idle samurai,
and now as the different classes were social equals they would
all be expected to render equal service to their country. It made
quite clear that conscription would deprive the samurai of his
profession. Considering the times, this was indeed a bold
proclamation.

Due to its very nature, the new method of conscription was
subject to much opposition. According to Yamada Akiyoshi,
a Brigadier General who regarded the draft as premature, na-
tional conscription should be carried out after the officers and
non-commissioned officers had received their training and after
the people had been given military drill. This was the view
point of persons who contended that the time was not yet ripe
for conscription. Other argument rejected the conscription
plan completely. Though we have seen by his reminiscences

2. See Appendix 10.
that Itagaki perceived the need for universal conscription at the time of the attack on Aizu, he was fully opposed to the government's conscription program. It was his argument that the sons of commoners, who knew nothing of military affairs, would in the long run be unsuited to their duty if forced into military service. This in brief was the sentiment which desired to preserve the function of the samurai. But Yamagata had already been skilled enough prior to the fall of the old feudal system to create a courageous cavalry unit in his home province of Chōshū by conscripting commoners, and, owing to the additional experience gained from the inspection of armies in Europe, he would not yield an inch in embarking up his conscription program. Saigō's position on the issue is not evident, but there can be no doubt that absence of positive opposition from Saigō made its implementation possible.

The *Conscription Order* was made public on January 10, 1873, about two weeks after the edict on conscription had been proclaimed. Its enactment was due in large part to the efforts of Nishi Amane.

The terms of the *Conscription Order*, which shall be partially outlined here, required the Japanese man to be conscripted at the age of twenty and assigned either to the Army or Navy. The Army was divided into 1) the Regular Army, 2) the Reserve and 3) the Militia. The conscripts were assigned to one of the five Army branches (artillery, cavalry, infantry, engineers and transportation) according to their physical fitness, and were kept in their own corps areas to perform duty at local garrisons. A term of service in the Regular Army lasted for three years, and upon discharge the ex-soldiers were required to enter the Reserve. When assigned to the First Reserve the individual received two years military training and a refresher tour of duty each year, since this reserve was subject to immediate call in time of war. Apart from the members of the Regular and Reserve forces, all other men between seventeen and forty years old formed the National Militia and were entered on the
Army rolls. In time of national crisis they could be called into service to perform garrison duties within their respective corps areas.

On January 9, one day before the promulgation of the Conscription Order, the four existing corps areas were replaced by six military districts and in each was established a corps area headquarters. These were located in Tokyo, Sendai, Osaka, Nagoya, Hiroshima and Kumamoto. The standard number of troops for each of the six districts totaled 31,680. Since at this time there were about 400,000 ex-samurai, approximately one third of them become members of the Regular Army. But the real problem at the start of the conscription program was the small number of conscripts. Being limited to the district of Tokyo, the draft only brought a few more than 15,300 into the army by the end of the first effective year (1873) of the Conscription Order. The draft was implemented in the Osaka and Nagoya corps areas for the first time in the year 1874.

The attitude of the Japanese subject toward the Conscription Order was summed up by Yamagata. As he expressed it, the sons of peasants, artisans and tradesmen did not have any understanding at all about military obligations or the right to protect their country. Their habits of cowardice and subservience could not be changed overnight, and there were many who hated military service. Further than this, the conscripts of samurai descent felt disgraced to be placed next in rank to men born of peasants and townsmen, and they constantly ranted that the clod hoppers and simple headed tradesmen could never stand up to the rigors of battle. But due to the remarkable results of training, displayed by the Army in suppressing the revolts in Saga, Hagi, Kumamoto, and Kagoshima in 1876-77, there was no one left to malign the new system.

So staunchly opposed to military service were the commoners that they made every effort to avail themselves of the rather broadly defined rules on exemption. These rules exempted anyone who (1) was less than five feet and one inch
tall, (2) was unfit for military service because of a naturally weak constitution, (3) was an official of the central government, including prefectural officials and those beneath the regular (hannin) grades, (4) was attending an army or naval academy as a student (5) was a special student in government school (including schools sponsored by the Departments of Education, Public Works and Industry, and the Colonization Commission); was receiving an education in the West, was a medical or veterinary student, or possessed a teacher's certificate, (6) was the head of a household, (7) was an heir either to his father or directly to his grandfather, (8) was the sole son or grandson, (9) had been punished for a crime with imprisonment or had received a heavier penalty, (10) was in charge of the household due to the illness or incapacitation of his brother, (11) was actually taken into his wife's family as an adopted son, or (12) who was the sole brother of a person already in military service. Among these provisions, numbers three and five were recognized privileges for persons who were or had been in special positions, and they ran counter to the spirit of equality which was so much in the public ear. Especially important with respect to the inequality of the conscript system was the arrangement which permitted military services by proxy. The proxy system allowed anyone called into service for either the Regular or Reserve units to evade service by the payment of ¥270. Thus persons of wealth obtained the privilege of buying exemption. This constituted the major exception to the principle of equality. Provisions six through twelve, with the exception of number nine, were service exemptions based on family reasons, but because of much overlapping and vagueness they were used as loopholes in the law. Provision twelve, which concerns an adopted son (yōshi), probably meant at first a son adopted for the purpose of making him the heir, but since the literal version simply mentions adopted son without further qualifications the abuse of this regulation was widespread. It is rather clear by these different provisions that the government
went to some extent to preserve the family system. In addition to the types of draft evaders already mentioned, others took advantage of the imperfect family registration system to alter their registration or to transfer their domiciles to Hokkaidō or the Ryūshū Islands where the *Conscription Order* was inoperative.

Besides the general opposition to the draft, there were other more specific protests. For example, the so called "blood riots" broke out all over Japan when the unrest and dissatisfaction against the new government was coupled with a misunderstanding of a sentence in the *Conscription Order*. The sentence concerned, when read carelessly, made it appear that conscription was a tax taken in blood, though actually the sentence was alluding to a term ("blood tax") in common parlance among Westerners which referred to the shedding of blood on behalf of one's country. Again, when the dissatisfaction generated by the loss of the samurai’s exclusive right to make war was combined with his irritation over the 1876 ban on sword wearing, the revolts in Kumamoto, Akizuki, Hagi and elsewhere were no doubt the result.

Despite the enactment of the *Conscription Order*, this did not mean that enlistment for elite troop service was completely abandoned. For in the preamble of the *Conscription Order*, Army personnel were classified into volunteers and draftees. After becoming thoroughly versed in all the techniques of combat through several years training, the volunteers were to be formed into a unit of elite troops, though the *Conscription Order* provided for their inactivation at a future date for fear that their existence as a special unit might prove detrimental to the Army. Yet practical considerations prevented their dissolution, inasmuch as volunteers, mostly ex-samurai, were recruited for military service in the 1874 Saga Revolt and in the 1877 campaign to suppress the rebel forces of Saigō Takamori. In certain cases, even the prefectures made it a point to recruit volunteers. Still, regardless of the value of the voluntary
enlistees, the startling achievements of the conscript Army in the campaign of 1877 enabled the government to consolidate public opinion in favor of conscription.

Afterwards, the *Conscription Order* underwent minor changes, and in 1879 it was completely revised. The purpose of the revision was primarily aimed at changing the clauses concerning exemption, for which a number of specific new categories were created. In the changes, the privilege of exemption for the individual who was simply an adopted son but not a legal heir disappeared. Also the names of the First and Second Reserves were slightly altered. Later again in 1889 the entire text of the Conscription Order was amended.
5. THE GROWTH OF LOCAL GOVERNMENT

Local government in the early Meiji Period may be divided into two phases by the enactment in 1878 of the Three New Laws, whose full titles are the Regulations for the Organization of Rural Divisions, Cities, Towns and Villages, the Prefectural Assembly Regulations, and the Local Tax Regulations. Prior to this legislation, the government had endeavored to standardize local government, but without success; and despite the issuance of uniform regulations considerable diversity had remained in the localities. However, as a result of the Three New Laws the diversity succumbed to order. This change may be partly explained, it seems, by the fact that the government had gained the reputation of being strongly entrenched after having suppressed the insurrection in Kyushu (1877), and it was able therefore to extend central authority to even the most remote areas of Japan.

a. Local Government Prior to the Three New Laws

The aspect of local government that deserves attention first consists in the developments which lead up to the elimination of the domains and the creation of the prefectural system. In late January 1868, during the same month that the Restoration Order announced the Emperor's new active role as direct ruler of Japan, the Court commissioned Prince Yoshiaki as Generalissimo in charge of the anti-Bakufu forces and, for the purpose of bringing peace and order to all parts of Japan, further appointed a Governor General of the Imperial Gendarme to each of the circuits (San'in, Tōkai, Tōzan, and Hokuriku) as well as to Kyūshū, Shikoku and to the Chūgoku area in Western Japan. In March, Prince Arisugawa, the Supreme Head, was made Supreme Governor General for Subjugating the East.

On their way to the various circuits, these Governors General confiscated the possessions of the Bakufu and those of the rebels, placing them under the control of Shogunate vassals
who were loyal to the Court or entrusting them to loyal or neighboring domains in the absence of other suitable caretakers.

Then in February and March, as preliminary steps to prepare the way for a centralized prefectural system, the Government ordered a survey of the holdings belonging to the Bakufu and the insurgents. For supervision of the former possessions of the Bakufu it sent to the circuits a number of Itinerant Inspectors who were recommended, upon government request, by several domains including Marugame in Shikoku.

Because of their opposition to the Court, the domains in the Northeast were sharply reduced in size and their confiscated lands were temporarily placed under the jurisdiction of Kubota, Hirosaki and other domains. Shortly afterwards this confiscated land was placed under the administration of the provisional government of Ōu prefecture.

Immediately upon taking the Bakufu lands, the government set up corps area headquarters (chindai) at strategic positions on the newly acquired territories. Among these were the Yamato, Osaka, and Hyōgo corps area headquarters which were set up in February 1868. Though they were government offices engaged in civil administration, they were nevertheless called corps area headquarters because of the military forces under their command. Between February and March the Osaka and Hyōgo headquarters were redesignated as saibansho (courts), yet their function remained that of administering civil government rather than justice. The Yamato Corps Area Headquarters was renamed the Governor General of the Imperial Gendarme of Yamato. Shortly thereafter administrative courts were also created in Nagasaki, Kyōto, Ōtsu, Yokohama, Hakodate, Kama-matsu, Niigata, Tajima-Fuchū, Sado and in Mikawa.

But, according to the Seitaisho which was proclaimed in June of this year, local government was to be administered by domains and prefectures (rural or urban). Consequently, the different saibansho or civil administrative courts together with the Governor General of the Imperial Gendarme of Yamato were converted to the status of prefectural offices.
With respect to the administration of Edo, the city’s government was taken out of the hands of the Governor General of the Tōkaidō (Eastern Sea Circuit) after the Edo Castle was evacuated in May, and then delegated to the two existing Town Magistracies: one in the northern half of Edo and the other in the southern half. On July 8, 1868, the Edo Corps Area Headquarters was established and placed under the command of Prince Arisugawa. At once the Town, Finance, and Shrine and Temple Magistracies were each replaced by the Municipal, the Civil, and the Shrine and Temple Courts respectively, although these continued to carry out the separate functions of the defunct magistracies. While establishment of the Edo Corps Area Headquarters was preceded a week before by the appointment in Kyōto of a magistrate for Edo prefecture, which suggests that a prefecture for Edo had come into momentary existence, the prefecture as such never came into actual existence owing to the rapid creation of the Corps Area Headquarters for Edo. The territory under the authority of the Edo Headquarters was defined in July so that it included the thirteen provinces which stretched all the way from the Izu Peninsula to the northern tip of Honshū.

On September 3, 1868, Tokyo prefecture was formally created and the city of Edo was renamed Tokyo. On the same day, the Edo Corps Area Headquarters was disestablished and replaced by the Chinshōfu, which served as a part of the central government for Eastern Japan in a status comparable to the Council of State which was based in Kyōto and exercised government over Western Japan. The newly appointed commanding general of the Chinshōfu was Sanjō Sanetomi, who was then a Chief Minister of State in the Kyōto government. As provided by the Seitaisho, there was a three-fold division of powers within the Chinshōfu. The commanding general was given final authority in all matters pertaining to the Eastern provinces. The Senior (gijō) and Junior Councilors (sanyo) were to follow the procedure of the Central Legislative Council in exercising their legislative duties, and the executive officers (benjī) were
expected to conform to the practices prescribed for the Central Administrative Council. Arrangements were also made for the establishment of five departments (Feudal Lords, Military Affairs, Shrines and Temples, Justice, and Finance), each under the direction of its own senior official (hanji). By virtue of the new government organization the Temple and Shrine Court, recent successor to the Edo Bakufu's Temple and Shrine Magistracy, was abolished; and the Civil Court, successor to the Finance Magistracy, was renamed the Finance Office of the Chinshōfu. The Municipal Courts, which had inherited the business of the Town Magistracies, were retained for a while longer, since the preparations for bringing Tokyo prefecture into operation were not yet completed. However, on October 1 when Karasumaru Mitsunori, the former Assistant Commander of the Edo Corps Area Headquarters, was appointed as governor of Tokyo Prefecture, the two Municipal Courts located in the northern and southern parts of the city were combined and Tokyo prefecture was brought into actual operation. On December 2, 1868, the Chinshōfu was abolished and the thirteen provinces under its authority were transferred to the jurisdiction of the Finance Department of the Council of State. Then, in February 1869, the provinces were transferred to the Central Administrative Council.

Between 1868 and 1869 urban prefectures like Tokyo prefecture were created in all important areas. These included Nara, Ōsaka, Nagasaki, Kyōto, Hakone, Echigo, Watarai, and Kai. Among the urban prefectures, however, all but Tokyo, Kyōto, and Ōsaka were converted to the status of rural prefectures in August 1869. This of course increased the already considerable number of rural prefectures that had been established during the period following May 1868 when Hida, Tomioka, and Tomitaka had appeared as the very first rural prefectures. Even in the turbulent Northeast there were several rural prefectures in existence. In January 1869 the Mutsu region was subdivided into the five provinces of Iwaki, Iwashiro, Rikuzen, Rikuchu and Mutsu; and the Dewa region was split
into the two provinces of Uzen and Ugo.

The prefectures, both urban and rural, were headed by governors whose duties, according to the Seitaisho, were "to foster the welfare of the people, promote production, encourage moral education, collect taxes, assess public labor, administer justice, and to command the prefectural militia". Their responsibility to encourage moral education is reminiscent of the encouragement given to moral education by the eighth century Ritsuryō Code. Administrative regulations for the prefectures were issued again in March 1869 and once more in August after the daimyō had surrendered their feudal possessions to the Throne. The latter regulations, known as the Government Officials Order, re-enumerated the duties of the governor that were stipulated in the Seitaisho, simply adding the task of census for both the lay and religious population and giving the governor supervision over trade and commerce. Besides the office of governor, the August order created a post for vice-governor in the rural prefectures. The governors of urban prefectures were vested with Court rank equivalent to that of the vice-ministers of state and to that of the governors of large domains, while the rank of rural prefectural governors was made equal to that of the small domain governors. Beneath the governor in both the urban and rural prefectures were important administrative officials called the Dai Sanji and the Shō Sanji, but only the urban prefectures were allowed deputies for these two offices. Like the Seitaisho, the Government Officials Order charged the governors with the promotion of good morals, which apparently was a common theme in the instructions to the prefectures at this time, since once more in September 1869 the Prefectural Service Regulations ordered the district officials to spread moral education and good standards of behavior.

In 1871, when the domain units of local government were done away with and replaced with prefectures, there was such diversity in the size of the new prefectures that the attempt to set up an effective prefectural system was greatly hindered. Therefore, beginning with the annexation of Tendō and Yama-
gata Prefectures on October 2, 1871, small prefectures throughout Japan were combined with each other until there were no more than three urban and seventy two rural prefectures by January 1872.

With the establishment of a uniform prefectoral system throughout Japan, a series of laws concerning their administrative organization and the duties of their offices were issued between December 1871 and January 1877. Since there is no need here to mention each set of regulations by name, it shall suffice for the purpose at hand to simply note their essentials. Each prefecture, whether urban or rural, was placed under the authority of one governor and one vice-governor. The official duties of the governor, as prescribed in January 1872, were much the same as before. He was required to provide education and protection for his citizens, to enforce laws and decrees of the central government, collect revenue, assess public labor, administer justice, and in times of emergency to take appropriate measures after conferring with the local garrison of the corps area headquarters. The official business of the prefectoral office was handled by four separate sections: 1) general affairs, 2) civil court, 3) revenue and 4) finance. The civil court section tried lawsuits, exercised surveillance within the prefecture, dealt with law offenders and arrested fugitives. In effect, the administration of justice and taxation were a part of the governor's powers. This legislation of January 1872, which succeeded the above-mentioned Prefectural Service Regulations (1869), also made further distinction between matters subject to the exclusive decision of the governors and those matters which required instructions from the competent department of the central government. In April 1875 a section for education was added to the other four, since the encouragement of learning was made a distinct sphere of activity separate from the duties of the general affairs section. In November 1875 the governor's duties were again set forth as the "faithful execution of laws and ordinances, preservation of peace within the prefecture, protection of the people, imposition of taxes, encouragement
of industry and education, etc." By this new legislation the business of the prefectural offices were parceled out among six sections instead of the existing five. The newly added section was in charge of promoting industry. In July 1876 the governor's term of office was set at 12 years, and it was determined that his record in office would be officially examined every three years. Finally in January 1877 the central government provided that anyone violating a regulation issued by the prefectural office would be subject to a court fine not to exceed 1.5 yen.

Although the finishing touches were thus gradually put on the prefectural system, the actual situation in the prefectures was dependent upon the attitude of the governor, since the orders of the central government were not always enforced. While Kagoshima, the center of the 1877 rebellion, was a special case it nevertheless "resembled a sort of independent state," according to Kido Takayoshi. Among the notable governors of the period we should not fail to mention Kanda Kōhei of Hyogo, Shibahara Yawara of Chiba, Matsuda Michiyuki of Shiga, and Kusumoto Masataka of Niigata.

The successive offices of the central government which exercised control over prefectural affairs during the early Meiji Period, when government offices were in constant flux, were the Office of Home Affairs, the Department of Civil Affairs, the Department of Finance, and ultimately the Department of Home Affairs.

After reducing the large number of domains and prefectures to a total of only seventy five in November 1871, their number was further diminished in 1872; and by a large scale amalgamation in April and August 1876 there remained only thirty-five rural and three urban prefectures. But when the Ryūkyū domain was replaced by Okinawa prefecture in April 1879, and when Tokushima, Fukui, and Tottori prefectures were created in 1880, and Sakai was incorporated into Ōsaka in the same year, the rural prefectures were increased to thirty-eight.

The next aspect of local government to which our attention shall be turned are the changes which occurred in the cities,
towns, and villages in the early years of the Meiji Period. For a while after the Restoration, major changes at this level were comparatively few. However, the central government did not completely disregard the local communities, for in 1868 it distributed a prospectus concerning the administrative organization of Kyōto in order to obtain different views on this plan. The prospectus separated Kyōto into two major sections and these were further divided into several wards which were to be composed of twenty subwards (machi). The wards were numbered and each was assigned two officials, a nakadoshiyori and a soedoshiyori. In addition there were provisions for gonin gumi or five man groups. With respect to Tokyo Prefecture, the central government, in April 1869, abolished the former headman (nanushi) and divided the city of Tokyo into fifty wards (ku); and in each ward it created a nakadoshiyori and a soedoshiyori, apparently following the Kyōto precedent. Kyōto's influence seems also to have reached Ōsaka where in June of the same year its three traditional subdivisions were replaced by four major sections (North, East, South and West). Each of these sections consisted of a number of wards (machigumi) and in turn these were made up of lesser units or machi.

Certain modifications were also made in the metropolitan assemblies, though on the whole there was little innovation in the villages. Before commenting on the changes in the village, a description of the village as it was in the Edo Period would perhaps be beneficial to the reader.

In addition to being an organization of villagers fixed to a definite geographical location, the village in the Edo Period was also the substance of feudal grants and an organization burdened with tax obligations. The village was one type of juridical person but not in the sense that it was a separate entity that could be in conflict with the villagers, for it represented the villagers in their entirety. While it was regarded as a single body, it was at the same time essentially a collective body of the villagers. Hence any land possessed by the village was also the general possession of all villagers, as were village debts
and litigation. As a more concrete illustration of the relationship between village and villagers, the power to dispose of village land was vested in the village as a single body, but the right to use it was divided among the villagers. Thus when village land was sold it was disposed of in the name of the village. Yet in using the village land, e.g., taking fodder from the commons, the villager could exercise in his own right that portion of the general possessory right vested in him. The village officials existed as organs of the village and, due to nature of the village, these officials, and particularly the village headman, were qualified to act as organs of the unitary village and as the general deputy of all the villagers. The village officials, usually three in kind, included one village head, three to five group heads (kumi gashira) and a peasants deputy (hyakushō dai). Among these officials the village head represented the village and the villagers, but further than this he may be regarded as the last unit in the administrative organization that reached from the feudal lord down through his deputy, the fief holding jitō, to the village level. In this respect the village had the additional characteristic of an administrative division. The group head was an assistant to the village head, and the peasants’ deputy was responsible for keeping an eye on both the village head and the group heads. The names of the officials varied in each locality, a notable example of this being the general practice in the Kansai area to call the village head shōya instead of nanushi. The nanushi achieved his position by heredity, by village election, or through a system of rotation limited to certain households. In any case his appointment required the approval of the daimyo’s district deputy who was called either jito or daikan. Ordinarily the group head and the peasants’ deputy were elected by the villagers. Some were elected by ballot and some by a joint consultation of the land holding peasants (hyakushō). In addition to the three village officials, there was another village organ known as the village assembly (yorai). This was formed by a gathering of the land holding peasants who assembled whenever the interests of
the villagers were at stake. This meant that they assembled for the reading of proclamations, the apportionment of the land tax, calculation of village expenses, the contracting of village loans, and the framing of village laws. It should be observed here that the assessments to be used in defraying village expenses, which were unrelated to the tax paid to the feudal lord, had to be levied because of the rather wide scope of the nanushi's duties within the village. Certain of his duties that were related to the land consisted of apportionment and collection of the land tax, irrigation, and public construction. His police functions consisted in taking the census, investigating disasters, controlling public morals and taking precautions against fire. In addition, he acted as mediator in lawsuits, as notary in placing his seal on petitions, and he transmitted proclamations from the daikan. The expenses incurred in these operations were thus defrayed by assessments on the villagers, which meant that they had to pay a village tax in addition to the revenue collected by the feudal lord. The village tax also included expenditures for the village festival. In some cases certain portions of the village expenses, such as those for festivals and public construction works, were more for the benefit of a limited segment of the village than for the whole group. In concluding this brief description of the Edo Period village, it should be noted that another function of the village that was expressed through its assembly was the formulation of regulations (muragime, mura giteisho) which were necessary to village life.

As for the towns (machi) of the Edo Period and their administration, complete autonomy was not granted to such large settlements as Osaka and Edo; they existed simply as administrative divisions, being governed by Bakufu officials known as the Town Magistrates (machi bugyo). Nevertheless the constituent subdivisions of Osaka and Edo, which were also referred to as machi, apparently did have a legal status similar to the village.

Against the background of local town and village government, as just depicted, the Household Registration Law was pro-
mulgated in May 1871. By this law, districts (ku) were created as administrative divisions for the purpose of carrying out the census; later these were divided into large and small districts, becoming ordinary administrative divisions.

The provisions of the Household Registration Law required each locality to be marked off into districts, each of which was to have at least one district and assistant district head (kocho, fuku kocho). These officials were charged with taking an accurate census of the houses, inhabitants, births, deaths, and the egress and ingress of the population in their respective districts. The law allowed the former village and town heads, their assistants (toshiyori), the proclamation disseminaters (furegashira), and other persons to fill the post of district head. Although there was no standard number of districts to be created in the urban prefectures and in the rural divisions (gun) of the rural prefectures, the districts were to be composed of four or five towns or seven or eight villages. Whether only a few large districts and many small districts were to be established depended entirely on local circumstances, and in case the districts could not be formed quickly the law required the town and village to serve as the basic unit of census. In other cases where special districts were formed for public schools, military posts, or large shrines and temples, the official in charge of the establishment was charged with the duties of the district head.

As a result of this Household Registration Law, a new administrative division under the jurisdiction of a registrar known as the kocho thus joined the company of the existing towns and villages. But the appearance of the district had no effect on the town and village. It only removed the census duties from the hands of the town and village heads.

How this district system actually worked is not evident, but the chances are that the ojoya, who formerly had supervision over a number of villages, often became the new district head. However, owing to the ojoya's abuse of his power, the Council of State ordered the abolition of the ojoya in May 1872. At
the same time it renamed the former village officials (*shōya, nanushi, toshiyori, etc.*) as *kochō* and *fuku kochō* and, in addition to their traditional functions, gave them control over all matters relating to the land and people in their respective jurisdiction. This marked the end of the district head system which had been created for census purposes, though the large and small district titles (*dai-ku, shō-ku*) themselves remained in existence. Believing it expedient to have some one to head each one of these districts, the Finance Department announced in November 1872 that it would be permissable for the large districts to have a full district head (*ku-chō*) and the small districts to have an assistant district head (*fuku ku-chō*). To prevent the former class of *ōjōya* from using their authority to interfere with district affairs, the announcement also directed the prefectures to make a detailed investigation of the regulations concerning the conduct of district business, salary, etc., and to refer the results to the Finance Department. With respect to the salary and expenses of the district and village heads, the Council of State had already made provisions for this matter on two previous occasions. In February 1872 an order had directed that the funds for the district head be collected from the populace and that salaries be set at a proper scale. Again in May when the *ōjōya* was abolished and the village officials assumed the census duties of the district head, another order authorized a thirty percent increase in the village officials’ allowance because of the deluge of work entailed by the census. The required allowance and expenses of the village officials had to be assessed within their own areas of control on each household or in proportion to the space of house facing the street which belonged to government personnel, shrine attendants, the peerage, monks, nuns, and the like. The next instructions concerning salaries of local officials came in November when the Finance Department, seeking to create new heads for the districts, specified that their salary and expenses must be derived from district taxes (*minpi*) levied on the inhabitants of the district.
Hence with the government’s attempt to create the machinery to implement a census, local administration beneath the prefectural level now consisted of large districts (headed by *ku-chō*), small districts (headed by *fuku kuchō*), and town and villages (headed by *kochō*). This, nonetheless, is only a formal outline of the situation, since the differences in each locality precluded complete uniformity. Though at a somewhat later date, the lack of uniformity was brought to light in 1875 at the first Prefectural Governors Conference when a proposal was put forward recommending that district (*ku*) assemblies be created as a forum for the local officials bearing the title *kochō*, who ostensibly were village heads. During examination of the proposal it was then learned that the term *kochō* was in many cases being applied throughout Japan to designate the head officials of small districts as well as the heads of towns and villages.

As we have seen, the traditional position of the village head was retained after 1872, despite the fact that his title had simply been changed from *shōya*, etc., to *kochō* and, since he was still considered the general representative of the villagers, he could conclude contracts in the name of the village on the strength of his office title or by affixing his seal jointly with that of the peasants’ deputy. But as the local administrative affairs of the state came to rest more and more on the shoulders of the *kochō*, he gradually assumed the character of a state official. Probably as an outcome of this trend, the status of the district and village heads was made to correspond to that of government officials in March 1874. As a consequence, the *kochō*’s role as representative of the villagers and townspeople seems to have been weakened and naturally, from about this time onward he was no longer regarded as their representative. The change of attitude may also be due to the enactment in June 1873 of the *Regulations for Deputies* (*dainin*) which required that all deputies obtain a letter of attorney.

Two years later, in October 1876, the Council of State issued the *Regulations Relating to Public Loans of Money and Cereals,*
to the Disposition of Common Property, and to the Commencement of Construction Works. Accordingly, in order for a district (ku) to borrow money or grain, or sell land, buildings, etc., which were owned in common, it was first necessary to obtain the joint signatures of the full and assistant heads of the district and of the full and assistant heads of the towns and villages within the limits of the district as well as sixty percent or more of the two peasant deputies of every town and village therein. If a village (or town) desired to obtain a similar loan or sell similar property the full and assistant heads of the district and village concerned as well as sixty per cent of the real estate owners of the village were obliged to sign conjointly. However, it was permissable for the real estate owners to select a deputy to act for them. The same rules applied in the case of public construction undertaken in the district, town, or village. Should only the full and assistant heads of the district, town or village sign the document in the above three cases, without obtaining the other necessary signatures, the loan or construction project would become their own private affair; and with their signatures alone the sale of commonly owned land and buildings was to be null and void. In view of these regulations, it must be admitted that the town and village head as such no longer qualified as the deputy of the villagers except when his seal was accompanied by the signature seals of the real estate owners. As to the district, this unit had only been established in 1871 and thus did not share the lengthy past of the town and village, but in so far as it was regarded as equivalent to the town and village it appears that similar regulations were provided for it. In the appointment of district, town, and village heads there was no one standard practice; sometimes they were publicly elected and sometimes they were appointed by the central government. On certain occasions the district head and his assistant were appointed by the government, while the town and village heads and their assistants were elected by the townsmen and villagers.

The local five man group organization within the town and
village, known as the *gonin gumi*, continued in existence even after the Restoration and, although encouraged for a while by the government, the *gonin gumi* was later left to fend for itself.

Another important facet of local government which deserves comment is the local popular assembly. This institution appeared in place of the domain assemblies when they disappeared along with the domains during the creation of a uniform prefectural system throughout Japan. The institutional form of these popular assemblies which developed in each locality was not dependent upon the decisions of the central government, rather it originated from the domain assemblies and from the influence of popular rights theories. The local assemblies were of two types: those at the prefectural level, and those of the district, town, and village level. According to a statement by Kido Takayoshi, made when he was presiding over the Prefectural Governors Conference in 1875, seven rural prefectures then had district assemblies (*ku-kai*), and twenty two rural prefectures and one urban prefecture had instituted the "*ku, kochō-kai*", which seems to be a reference by Kido to prefectural assemblies composed of district and village heads. In any case most of the local assemblies of either type were advisory in function.

Town and village assemblies were set up in each locality, and in the villages particularly they seem to have followed the precedents associated with the village assembly of the Edo Period. The number of these town and village assemblies, however, seem to have been very limited.

Among the Japanese statesmen at this time, only Kido Takayoshi showed any positive interest in the creation of popular assemblies. Presumably he thought in terms of establishing local popular assemblies and then proceeding slowly to a national assembly. In 1875 he became president of the first Prefectural Governors Conference. Though one of the five proposals presented to the conference concerned local assemblies, the discussions of the conference were only concerned with prefectural and district assemblies. Whether the membership of the assemblies should be publicly elected or composed of district and

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village heads was a subject of heated argument, but the supporters of the latter view defeated their opponents by a vote of thirty nine to twenty one. The governors conference also determined that the regulations governing the prefectural and district assemblies should make allowances for local conditions. Having settled these matters, two bills were passed which authorized 1) the creation of prefectural assemblies for district heads and 2) the creation of district assemblies for town and village heads. Yet their passage was to no avail, for, despite the strong demands of Kido, they were never enforced.

b. The Enactment of the Three New Laws and the City Ward, Town, and Village Assembly Law

On March 11, 1878, Ōkubo Toshimichi, Minister of Home Affairs, presented a memorial to the Council of State concerning reform of local government. Based upon the draft drawn up by Matsuda Michiyuki, the chief secretary of the Home Affairs Department, the proposal dealt with four major topics: 1) forms of local government, 2) distribution of functions in prefectural government, 3) local assembly legislation, and 4) local tax legislation. Under the first topic, the memorial called for the prefectures and cities (as well as the municipal officials) to function dually in that they were at one and the same time centrally controlled administrative divisions and independent communities, and also because there was no clear distinction between central and local expenditures. The towns and villages were to remain independent, their public affairs being handled by town and village functionaries. With respect to the second subject of the memorial, i.e., distribution of functions in prefectural government, the plan advocated that an exact distribution of power be made between the prefectural governors, the heads of rural divisions (gun) and the heads of cities on the one side and local government on the other; and that this power distribution should be determined in accordance with the dual nature (central control and local independence) of local government, and with regard to the factor of population. As to the
third topic, local assembly legislation, Ōkubo stressed the need for the central government to grant a greater degree of autonomy to local government and for the central government to allow the local inhabitants an exercise of their civil rights in disposing of local affairs. To guide them in this pursuit was sufficient reason, he thought, for enacting a local assembly law. Noting that the government had heretofore considered itself responsible for even the most trivial blunders of the village heads, owing to breaches of the local peace by riotous action in several prefectures, Ōkubo suggested that all resentment against government controls would subside once an assembly law had been enacted and the good or bad performance of government in the localities had become a local responsibility. Nevertheless he did not desire to adhere solely to European and American precedents in drafting the assembly legislation, for it was his opinion that the assemblies should concern themselves chiefly with budgetary matters and only to a slight extent with legislative activities. According to the memorial, the degree of power to be vested in the local assemblies should depend on whether they were prefectural, rural district, city, town or village assemblies. That is, at the prefectural level where more centralization and less autonomy was required, the governor should have exclusive legislative power and a degree of ordinance power in certain matters relating to the rural division and city assemblies, although further down the political ladder autonomous powers should progressively increase until reaching a degree of almost complete autonomy at the town and village level. The last part of the memorial, which concerned local tax legislation, criticized the fact that no standard procedure existed for assessing the existing form of district taxes (minpi). Projects had been recklessly initiated and to defray the expenditures incurred, taxes had been levied subsequently without regard to the community's ability to pay them. Criticism was also aimed at the failure to distinguish district expenditures from the expenditures used for a limited sector of private interests within a given district, and for the failure to separate central government
expenditures from district expenditures. To remedy these defects the memorial proposed a strict definition of the terminology and content of the different types of revenue without making the public apprehensive that further tax burdens were in the offing. In this connection the district taxes (minpi) were to be renamed local taxes (chihō kōhi) and were to be used by all government levels within the prefecture. The revenue for all of Japan was divided into four kinds: 1) taxes for central government disbursement, levied on the nation at large; 2) local taxes assessed by value of land held and those assessed by household, for general use within the prefecture; 3) taxes for general use within the prefecture, which would be supplemented by national taxes (category one, above) and expended in order to reduce local tax obligations; and 4) taxes for private obligations, to be borne only by the district or persons concerned.

To Ōkubo's memorial were attached separate draft proposals for prefectural government organization, rural division and city government organization, forms of local units of government, a prefectural assembly law, and a local tax law. However, with Ōkubo's death, his proposed draft legislation was left untouched until the last three items were revised by Inoue Kowashi who renamed them respectively the Law Governing the Organization of Rural Divisions, City Wards, Towns and Villages, the Prefectural Assembly Regulations and the Local Tax Regulations. In 1878 these three pieces of legislations were submitted to the second Prefectural Governors Conference which was presided over by Itō Hirobumi. After repeated examination they were sent to the Genrō-In for approval and then became law. In common parlance they were called the Three New Laws or Three Great New Laws. Two years later, by the promulgation of the City Ward, Town, and Village Assembly Law the framework for local government was temporarily completed.

The Law Governing the Organization of Rural Divisions, City Wards, Towns and Villages, promulgated on July 22, 1878, was an extremely simple piece of legislation consisting of only six articles. It provided for the creation of rural divisions,
wards, towns and villages, and prescribed that the names of _gun_ (rural division), _chō_ (town), and _son_ (village) should remain as before, but where rural divisions were too large for administrative convenience they were to be divided and reduced in size. The three urban prefectures (Tokyo, Kyōto and Ōsaka), the five open ports (Yokohama, Kōbe, Nagasaki, Niigata and Hakodate), and other densely populated areas were to become cities and, if too large for administrative convenience, to be divided into several wards. Although the rural division had previously been the name of a region and nothing more, it now denoted a local administrative division. Each rural division and city ward was given one head official, but when rural divisions were small in size one head was placed over several of them. The head of both the rural division and the ward, according to the _Regulations for the Organization of Prefectural Government_ (July 1878), was an administrative official who received his instructions from the governor, who enforced laws and orders within his jurisdiction, and who generally administered the affairs thereof. But, in addition, the head of a ward, owing to the nature of this urban unit, apparently was a functionary (_rijisha_) of the ward. For each town and village or for several of them a single head official was created. However, the head of a city ward could serve concurrently as the head of the towns and villages located within the bounds of his territorial jurisdiction. Essentially this covers the major points outlined in first of the _Three New Laws_.

Another point of significance to be noted while we are discussing the organization of local government is the bearing that the _Enforcement Regulations_ (July 1878) for the _Three New Laws_ had on the cities, towns, and villages. First, though, to make a slight digression, it will be observed that the former census districts (907 large _ku_; 7,699 small _ku_) that had been created in 1871 were eliminated about this time, because, not being created for general administrative purposes, they lacked uniformity of organization and were causing extreme confusion. They were eliminated by the government not only for the purpose
of reducing expenditures but in order to revive the former status of the rural divisions, the towns and villages, and also to increase the importance of the rural division head. All of this added up to efficient administration in the mind of the government. But despite the need for more effective government the former district divisions (ku: actually "wards" in their urban usage) were not abolished in the urban areas because city government could not be administered in the same fashion as it was in the rural divisions, towns, and villages. This then brings us back to the importance of the Enforcement Regulations, for they authorized the wards to establish assemblies, and the existence of assemblies gave the wards the character of autonomous bodies. The rural divisions on the other hand remained as administrative divisions and nothing else. Important as they were to the city ward, the Enforcement Regulations were just as important in spelling out the character of the town and village, especially as it concerns the role of their head official. In the original draft form the Enforcement Regulations, apparently following Ōkubo’s memorial in regard to village and town autonomy and in regard to the village functionary’s independent administration of community affairs, had prescribed that each town and village should have a head official to act as the general deputy (sōdai) for the inhabitants of his community; and as the head of a natural town or village community, the head official should be allowed to conduct his official duties without suffering the petty restraints imposed upon the administrative officials of the central government. The draft also emphasized the importance of having a clear distinction made between the prefectural sphere of government and that of the towns and villages in order to avoid the reciprocal clashes of authority that had occurred in the past and in order to distinguish prefectural and local taxation powers. Though this draft of the Enforcement Regulations passed the Conference of Prefectural Governors without alteration, the phrase allowing the head official “to act as general deputy” (sōdai) of the town or village was deleted by the Genrō-In when the proposal reached
the discussion stage. Thus when finally enacted, the Enforcement Regulations, though providing for town and village assemblies, only recognized the head official as a person engaged in administrative duties and as a functionary (rijisha) of his town or village rather than its deputy.

Besides the Enforcement Regulations as significant legislation for the organization of local government units, there were still other enactments of special interest. Of these, three amendments that were added in April 1880 to the Law Governing the Organization of Rural Divisions, City Ward, Towns and Villages may be mentioned first. The provisions of the amendments made it possible to adopt a special system of local government in islands where the above mentioned law was impossible of application; to change boundaries and names of rural divisions, wards, towns, and villages to suit the convenience of the locality and upon petition of the people; and to make exceptional changes only after submitting a governor's report to the Home Minister for approval. Following the enactment of these amendments, the Home Department issued a notification in August directing that the town and village heads be publicly elected by their respective communities in so far as possible; and that they obtain a writ of appointment from the prefectoral governor, although the manner in which the writ was to be granted and the way the elections were to be conducted was left to local circumstances.

The next of the Three New Laws, which shall be briefly outlined here, were the Prefectural Assembly Regulations (July 1878). Essentially they provided the following. The principal function of the prefectural assembly was to deliberate on the budget, which was defrayable out of local taxes, and to deliberate upon the method for collecting local taxes. The sessions were ordinary or extraordinary, and in either session the prefectural governor had to initiate all bills. Although all matters involving the expenditure of local taxes were to be brought before the assembly, their resolutions were to be carried out only after receiving the approval of the governor. When the governor
considered a bill unfit to become law he was obliged to make a detailed report to the Home Minister and request instructions. The assembly also possessed the authority to obtain a report on the previous year's revenue and expenditures of local taxes, to make a representation to the Home Minister, to provide advice to the governor when requested, and to form its own rules of procedure, though the latter were subject to the approval of the governor prior to enforcement. Every rural division and ward was to elect five members or less according to its size. Persons eligible for election to the assembly were required to be men (at least twenty-five years of age) who had their permanent domicile in the prefecture and had lived there for more than three years, and who paid a ten yen or higher land tax within the prefecture. Those listed as ineligible for election were 1) lunatics and idiots, 2) persons who had been sentenced to imprisonment at hard labor for a year or longer, 3) persons who had been declared bankrupt and had not yet discharged their liabilities, and 4) persons who were employed as government officials and teachers. To qualify as an elector a person (male, 25 years or older) had to be a permanent resident within the rural division or ward concerned and he must have been paying a land tax of five yen or more within the prefecture. Anyone falling within the first three categories of ineligibles mentioned above was barred from voting. The voting procedure required the elector to write his name on the ballot. Terms of office ran for four years, with half of the members standing for election every two years. The assembly chairman and vice-chairman were to be elected by the members for a two year term, subject to the approval of the governor; this did not prejudice re-election. No session could begin until one half of the members were present, and decisions were reached by an absolute majority of the present members. In case of a tie vote the vice-chairman was to cast the deciding vote. As a rule the public was permitted to attend the assembly. The assembly member, while vested with the right of debate, did not have the right to make laudatory or defamatory statements
about the character of an individual. The assembly was thirty days, and to be opened and closed by order of the governor. The extraordinary sessions of the assembly were also opened and closed by the governor. In case assembly debates disturbed the peace of the country, or violated laws and regulations, the governor was expected to suspend it and write a report to the Home Minister requesting instructions. Under similar circumstances the Home Minister was empowered at any time to close or dissolve the assembly.

The foregoing thus makes it clear that the rights of the assembly were weak in contrast to the strong power exerted over it by the governor, though in the final analysis the existence of the prefectural assembly was dependent upon the decision of the Home Minister.

These assembly regulations were amended in 1879, in 1880, and again in 1881. But the changes made on April 8, 1880 by a Council of State decree amounted to a complete revision. The major changes prescribed that when the assembly had a protest to make concerning the budget report, it was entitled to submit a report in the name of the chairman to both the Home and Finance Ministers; that assembly members, who did not comply with summons to attend the assembly and failed to state the reasons for their absence, could be investigated and caused to resign their posts; and that upon election of the chairman a report of this fact to the governor would suffice, his approval being unnecessary. In addition, the amendments included detailed revisions concerning the ineligibility of voters and candidates, and a provision that re-elections must be held within ninety days after the date on which the assembly was dissolved by the Home Minister. On November 5 of the same year a Council of State decree established the regulations for standing committees. These regulations prescribed that the standing committee would be consulted by, and give advice to, the governor in accordance with the resolutions of the assembly upon the method and procedure for carrying out the works which were to be defrayed by local taxes. In cases of urgent necessity,
the standing committee was empowered to decide the amount to be spent upon such works and report this to the assembly later. The regular number of committee members was set between five and seven, and they were to be elected from among the assembly members for a two year term. When the committee chairman's post was filled by the governor, the sessions had to be held in secret. The other amendments legislated on February 14, 1881 brought about certain important changes in the relationship between the assembly and the governor. Henceforth, if the governor considered an assembly resolution unacceptable, he could, at his discretion, have it returned for further deliberation; if the governor and the assembly differed in legal opinions, or there was a dispute over their relative competencies, either of them could state the case to the government and ask for its decision (in this event the governor could suspend the proceedings or the session); if the assembly failed to deliberate on bills which were within its competence, the governor, after obtaining the Home Minister's approval, could put the measures into force without a decision by the assembly; and, lastly, if the assembly could not be opened because more than half of the members failed to comply with the summons, the governor had the right to request instructions from the Home Department. On the same day in February, the Council of State decreed the division of the prefectural assemblies of the three metropolitan prefectures of Tokyo, Kyōto and Ōsaka and the assembly of Kanagawa prefecture (rural) into two parts: one, the urban branch, was charged with the deliberation of affairs concerning cities, and the other, the rural branch, was responsible for deciding upon the matters pertinent to the rural divisions.

The last of the Three New Laws, the Local Tax Regulations (July 1878), provided that the separate prefectural (kenzei) and district taxes (minpi) would be jointly assessed under the single term "local tax" (chihōzei), and levied according to the following three categories: 1) a tax not to exceed one-fifth of the land tax, 2) a business and miscellaneous tax, and 3) a
household tax. The types of, and limitations on, the business and miscellaneous taxes were determined in a separate decree. The expenditures to be defrayed by local taxes were limited to the following items: police; construction and repair of river ports, roads, embankments and bridges; prefectural assembly expenses; prevention of contagious disease; public schools within the prefecture and supplementary grants to elementary schools; construction and repair of government buildings in the rural divisions and city wards; salaries, travel, and office expenses for officials of the rural divisions and wards; hospitals and relief agencies; seashore offices and sea rescue operations; circulation and posting of notifications; promotion of industry; and salaries for the town and village heads and their subordinates as well as funds for their office expenses. Funds to be expended within the confines of one ward, town or village alone had to be raised by the consent of the people concerned, because local taxes could not be expended for this purpose. The fiscal year was defined as extending from July until June of the following year. By February of each year, the governor was expected to formulate a budget that indicated the local taxes to be collected and spent in the following year, and was expected to forward it by May to the Ministers of the Home and Finance Departments after submitting to a vote of the assembly. For localities that were not provided with prefectural assemblies the report was to be sent directly to these two ministers. Emergency expenses for natural disasters, to be levied separately, had to be reported to the two above state ministers after passing the assembly, but in cases of extreme emergency the report could be made after the tax measure had been put into effect. The period during which taxes could be collected was a matter for the governor to decide according to circumstances. The law further required the governor to audit the annual revenue and expenditures every year in July, and submit a statement of settled accounts and official returns to the Finance and Home Department Ministers. The same statement had to be presented to the prefectural assembly at the beginning of the following year's
regular session.

The Local Tax Regulations, like the Prefectural Assembly Regulations, were totally revised in April 1880 by Council of State decree. The principal amendments authorized the establishment of a reserve fund; they gave the Home Minister the power to levy taxes in accordance with the previous year’s budget in cases where he had closed or dissolved the assembly for not agreeing upon a budget or when it had not taken up the budget for deliberation; and they made it possible to separate the expenditures of a prefecture, which derived from local taxes, from the expenditures of islands under the prefecture’s jurisdiction. A decree on May 27 paved the way for the separation of the expenditures to be used for rural divisions and cities. Again on November 9 a reform designed by the Council of State to economize the budget, to increase funds for redeeming paper currency, and to improve local administration reduced one of the local tax categories which was “not to exceed one-fifth of the land tax” to one-third, and added to the items defrayed out of local taxes (1) the construction and repair of prefectural offices, and (2) the construction, repair and operational expenses for prefectural prisons. In 1881 grants made by the central government to supplement local taxes expended for prefectural public works were eliminated. Though other amendment were enacted in 1881, they were relatively unimportant.

In consequence of the Three New Laws and their revision, the prefectural system as a local autonomous organization and the regulations concerning prefectural government as an administrative organ of the state were gradually brought to completion.

Following the enactment of the Three New Laws, the Regulations for the Organization of Prefectural Government were laid down on July 25, 1878. By their provisions the governor was authorized to exercise full administrative control over his territorial jurisdiction, to enforce laws and government orders, and, when necessary, to proclaim enforcement regulations for their execution. In matters subject to the governor’s
discretionary power, he was also allowed to establish special regulations, although they would have to be immediately reported to the minister of state whose administrative jurisdiction was affected. But if the proclamations or measures emanating from the governor contravened the laws and orders enacted by the central government, or were in excess of the governor's authority, they could be cancelled by the Chancellor or the minister of state concerned. The governor was empowered to levy local taxes for prefectural expenditures, though he was obliged to submit reports of the budget and the final accounts to the Home and Finance Ministers, and to the prefectural assembly in those localities where it was in existence. In times of emergency the governor had the right to confer with the officer in command of the corps area or its branch post and take whatever measures were warranted. Among his other powers, the governor could call meetings of the assembly and suspend its deliberations; he could also initiate bills and approve or reject the decisions of the assembly. Though Article 5 of the Prefectural Assembly Regulations makes it appear that the governor's sanction power over assembly decisions was restricted only to matters related to local taxes, it must be recognized that, in view of the Regulations for the Organization of Prefectural Government, he was vested with a general veto power over all assembly resolutions. For example, in 1882, when a tax bill was rejected in its entirety by a regular session of the Fukushima prefectural assembly, governor Mishima Michitsune put the original bill into effect, without compromising on a single clause, once he had obtained the approval of Home Minister Yamada. This forceful action was based upon the powers granted in 1880 by the amended Local Tax Regulations.

With respect to police affairs within the prefecture, Article 430 of the Old Criminal Code (1880) prescribed that judgments in police offenses should conform not only to the appropriate provisions of the same code but also, depending on local circumstances, should conform (after 1882) to the police offense regulations which were to be established by the governor. The
next piece of legislation concerning police affairs resulted in the creation in March 1881 of a prison warden who was given control over the Office of Prisons beneath the direction of the governor. Later, in November, the Council of State created the Chief Police Inspector (keibuchō). He was given charge of all police matters in the prefecture under direction of the governor, although in national police affairs the Inspector had to follow the orders of, and submit reports to, the Home Minister.

Turning now from police functions at the prefectural level, we shall trace the course of events leading up to the enactment of the City Ward, Town and Village Assembly Law. Allusion has already been made to the fact that a number of localities had witnessed the opening of town and village assemblies about 1876, but in cases where the head official borrowed money or grain, sold commonly owned land or buildings, or initiated public works within the community, the Regulations Relating to Public Loans of Money and Cereals, to the Disposition of Common Property, and to the Commencement of Construction Works (1876) prescribed that the signing of the contract would have to be done by sixty percent or more of the community’s real estate owners. Though assembly members were probably actual real estate owners for the most part, it was the real estate owner and not the assembly member as such who was formally required to add his signature; the latter was not considered to have the right of signature. Despite the enactment of the Law Governing the Organization of Rural Divisions, City Wards, Towns and Villages, no provisions were included therein which had any reference to the town and village assembly. Again, the Enforcement Regulations for the Three New Laws (1878) did nothing more than authorize the opening of assemblies in each town and village in accordance with local conditions, yet on November 11, 1878, the Home Department announced that the management of public works, common property, etc., which was located within the community, should be determined by the town and village assemblies wherever these bodies existed. And in June of the
following year, the Council of State decreed that all matters concerning loans, common property, and public works, as mentioned in the 1876 law dealing with these subjects, would henceforth be decided upon and carried out by the existing ward, town, and village assemblies. In consequence of this legislation, the town and village assembly assumed the function of general deputy.

Owing to the growing significance of the ward, town, and village assemblies and to the official policy of shifting responsibility in local affairs to the localities themselves, the government in April 1880 enacted the City Ward, Town, and Village Law and thus made it compulsory for each community to establish an assembly. This piece of legislation was very brief, consisting of only ten articles. Notable also is the fact that the City Ward, Town, and Village Law, in contrast to the Prefectural Assembly Regulations, was designated as a “law” rather than a set of “regulations”. The reason for this is that the City Ward, Town, and Village Law was intended to be a mere outline so that detailed regulations could be formulated to suit local conditions. In essence the City Ward, Town and Village Assembly Law prescribed the following. The assembly of each community was required to frame regulations governing the procedure for deciding upon public affairs, the collection of taxes, and disbursement of expenditures; and to present these regulations to the governor for his sanction. His approval was also necessary for the regulations formulated by a single assembly composed of several wards, towns, or villages. Assembly decisions had to be enforced by the chief official of the community, and if he considered the decision unsuitable, he could delay enforcement pending appeal to the governor for instructions. In such cases, the appeal of the village head was channeled through the rural division head to the governor. The resolutions of an assembly that was composed of several associated wards were to be enforced by each ward head, while the resolutions of an assembly consisting of more than one town or village were to be carried out by the different heads of the towns and villages or by the
rural division head or ward head. If the decisions were unsuitable to the head official, he had the same recourse as just mentioned immediately above. If the chief officials of the rural division or ward deemed the measures of the town and village assemblies contrary to law, the measures could be suspended; if the decisions were deemed improper, their execution could be stayed pending an appeal to the governor. In case the governor considered the ward, town or village assembly actions in violation of law, he could suspend their actions or dissolve them and hold a new election. When irrigation ditching that affected a limited portion of the community or that was simply a traditional practice of a particular irrigation association required a meeting of the persons or the community concerned, as prescribed by a town or village assembly resolution, appropriate regulations governing the irrigation project had to be drawn up and presented to the governor for his approval. The implementation and supervision of the decisions made by the irrigation ditching association were generally bound by these regulations. However, when the towns, villages, or a group of persons refused to comply with the decisions of an assembly composed of several wards, towns or villages, or with the resolutions of the irrigation ditching association, the governor was required to place the issue before the prefectural assembly whose decision was binding. If the prefectural assembly was not in session and the matter could not be postponed until the assembly opened, the governor was entitled to make a ruling under his own authority. But such action by the governor had to be reported at the next session. As to the provisions relating to the meetings held by persons concerned with irrigation ditching amendments were enacted in February 1881.

c. District Taxes

Since the Meiji Restoration occasioned no clear-cut break with the traditional practices of the Edo Period, the existing system for town and village finance remained practically unchanged after 1867. During the Edo Period it was generally
customary for villages taxes to be allotted among the land holding peasantry according to their crop yield. At the beginning of each year two copies of a blank register containing the signatures of all the peasantry were submitted to the village office; and here the registers were stamped with the village seal and the amount of regular taxes were inscribed. In extraordinary cases or when an unusually large amount of taxes was needed, the influential village members (otona byakushō) of the village joined in consultation with the village officials in determining the apportionment of taxes. Then at the end of the year, after obtaining the consent of the landed peasantry, the taxes were collected according to each peasant’s yield. Practically the same procedure was adopted by both the Meiji government and the prefectures. The prefectures had to rely on the town and village revenue methods in imposing direct taxes since the prefectural revenue, which derived from national treasury grants and from prefectural taxes (fu-kenzei), was insufficient in the long run to defray expenditures. With respect to the terminology of district taxes, we have noted earlier that the tax imposed on the inhabitants of the districts (ku), the town and the villages was labelled minpi about 1872, though after 1873 the term minpi was applied as a general designation to denote any taxes disbursed within the prefecture except those obtained from national grants and prefectural taxes. In other words the term minpi or district tax was simply used as a general term to contrast with the term kanpi or central government taxes. At different levels within the prefecture the district tax was known by different names: kannaihi at the prefectural level, kuhi at the district level, and chōsonhi at the town and village level. Inasmuch as the kannaihi was allotted among the districts (ku) and collected from the district inhabitants together with the kuhi, this joint assessment was referred to as kunyūhi.

The minpi was levied in a number of ways: in proportion to the peasant’s crop yield, by acreage, by household and by other methods. When the Land Tax Reform Regulations were promulgated in 1873, the minpi was standardized at one third
of the land tax at the most in those localities where land titles were issued, and in January 1877, when the tax was reduced, the minpi was limited to one fifth of the land tax.

As a result of the independent and separate assessment of district taxes by the prefectures, wards, towns, and villages, notwithstanding the limited source of revenue, the taxes overlapped and were in competition with each other. Consequently the assessments levied by the towns and villages were placed under restrictions by certain prefectures.

The operations covered by district taxes between 1873-1877 included (1) construction and repair of prefectural offices, branch offices, and ware-houses, (2) road, embankment, and bridge repair, (3) dissemination of official pronouncements, (4) the dispatch of district (ku), village, and town heads on official business, (5) district office expenses, (6) the salaries of district, town, and village heads and of lesser officials, (7) expenses incurred in the collection of taxes, (8) expenses required for preparing land deeds and for the land tax reform, (9) the census, (10) schools, (11) irrigation and drainage ditches, and (12) police expenses. It is important to note that expenses required for delegated duties occupy a large portion of these items. Also included were expenses used for the benefit of only one segment of the town or village inhabitants.

The control over the disbursement of the prefectural level district taxes (kannaihi) was almost exclusively in the hands of the governor, for the prefectural assembly was merely an advisory body. With regard to the expenditure of the district, town and village taxes (kuhi, chōsonhi), the chief officials of these communities occasionally took advantage of their position to misappropriate community loans for private use, and on other occasions would initiate public works or sell common property without consulting the inhabitants of the concerned community. To prevent such officials from abusing their office, a series of regulations for the control of public loans, common property and construction works were enacted in 1876; and ordinarily these regulations seem to have given the property owners the right
to dispose of matters related to the expenditure of district expenditures. These regulations also seem to have confirmed the privileged position of the town and village landowners which had been acquired during the Edo Period. In order to give a preferential standing to the collection of the prefectural level (kannaihi) and the district level taxes (kuhi), which were collectively known as the kunyūhi, the government, in October 1876, recognized their collection as second in importance only to that of the prefectural taxes (fu-kenzei); and in November 1877 it decreed that arrearage of the minpi would be treated in the same fashion as arrearage in national taxes. But the minpi referred to in this decree meant only those district taxes levied as a public obligation for the performance of the district, town, or village head’s official duties, and they were set apart from the minpi that were levied by agreement of the assessed parties. The minpi of this latter category were afforded no more legal protection than was common to private obligations. Following enactment of this various and sundry tax legislation, the Local Tax Regulations (July 1878) lumped the prefectural tax (fukenzei) and the district taxes (minpi) together, designating them anew as a local tax (chihōzei) and specifying that this new local tax was not to be confused with the taxes raised and spent by the consent of the district, town or village assemblies. These latter taxes, it may be noted, even though levied by decision of the district, town or village assemblies, did not enjoy any government protection nor were they granted any by the Local Tax Regulations. Nevertheless, in April 1881 the Council of State, in pursuance of an 1877 decree, did eventually grant protection to those taxes by authorizing the public sale of goods possessed by a tax delinquent who had not paid his share of the construction expenses fixed by the district, town, or village assembly or by the irrigation association. This as we can see constituted a remedy similar to the one that was applied to national tax delinquents. And it was no doubt necessary to have a legal safeguard ensuring payment of the taxes levied by the community assemblies, because a decree of November
1880 had ordered that the national grants being given to the
prefectures for joint use with local taxes in defraying the cost
of public construction works be suspended as of 1881. Though
the safeguard only applied to a limited portion of the taxes
assessed by the community assembly, it is nevertheless significant
that within this restricted sphere the public sale of property
had fallen within the purview of the law.

6. GROWTH OF THE ADMINISTRATIVE BRANCHES
OF GOVERNMENT

a. Civil Service

In speaking of civil servants in the following pages, we
mean the ordinary civil officials, since judges and public pro-
curators shall be dealt with later when we describe the judicial
system.

During the Edo Period only the bushi were eligible to serve
as officials in the Bakufu or in the different domains. The
officials in the service of the Bakufu were selected only from
among the fudai daimyō and the vassals of the Shogun; those
in the service of any one domain were samurai who belonged
to that domain. As a general rule, the posts occupied by the
samurai were determined by hereditary status.

However, by the end of the Edo Period this principle was
not closely observed and the lower class samurai had become a
strong political factor in both the Bakufu and in the domains.
In truth, it is no exaggeration to say that the lower class samurai
were the element who accomplished the overthrow of the Bakufu.
Hence their position in the new government was an important
one. After the creation of the posts for Imperial Officers and
Domain Representatives, they were welcomed into public service
by the Meiji government. The post of Imperial Officer first
appeared toward the end of 1867, but it was not until February
25, 1868, during a government reorganization, that Imperial
Officers were required by law to be appointed to the rank of
Junior Councilor (*sanyo*) from among domain samurai and any other persons of ability, and allowed to serve as heads of the departments of state for a term of four years. Though the path was thus opened for the selection of samurai and other able men for government positions, those selected could only be appointed to the post of Junior Councilor, for the offices of Senior Councilor and Supreme Head were closed to them. Even in the *Seitaisho*, which was issued several months later, officials of the first grade had to be Princes of the Blood, Court nobles or feudal nobles; the samurai and commoners were barred from any position higher than the second grade court rank.

As mentioned previously, the *Seitaisho* provided for a four year term of service for officials, and for their appointment by a balloting procedure. Thus in June 1869 a very restricted application of the ballot resulted in the appointment of the highest officers in the government. But in passing it may be observed that this ballot in 1869 was conducted in accordance with an Imperial rescript that reads: "We deem that the source of order depends on the appointment of the proper person to the proper office; therefore, We now report in reverence to the spirits of Our ancestors that an official method of election has been established which enables Us to appoint the Chief Ministers of State (*hoshō*), and the Senior and Junior Councilors."

Subsequent to these arrangements for the appointment of civil officials, the titles of Imperial Officer and Domain Representative were done away with on August 5, 1869, and a system which identified government offices with corresponding court ranks was established on August 15 by the enactment of the *Government Officials Order* and the *Chart of Equivalent Court Ranks*. On August 18 civil officials were divided into three categories, though it was not until September that the classification titles became permanent. The first category or *chokunin* included officers of the first four grades who were appointed by the Emperor. The second category or *sōnin* included officers of the fifth and sixth grades who were appointed by the Emperor upon recommendation of the department ministers, governors,
chiefs of independent boards, etc. The third category or hannin included the officers beneath the sixth grade who were appointed by authority of the department ministers or by equal ranking officials who headed other major government offices. Again in September 1871 the system of equivalent court ranks was replaced by 15 grades; the first three being classified as chokunin, those from the fourth to the seventh as sōnin, and the grades from eight down as hannin. But for the three offices of Chancellor, Ministers of Left and Right, and Senior Councilor (sangi), who served as supreme advisers to the Emperor, no grade was established on the ground that they occupied a position superior to that of department ministers. Although some changes did occur later, this arrangement remained the general framework for the civil service grades.

Perhaps under the influence of the feudal practices of the Edo Period when officials came from the military aristocracy, the persons who held office in the first years of the Meiji Period were treated like members of the bushi class. As a clear indication of their special position, reference may be made to the Council of State order of December 1872 which provided that when commoners were appointed to office, whatever the rank, they as well as their descendants were to be treated as persons of samurai descent. Yet even before this date the Outlines of the New Criminal Law (1870), and again later the Amended Criminal Regulations (1873), accorded special treatment to government officials in respect to punishments, and it was not until the enforcement of the Old Criminal Code (1882) that this favoritism was abandoned. As to the unlawful acts committed by officials in the performance of their duties, whether intentional or arising from negligence, there were covering provisions in some detail in the Outline of the New Criminal Law and in the Amended Criminal Regulations; though on April 14, 1876, the stipulations in these two compendiums of criminal legislation that concerned official discipline and the public offenses of government officials were abolished by decree, and negligence in the performance of official duty, except for
deliberate offenses, were left to the disciplinary action of the competent superior official having jurisdiction over the guilty official. On the same day in April, the Regulations for the Discipline of Civil Officials were established and by certain of their provisions disciplinary punishment took the form of reprimand, docking, and dismissal.

b. Finance

The fiscal branch of the Meiji government was inaugurated on January 21, 1868, when the Treasury (Kinkoku Suitōjo) was temporarily established within the Gakushūin, a school in Kyōto for the children of Court nobles; and within the Treasury itself a Court at Accounts (Kaikei Jimu Saibansho) was created on February 12. Two days earlier an Accounts Section (Kaikei Jimuka) had been brought into existence, although its relations with the Treasury are not evident. The Accounts Section, however, was disestablished and created anew as the Accounts Office on February 25, and charged with the supervision of the census, taxes, money and cereals, office supplies, financial contributions, construction and repair, stipends, public warehouses, and commerce. A few months later, immediately after the issuance of the Seitaisho in June, the fiscal branch was renamed the Accounts Department and its authority was extended beyond finance to include transportation, post stations, and control over artisans. In 1869 there was further reshuffling within the fiscal branch, and immediately after enactment of the Government Officials Order in August of this year, following as it did upon the feudal lords' surrender of their feudal possessions to the Throne, the name of the fiscal branch was once again charged to the Finance Department. In September, however, this department was combined with the Department of Civil Affairs, and the full and Vice-Minister of the Civil Affairs Department, Matsudaira Yoshinaga and Ōkuma Shigenobu respectively, were given identical posts to discharge concurrently in the Finance Department. By August 1870 the two departments were separated and Date Muneki and Ōkuma Shigenobu were trans-
ferred from the Civil Affairs Department to the Finance Department as full and vice-minister respectively. In September the Civil Affairs Department was disestablished, and a number of bureaus, including the mint, taxes, census, construction and repair, paper currency, accounts, statistics, audit, records, post stations, and industry were set up within the Finance Department. To make our account short, the Finance Department had quickly burgeoned out as a powerful agency, controlling not only affairs of a fiscal nature but also those affairs and duties belonging to the defunct Civil Affairs Department. This enlargement of the authority of the Finance Department was based on the proposal of Itō Hirobumi who had just returned in June from America where he had made a study of public finance. Although a conflict arose between the Finance Department and its austerity policy on the one side and the other departments with their expanding programs on the other, as alluded to earlier, the authority of the Finance Department was soon limited principally to financial matters by the establishment in November 1873 of the Home Department and its six bureaus of industry, public security, census, post stations, public works, geography, and the survey office.

The fiscal practice of setting aside a fixed amount of expenditures for each department began in 1872; and announcement publicly of the budget was first made in 1873. The budget was announced as a rebuttal to the criticism of Inoue Kaoru and Shibusawa Eiichi, full and Vice-Ministers of the Finance Department respectively, who had charged publicly that the overhasty renovation plans of the government had produced a 10 million yen deficit. Since their charges had created public apprehension over the government's financial situation, Ōkuma, then the Secretary General of the Finance Department, announced the budget publicly to allay popular concern and to show conversely that the budget contained a surplus. Hereafter the preparation of a budget became a regular annual procedure.

Between 1873 and 1879 a number of other changes concerning fiscal matters were introduced by the government. In
December 1873 the Council of State prescribed for the prefectures and the central government offices a procedure for issuing and receiving money and cereals, and for keeping the account books. In October 1874 the fiscal year based on the traditional June of the following year, an arrangement that went into calendar was changed so that it would start in July and end in effect for the first time in July 1875. In May 1875 the budget adjustment procedure was revised so that strict compliance would be given to the itemization system of the budget and so that no expenditures would be diverted for non-itemized purposes; and in the next year the procedure for preparing the final budget was defined. In December 1879 the government published the settlement of accounts for the period running from December 1867 to June 1875, and thereafter each year a similar report was issued to the public. Finally, on December 27, 1879, the Regulations for Expense Items were enacted, dividing the items in the budget of expenditures into categories according to their importance. As a general rule, the first three major categories could not be diverted for other uses by the government offices without approval of the Council of State, and when the prefectures wished to divert funds to non-specified uses permission had to be obtained from the Finance Department.

On April 28, 1881 the different fiscal regulations which had been issued prior to this date were brought together in one form by enactment of the Accounts Law. According to this piece of legislation, the accounts originated with the budget of estimates, by which disbursements and collections were administered, and terminated with the final accounts. The annual budget was divided into two sections, one regular and one reserve, each of which was further subdivided into receipts and disbursements, and so on. As regards the budget of estimates, the central government offices (including prefectures when receipts and disbursements of the national treasury were concerned) had to prepare and submit to the Finance Department a budget for their respective jurisdictions. After consulting these reports, the Finance Department had to compile an overall
budget and forward it, together with the reports received, to the Council of State where the budget was given final sanction after being submitted to the Board of Audit. Without special authorization from the Council of State the central offices could not divert expenditures allotted to the three major budget categories nor could the prefectures do so without the sanction of the Finance Department. The receipts and disbursements of the national treasury were to be administered by the Finance Department in accordance with special regulations, and the final accounts had to be made public by the Council of State after each central government office had certified their settled accounts with the Board of Audit. If any surplus revenue appeared in the final accounts, it had to be transferred to the reserve fund.

For the sake of auditing accounts, an office known as the kantokushi was created in June 1869 within the Accounts Department, the forerunner of the Finance Department. However, it was not until March 1880, following a series of changes in the kantokushi, that an independent Board of Audit was created within the Council of State. By enactment of the Accounts Law in 1881 the authority of the Board of Audit was increased even more.

As to the expenditures of the government, over sixty per cent were occupied by the stipends of former bushi and by the stipends awarded to persons for distinguished service in the Meiji Restoration; the disposition of which constituted the greatest financial issue at that time. Besides these commitments, the other principal ones included the expenditures for the military forces and for the government sponsored industries. The financial obligations of the domains that were undertaken by the Meiji government shall be dealt with later.

Next comes the topic of taxation which, during early Meiji, consisted mostly of the land tax. But already having discussed the land tax reform, we shall concern ourselves with the non-land taxes and with prefectural taxes prior to the establishment of the Local Tax Regulations.
In August 1868 the Meiji government had decreed that it would be contrary to public sentiment to create new tax laws for the provinces without due consideration for local conditions, and had thus ordered existing practices to continue for a year or two. In principle the policy of adhering to former tax practices was determined by this decree. And of the taxes continuing to follow the old practices the land tax no doubt constituted the major portion. But there were some taxes like the liquor tax which, while conforming to the traditional mode of assessment, developed into an important source of revenue and there were others like the tobacco tax which appeared as part of the revenue system for the first time.

First, with respect to the liquor tax, it will be remembered that breweries were operated under a license during the Edo Period and that their operators paid taxes, known as *unjō* and *myōga*, according to the amount of wine produced. Though inheriting this procedure of tax payments, the Meiji government did away with the old licenses in July 1871 and issued new ones, and in addition to the breweage tax it levied a fixed tax in the form of a production license. Then in 1875 when the production license was abolished in accordance with the new liquor tax regulations, the breweage tax was levied on an estimate of annual production and the retailer was charged with a business license tax. This procedure, however, was changed in September 1880 by new legislation on liquor taxes. Accordingly, the tax on the retailer was abandoned, and the producer had to pay both a tax for a brewery license and for breweage; and those who produced for private consumption at home were subject to a tax if they produced more than one *koku* a year.

Next, let us examine the tobacco tax. In February 1875 the Council of State decreed that a tobacco tax would go into force in January 1876, and to this end it enacted the *Tobacco Tax Regulations* in October 1875. These prescribed that the tobacco wholesaler and retailer had to make application to the proper office, obtain a business license, and pay a business tax; and that processed tobacco for use by the purchaser could be
sold only after the tobacco was stamped according to its value.

Besides the liquor and tobacco taxes, certain miscellaneous taxes, covering such items as servants, horse drawn wagons, jinrikisha, palanquins, riding horses, and boats were created in January 1873 and were in effect until they were rescinded in February 1875. On the same day that they were rescinded 1,553 other miscellaneous taxes were abolished on account of their diversity and on account of the absence of any standard procedures for assessment. Then in September 1875, the taxes that had been levied up to this time were divided into national and prefectural taxes. Those which were assessed on a nationwide scale and were collected by the Finance Department to defray national expenditures fell in the former category; those assessments which were to defray local expenses, such as fukin and the local taxes (defined as chihōzei, February 1875), were called prefectural taxes. Consequently, a clear distinction was made between the national and prefectural taxes.

Although the principal tax or honto mononari of the Edo Period was paid in kind and some of the miscellaneous taxes or komononari were paid in specie, both gradually came to be paid in specie after the Restoration, as we have explained before. In respect to the collection of national taxes, regulations covering this matter were issued by the Finance Department in January 1879.

In the Edo Period it was customary for taxes to be formally levied on the village by the feudal lord and the jitō, although the actual work of apportioning the taxes to the villagers was done through the village assembly. In making payment the taxes for the village were collected and paid by the village as a whole. If a person failed to meet his obligations, not only he was responsible but his whole family and the five man group of which he was a member were held responsible. After the beginning of the Meiji Period this system came to an end, and the Council of State ordered in September 1872, that when taxes were not paid on the proper date because of negligence (natural calamities excepted) the delinquent tax-payer would be obliged
to pay fifty sen interest per hundred yen each month, and that if payments were not made by July, the delinquent would be declared bankrupt and would have to deliver both principle and interest. But in November 1877, bankruptcy as a measure applied to tax delinquents was rescinded, and a new decree specified that when a person failed to pay his national taxes within thirty days of the due date the property being taxed could be auctioned to meet the revenue requirements, and if the delinquent should sell or lease his property to another person, the latter would have to pay the taxes in full. In case a person failed to pay his business taxes the order provided for suspension of the business and public sale of the goods and household furnishings. Such public auctions were to be conducted by local officials who, after deducting the costs of the auction, would then pay the national, prefectural and district taxes. Any surplus money would be returned to the delinquent, and in case there was a deficiency the revenue shortage in national and prefectural taxes would be borne by the central government, and any shortage in district taxes by the district concerned.

In the sphere of local taxation, the prefectures had levied assessments since early after inception of the prefectural system, although they were not legally authorized to assess taxes other than district taxes (minpi) until September 1872. In January 1873, the government established regulations for collecting national taxes to be levied on servants, horse drawn wagons and the like, as we have mentioned, and it authorized the prefectures to increase the tax on these same items in order to obtain expenses for road and bridge repair, poor relief, elementary schools, police, and the like. In January of the following year this type of tax as well as similar taxes which were imposed on the theater and the geisha and which accrued to the prefectures were defined as fukin. Again in February 1875 the government reduced the national miscellaneous taxes and also allowed the prefectures at this time to assess those taxes necessary for the control of business. In September the government defined the concept of prefectural taxes and prescribed that the procedure
for assessing them and the program for their use should be put into effect after the prefecture had obtained approval from the Finance Department. Later in the following month of October a change required that the approval be granted by the Home Department instead. Also in October the Home Department drew up a general catalogue of expense items for which there was no need to make inquiries to the government; for these it was only necessary for the prefecture to record in a payment register the amount received and disbursed. Further than this, the fiscal year was set to run from July until June of the following year. Through these various tax measures the finishing touches were put on the prefectural tax structure, though it should be kept in mind that the district taxes (minpi) remained the important source of prefectural finance. Later in 1878 the Local Tax Regulations were prescribed. In the collection of local taxes, certain provisions in September 1875 made their assessment by local officials subject to approval of the Finance Department. In October 1876 the Council of State recognized that the preferential rights of the prefectural taxes were second only to national taxes; and in November 1877 a decree authorized public auction when necessary to obtain their collection.

c. Police

For the sake of convenience the administrative and judicial police shall both be included under the present topic heading.

Police functions in the Tokugawa period were carried out in the city of Edo by the Bakufu through the two Town Magistrates and through the arson and theft inspectors (hitsuke-tōzoku aratame); and in the scattered land possessions of the Shogun the duties of the police were discharged by the daikan. Within the Town Magistrate’s office the officials engaged in public security activities included the fire lookouts (füretsu mimawari) and the takazumi mimawari who prevented any edifice, pile of lumber, etc., from being built so high that it was menace to the public. In addition to these officials there were a number of regular, emergency, and secret constables who kept watch on
the *machi* and arrested law breakers. Beneath the constables came the plainclothes agents of various description, but because these were often little more than rascals who worked hardships on the townspeople the Bakufu frequently banned their use. Within the *daikan*'s office police affairs were administered by a subordinate office known as the *kujikata*. This office exercised control over morals, clandestine traffic in women, robbery, larceny, the arrest of criminals and gamblers, and the autopsy of those who met their death in unusual circumstances. For policing the Kantō area, branch offices of the Kantō Police Office were created during the late part of the Tokugawa Period; and from these branch offices officials were sent out to all parts of the Kantō area, except the Mito domain, in order to discover and investigate law violations, making no distinction among the territories of the Bakufu, the feudal lords, or of the religious organizations. These officials were commonly known as the *Yaesu mawari* and from all appearances they had a greater effect than their small number would indicate. As another means to prevent law violations the Bakufu also set up the five man group, consisting of five families, and obliged them to check on each other and to aid especially in the detection of Christians and insurgents.

This suggest roughly the type of police organization which had to serve as the essentials of an effective police system just at a time when the preservation of order in the city of Edo was of special importance to the newly formed government. What there was in the way of a police organization was doubly important because the city of Edo was in a state of complete disorder when the Edo Castle was taken in May 1868 by Hashimoto Saneyasu, the Governor General of the Tōkaidō Vanguard. Hence upon entering the castle on May 13, Prince Arisugawa, the Supreme Governor General, delegated the authority over the Edo Constabulary force (*Edo Shichū Torishimari*) to Ishikawa Toshimasa and Sakuma Nobuyoshi, the two former Edo Magistrates, and he also ordered the existing mode of police control to remain unchanged. On May 23, Tokugawa Yoshiyori and two
former Bakufu wakatoshiyori officials, i.e., Ōkubo Tadahiro and Katsu Yoshikuni, who was commanding general of the Bakufu Army, were put in charge of the Edo police; and twelve domains were ordered to patrol the city streets. However, being gravely concerned about the forces of the Shõgitai rebels, then operating from their base in Ueno against the government army, the Supreme Governor General’s Office did away with these police arrangements within a couple of weeks by turning the city patrols over to the government army. Then in an all out offensive on July 4 the government forces put an end to the rebels. By doing so, the complete control of Edo passed into the hands of the Meiji government.

Shortly thereafter, on July 8, the Edo Corp Area Headquarters was created; the two Magistrates’ offices were replaced by Municipal Courts (shisei saibansho); and on the following day troops from Kagoshima, Yamaguchi, Tottori, and Satohara were ordered to patrol the city. Apart from these domain troops, separate guard units attached to the Municipal Courts were organized and, in concert with the constables inherited from the Town Magistrate’s office, were made responsible for the arrest of thieves, robbers and other lawless elements.

In September, amidst a number of other administrative changes in Tokyo, the two Municipal Courts were replaced by Tokyo-fu or the Metropolitan Office of Tokyo. Of course the guard troops of the two courts were transferred to this office. Then through an understanding between the central government and the Department of Military Affairs, an order calling for more strict police controls over Tokyo was shortly issued; and by January an agreement between the Department of Military Affairs and Tokyo provided for the division of the city into 47 guard districts. The patrols for these districts were obtained from thirty different domains. Having thus completed the police arrangements for Tokyo, the guard units which had been attached to the Metropolitan Office were dissolved.

Since full use could not be made of the domain troops, owing to the fact that they were in Tokyo under order of the Depart-
ment of War (formerly the Department of Military Affairs), the Metropolitan Office requested and received permission in January 1870 to exercise jurisdiction over troop movements, promotions and demotions, and over the administration of troop justice. According to the regulations for their control, the purpose of the guard force was to prevent disorder and acts of theft, and to make it possible for the inhabitants of Tokyo to conduct their business under peaceful conditions. The forty-seven guard districts were consolidated into six large districts under a district commander, and each district’s unit of troops was now designated by the number of the district rather than by its domain appellation. At this time the guards belonging to the Metropolitan Office, which had recently been disbanded, were reorganized and by March 1870 numbered about 1,500.

Additional police duties were assigned to the Metropolitan Office in August 1870 when the special unit which had been formed under the Bakufu regime to protect the foreign settlement at Tsukiji (in Tokyo) was transferred from the control of the War Department. This special unit remained under the control of the Tokyo Metropolitan Office until abolished in 1872.

As organs of the judicial police, we find this role fulfilled during the period under review by the Department of Criminal Punishments and by the Censorate. The Department of Criminal Punishments, first of all, emerged from its predecessor, the Department of Criminal Law, which had been previously established in Kyoto in June 1868 to exercise the government’s judicial power. From its confined position in Kyoto, which was the extent of its authority then, the Department of Criminal Law had expanded by establishing a provisional branch office in Tokyo on November 26, 1868, during the Emperor’s visit there from the old capital. By January 1869 this branch office was exercising jurisdiction over the examination of Tokyo criminals of samurai status; the jurisdiction over Tokyo criminals of commoner origin being left to the Metropolitan Tokyo Office. Finally in April 1869 the head office of the Department of Criminal Law moved to Tokyo, and in August was renamed the
Department of Criminal Punishments. With respect to its judicial police functions it should be observed that in August, too, an arresting officer, who was charged with the arrest of fugitives, was formally attached to the Department of Criminal Punishments. And by December 1869 the arresting officer had developed into a full office (tsukasa) within this department.

Secondly, with respect to the Censorate (Danjōdai), it came into being on July 1, 1869, to replace the old Censorate (Kansatsu), and it was charged with making tours of inspection in all parts of Japan and also with making investigations of law violations. The Censorate officials who actually made the tours of inspection were the inspectors (junsatsu-zoku) and the secret agents (chōsha); their activities were governed by regulations drawn up in July 1870. The official duty of the secret agent, when simply expressed, was to seek out and obtain definite proof of the good actions and sinister plots of others. The investigative work for Metropolitan Tokyo, however, was the province of the Investigator’s Office, which was attached to the Criminal Court Section of the newly established (August 1869) Trials and Prison Bureau; though later in July 1870 the apprehension of thieves and robbers became the responsibility of the Metropolitan Constabulary (shichū torishimari).

Though there is no time here for details, it must not escape us that the five man group (gonin gumi) and certain vigilance organizations of the townsmen which originated in the Edo Period were still in operation at this time. It will also be observed in passing that all localities in Japan created prefectural and district guard troops after the example set by the organization of police in Tokyo.

Yet our immediate concern is not with police conditions in the districts but with those of Tokyo. Here the employment of domain troops as police units had failed to prove effective and, when the abolition of domains in August 1871 destroyed the basis for their existence, a new policing scheme had to be adopted. Thus the Tokyo Metropolitan Office proposed to the government in January 1872 that the Tokyo police be unified,
regard being given to the police experience of Europe and America. Accepting this proposal, the government commissioned Etō Shimpei to investigate the subject of police organization. The proposal, it might be worth observing, was perhaps not drawn up without some reference—indirect though it may have been—to police practices in the West. For it is clear that the police organization in Western countries had favorably impressed the Japanese intellectuals who had gone abroad shortly before the Restoration; but, more than this, Senior Councilor Hirosawa Heisuke, who had witnessed at first hand the quelling of disorder in Edo in 1868 and 1869, had commissioned Fukuzawa Yukichi to translate into Japanese some original works on police systems. Resulting from Fukuzawa's labors we have the Principles of Police Administration (Torishimari no Hō) which perhaps served as a link between Western methods and the above proposal for police unification in Tokyo. Parenthetically, as payment for the translation Fukuzawa received the official Tokyo residence of the Shimabara domain, which later became the location of Keiō University, the first private university to be established in Japan.

In the meantime because of the replacement of domains by prefectures and the need to find a suitable substitute for the domain troops that were serving in Tokyo as police units, a decision was made in November 1871 to provide Tokyo with 3000 police (rasotsu), two-thirds of them being enlisted from Kagoshima and the remainder from the other prefectures. By forming the new police into units under control of the Metropolitan Office and by disbanding the former troop units, the Tokyo scheme of police was completely renovated in December. As a result of the reorganization, Tokyo was divided into six large districts, each having a branch office and a commanding officer. Every one of the six districts was further subdivided into 16 small districts, and each of the small districts was provided with a police station staffed by an officer and thirty men. Three of the men were sergeants (kogashira). In April 1872 the police force was increased by an additional thousand
members.

It is as well to remember before going further into the study of the Japanese police that in the terminology during the first years of the Meiji Period our contemporary term shihō keisatsu, denoting judicial police, was non-existant. A comparable term in use then was kobō, which embraced the police duties of search, arrest and delivery of the offender to the judge. The administrative police (gyōsei keisatsu), by way of distinction, were simply referred to as keisatsu. However, a distinction between the judicial police and the administrative police appeared in enacted law with Etō Shimpei's issuance of the Office Regulations for the Justice Department on September 5, 1872. The word keisatsu itself also seems to have made its debut in enacted law on this occasion. The distinction between the judicial and administrative police was made in established law perhaps as a result of the investigation of police systems which Etō had just been ordered to conduct. Ordinarily the separation of these two branches of police is credited to Kawaji Toshiyoshi, who was as important to the administrative police in Japan as Etō was to the judicial police.

But putting aside the matter of terminology, the Office Regulations for the Justice Department, in so many words, assigned the business of judicial policing to the procurator, a sphere which he could not go beyond in his official capacity. Thus he was given charge and direction over criminal investigation and arrests. Officially his duties began with the inception of a crime and ended with pronouncement of the sentence by the judge. The procurator was barred from taking any administrative police action prior to the actual commission of an offense. In carrying out his duties the procurator had the assistance of certain subordinates known as the investigating officer (kenbu) and arresting officer (taibe). The investigating officer, charged with the search for criminals, gave instructions jointly with the chief arresting officer to his subordinate arresting officers for the arrest of law offenders in those instances where flagrant offenses had been committed and in cases where
guilt was evident. The arresting officer had as his official sphere of operation the search and arrest of criminals. Acting under orders from the procurator and investigating officer, the arresting officer went to the districts to make investigations and arrests in cooperation with local officers. An arresting officer, it should be noted, held a concurrent position in the local police that was equal to his original rank. In making arrests a flagrant offender could be seized immediately when proof of his offense was obvious; after the arrest the date, location, and proof of the offense had to be reported by the investigating officer to the procurator. In other instances, when a complaint or denunciation was made, or when an offense was detected, the investigating officer was expected to first submit a report to the procurator and then make the arrest after receiving the procurator's instructions. But even when an offense was not flagrant, an emergency arrest could be made without waiting for instructions from the procurator, provided plural evidence existed or if a weapon or other evidence were found on the accused. At the time of arrest the instruments of the accused were to be taken into possession for use as evidence. Offenses were classified according to their seriousness: the violations of general law were referred to the procurator, and contraventions to the local chief of police.

On September 25, 1872, control of the Tokyo police (rasotsu) was transferred to the Justice Department. Five days later the national Police Bureau and its staff were created therein, and the former police offices from sergeant (kogashira) on up were abolished. Kawai Toshiyoshi, the former Chief of Police, was then made the Vice Chief of the new Police Bureau and was also appointed concurrently to be the Chief of the Metropolitan Police. The purpose of the Police Bureau was to maintain peace and order throughout Japan, protect the health of the people, and to take precautionary measures against persons obstructing these objectives. In other words, the Police Bureau was set up to function as the administrative police. Besides taking direct charge over the police of Tokyo, the
Police Bureau dispatched police superintendents (keishi) and sergeants (keibu) to each district to supervise the local police personnel (hobōri, torishimari-gumi, bannin, etc.) which had been recently created to succeed the disbanded prefectural guard troops. While creating the Police Bureau, the Justice Department also brought into existence the semi-official constable (junsa) and a system of privately established watchmen (bannin) whose salaries were paid with district taxes (minpi). By virtue of these various police reforms three types of police appeared. These were the rasotsu, organized and paid by the central government; the junsa, organized by the government and paid by the district community; and the bannin who were created and paid by the district community.

The framing or altering of local police regulations had previously required the sanction of the government (Prefectural Government Regulations, December 1871), and again in February 1873 the Justice Department ruled that approval for either old or new regulations had to be given by the Police Bureau. Later in June the variously named local police officials (rasotsu, torishimari-gumi, hobōri, etc.) who were discharging the duties of the bannin were ordered by the Council of State to change their titles to bannin.

To obtain a single and uniform control of the police in Tokyo, Etō Shimpei, as we have mentioned, was commissioned in January 1872 to make an exploratory study of different police systems of Europe. He was to be accompanied by Kawaji Toshiyoshi, the Vice Chief of the Police Bureau. Since Etō was unable to make the trip, Kawaji departed alone in October 1872. Upon his return to Japan in September 1873, Kawaji submitted a proposal concerning police organization. Essentially the proposal requested a separation of the administrative and judicial police; establishment of a Home Department whose chief minister would be the head of the administrative police everywhere in Japan; and it requested that the capital's administrative police be placed under a separate police office which was, nevertheless, to remain under the direct control of the Home
Department. The proposal suggested also that all judicial police in Japan be headed by the Minister of Justice and managed by the procurator attached to each court. Lastly the proposal called for the abandonment of the bannin, and urged that the rasotsu be enlisted from the ex-samurai class.

Consequently, as soon as the Home Department was established in November 1873, the Council of State, following Kawaji's proposal, ordered the transfer of the Police Bureau to the Home Department on January 9, 1874. Within a week the Council of State then created the Tokyo Metropolitan Police Office and ordered it to comply with instructions from the Home Department. Charged with preserving the public peace of Tokyo, the Metropolitan Police Office, under the direction of Kawaji thus assumed the Justice Department's former jurisdiction over the administrative police of Tokyo. During these changes the junsa rasotsu and bannin were placed under the authority of the Tokyo Metropolitan Police Office. However, the rasotsu were renamed junsa in October 1874, and the bannin were done away with in February of the following year.

The principal purpose of the metropolitan police, according to the Constitution and Rules for the Conduct of Business of the Metropolitan Police Office (February 7, 1874), was to "prevent the people from suffering injury and to secure the public peace." The functions of the police were classified under the four topics of "rights, health, morals and political affairs" as follows:

"I. The police must protect the rights of the people and safeguard their property.

II. The police must take measures to safeguard the health of the people and protect their lives.

III. The police must suppress immoral conduct and purify popular habits.

IV. The police must secretly search out and take preventive action against political offenses."

The above-mentioned enactment also provided that whenever the administrative police failed to prevent a crime, the search for and arrest of the offender was to be the duty of the judicial
police; but in case this duty happened to be discharged by the administrative police the latter were bound to act in accordance with the regulations governing public procurators and the judicial police. Herein the general concept and limitations of the administrative police were clearly fixed.

In June 1873 the Justice Department made revisions in the regulations governing procurators, but in general they differed little with the previous regulations.

In regard to the judicial police, the first systematic regulations for them were issued in January 1874 by the Council of State. By these regulations the investigating officer (kenbu) and arresting officer (taibu) were supplanted by personnel known as the judicial police officials (shihō keisatsu kanri) who, like their predecessors, remained subordinate to the public procurator. The procurator, for his part, continued to be restricted to the duties of the judicial police, i.e., the investigation and arrest of offenders whose unlawful acts could not be prevented by the administrative police. Recognizing the fact that the duties of the judicial and administrative police might overlap and be exercised by one and the same person, the regulations provided that a clear distinction would nevertheless remain between the two respective functions. The confusion of the two branches after all was not an impossibility, for certain administrative officials were given concurrent responsibilities in judicial affairs. These officials were the full and assistant heads of the nationwide Police Bureau, the Chief of the Metropolitan Police, the Governors, and the prefectural secretaries (sanji). The police superintendents, the sergeants and their subordinates as well as the local administrative police officials were likewise given concurrent duties as judicial police, and were referred to as judicial police officials. In the execution of the judicial police power it will be noticed that unless a flagrant offense were committed or unless evidence of an offense were obtained, a person's rights, according to the regulations, could not be readily violated by arrest or detention; and if arrest and detention were imperative the individual was not
to be considered guilty until the day he signed a confession. After the regulations governing the judicial police had been enacted, not quite a month passed before the branch procurator offices were abolished and police affairs were placed under the local authorities.

Further legislation concerning the judicial police came on October 3, 1874 when the Council of State temporarily delegated the business of the judicial police to the prefectures and to the Hokkaido Colonization Commission. But despite this delegation of power, the Justice Department informed the prefectures on the very next day to submit inquiries concerning judicial police business to the Justice Department; and, in connection with the recent abolition of branch procurator offices, it instructed that petitions for criminal investigation (gimmi negai) into what seemed to have the making of a criminal offense be lodged with each prefecture’s criminal court section. In January of the following year the Council of State sent out notification that the Procurator’s Office in the Justice Department would send to the detached local police officials immediate instructions appropriate to the circumstances of any crime committed.

With regard to the administrative police outside of Metropolitan Tokyo, the Regulations Governing the Administrative Police were enacted in March 1875 and put into force on April 1. Simultaneously, the various local police personnel, including the hobōri, torishimari-gumi, and bannin were renamed rasotsu and their expenses were taken over by the administrative police. As expressed in these regulations, the concept of the administrative police was identical to that found in the regulations for the metropolitan police, which we have just seen, although the provisions concerning rights, health, morals and political offenses were more briefly expressed.

The term rasotsu did last but a few weeks as a name for the police, since this title was replaced throughout Japan by junsa as a result of the discussion on local police which was held at the Conference of District Officials in June.

The deployment of the branch police stations and their
personnel was first left to the dictate of circumstances by the *Regulations Governing the Administrative Police*, but in December 1875 a definite standard of deployment was fixed by the Home Department. That is, a given area was divided into several police districts, each of which embraced about 20,000-30,000 households. Each district was equipped with a branch police station staffed by a sergeant (*keibu*) and about thirty constables. Beneath the branch police stations were several more precinct substations, each under the control of the senior constable in the particular precinct. By the creation of this network of stations and sub-stations the local police system, which had experienced a variety of changes since the Restoration, was for the time being firmly established and completed.

In Tokyo, through compelling circumstances at this time, the administrative police under the Tokyo Metropolitan Police Office were transferred on January 11, 1877, to the direct jurisdiction of the Home Department; and an office known as the Board of Police (*Keishikyoku*) was established within the Home Department to take control of the Tokyo police and all other administrative police in Japan. In the task of supervising the Tokyo police the head of the new board of police had to comply with orders from the different ministers of state and to perform concurrently the duties of the judicial police. The reason why the Tokyo police were transferred to the direct supervision of the Home Department seems to be explained by the fact that police units had already been used once before at the end of the preceding year for the suppression of the revolts in Western Honshu and northern Kyushu, and the government thus desired to have the most thoroughly trained police in the hands of the Home Department as a precautionary measure against the anti-government forces which were gathering strength in Kagoshima under the leadership of Saigō Takamori.

However, once the insurrection led by Saigō had been put down and any fear of further uprisings had been diminished by the return of peaceful conditions in the Southwest, the police authorities within the Home Department were removed in
January 1881. Thereupon the nationwide Board of Police, renamed the Police Bureau (*keihokkyoku*), and the Metropolitan Police Office, formerly known as the *Tokyo Keishichō*, were reestablished in Tokyo. The new Metropolitan Police Office, whose head was newly titled the Chief of Police (*keishi sōkan*), was given control over police duties within Tokyo and control over the city's fire fighting units and prisons. The existing branch police stations were superceded by the creation of forty other police stations that were classified either as *tonsho* or *keisatsu sho*. The *tonsho* and their branches belonged to the Constable Headquarters which was responsible for patrolling activities; the *keisatsu sho*, headed by first and second class police officers, belonged directly to the Metropolitan Police Office and were exclusively concerned with crimes and other police duties. To expedite police work the old receptionists were removed so that the public could take their complaints directly to the police officers for disposition. The regular number of constables at this time was reduced to 3,060 men, which was only half the force in existence in 1873 when the Tokyo Metropolitan Police Office was first established. This reduction was probably prompted by the creation at that time of the Gendarme (*Kenpei*) and by the fact that budgetary restrictions were imposed upon the police by a metropolitan assembly that had been given the right to determine police expenditures.

One other aspect of the administrative police that may be suitably mentioned here is their jurisdiction. First let us speak of their jurisdiction over the minor offenses that were known as major and minor contraventions. Judgment on any of these offenses, according to the *Office Regulations for the Police Bureau* (November 1872), had to be rendered by the chief of the prefectural police when there were any complicating factors. If there were no complications, either the major or minor contraventions could be determined by the police superintendent. And the minor contraventions could even be decided by the sergeant, unless they were too difficult to determine and they had to be referred to the superintendent. As we shall see
later the *Regulations Governing Contraventions* were established for Tokyo in December 1872, and established for the different districts in the next year. The right to dispose of them still remained with the administrative police. At a later date these regulations for contraventions gave way to the *Regulations for Summary Trial of Police Offenses*. Now for the second part of the administrative police's jurisdiction we must mention their right to take action against illicit prostitution. During the Edo Period there had indeed been bans against illicit prostitutes, although the prohibitions seemed to have been of only too little effect. Again in the Meiji Period the government inserted certain provisions on this subject in the *Amended Criminal Regulations*, but these were afterwards rescinded in January 1876 when control and punishment of prostitution was delegated to the Metropolitan Police and to the local authorities. As soon as the local authorities were entrusted with the control of prostitution they were notified by the Home Department to take more thoroughgoing measures against this social evil by the most suitable means at their disposal; and they were authorized to impose correctional fines not to exceed thirty *yen* and sentences of disciplinary punishment not to exceed six months. Although the two punishments here mentioned were equivalent to the "penal fine" and "forced labor" sentences respectively that appeared in the *Amended Criminal Regulations*, they were nevertheless termed "correctional fines" and "disciplinary punishment" because they had to be administered by the administrative police. At any rate it was on the basis of this Home Department notification that the Metropolitan Police Office and the Prefectures drew up regulations for punishing illicit prostitution.

We have taken a brief survey of changes in the police system. Many other changes could still be discussed, but it will serve us better now to treat in more detail some of the restrictive legislation that was placed before the administrative police for enforcement. Outstanding examples of this type of legislation were the *Prohibition of Slave Trade*, the *Regulations Governing the Publication of Books*, the *Newspaper Regulations*,

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and the *Regulations for Public Meetings.*

First, a few words on slave trade and its prohibition. In 1872 when the María Luz, a Peruvian ship that was loaded with 225 Chinese coolies purchased as slaves in Kwangtung Province, stopped off at Yokohama on the way back to Peru, two of the coolies jumped into the sea to escape the ship and were picked up by an English vessel. The English Ambassador reported the incident and demanded that Japan take action. Soejima Taneomi, the Japanese Foreign Minister, thus ordered the governor of Kanagawa prefecture to free the Chinese and return them to their homeland. Upon returning to Peru the ship captain had his government make a representation to Japan, and he demanded compensation; however, Japan never replied and the case finally came up for arbitration. The Emperor of Russia served as the arbitrator. The decision rendered by the Russian Czar freed the Japanese government of liability and the matter therefore ended as a victory for Japan. But in the meanwhile the disclosure by the Peruvian government of slave trade within Japan and the assertion by Peru that Japan had no right to contend the actions of the ship captain were very embarassing matters to the Japanese government, which was just then on the eve of the major political task of treaty revision. For Etō, the Justice Minister, who was an upholder of human rights, the Peruvian charges were a most embarrassing experience. He thus made known to the government the urgency for banning slave trade; and since Ōe Taku also made a proposal on the subject, the government finally resolved in favor of a ban. The government's decision resulted in the *Ordinance for the Emancipation of Licensed Prostitutes* issued by the Council of State in November 1872. We have already referred to Article one of this ordinance in our discussion of customary law and reason. Articles two and three limited apprenticeship in agriculture, manufacture, and commerce to seven years, and for ordinary employees in other callings to a period of one year, leaving the matter of apprenticeship renewal optional. Article four stipulated that all prostitutes bound to a fixed term of
service were thereby emancipated, and, further, that the courts
would not accept any litigation concerning unpaid loans for
which the released prostitutes were heretofore held liable by
their keepers. As soon as this ordinance of the Council of State
was issued, Etō then made a pronouncement of his own through
the Justice Department. Briefly it was this. Since slave trade
was being practiced under various guises, despite long standing
prohibitions, any funds paid for the hire of prostitutes would
be regarded as money unlawfully acquired and subject to con-
fiscation whenever any complaints were made regarding it.
The pronouncement absolved the prostitutes from the respon-
sibility of repaying loans acquired from their employer in the
past by the reasoning that prostitutes, being devoid of rights,
were like animals; and it would be unreasonable to expect
animals to make compensation to human beings. What is
more, parents were strictly forbidden from selling their children
into prostitution under the guise of adoption.

Despite the resolute action of Etō and the legislation
prompted by him, the practical problems of prostitution were not
readily disposed of, and so the government left the matter of
its control or abolition to the prefectural governments. From
1873 onward, therefore, the prefectures issued control regula-
tions that required the prostitutes to apply individually for a
license. On a nationwide scale no legislation was created until
the Home Department issued the Regulations for Control of
Prostitutes in October 1900.

The next piece of restrictive legislation that draws our
attention concerns the publication of books. During the Edo
Period laws were in force against the writing and publishing
of books that were indecent or concerned foreign conditions;
and further the laws required the publisher to submit to the
authorities a specimen copy of any prospective publication.
Following the Restoration there again appeared censorship type
legislation directed against books. In August 1868 the govern-
ment ordered that all manuscripts be submitted to the Depart-
ment of Education before being sent to the publisher for publica-
tion. Secret publications were prohibited. The order also made it necessary for publication applications, beginning in February 1869, to be filed with the prefecture (or domain) having jurisdiction over the applicant, and the prefecture in turn was required to send an inquiry to the Central Administrative Council, accompanying it with the manuscript, the name, and the address of the author. In June 1869 the address for the publication applications was changed from the Department of Education to the Shōhei Gakkō and to the Kaisei Gakkō, which were two government controlled educational institutes. Again in June the standard form for the publication applications as well as the Regulations Governing the Publication of Books were established. By the provisions of these regulations, five specimen copies had to be submitted for inspection, and punishment was prescribed for anyone who, without good cause, expressed his views on religion, falsely accused others, publicized state secrets, or who indulged in libel and printed statements which would induce others to engage in lewd acts. Also included were provisions for government protection of the author’s copyright so that he could enjoy the profits of publication during his lifetime; after the author’s death the copyright could be extended by his relatives. The granting of permission for publishing books was transferred in 1870 to the Grand Recorder’s Office within the Council of State, and again transferred in the following year to the Education Department. In February 1872 another series of regulations for book publication replaced the 1869 regulations, although the same title of the old regulations was kept for the new. By the new regulations a book had to be banned if it abused existing laws or made false accusations against other persons. In June 1875 jurisdiction over published matter passed from the Education Department to the Home Department, followed in September by a complete revision of the Regulations Governing the Publication of Books. Henceforth instead of pre-publication censorship the Home Department only required a report of future publication, though when necessary this department was entitled to obtain the manuscript for ex-
amination. The copyright for publications was limited to thirty years. The punitive provisions of the regulations provided that when a publication violated the *Libel Law* or Article XII and subsequent Articles in the *Newspaper Regulations* the author or translator would be held responsible and prosecuted as the principal while the publisher would be regarded as the accessory. Likewise persons who authored, translated, or published lewd works that would have a disturbing effect on morals were to be punished. Although it may seem peculiar that there was a shift from pre-censorship to post-censorship at a time when there was increased agitation on behalf of the popular rights movement, the shift after all was not a complete one. For the government could still examine manuscripts, it could forbid publication or sale whenever the manuscript was judged injurious to the government, and it was empowered to destroy the printing blocks. Furthermore, since there existed a separate code for newspaper censorship, the switch in censorship methods was probably regarded as more conducive to the efficient dispatch of business.

As concerns the publication of newspapers and dissemination of news, which brings us to our third example of prohibitive legislations, it will be recalled that in the Edo Period the political and social events of importance were published on a single sheet of paper and were then read aloud in the cities to attract purchasers. These one sheet publications however, were not comparable to our present day newspapers. Although newspapers showing the imprint of Western influence did arrive on the public scene in the closing years of the Tokugawa Period, the frequent issuance of anti-government statements by Bakufu supporters during the Restoration movement caused the Council of State in July 1868 to forbid any delivery of newspapers to the public unless each issue was officially approved. Still, the publishing of newspapers was not altogether frowned upon, for in March of the next year newspaper issues subsequent to the initial issue were relieved of censorship once approval of the initial issue of Tokyo newspapers and local newspapers had been
granted by the *Kaisei Gakkō* and the Prefectural Courts respectively. By encouragement such as this the *Shimbun Zasshi*, an official government paper, and a host of private newspapers came to be published after 1871. However, owing to the vigorous clamor that was raised for popular rights after 1873 the government responded in October of this year with an enactment known as the *Newspaper Regulations*. By its provisions a newspaper was not allowed to abuse the national polity, discuss the laws, or lead to the obstruction of national laws by the persistent advocacy of foreign laws. It was forbidden to append unreasonable criticism to articles on politics, law, etc., to engender obstruction of the government by the unreasonable inclusion of religious doctrines, foment discord in the minds of the people, or to tempt people into immoral habits. Banned also was the defamation of a person on the basis of unfounded rumor, the publication of remarks on an official's conduct, and banned was any unauthorized article, however trifling, which was connected with foreign relations. Violations of these restrictions were subject to punishment according to the law. Nevertheless, during the year period intervening between the public call for a popularly elected assembly in January 1874 and the Osaka Conference in January 1875 the newspapers were put to more extensive use by both the liberal rights faction and by the supporters of the government. For this reason the government grew apprehensive, particularly over the strong attacks of the liberals, and on June 28, 1875, it enacted the *Libel Law* as a means to punish newspapers for acts of defamation. On the same day the Council of State repealed by decree the former newspaper regulations and framed anew the *Newspaper Press Law*. The new press law, which applied to newspapers, magazines, and periodicals demanded as in the past that press publications obtain government approval. The publication's proprietor or company head, editor or provisional editor could only be a person of Japanese citizenship. The contents of each number or volume was the complete responsibility of the editor or editor-in-chief whose name was inscribed at the end of the
publication. If anything contained in the publication infringed the prohibitions of Article XII or subsequent Article of the Newspaper Press Law, or if an offense were committed against the Libel Law, the editor was to be prosecuted as the principal, and the writer as an accessory; and if the proprietor or company head were cognizant of the offense, he would be prosecuted as if he were the responsible editor. With the exception of ordinary news items the writers were required to sign their names and address in every case where the discussion concerned foreign or domestic politics, finance, the feelings of the nation, current conditions, learning, religion or matters affecting the right of public debate or the rights of officials and the people. The writer who signed a feigned name or assumed another person’s name was liable to punishment. Any person using a newspaper, magazine or periodical to incite others to crime was subject to punishment; and anyone who incited the mob element to riot or incited them to a violent attack upon the authorities was to be prosecuted as though he were the leader of the mob. Anyone advocating the overthrow of the government, the subversion of the state or who incited to riot, anyone who defamed existing laws or confused the people’s sense of duty to observe them, or who by perverted reasoning attempted to justify offenses plainly contrary to the criminal law were punishable. The publications could not print the preliminary proceedings in criminal courts before the case was brought to public trial nor were they allowed to print the deliberations of the judicial officers respecting the trial. Memorials and petitions were not for publication without the sanction of the central government offices known as the in (chamber), shō (department), shi (commission), and chō (agency or office). In July 1875 a Council of State decree directed that previously authorized newspapers, magazines and periodicals which were deemed a nuisance to the state should be prohibited or suspended.

The fourth and last item of restrictive legislation that we shall examine before moving on to the subject of administrative petitions and actions concerns the prohibitions on public meet-
ings. The gathering of the public to hear speeches during the first years of the Meiji Period became a frequent occurrence with the sudden rise of the liberal rights movement, and as soon as the government's victory over Saigō's forces in the Southwest made it apparent that military opposition to the government was no longer feasible the agitation for liberal rights turned into a veritable campaign of words. As part of the new verbal onslaught the Rishishisha in April 1878 despatched political speakers to each locality and also sent out to each locality a prospectus on the revival of the Aikokusha, a nationwide political party which had become defunct in 1875. Responding to this political provocation, the Council of State issued a notification on July 12 declaring that "certain associations have been formed in order to discuss national politics and constitutional matters, and in other cases public speeches have been made before large crowds"; and the notice instructed the police authorities to observe the meetings. More still, the notice stated that if "such activities seem to inflame public opinion and disturb the peace", the Chief of Police for the metropolitan area and the governors within their own jurisdiction were to ban the meetings and file a report with the Home Minister. Here in this directive from the Council of State we find the origin of the restrictions applied to political rallies. Later, as organized political activity became more intense in the local districts the government took more comprehensive action by decreeing the the Regulations for Public Meetings (April 1880). Accordingly, anyone intending to assemble the public in order to lecture or discuss any topics concerned with politics was required, three days before the meeting, to report to the police authorities in whose jurisdiction the meeting was to be held and to obtain police permission. When the subjects of the lectures or debates, the number of lectures or debaters and the place and date of the meeting were fixed, such information was to be reported to the police for their approval. Once this initial information was given, regular meetings could be held in the future without notifying the police. Anyone organizing an association for the
purpose of lecturing or discussing political affairs was required to report to the police the association's name, rules, place of meeting, and a list of its members; and thus obtain the necessary sanction. This was not to be granted, however, if the meeting was deemed injurious to the public peace. Uniformed police were to be sent to the meeting to exercise supervision over it and if the warrant of official sanction was not produced on demand, if the lecturers or discussants passed beyond the reported topics, if the subject matter included any intent to incite or tempt people into crime, if the meeting were found prejudicial to public peace or if persons, who having no permission to attend the session, refused to comply with orders to leave the meeting, then it was to be dissolved. All military and naval men on active service or in the first or second reserve, all police officers or teachers, and all students of any government, public, or private schools, and all agricultural or technological apprentices were forbidden to attend any meeting where politics formed the subject of address or discussion. And no member of the aforementioned groups were allowed to become a member of such political organizations. But the harshest of these regulations stated that no political association could advertise its lectures or debates, persuade people to enter the ranks by dispatching committee members or by issuing circulars, combine and communicate with other similar societies, or hold open-air lectures. We need not dwell here on the obvious fact that these Regulations for Public Meetings caused a severe setback in Japanese political activities.

d. Administrative Petitions and Actions

By contrast to the attitude of the Edo Bakufu, the policy of the Meiji government was that of encouraging freedom of expression. This policy was manifested in the Charter Oath's assertion that assemblies would be established throughout Japan and all matters would be determined by public opinion, a principle upon which many subsequent actions were based. As one indication of the Meiji government's effort to improve com-
munication and freer expression between the rulers and ruled, a brief reference may be made to the new government’s system for receiving written memorials or petitions. At first, in February 1868, the government established a receiving box for memorials in the city of Kyoto. Thereafter on account of rapid changes in government organization, memorials had to be addressed to first one government body and then another. During the year 1869 they were ordered to be sent to the Kögisho, then to the Rescript Drafting Office in Tokyo, and next to the Shūgi-In until this organ merged with the Left Chamber in 1873. From the year 1873 the Left Chamber received the memorials until it was abolished in 1875; and from November 1875 the Genro-In was ordered to receive those memorials that were only concerned with legislation while all other types of memorials were ordered to be addressed to the government department having jurisdiction in the matter concerned. Since a memorial (kenpaku) was defined as a statement of views on behalf of the country and was not a petition for personal interests, the originator of the petition was never informed about its ultimate disposition. Finally the Council of State decreed in December 1880 that any memorial having to do with the general public interest, regardless of the specific subject concerned, would henceforth constitute a memorial (kenpaku) and would be submitted via the appropriate government office to the Genro-In. It seems likely that these last instructions on the definition and disposition of memorials were issued by the Council of State in order to clarify procedural matters, for earlier in 1880 a petition by twenty-four prefectures, which requested the establishment of a national assembly, had been turned down by the Council of State and forwarded to the Genro-In on the ground that a legislative matter was involved, but the Genro-In had rejected it for the second time on the basis that it did not constitute a memorial.

In respect to administrative actions, probably the first regulations by the Meiji government on this subject, issued by the Justice Department in 1871, provided that a suit initiated
against a prefectural office other than the one under whose jurisdiction the plaintiff resided would have to be sent to the Justice Department accompanied by a letter from the plaintiff’s prefectural office; and an action by the plaintiff against his own prefectural office was apparently to be lodged directly with the Justice Department. Further detailed provisions on administrative actions, which were issued in December 1872 and which formed part of Etō Shimpei’s judicial reforms, stipulated that a lawsuit could be filed at the District Court or at the Justice Department Court (1) when the local authorities or town and village heads created regulations or took action that contravened the decrees of the Council of State and the notifications of the departments, (2) when the local authorities or town and village heads delayed the petitions, inquiries, reports, etc., of individuals, (3) when the local authorities obstructed individual rights by restricting their migration and travel, (4) when the local authorities failed to make public the decrees and notifications of the government within ten days of the date on which they were posted by the neighboring prefecture, and (5) when the local authorities, through error, distributed instruction that were counter to government decrees and notifications. Furthermore, if an individual disapproved of the decision rendered by the District Court or by the local authorities with respect to an administrative action, the action could be taken to the Justice Department Court. An additional provision concerning administrative actions made it obligatory in February 1873 for anyone filing an administrative action at the Justice Department Court, because of objection to the decision of the local authorities or of a District Court, to have the action accompanied by a letter from either the local authorities or the District Court. If the accompanying letter failed to be sent within three days, the action could be lodged directly with the Justice Department Court.

In consequence of this new procedure for administrative actions, the suits filed against the local authorities multiplied in number, and the final results was that the executive arm of the
government suffered the undesirable and hampering effect of judicial restraints. To remedy this pressure on the government the Justice Department in September 1874 classified into two types the actions filed by individuals against the offices of the central government (i.e., the chambers, departments, the Hokkaidō Colonization Commission, and the prefectures). The first type which involved suits of the individual against government held land, government finances and loans, and against government buildings were to be accepted for adjudication by the judicial officials. In such cases the individual person was defined as a thing, company, etc., owned in common by all the people of a district (ku) or by several individuals. The second type consisted of suits instituted on behalf of the general public against (1) government finances, (2) road construction, (3) construction projects of the Department of Public Works, or (4) suits originating in a jurisdictional dispute between two government officers or (5) between administrative and judicial officials. Properly speaking, these suits deserved special handling since they were administrative suits, but, special facilities lacking, they were left to the disposition of judicial officials who were obliged to consult the Central Chamber before making a final decision on them. In any instance in which there was cause for the government to pay compensation to an individual by way of court proceedings, the particulars and a report on the possible outcome of the adjudication had to be submitted to the Central Chamber. If compensation had to be made by an individual official, through a mistake of his own doing, no report was necessary; but when the government was obliged to pay compensation, a report had to be forwarded to the Central Chamber. When a ruling was made on a report, it was final and no complaint was permissable. What is important to remember here is that actions were admissable against the central government as well as against the local governments, and that a distinction was made between judicial and administrative adjudication.

For the benefit of persons who disapproved of the judgments rendered by the Justice Department Court with respect to
administrative actions, an Extraordinary Court with review powers over such decisions was created with in the Justice Department in December 1873. The suits that were litigable by the Justice Department were addressed to the Chief Justice when they were directed to the Justic Department Court or addressed to the Justice Minister if directed to the Justice Department itself. For cases being taken from the courts and local authorities to the Justice Department Court and from there to the Extraordinary Court, the Justice Department in December 1873 simply provided for the filing of a re-appeal, but in September 1874 it defined the jurisdiction of first and final instance in accordance with the type of case being considered. In other words, the cases tried in the District Courts and appealed to the Justice Department Court were tried in the first and final instance respectively and the cases tried at the Justice Department and appealed to the Extraordinary Court were likewise tried in first and final instance respectively.

This procedure for administrative actions, however, was not permanent. As soon as the court system was reformed in 1875, suits filed by the individual against the government offices became the province of the Higher Courts and the foregoing procedure which developed between 1872 and 1874 was rescinded in whatever parts that clashed with the new Regulations for Appeal and Re-appeal (May 29, 1875). In November 1875 actions against the Colonization Commission were ordered to be filed at the Higher Court of Tokyo.

In the matter of appealing a Higher Court decision to the Supreme Court in an administrative action, it became necessary in July 1879 for both the Higher Court and the Justice Department to submit a report to the Supreme Court on the case in question, once the Council of State had given its permission for review, so that the Supreme Court would have adequate information at its disposal in determining whether to accept or reject the case.

Administrative actions pertaining to the official capacity of, and against, the head officials of rural divisions, city wards,
tonws, and villages had been tried in the Higher Courts prior to 1881, but after August of this year these cases went to the District Court. The procedure for accepting and trying such cases remained the same as in the past. This category of cases was probably assigned to the District Courts because of the inconvenience and trouble worked on both the individual and the government in having to make claims at far removed Higher Courts for cases which were often of little significance.

Finally, in respect to disputes between different government offices, the Council of State in February 1881 revised the regulations governing the prefectural assemblies to the extent that both parties to a dispute were obliged to submit reports to the central government for decision if the dispute were a difference in legal opinion between the governor and the assembly or if the dispute involved a question of jurisdiction. Although no specific organ of the central government was vested at this time with the authority to make such decisions, the authority was given in October of this year to the semi-executive, semi-legislative Secretariat (Sanji-In) of the central government.

7. MODERNIZATION OF THE JUDICIAL SYSTEM

a. Efforts Towards Judicial Independence and the Transition of the Court System

Prior to the Meiji Period there had been no thought in Japan of separating courts of law from the administrative arm of the government. To the contrary, it had been a general principle for the administrative offices to serve simultaneously as law courts. Without making any comment here on the era prior to the Taika Reform, it was a principle at least as far back as the Ritsuryō period for all administrative offices to serve simultaneously as courts. At that time a certain jurisdiction was granted by the state to the Imperial family, to persons of the first three court ranks who were on active status, and even to the stewards of these high ranking families. During the
Middle Ages and in the Modern Period as well the practice of not making any distinction between administrative organs and courts continued. However, we must not suppose that there has never existed any office in Japanese history whose principal function was to mete out justice, for as evidence of such offices we may cite the Gyōbu-shō of the Ritsuryō regime, the Hikitsuke of the Kamakura Bakufu, and the Hyōbu-shō of the Edo Bakufu. Still, it may be said of them that their existence did not prevent the executive offices from functioning as courts.

This traditional mixing of justice and administrative business was at first accepted and carried on by the Meiji government after its formation, though by the year 1889 the judicial and administrative branches were separated when the independence of the judiciary was positively affirmed by the Meiji Constitution. Now it is this course of events between judicial union with and judicial independence from the executive that we next wish to examine, but in so doing we shall also speak of the organization of the courts, since this is inevitably related to the events leading to the independence of the judiciary.

When Tokugawa Keiki restored the government to the Emperor in November 1867, to start our story at the beginning, nothing was done immediately to renovate the existing system for administering justice. Shortly thereafter, however, during establishment of the administrative framework of the government on February 11, 1868, the initial step was taken for the creation of a central government office to administer justice. This attempt was embodied in the Section of Criminal Affairs (Keihō Jimuka), which constituted one of the seven major departments of state. The jurisdiction of the Section of Criminal Affairs extended over censorate duties, impeachment proceedings, arrests, criminal trials, and penal laws. As the scope of its jurisdiction suggests, this section was primarily concerned with criminal matter. Two weeks after its creation the Section of Criminal Affairs was renamed the Office of Criminal Affairs (Keihō Jimukyoku), but its official duties remained unchanged.

The next important development in the evolution of the
judicial branch occurred in June 1868 when the *Seitaisho* separated the authority of the Council of State into the three separate powers of legislation, administration, and judicature. The judicial power was entrusted to the newly created Department of Criminal Law (*Keihōkan*), clearly a lineal successor to the Office of Criminal Affairs. The only major changes in this branch seem to have been that the Minister of the Department of Criminal Law was now responsible for enforcement of general public law as well as criminal law, and that definite offices (tsukasa) for the censorate, criminal trials, and for arrest were established within the department for the first time.

The location of the judicial branch was in Kyoto. Together with the remainder of the central government, the judicial branch had remained in the old capital since the very inception of the Meiji government in February 1868. Although the Criminal Law Department ostensibly exercised nationwide authority within its own sphere of business, in practice its jurisdiction reached no further than the vicinity adjoining Kyoto. But expand it did. In November 1868 when Emperor Meiji made a visit to Tokyo a branch of the Department of Criminal Law was organized there, and in the following month the examination of criminals in Tokyo was so divided that the samurai fell under the control of this Department while the commoners were left under the jurisdiction of the Tokyo Metropolitan Office. At length the transfer to Tokyo of the main Department of Criminal Law was heralded in March 1869 by a decree that announced the removal of the entire Council of State from Kyoto to the new capital.

Before progressing further with the general development of the judicial branch, it is important that some attention be focussed briefly on one of its related functions, the censorate. The Censorate (*Kansatsu Tsukasa*) within the Department of Criminal Law, according to regulations formulated in March 1869, was charged with making unscheduled and unescorted tours of the government offices and prefectures and with the inspection of official documents. This Censorate, however, was
abolished in July 1869 to pave the way for creation of a new and independent Censorate known as the Danjōdai. New though it was to the Meiji government, the Danjōdai was not new to Japanese history; it was first created in the eighth century after the fashion of the T'ang Chinese Yu Shih T'ai, an office of inspection and surveillance over government officials that dated back to the early days of Chinese history. That the independent Danjōdai made a ghostly reappearance in the Meiji Period only suggests that there was an attempt to reinforce the prestige and authority of the central government by strengthening the functions of the Censorate. After all the Meiji government had just been established, its political fortune was at low ebb, and the domains were acting in a high handed and independent manner. Empowered to investigate the administration of the domains and prefectures and to make impeachments for malfeasance with the same authority as Imperial emissaries, the officials of the Danjōdai actually did impeach some of the domain governors; and such forthright action was no doubt resorted to as a threatening gesture to the domains. The reason why the Danjōdai assumed its ancient form is perhaps that the original system was best suited for its censorate duties. Another reason for revival of the old institutional form is that it was an integral part of the ancient Grand Council of State which the government planned to resuscitate in order to bolster up the central government and offset the progressive ideas in the Seitaisho. In organization the Danjōdai was no different than its counterpart of eleven hundred years ago. It was headed by a president and vice-president, beneath whom there served several secretaries, assessors and ten inspectors. The president was in charge of law enforcement as well as the investigation and impeachment of unlawful conduct in the capital and in the provinces. Similar investigation and impeachment powers were rested in the inspectors, who were responsible for patrolling the capital city of Tokyo with its Imperial Palace, its government offices, and castle. Although the Danjōdai carried out the investigation and impeachment of central government officials on
the one hand, the government officials were given the authority to investigate the ordinary citizens on the other. This different procedure for investigating government officials and the private citizenry applied uniformly to all prefectures and domains.

But to return to the Department of Criminal Law and the growth of the judicial branch, we find that during the centralization of the government in August 1869 the Department of Criminal Law was renamed the Department of Criminal Punishments (Gyōusho). This title like the term Danjōdai was retrieved from an eighth century institution. Despite this change in titles the judicial branch remained much the same. Formally the chief minister of the department exercised supervision over criminal examinations, punishments, and over judgments in cases where suspicion of guilt existed. Beneath the department minister and in addition to the regular officials of fourth grade rank the department was staffed with different ranking judges, examiners, and arresting officers who conducted the trials, examinations and made the arrests. Essentially the Department of Criminal Punishments exercised jurisdiction over judicial administration and trials. In December 1869 an Arresting Officer’s Office with control over the judicial police was attached to this department, and again in January 1870 an Office of Prisons was added. Finally it should be observed that the conflict and friction between the Department of Criminal Punishments and the Danjōdai was of no small concern to the Council of State.

In spite of the changes and reforms experienced between February 1868 and August 1869 by the train of offices (Keihō Jimuka, Keihō Jimukyoku, Keihōkan, and Gyōusho) which represented the judicial branch, the primary concern of this branch of the government continued to lie with criminal justice, since civil adjudication was within the jurisdiction of another succession of government offices. At first civil trials had fallen within the purview of the Finance Department, though later they came to rest under the authority of the Department of Civil Affairs. While it is not certain that any civil actions were ever
tried by the Finance Department immediately after its creation in the early months of 1868, there are indications that it did handle civil litigation at a later date. In December 1868 lawsuits of the peasantry which could not be readily judged by the prefectures were sent directly to the Central Administrative Council, but after this date a government order required them to be addressed to the Revenue Office in the Finance Department. The determination by the Revenue Office of cases too complicated for the prefectures was probably a carry over of the Edo Period practice of having the Bakufu's Magistracy of Finance adjudicate the litigation that was forwarded from the daikan. However, due to careless decisions rendered by the Revenue Office, the prefectures were notified in February 1869 to send such cases to a special office for litigation within the Finance Department. Again by July, shortly after creation of the Civil Affairs Department, the Civil Court Office in the Civil Affairs Department was given jurisdiction over the complicated cases relating to land and persons. Still, the final decisions in such cases had to be made by an Assistant Vice-Minister or a higher official of the Civil Affairs Department. To the Civil Affairs Department the prefectures were also ordered to submit any suits involving other jurisdictions besides their own. After the Civil Affairs Department merged with the Finance Department in September 1869 and then later regained its independence in August 1870 the Civil Court Office, losing its status as one of the five principal offices (tsukasa) of the Civil Affair Department, became a subordinate section of this department's General Affairs Office.

Turning now from the central government offices that dispensed justice, it will be seen that in the districts the judicial role was fulfilled by each prefecture and domain. Their right to conduct trials after the Restoration was simply a retention of the jurisdiction in civil and criminal litigation that had been exercised by the domains of the Edo Period. Yet the administration of justice and government by the domains and prefectures, temporarily authorized by the Seitaisho (June 1868),
was marked by a diversity of local standards that irritated the central government. To remedy this and avoid political confusion, the government therefore drew up a prospectus for Metropolitan Kyoto in September 1868 and distributed it to the prefectures and domains as a model example of government organization. In outlining the proposed government of Kyoto, which was divided into rural and urban divisions, the prospectus mentioned that each division included two sections: one more or less equivalent to a civil court and the other equivalent to a criminal court. The first section, known as the chōshō-gata, was given jurisdiction over civil suits and the second section, the dangoku-gata, had jurisdiction over criminal cases and punishments. But the Kyoto prospectus was not the only endeavor by the government to encourage uniform standards in local justice and administration. Again in December 1868 the Regulations Governing Organization of Domain Government instructed the domain heads to act in the interests of uniformity by following the newly established prefectural scheme for organizing judicial and administrative offices of local government. Besides the government's concern for the formal organization of local judicial organs, we know on authority of an order dispatched to the prefectural governors in March 1869 that in the matter of trial procedure the central government expected the local governments to observe traditional procedural forms. In dealing out punishments it is clear, too, according to the Regulations for Prefectural Offices (September 1869), that the government had permitted the prefectures to exercise an exclusive jurisdiction up until this date in all cases punishable by imprisonment at hard labor or by lighter sentences. Lastly, in order that we may not exclude some reference to the litigation crossing prefectural and domain boundaries it will be noticed that the government enacted the Rules for the Adjudication of Litigation Involving Different Prefectures and/or Domains in January 1871.

Justice at the local level as well as that at the center, as we have just made apparent, was still unseparated from the
executive branch; and it is no wonder that this situation prompted Etō Shimpei to express criticism of the contemporary judicial set up. Making clear his views in a government reorganization plan, tendered to the government in the spring of 1871, Etō decried the Censorate's encroachment upon the judicial power as well as the fragmentation of the judicial power into criminal and civil elements by each of the local governments. Etō asserted furthermore that the supervision of criminal justice should be solely the prerogative of the central government, otherwise it would degenerate into a meaningless concept.

So it came about in August 1871, just prior to the nationwide creation of prefectures, that a new Department of Justice (Shihōshō) was organized and given all the business handled heretofore by the Department of Criminal Punishments and by the Censorate. The Justice Minister, having as his formal duties the administration of public and criminal law, criminal and civil trials, and arrests, had at last formally extended his authority over civil as well as criminal adjudication. Because of the newly expanded jurisdiction of the Judicial Branch, the civil litigation business handled until now by the Finance Department was transferred in October to the Justice Department. The transfer also included whatever civil litigation jurisdiction the Civil Affairs Department had possessed, since this department upon being abolished in August of this year had relinquished all of its functions to the Finance Department except those duties relating to public construction. If the policy of transferring all judicial matters to the Justice Department had been carried out completely, the criminal and civil court functions of the prefectures would also have been handed over to the Justice Department, but for the time being that was not the case; only the criminal and civil court business of metropolitan Tokyo was brought under the department's authority.

At the beginning the Justice Department officials were dispatched to the Tokyo Metropolitan Offices, but in February 1872 removed themselves to the Justice Department, forming a special office known as the Tokyo Court (saibansho). Not until this
date, it seems, had the term *saibansho* been formally used to denote a government office for the exclusive dispensing of justice. On the same day that this court for metropolitan Tokyo was created, all matters relating to arrests and prisons were delegated to the local authorities. Consequently, the Justice Department, so far as judicial functions were concerned, was able to concentrate all its energies on criminal and civil litigation. Yet, apart from the actual transfer of authority over arrests and prisons to the Tokyo Metropolitan Office, the delegation of this authority to the prefectures was purely nominal, since the Justice Department had never exercised real jurisdiction over any area beyond the confines of the capital. The Justice Department did however dispatch judicial officials to the Tokyo Kaishijō Court in March 1872 to administer the civil litigation involving foreigners, which had been disposed of previously at Tsukiji by officials of the Tokyo Metropolitan Office.

In May 1872 certain regulations governing Local Courts were framed and, accordingly, three Local Courts were established at different places in the city in order that the six large districts of Tokyo would fall under the jurisdiction of the Tokyo Court. The criminal jurisdiction of the Local Courts was limited to cases punishable by whipping with the rod (*muchi*) and stick (*tsue*); for if investigation indicated that a crime required a sentence of penal servitude or more severe penalty the defendant had to be handed over to the Tokyo Court. In civil cases no jurisdictional restrictions were imposed on the Local Courts, but cases involving one hundred *ryō* or more, or cases involving a lesser sum which could not be determined within thirty days, were sent to the Tokyo Court. To the Tokyo Court were also sent re-appeals when decisions of the Local Courts were disapproved.

The expansion of the judicial branch of the government, though desirable in many ways, implied that more judicial officials would be needed in the districts to handle legal matters, and this meant that the Justice Department would be confronted with the task of ferreting out for its own employment those
rare individuals who were trained in law. To make the search
less complicated the Justice Department thus urged the estab-
lishment of a law school and suggested to the government that
the school’s graduates be sent to the districts as judicial officials.
Within a month the Meiho-ryō Law School was created and
made a bureau of the first grade within the Justice Department.
Until disestablished in 1875 this school of law made unparal-leled
contributions to the advancement of jurisprudence in Japan.

The Justice Department, as we have said, exercised jurisdic-
tion over the civil and criminal litigation of Tokyo, but in the
districts this litigation remained as before in the hands of the
prefectures. According to the Regulations Governing Organiza-
tion of Prefectural Government (January 1872), lawsuits within
each prefecture were to be disposed of by the civil court section
of each prefectural office. This section, given control over
litigation, surveillance duties, arrests, and punishment of law
offenders, was one of the four offices set up to handle the different
business of the prefectural office.

In June 1872 the Justice Department received a new head
who was destined to carry out far-reaching reforms in the
judiciary before abruptly resigning at the beginning of the
following year. Promoted from the Vice Presidency of the
Left Chamber, Etō Shimpei, the new Minister of Justice, was
the third person to head the Justice Department since its cre-
ation. But he was not new to legal affairs. From the time Etō
had been an official in the Office of Laws he had headed the
project for codifying the civil law, and his concern for the
judicial system was, if anything, very profound. Therefore his
new positions as head of the Justice Department offered him
the opportunity to fulfill whatever aspirations he cherished for
Japan’s judicial branch of government. Scarcely a month after
his promotion Etō made several recommendations to the Council
of State; and these the Council approved. The first requested
that all courts of law and their general affairs be placed under
the Justice Department; trials however were to be made free of
the department’s interference. The second suggested that all
cases requiring Imperial sanction be reported to the Throne by the Justice Department. The third advised that the Minister and Vice Minister of Justice should have the power to exercise general control and supervision over the judicial officers, to initiate drafts for new legislation, to render judgments in doubtful cases of law, and to make promotions and demotions among judicial officials. In the fourth item Etō requested that judges guilty of crime be tried by the Justice Department. And the fifth and last point prescribed that judges should not be empowered to try offenses involving the government unless they received authorization from the Minister or Vice-Minister of Justice. Though item one expressed his views that the judiciary should be independent of the executive, items four and five make a big exception to this principle. Thinking perhaps that opposition would be invited by too sudden a change, he established the principle tentatively in the first item and, then, no doubt to allay any apprehension, added items four and five. On the same day that these recommendations were made, he also requested that the Prefectural Courts, like the Tokyo Court, be made clearly distinct from the executive.

Within only a brief period following the acceptance of Etō’s recommendations, another important step in judicial affairs was taken by the Council of State when it issued the first comprehensive regulations governing the judicial branch. Known as the Office Regulations for the Justice Department (September 1872), this piece of legislation followed the original draft submitted to the government by the Justice Department. Though clearly marked as nothing more than provisional legislation, the regulations nonetheless covered all manner of judicial business. The judges, public procurators, local police, arresting officers, and the scribes were provided for as also were the advocates, the law courts, the Meiho-ryō Law School, and the house of detention. By the terms of the new enactment, the Justice Department administered national legislation and the courts of law; and it parcelled out the judicial business among the Office of Law Courts, the Procurator’s Office and the Meiho-ryō. This
tri-partite division of duties was especially advocated by Etō and is evidenced in some of the proposals which he drafted after becoming the Justice Minister. The courts were five in kind: Justice Department Court Extraordinary, Justice Department Court, Circuit Court (Shuchō Saibansho), Prefectural Court, and Local Court. The Court Extraordinary opened only when occasion demanded, and it conducted trials for cases of vital importance to the state and those involving offenses committed by judges. This court had no regular members, for they were appointed ad hoc. The Justice Department Court, superior to the Circuit, Prefectural and Local Courts, was headed by the Justice Minister (until December 1873). The Justice Department Court had the right to decide on re-appeals (jōkoku) from Prefectural Courts, to decide civil and criminal cases too difficult for the prefectures, and, when authorized by the Justice Minister, to examine offenses committed by officials of chokunin or sōnin rank and those committed by members of the peerage. However, if certain crimes and doubtful cases were too difficult to permit judgment by even the Justice Department Court, such cases had to be referred to the Justice Department itself. Beneath the Justice Department Court the other courts were so organized that each had a criminal and a civil court section to deal with each type of litigation. The Circuit Courts, which were to be established wherever local conditions permitted, but subsequent to the creation of the Prefectural Courts, had authority equivalent to the Justice Department Court. The Prefectural Courts of course were established in the different prefectures and they bore the prefectural name of their location. The presiding judge of the Prefectural Court was selected from among the judges of that court. The range of penalties that could be imposed at the Prefectural Court level embraced any sentence up to and including deportation, although capital crimes, doubtful cases at law, and offenses which resulted in the divestment of court rank required supervision by the Justice Department. The Prefectural Courts afterwards became District Courts. (In the Tokyo vicinity Prefectural Courts were directly
controlled by the Justice Department Court.) The next lower judicial level consisted of the Local Courts, which fell under the jurisdiction of the Prefectural Courts. The Local Courts, each of which was headed by one of its respective examiners, were established in accordance with local circumstances; and their authority extended over the civil and criminal litigation within their respective forums. No sentence more severe than whipping with the rod could be imposed at this level. If upon examination a case revealed an offense that required a sentence of penal servitude or a heavier penalty, the case had to be removed to the Prefectural Court for decision. Other types of cases that had to be removed to the Prefectural Court were these: any case punishable by whipping with the stick that was too complicated for Local Court decision; any litigation involving more than 100 ryō or any cases of smaller sum that were difficult to determine; and any suit involving another prefecture’s jurisdiction regardless of the sum of money involved. When the parties to a suit resided in different Local Court forums, the suit was tried at the Local Court having jurisdiction over the defendant. Following the decision of the Local Court, the dissatisfied party was allowed to file a re-appeal by transmitting through the public procurator to the Prefectural Court a record of the trial and an accompanying letter from the Local Court that had rendered the adverse decision.

Considering the manner in which the courts were thus organized and operated, it is clear that an attempt was made to free the Prefectural Courts from the prefectures and to separate the Justice Department Court from the Justice Department; yet, in spite of this endeavor, the Minister of Justice was allowed to serve concurrently as Chief Justice of the Justice Department Court (to which he may possibly have added some prestige) and he was allowed to interfere to a considerable extent in court decisions. The potential role of the Justice Minister was hinted at in the regulations governing the judges, for, according to their provisions, doubtful cases at law or those requiring the attention of the Emperor had to
pass for decision to the Justice Minister, while crimes not covered by written legal provisions were to go for judgment to the Meiho-ryō.

By December 1872 fourteen Prefectural Courts, including the Kanagawa, Hyogo, Osaka, and Kyoto Courts, were established as provided by the terms of the Office Regulations for the Justice Department. Counting the Tokyo Court, which had been established in February 1872, the total number of the Prefectural Courts was fifteen. Upon establishment of these courts the prefectural officials that were formerly in charge of the prefectures' civil court section were appointed as officials of the Justice Department. New courts and added personnel, however, meant expanded operations for the Justice Department and it was therefore obliged to press for increased appropriations to meet the following year's expenditures. But the budgetary requests of the Justice Department were not met. In fact the Finance Department responded with a sharp curtailment of the Judiciary’s expenditures, which not only made the creation of courts in all parts of Japan quite difficult but also prompted Etō's resignation from the Justice Department along with his staff. Yet, regardless of these developments, the Prefectural Courts became known within a short while as District Court (chihō saibansho) and their branch courts, which first appeared in August 1872, became the Local Courts. Among other changes taking place at this time the Inner Council assumed a role similar to that of a supreme court. This resulted from a provision of the Regulations for the Organization of the Council of State and Central Chamber Office Regulations (May 1873) which prescribed that all grave cases in which there existed any suspicion of guilt would be investigated by members of the Inner Council or examined by this Council in an extraordinary court.

The provisions of the Office Regulations for the Justice Department that related to judicial officials classified them either as judges (hanji) or examiners (tokibe). The judges, though of several different grades, were all charged with the preserv-
tion of the law and with the expeditious and impartial adjudica-
tion of litigation. As judges they were dispatched to the
different courts where they were expected to specialize in either
civil or criminal litigation, if the specialization was warranted
by the court’s volume of business. Doubtful cases at law and
those requiring the attention of the Throne had to be deferred
by the judges to the Justice Minister. The examiners, also
varied in grade, were sent out to the courts, too, and they, like
the judges, specialized in either criminal or civil cases.

In passing, brief allusion should again be made to the fact
that on September 30, 1872, within a month after enactment
of the Office Regulations for the Justice Department, the Police
Bureau was set up under the Justice Department and police
affairs became part of this department’s jurisdiction. Two
other minor points to remember are that the District Court
branches became generally known as Local Courts in December
1872, and that the criminal jurisdiction of the Tokyo Kaishijō
Gourt was transferred to the Tokyo Court in February 1873,
followed shortly thereafter by a similar transfer of its civil
jurisdiction.

The many and far-reaching judicial innovations carried out
under Etō, which we have just briefly reviewed, were of pro-
found significance in the development of Japan’s judicial insti-
tutions. By attempting to separate the courts of law from the
executive branch, the judiciary was set upon a course leading
to modernization; yet, at the same time, we should perhaps not
fail to suggest that this beginning signaled the completion of
preparations for Japan’s emergence as a modern state and,
what is more, this beginning meant that a major contribution
had been made toward the creation of a totalitarian state.

Though the changes undertaken by Etō had achieved, or
were supposed to have achieved, a certain delineation between
judicial administration and adjudication in the Prefectural and
even in the Local Courts, the Justice Department Court which
functioned as a permanent supreme court was not completely
separated from the administrative branch, i.e., the Justice

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Department, because the Justice Minister himself retained certain court powers. However, with the creation of the Supreme Court in 1875, the government again embarked upon a sweeping reform; and this time a clear distinction was made between the Justice Department as an executive organ of the central government and the courts as dispensers of justice. Still this separation of the executive and judicial functions was not a complete reality at the local level, for Prefectural Courts could not be established immediately all over Japan; and for a while longer the local authorities continued to double at judges. Other results of the renewed judicial reforms during 1875 brought about the disestablishment in May of the Meicho-ryō Law School and produced new legislation governing the courts.

The new court legislation, entitled the Organization and Rules for the Conduct of Business of the Supreme Court and Other Courts of Law, was decreed in May by the Council of State. On this occasion the courts that were subject to this enactment were the Supreme Court, the Higher Courts, and the Prefectural Courts. For the sake of convenience we shall first treat the Prefectural Courts. One Prefectural Court was created in each prefecture and was named after its prefecture, e.g., the Niigata Court, the Tokyo Court, and the like. The Prefectural Court's jurisdiction extended to all civil and criminal cases that did not involve more serious penalties than imprisonment at hard labor. Where no Prefectural Court was created —forty seven of the sixty prefectures lacked them—the governor or his chief assistant (sanjī) served as the judge. Operating on the single judge system, the Prefectural Court was a court of first instance for all civil cases however serious their nature; and any of this court's decisions in first instance could be appealed to a Higher Court. There were no provisions to cover appeals against decisions rendered in criminal cases, which indicates that such appeals were not permitted. Civil and criminal cases that involved both Japanese and foreigners were decided without delay if they were not of a serious nature, otherwise they were first heard and then reported to the Justice
Minister. In cases requiring the death penalty, a draft of the most important evidence was prepared and the defendant was confined to prison pending the circuit court session; in cases requiring imprisonment at hard labor for life, a document containing the pertinent law applying to the offense was prepared and forwarded to a Higher Court for review and approval.

Next come the Higher Courts. One each of the Higher Courts was created in Tokyo, Osaka, Fukushima, and Nagasaki, though the one in Fukushima was shortly moved to Sendai. Among these, the Tokyo Higher Court was the successor to the former Justice Department Court and the others were successors to the old Circuit Courts (Shutchō Saibansho). The Higher Court examined appeals from the Prefectural Courts; and it had the authority to pronounce the death penalty, though this was not executed until after a record of the case had been sent to the Supreme Court for sanction. A Higher Court also reviewed and sanctioned the sentences imposing forced labor for a life term which were submitted to it by the Prefectural Courts; and it judged the errors in law of the advocates and scribes under its jurisdiction. The number of judges in the Higher Court was three. Their decisions could not be appealed; the only alternative was to lodge a re-appeal (jōkoku) with the Supreme Court for a quashment. The special characteristic of the Higher Court was its function as a Circuit Court (junkai saiban). Holding two sessions a year to judge death penalty cases, which were beyond the competence of the Prefectural Courts, the Circuit Court consisted of three members: one judge and one assistant judge from the Higher Court and one judge from the Prefectural Court. Whenever this court rendered a judgment it had to forward a report of the trial to the Supreme Court for approval. Subsequent to approval it was returned by the Supreme Court to the Prefectural Court for execution.

Lastly our attention shall be drawn to the Supreme Court, which was created in April 1875, only a month before enactment of its constitution and governing regulations. By these regulations, the Supreme Court received civil and criminal re-appeals,
quashed unlawful decisions of the Higher Courts and the other inferior courts, and concerned itself principally with the preservation of a unified national law. The Supreme Court, in other words, was patterned after France's Cour de Cassation. After quashing an unlawful decision the Supreme Court could either transfer the case to another court for determination or, if convenient, render the judgment itself. If the case were removed to another court for decision and that court failed to follow the instructions of the Supreme Court, then the latter court decided the case; but on this occasion the ruling had to be made by a council of all the judges. Whenever a military court exceeded its authority, the decision of the military court was to be set aside by the Supreme Court and the case submitted to the proper court. Any offenses committed by judges (excluding police offenses), any major crimes committed against the state, and any serious civil and criminal cases involving both Japanese and foreigners fell under the jurisdiction of the Supreme Court. It also examined and passed on death penalties emanating from the Higher Courts, although in reversing such penalties all of the judges had to meet in council to render a fresh judgment. Unless five judges or more were present a Supreme Court judgment could not be rendered. Still one other point to be mentioned is that when equivocal clauses in the law were an integral issue of a re-appeal, the Supreme Court was expected to set aside the re-appeal, then clarify the questionable clause and inform the inferior courts of the revision. Although what we have just seen here did constitute proper procedure for the Supreme Court, according to enacted legislation, a notable exception to this was the judicial disposition of momentous political crimes and of criminal and civil offenses of international scope. For such offenses as these the actual practice was to commission judge ad hoc and refer to them as the Court Extraordinary. For example, the persons who were appointed in 1877 as judges for the Court Extraordinary, which was created in Fukuoka to deal with the revolt led by Saigō Takamori, were not Supreme Court Justices.
The status of the Supreme Court, an important consideration for an independent judiciary, was disappointingly low. From its very beginning the Supreme Court had been in conflict with the Genrō-In, and thus, as a means to raise its stature and that of the entire judiciary, Minister of the Right Iwakura Tomomi had been scheduled to serve concurrently as the first Chief Justice. His appointment had been provided by the Regulations Governing the Organization of the Central Chamber. However, Iwakura stoutly refused the post. By default the next choice for Chief Justice had to be a judge of the first grade. Yet no one in the judiciary was qualified to be a judge of this grade, and Tamano Seiri, a judge of the second grade, was appointed Assistant Chief Justice instead. Failing to fill the Chief Justice position with a person of high status and hence elevate the Supreme Court to an equal position with the Genrō-In, where it would be situated just beneath the Central Chamber, the Supreme Court at length fell to rest in a place next in line to the departments of state.

Accompanying the legislation that was enacted in May 1875 for regulating the courts, certain other regulations were prescribed for the judges (hanji). Accordingly, the judges were graded anew into seven ranks and the examiners (tokibe) were replaced with a number of assistant judges (hanji-ho) who were classified into four ranks. The term hanji which had referred to both judicial and executive officials in the past now became a designation for judicial officials alone. The point of interest in these regulations is the power of intervention in trials which was vested in the Chief Justice of the Supreme Court and in the presidents of the Higher Courts. Put briefly, the Chief Justice and the various Higher Court presidents had the power to appoint a presiding judge for their respective courts; but, further than this, the Chief Justice and the Presidents could perform the duties of the presiding judge in either civil or criminal cases whenever occasion demanded and the appointed judge would have to vacate his seat and sit among the ordinary judges. This naturally was a violation of the judges'
independence; but, worse still, we must observe that there existed no system of personal security for the judges. Another long term possibility for the infringement of judicial independence lay in the Justice Minister's opportunity to abuse his official power, for, although lacking the authority to interfere directly in trials, he had the power, according to the Regulations Governing Organization of the Justice Department, to appoint and dismiss judges. Therefore, despite the reforms made in the judiciary in 1875, when so much to do was made over the separation of powers, the failure to carry the reforms to their logical end prevented the judiciary from enjoying the fruits of complete independence.

Now in the months following the May judicial reforms, branches (shichō) of the Prefectural Courts were set up in each locality. In civil suits their jurisdiction extended to litigation not involving more than 100 ryō; in criminal prosecutions it extended to cases involving sentences of no more than thirty days of penal servitude. Sentences for a term of forty to a hundred days could be imposed if evidence of guilt were obvious, otherwise the case had to be deferred to the President of the Prefectural Court. In July, when the Tokyo Kaishijō Court was combined with the Tokyo Court, a foreign section was organized and put in charge of litigation involving Japanese and the nationals of other countries.

In September 1876 the Prefectural Courts were renamed District Courts. In all there were twenty three. As in the past, they were simply known by the name of their geographical location. The reason for designating them District Courts is probably that their jurisdiction included more than one prefecture. For instance, the Tokyo Court served as the District Court for both metropolitan Tokyo and Chiba Prefecture. Another important change in September to be mentioned is that the branches of the Prefectural Courts began to be supplanted by a system of Local Courts whose jurisdiction was limited to civil actions where the matter in controversy did not exceed the sum of 100 yen. Jurisdiction in criminal cases was limited to
judgments not imposing terms for more than three years of penal servitude. Difficult cases, of course, were forwarded to the District Court. In civil actions, appeals could be made directly to the Higher Court, but in criminal cases no appeal (kōso) existed; the only recourse was a re-appeal to the Supreme Court.

It resulted from these diverse changes that the scheme of courts, now consisting of the Supreme Court, the Higher Court, the District Court, and the Local Court, was completed. But it was completed without the presence of the Circuit Court (junkai saiban), which vanished from the scene in February 1877 when a Council of State decree put an end to its governing regulations. Going further than this, the same Council of State decree abolished the right of the Chief Justice of the Supreme Court and that of the Higher Court presidents to intervene in trials; yet, most important of all, this decree struck a very significant blow for Japanese judicial independence by abolishing the right of the local authorities to act concurrently as judge in those places where no district court was in existence. Ended once and for all was the practice of allowing an executive official to administer justice, a practice with roots reaching far back into the early days of Japanese history. In special districts however, as several examples will illustrate, this combination of justice and administration was not totally eradicated. In the first place the judicial functions for Ogasawara island were delegated to that island's branch government office in 1878 by the Home Department. Secondly, the Department of Justice in May 1879 ordered the administration of justice on Okinawa, pending establishment there of a Prefectural Court, to be carried out by the prefectural office, regard being had for public sentiment, customs and existing laws. And thirdly, the judicial business for Izu Ōshima was delegated by the Justice Department in October 1879 to an official of that island's police office who was without concurrent jurisdiction in procuration affairs.

As very rare instances of mixing the judicial and executive
spheres we may mention, in addition, two other illustrations. The first instance concerns the formulation of regulations (October 1873) for a jury composed of government officials that was to serve at the trial of the Kyoto governor in 1873. The other concerns special trial regulations drawn up in February 1875 and again in 1879 for the assassination case of Hirosawa, the late Junior Councilor.

Though somewhat unrelated to the foregoing examples of combined judicial and administrative functions, we may nevertheless include reference to enactment of the Regulations for the Gendarme (March 1881). By this piece of legislation, the Gendarme (Kenpei) were ranked as a branch of the Army, and were encharged with patrol duties, investigations, and prosecutions. In connection with its duties the Gendarme exercised surveillance over the conduct of military personnel, and discharged at once the duties of the administrative and judicial police. Being under the joint jurisdiction of the Departments of Home Affairs, Navy, and Justice, the Gendarme was also responsible for preserving internal peace and order. Only in Metropolitan Tokyo was a unit established at this time, its headquarters being under the direct control of the Army Minister.

Before straying too far from the subject of courts it would be pertinent here to consider courtroom police and public trials. According to the Regulations for Courtroom Order, issued in May 1874, a sergeant-at-arms always had to be present in court to summon litigants in their proper order. Further, under the judge's bidding, it was his duty to prevent any disrespectful conduct and noise. Whenever disrespect was shown to the judge, he was required to immediately reprimand the discourteous individual, and in case the offense were repeated to fine the culprit accordingly. As long as the courtroom offense did not run afoul of criminal regulations the trial was simply suspended so that the judge could accompany the offender to the waiting room to pronounce judgment there, rather than having the judge submit the case to the criminal court section. For a
period of ten days following the pronouncement of judgment, the pronouncement had to be posted in the waiting room. If abusive language was used against the judge the trial was likewise suspended and the guilty individual was delivered to the criminal court section for disposition. The judge also had the right to order the sergeant-at-arms to remove any spectator from the courtroom who created a disturbance and hindered the court’s examination of the litigants. Within a half year these courtroom regulations were revised: disrespectful conduct became punishable only by reprimand, and the practice of posting a sentence in the waiting room was abolished. In the event that a judge was spoken to abusively by an advocate, the advocate was prohibited from entering the court for a period not to exceed three months subsequent to the discharge of his sentence. This stipulation concerning the advocate only lasted until the Rules for Advocates were enacted in 1876.

But before the enforcement of court room discipline can become a problem, trials must first of all be open to the public and attended by spectators. Toward this end the Justice Department, in December 1872, made it possible for the heads and assistant heads of towns and villages to attend trials after filing an application. Considering the early Meiji Period’s intellectual climate and the contemporary standards that made a District Officials Conference appear equal to a publicly elected assembly, the Justice Department’s toleration of town and village headmen in courtrooms indeed seems to be the first step toward public trials. Yet even before this first step, the Justice Department had already suggested to the Council of State in May of this year that the press be allowed entrance to the civil courts. By publication of the fairness and dispatch of civil trials the Justice Department felt that the public’s suspicion of government officials would be dispelled. Although the suggestion of the Justice Department was followed by the Justice Department Court and the Tokyo Court, it was not always suitable to permit press coverage from the beginning to the examination stage of a criminal prosecution. Hence the presence of newspaper men
at the criminal court in Tokyo was generally restricted to the concluding phase of the trial when judgment was pronounced. But even this little mercy to newsmen was not at first granted automatically in the prefectures beyond Tokyo. Limited though the principle of open trial was, it came nevertheless as part of Etō's judicial reform program and was finally embodied in the following year in the *Criminal Trial Regulations*. Hence formal recognition was extended to the court attendance of town and village headmen and of newspapermen, and, as indicated by these regulations, their presence at court, no less than the creation of the public procurator, was made possible in order to ensure a fair trial. The observation of trial proceedings was also authorized in January 1873 for prefectural officials, Justice Department official, and students of the *Meiho-ryō* Law School, although the latter were forbidden in the following month from attending the Court Extraordinary. By 1874 any member of the general public seems to have been allowed to witness civil trials, provided he listen quietly and respectfully. This is not certain however since the existence of spectator's rights is only known indirectly through the Justice Department's *Rgulations for Courtroom Order* (May 1874). But definite provisions ensuring the general public's right to attend civil court, except in litigation involving illicit relations between the sexes, did appear on February 22, 1875, the very day the Supreme Court was created. To gain entrance to court as spectator a person had to submit a name card containing his name and address to the court's general affairs section and obtain its permission, if we may believe the *Spectators Regulations* (May 1875). Foreigners as well were granted permission to attend civil court in May 1875.

Now that we have sketched the changes in law relating to the courts during the course of the judiciary's move toward independence, let us next focus our attention briefly on the public procurator and the advocate. The public procurator first appeared in 1872 as a creation of Etō Shimpei. Together with the Office of Law Courts and the *Meiho-ryō* Law School,
the Public Procurator's Office formed one of the three major sub-divisions of the Justice Department. Etō's reason for creating the public procurator is that he desired to have a restraining influence on the judges who, no matter how conscientious and fair-minded they might be, were not infallible. Also he saw in the procurator a way to provide safeguards for the rights of the litigants and prevent persons under indictment from escaping the reaches of the law. Hence the public procurator was created for the purpose of keeping close watch over the decisions of the judges and administering the judicial police, not for the purpose of monopolizing the right to institute public actions. He had, then, a role to play in both criminal and civil actions. To sum up the provisions of the Office Regulations for the Justice Department that concerned the procurator it will be seen that his duties were the following. First of all the procurator was charged with preservation of the laws and the rights of the people, the promotion of good and elimination of vice, and with close watch over trials. He always had to be present during civil proceedings, since the trial could not rightfully be conducted by the judge alone; he had to make special efforts for the protection of orphans and women litigants; and he had to make certain that all persons regardless of status enjoyed equal rights and fair treatment before the law. And the procurator served as the channel through which a dissatisfied litigant had to file his appeal with the Prefectural Court. The procurator's intervening role in civil cases, as described here, was patterned after French law. Although the procurator had the right to demand a judgment, he was without the power to render it; the power of judgment was vested exclusively in the judge. With respect to criminal procedure, the duties of the procurator commenced with the complaint of an offense and ended with the verdict; he was not allowed to take preventive police action prior to commission of an offense. The procurators, who were divided into several grades, had beneath their supervision different ranking investigating and arresting officers. The investigating officers, who were dispatched to each court,
followed the instructions of the procurator in the execution of their duties, in watching over trials, and in conducting criminal investigations. The arresting officers carried out the duties connected with criminal investigation and arrests.

In the prefectures where public procurator offices and courts of law had been created a segment of the government officials in the prefectures' civil court section were transferred to the procurator's office, while other officials were transferred to the courts, and still others were placed in the prefectures' general affairs section where they were given charge of police patrols, prisons, houses of correction, and the like. The duties of the procurator, which were prescribed in 1872 and which we have just outlined above, were modified by the Justice Department within a year. First, in June 1873 the Justice Department provided that the procurator only had to attend a civil hearing when he judged it necessary to give serious consideration to the plaintiff's case; and secondly, in January 1874 the Council of State relieved the procurator of his responsibility to keep close watch over trials, while leaving intact his other duties of criminal investigation, the promotion of good, and the eradication of vice. The procurator's duties in the judicial police which have already been discussed under the topic of police need not be re-examined here nor is there any need to discuss the procurator's role as agent to institute public actions in criminal cases, because this will be examined under criminal procedure.

Another novelty to the Meiji Period besides the public procurator was the advocate. The advocate, however, was not completely without precedent, since a type of lawyer known as the *kujishi* had existed in the Edo Period until being banned for abuses associated with its pettifogging activities. But in spite of the ban, lawyers of the *kujishi* tradition were no doubt still active even as late as 1872 when the advocate was first created by the *Office Regulations for the Justice Department*. According to these regulations, the advocate was created, one in each district (*ku*), so that he might state the case of persons unable to initiate proceedings by themselves, and thus prevent
any misrepresentation. Reliance upon an advocate was optional, but those who did use his services had to pay a fee. After May 1876 no one was allowed to serve as advocate unless licensed in accordance with the *Regulations for Advocates* (February 1876). However, when there was no advocate available to assist an individual, and when sickness or incapacity left no other alternative, the nearest relative of the individual was permitted to represent him. Lacking such relative, a suitable proxy could be produced upon certificate of the ward, town, or village head. To become an advocate the aspirant was first required to file an application with the local authorities indicating to them the court at which he wished to practice. Then the local authorities administered an examination and sent a report to the Justice Department, where a license was granted when the candidate was accepted. Since the license limited the term of practice to one year, any advocate wishing to continue his profession after expiration of that period had to obtain a renewal. The examination of the would-be advocate consisted of four requirements: a general knowledge of (1) government decrees and notifications, (2) criminal law, and (3) current court procedure; and (4) a scrutiny of the candidate's moral character and personal history. The first three of these four requisites were waived in 1879 for graduates of the University of Tokyo's Law Department. The duties of the advocate were to elucidate in court the intent of the pleadings and replies, and to answer the questions put by the judge.

The *Regulations for Advocates* were completely revised in May 1880. By the new rules the advocate was defined as a person commissioned to represent the plaintiff or defendant in civil actions in which the use of advocates was legally permissible. As in the past, the candidate had to obtain a license from the Justice Minister after taking a standard examination. The examination concerned civil and criminal law, judicial procedure, and the rules of adjudication. Those receiving a license were obliged to join the bar association and observe its regulations. By way of disciplinary punishment the advocate was subject to
reprimand and to suspension or expulsion from the bar association.

The advocate was concerned exclusively with civil actions, for criminal law advocates did not exist before the enforcement of the Code of Criminal Procedure in 1882. Of course stipulations concerning defense attorneys had already appeared in the jury regulations drawn up in 1875 for the Hirosawa Assassination Case, but these provisions for criminal advocates were an exception to the rule. The fact that the Office Regulations for the Justice Department lacked any provision for the creation of criminal advocates may possibly be explained by the fact that, since the prosecutor was charged with supervision of trials to ensure fairness, there was seemingly no need for this type of advocate. Yet when the procurator's position became that of plaintiff in criminal litigation, it was no longer true that criminal advocates were unnecessary. Only a matter of habit continued to prevent their recognition, or as explained by a Justice Department inquiry of May 25, 1876, "the absence of a criminal lawyer heretofore is not due to any prohibition, it is due only to natural custom". Thus as no prohibition stood in the way, it seems that from this date onward criminal advocates were authorized in special cases by the Justice Department. Finally as a parting word on advocates, it may be observed that in December 1877 provisions were made for advocates to be attached to the Justice Department to represent the government when it was a party to a civil suit and to provide legal counsel for persons too indigent to retain a lawyer. This practice however was discontinued in 1881.

b. The Law on Civil Procedure

During the Edo Period the judicial proceedings of the Bakufu were classified as either deiri suji or gimmi suji. The former consisted of civil procedure with an admixture of criminal procedure, while the latter consisted solely of criminal procedure. As a carry-over into the Meiji Period civil procedure was largely a latter day version of the deiri-suji, though complemented by
the customary law of the Edo Period and by some modification of custom through enactment of special laws. This composite source of procedure remained in use during the period under review (1868-1881), since Japan's first code of civil procedure, inspired by French law, was not enacted until 1890. But it is not to be supposed that court procedure was at a complete standstill during this period; for certain remnants of the feudal scheme of law were in fact being sloughed off. For instance, the use of different styles of language in the legal documents as well as the seating arrangements in court, both dependent on the individual's social status, were discarded; also cast by the wayside was the practice of jailing the defendant when he failed to respond to a court summons, and abolished was the practice of investigating bills of civil complaint that were dropped by anyone into the complaint box at the former Supreme Court (hyōjōsho). As these and other traditional methods of justice were supplanted by modern Western procedural techniques we may trace the growth of the law of civil procedure during the early Meiji Period.

Our knowledge of civil procedure in early Meiji is based primarily on certain regulations that were drawn up by the central government to govern disputes involving litigants of two or more local government jurisdictions. Such controversies at an earlier day had been determined by the Bakufu, provided the local units, i.e., domains, did not reach an amicable settlement. Of course disputes taking place within a single domain or within the territory of the Bakufu were strictly a local matter and fell within the independent jurisdiction of the domain concerned or within the jurisdiction of the Bakufu whichever the case happened to be. Then came the Restoration and, although each domain and newly created prefecture continued to exercise an independent jurisdiction over controversies confined to its own respective boundaries, there emerged a twilight zone for litigation between suitors residing in different domains and, or, prefectures over which no clear cut authority existed. Yet as the central government gradually converted the
old Bakufu holdings into more and more prefectures and law suits between the domains and prefectures multiplied there was a growing need for the political heir of the Bakufu to step in and judge this type of civil action. For this reason the Meiji government gave the Civil Affairs Department control over the disputes crossing local boundaries, and by July 1869 the Civil Affairs Department had already on two occasions made official notification of its governing authority over these controversies. Again in July, by issuance of another Civil Affairs Department notification, which bequeaths some brief evidence of the formal procedure then in use, suits involving more than one domain or prefectural jurisdiction were ordered determined at the domain or prefectural office having proper jurisdiction in the civil action at issue. If, however, the dispute could not be determined without an examination of the plaintiff and defendant together, the plaintiff had to be dispatched with accompanying papers to the Civil Affairs Department. And the defendant, after having prepared a reply to the complaint forwarded to him through his local government (domain or prefectural) office, had to proceed also to the Civil Affairs Department in order that a final disposition might be made. Subsequent to the establishment of this procedural formula the domains were surrendered to the Throne in August and the government was once more radically reorganized. Following this reorganization, the government's next step to provide a more inclusive civil procedure was taken in January 1871 by enactment of the Rules for the Adjudication of Litigation Involving Different Prefectures and/or Domains. Similar to the notification issued by the Civil Affairs Department in July 1869, these rules also made it a policy for litigation overlapping prefectural and domain boundaries to be disposed of by the local government offices. But besides their primary concern for overlapping controversies, the above Rules provided at the same time the basis for judging intra-prefectural and intra-domain suits, and, therefore, it is through these rules that we shall try to obtain a general view of civil procedure during
the early years of the Meiji Period. Still, it should be kept in mind that these rules afford a view of rather limited scope, for what does not appear to the eye is the invisible yet continued application of traditional procedure.

So we go now to see what is offered by the Rules for the Adjudication of Litigation Involving Different Prefectures and/or Domains. Under their terms it was a general principle for the trial to be conducted at the local government office having jurisdiction over the defendant. If an individual of one prefecture (or domain), for example sought trial in order to settle a dispute with a person residing in another prefecture (or domain), the governor or his chief assistant (sanji) was expected to personally corroborate the particulars of the petition and, if correct, send a copy bearing the prefectural seal to the attendant of the plaintiff, in case the latter were of samurai origin, or to the village head of the plaintiff in case the latter were a commoner. Another copy of the petition had to be delivered to the accused. Then the parties to the suit were obliged to go to the court having jurisdiction over the defendant. But as an exception to the general rule of jurisdiction, controversies involving the boundary line of drainage ditches, of villages, towns, and forests wherein two local government jurisdictions were involved were not tried at the local government office having jurisdiction over the defendant. Instead, this category of suits was handled by the local government office of the claimant. The procedure in such exceptional cases was this. The petition of the claimant was officially sealed by his local government office and forwarded to that of the defendant, where the governor or his chief assistant ordered the defendant and his village head to prepare a reply. If, upon examination of the evidence, the charges were substantiated, the village head and defendant were accompanied by a local government clerk to the local government office of the claimant in order that the trial might be held. During the course of the trial, maps and other evidence could be examined or, if essential to the conduct of its hearings, the court could repair to the actual location.
of the dispute. Upon reaching the final stage of the trial the court always had to send the judgment in draft form to the Civil Affairs Department for final disposition. In these and similar cases the written reply of the defendant had to be forwarded to his local government office within ten days after he had received the complaint. Another exception to the general rules of procedure applied to civil actions relating to agricultural land, timber land, and land in pledge. Exceptional suits of this kind were the province of the local government office having jurisdiction over the general territory where the land was located. Hence whether or not the claimant and defendant had their domicile in the same forum where the land was located was immaterial, for the suit was always heard in the forum of the land in dispute. For other type suits there were still different procedural requirements. For instance, in a controversy involving a sojourner from a distant section of the country and a permanent resident in the locality where the former was in temporary residence, the sojourner had to be accompanied in court by the proprietor of his lodging house or by a local relative upon filing complaint. Following determination of the suit, the details of the case were sent to the local government office having jurisdiction over the plaintiff. If the suit could not be determined within a hundred day period, it was submitted to the Civil Affairs Department and the plaintiff's local government office was notified accordingly. The same procedure obtained when two temporary residents, both coming from different parts of Japan, became involved in a dispute and the local inn or a local relative initiated the action as witness.

Court acceptance and adjudication of a suit depended solely upon institution of proceedings by the plaintiff. When, because of illness, old age, minority or incompetence, a person could not act for himself, a relative or other representative could present the petition and have it accepted if an examination of the facts supported the charges. But a written petition would not be accepted, regardless of its merits, unless endorsed by
the seal of the proper government official, when the petitioner was an ex-samurai, or unless endorsed by the village head, when the petitioner was a commoner. If a petition were blocked by the endorsing party for personal reasons or through bribery, the petition could be filed without the necessary seal in order to prevent an injustice. In making a reply, the defendant had to do so within ten days after his local government office had received the complaint from the office of the plaintiff. More time for the reply was allowed when the new year or mid year holidays were approaching. After drawing up the reply and having it properly sealed the defendant was sent to the local government office of the plaintiff. If he were a samurai the defendant had to be accompanied by an attendant; if a commoner, the defendant had to be accompanied by his village head. It should not be supposed however that a private settlement was out of the question. For a request of private settlement would be granted if, during the ten day period that was allowed for preparation of the reply, the plaintiff and the defendant would join in requesting it and if they would both sign a statement to the effect that no future complaints would be made. A five day extension of the ordinary ten day period was permissible when a settlement could not be immediately reached. In the event of a mutual agreement being reached, a copy of the plaintiff's and defendant's statement abjuring further complaint was sent to the plaintiff's local government office.

Barring a private settlement, the suit was tried, as we have seen, at the appropriate domain or prefectural office. At the first hearing of the trial the governor or his chief assistant presided, with a subordinate official sitting in attendance. Failure to reach a decision on the first day meant that the hearings thereafter could be presided over by the subordinate official, although there had to be two of them to conduct the examination. When the case assumed serious proportions or developed into a felony, the governor or his chief assistant was required to conduct a number of successive examinations. After the trial proceedings had been finished and a judgment rendered,
both parties had to evidence in a written acknowledgment that no future complaints would be made; and a copy of the acknowledgment had to be forwarded to the plaintiff’s prefectural office.

When a decision could not be reached within a hundred days after commencement of trial owing to involved evidence and conflicting testimony, a detailed report of the examination had to be recorded and signed for accuracy by the defendant and plaintiff. Sealed by the local government office conducting the hearings, the report was then delivered to the defendant and plaintiff and they were sent off to the Civil Affairs Department to face trial. The plaintiff’s local government office was notified of the case’s transfer, but the local authorities were in no way allowed to offer any objections. After having been instructed to petition the Civil Affairs Department, the two parties to the controversy were allowed fifteen days within which to depart for the trial or be considered in violation of the law. More time for travel was granted to those who needed it. If a private settlement could be reached before the departure date arrived, it had to be worked out within the procedural framework for private settlements that we have just mentioned above. When any decision formed within the hundred day period was staunchly opposed by the plaintiff it could be appealed to the Civil Affairs Department. And when a plaintiff could produce evidence that deserved a fresh appeal or a change in the existing ruling, the Civil Affairs Department was bound to redetermine the case or modify the ruling. In certain exceptions the hundred day limitation did not apply; for example, in actions concerning loans of money, cereal, etc., where the object was to achieve a compromise. Also the hundred day limitation was not binding if either the plaintiff or defendant became ill or incapacitated during the litigation proceedings.

When one of the parties to the suit died during the proceedings, an investigation was made and it had to be particularly thorough if the individual died under suspicious circumstances. Whether the circumstances were suspicious or not, a signed statement was obtained from the attendant or village head of
the deceased party and sent to his local government office. Suits that were difficult to determine due to the involvement of prefectural officials in the essentials of the case had to be promptly forwarded to the Department of Civil Affairs.

Although the foregoing, which is an outline of the *Rules for the Adjudication of Litigation Involving Different Prefectures and Domains*, suggests the formal essentials of the law of civil procedure as it first stood in the early years after the Restoration, certain alterations in these regulations soon appeared in August 1871. According to one new provision, if the several plaintiffs to a case each came from different forums the local government office having jurisdiction over the plaintiff whose name appeared at the head of the severally undersigned claimants had to make the investigation and forward the petition to the prefectural office of the defendant. Another new provision made it possible for the two litigants concerned to reach a private settlement even after the suit had been lodged with the Civil Affairs Department. Besides the addition of new clauses there were certain deletions from the old ones. These included removal of the above mentioned stipulations concerning retrial, modification of previous rulings, the procedure to be followed in the event of a litigant's death, and removal of the provision concerning the transfer of cases involving prefectural officials to the Civil Affairs Department.

Further legislation concerning civil procedure was included in the *Office Regulations for the Justice Department* (September 1872). Accordingly, the trying of civil lawsuits was made the business of the civil court section of the Justice Department Court, the Prefectural Courts, and of the Local Courts. The work of the civil court section was divided into three stages: 1) examination of petitions, 2) initial hearing and 3) settlement. The first stage began with the filing of a petition. After its receipt, the petition was stamped by the inspector and passed to the presiding judge of the civil court section. He consequently relayed it to the procurator for his stamp, after which the case went to a judge or examiner. While the latter conducted the
examination a procurator had to sit in attendance. This ended
the phase for examining the petition. Next came the initial
hearing during the course of which the court affixed its seal
to the petition first and then summoned the defendant, giving
him a copy of the petition and ordering him to submit a written
reply within a definite period. If this procedure were obviated
by a request for conciliation, the matter was left to the discretion
of the interested parties, otherwise the judge and examiner
had to summon the plaintiff and the defendant to appear together
for examination. After completion of the initial hearing, when
the facts of the case had become clear, the third and final stage
—settlement—was reached. At this point the judge either
delivered the decision or dismissed the two parties to the
case, provided they had settled their differences through con-
ciliation.

This constituted the usual order of civil procedure, though
in the Justice Department Court the organizational requirements
made it necessary for a judge to preside over the initial hearing
and to deliver the decision at the conclusion of the trial. But
in any of the courts the examiner was likely to continue the
questioning after the first session, though afterwards he had
to make a detailed report of the examination to the judge.
Where complicating factors in a serious case precluded an easy
decision the case had to be deferred to the chief judge of the
court. During trial the judge could grant a withdrawal if
both parties would sign a sealed statement to that effect. As
to evidence, if either party provided facts of a doubtful nature,
it was the responsibility of the custodian of court documents to
detect any discrepancy by cross referencing the documents. An-
other matter of procedure worth mentioning is that disclosure
of an offense during a hearing resulted in transfer of the offense
to the criminal court section whenever proof of the offense was
obvious. Transfer to the criminal court section also applied
to a direct appeal case when the plaintiff was found guilty of
an offense. In the preparation of all documents and records
relating to the foregoing procedure the pertinent provisions of
the Office Regulations for the Justice Department had to be observed.

In July 1873 the Forms for Pleadings were issued by the Council of State, and after the first of September these forms became required usage for both the plaintiff and defendant. Their use however was temporarily restricted in October to Japanese alone. In content the first chapter of the Forms for Pleadings treated the written petitions of the plaintiff, the second one dealt with the written replies of the defendant, and the appendix contained the proper form of each type of petition and response. Supplemental to the Forms, an additional rule concerning pleading, issued by the Justice Department in March 1877, prescribed that, except for the petitions concerning transactions of commercial companies and the initiation of proceedings based on deeds of transfer, any pleading should be deemed authentic if a trace of evidence existed, even when no specific example of the written pleading in question was found in the Forms for Pleadings.

First of all in the process of pleading the plaintiff, when ignorant of the defendant's address, name, or social status, took an introductory letter from his own town or village office to that of the defendant in order to obtain these necessary particulars of the defendant's status. This completed, the plaintiff employed a scribe to prepare the petition, since in all cases it was obligatory to have a scribe prepare the petition and all correspondence between the plaintiff and defendant. Not even an advocate could prepare the petition and correspondence, whether for himself or for someone else. The use of the scribe however was made optional in July 1874. When the petition was not drawn up in the proper form nor on the proper paper it could not be accepted by the judge. Regardless of the number of plaintiffs and defendants, only one particular case could be entered in one petition, and if one person were filing suit on several matters at one time, each matter would require a separate petition. But in case the subject matter concerned a loan, more than two items could be combined in the same
petition if the plaintiff and defendant remained the same in all items. In suits concerning loans where the creditor party consisted of several individuals, the suit was filed under all their names, though one alone could institute proceedings if he had a certified statement of trust from the other creditors. Where there were two or more creditors, each having his domicile in a different forum, the litigation could be instituted in whichever forum was the most suitable. In a case where the debtor party to a loan consisted of several individuals, all forming the opponent party, the plaintiff decided where the case would be heard, irrespective of the wishes of the individual debtors.

In sending the summons to the defendant, the court also accompanied it with the plaintiff’s petition. If the allegations of the petition were well founded the defendant was expected to give them prompt and deliberate consideration as soon as he received the petition. But even after the petition had been dispatched, the plaintiff willing, the suit could be withdrawn. When withdrawn, an answer to that effect was prepared by the scribe and submitted to the court, and finally the answer was affixed with the seal of the plaintiff. In case the allegations of the plaintiff were without substance and there existed conclusive evidence of the defendant’s innocence, a copy of the full text of the petition had to be prepared and a reply referring to the false charges had to be put in writing.

Aside from the proper procedure for pleading, another important matter for the early Meiji court was the problem of dealing with persons who ignored the court summons or who were tardy in appearing at court hearings. To punish such individuals the imposition of fines was provided by regulations issuing from the Department of Civil Affairs in 1869, but these lasted only until the next year when they were rescinded by the Department of Criminal Punishments. Then in May 1871 the Department of Criminal Punishments created a basis for dealing with summons delinquents by establishing certain contraventions (ishiki) punishable by ten to twenty blows of the rod or punishable by as little as a reprimand. The degree
of these punishments and the amount of fines were classified by the Department of Criminal Punishments according to whether the delinquent failed to appear in court or was just tardy, and whether the culprit was a principal or attendant, and whether he resided in Tokyo or elsewhere. By July 1874 the judges were authorized to impose nothing but fines, which were to be imposed directly and in accordance with the gravity of the contravention. However, from December 1874 until January 1877 these delinquencies were turned over to the criminal court section for disposition. Thereafter until 1890 the judges could directly impose fines ranging in amount from five sen to ten yen.

In December 1875 the Justice Department defined the procedure for the acceptance of withdrawal of civil petitions during the initial stage of examination. Incidentally, the word civil (mínji), as it is known today, appeared about this time in laws and ordinances. Now, as defined in 1875, the procedure for examining civil petitions was still similar to that of the Edo Period wherein the early Meiji procedure had originated. As in the past the acceptance of a civil suit depended first of all on the plaintiff's petition and nothing else, for no regard was given to an answer by the defendant. When the judge decided to reject the petition he was only required to write in the margin why it was unacceptable. The stamp used by the court to indicate rejection was even similar to the one used in the Edo Period. A second aspect of the Meiji examination procedure that was rooted in the past was the practice of designating certain actions as inherently inadmissible, and these suits were automatically turned down in the examination stage. As to the withdrawal of a petition, the judge only had to inquire into the plaintiff's reasons for wishing to make a withdrawal and to obtain two copies explaining why the right of petition was waived. One copy was kept by the court and one, granting the request, was returned to the plaintiff. However, the judge was barred from causing the plaintiff to request a withdrawal of the suit by exerting judicial pressure in favor of an agreement.
This traditional system of examining petitions went by the wayside in April 1877 when the Justice Department declared that, except in the preliminary examination of a petition by the Supreme Court, the practice of accepting or rejecting a petition without a hearing from the defendant was abolished. This declaration meant that a petition would have to be accepted even though the judge might consider it groundless or completely lacking in evidence. Of course, petition which were not filed within the proper time limit or were in violation of some technical or written form could be rejected without waiting for a response from the defendant.

Once accepted, a civil suit, or criminal prosecution for that matter, was subject to certain general principles of adjudication. These principles, decreed in June 1875 when the Council of State issued the Rules for the Conduct of Court Affairs, were as follows:

1. Each court shall try both civil and criminal cases according to law and without delay, and no court shall suspend trial and appeal to a higher court on the grounds that a case is too complicated and open to doubt. However, this does not apply to cases involving sentences of capital punishment and forced labor for life.

2. When application is made to disapprove a judgment, it is not necessary for the application to be justified in court; the court shall simply announce that the appeal or re-appeal shall be filed within a prescribed period according to established rules.

3. Judgment of civil cases shall be rendered according to custom in the absence of law; and in the absence of custom they shall be decided according to reason.

4. Pronouncements rendered by judges shall not act in the future with the binding power of ordinary established rules.

5. With the exception of promulgated decrees and notifications, the directives issued by the offices of the central government shall not act in the future as ordinary
established rules of authority for the courts. The most important of the above five provisions is the third one, though it needs no special comment here in view of our earlier discussion of it.

Now, after a suit had been examined and had passed the initial hearing, it arrived at the final or settlement stage, at which point the plaintiff and defendant were required to submit a signed document indicating that they would abide by the decision. They signed separate statements when one was a samurai and the other a commoner. This was the tradition carried over into the Meiji Period. Then in 1872 the old procedure was changed so that, regardless of their status, the two parties to the suit were obliged to sign a joint statement. Finally this practice was altogether abandoned in 1873 and the defendant and plaintiff were simply required to hand in a certified statement verifying that they had received a copy of the judge's decision.

Another point that should not be overlooked in our discussion of civil procedure is the court's encouragement of conciliation. The encouragement of private and amicable settlements between the parties to a suit had been a function of the court during the Tokugawa Era, particularly in suits involving interest bearing obligations; and even after the Restoration when certain financial obligations were made inadmissible to judicial determination, the traditional regard for conciliation was by no means discontinued, though in early Meiji conciliation was referred to as kankai rather than naizumi which was the traditional term. As to who was eligible to initiate a private settlement, what amount of money could be involved, and which courts had jurisdiction in early Meiji, certain basic standards emerged by 1876 owing to the accumulation of regulations and instructions that were issued for the Branch Courts by the Justice Department. By their provisions it is apparent that conciliation could be requested by the principal to a suit or by one of his relatives or employees when the principal was incapacitated. There was no need for the applicant to prepare
a written petition; he only had to appear at court and state the details of his case. The negotiations were not circumscribed by any fixed rules and the sum of money involved was immaterial. However, litigants who were tardy or failed to attend conciliation proceedings could be punished in accordance with court regulations. The courts having jurisdiction over the conciliation cases were the Branch Courts, or Local Courts as they were later known. For a glimpse of the conciliation procedure itself we must depend upon a brief view of the procedure for the Tokyo courts which was outlined in the Provisional Regulations for the Branch Courts (December 1875). According to these regulations, the litigant desirous of a private settlement first submitted a signed application for conciliation to the court and was then assigned to an assistant judge. Whether or not both parties to the suit appeared together to file for conciliation was of no consequence. After hearing the litigant's petition, the judge issued a summons valid for three days and certified that the pertinent evidence had been examined. If both parties assembled within the required three days and accepted mediation, they were ordered to tender a document of postponement or withdrawal. But regardless of the final disposition of the case—whether the suit was withdrawn or the conciliation attempt ended in failure—the clerk recorded the results in his register. If during the conciliation proceedings a settlement by distribution of property was requested, it became necessary for the defendant to sign a statement of distribution with the different plaintiffs after having privately settled with each one of them. When this was done the case was closed. As a general rule representatives were not permitted a role in conciliation cases, although in 1880 their services were authorized in compelling circumstances. For conciliation attempts that failed, the Justice Department provided in 1876 that the plaintiff should receive a certificate indicting failure so that the certificate could be presented to a competent court in the future if the plaintiff desired to apply again. In cases where the time limit for the action expired in the midst of conciliation discussions, a thirty
day extension could be granted; but when agreement failed to be achieved in that period of time and the applicant neglected to make application with the Prefectural Court by the thirtieth day, he lost his right of petition in that particular case.

The parties to a civil suit, despite their innocence of criminal acts, were not necessarily free from criminal duress. It frequently happened in the Edo Period and also after the Restoration that judges threatened the litigants and ordered them into custody to prevent their disappearance. To improve this situation the Justice Department, during the judicial reforms of 1872, gave instructions for the judges to distinguish between civil and criminal actions and to refrain from applying corporal punishment to civil litigants. This advice was based on the reasoning that civil hearings were for the purpose of extending the rights of the people, an objective to be obtained by persuasion rather than force. These instructions followed by only two months an order from the Council of State directing the local authorities to arrest any civil suit defendant who fled upon being summoned and to deliver him to the court having jurisdiction. Yet by January 1876 the Justice Department banned the past practice of placing a person in detention by virtue of his having received a civil suit summons.

As the treatment of the litigants in a civil suit was important so, too, was the disposition of documentary evidence. After all a document could not be used unless it was authentic. In order to establish standards of authenticity and minimize complications which might arise from carelessly prepared commercial contracts, a number of regulations—not all permanent—were established between 1871 and 1879. First, in October 1871, the Council of State publicized the proper form for written contracts of exchange between buyer and seller and also made it known that the signature seal to be applied to contracts had to be submitted in advance of their use to the village or town authorities where the possessor of the seal resided. Any failure to comply with these instructions meant that a deed would be improperly prepared and not readily used as evidence in future
civil actions. These regulations however were rescinded in May 1875. Of the number of laws concerning the proper way to apply one's signature to a contract, one of the significant orders (No. 29, July 1873) of the Council of State prescribed that after October 1 of the same year a contract between two persons not signed with a registered seal would not be used as evidence in court. Of course the use of commercial seals and those of shop owners were treated separately. By October 1879 the signatures on contracts covered by civil law had to be written by the individual himself and accompanied by his registered seal; if a person was incapable of writing his name, this could be done by proxy, but the principal always had to affix his own registered seal. The person who acted as proxy was required to indicate his role next to the principal's name and also affix his own signature and registered seal. But within a month, due to the perplexities caused in the banking routine by the addition of the proxy's name, the Justice Department allowed bank deposit receipts, bank drafts, and exchange bills to be signed simply by the impression of the individual's seal, carved in such a way that it would be identical to a hand-written specimen of his signature, and by the impression of the proxy's seal. Though the use of seals was thus completely covered by government regulations, the Council of State in May 1879 abolished its aforementioned Order No. 29 (July 1873) and declared that contracts without the registered seal were not necessarily invalid, but that their validity depended upon an examination in court. Another important alteration of the rules governing documentary evidence came in February 1875 when an earlier government order of 1873, that disallowed as court evidence any private or public documents or documentary evidence which lacked the inclusion of a date, was modified so that such documents would be valid as to contents but could not stand as proof in determining the sequence of time. Lastly it should not be forgotten that any contract not bearing a stamp was inadmissible in a civil action. The first such provision on the validating force of stamps appeared in 1873, though later
it underwent many changes that need not be discussed here.

It will be noticed in passing that in respect to the questioning of witnesses, the Council of State made it unnecessary in December 1873 for a report to be made to the Throne when an official of chokunin or sōnin rank or a member of the peerage was summoned for questioning in connection with civil law suits, although a report had to be made to the government office where he served. But even this latter qualification was rescinded in October 1877.

In the matter of expert witnesses, the Home Affairs Department’s standing rule of dispatching qualified persons to survey boundaries under dispute was abandoned in October 1876.

Now at this point, having already spoken of the procedure for conciliating civil suits, of the requisites for valid documents, and related matters, it is time here to consider the procedure for appeal. The lodging of an appeal is evident in Japanese history as far back as the eighth century and again in the Japanese Middle Ages, though afterwards there is no indication of it in the legislation of the Edo Bakufu. By the early Meiji Period the system of recourse had become an offspring of French law. The early Meiji appeal, as we have noted in the treatment of administrative litigation, could be filed after December 1872 with the Justice Department Court whenever a litigant disapproved of the proceedings by the local authorities or the District Court. But in May 1874 new regulations on the civil appeal appeared. By their definition, the appeal was an application to a higher court that was filed by an individual who disapproved of a decision rendered in an action instituted by reason of the obstruction of any right outside the sphere of criminal law. If either party to a suit, in other words, was dissatisfied with a judgment of the Prefectural Court or prefectoral office, either party could appeal to the Justice Department Court; and a judgment of the latter court, when rendered the first time in a given case, was subject to appeal to the Court Extraordinary. The appeal had to be filed in writing by the appellant within three months from the day that the
judgment was pronounced, and the court or prefectural office where the decision had been rendered was obliged to send the litigant and the documents relating to the case to the next superior court. In September 1874 the Justice Department ruled that when civil suits between individuals which were tried by the prefectural office in the first instance were appealed, the Justice Department Court would serve as the court of final instance.

Additional legislation concerning appeal procedure for the ordinary appeal (kōso) and the re-appeal (jōkoku) was enacted in the year 1875 during the judicial reforms marking the creation of the Supreme Court and the Higher Courts. According to this new procedure, the ordinary appeal was addressed to a Higher Court when one or both parties disagreed with a Prefectural Court decision. The appeal was limited in its use to civil actions while, conversely, the re-appeal was a valid recourse in either civil or criminal actions. The appeal could not be filed until the eighth day after delivery of the decision during which time the persons involved in the suit were expected to give serious consideration to the judge’s ruling. But suits involving commercial transactions, if urgent, could be appealed within the seven day waiting period. After a period of three months the proper time for appeal expired unless the distance of the appellant from the court made additional time necessary. Upon receipt of the appeal application the Prefectural Court stayed the execution of the judgment and, when requested to do so, forwarded the pertinent documents of the case to the Higher Court.

When the disappointed litigant regarded the final decision of each court as unjust and thus turned to the Supreme Court for a reversal of the decision, such action constituted a re-appeal. The re-appeal could be filed with the Supreme Court whenever an inferior court violated adjective or substantive law or exceeded its authority. The same re-appeal procedure held true if an Army or Navy tribunal exceeded its proper authority. And as we have just mentioned, the re-appeal was also a proper
recourse in criminal cases. In civil actions the re-appeal was only available to a litigant after the ordinary appeal had been adjudicated by the Higher Court. That is, the appellant or his representative had to submit two copies of the re-appeal to the Supreme Court within two months after the Higher Court had announced the decision; and, upon filing the re-appeal, notice of this action had to be forwarded to the defendant. A similar notice had to be sent to the court of original jurisdiction so that within three days it could forward to the Supreme Court the necessary documents. For a re-appeal there was no stay of judgment, but when the first court's decision was quashed by the Supreme Court, the former was immediately notified and the stay was out into effect. Upon conclusion of the trial by the Supreme Court, execution of the previous judgment was revoked and replaced by execution of the new judgment. However, the Council of State ruled in May 1876 that whenever a person beyond jurisdiction of the Japanese courts was a party to an action being re-appealed, the judgment of the first court would be stayed. When the five or more justices of the Supreme Court's Civil Court Section assembled to have the plaintiff or his representative read the petition for re-appeal and to hear his opinion, they announced at that time whether or not the re-appeal was legitimate and acceptable. This was known as the preliminary appeal. When the case was accepted, the defendant was sent summons and a copy of the re-appeal within two days. After receiving the summons, the defendant was required to deliver an answer in writing to the Supreme Court within thirty days, unless an extension of this period was warranted by reason of the defendant's extraordinary distance from the court. Upon receiving the defendant's answer the head of the civil court section had to appoint a presiding judge; fix a date for the hearing; and three days prior to the hearing serve a summons on the plaintiff and defendant. On the day of the hearing, when the justices had assembled in the courtroom, the presiding judge read aloud the case from beginning to end, then the plaintiff and defendant followed this with their oral statements,
and next, each party presented its pleadings. If, after completion of the proceedings, the judges decided justice was on the side of the plaintiff, they announced the reasons for reversing the lower court and either ordered the case retried there or declared that the Supreme Court itself would pass judgment on it. Similarly when the re-appeal was rejected, the court stated the reasons why. If the lower court failed to abide by the ruling of the Supreme Court in accordance with the quashment and it thus became necessary to hold a full judicial council in the Supreme Court to render a decision, the presiding judge of the council always had to be appointed from the Criminal Court Section.

Once more in February 1877 the appeal procedure was completely amended. The routine for ordinary appeals was virtually unchanged, but in reference to re-appeals their petitions became more detailed, accompanying documents increased, and the practice of appointing a criminal judge to head the full judicial council when a lower court refused to accept a previous Supreme Court ruling was abolished. Such were the major changes. In filing a re-appeal it was now necessary to deposit ten yen with the Supreme Court. When the re-appeal was rejected, the deposit was kept, otherwise, it was returned when the lower court ruling was reversed. When kept, the money was used to defray the trial expenses of the defendant. As a further comment on appeals, it will be noted that between 1877 and 1881 the Justice Minister, whenever he deemed the trial of a re-appeal inappropriate, had the right to authorize the public procurator to seek a retrial.

Before concluding our survey of the legislation on civil procedure in early Meiji something must be said of that period's proceedings in bankruptcy. These proceedings, which were a legacy of the Edo Period, constituted a form of compulsory execution. Initiated upon the application of a creditor the bankruptcy proceedings resulted in seizure of the debtor's property for public auction and in the distribution of the proceeds to the creditors. But prior to effecting execution, it was neces-
sary for the court to order the debtor to perform his obligation by a specific date; and when the court order was not met, the debtor was declared bankrupt. Building upon this inherited procedure of the Edo Period, the Meiji Period added the Bankruptcy Regulations for Peers, Ex-samurai, and Commoners (July 1872). This enactment drew a distinction between the peers and ex-samurai on the one hand and the commoners on the other, prescribing for each of these social groups a list of items that were exempt from seizure. For commoners the non-attachable items consisted of two pairs of wearing apparel, one set of bedding and those things indispensable for the exercise of the debtor’s vocation. The indispensable vocational items were left to the discretion of the debtor, although their total value could not exceed fifty ryō (i.e. yen). The amount of bedding and clothing left in the debtor’s hands depended on the size of his family, for the family members were entitled to the same amount of these articles as the debtor himself. To determine the value of the goods, the creditor and debtor each appointed an expert, perhaps second-hand dealers, and together with a bidder they tendered their bids. The village or town officials examined the bids and set the price according to the highest tender. For food the debtor could keep enough rice to feed his family for a month, and by way of cooking utensils he was allowed one set of pots and pans. For a peer or a person of samurai descent the basic exemptions were the same as those of the commoner, but in addition the aristocratic debtor was allowed to retain one long and one short sword, one toga virilis, and enough of his rice stipend to provide an annual supply of food for his family. If the debtor aristocrat had no surplus rice or was lacking enough rice to meet his minimum annual needs, only half of the stipend was delivered to the creditor pending satisfaction of the obligation. However, this provision in regard to stipends became a dead letter later in the same year because the Council of State declared that loans which had stipends as collateral were not justiciable under any circumstances. When a person inflicted bankruptcy, an an-
nouncement was posted for thirty days in front of the courthouse gate, on public boards, and at the debtor's residence. Anyone submitting a claim within this period of time was dealt with after his claim had been investigated. In areas where newspapers were published, the announcement of bankruptcy was circulated by that media. In 1873 the period of application was extended to sixty days, and in 1874 the claimant category was broadened to include claims that were not based solely on tardy payment of loans. Although the attached objects were put on auction, any gold and silver articles whose standard price was obvious could not be sold below their intrinsic value, and the total amount of goods sold by auction were not to exceed the amount required to meet the debtors' obligations and to defray the costs of managing the bankruptcy proceedings. Notice of the sealed bid sale went out three days prior to the event, being posted in various public places and in newspapers where available. Bids, as we have said, were tendered by expert witnesses and other bidders, and the articles were sold to those offering the highest price; the proceeds were delivered to the court. The distribution of this money was made according to the amount owed each creditor rather than according to the order in which the money was borrowed. In regard to the sum of money to be distributed, an 1873 order of the Justice Department provided that interest on loans of cereal and money would be calculated only up to the month prior to the date of the lawsuit, though in the same year this was modified and the calculation of interest was authorized up until the very date the obligation was satisfied or until the month in which the distribution was completed. The interest was included with the principle in the distribution.

These bankruptcy regulations were amended by the Justice Department in October 1872. The former provision that required a debtor to be ordered to perform his obligation within a prescribed period before he could be declared bankrupt was rescinded. In its place a new regulation permitted execution of the bankruptcy law when the borrower became unable to
effect immediate payment of his debts. Another measure taken in connection with financial insolvency resulted in March 1873 in the enactment of bankruptcy regulations for Buddhist priests. These regulations also included certain items exempt from seizure.

For the legal disposition of claims on obligors who became bankrupt prior to the termination of the period in which the claims were due, the Council of State issued a governing enactment in July 1873. By the terms of this enactment, the creditor could not file suit before completion of the term of contract, but if the debtor became insolvent within this period he was allowed to appeal for bankruptcy proceedings, and, having the same rights as a debtor who institutes proceedings after termination of the contract, his property was sold at public auction and distributed. For obligors who inflicted bankruptcy and who were at the same time vested with obligatory rights, another law, set forth in December 1872 by the Justice Department, provided that among the items declared subject to bankruptcy proceedings, any documents referring to the right of claim in respect of money or cereal loaned by the debtor had to be delivered to the execution creditor. If there were more than one attaching creditor and the obligor possessed more than one document of claim, these claims were auctioned to the creditors. The sum received by their sale was then distributed among the creditors in proportion to the loans they had made to the obligor. The provision was later revised in September 1874, particularly in regard to the auction of documents referring to the right of claim. If the obligor had movables in pledge or mortgage, this property was also auctioned. From the proceeds of this auction the person holding the pledge or mortgage was paid the principal and interest due him, and when there was any surplus, this was divided among the creditors. If, however, a deficit resulted from the auction, the pledge or mortgage holder was obliged to share the deficit portion equally with the ordinary creditors. In January 1873 a Council of State order stipulated that a preferential right to receive payment
was presumed vested in the mortgagee in the event that the mortgagor inflicted bankruptcy.

Goods in the possession of a pledgee were kept by him as a matter of course when the pledgor became insolvent, but we shall touch upon this later when the bankruptcy of a guarantor is discussed. Other related topics including the bankruptcy relations between man and wife and the effect on family property caused by bankruptcy of the househead shall also be deferred to a later page. But before leaving the subject of bankruptcy we should note that in March 1874 the Council of State declared that the judges in each locality had to use their own discretion in applying the provisions concerning an auction or the tender of bids.

For the costs of civil suits, certain provisional regulations were enacted by the Justice Department in October 1872, though later these underwent frequent revision.

In regard to civil actions between Japanese and foreigners, the major regulations for this sphere of law were enacted between 1873 and 1876. These regulations however deserve no comment here.

So much as to the separate enactments in the field of early Meiji civil procedure. As to the government’s plans for the codification of civil procedure, the Justice Department notified the Central Chamber in April 1872, just before Etō Shimpei became Justice Minister, that it wished to draw up an outline of procedure and proclaim it throughout Japan. The reason that the Justice Department wished to undertake this codification project is that each prefecture was following a different set of procedural rules in the absence of any specific regulations at that time to govern civil procedure. As a tentative move forward in its codification plans, the Justice Department intended to present to the Central Chamber for approval a series of regulations governing litigants in civil suits and at a later date to produce a draft of regulations for trial procedure. These two elements for the time being were to form the body of civil procedure. The regulations governing litigants were actually
completed, although they were never put into effect. Then Etō became head of the Justice Department and the Office Regulations for the Justice Department (September 1872) were utilized as a law for the courts and as a simple code of civil and criminal procedure. Still, notwithstanding this makeshift procedure, Etō contemplated a regular code of civil procedure as well as a code of civil law, and the essentials of a civil procedure were finally prepared, but they, too, failed to be put in force. The next time we hear of codification plans is in July 1873 when the Legal Procedure Section was created in the Left Chamber and given the official duty of drafting a code of civil procedure. There is no further evidence however as to whether this section ever drafted a code or not. Afterwards in 1875 a draft on legal procedure was begun under Ōki Takatō, the successor to Etō. But this draft only progressed as far as the Genrō-In and no further. Yet another effort was made to compile a procedure in September 1876 when the Genrō-In received an order to draft a code of procedure and to submit it to the Throne for inspection. Complying with the order, the Genrō-In initiated a draft and circulated three copies to the Justice Department for reference purposes. By December 1880 the Justice Department had completed the draft and presented it to the head of the Genrō-In. This tentative code, containing 287 articles, was modeled after the 1806 French code of civil procedure, but like the previous procedural legislation it failed to become law.

c. The Law of Criminal Procedure

In the course of the Edo Period criminal procedure was ordinarily a method for summoning a suspect to court for an examination, but even in criminal cases the defendant party was not immediately seized; and on certain occasions the civil procedural forms of petition and answer were resorted to if the defendant denied the charges leveled against him. Still, if the court decided to handle the proceedings as a criminal case, the litigant had no choice but to acquiesce to the court's wishes.
Such was the tradition in criminal procedure that was bequeathed to the Meiji Period.

Now after the Restoration and following the organization of the Meiji government on February 11, 1868, jurisdiction in criminal matters was formally placed under one of the seven major departments of government. Known as the Section of Criminal Affairs (Keihōjimuka), this department of government exercised control over censorate duties, impeachment proceedings, criminal arrests, criminal trials, and enforcement of penal laws. Though the Section of Criminal Affairs was not a permanent organ of government itself, jurisdiction in criminal matters remained with the offices that did succeed to its duties; and eventually not only criminal but also civil justice became a responsibility of this branch of government, which by 1871 was finally named the Department of Justice.

But returning to the matter of criminal procedure, the new regime's first legislation on this subject was the Criminal Court Regulations, enacted in June 1870 by the Department of Criminal Punishments. In general these regulations, following the procedural forms handed down from the Town Magistrate's Office of the Edo Period, required that at the initial examination of the criminal suspect there be present a judge, an examiner to conduct the preliminary questioning, and a clerk to serve as stenographer. Torture could only be applied after the judges or officials of higher rank had jointly decided in favor of it. Upon conclusion of the examination the prisoner was required to sign the deposition with his handwritten seal, his registered seal, and with his thumbprint; the examiner then read aloud the deposition and the judge pronounced the sentence. The seating arrangement for prisoners differed according to their court rank, political office and social status. There is no doubt that all of these formalities were based on the methods used by the Town Magistrate's Office. The judge was the equivalent of the former magistrate and the examiner was the counterpart of the former arbiter (tomeyaku). As we shall note later, these Criminal Court Regulations, excluding the provisions for the
discriminatory seating arrangement which were abolished in 1872, lasted until 1873 when they were replaced by other regulations for criminal trials.

As we have mentioned before, the right to conduct criminal trials was retained by the domains and prefectures following the Restriktion. However, by order of the Central Administrative Council in December 1868, a sentence of capital punishment could not be pronounced by the local authorities without their consulting the Department of Criminal Law. Other regulations concerning criminal trials appeared in February 1871 within certain chapters—Procedure, Arrest, and Criminal Trials—of the Outlines of the New Criminal Law. Among the criminal trial regulations, one provision, it should be noted, specified that the determination of guilt with respect to a cripple or to a person under fifteen or over seventy years of age must rest on plural evidence rather than torture.

The next legislation concerning criminal procedures, which was quite similar in content to the Criminal Court Regulations (June 1870), came as part of the Office Regulations for the Justice Department, enacted in September 1872. Though this new trial procedure applied specifically to the Justice Department Court, it also provided the basic procedure for the Prefectural and Local Courts. In this procedure there were four distinct phases: 1) the initial hearing, 2) unconvicted detention, 3) reading of the deposition, and 4) the decision. The initial hearing took place after the preliminary report on the criminal suspect had been forwarded from the procurator to the chief of the criminal court section. The latter appointed a judge and examiner to the case; and in the first questioning session the judge presided. Subsequent to the initial hearing, the case entered the second or unconvicted stage. Depending on the gravity of the offense, the suspect was sent either to a place of detention or to prison and from time to time he was questioned by the judge or the examiner. Then came the third stage or reading of the deposition. If the prisoner admitted the crime, his deposition was recorded by the examiner. After-
wards when assurance had been given by the prisoner that the deposition was without error it was read aloud by the judge or the examiner in the presence of the procurator; and at length the deposition was certified with the prisoner’s seal or thumb print. The fourth and final stage consisted in the judge’s formulation of the decision which was based on the deposition. Once the sentence was fixed, the judge pronounced it in the presence of the procurator and examiner. This final stage of the trial was concluded when the guilty prisoner was sent to prison for punishment or when the innocent prisoner was exonerated and released.

What about social status as a factor in criminal trials? This question was answered by the Justice Department in November 1872 when it abolished in the name of fairness to all Japanese the Edo Period practice of different treatment in court for persons of different social standing. Hereafter the same treatment was to be afforded government personnel, peers, ex-samurai and commoners alike.

Further legislation concerning the law of criminal procedure was enacted in February 1873 and was entitled the Criminal Trial Regulations. This set of regulations was essentially an abridged form of the contents of the Outlines of the New Criminal Law (1871), the Office Regulations for the Justice Department (1872), the Prison Regulations (1872), and the Forms for Criminal Decisions (1872); and as a law of criminal procedure the Criminal Trial Regulations remained in effect until late 1881 when replaced by the Law of Criminal Instruction. In conducting an initial hearing the Criminal Trial Regulations called for a gathering of one judge, one public procurator and an examiner. At the hearing the judge was in sole charge of the questioning, the examiner recorded the deposition, and it was the duty of the procurator to keep an attentive eye on the proceedings. Since the judge was sometimes concerned with other cases and could not always be present to conduct the questioning at each hearing, he only conducted the examination at the initial hearing and thereafter turned this duty over to
the examiner. At the trial the seating arrangement was such that the judge occupied the seat of seniority on the right with the examiner on his left and the procurator to his left front. An official known as the usher (kenza) was assigned the duty of bringing the prisoner before the judge when requested to do so by the examiner. After questioning the defendant about his personal history and whether or not he had a family, the judge could then proceed to question him about the crime. When this was completed and the examiner had recorded the prisoner's statements the prisoner was returned to his cell. Afterwards the examiner was required to write up the deposition in the prescribed form and deliver it to the judge, who in turn showed it to the procurator. Then once again the prisoner was called to court and re-examined according to the statements he had previously made; if the findings of the re-examination were consistent with the deposition, the examiner then read aloud the record of the crime and had the culprit affix his thumb print. When the judge was absent, two examiners attended court so that one could do the questioning and the other could act as stenographer. All persons committing criminal acts, regardless of their social status, were brought before the judge for trial, but in minor offenses which were committed by high ranking government officials (sōnin, chokunin) and by peers and which required no detailed examination the questioning was entrusted to the steward (karei) of the respective aristocratic household. In instances where the criminal trial involved an individual who was either related to the judge or was a friend, or was a person against whom the judicial officer held a grudge, the judge was authorized to excuse himself and turn the case over to another judge. When a person had to be questioned for different crimes committed in different forums, the trial was conducted in whichever place the crime was the more serious or in whichever place the more offenders were involved. If the number of offenders involved in the two cases happened to be equal, the forum in which the first crime was committed had jurisdiction. Depending on circumstances, it
might occasionally be necessary to conduct trials in each of
the two jurisdictions if the courts were at a great distance from
each other. During the examination of a suspect for armed
robbery, homicide, and for other felonies the deposition was
recorded in detail, and subsequent to each questioning the
suspect was forced to make a thumb impression on the document
as a means to prevent hardened criminals from later repudiating
their deposition. Further than this, the *Criminal Trial Regula-
tions* contained stipulations on torture, punishments, and the
like. It is also significant that other provisions required photo-
graphs to be taken of the confirmed criminals, who were sen-
tenced for any crime involving penal servitude on down, so
that a court file of photographs would be available for future
reference.

The initial phase of the criminal trial—the preliminary
examination—was worked out in more legislative detail between
1875 and 1877. The first of this legislation, known as the
*General Regulations for Judges* (May 1875), prescribed a pre-
liminary examination for any offenses that belonged to the
category of felonies or were of a particularly complicated nature.
And if the examination, which was conducted behind closed
doors, disclosed the commission of an offense, the case was to
be referred to a court for public trial. The examining judge
however was barred from participating in the ensuing trial.
The next pertinent legislation, coming from the Justice Depart-
ment in August 1875, specified 1) that the preliminary examina-
tion would be instituted upon request of the public procurator,
2) that the examining judge would be appointed *ad hoc* by the
president of the court, 3) that the examining judge upon com-
pletion of the investigation would refer the case to the procurator,
and 4) that the case would be submitted to public trial by the
procurator. Finally by April 1876, through enactment of the
*Provisional Regulations for Examining Judges* and the *Provi-
sional Regulations for the Judicial Police*, the procedure for
preliminary examinations was largely completed. According to
these regulations, which we shall only summarize, complaints
and accusations concerning all crimes except police offenses were to be filed with the public procurator. As to his authority, the procurator was allowed to personally investigate flagrant offenses and to personally prepare a detailed investigation of the investigation; he was allowed to receive similar statements from other judicial police officers; and he could demand prosecution for these offenses at the proper court. But as we have just noticed in the General Regulations for Judges, the procurator had to place before the examining judge for preliminary examination any felonies or any offenses of a complicated nature. After the documentary evidence of a crime had been delivered by the procurator to the examining judge, who was commissioned from among the judges and assistant judges in each prefectural court, the examining judge was bound to promptly conduct an examination. This judge also had to perform the duties of the procurator in his absence when a complaint of a flagrant offense had been received, though afterwards the judge was obliged to refer the case to the procurator's attention. During the investigation the judge had the right to examine the defendant and search his home in order to seize evidence; the judge could issue warrants of summons, production, and detention; and he could also summon witnesses. When the defendant was found guilty of nothing more than a police offense or when he seemed to be innocent, the procurator was notified and the individual was either transferred to the police authorities or released. When, on the other hand, the defendant was suspected of a crime, the documentary evidence was submitted to the procurator so that he could seek a trial; or if the procurator happened to be dissatisfied with the examination he was at liberty to refer the case to another judge for a second preliminary examination. However, in March 1877 the procurator was ordered by the Justice Department to demand immediate prosecution without seeking any preliminary examination at all, when an offense—even a felony—had clearly been committed. As a consequence, the examining judge's sphere of action was restricted to felonies for which there existed no conspicuous evidence. Furthermore
this March 1877 order authorized the procurator for the time being to seek an immediate trial whenever a court lacked an examining judge, regardless of the seriousness of the offense. In all likelihood this method of conducting a preliminary examination was not without some influence from French law.

For the benefit of criminal suspects being held over for a preliminary examination, the *Bail Regulations* were decreed in February 1877 by the Council of State. The bail system was patterned after its counterpart in the West, particularly that of France. The reason for adopting a foreign bail system is perhaps explained by the government’s desire to avoid making large outlays of money for guard precautions against riots and breakouts from the jails in Tokyo and in other districts. For in these jails no less than twenty unconvicted suspects were detained in a single room (approximately 15×24 feet). The nearest Japanese tradition to liberation on bail stems back to an arrangement in the eighth century that was known as *sekiho*, and was again known much later in the Edo Period as *sekiifu*. Under this traditional custom a wife who had committed a crime was entrusted to the custody of her husband, her relatives, or her neighbors; and in the first years after the Restoration, even before enactment of the *Bail Regulations*, a judge was allowed by authority of the *Prison Regulations* (1872) to commit a person suspected of a misdemeanor to the custody of his relatives or to two friends of long standing on the condition that they produce a document of guarantee. Later, impressed by the European and American bail practice, the Japanese established a bail system which permitted the defendant in criminal actions to avoid detention pending examination if he could obtain a guarantor and furnish a sum of money as security. The defendant or his guarantor always had the right to file petition for liberation on bail and the judge was required to grant it promptly. The petition could not be put off more than five days without good cause. However, if it was deemed that the defendant might flee or destroy evidence, or if he was likely to receive at least a life sentence or if he had previously
been sentenced for a felony, the petition for bail was not granted.

Next let us consider the law concerning evidence. Since the legislation of the Bakufu placed a value on criminal confessions, the questioning of suspects under torture was resorted to during the Edo Period and also in the years following close upon the Restoration. In early Meiji, for example, torture was expressly permitted by the 1870 Criminal Court Regulations, which left it to the decision of a council of judges or higher officials, and it was also permitted by the Outlines of the New Criminal Law (1871) which, among its diagrams of prison equipment, contains an illustration of a stick for beating prisoners while under questioning. The application of the stick was prescribed for felons who refused to confess when the evidence of guilt was obvious. However, another provision of the Outlines of the New Criminal Law indicates that cripples, and persons under fifteen or over seventy years of age were exempt from torture. Again in 1872 the Office Regulations for the Justice Department confirmed torture for persons who would not confess despite conspicuous evidence of their guilt, and the Criminal Trial Regulations (1873) carry illustrations of a stick for beating purposes and of a large sized abacus on which prisoners were forced to kneel. These instruments were utilized in cases of armed robbery and homicide “only to make the individual confess the truth through fear of suffering pain, not to punish him for evil with a horrible ordeal.” If first the stick did not bring a confession, then the abacus was used. In the following year torture was given a theoretical basis by Article 318 of the Amended Criminal Regulations, which declared that “the judgment of all crimes shall be based upon a deposition”. This meant that no criminal sentence could be imposed without a confession. But the tide of opinion was rising against torture, and the Justice Department, complaining in August 1874 that it was unpardonable for torture to result in false charges, required that it be discarded in future questioning. Nevertheless the application of torture to overcome obstacle arising during the course of examination remained permissable,
provided an account of its use be reported to the Justice Department at the end of the month. The trend against torture being what it was, the attitude of the government also turned in favor of its disuse. But no immediate action was taken despite the rather articulate criticism expressed by M. Boissonade before the Tokyo Higher Court in 1875 in his attack on the abacus device and despite his proposal of the same year which called upon the Justice Department to end the use of torture. Neither was there any effect from the torture abolishing proposal that was forwarded, also in 1875, to the Genrō-In from the Inner Council. In the following year, however, a proposal of the government did pass the Genrō-In and by June the Council of State revised Article 318 of the Amended Criminal Regulations to read, "judgments of all crimes shall be based on proof". Such proof was differentiated two months later into ten types: 1) confession of the defendant, 2) correspondence and other hand written documents of the defendant, 3) detailed statements of investigation prepared by proper officials, 4) oral statements of sworn and unsworn witnesses, 5) reports of expert witnesses appointed by the court, 6) real evidence, 7) indication, 8) presumptions of fact, 9) evidence, and 10) presumptions of law. Since the employment of these items of proof in the formulation of a judgment was entrusted solely to the judge, this meant the adoption in Japanese law of the principle of free conviction. Although torture as a consequence became unnecessary, it was not completely abandoned, and therefore the Council of State declared in 1879 that all regulations concerning torture were rescinded; and, what is more, provisions were written into the Old Criminal Code (enacted in 1880) which demanded punishment for anyone inflicting torture.

In respect to criminal appeals in the period under review we must admit that they are not connected to any practice of the preceding period. True, there was a retrial procedure in the eighth century that permitted an official of higher rank to retry a case decided upon by an official of lower rank, but even this arrangement later disappeared and nothing took its
place until the Meiji Period. Following the Restoration the criminal appeal made its first appearance—as a direct heir of Western law—in the *Office Regulations for the Justice Department* (1872). By this enactment, the decisions of Local Courts could be re-appealed to Prefectural Courts and those of the Prefectural Courts could be re-appealed to the Justice Department Court. The word “re-appeal” (*jōkoku*) as it was then used denoted a retrial and, therefore, criminal as well as civil cases were at first entitled to an “appeal” (*kōso*) in the true sense of the word.

However, as soon as the Supreme Court was created in May 1875 and the *Appeal and Re-appeal Procedure* was made law, the appeal terminology was distinguished in such a way that the term “appeal” (*kōso*) was restricted to civil cases and the term “re-appeal” (*jōkoku*), while made available to civil cases, was prescribed as the only recourse for criminal cases. The re-appeal, as defined, was filed at the Supreme Court by a dissatisfied litigant who wanted an adverse decision reversed, but it could only be filed if another court exceeded its authority or violated adjective or substantive law. Except for police offenses and capital crimes all criminal cases could be re-appealed. The persons permitted to file a re-appeal were the sentenced party, the public procurator, or a police officer located in those areas lacking procurators. The sentenced party had three days from the date of sentencing in which to present his re-appeal petition to the clerk’s office of the court, and ten days in which to submit to the same office a statement of the reasons for this petition. Notice of the re-appeal was then forwarded by the clerk’s office to the local authorities. They of course were interested in the case since it was ultimately their responsibility to execute the court’s sentence. When circumstances prevented the convicted person from filing a re-appeal, it was drawn up by his representative and signed by the two of them. If the convicted person was less than fifteen years old and ignorant of his right to re-appeal, any relative to the fifth degree could act in his behalf. In the event that the procurator instituted the
re-appeal, he was required to inform the convicted person of this action within twenty-four hours, then within ten days he was again obliged to send a statement of reasons for the re-appeal to the Justice Minister and to notify the local authorities. When either the person against whom the sentence was passed or the procurator failed to file the petition within the prescribed period, the right to do so was forfeited. The time limit for re-appeal however, did not apply to the Justice Minister. He, according to a Council of State decree in January 1876, could file a re-appeal as public procurator of the Supreme Court whenever he deemed a judgment improper, regardless of whether or not a re-appeal had been lodged by the procurator or prisoner. This constituted a kind of extraordinary re-appeal. Similarly, in either a civil or criminal case that was redetermined in consequence of a re-appeal, the Justice Minister, if he thought the second decision was unfair, was in the brief period from 1877-1881 entitled to have the procurator demand a new trial. The necessary documents relating to the re-appeal that were received by the clerk’s office of the court were forwarded within three days to the Supreme Court; if these documents were despatched by the procurator they went of course to the Justice Minister. He in turn sent them to the procurator of the Supreme Court whose task it was to prosecute the action. When a re-appeal reached the Supreme Court it was placed before that court’s Criminal Court section for examination, where the decision to accept or reject it was made. If rejected, the clerk’s office of the original court was instructed of the reasons why and it thus informed the appellant, who then had to fulfill the terms of his sentence. If the re-appeal was accepted, the original court decision was reversed and the case was put before another court for trial or before the Supreme Court itself; or the Supreme Court could simply remand the case to the original court for a more proper decision in the light of existing law. All judgments of the Supreme Court had to include the reasoning upon which they rested. The proper channel for returning an adjudicated re-appeal that had been instituted
by a local procurator extended from the Supreme Court procurator through the Justice Minister to the original court, where at last the judgment was executed. Though the Appeal and Re-appeal Procedure was completely revised in February 1877, the portion devoted to criminal re-appeals was left substantially unchanged.

In the outline of criminal procedure that we have just drawn, nothing has been said of the transition from the criminal procedure of the Edo Period to that of the Meiji Period. The former was essentially based on the principles of private prosecution and inquisition, while the latter came to depend on the principle of state prosecution. Here, then, we may allude to this shift in underlying principles by briefly retracing the development of the procurator’s office during the early years of Meiji. The public procurator, first established in 1872, was initially put in charge of the judicial police and given the task of keeping close watch on the judicial decisions of the judges. Though the duty of overseeing the judges’ decisions was eliminated in 1874, the procurator’s position as plaintiff with the right to demand prosecution became fully recognized in that year. In the following year the procurator’s function as impeachment officer (dankokukan) was clearly evidenced by legislation that empowered him to investigate law violations, institute formal impeachment charges before the judge and demand a trial, and by the fact that he could file a re-appeal when dissatisfied with the court’s decision. Again in 1876 the powers of the procurator were defined by the Provisional Regulations for the Judicial Police so that the procurator had the right to receive complaints and accusations concerning all crimes except police offenses, and the right to personally investigate and seek trial for flagrant offenses. Even in flagrant offenses it seems to have been necessary for the procurator to file an indictment, at least in principle, since an examining judge who proceeded to discharge the procurator’s duties in his absence, upon receiving complaint of a flagrant offense, was bound subsequently to refer the case to the procurator. Although the
authority of the procurator to conduct investigations and to make impeachment charges, to institute public actions and to lodge re-appeals was again reiterated by the Council of State in 1877, there appears to have remained some doubt whether the inquisitorial principle of the recent past was still in effect. Consequently the Justice Department announced in June 1878 that all offenses except those then being tried in court and those incidental crimes revealed during examination of the original case would henceforth be adjudicated only upon institution of public action by the procurator. By this announcement, therefore, the inquisitorial principle was replaced by the principle of state prosecution, at least as a guiding rule.

So it thus happened that there gradually emerged a system by which criminal prosecutions were initiated by the procurator on the strength of accusations and complaints received, but at the same time it is well to remember that during the early Restoration period another and more traditional method of instituting a criminal action continued to be employed. This traditional criminal action was initiated through the so-called petition for criminal investigation (gimmi negai), a petition that apparently derived from a peculiar form of criminal trial in the Edo Period which relied upon civil trial procedure. As a type of petition demanding an investigation into the facts, the petition for criminal investigation was filed under circumstances that seemed to constitute a criminal case. It was filed, for example, in loan cases and the like where complications had arisen because of the lack of any convincing evidence. The disposition of these petitions, though first left to the public procurator’s office following its establishment, became the province of the criminal court sections of the prefectures in 1874, and finally of the police authorities in 1875. But despite police jurisdiction over the petitions for criminal investigation they continued to be sent in large numbers to the procurator’s office; and in 1878 during the the month of October alone the Tokyo procurator’s office handled eighty-four of these petitions, whereas in the same period it only received five complaints and one
denunciation. The petition for criminal investigation was to be filed by the person concerned, according to a Justice Department order of 1875, for if a representative filed it the representative would have to obtain permission each time he appeared in connection with the petition. If the petition for criminal investigation was, as we have suggested, a survival of the peculiar Edo Period criminal trial that observed civil instead of criminal procedure, it appears likely that in the beginning the government office accepting the petition did the summoning of the plaintiff and the defendant and conducted their examination. After 1875, however, when the petition was finally submitted to the police authorities, it was the police who decided upon acceptance or rejection of the petition, and it was also the police who saw to it that a person deemed guilty was transferred to the procurator. If necessary of course the procurator demanded trial. Although made use of to a considerable extent, the petition for criminal investigation remained a mixed and abnormal form of civil and criminal elements. For this reason the Justice Department abolished it in January 1881 and made it necessary thereafter for the aggrieved party to lodge his complaints with the examining judge, the procurator, or the police authorities.

One other aspect of criminal procedure that remains to be seen, though of no major importance in the early part of the Meiji Period, was the jury. As we have observed earlier the jury was established by special legislation and was simply composed of government officials.

Finally a word or two will suffice concerning the government's attempt to codify early Meiji criminal procedure. As we have noted, certain elements of criminal procedure appeared in the 1870 Criminal Court Regulations and in the criminal procedure appeared in the 1870 Criminal Court Regulations and in the 1872 Office Regulations for the Justice Department, yet there was no organized treatment of criminal procedure until the Criminal Trial Regulations were issued in February 1873. This last set of regulations is sometimes regarded, though not with certainty, as identical to the criminal code which Etō
briefly mentioned as being in committee stage when he resigned from the Justice Department. A more complete code of civil procedure, known as the *Code of Criminal Instruction* came into force in 1882, but its contents shall not be discussed here since it falls within the period which we have designated as the second phase of the Meiji Era. We shall come to this code shortly.

d. Penal Legislation

Soon after restoring the government to the Throne on November 9, 1867, Tokugawa Keiki inquired of the government about the propriety of retaining the existing criminal laws until they could be replaced by new ones. The instructions he received ordered him to leave the criminal laws intact until fresh legislation could be formulated by the barons, who were going to be summoned to Kyoto. These instructions to Keiki meant essentially that in the Bakufu held territories the enforcement of criminal law should continue to follow the criminal provisions of the Shogunate’s codified handbook of law, the *Kujikata Onsadamegaki*, while in the domains the administration of criminal justice should be based on their own collections of criminal law. What deserves our attention in the reply to Keiki is the reference to the creation of new criminal legislation, for this indicates the importance attached by the new regime to penal enactments. This immediate concern for penal legislation, which stands in contrast to the government’s later interest in civil and administrative legislation subsequent to 1888, is clearly demonstrated by the rather rapid enactment of such large compilations of law as the *Provisional Penal Code* (1868), the *Outlines of the New Criminal Law* (1870), and the *Amended Criminal Regulations* (1873). This is indeed a distinct departure from the course taken in the *Taika Reform* (645 A.D.) when the Imperial government first enacted administrative laws and then fifty-six years later drafted the penal legislation. But there are perhaps two reasons why the Meiji government placed penal legislation ahead of administrative legislation. One is
that there was an urgent need to preserve peace and order immediately following the Restoration. The other reason, related as it is to the contemporary revivalist thought which so greatly esteemed the penal and administrative law of the Taika Reform, is that the penal laws of the eighth century were easily adaptable to current needs with only limited revision, whereas the rapid and wholesale adoption of the ancient administrative laws was precluded by the vastly different social conditions of Meiji Japan.

First of the criminal legislation prepared by the new administration was the so-called Provisional Penal Code of 1868. While the exact date and government office of its origin is not precisely clear, we may accept the view that it was first drafted in the early months of 1868 and revised for the most part by December. Its preparation seems to have taken place in that succession of offices which directly preceded the Department of Justice as the judicial arm of the new Meiji government. Used as basic legal references in its compilation were the Japanese Yōro Code (718 A.D.), the Chinese codes of the T’ang and Ming Periods, and the Edo Period Code of One Hundred Articles (i.e., Vol. II of the Kujikata On-sadamegaki). Besides these different sources it is clear that the Preliminary Draft Criminal Code of Higo domain (in Kyushu) and its compilers exerted a strong influence. After all the compilers of the Provisional Penal Code were in large number from Higo domain and it was through them that the Ming criminal provisions found in Higo’s Preliminary Draft Criminal Code passed into the Provisional Penal Code. Established as a legal reference and guide for judicial officials, the Provisional Penal Code was not made public; rather it was used as a fount of directives and instructions sent to the prefectures in response to their judicial inquiries. In contents the Provisional Penal Code consisted of the following chapters: 1) punishments and application of the law, 2) larceny and robbery, 3) death resulting from bodily injury, 4) homicide, 5) civil suits, 6) arrest, 7) rape, 8) bribery, 9) counterfeiting, 10) criminal trials, 11) marriage, 12) miscellaneous offenses. Except for the chapter on punishments and application of the
law and the chapter on the family, the other ten chapters all belonged to the penal portion of the *Ming Code*, which is the reason why the *Provisional Penal Code* is labeled as basically of Ming origin. Another striking feature of this code is its omission of any provisions for the punishment of offenses committed by officials. This and its other peculiarities are also common to the Preliminary *Draft Criminal Code* of Higo. At any rate, owing to its disregard for any offenses that might be perpetrated by government officials and owing to its heavy emphasis on punitive provisions, the *Provisional Penal Code* has been regarded as a legal instrument for enforcing feudal rule over the Japanese.

As to the scheme of punishments in the *Provisional Penal Code*, there were four categories: 1) capital punishment, 2) deportation, 3) penal servitude, and 4) whipping with the rod. Each category of punishment was further divided into various degree, and separate provisions were included for commutation of punishment. The death penalty was effected by decapitation or by cutting diagonally across the condemned person's body, though later this was changed to either hanging, simple decapitation, or exposure of the decapitated head. Two other forms of capital punishment included crucifixion and spearing on the one hand and burning at the stake for arsonists on the other. Deportation was a matter of degree, with the convicted being dispatched a distance commensurate to his crime, but in all cases he received a hundred blows with a rod. Later revisions established three, five, and seven year sentences; and corporal punishment was eliminated. Penal servitude was imposed in five degrees increasing by half year periods within a one to three year range and whipping with the rod constituted an additional penalty. Afterwards these prison terms ran in one, one and a half, two, and three year periods, and use of the rod was abolished. Punishment by whipping with the rod was inflicted in ten degrees ranging between ten and one hundred blows. That no distinction was made between the rod and the stick was perhaps in keeping with the practice in the domain
of Kumamoto. Afterwards, whipping was reduced to three
degrees, consisting of twenty, fifty or hundred blows. The
penalties of hanging, deportation, penal servitude, and whipping
—all of them—could be avoided by a substitute payment of
money. The commutation of penalties, i.e., their conversion to
special penalties for persons of special social status, was a
practice that had come down to the Provisional Penal Code from
the T’ang influenced Yōrō Code of the eighth century. By virtue
of the provisions on commutation, punishments for members of
the Court and for the samurai consisted of suicide by disembowelment, deprivation of right to wear a sword, deprivation of stipend, demotion, and various kinds of confinement to one’s residence. For Buddhist monks and nuns holding official government positions the special punishments included demotion, dismissal from office, expulsion from their temple, and confinement. For those without official office, divestment of their religious robe and expulsion from their temple were the penalties. It will be noticed that these commuted punishments were influenced by the Kujikata On-sadamegaki. Influences of a still older origin, coming in fact from the Yōrō Code, were manifest in a number of punishments such as the following: 1) unbecoming offenses (i.e., conduct counter to reason and sentiment), 2) incest, 3) false accusation, 4) the crime of placing stolen goods with innocent persons in order to implicate them, and 5) the eight heinous crimes (assassination of the Emperor, destruction of the Imperial tomb or palace, treason, the slaying of one’s lord or father, parricide, lèse majesté, unfilial conduct, and the slaying of officials, priests, etc.). A further similarity with the Yōrō Code was the designation of six groups of persons who were allowed a one degree commutation for any criminal sentence not involving a punishment more severe than deportation. The six groups included those persons who had 1) rendered service in the past, 2) shown great virtue, 3) great talents, 4) achieved great merit, and it included 5) officials above the third court grade, and 6) members of the Imperial family. Without delving further into the details on the origin of the Provisional Penal
Code, suffice it to say that the laws of Higo as well as the Ming Code were of great importance.

Following enactment of the Provisional Penal Code the next significant action of the government in respect to criminal law was a decree, issued on December 13, 1868, that announced the amendment of the existing Bakufu penal legislation pending issuance of new criminal laws. By this decree, the penalty of crucifixion and spearing was reserved solely for persons killing their lord or father; and burning at the stake was replaced by exposure of the decapitated head for persons guilty of other grave crimes. Penal servitude took the place of banishment, and deportation was restricted to Hokkaidō where existing practices were ordered to remain in effect until new institutions could be created. Larceny amounting to less than one hundred ryō was excluded from capital punishment, and any sentences requiring the death penalty had to obtain the Imperial sanction. Penal servitude was left for the time being to be imposed and carried out by the different prefectures and domains as their local penal facilities permitted. What is important about this decree, besides the mollification of punishments, is the fact that it ordered the domains and prefectures to observe the Bakufu's Code of One Hundred Articles. This meant that the government's policy of November 1867, originally allowing each to follow its own criminal legislation, was being discarded in favor of a standardization of criminal law in all sections of the country. The government's intentions and the December decree notwithstanding, it is difficult to believe that the districts really gave literal observance to the Code of One Hundred Articles, for Japan of this time was still suffering from the chaotic conditions produced by the conquest of the Northeastern provinces. Still, just to say that a large number of domains continued to observe their own traditional laws does not make the government's attempt to bring nationwide uniformity to the application of criminal law any less significant. One other important point to be noticed about the December decree is that penal servitude took the place of banishment and that the districts were ordered
to set up prison facilities at their convenience. In this respect, the decree appears to have served in all the districts as an encouragement for establishing penal institutions.

Provisions of criminal laws that were established on one occasion were eliminated on another, and as part of the flux that characterized early Meiji it is worth remembering that the severity of punishments was also changed from time to time. Such changes, though not substantial, occurred between December 1868 and September 1869. There also occurred during these months certain other innovations in criminal law which may be suitably mentioned here. Persons sentenced to prison, for instance, had their terms doubled if they broke prison once or twice, but on the third escape they were to be beheaded. Criminals in the Osaka area and to the west and those in Kyūshū who were sentenced to deportation were ordered sent to nine different domains from collection points in Osaka and Nagasaki. In September 1869 the prefectures were allowed to determine on their own authority sentences involving whipping with the rod and penal servitude, but deportation and various forms of capital punishment had to be referred to the Department of Criminal Punishments. Although this department could sanction deportation and suicide by disembowelment, even it had to obtain Imperial approval for the other capital punishments that involved decapitation, exposure of the decapitated head, and crucifixion. According to an undated report from the Justice Ministry, which was made sometime in 1869, capital punishment in one form or another was demanded for the following crimes:

<table>
<thead>
<tr>
<th>Crime</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>assassination of the Emperor</td>
<td>crucifixion</td>
</tr>
<tr>
<td>destruction of Imperial tomb or palace</td>
<td>&quot;</td>
</tr>
<tr>
<td>killing of parents or husband</td>
<td>&quot;</td>
</tr>
<tr>
<td>treason</td>
<td>&quot;</td>
</tr>
<tr>
<td>manslaughter</td>
<td>&quot;</td>
</tr>
<tr>
<td>premeditated murder</td>
<td>&quot;</td>
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<tr>
<td>killing of a teacher</td>
<td>&quot;</td>
</tr>
<tr>
<td>arson</td>
<td>&quot;</td>
</tr>
<tr>
<td>rape</td>
<td>&quot;</td>
</tr>
</tbody>
</table>
forgery of government seals, documents, and money
robbery                                    decapitation
larceny (for sums exceeding one hundred ryō)                             "
adultery with a man's wife                          decapitation of both parties
sale of children                                     decapitation

Other miscellaneous changes in criminal law, which occurred in the year 1870, were 1) revocation of the law that authorized confiscation of one's family register and entailed reduction of the individual concerned to commoner status, 2) abolition of the system of family responsibility, and 3) establishment of penalties concerning opium.

As to the punishment of deportation, the government had ordered in December 1868 that deportees be sent as in the past to Hokkaidō, but there were more deportees after 1869 than the facilities on Hokkaidō could accommodate. Therefore in December of that year deportation was temporarily suspended and the deportees were given penal servitude sentences of five, seven, or ten years depending on the gravity of the offense.

Penal servitude, as mentioned before, was provided by the Provisional Penal Code, yet as the application of this type of sentence gradually broadened, taking the place of banishment and finally deportation, it came to occupy a much larger place on the scale of punishments than occupied by capital punishment and whipping with the rod, which were the two other forms of punishment. As the types of punishments were thus being curtailed, the judicial branch of the government in 1869 banned a number of former practices including exposure of the executed criminal, exhibition of criminals prior to execution, and death by sawing. Then in 1870 the use of tattooing on the brow as a punishment was replaced by whipping with rod or stick. In the same year a law on counterfeiting was enacted. Interestingly enough, the counterfeiting law was the only legislation for which the prefectures and domains were delegated the summary power to sentence persons to death and deportation, though of course subsequent reports of these sentences had to
be sent to the Department of Criminal Justice.

Apart from issuing so many of these special laws, the government also laid plans for the compilation of a criminal code. The work on this code, which began in February 1869 within the Giji Torishirabe Kyoku, a bureau for investigation of the various types of deliberative assemblies, was continued after April in the Department of Criminal Law and then later in the Department of Criminal Punishments. A draft code was finally completed by early March 1870 and, upon revision, was presented to the government in July. After being inspected and further corrected by the Council of State, the draft was returned to the Department of Criminal Punishments. As soon as the different corrections were incorporated into the draft the government gave it effect by November 1870, though for the time being its application was the sole prerogative of the Department of Criminal Punishments. Leaving its enforcement to the discretion of this department may perhaps be explained by the contemporary problem of overcrowded prisons, for since 1869 the suspension of death penalties, pending creation of legislation more lenient than the Provisional Penal Code, had resulted in the accumulation of over three hundred convicts awaiting disposition. The prisons were thus overflowing, inmates were dying, and there was concern over possible prison outbreaks. Hence to avoid aggravating an already acute prison situation by unrestricted application of the lenient provisions of the government's new criminal law, the extent of its enforcement was temporarily entrusted to the Department of Criminal Punishments.

Designated the Outline of the New Criminal Law, this new legislation was sanctioned by the Emperor on February 9, 1871, and handed down to the Council of State. A few days later it was distributed to local governments. But it was not circulated to the general public. This restriction of the written law to official personnel was exactly the same confidential treatment that the law received in the eighth century. Nonetheless, before the year was out, the sale of law texts was authorized so that
the new code could be known by all. And in April a copy of the code was given to the diplomatic representatives of each foreign nation. That the criminal code, which had been regarded in the Edo Period as a secret document, had finally been proclaimed in detail to the public marks a far reaching change in the history of Japanese criminal law.

The Outline of the New Criminal Law, with the exception of one chapter of diagrams, was comprised of the following chapters: 1) punishments and application of the law, 2) official discipline, 3) the family, 4) robbery and larceny, 5) homicide, 6) death resulting from bodily injury, 7) defamation, 8) civil suits, 9) bribery, 10) counterfeiting, 11) adultery, 12) miscellaneous offenses, 13) arrests, and 14) criminal trials. By contrast to the Provisional Penal Code it is significant that among the provisions of this law there were included stipulations on official discipline and defamation. However, the appearance of penal regulations for government personnel is not too startling when we consider that the Government Officials Order, which specified the standards for official appointments, had been enacted in 1869. A second point to notice is that the Outline of the New Criminal Law omitted certain provisions of the Provisional Penal Code which expressly covered such offenses as assassination of the Emperor, treason, and the slaying of one's lord or father. Supposedly these provisions were eliminated from the original draft because of the objections raised against them by Senior Councilor Soejima Taneomi. To have included such provisions in the criminal code at a time when the government was greatly publicizing the Emperor's divinity and his personal rule would perhaps have seemed incongruous with government policy. Anyway, this peculiar variety of offenses had not even existed in the Edo Bakufu's Kujikata On-sadamegaki.

As is apparent from the above chapter headings, the Outline of the New Criminal Law was derived from Chinese law, principally from the codes of the Ming and Ch'ing Periods, and to some extent from the Japanese Yōrō Code and the Code of One Hundred Articles; but there is almost no trace of Western
criminal law. This however is not unusual. For the Outline of the New Criminal Law was compiled during a period when the revival of eighth century Japanese institutions was in great demand and, what is more, it was compiled under the chief editorialship of Mizumoto Yasutarō, a legal scholar primarily interested in the ancient Ritsuryō Era. Still, it can be said that in the code’s preparation the spirit of leniency had the upper hand. In October 1869 leniency and its importance had been stressed by the Throne in a communication to the Lower House; and in compliance with this sentiment the Council of State had notified the Department of Criminal Punishments in the following month to give the principle of leniency the utmost consideration during its legal research, and to avoid, in so far as possible, the creation of punishments more severe than deportation, except for such crimes as patricide, homicide, armed robbery, and arson. The principle of leniency was again brought to the fore when the Council of State settled a dispute between the jurists who were compiling the code. The code compilers had split up into two factions over the issue of retaining or discarding the Provisional Penal Code’s provisions on the eight heinous crimes and those on the commuted sentences for the six special groups. The issue was settled when the Council of State instructed the jurists to discard these peculiar provisions. In making its decision the Council of State had apparently been moved by the faction which argued that no special category for the eight heinous crimes was needed, for this faction had insisted that the gravity of any offense should be determined by the specific article of law pertaining to that offense and that punishments should be administered more with an eye to fairness and social equality than to the degree of a penalty’s severity.

Owing to the heavy influence of the Chinese tradition of penal law, the Outline of the New Criminal Law reflected a number of characteristics peculiar to this penal legacy. A general category of offense like homicide, for example, was subdivided into the following particular offenses: 1) premedi-
tated murder, 2) killing by poison, 3) death resulting from bodily injury, 4) manslaughter, 5) death resulting from a practical joke, 6) killing in mistake for someone else, 7) death resulting from intentional deception, and 8) negligent homicide. Furthermore, distinctions were made in the subcategory of premeditated murder, depending on whether or not the victim was the killer's superior official or whether the victim was an ordinary person, a government official, a grandfather, a house head, etc. When the murdered party was a government official, the punishment was still further differentiated in accordance with the official's Chokunin, sônin or hannin status. Not only this but in contrast to modern criminal law there were provisions on the commutation of punishments. Punishments were reduced for the culprit who surrendered himself to justice; and there was a conspicuous absence of the principle of no punishment without a previous law. Although the code contained stipulations for the punishment of judges who rendered improper decisions, the traditional Chinese approach to penal law, i.e., judicial discretion, was preserved. For instance, whenever provisions of law were technically deficient or there was no law to cover a crime, the judge was allowed to refer to other laws covering similar offenses and to increase or diminish the penalties imposed by the borrowed law as the occasion demanded. In miscellaneous offenses the judge had the power to impose forty blows or less of a rod on a person who violated a rule (rei) and he could impose as many as seventy blows on a person whose conduct, while not an infringement of any law, was counter to reason and sentiment. In regard to the retroactive effect of law, the Outline of the New Criminal Law repudiated the concept of no punishment without a previous law in virtue of a provision that gave the new code retroactive power over crimes committed prior to its promulgation. For offenders surrendering themselves voluntarily to the law prior to the detection of their crime, the law specified that they would be exempt from punishment. This system of surrender and confession, based on the Oriental moral concept that corrected
faults deserve no punishment, does not appear in the West. Other provisions of the new criminal legislation were identified with Japan's old Yörö Code. Of these we shall only mention the following three: 1) if an offender unwittingly committed an offense more serious than he intended (i.e., a robber son killed his father mistakenly, thinking him to be only an ordinary unrelated victim), he was only charged with the ordinary offense; 2) if a crime was perpetrated with the cooperation of several persons the accomplice, who was prosecuted as an accessory, received one degree less punishment than the conspirator who was prosecuted as the principal; and 3) if two offenses were committed concurrently the offender was prosecuted for the more serious of the two, or, if the offenses were of equal gravity, for either one of them.

Unlike the Provisional Penal Code, which only specified four categories of punishment, the Outline of the New Criminal Law revived the tradition beginning with the T'ang Code and enumerated five: 1) whipping with the rod, 2) whipping with the stick, 3) imprisonment, 4) deportation and 5) capital punishment. When a person was sentenced to the rod he received from ten to fifty blows, and from sixty to one hundred when sentenced to the stick.

For the hardened and habitual offender who had no fear of the rod, the stick was used to serve as a warning. Imprisonment was meted out in terms of one to three years, gradated in ascending order by half year increments, and persons committed to prison were expected to do work according to their physical capacity. As daily wages the prison worker was allowed one tenth the sum ordinarily paid for such work, though half of the prisoner's pay was retained by the prison authorities and then delivered to him upon fulfillment of the prison term so that he would have available funds for engaging in some vocation. The purpose of imprisonment was "to correct the individual's vices and inculcate a sense of virtue by hard labor." Therefore prison routine was largely of a correctional nature like the confinement routine at the Ninsoku Yoseba on
Ishikawa Jima, where vagrants and certain ex-convicts were detained and taught a trade during the late Tokugawa Period. Deportation to Hokkaidō which also entailed forced labor was limited to a term of one, one and a half, or a terms of two years, depending upon the crime. After completing his deportation sentence the deportee was registered as a permanent resident of Hokkaidō and given a vocation. The death penalty was executed either by hanging or decapitation; in either case the relative was entitled to claim the corpse. Besides these two forms of the death penalty, the decapitated head was sometimes put on a pole for public display at the execution grounds and there it remained for three days with an accompanying poster explaining the crime of the executed criminal. Exposure of the head, as this was known, was reserved for arch criminals.

The punishments for persons holding chokunin or sōnin rank and those for the nobility were commuted to five differently graded types of sentences, which were known in Japanese as 1) kinshin, 2) heimon, 3) kinko, 4) henju, and 5) jisai. Kinshin required the individual to be confined to his home from ten to fifty days without having contact or communication with outsiders. Heimon meant that the residence gates were locked for sixty to one hundred days and that, with the exception of receiving firewood and provisions, not even household servants would be allowed to pass through the gates of the person in confinement. Kinko was a sentence of domiciliary confinement in a single room from one to three years. Henju was a one or two year sentence spent in Hokkaido in the defense of Japan's frontier boundary, and the sentenced person was stripped of any life time titles to land or pensions awarded for meritorious service. Lastly, jisai required that the convicted person commit suicide by disembowelment and that his hereditary stipends be given to his heir. These commuted punishments were dealt out to the ex-samurai, to officials of the government, and to Buddhist priest with court rank. In the case of an ex-samurai, for example, whipping with the rod was commuted to kinshin, whipping with the stick to heimon, imprisonment to kinko,
deportation to *henju*, and the death penalty to *jisai*. But in actuality deportation and its commuted equivalent, *henju*, were never used, since deportation had been converted to a sentence of penal servitude only shortly before the *Outline of the New Criminal Law* came into effect. For government officials committing public or private crimes there were additional distinctions of punishment; and for women, the aged, juveniles and cripples there were special regulations. When a government official was sentenced for robbery, larceny, gambling or other conduct involving moral turpitude he was reduced to the status of commoner, provided his penalty only called for whipping with the rod or stick, but when his sentence called for penal servitude or a more grievous penalty the official was obliged to serve the original sentence. Similar treatment was also given to the priests holding official rank whenever they broke their religious commandments by involvement in theft, etc.; in place of the rod or stick they were reduced to lay status, but if sentenced to penal servitude or worse their punishments could not be commuted. All of these commuted sentences, it will be remembered, were based on a similar scheme of commuted sentences found in the laws of the Edo Bakufu. Under special circumstance however any of the five penalties could be avoided by a payment or ransom.

After being put in operation the *Outline of the New Criminal Law* was partially amended. Of the different amendments, the most important was the *Penal Servitude Law* (May 1872). By its provisions ten blows of the rod were converted into ten days of hard labor, and a hundred blows of the stick into a hundred days of labor. However, the exact form of penal servitude was left to the determination of the local authorities pending future orders from the government; and continued use of the rod and stick was still authorized wherever prison space was inadequate to local needs. This shift to imprisonment at hard labor was brought about by the Justice Department on the ground that its application in the Western fashion was preferable to corporal punishment, since the rod was ineffective
and the stick was overly severe for persons of weak constitution. The Justice Department also reasoned that penal labor would be of value to society and conducive to the prisoner’s health, leading the way to discipline and repentance. So now that the rod and stick as well as deportation had been converted to imprisonment at hard labor there remained officially only two types of punishment: 1) penal servitude and 2) capital punishment. Though formally abolished, the complete and real disuse of corporal punishment depended of course on completion of adequate prison space to accommodate the increase in prison inmates. Another important amendment to the criminal law was added in February 1873. A former provision which required the reduction of a peer or ex-samurai to the status of commoner for offenses involving moral turpitude was reworded so that the reduction in status of the individual and his forfeiture of pension did not include any reference that might imply derogation of commoner status. Likely as not this amendment resulted from a Justice Department communication to the government suggesting how highly improper it was to identify criminal penalties with the status of commoner in a society where peers and commoners intermarried and the peer and ex-samurai engaged in agriculture and commerce.

Since even the Department of Criminal Punishments had only looked upon the Outline of the New Criminal Law as a temporary measure rather than a final codification of criminal law, this department began the task of improving it in the spring of 1871; and by August 1872 a three volume draft had been completed. After passing the Lower Chamber and being given the Imperial sanction in early 1873, the new criminal legislation which was entitled the Amended Criminal Regulations was ordered enforced as of July 1, 1873, by the Council of State. Included in the enforcement order were a number of significant instructions. One suspended the delegation to the local authorities of summary punishment powers in counterfeiting cases. Another forbade the courts to use as legal authorities the previous government directives and the existing laws that pertained to
the application of criminal law; and the courts were further instructed to consult the Justice Department when meting out punishments for offenses that were not covered by any specific provision of law. And the third instruction accompanying the enforcement order authorized the infliction of corporal punishment in those localities which found it difficult to provide a system of penal servitude for persons sentenced to less than one hundred days of hard labor. Although the Amended Criminal Regulations showed some trace of Japan’s eighth century legal tradition in that they were accompanied by an Imperial edict expressly ordering the government officials to uphold the law, the Amended Criminal Regulations were at the same time a new form of criminal legislation in comparison to the Outline of the New Criminal Law, since from the very beginning the former were ordered into general effect throughout Japan by a Council of State decree. But only being a revised and enlarged form of the Outline of the New Criminal Law and only containing special laws that had been enacted at an earlier date, the Amended Criminal Regulations were not at all intended to contrast with or supersede its predecessor, the Outline of the New Criminal Law.

By contrast to the heavy Chinese coloring of the Outline of the New Criminal Law, the influence of Western and particularly French criminal law is visible by the time we come to the Amended Criminal Regulations. Even the accompanying edict admits the imprint of Western influence. After all, the arrangements for penal servitude, created by the aforementioned Penal Servitude Law, were of French origin; and French criminal law even played a part along side Chinese law of the Ch’ing Period in the framing of the provision on sodomy.

In one respect—the disregard of the principle of no punishment without a previous law—there was no difference between the Outline of the New Criminal Law and the Amended Criminal Regulations. The traditional concept of judicial discretion was in fact made even more far-reaching in the Amended Criminal Regulations. This was done by the inclusion of a rather refined
gradation of punishments that could be imposed on persons who committed offenses against reason and sentiment or who violated certain unwritten rules (rei) which were classified into sei and shiki. The violation of a sei brought the offender a sentence of imprisonment at forced labor ranging up to 100 days; violation of a shiki brought up to twenty days imprisonment at forced labor; and perpetration of an offense against reason and sentiment (destruction of Buddhist images, etc.) netted the offender anywhere from twenty to seventy days of imprisonment at forced labor. All these sentences were meted out according to the judge's calculation of the gravity of the offense. As to the retroactive power of the provisions of the Amended Criminal Regulations, their legal beginning was dated from the day of enforcement, although if an offense committed prior to the enforcement date drew a lighter punishment under the previous criminal legislation the former punishment prevailed. A reduction of penalty was also obligatory in those offenses for which the old code had demanded sentences ranging from deportation on down, provided a lesser penalty for the same offense was prescribed by the Amended Criminal Regulations. This latter adjustment in punishments had been provided in advance by a Council of State order in July 1872. This order also authorized release of prisoners who had served their terms according to the provisions of the new legislation. In respect to persons voluntarily surrendering themselves to the law, the Amended Criminal Regulations treated the offender one degree more leniently than did the old law when he surrendered upon learning that someone else intended to give information. Thus his penalty was two degrees lighter than required by the provisions for the original offense. Two additional provisions on voluntary surrender which were carried over directly from the Outline of the New Criminal Law were these. The first one provided that when a person surrendered upon learning that the authorities intended to arrest him, his sentence was to be reduced one degree. The other specified that when a person surrendered after his offense had been reported but before his name or his real offense had
been learned he was to be exempted from any punishment just
the same as the offender who surrendered prior to the detection
of his offense. In the matter of punishments, imprisonment
at hard labor completely replaced such former sentences as
whipping with the rod and stick and the sentence of deportation;
and, although the omission of such sentences only confirmed
the penal innovations legislated in 1869 and 1872, it seems fair
to say that the triumph of the liberty restraining penalties had
eventually brought to tentative completion the early Meiji scheme
of punishments. Besides the sentence of ten years imprisonment
at hard labor, a hard labor sentence for life was established and
substituted in general for the death penalty, except where the
death penalty was demanded in such offenses as armed robbery,
embezzlement, premeditated murder, arson, breaking prison, and
counterfeiting. The penalties of the Amended Criminal Regula-
tions were often one or two degree lighter than in the Outline
of the New Criminal Law, though this principle of leniency did
not prevail throughout, and it should be borne in mind that
fresh categories of offenses were created. Whipping with the
rod and the stick were abolished, as we have seen, but it was
replaced by the penalty of hobbling. A foster parent who
deserted his charge, for example, or a prisoner who took flight
from his penal servitude could be summarily punished by hob-
bling, which amounted to tying a chain around his waist and
connecting the chain to each ankle. One day of hobbling was
equivalent to ten to fifty blows of a rod, and two or three days
of hobbling was the equivalent of sixty to eighty blows of the
stick. In other offenses that were only serious enough to merit
ten days of hard labor, the offender was reprimanded and
released. The former practice of commuting penalties continued
to be observed even in the Amended Criminal Regulations, but
only in a modified form. The retention of this type of special
punishment does not appear extraordinary in spite of the much
touted equality of the four classes, since there still existed at
this time certain distinctions in the law concerning relatives
and succession. Yet the hold of feudal law was growing weaker
and the offenses of the ex-samurai which had formerly demanded
the penalties of *kinshin*, *heimon*, *kinko*, *henju*, and *jisai*, were
all converted to *kinko*, i.e., confinement to a single room of one's
residence. The period of confinement depended upon the term
ordinarily identified with the converted penalties, except in the
case of *jisai* which was converted to confinement for life.

In spite of the labor expended on the *Amended Criminal
Regulations*, which were essentially a product of Chinese law
of the Ming and Ch'ing Periods with an admixture of French
and other modern criminal legislation, there were additional
though abortive efforts to create still other criminal legislation.
While the *Amended Criminal Regulations* were still in draft
form the compilation of a criminal code, presumably patterned
after French criminal law, was in progress in the Justice Depart-
ment from the fall of 1872 until 1873 under the direction of
Etō Shimpei. But with Etō's fall and with the Left Chamber's
acquisition of exclusive control over legislation about this time
the criminal code project came to an end. The next effort in
the field of criminal legislation dates from late 1873 until the
early part of the following year and seems to have been made
by the Left Chamber. A surviving manuscript indicates that
there were intentions to remedy the disparities existing between
the *Outline of the New Criminal Law* and the *Amended Criminal
Regulations* (e.g., the death penalty could be imposed on an
employee for stealing from, but not for killing his employer),
and a desire to produce a code more in tune with the times by
tempering the Chinese influence with a greater measure of
Western criminal law. An interesting feature of this manu-
script, considering the period in which it was prepared, is that
it contained a law on high treason. Ultimately this attempted
revision was no more successful in becoming law than was the
criminal code initiated under Etō. Still, in 1874, there was
another attempt to change the *Amended Criminal Code*. In this
year the Left Chamber, after proposing to the Council of State
that the criminal laws be amended in order that they might
conform more basically to European law, commenced and com-
pleted a criminal code draft. Though presented to the government, this draft had a fate no happier than the other unsuccessful revision attempts.

All major revision attempts failing, both the Outline of the New Criminal Law and the Amended Criminal Regulations remained in effect until superseded in 1882 by the Old Criminal Code. Yet it should not be supposed that there were no innovations at all in criminal law following the enactment of the Amended Criminal Regulations. A few of the changes that ensured will be pointed out here. First in May 1874, the courts and prefectures were notified by the Justice Department that no one would be prosecuted for adultery when accused by an outside party. This new rule, inspired by the Western practice of prosecution only on complaint of the plaintiff, was probably established in order to avert the host of evils caused by the many unwarranted accusations of adultery involving married women. Then in the following month the commuted sentence of *kinko* was changed to imprisonment by an order from the Council of State, perhaps in order to remedy the lax disciplinary control arising from domiciliary confinement and to ensure disciplinary punishment through actual prison confinement. Of course this conversion of penalties remained only a nominal change until there was an expansion of prison facilities. Again, in December, the Council of State made it possible to reduce a punishment as much as five degrees when the offense was of a minor nature and circumstances warranted a lighter punishment, irrespective of any existing legal provisions for that offense. This is the first time that any provision had been set up by the Japanese for the reduction of sentences on account of extenuating circumstances. The move to alleviate penalties in mitigating circumstances, a move prompted by the Justice Department, was based on European precedent; and, although there were complaints that the mitigation of punishments was incompatible with the principle of penal law, the wishes of the Justice Department prevailed. In consequence, the strict principle of the legality of punishments in penal law was greatly
mollified. Another important modification in criminal law came in April 1876 with enactment of the Regulations for the Discipline of Government Officials. These regulations assigned the responsibility for the discipline of government officials to the superior official having jurisdiction over the action of the official concerned, and the provisions on official discipline that were in the Outline of the New Criminal Law and the Amended Criminal Regulations were rescinded. With respect to capital punishment, the practice of displaying the decapitated head of a criminal was abolished in 1879 in favor of simple decapitation. This change had only come about after the Genrō-In had unsuccessfully suggested to the Throne in 1876 that capital punishment be limited to hanging, and had again, in a more subdued proposal in 1878, requested the abolition of decapitation and of display of the criminal’s head. It should perhaps also be mentioned here, in connection with the topic of legislative reform, that the Genrō-In appealed in 1876 for a radical reform of contemporary Japanese criminal laws. The appeal was based on the reasoning that a Japanese criminal law resting on outdated Chinese legal concepts was incompatible with the Japanese political institutions and social manners that were rapidly being patterned after Western practices. Acknowledging however that the scrapping of the present criminal laws would entail a radical reform—not feasible at the moment—the Genrō-In recommended an immediate but limited repeal of such criminal provisions as pertained to the family. These provisions, a mixture of criminal and civil law, were derived from Ming and Ch'ing Period legislation, according to the Genrō-In, and they were regarded as inappropriate to Japanese realities. Finally, one other amendment to the criminal law that should not be overlooked was the rescinding in December 1877 of the provision on absconderence, which had formed a part of the criminal regulations covering the family. This action no doubt stemmed from the completion of the prefectural system and also from the idea that freedom of movement should be made possible.

Besides these changes that were made in the two existing
compilations of criminal law, a large number of special criminal laws were also enacted. Of these we shall only briefly examine the Libel Law, the Regulations Governing Contraventions, and the ban on vendettas. With reference to the Libel Law, which was enacted by the Council of State in June 1875, libel was one of two kinds. One kind consisted in the publicizing of an individual's activities, whether true or not, that were injurious to the individual's reputation; and the other consisted in the act of publicizing discrepante remarks about an individual without any reference to specific activities of the individual. In either case the person exhibiting, selling or posting written material, caricatures, and images for the purpose of libel were subject to punishment commensurate to the offense. The seriousness of the offense depended on whether the libelous activities were directed against the 1) Emperor, 2) the Imperial family, 3) the duties of government officials, or 4) peers, ex-samurai, and commoners. Libel in regard to the last two categories was prosecuted only upon complaint of the person injured. It need hardly be said that this Libel Law together with the Newspaper Press Law, which was enacted on the same day, were quite positive instruments in the suppression of the liberal right advocates.

As to the Regulations Governing Contraventions, they were first ordered enforced in November 1872 as provisional instructions, and then in the following month they were put into full force in metropolitan Tokyo. These regulations covered what amounted to minor police offenses, though they were classified as major contraventions (ishiki) and minor contraventions (kaii). A major contravention, for instance, made it against the law for anyone not engaged in fire fighting duties to ride a horse, for anyone to hold unsightly exhibitions sponsoring snake charmers or mixed sumō wrestling matches between the sexes, for anyone to operate a bathing house that permitted men and women to enter the water together, or for anyone to make unauthorized and selfish use of irrigation water. A minor contravention, on the other hand, made it illegal to obstruct traffic.
because of drunkeness or through a prank, to gallop a horse
drawn vehicle down a narrow alley, or to mistakenly allow a
cow or horse to enter someone's house. The punishment for
violating a major contravention was the imposition of a fine
ranging from seventy five to 150 sen; for violating a minor
contravention, a fine of from 6.25 sen to 12.5 sen. When a
person was unable to pay the fine for a major contravention,
he was liable to ten to twenty blows with the rod; if unable to
pay the fine for a minor contravention he might be placed in
detention from one to two days. Confiscation of goods under
the terms of this law depended upon separate judgment. When
an offense resulted in loss to another party, the aggrieved
individual was to be indemnified before the minor fine was
imposed. Frequent amendments and supplementary provisions
were added to the Regulations Governing Contraventions; and
in July 1873, by order of the Council of State, similar laws
were established for each locality. The only difference between
the regulations for Tokyo and for the localities, in so far as
their chapters on general principles are concerned, was that
punishment by whipping and detention in the original Tokyo
regulations became sentences of imprisonment at hard labor in
the local regulations on contraventions. Another point of con-
trast was that the local laws contained twice as many articles
as the original Tokyo regulations, though the former served as
tentative standards and could be modified in extenuating cir-
cumstances by seeking instructions from the Police Bureau.
To make these laws as easily understandable as possible the
prefectures often inserted illustrations in them. The punish-
ments for the contraventions were meted out by the police
authorities, as we have stated earlier in our treatment of the
police.

Lastly a brief word about the vendetta and its ban. During
the Edo Period it had been possible for a member of the bushi
class, primarily, to assail the antagonist of his father, older
brother, or similar ascendant after performing certain pro-
cedural formalities. Following the Restoration the vendetta was
again formally recognized by the Outline of the New Criminal Law. By one of its provisions of Ming Chinese origin the offspring was allowed to kill the slayer of his grandparents or parents provided the attacker was caught in the act or if the offspring first complained to the authorities, but the person taking revenge on his own initiative was subject to fifty blows of the rod. Then, in 1873, this provision was amended so that the offspring could only kill the assailant at the spot of the crime, while any other act of arbitrary killing laid the avenging offspring liable to decapitation under a charge of premeditated murder. Finally, the practice of revenge was completely disallowed by certain provisions of the Old Criminal Code (1882).

Thus far in our discussion on criminal offenses no allusion has been made to the execution of punishments, therefore, let us now turn our attention to prisons and their control. In the Tokugawa Era the prisons were as a rule places for the detention of unconvicted prisoners; and in the city of Edo the prisons were located at Kodemma-machi and Honjo. The Kodemma-machi prison was under the authority of the Edo Town Magistrate and the Honjo prison was under the jurisdiction of the Kantō District Deputy. Within the prison there were different wards so to speak where persons of different social status were confined. Peasants and townsmen were kept in one ward; priest, doctors, rear vassals and the lower ranking direct vassals of the Shogun who lacked audience privilege with him were kept in another; and the higher ranking vassals who enjoyed the privilege of audience were kept in a third ward. Women were all placed in a ward for their own sex, but with no distinction being drawn between the women who were allowed audience with the Shogun and those who were not. The seriously ill prisoners and the juveniles were incarcerated in the Asakusa or Shinagawa prisons for social pariahs (hinin). In the local districts each domain had its own prison. In addition to these prison facilities there was an institution known as the Ninsoku Yoseba. Established in 1790 on Tsukudajima in Edo Bay by Matsudaira Sadanobu, a Senior Councilor of the Bakufu,
the Ninsoku Yoseba was originally used to house and rehabilitate vagrants by assigning them work, though later this institution was used to house ex-convicts.

The control of prisons subsequent to the Restoration was formally delegated in 1868 to the Section of Criminal Affairs and then to its successors, the Office of Criminal Affairs and to the Department of Criminal Laws, but in actual practice the former Bakufu arrangement of delegating prison control to the domains continued to be observed. Two years later, in January 1870, an Office of Prisons was set up within the Department of Criminal Punishments and this office was shortly thereafter given control over the Tokyo Prisons, the Ninsoku Yoseba and over the two Tokyo institutions for social pariahs. In February the Ninsoku Yoseba was converted formally into a penal institution. While penal servitude constituted but one of the four penalties (whipping with the rod, penal servitude, deportation, and capital punishment) prescribed by the Provisional Penal Code (1868), its position in the scheme of penalties became relatively more important by December 1868 when the traditional punishment of banishment was converted to penal servitude and when the domains and prefectures were instructed to establish penal institution to the extent that local conditions permitted. Naturally a uniform prison system did not emerge in all districts, but Nagasaki prefecture and the domains of Okayama and Kaga did legislate prisons into existence in 1869 and 1870. In this legislation, escape from penal servitude was especially singled out for precautionary measures; and the prisoners were marked to indicate that they were prison inmates. The Nagasaki legislation, for example, required that all the hair be shaven from the prisoner's head, whereas in Okayama both the eyebrows were shaven off and an iron collar was placed about the neck of any prisoner convicted of robbery, larceny, and the more serious crimes. The lesser criminals, such as gamblers and the like, who were sentenced for more than a half year term, had the hair on only one side of their head shaven off, according to the Okayama legislation, while minor offenders lost only one
eyebrow. But all prisoners in Okayama were obliged to wear the prison uniform. In Kaga the iron collar that was worn about the neck of the prisoner had to be covered in a bright colored cloth to make it conspicuous. To house prisoners it seems that the old Ninsoku Yoseba, rice storage buildings, certain sections of existing prisons, and similar places were often put to use. The importance of penal servitude was increased further in 1870 when the sentence of deportation was abolished and the offenses formerly requiring deportation were made punishable by penal servitude. As a consequence of this substitution of punishments the prisoners who ordinarily would have been deported were placed in the prefectural and domain prisons, but apart from the common prisoners, and were ordered to be rigorously worked. If small domains could not afford to set up prisons, they were obliged to join other domains or prefectures in a common project, each contributing funds according to its revenue capacity. For the administration of these institutions the Department of Criminal Punishments established the Regulations for Penal Institutions in March 1871, and in the same month sent a group of prison officials under Ohara Shigeya to Hongkong and Singapore to study the English prison system. Within a half year of this date the Office of Prisons in the Department of Criminal Punishments was abolished and its functions were transferred to Metropolitan Tokyo. This transfer may apparently be explained by the fact that the abolished office only had control over the prisons located in Tokyo and by the fact that the inmates were mostly former Tokyo residents. Prison affairs, by the end of 1871, were placed generally under the control of the civil court section in each prefectural office, in accordance with the Regulations for Prefectural Administration; though with the abolition of these court sections in September of the following year, as required by the Office Regulations for the Justice Department, prison affairs were removed to the general affairs section of each prefectural office in those prefectures where courts and public procurator offices were in existence. Also in accordance with
the Office Regulations for the Justice Department, a place of detention administered by the procurator was attached to each court for the housing of suspected criminals and any persons who had to be examined on the spur of the moment. Unless an examination of the suspect proved his innocence and brought his release, the accused, depending on the seriousness of the offense, was either to be placed in prison or in the custody of a government or local official, or in the safekeeping of a relative. In practice the detention period was more prolonged and persons were often held for over a year.

Upon the return in August 1871 of Ohara and his party from the prison inspection tour, begun several months earlier, the Illustrated Regulations for Prisons were compiled and issued in December 1872. This set of regulations formed but another part of the judicial reforms then being carried out by Justice Minister Etō Shimpei. A prison as defined in the preface of the regulations was a place where individuals were confined for disciplinary punishment and paternal care, rather than a place where they were to receive brutal treatment. Compiled in the light of this definition of what a prison should be, the regulations were on the whole quite progressive despite the regard given to traditional prison practices. The major subdivisions of the regulations dealt with 1) prison structure, 2) detention of suspects, 3) penal labor, 4) disease, 5) execution of punishments, 6) officials, and 7) miscellaneous rules. By the terms of these regulations, a prison was to contain two places for penal labor; one for ordinary prisoners and one for the physically handicapped. In addition there was a ward for female prisoners, a sick ward, a juvenile correction ward, and a place for the handicapped to perform a less demanding type of labor. In architectural form, one of the illustrations in the Regulations indicates that prisons were henceforth to be built in radial fashion after the Ghent style of prison structure. The internal organization of the prison was planned to accommodate the single cell system; and there were arrangements for the separation of the unconvicted and first offenders from the repeated
offenders. Likewise, men and women prisoners and those in the juvenile correction ward were each to be isolated from the other group and prevented from any intermixing. We should also note that, primarily through English influence, the promotion system in prison labor was adopted. For the ordinary prisoner this meant that he could progress through five grades of labor starting at the bottom with the carrying of dirt and rocks, reclamation of wasteland, etc., and after one hundred days of such labor, he could proceed to the fourth grade where prisoners engaged in the construction of official government residences, road repair, and similar occupations. After having reached the fourth grade, the period of time fixed for the remaining grades depended on the length of the individual's prison term. Even prisoners who incurred sentences equivalent to deportation or who were in prison for life were allowed a special form of commutation after reaching the first grade. The prisoners in any of the top three grades labored as blacksmiths, as handicraft workers in wood, bamboo, and rattan, and as other craftsmen of a similar nature. However, the prisoners in the first two grades who were properly qualified could serve as instructors for the other prisoners, or serve as cooks and gate guards. There were special provisions for prisoners with exceptional skills and for women and juveniles. The work schedule of the prisoners consisted in an eight hour day; and once they were promoted to the first grade they each earned 100 mon per day, which, minus the cost of their meals, was delivered to them upon their release from prison.

While the purpose of enacting these prison regulations was the establishment of a scheme of liberty restraining punishments and the creation of adequate prison facilities, the funds needed to implement the Regulations were so huge that the scope of their initial enforcement had to be curtailed to the provisions concerning penal labor and the treatment of prisoners. The only new radial prison was to be built in Tokyo. But on account of opposition from the Finance Department the Council of State ordered on April 8, 1873, that all provisions of the regula-
tions should be temporarily suspended. Nevertheless the Justice Department apparently wanted that portion of the regulations enforced which did not depend on any government outlay, and on April 19 instructed the districts wherever it was convenient to carry out the provisions concerning penal labor and the treatment of prisoners even without the benefit of new prisons. The continuation of corporal punishment was of course permitted as an expedience in those districts lacking adequate penal institutions, but the reprieve for corporal punishments only lasted until the Amended Criminal Regulations were enacted in June 1873. By their enactment the importance of imprisonment at hard labor was uncompromisingly accepted. Subsequently, more and more prisoners were sentenced to hard labor terms, and this in turn contributed to an elaboration of prison facilities and an expansion of work operations outside of prison. One other point to be made concerning insufficient prison space is that in July 1874 the Justice Department issued instructions demanding that the person (ex-samurai, etc.) sentenced to confinement in a single room of his residence, in default of adequate prison accommodation, be kept at home under the same strict discipline that would ordinarily be his lot in prison.

Somewhat before these developments in criminal legislation the Department of Home Affairs had been created in November 1873. By December 1875 this department was given jurisdiction over the detention of persons who were pending conviction and who were already convicted, except where the places of detention were under control of the Justice Department and of the law courts. But in February 1875 even these places of detention were transferred to the Home Department, which then delegated their control to the prefectural offices. And when the penitentiaries of Tokyo and Miyagi were created in 1879 they, too, were placed directly under the Department of Home Affairs.

To improve prison conditions, plans were formulated by Home Minister Ōkubo Toshimichi about the year 1875, and while regulations for feeding prisoners and a system of taking criminal statistics were established within the next two years,
the projected improvements were soon cut short by the urgent necessity of the government to reduce its financial obligations. These had been greatly expanded by the conduct of the Southwest campaign to suppress the rebellion of Saigō Takamori. So as a measure aimed at financial solvency the Council of State decreed in November 1880 that prefectoral prison expenses, prison construction, and repair be defrayed by local taxes. That this action further complicated the task of improving Japanese prisons cannot be denied.

In concluding our brief survey of criminal legislation it remains to consider one final piece of legislation that was enacted in September 1881. This was the Regulations for Prisons. Of its provisions, those which concerned the Old Criminal Code and the Code of Criminal Instruction were scheduled to go into effect as of January 1, 1882, on the same date that these latter two codes were to be enforced. Although regarded as a compendium of the Prison Regulations issued in 1872 and of other miscellaneous prison legislation of 1881, the Regulations for Prisons were actually nothing more than a thorough revision of the 1872 Prison Regulations. The work of revision, which was based on French and Belgian precedents, supposedly follows the views on Onoda Motohiro who accompanied Chief Police Inspector Kawaji to Europe and America for an inspection tour of prisons. In consequence of the revision, prisons were classified anew into the following six categories: 1) the ryūchi-jō, a place of temporary detention attached to the court or police station where persons waiting trial were kept, 2) the kansō, a place of detention for unconvicted persons, 3) the chōji-jō, reformatory for minors, the mute, and for persons whose commitment was desired by a lineal ascendant, 4) the kōryū-jō, a house of detention where persons sentenced to police custody were confined; 5) the chōeki-jō, a place of internment for persons sentenced to hard labor and to domiciliary confinement (kinko); and 6) the shūchikan, a penitentiary for persons sentenced to imprisonment, imprisonment with hard labor, and deportation. The prisons were under the supervision of the
Minister of Home Affairs, but he had direct control only over the penitentiaries; the other categories were administered by the Chief of the Metropolitan Police and prefectural governors. Within the prisons the unconvicted and convicted were separated, and in the juvenile reformatories the boys were separated from the girls. For convicted prisoners there were different wards for different crimes, and within each of these wards there were even further distinctions: prisoners under sixteen years were kept away from older prisoners; first offenders between the ages of sixteen and twenty years were distinguished from repeated offenders of this age group; and there was general distinction between first and second offenders. Besides the arrangements for the classified handling of prisoners, the Regulations for Prisons also contained numerous detailed provisions on everything from prison structure to the moral instructions that were to be given the prisoners.
CHAPTER II.

THE MIDDLE PERIOD
(1882–1898)

1. ENACTMENT OF THE CONSTITUTION

As we have seen, once the Emperor announced in October 1881 that a national assembly would be opened in 1890 the center of political activity was focused on the preparations for enacting a constitution and creating a national assembly. The task of directing the constitution’s framing was ultimately destined to fall in the hands of Itō Hirobumi, for the ranks of the leading power holders in the government had been thinned out by Okuma’s dismissal from the administration immediately prior to the Emperor’s announcement of the establishment of a future assembly and by the death of Iwakura in 1883 on the eve of Itō’s return from his commissioned tour to Europe where he had been studying constitutional theory and practice.

a. Itō Hirobumi’s Constitutional Research in Europe

In February 1882 Emperor Meiji made an inquiry to his highest advisers concerning the future constitutional government of Japan. He wanted to know whether any limitations would be imposed on the Imperial household’s exercise of sovereign power upon inauguration of the national assembly. He inquired whether the sovereign power of the Emperor should be clearly defined by specific provisions of law. And he wished to be apprised generally about the preparations being made for the constitutional form of government that was scheduled to be inaugurated in 1890. By February 24 he received a reply from Chancellor
Sanjō Sanetomi, Minister of the Left Prince Arisugawa, and Minister of the Right Iwakura, in which they made it clear that constitutional government and the respective spheres of authority of the monarch and the assemblies were different in each country, and hence it would be necessary for Japan to use discretion in selecting the form of government that would be suitable to the national polity and the customs of the people. As in other countries, the reply continued, the possessions of the Imperial family should be made separate from the national treasury and placed beyond the control of the assembly; the peerage, which would form the future upper house, should educate their children and give considerate guidance to the ex-samurai to ensure their loyalty; and a legislative assembly should have the power to determine the authority of the administrative departments, the methods for exercising surveillance over them, and the right to determine the rules governing elections. The reply to the Emperor also declared that public finances should follow the lead of public opinion except when emergencies made further expenditures necessary.

This joint reply was not the only advice given to the Throne, for again in February Iwakura submitted his own proposal apropos of the Emperor's sovereignty. The party movement being at its strongest just at this juncture, Iwakura expressed through his proposal the fear that the argument for popular rights would make great forward strides upon the creation of the national assembly and that a written constitution would not only lose its authority but the Emperor would fall under the control of the legislature, and the traditional Japanese concept of Imperial supremacy would be forever lost. To avert this calamity and preserve the authority of the written constitution Iwakura advised that the substance of this constitutional authority—the property of the Imperial family—be increased and that all military expenditures be defrayed by the revenue obtained from this property. In consequence, Iwakura pointed out, any future political opposition could be easily quelled and forced to comply with the government however radical the
political philosophy of the opposition might be or however obstreperous an assembly might become with regard to the budget. Therefore, if the Emperor desired to firmly anchor his sovereignty it would be necessary to prevent any substantial imbalance from arising between the holdings of the Imperial family and the assets of the people, though this was of no immediate concern in view of a contemporary survey showing a favorable ratio of government forest lands (4,818,000 chō) to the land holdings (4,818,350 chō) of private citizens. To these forest lands Iwakura wanted the unsurveyed government forests in Hokkaidō added and all of them included together as Imperial household property under the jurisdiction of the Home Affairs Department, with their revenue going to the national treasury as a source of financial support for the government. But because it would be difficult to make a decision upon the property of the Imperial household after the inauguration of constitutional government, Iwakura concluded that this decision would have to be made with all haste before that time. Such were no doubt the thoughts of Iwakura, and as it turned out a very sizable portion of national wealth was in fact incorporated into the private holdings of the Imperial family before the Constitution was enacted.

Now the Chancellor and the two ministers of Left and Right who had responded to the Throne's inquiries about constitutional government also had definite ideas about the person best suited to prepare a constitution. In their estimation there was no one so well qualified as Itō Hirobumi. So it was decided that he should be sent to Europe for constitutional research, and on March 3, 1882, he received explicit orders from the Emperor. To Itō was also given a list of thirty-one items which fixed the bounds of his research duties. Briefly put, the list directed Itō to conduct a critical historical analysis of each constitutional monarchy in Europe. Included among the items for his investigation were the royal household and the cabinet, the assembly and the departments of state, the relations of these institutions to each other, the appointment and dismissal of government
officials, local government and similar important aspects of constitutional government.

On March 14 Itō departed from Japan. So far as Itō was concerned, Germany and particularly Prussia were more suitable than England as places to conduct his investigation. Possibly this choice had already been made final in accordance with the views of Iwakura. After arriving in Berlin on May 16, he attended lectures by Rudolf von Gneist and those of his student Albert Mosse; then, in September Itō proceeded to Vienna to hear lectures delivered by Lorenz von Stein, and in November Itō finally returned to Berlin where he remained until early February listening once again to Mosse’s lectures. During his European tour Itō sent a letter in August to Iwakura expressing great satisfaction with the teachings of Gneist and Stein, because they seemed to provide the essentials for creating patriotism and thus the means with which to counteract the excessively liberal thought then being introduced into Japan from England, America, and France. Noting that Gneist and Stein classified nations as constitutional monarchies or republics, Itō went on to outline in his letter the characteristics of a monarchy. The monarch, first of all, was superior to the legislative and executive branches, he suffered neither the restrictions of law nor of punishments, and he alone could sanction laws and ordinances. Under a monarchy a clash between assembly legislation and government ordinances was to be avoided by allowing the cabinet to originate all legislative enactments, and any enactments of the assembly would have cabinet approval before receiving the monarch’s sanction. Lastly, Itō observed that when the power of a constitutional monarch was abridged in any way the form of government tended to republicanism and to the practice of selecting prime ministers from the majority party. Judging by the sentiments expressed in this letter to Iwakura, it is plain that the series of lectures heard by Itō made him perceive the need for a strong sovereign and a weak assembly and he was only strengthened in his conviction that the party cabinet system was a threat to monarchical power.
Before leaving Europe Itō made his way to London in March 1883, then to Russia for the coronation of the Emperor, and from there to Naples where he departed for Japan in May. His ship finally arrived in Yokohama on August 3. In an address to the Throne on September 19, Itō summed up constitutional government as being based on two principles. The first principle, as originally expounded, was that there could be no taxation without the consent of the persons taxed. This notion, according to Itō, was only applied in England. The second and more recent principle was that of the separation of the three powers, with the legislature having the sole right to create legislation. Yet, regardless of the existence of these concepts, Itō informed the Throne that Japan’s unique national polity in which one line of Emperors had reigned from time immemorial should serve as the basic orientation for compiling Japan’s Constitution.

b. Creation of the Cabinet

It was thus through Itō’s trip to Europe that his contributions to the Constitution began. But before taking up the actual framing of the Constitution it is of special interest to note certain changes in government which afforded Itō a commanding position among Japanese statesmen and which paved the way to enactment of Meiji Japan’s basic law. In December 1882, while Itō was still abroad, a bureau known as the Naiki Torishirabe Kyoku had been created within the Imperial Household Department upon Iwakura’s recommendation and a study had been made of the Imperial Household. Then on March 17, 1884 the Legislation Research Bureau was established in order to take charge of legislative affairs and Itō, still a Junior Councilor, was appointed its director. Four days later he was given a concurrent position as Minister of the Imperial Household. This appointment no doubt was made so that he might preserve harmonious relations between the administration and the Court during the course of the preparations for constitutional government, because there was particular need for close contact be-
tween the two until the time that they would be separated under the new constitutional form of government.

The next significant action in the movement toward constitutional government, an action which pointed to the continuing political influence of the aristocracy in future governments, was the *Ordinance Concerning Peers*. Enacted on July 7, 1884, by the Imperial Household Department, this ordinance created the following five ranks of peerage: prince, marquis, count, viscount, and baron. Their formal creation was an advance move to provide the national assembly, once it was established, with a peerage majority in the upper house that would serve as a bulwark against the lower house.

Following this enactment, plans were formulated for a reorganization of the Council of State so that there would be less difficulty in adopting constitutional forms of government. Basic political reform was needed because of certain short comings inherent in Council of State's organization. Under the existing mode of government, for example, there existed an Inner Council composed of Junior Councilors, and yet the officials who advised the Emperor and exercised control over the departments were the Chancellor and the Ministers of Left and Right. Furthermore, these three chief ministers were not always in accord with the Inner Council nor in agreement among themselves. And of course another defect of the Council of State was that as long as this traditional form of government continued to function it would be difficult to get rid of the time worn and oppressive practice of restricting eligibility to the chancellorship to persons having a special family lineage.

Itō desired therefore to convert the Council of State into a cabinet system. He would do this by abolishing the Chancellor and the Ministers of Left and Right, replacing them with a new Prime Minister and the necessary department ministers. The new cabinet would be headed by the Prime Minister and he would be expected to preserve its unity as a body. Last but not least the Prime Minister would be appointed on the basis of his ability rather than on the basis of family background.
The finishing touches were put on Itō's plan in early 1884, but the plan was shelved when he had to visit China as Minister Plenipotentiary to deal with certain issues concerning Korea. Upon his return to Japan in April, Itō did his utmost to implement the new cabinet system. His plan however was countered by Chancellor Sanjō who feared that a one man Prime Minister would cause the disruption of the political balance between Satsuma and Chōshū. Instead of a new and different system, Sanjō thought it a better plan to simply fill the post of Minister of the Right which was vacated by the death of Iwakura. As a candidate for the vacant post Kuroda Kiyotaka was put forward, and at the same time Itō's name was suggested for the post of Minister of the Left. There were even proposals to make Itō the Minister of the Right, but both Itō and Kuroda stoutly declined the offers and the situation only became more confused. However, when an order came down from the Emperor instructing that the form of government be decided upon before the appointments to office were made, Sanjō finally joined in urging Itō to present an outline for government reform. Itō then presented a plan calling for the abolition of certain government posts, including the offices of Chancellor and the Ministers of Left and Right, the office of Junior Councilor, and the office of Department Minister. To take the place of the defunct ministers and councilors, Itō's plan specified the creation of a Prime Minister, upon whose recommendation the ministers of state would be appointed. The plan also called for the Prime Minister to be given control over the state ministers and to be made completely responsible for state affairs. Itō's proposed system of government was unanimously approved in a meeting of the Junior Councilors.

The formal scheme of government having been decided, the only problem still requiring attention was who to designate as Prime Minister. The decision of the Junior Councilors was again in favor of Itō, so their preference was reported to the throne by Sanjō. On December 7, 1885, an informal order from the Emperor indicated that Itō should become Prime Minister,
and his appointment was sanctioned twelve days later after Sanjō had submitted all pertinent documents to the Court council for deliberation. On the day following Itō’s confirmation, December 20, the Council of State notified the disestablishment of the offices as prescribed in Itō’s plan of government, and the notification announced the creation of the Prime Minister and the ministers of the Imperial Household, Foreign Affairs, Home Affairs, Finance, Army, Navy, Justice, Education, Agriculture and Commerce, and Communications. All but the Minister of the Imperial Household were members of the cabinet. On the same day, the regulations governing the Home Affairs Minister and seven Articles known as the Official Powers of the Cabinet were issued. Though ostensibly the latter outlined the authority of the cabinet, all but the last article, which made it possible for the affairs of a disabled cabinet minister to be administered by another cabinet minister, pertained to the powers of the Prime Minister. For this reason the seven articles should perhaps be more properly referred to as the “powers of the Prime Minister”. Article I declared that the Prime Minister, as the head of the other ministers, should report on state affairs to the Emperor and, upon receiving his orders, should give instructions on the course of administrative policy; and this Article gave the Prime Minister control over all executive departments. The second Article authorized the Prime Minister to demand explanations and to investigate the activities of the executive departments. Article III empowered him to suspend the Imperial decision when it was deemed necessary. Article IV gave the Prime Minister supervisory control over the legislation drafting committees within the departments. Article V required the Prime Minister, and any minister whose jurisdiction was concerned, to countersign laws and ordinances. Article VI specified that each cabinet minister should make occasional reports to the Minister on the state of affairs within his own respective department, though in military matters the Minister of the Army was to report to the Prime Minister what the General Staff Office reported directly to the Throne. Article VII
needs no comment since we have just made reference to it. These seven Articles are the only provisions concerning the cabinet and, though it might be expected that they would fully elucidate the powers of the cabinet, the Articles are completely lacking in any reference to the conferences that were to be held by the cabinet. Considering the Articles as a whole, our attention is drawn to the preponderant power of the Prime Minister. His preeminent position was no doubt an outgrowth of the Council of State tradition and due in part also to the attractive example set by the Prussian system of government.

One other interesting point related to the creation of the cabinet is the high minded and noble fashion in which Prince Sanjō Sanetomi retired to the post of Imperial Household Minister from his exalted position as Chancellor of the Council of State. His conduct on this occasion has brought him acclaim as a man possessed of a just and fair spirit. On the other side of the balance it was a great surprise for the people that Itō, a man with a samurai foot soldier background, should have become the Prime Minister. Besides these personal considerations, the creation of the cabinet is also profoundly significant for having done away with the importance traditionally placed on family status and for having opened up the way for the appointment of capable men to government positions.

c. Drafting the Constitution

It has been observed already that Itō, in the year following his return to Japan in 1883, set up the Legislation Research Bureau and began the preparations for drafting the Constitution, but being busily occupied during 1884 and 1885 in conducting a study for a complete administrative reorganization, Itō was actually engaged in the work of drafting a constitution only from 1886 to the spring of 1888. Commencing after the Legislation Research Bureau was disestablished in 1885, the work on the Constitution was carried out in secrecy at Itō's Tokyo residence at first, and then after June 1887 in a village hotel in Kanagawa prefecture, and finally at Itō's villa on
Matsushima Island.

The persons participating in the project were Inoue Kowashi, Itō Miyoji, and Kaneko Kentarō; though in addition to them there were two German legal scholars, namely, Hermann Roessler and Albert Mosse, who were serving as legal advisers to the Japanese governmmt. Roesslr's contributions to the constitution were particularly outstanding. Each of the Japanese drafters had more or less specific legislative objectives assigned to them. Itō Miyoji, for instance, was responsible for the Law of the Houses, Kaneko was in charge of the Law of Election of the Members of the House of Representatives and the Ordinance Concerning the House of Peers, and Inoue was entrusted with the Constitution and the Imperial House Law. Inoue's legislative assignment was of course the most important. Earlier Inoue had acted as legal adviser to Okubo Toshimichi and then as adviser to Iwakura, but knowledge concerning the Constitution came primarily from Roessler. The essentials of the Constitution, as pointed out much earlier when we discussed the different constitutional proposals, had already appeared in 1881 in two constitutional outlines put forward by Iwakura. These of course had been prepared by Inoue who in turn had been assisted by Roessler. Following Iwakura's death, the Roessler-Inoue-Iwakura chain of constitutional thought simply became the thought of Roessler being refracted through Inoue to Itō. By virtue of the unbroken existence of the Roessler-Inoue combination it is clear that their line of thought was basic throughout the preparation of the Constitution. Their ideas were the mainstream of constitutional thought owing to Inoue's great personal respect for Roessler and because Roessler's ideas, not greatly different from those of Gneist and Stein, were not overshadowed on the surface by the thought of these two scholars despite the appeal that they held for Itō Hirobumi. With respect to Inoue's influence on the Constitution, it should also be remembered that instead of accompanying Itō to Europe to study constitutional law as originally planned, Inoue remained behind to do research in Japanese history.
Now as soon as the drafting work on the Constitution commenced, Itō Hirobumi presented to Inoue, Itō Miyoji, and Kaneko an outline of instructions to follow. The outline contained these seven points:

1. The general principles relating to the Imperial House should be separated from the Constitution by enactment of an Imperial House Law.

2. Consideration for the national polity and the history of Japan should be the fundamental principles that guide the drafting of the Constitution.

3. The Constitution should be only a general outline concerning the administration of the Empire; the text should be brief and clear, and it should be written in such a way that it may respond flexibly to the development of the national destiny.

4. The law of the houses and the election law for members of the House of Representatives should be determined by statute law.

5. The organization of the House of Peers should be determined by Imperial ordinance, and any amendments of this ordinance should require the consent of the same House.

6. The territorial boundaries of the Japanese Empire should not be included in the Constitution, but fixed by statute.

7. Impeachment of state ministers should be excluded; and both houses should have the right to address the Throne.

All seven of these items later appeared in the Constitution, and it may be said of them that they form the distinguishing features of this basic law. Though the Constitution was drafted by Inoue with the benefit of the knowledge gained by Itō from Gneist and Stein and, above all, with the benefit of Roessler's and Mosse's guidance, there is no doubt that in the drafting process Inoue modeled the Constitution on what he had learned from his study of the Japanese polity, and that the final result
was quite within the bounds set by Iwakura's two constitutional outlines of 1881.

The completed draft, which was put before the Privy Council for debate, was known as the Emperor's Advisory Draft Constitution. Over ten drafts had been prepared before having reached this stage, and the most important ones among them were the tentative Drafts A (kō) and B (otsu) both of which were the handiwork of Inoue. In Draft A the comments of Roessler and Mosse were appended to each article, and in Draft B the pertinent clauses of foreign constitutions were appended to each article, which now enables us to make a comparative constitutional study. It is assumed that both of these drafts were prepared about May 1887. The extent of the contribution made by Mosse and particularly by Roessler may be seen by an examination of Draft A. These drafts had only reached a finished draft form by April 1888, after numerous revisions. Similarly, Inoue's draft of the Imperial House Law was completed only after it had been thoroughly examined by Itō Hirobumi, Itō Miyoji, and others.

As we have said, the Constitution was prepared under conditions of strict secrecy and even Roessler's draft bore the classification of a secret document. Because the drafting activities were so hidden from public view, rumors began to circulate as to the philosophical sources of the Constitution; some claiming it to be a product of English liberalism and others giving it the reputation of being extremely oppressive and Bismarkian. Combined with the crucial contemporary issues of treaty revision, reduction of taxes, and freedom of speech and assembly, the rumor engendering secrecy that shrouded the Constitution helped to produce a popular movement that spread throughout Japan. But to the popular agitation, the government reacted with the promulgation of the Peace Preservation Law in December 1887. Armed with this law the authorities banished from the capital the leading patriots who were in opposition to the government.
d. The Council for the Enactment of the Constitution and Promulgation of the Constitution

After being completed, the drafts of the *Imperial House Law* and the *Constitution* (*Emperor's Advisory Draft*) were presented to the Emperor. But when he had seen them, the high government officials were then perplexed about what to do with the drafts next. One proposal suggested that they be submitted to the *Genrō-in* for deliberation; another recommended that they be discussed by a constitutional council composed of both government personnel and private citizens. Yet in view of past procedure the first proposal was regarded as unsuitable and the second proposal, though strongly insisted upon by private individuals, was favored by only a few government officials. The government leaders for the most part wanted the *Constitution* to be granted by the Throne. Therefore it was decided to gather together the elder statesman and certain distinguished men of broad learning and experience in a newly established Privy Council where the drafts of the *Constitution* and the *Imperial House Law* could be examined in the presence of the Emperor. So on April 30, 1888, the *Regulations Governing the Privy Council* were made into law and Prime Minister Itō Hirobumi was appointed as the Privy Council's President. In transferring to the Privy Council as its President, Itō lost his Premiership in the cabinet, though he still continued to attend the cabinet under the express order of the Emperor.

On May 8 when the Privy Council was formally opened, the discussion of the two basic documents began. During the first session, which ended by the middle of July, the *Imperial House Law* was examined first and the *Constitution* afterwards. About one month was spent on each. On the first day of the beginning session a summary of Roessler's opinion on the draft *Constitution* was distributed for the benefit of the participants; and small committees were formed for special problems. After the *Constitution* had been examined, other basic legislation was then debated. The *Law of the Houses*, for example, was under
scrutiny nearly a month and a half during September and October, the *Law for the Election of Members of the House of Representatives* was examined for three weeks during November and December, and the *Ordinance Concerning the House of Peers* was scrutinized for two days during December. Since Itō was the President of the Privy Council, the task of explaining the different drafts was left to others. The *Imperial House Law* and the *Constitution* were elucidated by Inoue with occasional help from Itō Miyoji; the *Law of the Houses* was clarified by Itō Miyoji; and the *Law for the Election of Members of the House of Representatives* as well as the *Ordinance Concerning the House of Peers* were explained by Kaneko Kentarō. When they had been passed by the first session, the different drafts were presented to the Emperor. From the Throne they were then returned to the cabinet where it was determined that the drafts should again be submitted to examination. A second and third session were held in January 1889; these however were brief, lasting for only three days, and the final conference was held on February 5, which finally brought an end to the deliberation on the *Constitution*. All the conferences were held in the Akasaka Detached Palace in Tokyo.

The minor corrections made in the *Emperor’s Advisory Draft Constitution* during the deliberations were mostly changes in the wording and in the arrangement of the provisions. As an example of word changing, the word “approval” (*shōnin*), used to indicate the Diet’s power over legislation, was finally replaced by the word consent (*kyōsan*), for it was considered improper for mere subjects to approve of acts by the Emperor. And in Articles VIII, LXIV, and LXX, where the Diet’s *ex post facto* power over Imperial ordinances that were issued during the Diet’s adjournment was in question, the word “approval” was replaced by the word “accept” (*shōdaku*).

Of the substantial modifications made in the draft *Constitution*, we may mention a few outstanding ones. First, succession to the Throne was restricted to male heirs (Article II). This particular line of succession, however, had been the
case from the very beginning in the *Imperial House Law*. The right of the Diet to initiate legislation was given recognition (Article XXXVIII); the Emperor's sanction became unnecessary in the enactment of regulations for both houses (LI); the raising of extra-budgetary national loans chargeable to the national treasury came to require the consent of the Diet (LXII); the original provision which prevented the House of Peers from making a clause by clause revision of the budget was eliminated (LXV); and as emergency financial measures, those which would entail future obligations on the National Treasury and the assessment of new taxes were struck out. Among these modifications, the one which conferred on the Diet the right to initiate legislation was only approved in the second session of deliberations after having been voted down in the first session when the grant of this power was proposed by Viscount Torio. In respect to this alteration it will be remembered that Iwakura had originally denied the Diet any legislative initiative when he prepared his *General Principles* for the Constitution in 1881. Interesting, too, is the fact that the Diet's right to address the Throne was deleted during the second session and then restored in the third session. One other important modification of the *Constitution* while it was in draft stage was the deletion of a clause from Article LXV that had restricted the House of Peers' right to review the budget. Though this deletion had been unsuccessfully demanded by Viscount Sano in the first two sessions, it was only deleted after the deliberations of the Privy Council had reached the third session.

Thus after being subjected to a very detailed examination, the *Constitution of the Empire of Japan*, along with the *Law of the Houses*, the *Law of Election of the Members of the House of Representatives*, the *Imperial Ordinance Concerning the House of Peers*, and the *Law of Finance* was announced to the public on February 11, 1889, the day commemorating the tradi-

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1) See appendix 11.
tional founding date of the Japanese Empire in 660 B.C. This
day in 1889 also witnessed the enactment of the Imperial House
Law, though it was not promulgated in the Official Gazette like
the other legislation. Being enacted by the Imperial family for
its own personal affairs, it was thought that the Imperial House
Law need not be formally announced to the public.

2. THE EMPEROR

The Emperor in the very first few years of the Meiji Period
—despite certain of his modern looking characteristics—was an
autocratic monarch who presided over the Council of State.
It is already evident at this time that the Emperor’s position
corresponded to the status of the sovereign as prescribed later
by Article I of the Constitution (i.e., “The Empire of Japan
shall be reigned over and governed by a line of Emperors
unbroken for ages eternal). But the real issue concerning the
Meiji Emperor is whether or not this description of his sovereignty
applied equally and accurately to the sovereign position of the
Emperors during the Edo Period. As observed earlier, certain
constitutional scholars have argued that the position of the
Emperor during the Edo Period and during the Meiji Period
was the same, since the Edo Period Emperor was vested with
sovereign power and this was only being exercised for him
by the Shogun as an Imperial deputy. But history does not
bear this argument out. For in the Edo Period the Emperor
only had the authority to create era titles, to grant formal
and titular Court ranks, and just enough authority to set the
calendar. This was all that was left of the real sovereignty
that had been once exercised by the Japanese Emperor in the
eighth century when the Imperial capital was at Nara. The
Emperor’s real power had been lost in the centuries following
the Middle Heian Period as the ecclesiastical organizations and
the nobility residing in the provinces had gradually displaced
the central authority of the Court nobility who were located
in Kyoto. And practically all semblance of Imperial control
and political unity had been destroyed when the gradual accumu-
lation of power in the provincial districts had lead to open conflict with the Court and to prolonged internecine strife. The power and might that eventually restored unity to the provinces and emerged as the actual ruling authority in Japan had been molded by force and much fighting by such military figures as Oda Nobunaga, Toyotomi Hideyoshi, and Tokugawa Ieyasu. Their achievements were not the result of any grant of power from the Court. And when the title of Shogun was conferred upon Ieyasu it was given simply in recognition of his military supremacy. Ieyasu was given nothing in real power that he did not already possess, and this is why we can assert that the Shogun was not exercising sovereign power as a deputy of the Emperor. In deed Ieyasu was merely the successor to the political power which had gradually been usurped from the Court by the military houses since the Kamakura Period.

In view of these historical events it must be admitted that the Emperor in the Edo Period was without sovereign power; and, consequently, we must regard the Restoration as nothing more than a transfer of political authority from Tokugawa Keiki to Emperor Meiji. As a result of the Restoration, then, the Emperor recovered the sovereignty that his Imperial predecessors had once enjoyed in the Ritsuryō Period, and this meant a return of the political authority usurped by the military houses from the Court.

It is by reason of the Restoration, therefore, that sovereignty passed to the Emperor and that he obtained the position which allowed him to reign over and govern Japan as one of a line of Emperors unbroken for ages eternal, as provided by Article I of the Constitution. The Emperor was actually an autocrat at this time, yet the Constitution treated him as a constitutional monarch. According to Article IV, which provided generally for the constitutional aspect of his character, the Emperor exercised the rights of sovereignty according to the provisions of the Constitution. The Constitution (or the laws, treaties, and Imperial ordinances derived from the Constitution) thus imposed a limitation on the Emperor's sovereignty; and
it is this limitation that draws the line between an autocrat and a constitutional monarch. Of course the amount of power conferred on a monarch differs according to the country and the period concerned; and while Article IV makes it impossible to measure the full extent of the Emperor's authority, it is nevertheless clear that the Constitution did grant him very extensive powers.

First of all, Article I embraces the principle of direct personal rule by the Emperor. He was not relegated by the Constitution to a position where he simply gave acknowledgment to the reports of a regent while the regent himself actually administered the affairs of state. But notwithstanding the Emperor's right to rule directly, his exercise of the rights of sovereignty was a matter of procedure, and the procedure differed according to whether the particular sphere of government concerned was the judicial, the executive, or the legislative branch. The judicial power, for example, had to be exercised by the courts of law according to law, although this was done in the name of the Emperor (Article LVII). The legislative power which was to be exercised in principle by the Emperor himself still required the consent of the Diet (Article V); and as we shall see later the promulgation and enforcement of laws required the counter signature of a minister of state. Even as to the Emperor's exercise of the executive power, the Constitution made it necessary for the ministers of state to tender their advice to him (Article LV). Therefore even though the Emperor combined in himself the rights of sovereignty and was their source, he was nonetheless subject to different constitutional limitations; and the existence of the limitations, as we have seen, was evinced generally by Article IV.

Yet in spite of the limitations, the Japanese monarch under the Constitution was especially powerful, depending heavily on the principle of monarchical prerogative; and he had more in common with his Prussian than with his English counterpart as the following will indicate. First it will be seen that the Constitution was granted to the Japanese people through the
benevolence of the Emperor rather than being enacted by a constitutional assembly. Furthermore, the Constitution could only be amended when an amendment proposal was submitted to the Diet by Imperial order. In neither the enactment nor in the amendment of the Constitution was legislative initiative recognized.

Secondly, in regard to the Imperial family, such extremely important state and constitutional matters as the Imperial succession and regency were beyond the voting authority of the Diet because the provisions on succession and regency were included in the Imperial House Law which was considered a private affair of the Imperial family and thus not subject to Diet concern. Such was the principle of Imperial house autonomy.

Thirdly, the relationship between the Diet and the Emperor was characterized by a division of power that left the Diet overshadowed by the Emperor. The Diet’s sphere of action was comparatively limited while the sphere of independent action conferred upon the Emperor was rather broad. The Emperor’s favored position was made clear in Articles VI through XVI. Though there is no need here to quote each of these articles it is worth noting that 1) the Emperor sanctioned laws and ordered them to be promulgated and executed; 2) he convoked the Diet, opened, closed, and prorogued it, and dissolved the House of Representatives; 3) he could issue Imperial ordinances in the place of law when the Diet was not sitting if the public safety demanded such action; 4) he determined the organization of the different branches of the administration, and he determined the salaries of all civil and military officers, whom he appointed and dismissed; 5) he had supreme command of the Army and Navy; 6) he declared war, made peace and concluded treaties; and 7) he conferred titles of nobility, rank, order and other marks of honor. All of these things he was entitled to do without seeking prior approval of the Diet. Still these so called arbitrary actions of the Emperor did require the counter-signature of a state minister, which made the
Emperor less autocratic than an Emperor would have been in a period of ancient history or in a period of absolutism. But the restraining influence of a minister of state did not apply equally to each of the powers between Articles VI and XVI, for the supreme command of the military (Article XI) and the conferring of titles and marks of honor (Article XV) were regarded as special prerogatives that depended solely upon the Emperor's personal sanction. Especially was the Emperor's command over the Army and Navy beyond all advice giving authority of a state minister. The special position of the military was not explicitly stated in the Constitution; it was handed down from custom and from certain laws enacted prior to the Constitution. Besides Articles VI through XVI, there were other peculiar provisions in the Constitution, concerning the public purse, that favored the arbitrary action of the executive over the authority of the Diet. The Constitution, for instance, gave the government the authority to carry out the budget of the preceding year whenever the Diet failed to vote on the budget or whenever the budget failed to be brought into actual existence (Article LXXI). In addition, the government could use the Imperial ordinance to take whatever financial measures were necessary whenever a crisis prevented the Diet from being convoked (Article LXX); and any expenditures that exceeded the appropriations as set forth in the budget only required a subsequent approval of the Diet (Article LXIV).

The fourth point we have to make about the Japanese style of constitutional monarchy concerns the weakness of the Diet. Its weakness and ambivalence was due to a number of factors. First the upper house was composed mostly of peers and they were regarded as a bulwark of the Imperial family. Secondly the composition of the upper house was determined by an Imperial ordinance that was beyond the legislative authority of the lower house. And thirdly the Diet's weakness was due to the fact that the upper house had absolutely no more legislative authority than the lower house.

In view of these peculiarities of the Japanese constitutional
scheme of government it is plain that the Constitution put the utmost stress on the prerogative of the Emperor. But to simply point out that the powers appertaining to the Emperor were extensive in scope does not explain the ultimate source of them. If we ask where he derived his sovereign power, it must be admitted that he did not get them from any source so mundane as the people. Apparently these powers came from the Imperial ancestress Amaterasu Omikami, who, according to one of Japan’s earliest historical records, commanded her grandson Ninigi no Mikoto and his descendants to come down to earth and rule for ever over the Japanese islands. Owing to the divine nature traditionally accorded to Amaterasu, her command and hence also the source of the Emperor’s sovereignty was regarded as divine. This is exemplified in the Imperial Oath made at the sanctuary of the Imperial Palace upon promulgation of the Constitution. According to the Oath, the Emperor announced to his ancestors that:

“In accordance with the Grand Design [Amaterasu’s commandment], coeval as it is with heaven and earth, and in accordance with this design alone, We have succeeded to the divine Throne. . . . In view of the progressive tendency of human affairs and the advance of civilization, it has been incumbent upon Us, for the sake of clarifying the instructions bequeathed by [Amaterasu] the Imperial founder of Our house and by Our other Ancestors, to establish fundamental laws and clearly explain their provisions so that they may serve on the one hand as a guide for Our Imperial posterity and may on the other amplify the means by which Our subjects shall assist the Imperial rule. Not only that but these laws have been created so that the teachings of Our ancestors may be faithfully observed forever and eternally; and through their observance the foundation of the state [national family headed by paternal Emperor] shall be increasingly strengthened and the welfare of the Japanese shall constantly advance. Hence We now establish the Imperial House Law and the Constitution which We solemnly regard as merely a reitera-
tion in Our own day of the grand precepts of government that have been handed down by the Imperial founder of Our house and by Our other Imperial Ancestors to their descendants."

Now although this oath suggests that the Emperor's occupation of the Throne, his sovereignty, and the Constitution itself derived solely from his divine ancestors, which would seem to give him unbridled authority, the Emperor under the Constitution was not unlimited and his judgments, therefore, were of no legal force in themselves. To be effective as state law his judgments had to be countersigned by a state minister. This meant essentially that the government was conducted by the Emperor upon the advice of his ministers of state. Yet to speak of an Emperor who was surrounded by his ministerial advisers as the government is little different than saying that the Emperor's prerogative was the dictatorial authority of the government. In substance this was the meaning of government so far as the Constitution was concerned, because, in spite of the formal view that sovereignty was vested in the Emperor, the government was in practice operated according to the views of the cabinet; and any matter submitted by the cabinet to the Throne was always approved. In no case is there any instance of the Emperor's withholding of approval from a cabinet proposal. What is more, the cabinet in any of its arbitrary actions could benefit from the protection afforded by the mystic prestige of an aloof Emperor, since the cabinet's conduct was regarded in a legal sense as the exercise of an Imperial prerogative legitimately based on the advice of Imperial ministers. That this type of cabinet government was very conspicuous in Japan after the Manchurian Incident needs no comment here. Since the end of World War II, however, the Emperor under Japan's new Constitution has lost his sovereign position and he has been reduced to nothing more than a symbol of the state and of national unity.

When the exercise of personal rule by the Emperor, as espoused by the Meiji Constitution, became an impossibility owing to the minority or the permanent disability of an Emperor,
the constitutional alternative was the creation of a regent. The regent was appointed in accordance with a provision (Article XVII) of the Imperial House Law, and as a vicarious organ he exercised the powers appertaining to the Emperor in the Emperor’s name. The regent’s appointment under the terms of the Imperial House Law was based on the principle of Imperial house autonomy as we have just seen. In case a regency had to be established, a member of the Imperial family was assigned to this post by an established order of eligibility that existed among the Imperial family. And by the adoption of this new system of vicarious government the age old custom of allowing a Court minister to take the Emperor’s place of rule was done away with.

The autonomy of the Imperial house was again evident in a constitutional provision that concerned the Imperial succession. According to Article II, of the Constitution the Throne would be succeeded to by Imperial male descendants in accordance with the provisions of the Imperial House Law. Originally in the Advisory Draft Constitution, the successor to the Throne was designated simply as “Imperial descendants” though this was later changed by the Privy Council to read “Imperial male descendants”. The revision was of no real consequence, however, because Article I of the Imperial House Law draft specified that a male heir should succeed. The cause for bringing a new Emperor to the Throne, in spite of the frequent examples of abdication in Japanese history, was limited by the Imperial House Law to the death of the ruling Emperor.

As for the title of the Emperor, he was popularly known through the Constitution as Tennō (Divine Ruler) in contrast to the ancient Ritsuryō usage by which he was popularly known as Kōtei (Emperor) and by which the term Tennō was a special title used in Imperial rescripts. Nevertheless the term Kōtei continued to be used in diplomatic documents and in patents of decoration until 1936.

One final point regarding titles is that the designation of a period of years with a particular title, such as the Meiji
(Enlightened Government) Era, has been a constant practice of
the Japanese Emperors since the notion of era titles was first
introduced from China in 645 at the beginning of the Taika
Reform. It has even been a customary practice for the same
Emperor to create different era titles within the span of his
own reign, but on October 23, 1868, when the era title was
changed to "Meiji" it then became a principle to create only
one era title during an Emperor's reign, and this new principle
was incorporated in the *Imperial House Law*.

3. THE CABINET AND THE PRIVY COUNCIL

a. The *Cabinet*

The cabinet, as we have noted, originated in December
1885, and among its members the Prime Minister was at first
given a very powerful position. By 1889, however, it became
necessary to reorganize the cabinet and reduce the power of the
Prime Minister so that the ministers of the state would be able
to fulfill the role being allotted to them by the drafters of the
Constitution. On December 24, 1889, the day that the *Regula-
tions Governing Cabinet Organization* superseded the *Official
Powers of the Cabinet*, which had served since 1885 as the
cabinet regulations, a memorial submitted to the Emperor by
Prime Minister Sanjō and his fellow cabinet ministers pointed
out the reasons why cabinet reorganization was necessary.
According to the memorial, the Prime Minister under the old
cabinet system was in a position to grow too powerful, for he
exercised general control over the other state ministers and
he added his signature to all laws and ordinances in addition
to the counter signature affixed by the proper minister of state.
In order to restrain the Prime Minister the memorial claimed
it would be necessary to give each minister of state the exclusive
power to counter sign the laws and ordinances that dealt solely
with his own official jurisdiction. Also the memorial considered
it best that the ministers be individually responsible to the
Emperor for their respective sphere of business, because the
Emperor was the sovereign and it was his right to administer the affairs of state. There was even an allusion in the memorial to the need for cabinet unity and to the need for guarding cabinet secrets, which no doubt was prompted by the split in the Kuroda cabinet (1888-1889) over treaty revision and by the cabinet minister's leaking of confidential matters.

But returning to the *Regulations Governing Cabinet Organization*, they prescribed that the cabinet would consist of the different ministers of state and that the Prime Minister, as the chief minister, would report on the affairs of state to the Emperor, receive his instructions, and preserve the unity of the different departments of the executive. Certain powers enjoyed thus far by the Prime Minister were withdrawn. That is, he was deprived of the right to direct state policy and to exercise general control over the executive departments, to investigate the performance of the executive departments, to supervise the legislative committees, and to receive reports from each minister on the affairs under his jurisdiction. The only power conferred on the Prime Minister was that of suspending actions and orders of the departments when he deemed it necessary to have them wait for a decision of the Emperor. While the Prime Minister was to add his countersignature along with that of competent minister to laws and to any Imperial orders relating to general administrative affairs, only the competent minister himself was to countersign Imperial orders that concerned only the administrative affairs of his own department. As to the items that had to be deliberated upon by the cabinet, the *Regulations Governing Cabinet Organization* listed the following: 1) legislative proposals and budget and final account bills, 2) treaties and matters of international importance, 3) Imperial ordinances relating to administrative organization or to the enforcement of regulations and laws, 4) jurisdictional disputes between the departments, 5) petitions from the people which came via the Emperor or through the Diet, 6) extra-budgetary expenditures, and 7) appointments, promotions, and dismissals of prefectural governors and of officials appointed
directly by the Emperor. Besides these items, the cabinet was expected to deliberate upon any business of the department ministers that had a bearing on the higher levels of administration and that was of a slightly serious nature. And of course a state minister could call for a cabinet deliberation on any matter by presenting the matter to the Prime Minister. One other point concerning cabinet deliberations is that neither the *Regulations Governing Cabinet Organization* (1889) nor the *Official Powers of the Cabinet* (1885) specified that the Emperor should preside over the cabinet deliberations and in practice he never did.

In addition to the regular cabinet ministers there were also ministers without portfolio. No provisions were made for such ministers in the *Official Powers of the Cabinet* and there was no precedent for them until April 1888 when Itō Hirobumi, after having left the Premiership to become President of the Privy Council, was expressly ordered by the Emperor to continue to attend the cabinet. Itō continued in this irregular cabinet position for six months before resigning. This precedent set by Itō was legalized by a provision of the *Regulations Governing Cabinet Organization* which stipulated that a person other than a department minister could be ranked as a cabinet minister in the capacity of a minister of state by special Imperial command.

Another important development concerning cabinet organization that should not be overlooked was the attempt of the Matsukata cabinet (May 1891 - August 1892) to strengthen itself by creating a political affairs division. Being composed of second rate figures and unable to escape its shortcomings, the Matsukata cabinet was anxious to achieve cabinet unity and to gain control over public opinion. To this end it created cabinet by laws which prescribed that cabinet ministers should be unanimous in their views 1) whenever discussing government policy and strategy with persons outside of the cabinet, 2) whenever expressing their views in the Diet, and 3) whenever the views of the government were published in newspapers and
magazines. To ensure the achievement of this facade of unity the cabinet then created the political affairs division, placing it under the direct control of the Prime Minister. Its existence was to remain a secret from the public. The political affairs division was headed by one of the cabinet ministers, and it was his duty to conduct research for cabinet strategy and to investigate the developments in other political parties; to conduct research in significant political matters; and to present to the cabinet sessions the summary of the Prime Minister's views concerning these political matters. The head of the political affairs division was also charged with the custody of the confidential funds belonging to the cabinet and to the departments; he controlled the newspapers and periodicals supported by the government; and he was expected to confer with a cabinet minister before this minister made any statements in the Diet. Though the political affairs division was not an official organization, it was put into operation with the Emperor's approval. At first Mutus Munemitsu, Minister of Agriculture and Trade, was made the head of this division, but, because some of the cabinet members refused to submit to his control and others even opposed him, he tendered his resignation within a month after his appointment. The headship of the political affairs division then went to Matsukata, but in the end this inner cabinet organization met with failure.

As for the role of the Army and Navy Ministers in the cabinet, there was little substantial difference between the provisions of the *Official Powers of the Cabinet* (1885) and the *Regulations Governing Cabinet Organization* (1889). The military in either case had direct access to the Throne. Officially the cabinet regulations issued in 1889 stated that the Army and Navy Ministers would each report to the Prime Minister concerning those matters of military secrecy and command that had been communicated directly to the Throne, except for such information that was granted to the cabinet by Imperial command. These provisions differed from the 1885 cabinet regulations in that they did not include any reference to the Emperor's
granting of military information to the cabinet nor did they make any mention of a Navy Minister. Omission then of any reference to a Navy Minister was only natural, since the Navy did not become independent from the Army until March 1889. It should be observed, incidentally, that after naval independence from the army had been achieved the two military services differed in that command over the Navy was exercised by the Navy Minister while command over the Army was exercised by the Chief of the General Staff who existed independently of the Army Minister. When the Constitution was promulgated in 1890, the year following the appearance of the Regulations Governing Cabinet Organization, the Emperor was vested with the supreme command of the Army and Navy, and in accordance with established practices of the past this command continued to be regarded as beyond the advice giving authority of the state ministers.

The principle that the cabinet ministers who represented the military organizations should be military officers was established as early as July 1871 when the qualifications for the Minister of War were defined as “Brigadier General or higher.” The principle was made clear again in June 1888 in an Army Department personnel chart which specified that the minister must be a general officer. This military qualification however was withdrawn in July 1891 by the government owing to the Army and Navy’s refusal, during reorganization of the Matsukata cabinet, to nominate ministers unless their demands for armament expansion were accepted. But removal of the military officer qualification did not become permanent, for in May 1900 an Imperial ordinance again made it necessary for the Minister of the Army to be a lieutenant general or full general.

Though the strong position of the military sometimes made the formation of cabinets difficult, another important problem facing the new cabinet system was a suitable procedure for selecting premiers. The choice of the first Premier was solved when Sanjō, the outgoing Chancellor of the Council of State,
sought the views of the Junior Councilors and then recommended Itō to the Throne as their choice. From this time onward until the formation of the first political party cabinet in 1898 by Okuma and Itagaki, the retiring Prime Minister (in cases where the cabinet resigned en bloc), recommended to the Throne the name of a possible successor; and if this choice failed or there were special considerations to make, it became a practice to settle the question in a conference attended by the elder statesmen.

That the Premier should not be appointed by a majority party was clearly expressed by Itō only a short while after the promulgation of the Constitution. Venting his antipathy for party cabinets before a gathering of the presidents of the prefectural assemblies, Itō, who was then President of the Privy Council, emphasized that all powers of government were vested in the Emperor and that it was the Emperor who ruled Japan. Not only would the Emperor appoint and dismiss the Prime Minister but the Emperor would personally determine whether the Premier was suitable to the public and whether he was a capable statesman. The demands for immediate formation of party cabinets, according to Itō, were fraught with the greatest of perils. Such sentiment as this was also basic to the Constitution. But in spite of Itō's distaste for party government, the realities of politics made it impossible for Itō to disregard political parties; and around 1892 he reported to the Throne his decision to form a party. For a while however he was obliged to hold back on his party organizing plans because of the opposition from a council of elder statesmen; but in 1895 Itō's cabinet joined with the Jiyūtō (Liberal Party) and in 1898, following his departure from the government, Itō finally achieved his long standing desire by forming and becoming the head of the Kenseiyūkai (Association of the Friends of Constitutional Government).

b. The Privy Council

The Privy Council, according to the Regulations Governing
the Organization of the Privy Council (April 1888) was a body over which the Emperor presided in person and a body where he made consultation on important matters of state. Essentially it was created for the purpose of deliberating on the Constitution. Yet after discharging its deliberative duties concerning the Constitution, the Imperial House Law, and related legislation, the Privy Council was not abolished; it remained as an official organ, and its governing regulations were recognized by the Constitution (Article LVI).

Despite the opposition of Inoue Kowashi, the Privy Council had come into existence through the resolute action of Itō Hirobumi. Perhaps reasoning that the Constitution's rejection of the party cabinet principle would bring the government and Diet into occasional disagreement and thus leave only the alternatives of cabinet dissolution of the Diet or Imperial dissolution of the cabinet, Itō considered it necessary to have councilors available at such crucial moments who might gage the political situation and furnish sound advice to the Emperor on the proper course of action. In Itō’s opinion there would be only one place to find such councilors and that would be in a Privy Council which he was proud to call his own creation.

Nevertheless, in actual practice, when a cabinet resigned en bloc or a Premier was selected for a new cabinet the Emperor did not consult the Privy Council, he only consulted the President of the Privy Council in his capacity as an important minister of government or as an elder statesman.

It so happened therefore that the Privy Council, which had no specific obligations to anyone, played an active role in restraining the cabinet, a development which Itō had not anticipated. Not that action had not been taken to avoid such an outcome, because Inoue Kowashi had amended the organization regulations for the Privy Council, which were drafted by Roessler, so that the council would be barred from interfering in government; and Itō, too, had apparently taken precautions to prevent the Privy Council from clashing with the cabinet, and yet the Council still functioned as an overseer of the govern-
ment. Nevertheless, it should be remembered that the cabinet ministers had the right to sit in the Privy Council and vote along with the Privy Councilors.

The advisory functions of the Privy Council were modified in October 1890 prior to the opening of the Diet so that the Council would give advice to the Emperor on the following:

1. The *Imperial House Law* and matters appertaining to its authority.

2. Provisions of the *Constitution*, draft bills, and doubtful interpretations of laws and Imperial ordinances relating to the *Constitution*.

3. The declaration of martial law, the Emperor's issuance of ordinances during adjournment of the Diet, and Imperial ordinances containing penal provisions.

4. Treaties and conventions.

5. Revision of the Privy Council's organization and duties.

6. Matters of an emergency nature not included in the preceding five items.

Judging by these advisory duties the Privy Council functioned not only as an organ of the Imperial house. One other duty assigned to the Privy Council, according to the *Law for the Court of Administrative Litigation*, was that of deciding upon jurisdictional disputes arising between the Court of Administrative Litigation and the ordinary or special courts, but because the procedure for judgment was not defined this duty was never discharged.

**4. THE RIGHTS AND DUTIES OF JAPANESE SUBJECTS**

In all modern constitutions the basic rights and freedoms belonging to the people and the guarantees for them are affirmed in what is known as a declaration of rights. Similarly, Chapter II of the Meiji *Constitution*, which was entitled "Rights and Duties of Subjects", contained stipulations concerning the rights, freedoms, and duties of Japanese subjects.

The rights and freedoms defined in the Meiji *Constitution*,
however, were not based on the natural rights philosophy found in the French declaration of human rights or on that found in the American declaration of independence, but were bestowed by a benevolent act of the Emperor. This was made clear in the preamble to the Constitution which in part read, "We now declare to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law". In another passage found in Itō Hirobumi's *Commentaries on the Constitution* (Chapter II) this sentiment was again expressed: "the Emperors have made it their care to show love and affection to the people, treating them as the treasures of the country; and the people have ever been loyal to the sovereign, and have considered themselves as happy and blessed. Such is in short what appears from the study of ancient documents and of the customs of the land, and it is to this concept [of the relations between the Emperor and his people] that the theory of the rights and duties of subjects, as mentioned in Chapter II [of the Constitution], is to be traced".

The connotation of the word "subject" (shinmin) is quite unlike that of the word "citizen" (kokumin); and in the Meiji Constitution this term for subject was used to denote all Japanese loyal to the sovereign, without any regard for the traditional distinction drawn between the court ministers (shin) or the common people (min).

The problem confronting the Constitution's drafters in dealing with the whole topic of rights and duties of subjects stemmed from the traditional Japanese view that the retainer could not appeal against his lord because it was believed that the retainer owned his lord absolute obedience. And this traditional orientation to individual rights lends credence to the allegation that during compilation of the Civil Code in 1870 certain jurists opposed the coining of the term minken (civil rights) as an equivalent to the French droit civil on the ground that common people were not entitled to any rights. This bias
against the commoners having rights was also shared by Iwakura, and when he drew up his *General Principles* in 1881 for the future *Constitution* he showed only the slightest interest in the matter by simply mentioning that "the general rights and obligations of the subject should be defined" and "foreign constitutions should be consulted in regard to the rights of subjects". Again when Itō was sent to Europe to make a survey of constitutional law, there was not even one reference to the rights and obligations of subjects in the thirty-one point outline that he carried with him as a guide for his constitutional research.

Nevertheless, Itō, who was comparatively better versed in constitutional matters than other government officials, did formulate the title "Rights and Obligations of Subjects" for Chapter II of the *Constitution* and placed this chapter next after the chapter that dealt with the powers of the Emperor. Itō's choice of words for this title, however, was questioned by Mori Arinori during the Privy Council deliberations on the *Constitution*. Mori contended that the title should be changed to read "The status of Subjects". The word "rights" was inappropriate, Mori thought, because in regard to the Emperor the Japanese subject had nothing but a definite station in life and obligations. Itō replied to Mori by pointing out that Mori's contention was tantamount to repudiating the concept of constitutional law itself, and Itō explained that the purpose of a constitution was to limit the powers of the monarch and secure the rights of his subjects. To do nothing more than list the obligations of the subject would make the drafting of a constitution pointless; the rights of the monarch would become as unlimited as the duties of the subjects and this, in Itō's opinion, was the essence of autocracy. Eventually Itō's wording of the chapter heading received the approval of the Privy Council.

But the rights on whose behalf Itō argued were not based on the philosophy of fundamental human rights, they rested instead on the premise that they were being granted to subjects who were loyal to the Emperor. And while these rights might be a guarantee against the executive power, they did not serve
as security against the legislative power. As indicated at different places in the Constitution any right or liberty set forth in the Constitution could be violated by legislative act wherever the guarantee of the liberty was qualified by such a phrase as “within the limit of the law” (Article XXII, XXIX), “unless according to law” (Article XXIII), and “except in the cases provided for in the law” (Articles XXV, XXVI). Of course there is no apparent reason for believing that the drafters of the Constitution looked upon the restrictoin of constitutional rights with approval so long as the restrictions were imposed by statute law; yet, because there existed no specific constitutional provisions to determine what degree of constitutional restriction would be suitable, the way was open to a serious infringement of individual liberties through legislative acts as was the case after the middle 1920’s. In connection with the abridgment of individual liberties, menton should be made of two other constitutional provisions. Though never invoked, Article XXXI declared that the constitutional rights of the people would not affect the exercise of the powers appertaining to the Emperor in times of war or in cases of a national emergency; and Article XXXII made it plain that only those constitutional rights not in conflict with the laws or the rules and discipline of the Army and Navy would apply to men in military service. These two Articles stand in remarkable contrast to the post-World War II Constitution in which it is asserted that the fundamental rights guaranteed by the Constitution are everlasting and inviolate, and that these rights were gained over a long period of time by man’s efforts to acquired freedom (Article XI, LXXXXVII).

Having spoken so far of the insecurity of the individual’s liberties, it is appropriate here that we point out some of the different rights and liberties guaranteed by the Meiji Constitution. These were the liberty of abode and change thereof (Article XXII), freedom from illegal arrest, detention, trial or punishment (XXIII), right of trial by a lawful judge (XXIV), the inviolableness of the individual’s home (XXV), the right to the secrecy of the mails (XXVI), the inviolable right of
property (XXVII), freedom of religious belief (XXVIII), the liberty of speech, writing, publication, public meetings and associations (XXIX), and the right of petition (XXX). Among these the most notable is the freedom of religious belief.

In respect to religious freedom it is important to observe that the enjoyment of this freedom, as guaranteed by the Constitution, was not to be limited by law as long as the religion was not prejudicial to peace and order and not antagonistic to the duties of Japanese as subjects; and it was through this provision of the Constitution that the Christian religion gained formal recognition in Japan. But the enjoyment of religious freedom did not apply to the traditional Japanese belief of Shinto, because this belief was denied the status of an ordinary religion. Each Japanese regardless of his faith was compelled to accept Shinto, which was raised to the position of a state religion.

5. THE IMPERIAL DIET

The most striking political development between the late eighteenth and the early nineteenth century was the creation of national parliaments in all parts of the world. The growth of parliamentary government meant in turn the rise of constitutional government, since they were but two sides to the same coin. In Japan, too, the agitation for constitutional government always centered on the creation of a parliament. The central importance of a national legislature to Japanese constitutional government was made evident on a number of occasions before the Diet was finally created in 1890. In January 1874, for instance, a memorial was presented to the government calling for establishment of a representative assembly; and in October 1881 the Imperial rescript which set the year 1890 as the opening date for a parliament spoke only of a national legislature and said nothing of a constitution. Again in February 1882 Chancellor Sanjō, Minister of the Left Arisugawa, and Minister of the Right Iwakura formally advised the Emperor that the creation of a national assembly was fundamental to a
constitution.

The opening of the assembly would naturally entail the curtailment of the Emperor's powers. Even the staunch conservative Iwakura was compelled to recognize this fact; and he even went so far in his General Principles as to provide for the creation of a Genrō-In and a representative lower house between which he divided the legislative power. Nevertheless, he advocated non-party cabinets and would have nothing to do with the idea of cabinets formed by a majority party. Itō no less than Iwakura accepted constitutional government and regarded the restriction of the sovereign's powers as natural. This he directed attention to during the Privy Council deliberations on the Constitution where he argued that the purpose of a constitution was first of all the limitation of the ruler's powers. The first step in imposing such limitations and preventing the Emperor from endowing his arbitrary will with unrestrained legal force was to require the countersignature of a minister on laws and orders issued in the Emperor's name. But this curb alone would leave a minister advised Emperor vested with omnipotent powers, so as a final check a parliamentary scheme was to be used so that government would respond to the will of the people.

Itō was also quite aware, in view of the legislature's restraining role, that the legislature would not act merely as an administrative office of the central government. During the deliberations on the Constitution Torio Koyota had tried to interpret the Diet as an "office for administering the Emperor's government", but Itō had replied that such an interpretation was opposite to the purpose of establishing a constitutional government and an assembly.

When finally established, the Diet was a bicameral body composed of a House of Peers and a House of Representatives. The House of Peers was no doubt intended to serve as a moderating influence on any extreme actions that might be taken by the House of Representatives. That this was the purpose of the upper house was most clearly demonstrated in the memorials

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on constitutional government that were presented to the Throne in 1880 by Inoue Kowashi and Itô Hirobumi. Inoue had advised in his memorial that the Genrō-In be replaced by an upper house capable of resisting a house of elected representatives; and Itô, by way of reference to the parliaments of Europe, had pointed out in his memorial that in the monarchical countries the upper house was by far the most important in preserving the state. So far as the political parties were concerned with the nature of the future Japanese parliament, a unicameral system was espoused by the Jiyūtō and a bicameral system was advocated by the Kaishintō (Progressive Party).

The House of Peers, from what we have already observed about the Ordinance Concerning the House of Peers, was composed of the Imperial family, the peerage and members appointed directly by the Emperor. The organization of this house should have been determined by statute as was done in the case of the lower house, yet in deference to the views of Itô, who feared that a legislative act would not bar the lower house from tampering with the organization of the House of Peers, the membership of the House of Peers was fixed by Imperial ordinance. This ordinance, which was promulgated on the same day as the Constitution, could only be amended or supplemented by a vote of the House of Peers, and because of this peculiar arrangement, reorganization of the upper house was almost impossible. But as we have said this was Itô's policy from the very beginning.

To sit in the House of Peers the members of the Imperial family and the members of the hereditary peerage had to be at least 25 years of age. The term of office in the House of Peers for the counts, viscounts and barons was seven years, each order of nobility being allowed to elect its own members so long as the number elected did not exceed one fifth the entire number of the respective order. In addition to the hereditary peerage, men past the age of thirty could be nominated to the House of Peers by the Emperor because of their meritorious service to the state or for their erudition, and such appointments
were for life. Still another category of persons that was allowed membership in the House of Peers consisted of one member from each prefecture elected from among and by the fifteen male inhabitants past the age of thirty who paid the highest amount of direct national taxes on land, industry or trade. The total number of members appointed because of their distinguished service, erudition, or payment of high taxes were not allowed to exceed that of the titled nobility. The President and Vice President of the House of Peers were elected by the member peers for a seven year term. Besides being entitled to the powers derived from the Constitution, the House of Peers was entitled to vote upon the Emperor, to decide upon the qualifications of its members, and to determine the disputes concerning elections to the House of Peers.

The House of Representatives was composed of members publicly elected in accordance with the Law of Election of the Members of the House of Representatives (Article XXXV). Beyond this provision the Constitution was silent as to the details of the lower house elections. Nor did the Constitution include any reference to the property qualifications which Iwakura, according to his General Principles, wanted inserted in the lower house election law. According to Itō's Commentaries on the Constitution, the election law was omitted from the Constitution in order to keep it free of matters that would be susceptible to occasional change, and its omission would thus prevent the Constitution as a permanent law from being marred by amendments. Considering the subsequent changes made in the election law it must be admitted that Itō's foresight was well founded. By the terms of the lower house election law, which was officially announced on the same day as the Constitution and the Ordinance Concerning the House of Peers, a Japanese subject had to meet the following qualifications to be an elector: 1) be at least twenty five years old, 2) be in residence in the prefecture of his permanent domicile for one year previous to the preparation of the electoral list, and 3) to have been paying in the prefecture of his domicil direct national
taxes to the amount of fifteen yen. In case the elector was qualified by payment of income tax his payments had to ante-date the preparation of the electoral list by three years. Of these election qualifications the original draft had only prescribed a tax payment of ten yen or more and the elector had been entitled to vote at the age of twenty. The election districts, which consisted of one or more rural divisions, comprised a system of minor electorates, although there were exceptional cases where two persons were elected from one district. Balloting was conducted by the single entry open voting method in which the voter was required to sign the ballot by hand and by seal; the ballots of the voter who was unable to write his own name could be signed by the town or village official. Of course in districts where there were two or more electees the voting was done by plural ballot.

Another piece of important legislation concerning the Diet, which was enacted along with the Constitution, was the Law of the Houses. This law fixed the standard operating procedure for the Diet. Among its peculiar features we may note that it failed to empower either house to summon persons or to dispatch their members in the interests of an investigation, and it denied both houses the right to send letters of inquiry to state ministers and government committee members or to other government agencies and to the district assemblies.

In passing it should be remembered that no person could be a member of both houses at one and the same time (Article XXXVI).

Of the Imperial Diet's functions the most important was that of giving consent to the Emperor's legislation, for no law could take effect without both the consent of the Diet and the sanction of the Emperor. (Concerning this division of the legislative power, the reader should hear in mind Iwakura's proposal in his General Principles). The Diet's consenting role in legislative matters was determined by the fact that the Emperor combined in himself and exercised the rights of sovereignty (Article IV), which permitted him to exercise the
legislative authority while the Diet gave its consent (Article V). The sentiment expressed in Articles IV and V was again stated in slightly different words under Article XXXVII where it was provided that "every law requires the consent of the Diet". The choice of a word to be used in the Constitution to properly express the Diet's legislative power was not easily determined, and the word "consent" only represents the final result of a number of changes made by the Privy Council during its deliberations on the draft Constitution. When first received by the Privy Council, Articles V and XXXVII used the word "approval" (shōnin) to express the Diet's legislative function, but the Privy Council replaced this word in Article V with the word "endorse" (yokusanyō) and in Article XXXVII with the word "accept" (shōdakushō). And then finally these words were replaced by the word "consent". The reason that the choice of one word was such a problem is that the hierarchical relation between the Emperor and the Diet made it necessary that a suitable word for this relationship be chosen. The word "approval" (shōnin) had been unacceptable in Articles V and XXXVII because shōnin by its very definition implied that the party doing the approving had the higher standing, and to suggest that the Diet was superior to the Emperor was naturally unacceptable. The same wording problem was also met in Article VIII, which was finally worded so that any Imperial ordinance issued by the Emperor to preserve public order during adjournment of the Diet could be repealed if it were not accepted ("approved" was the original word) by the Diet at its next session. One other example of wording difficulties concerned the Diet's legislative power over the budget, but this shall be discussed later. Of course finding the proper word to fit the Diet's legislative position vis a vis the Emperor was not the only issue. The question of whether the Diet should have legislative initiative was also a problem. Originally the draft Constitution had made the introduction of new legislation a monopoly of the government and only after considerable debate in the Privy Council was this right conferred upon the Diet.
Next to its legislative authority the second most important function of the Diet was its right to make representations to the government as to law or to any other subject, to make addresses to the Emperor, and to receive petitions from Japanese subjects. And third in order of importance was the Diet's right of self government, which entitled both houses to enact, besides what was provided for in the Constitution and in the Law of the Houses, the rules necessary for the management of their internal affairs.

In addition to these powers, the Diet had the right to question and to receive reports from the government as provided by the Law of the Houses. The government however was under no responsibility to the Diet; this was a principle of the Constitution. In virtue of Article LV, which required the respective ministers of state to give their advice to the Emperor and be responsible for it, the cabinet ministers were obligated to the Emperor rather than to the Diet. Thus the idea of having cabinets formed from members of the Diet and having the cabinet subject to non-confidence votes was rejected by the Constitution. Yet it was impossible for the cabinet to remain completely independent of the Diet and votes of non-confidence were indeed taken. When they were taken, the government chose in constitutional fashion between resigning en bloc or dissolving the lower house and calling for a general election.

The powers of the House of Peers and the House of Representatives were both the same, except that the lower house had the right to examine the budget first. At the beginning, before the draft Constitution had been placed before the Privy Council, the financial powers of the House of Peers had been limited, but ultimately the powers of the two houses were made equal during the Privy Council deliberations. In one respect, though, there was a great inequality between the two houses, for the lower house could be dissolved by the government and the House of Peers could not.

With respect to the relationship between the Diet and the government, which we have already treated, it should be added
that a state minister or government committee member could attend either house at any time and express his views. In general it may be said that the Constitution provided for a stronger government than Diet.

Following the promulgation of the basic legislation concerning the Diet, the first general election was held on July 1, 1890 in accordance with the Law of Election of the Members of the House of Representatives. Though ostensibly the lower house was a representative body, only 450,000 persons or 1.1 percent of the total population were able to vote owing to the existence of property qualifications. The election of the highest taxpayers, the election of the different orders of nobility, and the appointment by the Emperor of certain members of the House of Peers took place between May and September 1890. When all the elections and appointments were finished, the members of both houses were summoned to the Diet by Imperial order. The Diet members met on November 25 and the opening ceremony for the Imperial Diet was performed on November 29, the day that marks the enforcement of the Meiji Constitution.

Before the Diet was opened, the Genrō-In, which had acted as the legislative organ since 1875, was abolished on October 20 and its members were placed either in important posts in the Imperial Court or were appointed by the Emperor to the House of Peers.

In concluding our discussion of the Diet, let us mention briefly the origin of the Japanese term for Imperial Diet (Teikoku Gikai). Since the closing years of the Tokugawa Period there had appeared a number of terms for a Japanese parliament, among which Jō-In (Upper House) and Ka-In (Lower House) ranked with the more popular usages. But as a term connoting a representative body the term Minsen Gi-In was first put forward in April 1872 in a proposal on constitutional government prepared by Miyashima Seiichirō. Minsen Gi-In was again used when a group of samurai including Itagaki, Gōtō and Etō addressed a famous memorial to the government in 1874 in which they demanded the establishment of a represen-
tative assembly. Still another term that we may mention is Kokkai Gi-In (national assembly chamber), which appeared in a survey on assembly procedure that the Left Chamber presented to the Central Chamber in 1872. But the term eventually chosen was Teikoku Gikai (Imperial Diet) which, according to its usage in a constitutional proposal made by the Genrō-In in 1878, denoted originally a bicameral body composed of a Genrō-In (House of Elder Statesmen) and a Daigishi-In (House of Representatives).

6. ESTABLISHMENT OF LOCAL AUTONOMY

a. The Changes Subsequent to the Three New Laws

The autonomous framework for towns and villages was finally brought to completion through enactment of the City Ward, Town, and Village Assembly Law (1880), which followed by two years the promulgation of the Law Governing the Organization of Rural Divisions, City Wards, Towns, and Villages (1878). The City Ward, Town and Village Assembly Law prescribed nothing more than the basic principles underlying the organization and activity of the ward, town, and village assemblies; the detailed regulations governing each assembly were to be formulated by each assembly itself and were then to be approved by the prefectural governor. But because the framing of these detailed regulations did not proceed as smoothly as anticipated and because the assembly members and the village head (rijisha) failed to remain on good terms, abuses of all kinds developed and the assembly law had to be completely amended in May 1884. Under the amended version the duties of the ward, town, and village assemblies were that of deciding upon items to be defrayed by village expenditures and upon the methods of collection and disbursement of these expenditures. The regulations concerning the period of assembly sessions, the number of its members, their period of office, re-election, and other similar matters were left to the determination of the prefectural governor. By contrast to the original assembly law
which had allowed several wards, towns, or villages to combine into one association (renγōkai) or into an irrigation association and had allowed each association to define its own boundary lines, the revised assembly law only permitted these associations to be created by the prefectural governor. Among the important provisions of the amended version that appeared for the first time, it was provided that: 1) the electors of assembly members would be men at least twenty years old who resided in their respective community and paid taxes therein; 2) the electees would be men at least twenty five years old who also resided in their community and paid land taxes therein; 3) the presidency of the assembly would be filled by the head of the respective ward, town or village; 4) the assembly president would summon the assemblies and initiate legislation; and 5) the assemblies could be suspended when it was deemed that their proceedings were unlawful or prejudicial to the preservation of public order. This last provision meant that the ward assembly could be suspended by the ward head and that the town and village assemblies, besides being suspended by their respective heads, could be suspended by the rural division and ward head within whose jurisdiction they were located. During the period of suspension the head who had taken the suspensory action had to consult with the prefectural governor for instructions. By contrast to the old law, it should be observed that the authority vested in the governors and in the head officials of the ward, town, and village was strengthened.

Accompanying the amendment of the City Ward, Town, and Village Assembly Law in May 1884, the Council of State repealed the enactment of 1878 that allowed public election of the town and village head. At the same time the Council of State notified that the prefectural governor would appoint the village head from among three to five candidates elected by the local community and that the election of these candidates would be conducted like the election of the assembly members. This change from public election to government appointment of the town and village heads may perhaps be explained by the govern-
ment's desire to improve conditions in local government. Here-
tofoere every individual town and village had its own head
official, but there being only twenty to thirty households in a
village the head received very little pay, and what office there was
for the village was located in the head official's private residence.
Under such an arrangement as this there was danger that
public and private affairs would be mixed to the interest of
the head official, and of course the handling of village affairs
was ont outstanding for its efficiency. To remedy these short-
comings, therefore, the central government made arrangements
for the creation of one office for about every five towns or
villages, for the appointment of the head officials, and for the
increase of his salary.

In consequence of the series of legislative changes which
made the town and village head a government appointee, which
brought about amendment of the City Ward, Town, and Village
Assembly Law, and which at an earlier date (1881) had specified
public auction for the goods of a delinquent tax payer who
failed to pay the assessments levied by the town or village or
irrigation association, the town and village were converted more
or less into public corporations. Having thus assumed a public
character, their expenditures and those of the ward as well were
restricted to undertakings of a public nature; and in May 1884
their expenditures were classified by the Home Ministry as
expenses to be used for 1) the head official's office, 2) the
assembly, 3) civil construction, 4) education, 5) sanitation,
6) relief, 7) disaster precautions, and 8) police. In making
assessments for these expenditures the ward town and village
assemblies were left free to determine for themselves which
types of expenditures were needed and whether to levy assess-
ments according to land value or land acreage, on business, or
by household. Because these assessments could only be used
to defray expenditures of a public nature, no private possession
held in common by ward, town, or village residents, no private
obligations, nor any privately initiated civil construction projects
could benefit from these assessments. Such private obligations
had to seek their funds from levies privately agreed upon. By drawing a distinction between assessments for public use and those for private use the ward, town, and village as public organizations became clearly set apart from the private organizations that were formed within their boundaries. This distinction became more definite after enforcement (1890) of the legislation governing the organization of cities, towns, and villages, for the wards, towns, and villages then emerged as public corporations and the private organizations remained within the public corporations as private subdivisions like the buraku.

In addition to the various innovations brought about at the town and village level, there were also changes made at the prefectural level. By amendment of the Regulations Governing Prefectural Assemblies in February 1882, the assemblies were given the right to make representation to the prefectural governor as well as to the Home Minister. Another change in prefectural government was the alteration in December 1884 of the opening date for the prefectural assembly so that it fell in November. This change was made in order to accommodate the change in the fiscal year.

The prefectural assemblies and the town and village assemblies as well were created in preparation for the future opening of the national assembly and in order to relieve the central government from assuming the responsibility for each and every local event. But owing to the far ranging debates soon indulged in by the prefectural assemblies, their creation was not an unmixed joy to the more conservative element of the central government. In fact by 1882 Iwakura demanded that the prefectural assemblies be disbanded. He felt that they were premature and would destroy orderly progress in that they cleared the way for the people to transgress their superiors and because they gave origin to the idea of disrespect for the central government.
b. Enactment of Regulations Governing the Organization of Cities, Towns, and Villages

When Itō went to Europe in 1882 to conduct an exploratory survey of constitutional law, one of the subjects he was scheduled to study according to his research outline was local government, and in fact he did hear lectures by Mosse and Stein concerning local autonomy. Still, not one provision on local autonomy appears in the Constitution. Such details as local autonomy, according to Itō, only deserved to be considered after enactment of the Constitution. Yamagata, on the other hand, strenuously insisted upon the creation of a scheme of local autonomy prior to the promulgation of the Constitution, his argument being that the promotion of the spirit of local autonomy would prepare and develop the ability of the Japanese to take part in national affairs and make them aware of the grave responsibilities of government. In local autonomy Yamagata saw the basis for constitutional government and a permanent foundation for the nation; and it was through his efforts while Home Minister in the Kuroda Cabinet that the Japanese scheme of local autonomy was firmly established.

Yamagata, a Junior Councilor, became concerned with local autonomy legislation after he succeeded Yamada Akiyoshi in December 1883 as Home Minister in the old Council of State. Only five months after his appointment as Home Minister, Yamagata received a draft law on town and village organization that had been prepared under Yamada by Murata Tamotsu, the former Chief Secretary of the Home Department. The draft was presented to Yamagata in May 1884 just when a number of important town and village reforms that we have mentioned were being enacted. But Murata’s draft was apparently unsatisfactory, for Yamagata set up a fresh committee in December 1884 within the Home Department to study town and village legislation, and he commissioned this committee to prepare a new draft, due consideration being given to both Japanese and foreign legislation in this particular field. By
June 1885 Yamagata was presented with a complete draft which, after some revision, became known as the Regulations Governing the Organization of Towns and Villages. This draft we may regard as a revised and supplemented version of the draft prepared by Murata.

The draft Regulations Governing the Organization of Towns and Villages were then given to Hermann Roessler and Albert Mosse, advisers to the cabinet, in an effort to obtain their views on this pending legislation. Both advisers handed in their views, though the observations of Mosse were not as lengthy and critical as Roessler's, since Mosse had only been in Japan a short while. Nevertheless, in general terms, Mosse thought that because the provisions of the future constitution, particularly those provisions dealing with the organization of the upper and lower houses of the national legislature would be related in no small measure to the composition of the local bodies, the enactment of the constitution should be preceded by the creation of municipal corporations (jichitai), which would strengthen the foundation of the nation. And because of the high degree of mutual influence that would be exerted upon each other by the municipalities and the higher autonomous bodies and by the local autonomous organs and the prefectural government organs, Mosse thought that the Japanese government should set up a high ranking organ and give it the task of formulating in outline the necessary plans; and these plans once having been submitted to the cabinet for deliberation and to the Emperor for his sanction should then become the basis for reform. Accepting these recommendations of Mosse wholeheartedly, Yamagata scrapped the existing policy on local autonomy and, with cabinet approval, created on January 24, 1887, a new local government committee. Becoming chairman of the committee, Yamagata commissioned Mosse to draw up the essentials of the local government legislation. A draft was completed within a week and, after being modified by the committee, was approved by the cabinet in early February. In the following month this draft was shown unofficially by Yamagata to the prefectural
governors who were assembled in Tokyo, but their response was extremely conservative.

Following cabinet approval of his draft on local government, Mosse set to work preparing legislation on city, town and village organization. When finished, this draft was known as the Draft Regulations Governing the Organization of Self-governing Communities (jichi buraku/gemeinde). The term self-governing community denoted towns, villages, cities (shi) and wards (ku). Yamagata's committee on local government, however, revised this draft so that the organization of cities was treated separately in one piece of legislation and the organization of towns and villages was treated in another. Then the two separate pieces of draft legislation, hereafter referred to as Yamagata's municipal legislation, were sent in September 1887 from the local government committee to the cabinet for deliberation, and finally in November to the Genrō-In. In the Genrō-In there was some difficulty in reaching a unanimous opinion on the draft Regulations Governing Organization of Towns and Villages. The main issues that were debated by the Genrō-In were 1) whether or not to classify the towns and villages into three categories according to their population (less than 3,000; 3-5,000; over 5,000), 2) whether to make the positions of head officials honorary posts, and 3) to what areas the new town and village legislation should apply. The first problem was resolved by not making any classification by population; the second was determined by making town or village headship an honorary post unless the particular community voted in favor of remunerating their head official; and the third issue was settled by making the town and village law apply to all towns and villages except those in Tokyo, Kyoto, and Osaka, and except where the Regulations Governing the Organization of Cities applied. By February 1, 1888, the revised draft was placed before the Emperor.

The draft Regulations Governing Organization of Cities as we have said was also placed before the Genrō-In in November 1887. This legislation only differed from the town and village
legislation by virtue of certain provisions that concerned city 
administration and by the provisions that related to the cities’ 
and wards’ having special property. Another peculiarity of the 
legislation on city organization was that it contained no equiva-
 lent of the associations (kumiai) that could be formed by towns 
and villages when they wished to dispose of certain affairs in 
common. After making a few revisions, the Genrō-In submitted 
the Regulations Governing the Organization of Cities to the 
Throne on February 8, 1888.

The two pieces of Yamagata’s municipal legislation were 
next placed before a conference of prefectural governors on 
February 13. After they had received instructions from the 
Home Minister, the governors gave the legislation a detailed 
scrutiny. Of the four requests made by the chief delegates of 
the governors, Yamagata accepted the one that petitioned a 
year’s delay in the execution of the legislation. The two pieces 
of municipal legislation were thus scheduled to be gradually 
enforced in each prefecture after April 1, 1889, in accordance 
with a detailed report submitted by each governor, regard 
being given to local conditions. The proposed enforcement date 
was finally referred to the cabinet in March, and after further 
revisions were made by this body the two draft laws were 
sanctioned by the Emperor and then promulgated on April 25. 
In view of the revisions it made in March, the cabinet added 
a provision to the legislation requiring that it be again inspected 
by the Genrō-In at some convenient date after promulgation.

The important changes that had been made in March by 
the cabinet in the Regulations Governing Organization of Cities 
concerned the election of the mayor and the scope of the 
regulations’ application. Earlier, in September 1887, the cabinet 
had approved the idea of having the government appoint the 
mayors and having separate city regulations for metropolitan 
Tokyo, Kyoto and Osaka, but in March 1888 the cabinet decided 
to have all mayors elected by the city assemblies and to apply 
the city regulations even to Tokyo, Kyoto and Osaka. The 
Genrō-In, however, stood fast on its demand for government
appointment of the mayors and separate city regulations for the metropolitan areas. To compromise the difference of opinion Yamagata had worked out a program in which the mayor would be appointed by the Emperor from among three candidates selected by the city assembly. Yamagata's proposal had been accepted by the cabinet in March and was agreed upon by the Genrō-In subsequent to the law's promulgation in April. But in order to reach a compromise on the question of applying the regulations to metropolitan areas, special regulations were formulated so that the prefectural governors of Tokyo, Kyoto, and Osaka would act concurrently as mayors and the city councils would be composed of the governor, his secretary (shokikan), and the honorary councilors. These special regulations for the three metropolitan areas were promulgated in March 1889 and remained in effect until repealed in 1898.

To each of the laws, one on city organization and the other on town and village organization, detailed explanations of every chapter and article were appended by Mosse. The adding of detailed explanations, which was unprecedented in Japanese legislation, caused the laws to be warmly received by the public. Still another precedent set by this legislation, further indicating its importance, was the inclusion in the preamble of the legislation of the reasons for its enactment. The public was informed through the preamble that the Emperor had promulgated this municipal legislation because of the desire to increase the common benefits of the localities and promote the happiness of the people. Further, according to the preamble, there was a need to preserve and extend the traditional scheme of neighborhood solidarity and to safeguard by law the rights and duties of the cities, towns, and villages.

By the terms of this municipal legislation, towns and villages had to same legal rights and obligations as individual persons and, under government supervision, they could dispose of their public affairs by their own accord. This legislation therefore confirmed and put the finishing touches on the Edo Period status of towns and villages as autonomous bodies.
possessed of a legal personality. In one aspect however the character of the old city, town, and village had been changed. Their character as a real aggregate person (jitsuzai sōgōnin) was gone; and now, in the Roman legal sense, they were abstract and artificial persons having an existence distinct from their several members. The individuals living in the municipalites were classified as either inhabitants (jūmin) or residents (kōmin). The inhabitant merely occupied a residence in the municipality while the resident had both a common right to use municipal establishments and municipal property and a duty to bear his share of municipal obligations. Men who were independent and were possessed of civil rights (i.e., men who were resident in the municipality for two years, who bore their share of municipal obligations, and who paid at least two yen in tax on land located within the municipality or paid a direct national tax of two yen) had the right and obligation to participate in the municipal elections and to be appointed to honorary posts. As for the official business of the municipality and for the rights and obligations of its residents, the municipality had the right to establish bylaws wherever the Regulations Governing Organization of Cities and the Regulations Governing the Organization of Towns and Villages lacked specific provisions or wherever these regulations permitted the creation of special bylaws. The decision making organ of the municipalites was the city, town, or village assembly whichever the case might be. Membership in the city assembly ranged between thirty to sixty persons, and from eight to thirty persons in the town and village assemblies depending on the population. The municipal residents had the right to vote and to be elected. Voting was conducted by a plural and unsigned ballot, the winning candidate being determined by a majority vote. The city voters however were classified into three categories according to the amount of direct city taxes paid, and each category elected one third of the members; in the towns and villages the voters were also classified by the amount of direct taxes paid, but here there were only two categories, each electing
half the members. The persons standing for election could receive votes from all categories of voters. In cities sprawled over large areas or having dense population it was permissable to establish election districts. The assembly member's term of office was for a period of six years with half the members standing for re-election every three years. The municipal assemblies had the authority to vote on anything pertaining to the municipality, including 1) by-laws and regulations, 2) matters defrayed by municipal expenses, 3) budgets and final accounts, 4) the method of assessment and collection of municipal taxes, fees, statutory labor, and actual articles, 5) endowments, and 6) the management of municipal property and public works; and, what is more, the assemblies could vote on those matters delegated to them by law or Imperial ordinance. The city, town, or village assembly was convened by request of the assembly president, or by no less than one fourth of the members, by the mayor or by the city council. The president of the city assembly was chosen by mutual vote of the assembly members, and the president's post in the town and village assembly was filled by the head official of the respective town or village. The executive organ of the municipalities differed. In the city, which followed the mode of city government in Prussia, the city council was the executive organ. This council exercised general authority over the city, carried out the city's administrative affairs and represented it. In the towns and villages the head official was the executive organ. He had general authority over his municipality and took care of its administrative affairs. The members constituting the city council were the mayor, his assistant, and the honorary councilors. The honorary councilors were chosen by the city assembly from men over thirty years of age who were eligible for election to the assembly. The mayor, who presided over the council and supervised the entirety of administrative affairs, was appointed by the Emperor after having been elected by the Home Minister from among three candidates recommended to the Home Department by the city assembly. The town and
village heads were elected by their respective assemblies and were approved by the prefectural governor. The mayor's assistant, though elected by the city assembly, had to be approved by the governor. Secretaries and other subordinate officials in city government were appointed by the council; and their counterparts in the towns and villages were appointed by the respective assembly upon recommendation of the head official. In addition to the business that was peculiar to the city, town, or village, each one of these municipalities was also responsible for the business delegated by the central and prefectural government; and the town and village alone were held responsible for the official duties assigned by the rural division. Though the burden of executing the various administrative duties devolved upon the head of the municipality concerned, the expenditures of a municipality were the burden of its assembly. The revenue of the municipalities derived from municipal property, charges for the use of public works, fees, fines and, when these proved insufficient, from national and prefectural taxes (miscellaneous and special), and from statutory labor and actual articles. Actually, the revenue from national and prefectural taxes was very important. Temporary loans and bonds could be subscribed, but this source of revenue was controlled by rather strict regulations. The budget for each fiscal year had to be submitted in advance by the city council, or by the town and village heads to their respective assemblies for decision. When several towns and villages wished to make a common disposition of their affairs, they were allowed to form associations (kumiai) after obtaining government approval. On certain occasions these associations could be formed by authority of the rural division council. As to the supervision of city government, this was primarily the task of the prefectural governor who was backed up by the Home Minister. In the case of towns and villages, supervision of their government was firstly the responsibility of the rural division head and beyond him it was the duty of the prefectural governor and finally that of the Home Minister.
So much as to the contents of the municipal legislation. As to the effects of one piece of this legislation, i.e., the Regulations Governing the Organization of Towns and Villages, it is maintained by one school of historians that this set of regulations was quite injurious to the property interests of the town and village residents. This view is based on the premise that the enforcement of the regulations, which synchronized with a movement to amalgamate the traditional village and town units into large municipal units, caused the property that had been jointly owned (sōyū) by the old town and its residents and by the old village and its residents to become the exclusive property of the town and village units themselves. With this view, however, the author takes exception. No doubt there were certain instances in which the municipality gained sole ownership over such property, but inasmuch as a clear distinction had been drawn in 1884—five years before enforcement of the municipal legislation—between the organizations of the townsmen and villagers that were public in character and those that were private in character it does not necessarily follow that all jointly owned property fell completely into the possession of the town or village. Furthermore, whatever effect amalgamation may have had in 1889 and thereafter, it should not be forgotten that villages and towns were not being amalgamated for the first time in 1889. For in the twelve year period from 1874-1886, during which time the number of towns and villages were reduced from 78,280 to 71,573 (including 199 newly established towns and villages), 94% (6,150) of this reduction having occurred between 1875 and 1877, it seems likely that the property jointly owned by the towns and villages and their respective residents survived in most cases within the newly amalgamated municipalities as the joint property of the residents or of a part of the residents of the old town or village unit. But of course the real issue, so far as we are concerned with the effect of the Regulations Governing the Organization of Towns and Villages, is to determine what provisions were made for adjusting property interests during the nationwide amalgamation
movement that immediately preceded the enforcement of these regulations. Such provisions there were; and they were included in the order from the Home Minister on June 13, 1888, that directed the amalgamation of the towns and villages. By the terms of these provisions, the disposition of property at the time of town and village amalgamation was to be determined through the mutual agreement of the towns and villages concerned in the amalgamation and the disposition was to be approved by the prefectural governor. In case mutual agreement could not be reached, even with the governor’s assistance, another provision in the Home Minister’s instructions, which provided detailed guidance, was to be followed. This provision, which first of all made it clear that civil law rights would continue unchanged, since they were not affected by town or village amalgamation, made a distinction between 1) the property owned jointly by the townsmen or villagers and 2) the property owned by the town or village. In the first category the public works, forest land, waste land, and the fields which were not jointly possessed by the town or village as a sole body, but were maintained and used in common by the residents or landholders of the town or village, were to continue in their traditional status without being disturbed by amalgamation. In the second category the property held by the town or village was classified into two types. The first type consisted of the property customarily furnished for public use, such as the town or village office, the medical clinic, flood and fire prevention equipment, and post boards; and the ownership of it was transferred to the new town or village regardless of whether or not such property had belonged to all or only part of the former town or village. Furthermore, ownership of the property came to be vested exclusively in the new town or village, since both of these municipal units enjoyed the status of a public corporation according to the Regulations Governing the Organization of Towns and Villages. The second type of property owned by the town or village, which was designated as any additional property heretofore held in common, consisted of land, houses, deposits,
money and grain; and this property was not to be transferred to the new town or village. Such property was to be retained by all or part of the old town or village unit and the right of its use and the enjoyment of its profits were to continue to "conform to traditional practices". There is no reason therefore to believe that all property jointly owned by the old town or village and their respective residents became the exclusive property of the town or village upon enforcement of the Regulations Governing Organization of Towns and Villages, for these clear cut instructions that called for continued conformance to traditional property practices must certainly have reinforced such practices in so far as they still existed at this time. The same instructions applied equally to the commonly owned property that was jointly owned by only one part of the town or village and they applied also to a town or village that was being partitioned. In case of partition the common property of the old town or village was divided wherever possible, otherwise it became the exclusive property of one of the partitioned parts and the other part received proper indemnity for its share. Or if traditional practices could be retained without a division of the property the property could be left undisturbed. The preservation of existing forms of property holding was not limited solely to town and village units that were being amalgamated by way of preparation for the enforcement of Yamagata's municipal legislation; even the subdivisions (ku) and such sections as the buraku were entitled to independent rights and to their traditional mode of property ownership, no matter if their parent town or village was amalgamated with other towns and villages. In the event the subdivision or buraku's parent town or village was amalgamated, the rural division council, after consulting the assembly of the enlarged town or village, could issue bylaws providing for the establishment of a subdivision association or a general association of sub-divisions for carrying out the affairs relating to the sub-division's property and public works. (A general association of sub-divisions was probably an association for all of the residents of the different
buraku within the old village unit.) With regard to the management of the property belonging to the sub-division or buraku, it was customary for a deputy to be appointed for this work. By the retention of an independent status the buraku was regarded as having the character of a juridical person, although it cannot be denied that the buraku also continued to possess in great measure elements of its traditional aggregate personality. The lawsuits that concerned buraku owned property, however, had to be filed in the name of the town or village head, according to a ruling by the Court of Administrative Litigation. This ruling was based on a provision of the Regulations Governing Organization of Towns and Villages that gave the head official of the town or village jurisdiction over the affairs of any municipal sub-division that bore expenses as a unit with respect to special property and public works.

Now as a result of the government's encouragement of the amalgamation movement just prior to the enforcement of Yamagata's municipal legislation, towns and villages were combined throughout the length and breadth of Japan; and within a year (1888-1889) the number of towns and villages decreased from 71,314 to 15,820.

The enforcement of the Regulations Governing Organization of Cities as we have said was scheduled to take place after April 1, 1889, in those places designated by the Home Minister in accordance with a report submitted by the prefectural governor, allowances being made for local circumstances. The Regulations Governing the Organization of Towns and Villages were to go into effect in practically the same manner and at the same time. The regulations governing city organization were applied to forty cities including Kyoto in 1889, and the town and village regulations were enforced throughout the country at the beginning of 1890. Okinawa, Hokkaido, and other islands were exempt from the town and village regulations until 1896 and 1897 when special regulations were issued for them by Imperial order.

The above-mentioned regulations governing organization
of cities, towns, and villages were amended, though only to a minor extent, in the year 1895. As a result, certain matters pertaining to civil rights were clarified and the number of assembly members required for a quorum in the municipal assemblies was reduced from two-thirds to one-half. Then in June 1898 the Regulations Governing Organization of Cities were again amended so that the special regulations of 1889 which authorized the prefectural governors of Tokyo, Kyoto, and Osaka to act concurrently as mayors and which staffed their city councils with the governor, his secretary and the honorary councilors, were rescinded; and amendment provisions dealing with the wards of these three large cities were added.

c. Enactment of the Regulations Governing Organization of Prefectures and Rural Divisions

Following immediately upon the enactment of the foregoing municipal legislation, additional legislation governing the organization of prefectures and rural divisions was enacted in 1890. As a result, both the prefectures and rural divisions acquired more of an autonomous standing. When the prefectures had first appeared shortly after the Restoration they had been nothing more than administrative zones of the central government, and though they were later given an autonomous standing by the Prefectural Assembly Regulations (1878) and by the Local Tax Regulations (1878), the Regulations Governing Prefectural Organization of 1890 were an even greater boost to their autonomous status.

With respect to the rural division as a body of local government, this unit had been merely a name given to a geographical location before the Restoration; and even after the enactment of the Law Governing the Organization of Rural Divisions, Cities, Towns and Villages (1878) the rural division was still only an administrative division controlled by an official of the central government. It was solely through the determination of Yamagata that the rural division became autonomous. His strong opinions in favor of an autonomous rural division were
inspired by the basic role in local autonomy that was fulfilled by a similar unit of government in Prussia. Though Yamagata finally achieved his goal by the enactment of the Regulations Governing Rural Division Organization (1890), the autonomous rural division was not as effective as anticipated and it was eventually abolished in 1922.

The initial work on legislation for prefectural and rural division organization was performed by a committee that was set up by Yamagata in 1884 for the purpose of making a study of town and village legislation. This initial work, however, never came to anything; and the basis for the laws on prefectural and rural division organization that were finally enacted in 1890 came from parts of a cabinet approved draft known as the General Principles of Local Government. This draft had been prepared by a committee on local government on the basis of work done by Mosse, one of the committee members. By the time that the draft regulations for prefectural organization and the draft for rural division organization were finally completed they shared much in common in their formal make-up: both had provisions for an assembly, finance, administration, supervision of administration, and the like. The completed drafts were given first to the cabinet for deliberation and then on October 1, 1888, to the Genrō-In.

The attitude of the Genrō-In toward this legislation was not conducive to any optimism on the part of the government, for there were certain members of the Genrō-In who proposed that the legislation be abandoned. This view drew strength from the notion that the conversion of the local administrative units (prefectures and rural divisions) into autonomous bodies was a premature and pointless measure. To allay this sentiment Home Minister Yamagata himself appeared before the Genrō-In to make a detailed explanation of the legislation. He made it clear that there was no intention to enforce the legislation immediately after its promulgation, that the position of the prefectural governor and rural division head would remain unchanged despite a decentralization of authority, and that the
sovereign powers of the Emperor would not be weakened since
control over the police and prisons would remain the exclusive
responsibility of the state. But Yamagata's appearance did not
weaken the Genrō-In's desire to do away with the legislation,
and finally on December 8, 1888, the cabinet withdrew it.

In the meantime Yamagata departed for Europe, not returning
to Japan until October 1889. During his absence, Finance
Minister Matsukata took over his post concurrently; and after
the legislation had run the gamut of revision at the hands of
the Home Department, the Bureau of Legislation, the cabinet,
the Genrō-In, and Privy Council it was ultimately promulgated
in May 1890. In May, too, Yamagata was appointed as Prime
Minister and his Home Minister's post was given to Saigō
Tsugumichi.

If we compare the enacted Regulations Governing Prefec-
tural Organization and the enacted Regulations Governing Rural
Division Organization with the drafts that were originally
presented to the Genrō-In, it is clear that the autonomous
features contained in both drafts were in large measure eliminat-
ed. In draft form, for example, the prefectures and rural
divisions were expressly designated as sub-divisions of the state
possessed of the rights of juridical persons; the prefectural
assembly was authorized to enact its own bylaws; there were
stipulations based on Yamagata's municipal legislation concern-
ing the prefectural inhabitants and their rights and duties;
and the prefectures were allowed to express their opinions in
case they were partitioned or amalgamated. By the time that
the draft regulations had been revised and had become enacted
law all these provisions had been removed. Further, the matters
requiring the prefectural assembly's vote, which had only been
mentioned in a general way in the draft regulations, were now
specifically enumerated and limited; and the prefectural council
had been converted from an executive to a legislative organ.
Such were the major innovations in the Regulations Governing
Prefectural Organization. Similar changes were also made in
the Regulations Governing Rural Division Organization.
Though the deletions and alterations made in the draft legislation caused a general increase in government control over the prefectures and rural divisions, one change was made in favor of self government. That is, where the draft originally required the governor to be the president of the prefectural assembly, the final version allowed the president to be mutually elected from the assembly members. The change, however, seems to have been motivated by a desire to keep the governor from being subordinated by the assembly, which would have been a possibility if the governor were to continue as the assembly president. No such change was made for the rural division assembly and thus the rural division head continued to be designated as the president of this assembly.

The *Regulations for Prefectural Organization* contained chapters on the prefectural assembly, the prefectural council, finance, supervision of prefectural government, and on other related subjects. But there is no need here to reproduce the contents of the legislation; so we shall dwell only on those provisions that were peculiar to prefectural organization. For the most part the intent and provisions of this piece of legislation were similar to that of the municipal legislation.

First of all it should be remembered that the prefecture was an administrative subdivision and a juridical person, though there were no provisions to this effect in the enacted version of the law. The principal organs of the prefecture were the prefectural assembly and the prefectural council, but it was the governor who carried out their decisions, who managed prefectural finance and public works, and who executed the construction work defrayed by prefectural expenditures. In conformity with assembly decisions the governor also created the salaried officials responsible for the conduct of these operations. (The power to appoint, supervise, and dismiss the salaried officials likewise belonged to the governor.) And the governor was entitled to create temporary committees, permanent committees, and investigation (*chōsa*) committees.

The prefectural assembly was composed of members elected
from among the city, town, and village residents of the prefecture who were qualified voters and who had been paying at least ten yen in direct national taxes within the prefecture. The number of assembly members was set in June 1891 by Imperial order at a minimum of thirty, and this figure was to be increased proportionately as the prefectural population exceeded an established figure. The electors of the prefectural assembly members were the members of the city assemblies and councils and the members of the rural division councils and assemblies. The voting was done by secret ballot. The prefectural assembly members served in an honorary capacity for a term of four years, and reelectons were held every two years for half their number. The president and vice-president of the assembly were elected by mutual vote of the assembly. The matters subject to assembly vote were limited to 1) formulation of the budget, 2) approval of the final accounts report, 3) determination of the method for assessing and collecting prefectural taxes, 4) sale, purchase, exchange, transfer, receipt, pledge and mortgage of prefectural real estate, 5) creation of new (fiscal?) obligations and rejection of (fiscal?) rights, excluding items specified in the budget, 6) control of prefectural property and maintenance of public works, and 7) those matters placed within the competence of the assembly by statute or ordinance. The assembly could delegate matters within its competence to the prefectural council, it could state its views when consulted by a government office and it could make representations to the prefectural governor or Home Affairs Minister on matters concerned in whole or part with the welfare of the prefecture. As to the three metropolitan prefectures of Tokyo, Kyoto, and Osaka, their prefectural assemblies were allowed to distinguish between the affairs that belonged exclusively to their respective metropolitan areas and those that did not. This distinction was made so that the assembly members elected by the rural divisions could not take part in the assembly proceedings concerned exclusively with urban affairs and so that the members returned by the urban areas could not participate in the proceedings
affecting rural affairs.

The regular sessions of the prefectural assembly, which lasted no more than thirty days, were opened every year in the fall; though, when necessary, an additional seven day emergency session could be held. The assembly was summoned, convened, and closed by the governor, but its dissolution depended on Imperial order. In order to open the assembly and hold a vote, which was decided by a simple majority, one third of the members were required to be present. A tie vote was broken by the ballot of the assembly president. The proceedings of the assembly were opened to the public.

The prefectural council consisted of the governor, two senior (kōtō) civil officials, and honorary councilors. The honorary members were elected differently in the rural and metropolitan prefectures. The metropolitan prefectural council had eight members, half being elected by and among the assembly, and their term of office corresponded to their term as assembly members. The senior civil officials were appointed by the Home Affairs Minister from among the senior civil officials serving the prefectural government. The post of council president was held by the governor. The council had the authority to pass upon matters delegated by the assembly and to make decisions for the assembly on emergency measures when there was insufficient time to summon the legislature. The council could decide upon matters necessary to the maintenance and control of prefectural property within the limits prescribed by the assembly and could decide upon the precedence and order of construction work defrayed by prefectural expenditures. The council also had the right to express its views when consulted by the governor or a government office, to state its opinions on legislation initiated by the governor, to report to the assembly, to audit the prefectural accounts when occasion demanded, and to dispose of those matters placed within its competence by statute and ordinance. In regard to the budget, the council had the right to examine it before it was deliberated upon by the assembly, and the council had the right to vote on the expendi-
ture of reserve funds. Lastly, the council sessions were closed to the public.

With regard to prefectural expenditures, the prefectures were required to pay the expenses for 1) control of prefectural property and public works, 2) the prefectural assembly, council, and committees, 3) salaries of officials and other allowances, and 4) the obligations determined by law, ordinance, and custom. In April 1880 a Council of State decree listed the expense items to be defrayed by local taxes as follows: 1) police, 2) construction and repair of rivers, ports, roads, dikes, and bridges, 3) prefectural assembly expenses, 4) sanitation and hospital expenses, 5) expenses for schools established by the prefectures and grants to elementary schools, 6) construction and repair of government buildings belonging to the rural divisions and cities, 7) salaries and traveling expenses of rural division and city officials and their office expenses, 8) relief, 9) sea coast offices and sea rescue expenses, 10) officials announcements, 11) promotion of industry, and 12) the pay of town and village heads and lesser officials. The disbursements made by the prefecture were to be obtained from prefectural taxes (fu-kenzei) and other revenue. Each year the governor was required to prepare the following year’s budget, submit it to the council for decision, and then place it before the assembly for a vote. As to the final accounts, the officials in charge of financial matters had to present the accounts to the governor within three months after conclusion of the fiscal year; and, then, after being examined by the council, the governor was to place them before a regular session of the assembly for approval. While the prefectures had the right to raise prefectural bonds, such action was strictly regulated.

The prefectures, as we have said, were not completely autonomous; their administration was supervised by the Home Minister. And in obtaining approval for any important financial measures that were taken by the prefectures the Finance Minister as well as the Home Minister had to give his consent.

Now, what about the Regulations Governing Rural Division
Organization? They were to be enforced in the prefectures where the regulations governing organization of cities, towns, and villages had gone into effect, though the date of enforcement for each prefecture was to be determined by the Home Minister in accordance with a report from the prefectural governor. The Regulations Governing Rural Division Organization were in many respects similar to the Regulations Governing Prefectural Organization and thus we shall only make reference to some of the more important provisions peculiar to the rural division.

The organs of the rural division were the division assembly and the division council; and their decisions were carried out by the rural division head. The rural division head controlled rural division property and public works and he executed construction work defrayed by rural division expenditures. The division head also created the division officials who were paid from prefectural taxes; and pursuant to a resolution of the division assembly the rural division head created the officials who were in charge of division property, public works, and construction. But the person who appointed, supervised, and dismissed these officials was the governor.

The rural division assembly was composed of members elected by the towns, villages, and by the major landowners within the division. The division assembly was headed by a president who was always the rural division head. The assembly members were elected by the towns and villages, one member coming as a rule from each of these municipalities; but in case more than the established quota of twenty representatives to a division assembly were elected, the division assembly was entitled to enact a law of apportionment and have it approved by the governor. Similarly, if an assembly contained less than ten members, the number was increased to ten with the governor's approval. When one or more division assembly members were to be elected by one town or village, they were elected by the town or village assembly; and when one or more assembly members were to be elected by several towns or villages, the assemblies of these towns and villages combined for the election.
The term of office for the division assembly member was for six years, with re-elections for half the members being held every three years. In addition to the established number of assembly members, one third this number was mutually elected among the major landholders (ō-jinushi); but when there was not a sufficient number of such landlords within the rural division to constitute the extra one third of the assembly, what major landholders there were automatically became assembly members. These members served for a three year period, at the end of which re-elections were held for all of them. To be classified as a major landowner, a landholder had to own land that totaled ¥10,000 in value, and all of this land had to be located within the division and be subject to town or village taxation. To be eligible for election to the division assembly, the assembly candidate had to be a qualified voter of a town or village within the division or be a major landowner possessed of voting rights. The division assembly held regular sessions every year and emergency meetings could be held if necessary. The division assembly was summoned by the division head or summoned ad hoc whenever one third or more of the members so requested. As a rule the sessions were open to the public.

The rural division council was formed by the division head and four honorary councilors. Three of the four were elected mutually from among the division assembly members and one was selected and appointed by the governor from among the assembly members or from among the town and village residents within the rural division. Unlike the assembly sessions the division council meetings were closed to the public.

The expenditures of the rural division, similar to those of the prefecture, included the expenses for 1) management of division property and public works, 2) division council and committees, 3) the pay, retirement allotments and other allowances for division officials, and 4) other obligations prescribed by law and Imperial ordinance. In defraying these expenditures the rural division depended not only upon the revenue gained from division property and from other miscellaneous revenue but
also upon taxes imposed on the towns and villages within the division. Such taxes, which were based on the amount of direct national taxes and prefectural taxes paid by the towns and villages in the preceding year, were incorporated into the towns and village budgets so that they could be levied as town and village taxes and then be sent to the division treasury.

The supervision of the government activities of the rural division was primarily a task of the prefectural governor and secondary that of the Home Minister.

The organization of the rural divisions and prefectures had to be preceded first by the enforcement of the *Regulations Governing Organization of Towns and Villages* and the *Regulations Governing Organization of Cities*; and only then could the *Regulations Governing Rural Division Organization* and the *Regulations Governing Prefectural Organization*, in that order, be put into effect. In each case the date of enforcement for each prefecture was set by the Home Minister after he had received an indication from the prefectural governor that local conditions were favorable for enforcement. Like the municipal legislation, the rural division and prefectural organization legislation could not be put into effect all over Japan in one or two years. For one reason there had been strong opposition against the legislation in the *Genrō-In* and the government therefore had to be cautious in putting it into force; and for another reason a certain amount of time was required in the consolidation of rural divisions. Many of the rural divisions after all were small and their boundaries were intricately drawn; and until the necessary preparations were made for the consolidation of such areas and for the partitioning of those that could not remain united owing to topographical conditions and popular sentiment, the enforcement of the rural division legislation would have to wait. Hence it was not until April 1, 1891 that the *Regulations Governing Rural Division Organization* were put into effect for the first time. The first prefectures to organize rural divisions in 1891 were Aomori, Akita, Yamagata, Fukui, Nagano, Aichi, Tokushima, Köchi and Oita. Then shortly after-
wards, on July 1, the prefectural regulations first went into force in Nagano prefecture.

The consolidation of rural divisions, which had to be authorized by legislation enacted by the Diet (according to the Regulations Governing Rural Division Organization), ran into difficulty in the first Diet session (1890) when the government's proposal to reduce 531 rural divisions in thirty-two prefectures to a total number of 134 was vetoed by the lower house. After another unsuccessful proposal was put forward in 1891 the government changed its plans and decided not to consolidate all the rural divisions in Japan at one time, but to start with the prefectures that presented no obstacles. After having made these initial legislative attempts at consolidation, the government waited five years before presenting another proposal in February 1896. This proposal, aimed at the thirty-three prefectures in which the rural division regulations were not yet in effect, was passed into law in its entirety after being slightly modified. This law became effective for some of the prefectures on April 1, 1896, and for others it became effective on April 1, 1897. By 1900 all the prefectures had met the requirements of the Regulation Governing Rural Division Organization and by 1897 all prefectures except Okinawa had enforced the Regulations Governing Prefectural Organization. Okinawa enforced the latter regulations in 1909. After the prefectural regulations were put into effect they were amended in June 1892 in order to allow the assemblies of the metropolitan prefectures to retain the existing practice of holding separate sectional meetings for the cities and for the rural divisions. In concluding our survey of rural division and prefectural organization it should be remembered that the total number of prefectures was finally set at forty-six (3 metropolitan, 43 rural) in December 1888 when Kagawa prefecture on the island of Shikoku became independent of Ehime prefecture.

d. Local Government Organization

In what we have just said of local autonomy, no mention
was made of the local or prefectural authorities as local organs of the executive branch of government. So now let us consider the prefectural officials and their duties.

Though the organization of local government had previously been provided for in the Regulations Governing Prefectural Government Organization (1878) it was not until May 1884 that an official known as the chief of revenue (shuzeichō) was created in each prefecture. This official, who took instructions from the governor in administering the prefecture’s revenue business, was at the same time under the direct supervision of the Finance Department’s Chief Revenue Officer to whom he directly submitted reports.

Following the appearance of the chief of revenue, the next significant development concerning prefectural government was the enactment of the Regulations Governing Organization of Local Government Officials (July 1886). These regulations followed by only a half year the sweeping reorganization of the central government and creation of the new cabinet system. By the terms of these regulations the prefectural governor, who was the highest ranking local official in each prefecture, was under the control and supervision of the Home Minister and also under the control and supervision of the other state ministers whenever his duties fell within their jurisdiction. The governor was required to enforce laws and ordinances and to exercise general control over the prefectural administration and police. He was authorized ex officio or through a special delegation of power to issue within the bounds of law and ordinance, prefectural orders relating to his administrative and police duties for all or part of his prefecture. He could revoke or suspend the actions of the Home Minister and other state ministers when he deemed such actions detrimental to the common welfare or a violation of existing regulations, or when he considered them as transcending the proper bounds of authority. He had general supervisory and disciplinary control over the government officials beneath his authority, and, although he referred matters of conduct and disciplinary punishment of sōnin rank officials to
the Home Minister, he could act unilaterally in the promotion and dismissal of officials who were of hannin or lesser rank. In an emergency that required military force or when it was necessary to mount a guard, the governor was permitted to notify the commanding officer of the corps area or the commander of its local garrison and request the dispatch of troops. This provision concerning the governor’s need of military assistance was more exact than the same provision in the Regulations Governing Prefectural Government Organization (1878), in which it was specified that the governor could take suitable measures after conferring with the commanding officer of the corps area or local garrison. One other difference between the new regulations of 1886 and the previous regulations for prefectural government is that there was no longer any enumeration of items about which the governor had to consult with the different ministers of state before taking official action.

Besides the governor, the Regulations Governing the Organization of Local Government Officials provided for a number of subordinate officials including secretaries, a chief of revenue, a chief of police, and a prison warden. The secretaries headed the first and second departments which had as their business the general administration of the prefecture. Beneath the departments, sub-sections could be created to suit the occasion. The chief of revenue headed the department of revenue; and in compliance with orders from the governor he administered the assessment and collection of taxes. To aid in the collection of taxes (direct and indirect) the chief of revenue was also expected to establish branch revenue offices throughout the prefecture. The chief of police, also subordinate to the control and supervision of the governor, was in charge of the higher (secret) police, the administrative police, and the judicial police. And he was responsible for the enforcement of public health measures. One police station was set up in each rural division and ward, and each station had beneath its jurisdiction several substations. The warden, who belonged to the second department, headed the prefectural prison. The police and prisons
of Tokyo, incidentally, were not subject to these *Regulations Governing the Organization of Local Government Officials*, but were controlled by the *Regulations Governing the Organization of the Metropolitan Police*. With respect to the rural divisions and wards the *Regulations Governing Organization of Local Government Officials* specified that a head official would be created for each rural division (or for several of them) and for each ward, and that these head officials, acting under the supervision of the governor, would be responsible for the enforcement of laws and ordinances and the execution of administrative affairs within their competence. These head officials were also responsible for directing the town and village heads and supervising the conduct of their public duties. In such prefectures as Nagasaki and Kagoshima special island director offices were created and put in charge of off shore islands.

By October 1890 the *Regulations Governing the Organization of Local Government Officials* were completely amended, probably in an attempt to keep prefectural government abreast of the developments heralded by Yamagata's municipal legislation and by the impending enforcement of the *Constitution*. As a result of the amendment, which was concerned primarily with the organization of prefectural offices, there were created for the first time a governor's secretariat (*kanbō*) and a councilor who was to be in charge of drafting legislation when consulted by the governor. The first and second departments of the prefectural office were combined into one unit within which there were four sub-sections, and the combined departments were headed by a secretary become deputy governor. There were no significant changes in the offices of the warden or chief of revenue, but the jurisdiction of the police was narrowed by the loss of control over the judicial police and public health.

The same regulations were again completely amended in 1893. This time the police were once again given control over public health. Also as a result of the amendment the governor's control over the rural division head and island director's office was strengthened, for the governor was allowed to set aside
or suspend their actions and orders when they violated regulations, when their actions were prejudicial to public welfare, or when they exceeded proper authority.

In October 1896 the revenue department in each prefecture was abolished and its duties were transferred to the Bureau of Revenue Control which was under the Finance Minister's jurisdiction.

7. THE ADMINISTRATIVE BRANCHES OF GOVERNMENT

a. Civil Service

The appointment of government officials without regard to the appointee's social status was openly accepted in principle by the Meiji government immediately after the Restoration, though the principle did not apply to the highest offices of the Council of State nor did there exist any comprehensive procedure for the selection of qualified government personnel. Following formation of the cabinet in December 1885, provisions for basing government appointments on examinations appeared in the *Official Discipline*, a basic outline of principles for the management of each department's business, which was shown to the ministers of state on December 26 by Prime Minister Itō. Then in March 1886 detailed regulations for *chokunin* and *sōnin* officials were established, and in July 1887 the *Regulations for Civil Official Examinations, for Probationers and Trainees* were promulgated. By these 1887 regulations, the term "civil official" was a general designation for any official of *sōnin* or *hannin* rank; a probationer was defined as a person who received training in the routine duties of a higher official in virtue of having passed the higher examinations or in virtue of meeting certain qualifications as prescribed by law; and a trainee was described as a person who learned the duties of a *hannin* official by way of having successfully completed the ordinary examinations or by meeting the qualifications fixed by law. Besides the appointments that depended upon successful completion of these examinations,
there were special appointments and direct Imperial appointments to the highest offices of government. The latter, known as chokunin appointments, needed no special qualifications.

Again in 1889, when the Constitution was enacted, Article XIX clearly guaranteed that any Japanese regardless of family background could become either a civil or military official if he was possessed of the proper qualifications as determined by laws and ordinances. It was surprising enough that Itō, a low ranking samurai of Chōshū, had become Prime Minister in 1885, but now the basic law of the land was even proclaiming that all civil and military offices were open to the public at large. That anyone being qualified to hold a government post should be welcome to the executive branch and civil officialdom was of profound significance to the legislative branch of Japanese government. One other provision of the Constitution that may be suitably mentioned here is Article X, according to which the salaries of the civil and military officials and their appointment and dismissal were a prerogative of the Emperor.

Additional legislation concerning the appointment of civil officials was promulgated in October 1893. Part of this legislation, the Civil Service Appointment Ordinance, spelled out the qualifications needed by sōnin and chokunin appointees: the sōnin official had to pass the higher civil service examination while the chokunin or Imperial appointee had, as in the past, no specific qualifications to meet. The other part of the 1893 legislation, the Civil Service Examination Regulations, classified examinations for official positions into the higher examinations for higher civil officials and into the ordinary examinations for the hannin officials; and the higher examinations were subdivided into preliminary and final examinations. Since this 1893 legislation left the appointment of the chokunin official unimpeded by any definite qualifications, a large number of vice-ministers, bureau heads and prefectural governors were appointed from the Shimpo-tō (Progressive Party) to the Matsukata Cabinet (September 1896) at the instigation of Okuma Shigenobu; and again in June 1898 when the first party cabinet was formed.
under Okuma and Itagaki this type of party appointment to high office was carried even further. However, Yamagata, who became the new Prime Minister in November 1898 was bent on putting an end to the office hunting for party members and, more broadly speaking, determined to protect the bureaucratic citadel from party influence; therefore, as soon as the Diet concluded its business Yamagata issued an Imperial ordinance in March 1899 that completely amended the Civil Service Appointment Ordinance. With the exception of the shinnin officials appointed personally by the Emperor and except for special appointees, the civil officials of chokunin rank were henceforth required as a general rule to meet one of the following requirements: 1) to be or have been a higher official of the third grade with sōnin rank, 2) to have served at least one year as a chokunin official, 3) to have served as a chokunin official and be possessed of a higher examination certificate, or 4) to be or have been two years as a chokunin appointee in the office of public procurator. On the same day this ordinance was issued, two other ordinances concerning government officials were promulgated. They were the Ordinance for Civil Service Discipline and the Civil Service Limitation Ordinance. The latter ordinance had the effect of securing the tenure of civil servants by preventing their dismissal except when they were convicted in criminal court or were subject to disciplinary action, or were dismissed in accordance with the terms of this ordinance. The two above-mentioned ordinances and also the Civil Service Appointment Ordinance were promulgated on the advice of the Privy Council, and it so happened that this pinnacle of the bureaucracy would have to be consulted before any of these ordinances could be amended. In this way the bureaucracy was given protection against the political parties, and the officials who could be freely appointed without meeting any legal requirements were restricted to those persons who were personally appointed (shinnin) by the Emperor and to those officials whose fate was linked directly to that of the cabinet. Following this spate of ordinances, another Imperial order in April 1900
designated the Chief Secretary of the Cabinet and the chief secretary of each department as special appointees like the state ministers and the confidential secretary of the Governor General of Formosa. This order however was soon repealed. Subsequent to 1900 no major alterations were made in the Civil Service Appointment Ordinance, although there were some changes in the sphere of free appointments made by the higher examination screening committee.

The establishment of general regulations for the proper discipline of civil officials was effected in July 1882 when the Council of Satte issued Service Regulations for Executive Officials. According to these regulations, a civil official received instructions from, and carried out his duties in compliance with the orders of, his competent superior; the civil official was barred from disclosing confidential matters of an official nature whether he was on active service or in retirement; and without the approval of his competent superior the civil official could neither occupy directly or indirectly a salaried position nor could he accept gifts from others in connection with his work. The same disciplinary requirements, except for two provisions, also applied to the judicial officials (judges and public procurators). In illustration of the two exceptions, the judge was exempt from the provision that required the government official to follow the orders of his competent superior when discharging his duties; and both the judge and procurator were barred absolutely from accepting any gifts in connection with their work. One other enactment concerning the good behavior of officials was the Service Regulations for Government Officials (July 1887). Based on the provision of the Official Discipline (December 1885) that called upon the official to maintain rigid discipline, the Service Regulations for Government Officials demanded the official to be diligent and loyal to the Emperor and to the Emperor’s government, and to perform his duties according to the law. This was for a long time the fundamental precept for government personnel.

The salaries of higher officials as we have noted earlier were
determined by an ordinance issued in 1886; and pensions were provided for in an ordinance of January 1884 and again provided for in the Civil Service Pension Law of June 1890. As for the disciplinary measures to be taken against a civil official, the proper action was prescribed in the Disciplinary Regulations of April 1876; and these regulations applied to judges, too, until separate disciplinary rules could be created for judges as required by Article LVIII of the Constitution.

b. Finance

The Finance Law of 1881 was amended throughout in January 1882. Of the major amendments it should be noted that the Finance Minister was no longer allowed to control the reserve accounts in accordance with special regulations; the arrangement allowing the Council of State to submit the preliminary budget and budget statistics to the Board of Audit for deliberation was done away with; and the cash funds to be handled by each government office were henceforth to be in the custody of the Finance Department, being released to the trust of each office at the convenience of the Finance Department. In September 1884 the Securities Regulations were decreed by the Council of State. The Finance Department securities, which were issued by the Finance Department owing to momentary account requirements, were bearer securities paying interest at prescribed intervals and were defrayed by the revenue collected in the fiscal year of their issue. In the following month the fiscal year period that had been fixed a decade earlier was changed so that subsequent to the fiscal year of 1886 the new fiscal year would run from April 1 to March 31. The next important piece of legislation concerning finance was a Council of State notification of March 16, 1885. This notification lay down the standards for compilation of the budget and classified the budget entries into four categories (titles, paragraphs, items, sub-items). Among these four categories, the two major ones (titles and paragraphs) could only be changed by the Finance Department upon approval of the Council of State while altera-
tion of the lesser two categories was a concern of the Finance Department alone. Together with this March notification there also appeared the Budget Regulations, establishing a reserve fund in the national treasury under the supervision of the Finance Department. The reserve fund was divided into two parts. The first part, which was to be appropriated for special services in times of emergency, required the Council of State's sanction prior to disbursement; and the second part, which was to be used to offset the deficiencies created in the budget by annuities, pensions, and by the refund of excess revenue collections, etc., could be disbursed without prior sanction, although the disbursement had to be followed up by a report to the Council of State. Again in the month of March 1886 the cabinet abolished the standards for the compilations of the budget that were defined in March of the preceding year and gave to the Finance Minister the authority to decide upon all four categories (titles, paragraphs, items and sub-items) of revenue and expenditures. This change was perhaps due to the view of Finance Minister Matsukata that the budget's itemizing scheme was only a method for managing the accounts and it was thus unnecessary to bother the cabinet for every alteration of it.

Such were the individual changes made in the field of finance between 1882 and 1886. Now let us see what the provisions of the Constitution did toward perfecting the government's financial system.

First, as to the budget, the Constitution provided that the expenditures and revenue of the state required the consent of the Diet in the form of an annual budget and all expenditures exceeding the appropriations set forth in the budget, would subsequently require the acceptance of the Diet (Article LXIV). Whereas it is a common practice in the West for the budget to be enacted as any other statute law, the Meiji Constitution made a formal distinction between statute law and the budget so that expenditures and revenue followed the special form of the budget rather than that of statute law. With respect to the financial source for the expenditures that were in excess of
the budget and for the extra-budgetary expenditures, Article LXIX provided that a reserve fund would be included in the budget.

The budget, according to the *Constitution* (Article LXV), was to be laid first before the House of Representatives before being sent to the House of Peers. While it might appear on the surface that this provision allowed the lower house an advantage over the upper house with respect to the budget, this was certainly not the case in Japan. For there was no way for the lower house to squander so much time on the budget that the upper house would lack the time to give full consideration to the lower house's deletions. The *Law of the Houses* prevented such stalling tactics by limiting the amount of time allotted to the budget committee of the lower house. Furthermore whatever the lower house might wish to delete from the budget could always be restored by the upper house. This was proven in a dispute that the lower house had with the upper house in 1892. The dispute arose when the lower house deleted certain government supported items (naval construction, etc.) from the budget and the upper house restored them. Insisting that the upper house lacked the authority to insert new items in the budget the lower house refused to accept the budget from the upper house and therefore returned it. Since neither house would yield and the budget was thus shuttled back and forth with neither house accepting it, the upper house finally appealed to the Emperor for a decision. For advice the Emperor turned to the Privy Council. Taking the side of the upper house, the Privy Council advised the Emperor that both houses had equal revision powers over the budget. Thus the House of Representatives was obliged to accept the restored deletions; and a precedent was set for giving both houses equal authority in deliberating upon the budget. This issue, we might add, was the only instance in which the Emperor was ever called upon to settle a constitutional conflict between the two houses.

As the lower house was limited in its rights to deliberate upon the annual budget so was the Diet as a whole in its right
to give consent to the budget. The Diet's power of consent was limited in two ways. First, the fixed expenditures of the Imperial House could be defrayed each year out of the national Treasury without the consent of the Diet unless they were increased (Article LXVI). And secondly, such predetermined expenditures which were based on the constitutuional prerogative of the Emperor, and such expenditures that might arise by legislative act, or those that might appertain to the legal obligations of the government, could neither be rejected nor reduced by the Diet without the concurrence of the government (Article LXVII). As to when the government should give its concurrence to such rejections or reductions, the Diet was somewhat confused during its opening session in 1891, but all doubt was dispelled when the lower house, after many complicated maneuvers, completed its deliberations on the entire budget and, then, before sending the budget to the House of Peers, sought the government's approval. This procedure then became a precedent for obtaining the assent of the government in this particular type of budget alteration.

The budget as a rule was an annual undertaking, yet the Constitution made it possible for the government to ask the Diet to consent to a certain sum as a continuing expenditure fund for a pre-arranged number of years in order to meet special requirements (Article LXVIII). And once the government received the Diet's consent for 1) the total sum of expenditures, 2) the continuing expenditure fund, and 3) the annual apportionment, there was no need to obtain further Diet consent unless changes were made at some future date.

When the Diet did not vote on the budget, or when it was not brought into actual existence, the government was empowered to carry out the budget of the preceding year (Article LXXI). This was one of the points most strongly advocated by Iwakura. Similarly, when it was necessary for the government to maintain public safety during an emergency, and domestic or foreign circumstances prevented the Diet from being convoked, the government was entitled to use the Imperial ordinance to put
through such financial measure as were needed (Article LXX). After taking such measures, however, the government was obliged to submit them to the Diet at its next session for acceptance.

In the matter of auditing accounts, the final account of the expenditures and revenue of the government had to be verified and confirmed by the Board of Audit, and then submitted by the government to the Diet along with the Board of Audit’s report of verification. The organization and competency of the Board of Audit was determined by separate law (Article LXXII).

The aforementioned constitutional provisions concerning finance were also basic to the Finance Law. Compiled under the direction of Finance Minister Matsukata Masayoshi, this law followed the usual course of important draft legislation by passing through the cabinet and Privy Council for review and revision before being promulgated in February 1889. The Finance Law embraced the fundamentals of finance while the Finance Regulations, promulgated in May 1889, contained the details. Taken together these two pieces of legislation provide us with a general picture of government finance. According to their provisions, the fiscal year remained the same as before, extending from April 1 to March 31 of the following year. Taxes and all other receipts were termed revenue, all outlay was designated as expenditures, and both were incorporated in the general budget. The budget had to be submitted at the first part of the Diet session preceding the year in which it was to take effect. The general budget was divided into two parts, the ordinary and extraordinary, and each of these parts was further subdivided. The reserve fund was used in part to supplement unavoidable budget deficiencies and in part for extra budgetary needs; and upon conclusion of the fiscal year a statement explaining its different uses had to be placed before the Diet for acceptance. The fixed appropriations for one year could not be assigned to another fiscal year, and the appropriation for each year had to be paid out of the revenue for that
year. The state ministers were not allowed to use the appropri-
ations for purposes other than those specified in the budget,
and the receipts under their control that had to be delivered
to the national treasury could not be appropriated by the
ministers directly. The maximum sum of Finance Department
securities that could be issued each year was determined with the
consent of the Diet. The final accounts, prepared by the Finance
Minister in the same form as the budget, were required to go
before the Diet after being certified by the Board of Audit; and
when there was an annual balance, it was to be transferred to
the following year's revenue. In time of special need, when it
was difficult to keep within the legal limitation on finance,
special financial measures could be legislated or the government
could order the Bank of Japan to use the funds in the national
treasury. This use of Treasury funds was governed by the
Depository Regulations (promulgated in December 1889).
Under the control of the Finance Department, the Depository
handled the specie that was received, disbursed, and kept on
deposit by the national treasury. The Depository was divided
into a Central Depository in Tokyo, with other major depositories
being located in each prefecture and in Hokkaido (Sapporo,
Hakodate and Nemuro). In addition there were branch depositories. The specie deposits and accounts of the Depository were
placed under the control of the Bank of Japan.

As we have seen, a Board of Accounts was vested in 1882
with the power to certify the budget and the final accounts and
to judge the responsibility of the accounting officials. Then
in May 1889 further provisions concerning the nation's auditing
business appeared in the Board of Audit Law. By this law,
the Board of Audit was under the direct control of the Emperor
where it enjoyed a position independent of the state ministers;
and the auditors were as independent as judges, since they
could not be retired, transferred, or suspended against their will
unless so ordered by a criminal or disciplinary court. The items
subject to the Board's audit were 1) the final accounts of the
budget, 2) the expenses and receipts of government sponsored
undertakings and the final accounts for government property, 3) the final accounts of organizations and public or private undertakings that received government subsidies or held a special government contract, and 4) the final accounts submitted expressly to the Board of Audit by law or ordinance.

Other important financial legislation remains to be considered, but it is impossible to treat all of it here, and we shall turn now to the tax legislation during the middle part of the Meiji Period. The general provisions on taxation were determined at this time by the Constitution. By its terms, the taxes being levied in 1890 when the Constitution was to become effective were to continue to be collected in accordance with existing methods and rates unless these were changed by law (Article LXIII). The obligation to pay taxes was shared by all Japanese subjects according to provisions of law (Article XXI). Likewise any imposition of a new tax or any modification of existing tax rates also had to be determined according to the provisions of law. Not determined by law, however, were all administrative fees or other revenue having the nature of compensation. As for national loans and other liabilities contracted to the charge of the national treasury, such obligations, except those provided in the budget, had to obtain the consent of the Diet (Article LXII).

The important taxes that were being collected when the Constitution went into effect were the taxes on land, incomes, liquor, tobacco, business and registration. First, with respect to the land tax, the Council of State set the broad outlines for the assessment of this tax in March 1884 by promulgating the Land Tax Regulations. By promulgation of these regulations any legislation in conflict with the Land Tax Reform Regulations of 1874, and any legislation that clashed with other land tax reform regulations or with the Land Tax Regulations themselves was repealed. According to the Land Tax Regulations, the land tax remained unchanged at two per cent of the land value as inscribed on the land titles; the taxable land was classified into two categories (1. paddy fields, dry fields, rural residence land,
urban residence land, salt fields, and land having mineral springs; 2. pond or marsh, mountain forest, wasteland, miscellaneous land), a third category of land (used for public school, village shrines, graveyards, drainage ditches, reservoirs, embankments, canals, and public roads) being made tax exempt; and taxable land could only be reevaluated if it underwent a fundamental change or was reclaimed. In case taxable land did undergo a fundamental change the prefectural office had to be notified, and if land was reclaimed or converted to taxable or to non-taxable land the approval of the prefectural office had to be obtained. The Land Tax Regulations also contained detailed stipulations as to the period during which the reevaluation should be effected and the duration of assessments or exemptions. The determination of the land's value was based on its fertility classification, its income, and on local conditions. The land taxes were collected either from the person whose name appeared on the land title or from the pledgee when the land was in pledge. Following the promulgation of the Land Tax Regulations, the necessary instructions for their enforcement were issued by the Finance Department on April 5, 1884.

The next important act concerning land taxes came in February 1885 when the Finance Department ordered each landowner to correlate his actual holdings with the data in the local land register. This was an attempt by the government to correct the inaccuracies of the land reform surveys and to make the landholders declare undisclosed reclamation projects and the changes in the quality of their land. If the landowners failed to make these declarations, a government official was to conduct an on-the-spot survey and make the necessary correction in the records himself. This supplementary survey, designed to put the finishing touches on the land tax reform, was completed in 1888. Then on March 23, 1889, the Diet enacted a law which abolished land titles and which specified that the collection of taxes from the landholder would henceforth be based on the land evaluation entered in a land register to be known as the tochi daichō. The preparation of the tochi daichō for the cities
was made the responsibility of the prefectural offices and that of the towns and villages was encharged to the rural division offices and island offices. At first the Finance Department intended to have the existing land title registers (*chiken daichō*) retained, simply having included in them whatever additional land tax data was needed, but, since the title registers were already marked full of changes and corrections, the inclusion of more information would have made these registers illegible. Hence it was decided to prepare a completely new land register at government expense; and by 1891 the new register (*tochi daichō*) was prepared and filled out.

Before leaving the land tax to discuss income tax, it should be noted that the value of paddy and unirrigated land was reduced in August 1889. The reduction was brought about owing to the decline in commodity prices and the impoverishment of the peasantry that had been caused by the 1882 currency reform. The statute that reduced the value of land designated the areas where the reduction applied and the total amount of reduction due each locality as of 1890. The actual decrease in total land value amounted to almost ¥130,000,000, and the total reduction in taxes equalled more than ¥3,200,000. Following the enactment of this statute, other bills calling for land re-evaluation were frequently presented to the Diet, though none succeeded until December 1898 when the value of paddy and unirrigated land was reduced almost ¥150,000,000. But at the same time that this reduction was made, the tax on land was increased in order to keep up with the growing financial needs that followed the Sino-Japanese War. The rate of increase for paddy and unirrigated land, effective from 1899 to 1903, was eight thousandths of the land value while the increase for city house lots was two and a half per cent.

While the major portion of the government’s revenue came from the land and liquor tax, the former was designed and executed while Japan was still under the influence of a lingering feudal tradition and, consequently, it was neither appropriate to the times nor was it well suited to Japan’s progressive develop-
ment as a nation. The land tax was particularly inexpedient because it placed a heavy burden on the peasantry while only light tax obligations were incurred by the trading and handicraft classes. This inequity finally gained recognition and was somewhat remedied by promulgation of the Income Tax Law in July 1887. The person who proposed this law was Matsukata, and he had adopted the more acceptable aspects of English and American tax methods in order to tap a new source of revenue needed for the completion of Japan’s naval program. By the terms of the Income Tax Law, each person who received over three hundred yen annually from property, business, or from any similar source had to pay an income tax. All members belonging to the same household filed a joint return in the name of the househead. Income was regarded as a sum of money derived directly from bonds, deposits, interest on loans, stock dividends, and from salaries derived from either government or private sources, etc. Income from any other property or business sources, after reductions had been made for operating expenses, was termed income; and it was computed by taking an average of the preceding three years’ returns. Income tax rates were graded in five categories starting at one per cent on ¥300 incomes and going up to three per cent on incomes over ¥30,000. The tax payer was required to report the estimate and type of his income by a certain date each year. In order to tax incomes, an income tax investigating committee composed of no more than seven persons and presided over by either a rural division head or mayor of a city was set up in each rural division and city, and from this committee a notice was sent to each tax payer informing him of the amount he must pay. If dissatisfied with the committee’s demands, the tax payer could protest to the governor within twenty days after receiving the tax notice, though in the meantime he would have to pay the prescribed amount. The tax payer’s protest was disposed of by the governor upon a vote of the prefectural standing committee. As we shall see later, the income tax and the liquor tax constituted the two major sources of national revenue during
the last part of the Meiji Period.

Following the Sino-Japanese War, the budgetary needs of the government caused it to improve tax collection methods and to adopt a program of increased taxation. Aside from raising the land tax, the first measure of the new tax program brought about an increase in the liquor tax and the adoption of a monopoly system in the sale of leaf tobacco. The second measure of the tax program resulted in the creation of such new taxes as the business and registration taxes. Both measures were proposed by Finance Minister Matsukata.

First, with regard to the liquor tax, the Brewery Tax Regulations of 1880 were amended and put into force as the Brewery Tax Law in October 1896. Liquor was classified into three categories according to its alcoholic content and it was taxed six, seven, or eight yen per koku (barrel) depending on the liquor's classification. The third category which was raised from five to eight yen brought an increased revenue totaling over ¥11,000,000.

Next, with regard to the changes in tobacco taxation, the existing tax that was imposed on the manufacture of tobacco was replaced with a monopoly on leaf tobacco sales. This switch in taxes was made because of the difficulty of controlling tax evasion and because of the pressing financial needs that we have mentioned. The Leaf Tobacco Monopoly Law was thus enacted in March 1896; but it could not be enforced until January 1898, since most of the tobacco at this time was distributed for shredding among so many small scale domestic handicraft units. When enforced, the new tobacco monopoly law gave the government a monopoly over leaf tobacco and allowed it to determine the land that would be devoted to its cultivation. Persons engaged in the cultivation of tobacco were obliged to sell all of their crop to the government once it had been dried, and they received for their crop a price that was set and announced in advance. In turn the government sold the tobacco at a set profit to leaf tobacco retailers and to manufacturers. The annual revenue from tobacco was planned to
exceed ¥10,000,000, a goal that was achieved after 1901.

Another of the new and particularly important taxes that was created with the aim of increasing national revenue was the business tax. Although this was not the first time a business tax had been imposed in Japan, the old business tax had formerly been included in the local taxes where the rate of its assessment had not been uniform, and there had been many abuses associated with it. The government thus wanted a new business tax imposed uniformly throughout Japan so that there would be no obstacles to economic development. Furthermore, being levied as a direct national tax, the business tax would broaden the field of eligible voters and increase the number of eligible candidates for the House of Representatives, and thus destroy the virtual monopoly in politics that was enjoyed by the landowners. And of course the business tax represented a way for the government to secure over ¥7,500,000 in annual revenue for the Treasury. Therefore the Business Tax Law was enacted in March 1896 and put into force in January 1897. This new law applied to twenty-four types of business including banks, insurance, loans, sales of commodities, etc., provided that the business receipts amounted to at least ¥1,000 per year. The tax assessment for each individual business man was based on business capital, sale, income, sum of money under contract, or compensation money, building rental value, and number of employees; and the assessment was computed at a rate fixed for each type of business operation. By a fixed date each year the business operator was required to report his business classification and tax basis, the latter being determined by the gross proceeds, the average amount of capital and building rental value, and the maximum number of employees employed in the preceding year. If the business operator's report was considered incorrect, the government itself determined the tax basis according to a fixed standard. When dissatisfied with the government's ruling, the operator had twenty days within which to protest and seek a review of the decision, but in the meantime the operator, like the income tax payer, had to pay the amount indicated by
the government. The final ruling of the government was rendered after consultation with the Committee for Investigating Business Tax.

The Registration Tax, promulgated in March 1896 and enforced in May of the following year, had as its object the taxation of persons who registered real estate, shipping vessels, the nationality of vessels, companies, etc., in the government register; and it abolished any so-called registration fees which, though hitherto based on law and ordinance, duplicated the new registration tax.

In summing up what we have just said of taxation, it will be seen that the land and liquor tax were the major sources of revenue in the early part of the period (1882-1898) under review. Then later, as the period progressed, the income tax was created for the first time in 1887, being followed by the appearance of a new tobacco monopoly, a business tax, and a registration tax. These three sources of revenue were established in 1896 as a means to combat the inflation caused by the Sino-Japanese War. And finally in 1898, which marks the end of the middle part of the Meiji Period, there was an increase in the land tax.

In addition to creating new sources of revenue the Diet also improved the means of collecting national revenue by the enactment of the National Tax Collection Law (March 1889). With the exception of customs taxes, all national taxes were to be collected in accordance with the provisions of this tax law, which we may summarize as follows. Each city, town, and village had to collect the land taxes falling within its own boundaries and had to deliver them to the Treasury; and each of these municipalities had to bear the expenses incurred in making the collection. The same collection procedure obtained for national taxes that were designated by Imperial ordinance, although in the collection of these taxes four per cent of the collected amount was turned over to the municipalities. The national taxes designated by Imperial ordinance (March 14, 1889) were 1) income tax, 2) liquor tax, including the impost
on sake produced in the home for domestic consumption, 3) manufacturing, wholesale, and retail tax on confectionary, 4) manufacturing, brokerage, and retail tax on tobacco, 5) patent medicine business tax, 6) ship tax, 7) carriage tax, 8) tax on the sale of oxen and horses, and 9) hunting tax. In collecting the tax on land and the national taxes designated by Imperial ordinance, a written tax collection order was issued by the governor to the cities and by the rural division head to the towns and villages; and in the collection of other national taxes a written order was sent directly by the governor to each tax payer in the cities and by the rural head to each tax payer in the towns and villages. (In September this provision was amended so that the role of the rural division head was eliminated; henceforth the governor was to issue a collection order directly to the municipalities for collection of the land tax or for collection of the taxes imposed by Imperial order, and he was to issue another collection order to the individual tax payer for any other national tax.) If a person did not complete payment of his taxes within the proper time limit, the individual and the necessary particulars were to be reported to the revenue officer by the competent city, town or village head. When a person, by virtue of other obligations, was declared bankrupt subsequent to the issuance of his tax collection order the collection of taxes still took precedence over the demands of the other claimants regardless of whether the period for tax payment had expired or not. But if a full three years calculated from the day following the expiration of the payment period elapsed without the issuance of a collection order or a message concerning tax collection, the tax payer was to be exempt from his tax obligations. The collection of national taxes was administered by the prefectures until 1896, the year that the Finance Department’s Bureau of Revenue Control was established and given control over the collection of these taxes.

To deal with persons who failed to pay their national taxes, the Law for the Disposition of Delinquency in National Tax Payments was enacted in December 1889. This law covered
delinquency in all national taxes except custom duties. When a person failed to make complete payment of his taxes within the prescribed period, the revenue official was required to issue a demand note, and when the taxes remain unpaid five days subsequent to receipt of the note, the tax delinquent's property was subject to attachment and disposal. Once the government had attached and disposed of the property, the tax obligations of the delinquent ceased. No attachment, however, could be effected unless the value of the delinquent's property indicated that sufficient money would be left over with which to defray the expenses involved in the disposal proceedings. The expenses incurred in the disposal of the property and the sum in arrears took precedence over the demands of other claimants, unless the property of the delinquent had been pledged or mortgaged a year prior to the expiration of the payment period for the taxes in arrears. When the seizure of property became necessary, an attachment order was issued by the governor and carried out by the revenue official. Certain property items of course were not subject to seizure and they were specially provided for. Within three to five days after the day following completion of distress proceedings the revenue official was required to take the necessary steps to announce a public sale. The goods under distress were sold publicly by a tender of bids or by auction; although the public sale of immovables and ships could only be accomplished by the tendering of bids. After satisfying the disposal expenses and unpaid tax requirements, any money remaining from the sale was returned to the tax delinquent. In serving documents (which related to the disposition of tax arrears) to tax delinquents and obligors, the documents were delivered by messenger or by registered mail, depending upon the distance involved.

In passing, it should be observed that the National Tax Collection Law (No. 9) and the Law for the Disposition of Delinquency in National Tax Payments were repealed and combined into a single statute known as the National Tax Collection Law (No. 21) in March 1897. Since the combination
of the two statutes into one brought no major changes, there is no need here to elaborate any further on the collection of national taxes.

With respect to prefectural taxes, a provision of the Regulations Governing Prefectural Organization (1890), specified that prefectural taxes, their assessment, and their collection would continue to be governed by the local tax regulations that existed prior to the enactment of the Regulations Governing Prefectural Organization unless the local taxes were specifically changed by these regulations. This provision meant that the Local Tax Regulations which were first enacted in 1878 and which were completely amended in 1880 continued in effect during the middle part of the Meiji Period (1882-1898). Yet even in this period the Local Tax Regulations were changed somewhat and they were modified even further in those districts where the Regulations Governing Prefectural Organization were enforced. The provisions of these latter regulations that brought the changes in local taxes were briefly as follows. The governor, upon resolution of the prefectural assembly and with approval of the Home Minister and Finance Minister, was given the authority to impose a house tax (kaoku-zei) throughout the entire prefecture or wherever the Regulations Governing Organization of Cities had gone into effect; though he could not levy a household tax (kosū-wari) where the house tax was in effect. As a substitute payment in whole or part for the house tax or household tax the assembly was empowered to authorize a tax in statutory labor or goods for undertakings defrayed by prefectural expenses. The persons (natural or juridical) who were required to pay prefectural taxes had to 1) possess within the prefecture a house and lot or be engaged in business in an established store or 2) to have set up a home and resided therein at least three months. The former paid the prefectural taxes levied on his house and lot or business and the latter paid those on his home or homes. Unless otherwise provided by special provision of law or ordinance, the head official of each city, town, and village was to collect the prefectural taxes by the same
procedure that he collected the taxes for his own municipality. (The Prefectural Tax Collection Law was promulgated in October 1890). As a final word on prefectural tax collection, the Regulations Governing Prefectural Organization allowed the tax payer who discovered a discrepancy in the prefectural tax assessment to make application to the office issuing the official payment order within three months after receiving the order; and if the office made no correction or if the correction was unsatisfactory, the individual could appeal first to the rural division council, then to the prefectural council, and finally to the Court of Administrative Litigation. In the cites, appeals were submitted directly to the prefectural council rather than to the rural division council.

In addition to national and prefectural taxes there remains only one other category of tax to consider. This is the city, town, and village tax. As provided by the Regulations Governing Organization of Cities and by the Regulations Governing Organization of Towns and Villages, the tax that could be levied as a city, town, or village tax was to be 1) a surtax on national and prefectural taxes and 2) a special tax. The surtax was customarily added to the national or prefectural tax and was collected uniformly from all cities, towns, and villages. The special tax could only be levied on certain cities, towns, and villages. The city, town, and village taxes were again defined in July 1888 in a notification of the Finance Department that classified taxes into direct and indirect taxes. The direct taxes were subdivided into 1) city, town, and village tax (land rate: imposed on assessed value, acreage rate, household rate, house rate, and business rate); 2) local tax (land tax rate, household tax, business tax, and miscellaneous tax), and 3) national tax (land tax and income tax). All other taxes were specified as indirect taxes. The persons who were obliged to pay the city, town, or village tax were persons that resided therein for at least three months. Even a person did not set up a residence within a city, town, or village nor stay longer than three months, he still had to pay the city, town, or village tax on his
house and lot or on his business or income if he owned a house or lot or operated a business (itinerant tradesmen excluded) within one of these municipalities. A tax in statutory labor or in goods could be imposed on the taxpayer for the commencing of public projects or for the maintenance of peace in the municipality. When the taxpayer wished to appeal against the imposition of a city tax he had to file his complaint with the city council within three months after receipt of the tax notice. From there appeals could be taken to the prefectural council and finally to the Court of Administrative Litigation. Similarly any appeals against a town or village tax could be made within three months of the tax notice to the town or village head, and from there the chain of appeal stretched to the rural division council, the prefectural council and finally to the Court of Administrative Litigation. When the municipal tax requirements were not met and the payment demands of the city council or town and village head were also disregarded, the tax delinquent could be forced to pay his taxes by invoking the Law for the Disposition of Delinquency in National Tax Payments. The city, town, and village by-laws also made it possible to collect a reminder fee from the tax delinquent if it became necessary to press him for payment of his taxes.

c. Police

The important legislative developments relating to the Japanese police during the middle part of the Meiji Period were concerned primarily with changes in police organization and jurisdiction. Before discussing these changes, however, it should be remembered that the administrative police in all districts of Japan except Tokyo were under the Police Bureau (Keihokkyoku), a nationwide office that succeeded the Board of Police (Keishikyoku) in January 1881. The Police Bureau itself was under the jurisdiction of the Home Minister. But in Tokyo, police affairs were administered by the Metropolitan Police Office.

The first change of note concerns the police stations
(keisatsusho) and constable stations (junsan tonsho) that were under the jurisdiction of the Metropolitan Police Office. These stations had been originally established in 1881 as a result of Western influence, but because of mutual conflict in precinct jurisdictions and police interference with the constable stations, the latter were finally combined with the police stations in July 1885. As a result, the police superintendent (keishi) who headed the police station also became the chief official of the constable headquarters. Accompanying this change a receptionist was created for each police station and the practice of allowing people to take their complaints directly to the head of the police station was discontinued.

There were changes for the other prefectural police as well as for the police of Metropolitan Tokyo. Whereas formerly the prefectural police chief complied directly with the orders of the Home Minister and reported directly to him with respect to the prefecture’s higher police (kokujii keisatsu) duties, this arrangement was changed by the Regulations Governing the Organization of Local Government Officials (July 1886). Accordingly, the prefectural police chief now became responsible to the governor for the execution of the higher police duties as well as for all other police business. By these same regulations one police station was created in each rural division and ward, and each was given control over the higher police, the administrative police, and the judicial police within its precinct. And each station, of course, was charged with the enforcement of laws and ordinances. When the Regulations Concerning the Organization of Local Government Officials was amended in 1890 the cities of Osaka and Kyoto were given the authority to establish two or more police stations after obtaining the Home Minister’s approval; and as the result of another amendment in 1893 it became possible to create police stations by Imperial ordinance when ever they were needed, without any regard for rural division and city boundaries.

For self protection while on duty the constables were at first armed with six foot staffs. Then in 1874 the first class
constables of the Tokyo Metropolitan Police Office were permitted to wear a sword, a practice which was made permissable for all constables in 1882.

While discussing the changes and improvements taking place in Japan's police system, we cannot fail to mention the distinguished service of Wilhelm Haehn, a Prussian who was hired to train the Japanese police. In order to train the Japanese police officers and constables Yamagata Aritomo had at first created a training institute soon after becoming Home Minister in 1883, and as head of the institute he had appointed Higaki Naoe, Chief of the Police Bureau. Then Haehn and another German were employed as instructors. Haehn, who was chiefly engaged in training the chief officers (keibu) of the police stations, gave instructions to the police cadre from 1885-1890. He also made a report to the government on police conditions after making a tour of all sections of Japan. In his report he pointed out the inefficiency in having a number of constables dispatched in group patrols from a police station or a branch station, and he insisted that the constables be stationed at dispersed intervals. In keeping with Haehn's views therefore police substations were created throughout Japan in 1888 and 1889.

As Japan's police organization grew, the classification of the police branched out and by 1886 the administrative and judicial police were eventually joined by a third branch known as the higher police. This branch of the police apparently evolved from the political police (kokuji keisatsu) function that constituted part of the duties of the Tokyo Metropolitan Police during the early part of the Meiji Period. The political police duties, according to different enactment issued between 1874 and 1886, were always discharged under the direct supervision of the central government. In 1874, for instance, the Tokyo Metropolitan police chief was ordered to comply directly with the instructions of the Central Chamber in carrying out these duties; and in January 1881 the police chief was instructed to give direct compliance with the Chancellor, the Ministers of
Left and Right, and the Junior Councilors. Likewise the chiefs of the prefectural police were ordered in November 1881 to get their instructions directly from the Home Minister. Though not clearly defined from the beginning it may be assumed that this type of police activity obliged the police to secretly ferret out and take preventive measures against political offenses. At any rate such was the definition of political police duties in the Metropolitan Police Constitution of 1881. The term political police (kokuji keisatsu) was formally changed to higher police (kōtō keisatsu) by the Regulations Governing the Organization of Local Government Officials (July 1886). On account of the importance of the higher police functions they were specifically cited by the aforementioned regulations as one of the duties of the prefectural police chief, though as we have just explained the police chief after 1886 received his instructions concerning the higher police from the prefectural governor and the governor in turn received his instructions from the Home Minister.

Turning now from the police controls for political offenses to the control of prostitution and gambling, it will be recalled that the right to dispose of cases involving illicit prostitution continued to remain in the hands of the police after this authority had been granted them in January 1876. As for gambling, notwithstanding the fact that the Criminal Code (1880) carried explicit provisions on this vice, a decree of January 4, 1884, provided that the control and punishment of gambling would be temporarily administered by the administrative police (Tokyo Metropolitan Police and the local authorities) in accordance with the Gambling Regulations. The reason that the Criminal Code was bypassed for the Gambling Regulations is that the relaxation in control over gambling following enforcement of the Criminal Code in January 1882 had produced serious evils, and it was thought therefore that gambling offenses could be most appropriately dealt with by letting the administrative police administer the disciplinary punishments. Like the punishments for illicit prostitution, the punishments for gambling as prescribed by the Gambling Regulations consisted nominally of disciplinary
punishment and correctional fines, though in actuality they were equivalent to the punishments of imprisonment at hard labor and penal fine respectively that were found in the *Criminal Code*. The name of the punishments in the *Gambling Regulations* were no doubt purposely made to differ with those of the *Criminal Code*, since the punishments of the *Gambling Regulations* were to be administered by administrative officials rather than judicial officials. Within a few years gambling was largely done away with and, since the delegation of control over gambling and illicit prostitution was only an emergency measure, both the January 1876 decree on prostitution and the January 1884 decree on gambling were repealed in 1888 and 1889 respectively.

Besides having temporary jurisdiction over gambling and illicit prostitution, the police had permanent jurisdiction over the minor offenses that were known as contraventions (*ishiki, keii*). They had acquired the right to deal with these minor offenses in 1872 and 1873 when the *Regulations Governing Contraventions* had been issued first in Tokyo and afterwards in the districts. Contraventions were later renamed police offenses (*ikeizai*) when the *Old Criminal Code* (1880) reclassified law violations into the three categories of police offense, misdemeanor, and felony. Judgment of police offenses was to be rendered by the Peace Courts (*Chian Saibansho*) subsequent to the enforcement of the *Code of Criminal Instruction* in January 1882, and the penalties for such offenses were to be limited to detention and minor fine. But before the enforcement date of the *Code of Criminal Instruction* arrived, the Council of State issued several decrees between September and December 1881 that caused police offenses to be tried for the time being at police stations and at their substations, and one of these decrees made appeals against judgments in police offenses inadmissible. By the end of 1884 however, the Justice Department protested that it was unfair to disallow appeals in minor offenses just because they were police offenses and it urged the enactment of summary trial regulations for this category of offenses. By September 1885 therefore the Council of
State decreed the *Summary Trial Regulations for Police Offenses* and these superseded the provisional procedure that had been laid down by the Council of State in 1881. Under the new summary trial regulations the chief of the police station, the chief of the substation and their deputies were given the power to make summary convictions for the police offenses committed within their precincts. No formal trial was needed in such cases. Immediately after hearing the defendant’s oral statements and examining the evidence, the police official could render a judgment. Or even if the defendant did not appear in court (whether summoned or not) a judgment could be written out and served on the defendant or delivered to his residence. After conviction the defendant could request a formal trial, though he could not go directly to a court of appeal. An application for a formal trial had to be submitted to the police station within three to five days after judgment, depending upon whether the sentence was read directly to the defendant or delivered to his home. If no applications were filed within this period, the judgment was final. When a person under confinement applied for a formal trial and he received a summons, he was immediately released from jail. Inasmuch as the summary trial regulations left an avenue open for a formal trial and thus did not clash with the *Constitution*, which gave each Japanese the right to be tried by judges determined by law, the *Summary Trial Regulation for Police Offenses* (1885) were allowed to continue in effect after enforcement of the *Constitution* in 1890. Another point concerning police offenses that should be observed here is that the *Old Criminal Code* made it possible for each locality at its own convenience to formulate police offenses in addition to those mentioned in the *Old Criminal Code* itself; and in September 1890 it was determined by Imperial ordinance that ten yen fines and detention could be imposed even for violations of orders issued by the Chief of the Tokyo Metropolitan Police and by the local authorities.

Having now summed up the legislation concerning the general powers of the police, let us next consider the special
laws that were put at the disposal of the police for the preservation of public peace and order. These include the various codes of regulations that controlled the publication of books and newspapers, public meetings, and the preservation of public peace.

As we have noted earlier the Regulations Governing the Publication of Books were first proclaimed in June 1869 and were revised at different intervals thereafter. In December 1887 these regulations were again completely amended by Imperial ordinance, though at this time a law passed by the Diet made it no longer necessary to present a copy of the manuscript for inspection. Finally in April 1893 the Regulations Governing the Publication of Books were superseded by the Book Law, although no major changes were brought about by this new enactment.

The existing Newspaper Press Law of 1875 was amended throughout by decree in April 1883. Owing to the changes made in this law increased responsibility was placed on the persons connected with the publication of newspapers; and evasion of the press law was discouraged by a variety of new provisions. The most important of these provisions were the requirements demanding a sum of money as security, and the suppression of all newspapers belonging to one individual or publisher when any one of them was suppressed. The sum of the security money depended upon the location of the newspaper, and it had to be paid when application was made for the publication of any newspaper except those containing only matters relating to science, art, statistics, government orders and market price reports. When the newspaper was located in Tokyo the security money amounted to one thousand yen, in the other major cities it was seven hundred yen, and elsewhere only three hundred and fifty yen. Only half this amount was required if the newspaper was published three times per month or less and the security money was returned when the newspaper was discontinud or prohibited. The prohibition and suspension of a newspaper could be ordered by the Home Minister when he deemed that its articles were prejudicial to public peace and
order or detrimental to morals, in which cases he could seize the newspaper or prohibit its sales; and in serious cases he could even seize the printing equipment. Banned from publication were the proceedings of the major government offices, the closed door deliberations of the prefectures, and the preliminary investigations of felonies and misdemeanors; and, furthermore, no official document, no memorial, no representation, and no petition that was not formally announced to the public could be published without permission of the competent government office. Included in this ban also was news concerning Army and Navy movements and general military affairs—all of which could be kept from publication by express order from the Army and Navy Ministers. Although it was natural that publications of an obscene character should be banned, the fact that "libelous caricatures" were also prohibited is an indication of the atmosphere of the period. The Newspaper Press Law underwent radical revision once more in 1887. Among the most important changes, it became no longer necessary for the publisher to wait until his application was approved before publishing the first issue of his paper, he was now only required to submit application to the Home Ministry two weeks prior to the first issue. Important, too, were the changes which made it possible for a publisher to continue to publish any of his several newspapers when only one of them was specifically suppressed, and which eliminated the government's right to seize printing equipment when a newspaper was prohibited or suspended. These amendments made the Newspaper Press Law look a bit more liberal, and made it stand in sharp contrast to the contents of the Peace Preservation Regulations which were promulgated only three days before the amended Newspaper Press Law was enacted. Following the establishment of the Diet in 1890 the amendment of the Newspaper Press Law became an issue in almost every session. The chief demands of the Diet called for the repeal of the provision requiring security money and for the abrogation of the provision that permitted suppression and suspension of the press by executive action.
At length in March 1897 the Diet abrogated the Home Minister's right to suppress the publication of newspapers.

The same as the preceding special laws, the Regulations for Public Meetings were also amended in June 1882 by Council of State decree. The principal amendments were these. Anyone organizing an association for the purpose of lecturing or deliberating on political subjects, no matter under what name, was required to inform the police authorities in advance. When an assembly was ordered to dissolve, the local governor or Chief of the Metropolitan Police could, depending on circumstances, prohibit the speakers from publicly lecturing or discussing politics in that jurisdiction for as much as one year; and this same sanction, which could be imposed on the speaker by the Home Minister, applied to speeches anywhere in Japan. Political parties were prohibited from forming branch organizations; police officials could attend scientific or any other public meetings when they thought it necessary for the maintenance of public peace; and the Home Minister could ban any meeting or association when it seemed prejudicial to the public peace. As a result of the enactment of these regulations it is fair to say that the government went to the extreme in suppressing political parties. Still, these regulations were not the only ones that applied to associations and public meetings, for similar provisions appeared five years later in the Peace Preservation Regulations (1887) and in the Public Meeting and Political Party Law of July 1890. Of this latter law's regulations the new and important provisions were as follows. The sponsor of a political meeting (who had to be a mature Japanese male possessed of civil rights) was bound to report the necessary particulars of the meeting forty-eight hours in advance to the proper police authorities; and this same advance time notice applied equally to the sponsor of any outdoor public meeting or mass demonstration. Outdoor political meetings however were banned; and no public meetings and demonstrations could be held within a seven and a half mile radius of the Diet when it was in session. Furthermore, no woman, foreigner, or man under age could attend political
meetings or join political organizations. No organization was allowed to use an emblem or flag, and no political party had the right to frame regulations that would make their members responsible outside the Diet for the views that they expressed and the ballots that they cast at a legally organized session of the Diet. Though it is true that this law contained oppressive regulations for political meetings and parties, a spirit of leniency was not altogether lacking. For to establish a party it was merely necessary to report the particulars to the police authorities; no permit was required. But once established by this simple procedure the political meetings were then subject to rigid regulations. Amendment proposals for the Public Meeting and Political Party Law came up regularly in the Diet for discussion until one was passed in 1898. This amendment, it should be pointed out, gave recognition to the creation of branch political organizations and thus made possible wide scale political activity of a regional and national scope.

Now as for the Peace Preservation Regulations, to which reference has just been made, they were promulgated suddenly and just at a time when the capital was seething with disorder. The capital was crowded with public spirited men who had made their way from the districts to conduct public meetings and demonstrations and to present memorials on the burning issues of the day. Revision of the unequal treaties, reduction of taxes, and freedom of speech and assembly were the big issues, and the militant throng in Tokyo was making them heard. To answer this disorderly political threat and preserve public order the government unanimously adopted as an emergency measure the Peace Preservation Regulations; although the government's unanimity had only come about after strong differences of opinion had been expressed within the government's inner councils. Aimed primarily at ridding Tokyo of the liberal rights advocates, the Peace Preservation Regulations had originally been named the Expulsion Regulations, but this tentative title was later discarded because Inoue Kowashi thought it was too blunt. When promulgated, the Peace Pre-
servation Regulations contained only seven articles. Of these the first five were the most significant. The first article prohibited secret societies and meetings; the second allowed the police to use their discretion in putting a stop to open air meetings; and the third provided that any person plotting or instigating a disturbance or anyone printing or publishing books or pictures designed to disturb the public peace would be liable to confiscation of the equipment used in their preparation. The fourth gave the Metropolitan Police Chief and the local authorities, with the sanction of the Home Minister, the power to expel within a fixed period of time from a seven and a half miles radius around the Imperial Palace or Imperial place of resort anyone staying in that area who was plotting or inciting a disturbance, or who was judged as a potential violator of the peace. And the fifth article specified that when peace and order in any locality should be endangered by popular upheavals or preparations for disturbances, or by secret plotting, the Cabinet could invoke the following sanctions, either wholly or in part, in that locality for a fixed period: 1) ban all public meetings unless previously sanctioned by the police authorities, 2) ban the publication of newspapers and other printed matter unless previously censored by the police authorities, 3) ban the personal use, transportation and sale of guns, pistols, gunpowder, swords, sword-canies, etc., unless specially authorized by the authorities, and 4) inspect the comings and goings of travelers and establish a passport system. For the enforcement of the above five articles the government had at its disposal the necessary sanctions, among which those for article four were the most important. By the terms of article four any violator of this article could be expelled from a seven-and-a-half mile radius of the Imperial palace or Imperial resort for as many as three years; and when a person did not promptly comply with the expulsion order or when he returned before expiration of the order, he became liable to a penalty of from one to three years' minor imprisonment and then to police surveillance for a period not exceeding five years; such surveillance being exercised within
the district of the offender's permanent registration. According to popular tradition, Mishima Michitsune, who was then the Chief of the Metropolitan Police, hesitated to enforce these regulations and only did enforce them with the urgings of Yamagata, the Home Minister. Yet no sooner had these regulations appeared in an extra edition of the Official Gazette on December 26, than the police on the very same night began to round up—under conditions resembling martial law—the public figures marked for expulsion from Tokyo; and within two days close to six hundred persons including Hoshi Tōru, Nakashima Nobuyuki, Ozaki Yukio, and Kataoka Kenkichi had been banished from the capital. Ultimately in June 1898 the Peace Preservation Regulations were repealed.

Another piece of legislation having as its object the preservation of public order, and always to be remembered in association with the Peace Preservation Regulations, was the Precaution Order of January 1892. In the name of public peace the Precaution Order permitted the prefectural governor to order anyone to take up a lawful occupation within a prescribed period when, in the absence of regular work, the individual was leading a life of violence, when he was attempting to or was obstructing public meetings, or when he was interfering in the execution of another person’s duties. In case the guilty party disregarded an order to desist, he was liable to a fixed punishment. The need for this type of legislation had been pleaded by certain government officials even before the issuance of the Peace Preservation Regulations, yet the Precaution Order was not announced and enforced until just before the lower house election in February 1890, a time explicitly chosen by the Matsukata cabinet for crushing the popular parties. Used together the Peace Preservation Regulations, which could be applied to limited areas, and the Precaution Order became weapons in the hands of Home Minister Shinagawa Yajirō for an unprecedented interference in the 1890 election. In January 1914, however, the Precaution Order was repealed.

In concluding our sketch of the police during the middle
years of the Meiji Period, brief mention should be made of the *Martial Law Order* that was decreed by the Council of State in the year 1882. According to this order, the declaration of martial law was a method of accomplishing through military force the defense of all or part of Japan in war time or during a serious civil disturbance. There were two types of martial law: one was declared for a war zone (an area marked off for defense and made into a zone of actual hostilities during war time or during a serious civil disturbance), and the other was declared for a siege area (an area marked off for defense when under enemy siege, attack or during some serious civil disturbance). When martial law was declared in a war zone, only those local administrative and judicial matters involving the military were delegated to the local commanding officer, but when martial law was declared in a siege area not only these same matters but, in addition, all civil offenses and special offenses involving the military were justiciable by military offices. If there were no courts in the siege area or avenue to them were cut off, the military offices judged criminal and civil cases without distinction and appeals against their judgments were inadmissible. In areas under martial law the commanding officer had, among other powers, a suspensory power which he could invoke when the tenor of public meetings, newspapers, periodicals and public notices were judged a nuisance, and there could be no compensation for damages arising from the execution of these powers. Even after promulgation of the *Constitution* (1889), which clearly specified that the declaration of a state of siege was a prerogative of the Emperor and that its conditions and effects would be determined by law (Article XIV), the *Martial Law Order* continued in force since it did not clash with the *Constitution* (Article LXXVI).

d. Administrative Petitions and Actions

From what has been observed earlier any Japanese in the early part of the Meiji Period was allowed to present memorials (*kenpaku*) of a general petitionary nature to the government,
although the person who tendered a memorial was never informed of its disposition. The right of a Japanese to submit an administrative petition was not given recognition until the Council of State decreed the *Regulations for Ordinary Petitions* in December 1882. Though the title of these regulations would seem to indicate that ordinary petitions (*seigan*) were the subject matter concerned, the regulations actually dealt with administrative petitions (*sogans*) that were to be filed by the individual when his interests were injured by an administrative disposition. Under the terms of the *Regulations for Ordinary Petitions*, an appeal concerning matters within the competency of a head of a rural division, ward, town, or village was first appealed to the proper head and if satisfaction was not obtained at this level, the channel of petition progressed to the governor, then to the competent minister of state and, if necessary, eventually to the Council of State. A petition relating to the official duties of the prefectural governor or chief of the Tokyo Metropolitan Police was first filed with whichever of these two officials was concerned; and their decisions could be appealed first to the competent minister of state and then finally to the Council of State. Similarly a petition that was filed in the beginning with a minister of state could be appealed in the end to the Council of State. Each time that a petition was moved from an inferior government office to a superior office it had to be accompanied with written instructions from the inferior office. And no matter at what level an administrative petition originated, it was allowed to ascend the hierarchic ladder of administrative offices until it obtained relief or until a final solution was offered by the government's highest organ—the Council of State. The petition was not made orally but in writing, and it could be delivered to the proper office by mail. Although a petition could not be presented by proxy, it was permissible for three or less than three of the petitioners to be chosen as representatives and entrusted with the petition when it was severally signed. No petition could be made in the name of a deputy of a prefecture, rural division, city, or association. A company established by
law, however, was not barred from using a representative to file a petition. Once a petition was approved by the Council of State, the petition was handed to the competent department for disposition; but no petition could be filed twice with the Council of State if it had once been accepted there. Neither was it possible for the petitioner to take his administration petition to a court of law, nor could he refuse to accept an administrative disposition on the ground that this appeal was an ordinary petition (seigan). Matters that properly belonged in a memorial would not be accepted in a petition even though the petition was filed on the pretext that the interests of the individual were affected. And no petition would be accepted when it was filed five years subsequent to the administrative disposition in question. Lastly, it was against the above-mentioned regulations to publish petitions in newspapers or in other printed media.

Two years following the announcement of the Regulations for Ordinary Petitions, Roessler drafted another law for administrative petitions; and by October 1890 it was promulgated as the Law Concerning Administrative Petitions. By this new law, which had nothing to do with the ordinary petitions submitted to administrative offices, an administrative petition was presented directly to the next higher administrative office through the administrative office that had made the disposition in question; and when the next higher office had made a decision on the petition, the petition could again be appealed by sending it through the office having made the decision to the next higher office until finally the petition reached the minister of a department. A petition filed against a disposition made by a department minister had to be submitted to his department. After a petition had been decided upon by a court of law, by a department of state, or after a prefectoral council had rendered a decision in a petition against a rural division council or city council disposition or decision that concerned national administration, no further petition concerning the matter in question could be lodged. Unless otherwise specially provided in laws and ordinances, an administrative petition could only be made in
regard to the following matters: 1) imposition of taxes and fees, 2) dispositions for recovery of taxes in arrear, 3) refusal or annulment of business licenses, 4) irrigation and public works, 5) dividing of land between the government and private individuals, and 6) local police. The petition had to be submitted in writing within sixty days of the administrative disposition against which it was filed or within thirty days after a decision had been reached by an administrative office; although this time limit could be extended when an administrative office judged that the circumstances warranted an extension. There were no oral examinations and a decision for the petition was put in writing. As a rule administrative dispositions were not suspended by a petition. When a decision on the petition was reached or when the petition was rejected, the petitioner was so notified by the administrative office that had originally made the disposition. And any decision formed by a higher administrative office was binding on a lower office.

Now, besides these two laws that laid down the rules for administrative petitions, what in the way of legislation for administrative actions was there during the middle part of the Meiji Period? We have seen already that during the first part of the Meiji Period there was no single and uniform law for administrative litigation. In this early stage of the new regime administrative hearings were simply made the province of the judicial officials, which, as it will be remembered, had caused the government to devise various measures to prevent the judiciary from placing restraints on the executive. Even after entering the middle years of the Meiji Period there was still no single and complete law concerning administrative litigation; and before enactment of the Law Concerning Administrative Litigation in 1890 there are only two enactments that deserve our attention. The first was Yamagata's municipal legislation (April 1888), which provided for a Court of Administrative Litigation, at least in name, and which provided for the institution of administrative actions having relation to the municipalities. This municipal legislation stipulated that administrative
litigation would be adjudicated for the time being by the cabinet, and the assumption underlying the litigation was that, prior to filing an administrative action, an administrative petition would be previously filed at, and determined by, certain administrative offices of the government. The second important enactment on administrative litigation (June 1889) specified that administrative actions would be received and tried by the Courts of Appeal and that judgments for these actions would be delivered subsequent to a ruling by the cabinet.

But it must not be thought that these two pieces of legislation completely represent the government's concern for administrative litigation during the middle part of the Meiji Period. For as early as 1882 Itō had been given instructions to include the topics of petitions and administrative adjudication in his study of European constitutional law, and a number of draft laws for administrative litigation were prepared following his return from Europe in 1884. One of the drafts was made by Roessler while Itō was head of the Legislation Research Bureau; another was compiled in 1885 under the Bureau of Legislation; a third was prepared by the framers of the Constitution; and a fourth one, which was destined to become law, was a revised version of a draft by Mosse. After being revised again by the Privy Council and having passed the deliberations of the cabinet, Mosse's draft was promulgated in June 1890 as the Law Concerning Administrative Litigation. This law, which had the reputation of being strongly influenced by Austrian law, derived its authority from a provision of the Constitution that required lawsuits relating to rights supposedly infringed by illegal measures of the administrative authorities to fall within the competence of the Court of Administrative Litigation.

The Law Concerning Administrative Litigation established the Court of Administrative Litigation in Tokyo, and it provided for the creation of one court president and several justices (kyōjōkan) and clerks whose number was to be determined by Imperial ordinance. The Court of Administrative Litigation judged the administrative actions that were placed within its
jurisdiction by law and ordinance, though it could not accept and judge any actions for damages. As a rule an administrative action could not be instituted until an administrative petition had been filed at, and a decision had been obtained from, the superior administrative office of the petitioner's district; but in case a department minister, an office under the direct control of the cabinet, or the superior administrative office of a district made an adverse disposition, the aggrieved party could institute an administrative action directly with the Court of Administrative Litigation without first filing an administrative petition. However, no administrative action could be filed at the same time that an administrative petition was being lodged with a department or the cabinet. When the administrative court rendered a decision, it was binding on the administrative office involved in the action, and against the court's decision no appeal was allowed. An administrative action had to be filed within sixty days after the unsatisfactory disposition was made or after an adverse decision had been given. During the litigation proceedings, which were usually open to the public, documents and litigants could be examined, although a decision based on documents alone could be rendered when the plaintiff, the defendant, and third party did not desire an oral examination. In case the Law Concerning Administrative Litigation lacked appropriate provisions for administrative court procedure, the rules relating to civil procedure could be applied according to the dictate of the Court of Administrative Litigation. In the event that jurisdictional disputes might arise between the Court of Administrative Litigation and the ordinary courts or the special courts, such disputes had to be deferred for decision to a court having proper jurisdiction or to the Privy Council until such time that a competent court would be created.

In general the types of cases that were admissable to the Court of Administrative Litigation related to 1) the imposition of taxes and fees (excluding custom duties), 2) the dispositions for recovery of taxes in arrear, 3) the refusal or annulment of business licenses, 4) irrigation and public works, and 5) the
dividing of land between the government and private individuals. Owing to the brevity of the provisions of the Law Concerning Administrative Litigation and to their many flaws, amendment proposals were put forward frequently after 1893 by Diet members and by the government, but none of the proposals ever became law. Hence during the Meiji Era this law remained unchanged and it continued in force down to the conclusion of World War II.

8. ESTABLISHMENT OF THE JUDICIAL SYSTEM

a. The Law of the Constitution of the Courts

The Japanese scheme of courts was greatly improved by the reform of 1875 and by the reforms that ensued shortly thereafter, but these innovations were not the last of the changes to be made in Japan's judicial system. Still another scheme of courts was to be created on January 1, 1882, with the enforcement of the Code of Criminal Instruction. By the terms of this code the courts were to be classified as follows:

1. Courts for police offenses: to be held in the Peace Courts
2. Courts for misdemeanors: to be held in the Courts of Original Jurisdiction (shishin saibansho)
3. Courts for felonies: to be held every three months in the Courts of Appeals or in the Courts of Original Jurisdiction
4. Supreme Court
5. Special Higher Court (Kōtō Hōin) to be held when the Justice Minister's petition to open this court was sanctioned by the Emperor

In virtue of the judicial changes thus anticipated by the Code of Criminal Instruction, the government initiated a general legislative overhaul of the judicial system in 1881 as a means to prepare the way for the operation of the new courts. First of all the Council of State in October 1881 decreed the location and the district boundaries of the Courts of Appeal, the Courts of Original Jurisdiction and the Peace Courts (the material
jurisdiction of these last two courts was determined by separate decree/December 1881). Upon coming into being the Courts of Appeal, the Courts of Original Jurisdiction and the Peace Courts replaced the existing Higher Courts, the District Courts, and the Local Courts respectively. Within the Court of Original Jurisdiction a court of misdemeanors was created, both being made coexistent. Then in January 1882 the Justice Department ordered that any records submitted to the Justice Department by the Peace Courts would have to be passed through the Courts of Original Jurisdiction. This order of course did not mean that the relation between the Court of Original Jurisdiction and the Peace Courts was a head and branch relationship as had previously been the case between the District Court and the Local Courts. The branch courts of the Courts of Original Jurisdiction were not created until January 1883, at which time they were given the same jurisdiction as their head courts.

In passing, brief mention should be made of the Regulations Concerning the Record of Administration of the Personnel of the Supreme Court and the Other Courts of Law. These regulations, issued in December 1884 by the Justice Department, contained detailed provisions for grading the official performance of the judges, public procurators, and other justice officials so that the Justice Minister would have the necessary information upon which to base future appointments.

The next important enactment concerning the judiciary came as part of the general judicial reform that accompanied the abolition of the Council of State and the creation of the cabinet in December 1885. Issued by Imperial order, this enactment was known as the Regulations Governing the Organization of the Courts. These regulations confirmed the classification of courts which had appeared in the Code of Criminal Instruction and they also defined the general terms for "judge" and "procuratorial officer". The term judge (saibankan) was defined as a general name for the president of a court, the head of a court division, a justice (hyōjōkan), a magistrate (hanji) and a probationary magistrate. The term procuratorial
officer (*kensatsukan*) was a general designation for a superintendent public procurator, a public procurator, and a probationary public procurator. A justice (*hyōjōkan*) served in a Court of Appeals or in the Supreme Court while a magistrate (*hanji*) served in a Peace Court or Court of Original Jurisdiction. The division heads (*kyokuchō*) presided over the first and second criminal divisions and over the first civil division of the Supreme Court, the second civil division being headed by the Chief Justice of the Supreme Court. A public procurator was attached to each of the courts except the Peace Court where a probationary procurator discharged the procuratorial duties. But even the Peace Court was assigned a procurator after December 1887. In addition to the probationary procurator, the Peace Court had a mediator and a bailiff. The bailiff served documents and enforced decisions and orders in accordance with the *Code of Criminal Instruction*, the law of legal procedure, and in accordance with any other laws or ordinances. The bailiff, however, was not immediately created at this time. Aside from classifying the courts and the court officials, the *Regulations Governing the Organization of the Courts* were particularly important because they secured the status of the judges by providing that no judge could be removed or punished against his will except by a criminal or disciplinary decision. There were no stipulations, however, against transferring judges; and any judge or procurator besides the justices of the Supreme Court, the justices of the Court of Appeals, and the superintendent procurator and the President of the Court of Original Jurisdiction could be assigned to courts of the Justice Minister's choosing.

Four years after being promulgated, the *Regulations Governing the Organization of the Courts* (1886) were superseded by the *Law of the Constitution of the Courts*. This law, which was designed to furnish Japan with a judicial system that would merit the abolition of extraterritoriality and also provide the necessary judicial institutions needed for the proper enforcement of the *Constitution*, was drafted by a German named Rudolf.
Rudolf had originally come to Japan in 1884 to lecture on Roman law and constitutional law for the Tokyo University's Faculty of Law, though in 1885 he had become a legal consultant to the Justice Department and in May 1887 had been entrusted with the legal research of the Foreign Department. The work of preparing the Law of the Constitution of the Courts was probably begun in the legal research committee that was created under the Foreign Department in August 1886, for this was a time when the Foreign Department was trying urgently to prepare various codes of law in preparation for the revision of Japan's treaties with the Western powers. At any rate Rudolf's draft was translated from German to Japanese by the Translation Bureau of the Foreign Department. Then in October 1886 the legal research committee was transferred to the Justice Department where the first of the deliberations on Rudolf's draft were made. After inspection by this committee, the draft law was examined by the cabinet, the Genrō-In, and finally by the Privy Council, where the draft was considerably altered. Promulgated in February 1890, the Law of the Constitution of the Courts became effective in March 1891.

It is interesting to note here that M. Boissonade also drafted a law on the organization of the courts, although his draft failed to be adopted.

As a result of the enactment of the Law of the Constitution of the Courts the former Peace Courts became Local Courts, the Courts of Original Jurisdiction became District Courts, and the Courts of Appeal and the Supreme Court simply remained as they were. The judgments of a Local Court were rendered by a single judge, while the judgments of the other three classes of courts were rendered by a collegiate body of judges. Aside from the judges, each court had a clerk's office; and in the Local Court there was a bailiff, although the bailiff could not actually be employed until the Code of Civil Procedure went into force in January 1891. The bailiff's duties were to serve documents issued by the court and to execute its decisions. As for the determination of a jurisdictional dispute arising between two
or more courts, this was left to the next immediately higher court having jurisdiction over the several courts involved in the jurisdictional issue.

In describing the organization and jurisdiction of each class of courts, as provided by the Law of the Constitution of the Courts, let us begin with the Local Courts. Ordinarily one judge was assigned to each Local Court, but when there were two or more to a court one of them was made the supervising judge and he was put in charge of the court's administrative business. The Local Court's jurisdiction in civil cases was of two types. One concerned claims in which the amount involved or the value of the object in dispute did not exceed 100 yen. The second type included 1) actions between lessors and lessees with respect to the renting of all or part of a dwelling house, 2) actions which concerned the fixing of boundaries of immovable property, 3) actions concerning possession, 4) actions between employers and employees with respect to a contract for one year or a shorter period, and 5) actions between travelers and hotel or restaurant keepers, or between travelers and carriers with respect to payments or with respect to items deposited by travelers for safe keeping. In the matter of actions the provisions of the Code of Civil Procedure had to be followed. In criminal cases the jurisdiction of the Local Court extended to 1) police offenses, 2) offenses for which the penalty was no more than two months imprisonment with or without a fifty yen fine, or a fine of not more than 100 yen, and 3) misdemeanors that were transmitted to the Local Courts from the District Courts or from their Branch Courts' procurator office because the offenses did not seem to merit a heavier penalty than category (2) immediately preceding and for which the penalty was two years in prison with or without a 200 yen fine or was punishable by a fine of not more then 300 yen. With regard to these punishments it should be observed that the Summary Trial Regulations for Police Offenses (1885) did not have to be altered as a result of the enactment of the Law of the Constitution of the Courts.

Next above the Local Court came the District Court, which
was a collegiate court of first instance. Each District Court had one president who directed the general affairs of the court and supervised its administrative business. This court also had one or more civil and criminal divisions; and in each division there were three judges, on of which was the presiding judge. In civil actions the District Court exercised jurisdiction in first instance over claims other than those which fell within the jurisdiction of the Local Courts or within the special jurisdiction of the Tokyo Court of Appeals; and in second instance the District Court had jurisdiction over appeals against Local Court judgments and over complaints (kōkoku) against Local Court rulings and orders. In criminal cases the District Court had original jurisdiction over criminal actions that were not within the competency of the Local Courts nor within the special competency of the Supreme Court; and in second instance the District Court's jurisdiction over criminal actions was identical to its second instance jurisdiction in civil cases except that, in addition, the court was competent to judge the general run of bankruptcy cases. Lastly, with respect to the District Court branches, these could be established by the Justice Minister whenever they were needed.

Above the District Court stood the Court of Appeals, a court of second instance. In some respects this court was similar to the District Court. The Court of Appeals, for example, had a collegiate body of judges and a president; it had one or more civil and criminal divisions; and the functions of the court president were based on those of the District Court President. The jurisdiction of the Court of Appeals extended to 1) appeals against judgments of the District Courts rendered in first instance, 2) re-appeals (jōkoku) against judgments of the District Courts that were rendered on appeals against judgments of the Local Courts and 3) complaints against rulings and orders of the District Courts. However, jurisdiction in both first and second instance over civil actions brought against members of the Imperial family belonged exclusively to the Tokyo Court of Appeals. Each division of the Court of
Appeals was composed of five judges, but the division of second instance that had jurisdiction over actions against the Imperial family consisted of seven judges.

The last and highest court of the land was the Supreme Court. This court, too, had one president who directed the general affairs of the court and supervised its administrative business, and it also had one or more civil and criminal divisions. The divisions each had seven judges, one of them serving as the presiding judge. The jurisdiction of the Supreme Court extended in final instance to re-appeals against decisions rendered in second instance by District Courts and Courts of Appeal, and to complaints against rulings and orders of the Courts of Appeal; and in both first and final instance the Supreme Court's jurisdiction extended to the preliminary examination and trial of offenses liable to imprisonment or graver penalty that were committed against the Imperial household, the state, or were committed by members of the Imperial family. In case a division of the Supreme Court, subsequent to hearing a re-appeal, expressed an opinion contrary to a decision previously handed down by one or more divisions of the Supreme Court with respect to the same point of law, the division holding the contrary view had to make a report to the president of the court and the president was then obliged, according to the report and nature of the case, to order all civil divisions or all criminal divisions, or all of both divisions of the court to sit together for a second hearing and judgment of the case in question. In forming a judgment, any opinion expressed by the Supreme Court on a point of law was binding on the lower courts in all particulars of the action concerned. Thus when an original judgment was quashed by the Supreme Court and the case was remanded to the original court or a court of the same class, either of these lower courts was bound by the conclusion in law that formed the Supreme Court's reasoning for the quashment.

The appointment of judges and procurators followed certain prescribed regulations of the Law of the Constitution of the Courts, by the provisions of which the judicial or procuratorial
candidate was required to pass two competitive examinations. Those who passed the first or general intelligence examination had to acquire three years' practical training in the courts and public procurators' offices as probationers before being allowed to take the second examination. Graduates of the Faculty of Law of the Tokyo Imperial University could become probationers without passing the first examination, and a person who had been a professor of law at the Imperial University for three years or more or had been an advocate could be made a judge or procurator without passing either of the examinations. Certain types of persons, however, were barred from these position altogether.

A judge held his position for life; and except when he happened to be in compulsory retirement or except when placed on the waiting list, he could not be transferred to another official position, or to another court, nor could he be suspended, dismissed, or have his salary reduced unless he received a criminal sentence or disciplinary punishment. Of course a judge could be transferred when he was a supernumerary judge or when there was a vacancy to fill. And if a judge became too feeble physically and mentally to discharge his duties he could be ordered into compulsory retirement by the Minister of Justice upon a resolution of a general meeting of an Appeal Court or Supreme Court. Moreover when a judge was left without a post as a result of a lawful reorganization of the courts he could be placed on the waiting list at half pay by the Justice Minister pending the occurrence of a vacancy. In regard to personal conduct while on the active list, judges were not permitted to publicly interest themselves in politics, or to become members of any political party or society or of any prefectural, district, or municipal assembly. Neither could the judges occupy any public office to which a salary was attached or which had pecuniary gain as its object, nor could they engage in any commercial business or other vocation prohibited by administrative ordinances.

The sittings of the courts were to be held at the courts or their branches. The presidency and the direction of proceedings
belonged in the collegiate courts to the presiding judge, and in the Local Courts to the judge holding the sitting. When a decision to suspend public trial was made by the court the reasons for the suspension had to be explained before the public was expelled from the courtroom, and the public had to be re-admitted in time to hear the judgment. The maintenance of order during the hearing rested with the presiding judge, who had the power to expel anyone interrupting the proceedings or behaving improperly.

The decisions of the collegiate courts were to be deliberated upon and delivered by a fixed number of judges in accordance with the Law of the Constitution of the Courts, but the deliberations were not to take place in public. In delivering their opinions the judges started with the lowest ranking judge and concluded with the presiding judge. When judges were of equal rank the opinions were given in order of age proceeding from the junior to the senior judge; but in a commissioned case the commissioned judge delivered his opinion first. The decision of the court was determined by an absolute majority. There were also provisions in the Law of the Constitution of the Courts to cover situations in which a majority decision could not be reached owing to a three way split of opinion.

To each court was attached a procurator's office. The territorial jurisdiction of the procurator's office was coextensive with that of the court to which it was attached. The procurator, who transacted his business independently of the courts, had the authority to institute criminal actions and to take the steps necessary for their prosecution; to demand the proper application of the law; and to see that the sentences of the court were duly enforced. The procurator was allowed to obtain information on civil cases and he was allowed to state his opinions on them. As a representative of the public interest the procurator also supervised the judicial and administrative matters belonging to or concerning the courts.

The head procurator attached to the District Court, the chief procurator of the Court of Appeals, and the Procurator-
General of the Supreme Court were responsible for distributing and supervising the business within their own offices. The other procurators, nevertheless, could represent these chief procuration officials in carrying out procuratorial business without having to obtain special permission.

Public procurators could only be dismissed by a criminal sentence or disciplinary punishment. In no way were they allowed to interfere with the judges in the discharge of judicial duties, nor could they transact any judicial business. And it was a fundamental rule all procurators should follow the orders of their superiors.

The legal basis and certain of the major principles of the Law of the Constitution of the Courts are to be found in the Meiji Constitution. The Constitution, for example, required that the organization of the courts be determined by law (Article LVII), that judges be appointed from persons passing proper qualifications fixed by law, and that criminal sentence or disciplinary punishment be the sole requisite for the dismissal of a judge (Article LVIII). The Constitution also included, with certain qualifications, the principle that trials and judgments be held in public (Article LIX). This last principle, however, was only confirmed by the Constitution, for as we have seen this principle was given recognition first in civil actions and, then, in criminal actions by the Code of Criminal Instruction (1882).

Another important point to be observed with respect to the courts is that the Regulations for Enforcing the Law of the Constitution of the Courts permitted administrative officials in certain specific instances to administer justice as though they were the Local Courts. For example, until a court could be established for the Ogasawara (Bonin) Islands and the Seven Islands of Izu, which were within the territorial jurisdiction of the Tokyo District Court, the officials of these islands were allowed to dispose of civil or criminal suits rightfully falling within the competency of a Local Court. Criminal procedure was also left to the convenience of these island officials.
ly, until a court could be created for Okinawa prefecture, the civil and criminal litigation within this prefecture that fell within the jurisdiction of a Local or District Court was left to the disposition of prefectural officials, although cases deserving the attention of a Court of Appeals were assigned to the Nagasaki Court of Appeals. As to trials for misdemeanors that were committed by convicts in the Kabato, Sorachi, and Kushiro prisons in Hokkaido, the *Regulations for Enforcing the Law of the Constitution of the Courts* left in force the decrees that had been issued by the Council of State in 1882 (decrees No. 16, No. 41) and in 1885 (decrees No. 42). However, these various provisions on trials became unconstitutional after the Constitution went into force, because Article XXIV of the Constitution guaranteed all Japanese the right to be tried by regular judges who were appointed according to law.

Following promulgation of the *Law of the Constitution of the Courts* two enactments concerning the personnel of the Courts were promulgated. One was the *Regulations for Bailiffs* (July 1890) and the other was the *Law for the Discipline of Judges* (August 1890). According to the latter, which corresponded to Article LVIII of the Constitution and which seems to have been drafted by Rudolf, a judge was punishable by a disciplinary court whenever he violated his official obligations and neglected his duties or whenever his actions destroyed the prestige and reputation of his official position. A disciplinary court was created in every Court of Appeals and in the Supreme Court. The disciplinary punishments included 1) reprimand, 2) reduction of salary, 3) transfer, 4) suspension from office, and 5) dismissal.

In addition to the legislation governing bailiffs and judges there was also legislation for lawyers. As noted earlier the *Regulations for Advocates* was issued in 1880, yet in March 1893 a new law known as the *Lawyer's Law* was promulgated. By this new law, a lawyer was defined as one who, upon receiving a mandate from a litigant or upon orders of the court, performed duties determined by law at an ordinary court of law. To be a
lawyer, a candidate had to be a Japanese of lawful age who had passed the bar examination and was registered in the name list of lawyers. Though in case the candidate was already qualified as a judge or procurator he was automatically exempt from the bar examination. After the candidate had become an advocate, he could only engaged in his profession if he joined the bar association in his district. And any infringement of the bar association regulations or of the Lawyer's Law made the lawyer subject to disciplinary punishment. Through enactment of the Lawyer's Law the legal arrangements for lawyers were greatly perfected.

Having treated the organization of the courts and the legislation concerning judges, procurators, lawyers and the like, it is appropriate now that some reference be made to the judiciary's independence during the middle part of the Meiji Period. Since 1872 when Etō had made such a strong stand for the judicial arm of the government, the judiciary had gradually strengthened its position for independence and, finally, in 1889 the Constitution went so far as to proclaim that the Courts of law would exercise the judicial power according to law (Article LVII). This provision of the Constitution made explicit that the law would be the basis for judicial decisions and that the judicature would be absolutely independent of all authority, particularly the executive. The big test for this declared independence of the courts was not long in coming. On May 11, 1891, only a few months after the Constitution had gone into effect, the Crown Prince of Russia, later to become Nicholas II, was attacked and cut on the head with a saber by Tsuda Sanzō, a member of the Russian Prince's police guard. In view of the delicate relations between Japan and Russia at this time, the government wanted the attack treated as though it were an offense against the Japanese Imperial family so that the attacker would suffer the extreme penalty of death. The government's position on this case was also shared by a majority of the Supreme Court justices. Having the attack treated as an offense against the Imperial family was the only way that
the death penalty could be imposed; for the *Old Criminal Code* (1882) did not permit capital punishment for attempted murder. In spite of the pressure for a death sentence, however, Chief Justice Kojima Iken was able to persuade his fellow justices through sheer reason alone to accept a different view, and eventually on May 27 the Supreme Court only sentenced the police guard to a life term at hard labor. While the Chief Justice's act of persuasion was in itself a violation of judicial independence, the outcome of the case was nevertheless a shining example of the judiciary's independence of the executive and was tremendously significant for having put just such an impression in the minds of the Japanese.

Judicial independence from the executive was important, but more important to Japan as a nation was the removal of the foreign powers' consular jurisdiction in Japan and the revision of the tariff agreements that had been entered into by the Bakufu. Consular jurisdiction had been granted to England, the United States, France, Holland, and Russia when these powers had concluded commercial treaties with Japan in 1858. The tariff agreement that the Meiji government wished to revise had been signed in 1866 with the same powers, not including Russia. By this agreement all import and export commodities were made subject to a five percent ad valorem tax and in virtue of the most favored nation clause these obligations were to be included in any future treaty with other countries. Since the foreign consular jurisdiction and the tariff system prevented the Japanese from freely administering their own scheme of justice and tariff, the revision of the unequal treaties was foremost among the goals shared by the whole nation. For this reason the revision of the unequal treaties had been the prime concern of the Foreign Department ever since Iwakura's mission to the West in 1871. For two decades however the Meiji government's repeated attempts at treaty revision had all ended in failure. Then in August 1892 Mutsu Munemitsu became the new Japanese Foreign Minister and the treaty revision negotiations were begun afresh. Basing his negoti-
ations on the principle of reciprocal equality, he formulated a draft containing the following points:

1. The general contents should follow the Anglo-Italian Treaty of 1893.
2. The enforcement date of the revised treaties should fall five years subsequent to the date of their signing.
3. Subsequent to each power’s signing of the treaties, the treaty Provisions should go into effect simultaneously to prevent disputes arising from the most favored nation clause.
4. Land ownership in Japan should not be allowed to foreign nationals.
5. Tariff agreements should generally follow the Inoue draft (1886) except that the existing proposed agreement on imports should be abandoned and an average ten per cent *ad valorem* tariff should be imposed only on important imports.

Mutsu’s plan for revision was generally acceptable to the powers, England signing first in July 1894 and the other countries next. The signed documents went into effect on July 17 and on August 4, 1899. As a result of the treaty revision, consular jurisdiction and foreign settlement areas were abolished. Foreigners therefore fell under the jurisdiction of Japanese law and they were permitted unrestricted settlement in the interior of Japan. The restoration of complete tariff autonomy, however, never came until 1912.

b. The Code of Civil Procedure

The law of civil procedure during the second part (1882-1898) of the Meiji Period may be regarded as falling in two distinct phases. In the first phase (1882-1891) civil procedure consisted of a composite body of law, part of which had been in force before 1882 and the other part having been added by various amendments after 1882. In the second phase this mixed body of procedural law was replaced by the *Code of Civil Procedure*, which took effect in 1891.
Since the law of civil procedure prior to 1882 has already been treated, it is only necessary here to mention several of the most important special laws enacted during the first phase (1882-1891) and then pass on to the examination of the Code of Civil Procedure. The first of these miscellaneous special laws, issued by Council of State decree in December 1881, defined the material jurisdiction of the Peace Court, the Court of Original Jurisdiction, and the Court of Appeals. (Their location and territorial jurisdiction had already been determined in October 1881). According to the December decree, the Peace Courts were given the authority to work out a compromise in civil cases, except in suits against the government and in those relating to commerce which demanded immediate settlement. By interpretation this provision was taken to mean that civil suits always had to be compromised. The Peace Court's jurisdiction in civil suits was defined as extending in first instance to actions involving claims for sums of money or objects valued at no more than 100 yen, although the Peace Court could not adjudicate claims in personal suits and the like where the sum of money involved was beyond estimate. The jurisdiction of the Court of Original Jurisdiction extended to claims involving more than 100 yen or to those claims which, as in personal cases, could not be estimated; this court also had jurisdiction in final instance over appeals against judgments that were rendered in first instance by the Peace Courts located within its territorial boundaries. The jurisdiction of the Court of Appeals, which was the successor to the Higher Court, extended to appeals filed against the Court of Original Jurisdiction. And the jurisdiction of the Supreme Court, as in the past, extended to re-appeals. The second important special law, issued by Council of State decree in January 1883, changed the location and territorial jurisdiction of the different courts and, in addition, created branches for the Courts of Original Jurisdiction, conferring upon them the same jurisdiction as their head courts. The third special law to be mentioned here is the ordinance of May 1889, which established branch courts for the Peace Courts.
and assigned to their material jurisdiction the following types of causes: 1) claims against specific things, sums of money and other fungibles, or negotiable instruments of fixed amount, 2) demands for complete or partial evacuation, or repair of a building, and 3) compromise proceedings.

Other special laws, coming from the Justice Department, dealt with such procedural matters as mediation, inspection of evidence, judgment by default, forms for judgment, and bankruptcy. First, the General Regulations for Mediation were issued in June 1884. By these regulations a mediator (kankai-gakari) was created in each Peace Court and given the exclusive task of mediating civil suits. The post of mediator was to be filled by two assistant judges, and, when necessary, by a third judge. The president of the court could even serve as mediator. But whoever served in this position had to be at least thirty years old. The purpose of the mediator of course was to bring the parties to the suit to a harmonious agreement; and the methods for achieving this end were to remain the same as those already in use. With respect to inspection of evidence, a notification of February 1883 provided that when it was necessary for someone to conduct an on-the-spot examination in a civil suit for a Court of Appeals, such an undertaking was to be entrusted so far as possible to the proper Court of Original Jurisdiction or its branch, or to the Peace Court. The procedure to be followed in making an inspection of evidence was defined in 1884. For judgments by default, a directive of 1884 (or 1885?) directed that a judgment by default would be made whenever there was definite evidence that the absent party had received notice to appear by a certain date or face a judgment by default. As to the form of judicial pronouncements, this was set in March 1885. A definite form was no doubt needed, because the parties to a civil suit were expected to give willing compliance to judgments; and in order to ensure their acquiescence it was necessary to ensure that the reasoning of a decision would be lucid enough to make them want to accept it. Therefore the proper form for writing judgments was distributed
by the Justice Department in 1885. In the matter of bankruptcy, it was determined in 1883 that any appeal requesting admission to distribution was to be received by the court that had made the declaration of bankruptcy; and if the appeal required a judgment, the judgment was to be rendered by a competent court before the appellant was allowed admission to the distribution. In 1883 the Justice Department also provided that the town or village head could demand the police to use compulsory force when a person put up unwarranted resistance to a survey of a bankrupt estate.

Since this brief sketch of the special laws on civil procedure is sufficient to highlight the major additions to civil procedure that were made before 1891, our attention shall now be focused on the preparations for drafting a systematic body of civil procedure that was finally introduced by the Code of Civil Procedure in the years subsequent to 1891. As we have seen earlier the Genrō-In caused a code of civil procedure to be compiled in 1876, although this code, which was based on the French code of civil procedure (1806), failed in the end to become law. Other efforts toward the compilation of a code of procedure were also made by M. Boissonade. As a matter of fact he drafted a law on the attachment of property upon request of the Justice Department, and he also seems to have worked on a code of civil procedure that was eventually left uncompleted. The substance of this incomplete draft, which included provisions on hearing, judgments, mediation, ordinary procedure in the Peace Courts, and obstacles to civil actions, was based on the same French code of civil procedure that had served as a model for the Genrō-In's draft of 1876.

Notwithstanding these initial attempts at codifying civil procedure, the Japanese government attempted next, it seems, to use the German code of civil procedure (1877), the newest code of the day, as a model. As evidence of the government's new approach, Techow, a provincial councilor of Prussia, was employed as an adviser to the cabinet and was put to work on the code project. For his reference he was given a copy of the
Civil Procedure of Present Day Japan (Nihon Genkō Soshō Tesuzuki). Edited by the Justice Department, this volume was based on the written and customary law of Japan that prevailed during the late nineteenth century. Techow began work in May 1884 on his draft of the code, and when it was completed and rendered into Japanese each clause was then thoroughly examined by a committee headed by Amano Seiri, the Chief Justice of the Supreme Court. By July of the following year the entire draft had been completed and corrected. As near as possible this draft followed the German code of civil procedure (1877), the laws and enforcement regulations of Prussia, Würtenburg's code of legal procedure (1868), Austria's draft code of legal procedure (1867), and other Austrian laws. In addition, the French, English, and American principles of jurisprudence that were applicable to Japanese conditions were also incorporated where they were suitable. After examination by another committee Techow presented his draft to Justice Minister Yamada Akiyoshi in June 1886. The draft as it now stood was quite different than Techow's original work owing to the changes made by the committee; but Techow was nevertheless in agreement with most of the alterations. In this form, which was still not final, the draft was printed and distributed to the courts; and in November the director of the Civil Affairs Bureau of the Justice Department informed the Courts of Appeal and the Courts of Original Jurisdiction that there would probably be no harm in following the printed draft wherever it was not in conflict with existing laws. The draft code then seems to have been examined by the legal research committee which was created in the Foreign Department in August 1886, though this is not a certainty. It is a fact, however, that the draft was examined by this legal research committee when the committee was transferred to the Justice Department in 1887. The code was revised once again by the reporting members of this committee, their version becoming the basic draft. From the reporting members of the legal research committee, the draft then went to the parent committee where
deliberations lasted from December 1887 to October 1888. At this stage of the revision Mosse instead of Techow took part in the deliberations. Finally, after passing the Genrō-In and Privy Council, the draft was promulgated as the Code of Civil Procedure in April 1890, becoming effective on January 1, 1891.

In order to convey some idea of how much revision Techow's original draft actually underwent before becoming the Code of Civil Procedure the important revisions shall be briefly mentioned in the following paragraphs.

In Book I, (Courts of Law), Techow's provisions on the material and territorial jurisdiction of the courts were deleted and deferred to the Law of the Constitution of the Courts, leaving intact only the draft provisions on the calculation of the value of the subject matter of actions and other related provisions. In the part concerning the exclusion and refusal of members of the courts, Techow's original use of the term "restrainment" (kaihi) was replaced in the Code¹ by the word "exclusion" (joseki). But the provision in Techow's draft that permitted the procurator to be present at the hearings for special actions as a representative of the public interest was retained in the final version despite the protests of the legal research committee that such an arrangement was a threat to judicial independence. This particular role of the procurator was a partial revival of the practice, originating in the Office Regulations for the Justice Department (1872), of allowing the procurator to be in attendance at all civil trials. Another significant provision concerning courts was that the Code allowed the Peace Court magistrate to conduct examinations in his own residence. This provision came from the incompletely drafted code of civil procedure attributed to M. Boissonade. In Chapter II (Parties to a Suit), the finishing touches were put on the provisions relating to the litigation capacity and joint litigation of the parties, and there were set forth for the first time the conditions concerning the participation by interveners in civil

¹ For the Sake of brevity Code shall hereafter be used to mean the Code of Civil Procedure.
actions. As to legal representatives, some question existed as to whether the use of lawyers should be compulsory or not, yet in none of the Code drafts nor in the Code itself was it compulsory for a litigant to employ a lawyer. In Techow's version a person who was not a lawyer could serve as a legal representative with permission of the court, but he could not demand a lawyer's fee. In the final form the Code allowed relatives and employees possessing litigation capacity, or, in the absence of such persons, anyone of litigation capacity to act as process-attorney, but only when there was no professional advocate available. The clause in the Techow draft which allowed one or several of the co-litigants, with the court's permission, to act as a representative for all the co-litigant was eliminated in the enacted Code. The Code allowed a litigant or an attorney to have an assistant, although no such provision was included in the Techow version. In the matter of succour in litigation both Techow's draft and the Code agreed that when a person became able to pay the costs of the suit without working a hardship on him or his family's livelihood he would be obliged to pay the amount for which he had been granted a temporary release. In Chapter III (Procedure), both Techow's draft and the final form of the Code required the parties to an action to orally debate the action in court. Again both the draft and the Code were in accord in permitting the use of preliminary pleadings, although the Code required the inclusion of several items in the preliminary documents that were not mentioned by Techow. As for the conduct of public trials and court-room discipline, which were treated in the original draft, these matters were deferred by the Code to the Law of the Constitution of the Courts. In the matter of serving court documents, Techow's draft required the bailiff to perform this duty through the court clerk while the Code prescribed that the clerk should serve the documents ex officio. The German principle of having a party to the suit serve the documents was not adopted, perhaps because this practice was unsuitable to Japanese conditions. The portions of Chapter III of the final version that were
included under the title “result of default and restitution” and “interruption and stay of procedure” were non-existent in Techow’s draft. And Techow’s chapter on litigation records was removed from the draft before it became law.

In Book II (Procedure in First Instance), Chapter I (District Court Procedure), both Techow’s draft and the Code stipulated that an action would be instituted by filing a petition in court. But in order to file an action there was no need for the parties to make a prior attempt at compromise. That an attempted compromise was no longer necessary meant the abandonment of a long standing Japanese practice, for ever since the Edo Period and even earlier the courts had urged the parties to a suit to reach a mutual agreement. For that matter, rules for compromise had been established as late as 1875 and a prior attempt at compromise had even been made compulsory in 1881. Nevertheless in the different drafts of the Code there had been no unanimity on the subject of compromise. The Genrō-In’s draft did not adopt such a compromise; M. Boissonade made the attempted compromise compulsory; and Techow’s draft had made it optional. Techow’s draft had also provided that in the event of a prior compromise it would be possible to have an examination of witnesses, inspection of evidence, and the testimony of experts if both parties so requested. While accepting Techow’s optional compromise, the Code on the other hand failed in the case of the Local Court to allow any examination of witnesses, any inspection of evidence or any expert testimony when the parties opted the compromise. With respect to the ex-officio investigations of the court, Techow’s draft recognized certain practices that were common to foreign legislation at that time. For instance, the investigation of facts (chōsa), the inspection of evidence (kenshō), the questioning of the plaintiff and defendant as witnesses, and the taking of expert evidence were accepted, but beyond these powers of investigation the court was limited in its investigation to the means used by the parties to prove facts. This restriction of the court’s investigative activities in a civil suit was also
generally adhered to by the finished version of the Code. As for the court’s formulation of judgments, both Techow’s draft and the Code accepted the principle of free conviction. Thus as long as the court did not violate any provisions of the Code of Civil Procedure nor of the Civil Code, the court was to decide in the light of the evidence and of the entire tenor of the oral proceedings whether or not the allegations of fact were to be deemed true. The Code’s procedure for the withdrawal of a suit in whole or part was such that the plaintiff could withdraw it without the defendant’s consent anytime before the defendant began his first oral proceedings; although from that time on until the conclusion of the oral proceedings the suit could be withdrawn only with the defendant’s consent. When the suit became ripe for decision and the court rendered the final judgment, it had to abstain from ascribing to either party any matters not advanced by them. Furthermore, if the plaintiff waived his claim or the defendant admitted the claim during the course of the pleadings, the court was obliged to pronounce the case dismissed or lost; and as we have just mentioned the court’s taking of evidence was limited to the cause material presented by the parties. In view of these various procedural forms of the Code that restricted the court to a consideration of what the parties placed before it, we may say of the Code that the principle of party presentation (verhandlungs maxime) was basic to it. In respect to the Code’s procedure for the Local Courts, this procedure was based generally on that of the District Courts, except that actions could be instituted orally as well as in writing. The exchange of preparatory documents was not required by either the draft or the Code, and in the latter both parties were allowed to appear in court on any regular court day and begin oral proceedings without having made advance arrangements.

In Book III (Recourse) of the Code, appeals were divided into three types: appeal (kōso), re-appeal (jōkoku), and complaint (kōkoku). The appeal was lodged against a final judgment in first instance that was rendered by the Local and
District Courts. No appeal, however, could be made against a judgment by default; instead the party that failed to appear in court on the proper date was merely permitted to enter a protest to the original court. When an appellant successfully reached a Court of Appeals he was allowed to carry on further oral proceedings within the limit of the dissatisfaction expressed. Both parties could introduce means of attack and defense, particularly new facts and evidence not asserted in first instance, but they could not present fresh claims; and inasmuch as an alteration in a judgment of first instance could be effected for that part of the judgment that was objectionable, it may be observed that the Code embraced the principle of trial renewal (zokushin) rather than trial de novo (fukushin). The re-appeal, which was filed against a final judgment in second instance that was rendered by a District or Appeal Court, could only be lodged on the ground that the judgment was in violation of law (In Techow's draft there were provisions for an extraordinary complaint but this was not in the Code.) The court of re-appeal carried on investigations within the limits of dissatisfaction expressed by the re-appellant and based its decision on the facts that supported the judgment being appealed against. However, when a re-appeal was based on a violation of legal procedure or on the ground that facts had been established, omitted, or presented in violation of the law, due consideration could be given to evidence substantiating these errors. In filing for a re-appeal Techow's draft called for the payment of a ten yen fee, and, although this fee was not included in the Code, the fee was recognized indirectly in other legislation.

In Book IV (Renewal of Procedure), Techow provided for an extraordinary renewal of procedure, although this was omitted by the Code.

Book V of the Code, entitled Suits on Documents and Bills and Exchange, had been originally entitled in Techow's draft as Special Procedure and it had consisted then of two chapters. But in the final Code version the chapter on documentary examination had been cut out and the other chapter, which had been
retitled *Suits on Documents and Bills of Exchange*, became the final title of Book V. While the subject matter of this Book as found in Techow’s draft was exclusively concerned with bills of exchange and promissory notes, Book V in the final version of the *Code* provided for any claim that could be asserted by suit on documents containing sufficient evidence to establish the claim for the payment of a fixed sum of money or a fixed quantity of other fungibles or negotiable instruments; and suits on bills were cited in Book V as a special example. Apparently, as in other simple processes, suits on documents having as their object the prompt satisfaction of a title of obligation in a certain type of action simply limited the means of proof to documents.

In Book VI (*Compulsory Execution*), execution against movables was accomplished by way of seizure, which in turn was effected by the bailiff’s taking possession of the corporeal movables. At first, in Techow’s outline, where the German principle of preferential distribution was adopted, the claimant acquired the right of mortgage (right of pledge in German law) on the items seized, but in the final version of the *Code* the principle of preferential distribution was replaced with the French practice that allowed all creditors to demand distribution. This change was made so there would be no conflict with another provision of the *Code* that made the entire estate the joint security of all the creditors. The right of mortgage on attached claims and immovables was also recognized in the original draft but not in the *Code*. In order to carry out execution against rights of claim and other rights of property, the *Code* required an order of attachment from the court. As means for converting the attached claims, the execution creditor could choose between an order of collection and an assignment order; and the execution against immovables could be effected either through compulsory auction sale or through compulsory administration. Upon petition, execution was to be performed by the court, although the actual business of execution was encharged to the bailiff just as it was in Techow’s draft with respect to execution against corporeal movables. As concerns execution of claims
other than for the payment of money, the execution was effected as in the case of fungibles when the performance required an act by the debtor, but when forbearance instead of an act was demanded of the debtor the execution was effected by allowing him to pay compensation for acts in violation of his obligations or by allowing him to make proper dispositions for the future with respect to such violations. And when performance required a non-fungible act or forbearance—courses of action that depended solely on the will of the debtor—the court could order the debtor into direct compliance and it could also apply an indirect form of compulsion such as appointing a term for performance and directing the payment of a fixed amount of damages in proportion to the debtor's delay following expiration of this term. In Techow's draft, again following German law, a claim for which execution required either an act or forbearance on the part of the obligor could be calculated in money and the obligor could be forced to pay the calculated sum. In case an act was the object of the claim, an execution by proxy (bailiff) was permitted; but if forbearance happened to be the object, the court, upon application of the claimant, could impose a fine up to fifty yen and the claimant could cause the bailiff to reject any resistance shown by the obligor. As for provisional attachment, the Code allowed it to be carried out on claims before they matured, while Techow's draft predicated this type of attachment on the conditions of urgency and the posting of a security.

The last two Books (VII and VIII) of the Code, which were devoted to public summons and arbitration procedure respectively, did not appear in Techow's draft; they were added just before the draft was presented to the legal research committee. Nonetheless the contents of these two Books were in the German legal tradition.

When the Code of Civil Procedure was promulgated in the year 1890 other legislation of a related nature was also enacted. The additional enactments include the Regulations for Enforcement of the Code of Civil Procedure, the Law of Costs for Civil
Suits, the *Stamp Law for Civil Suits*, the *Law for Official Auction at a Higher Price*, the *Law of Procedure in Non-contentious Litigation*, and the *Procedural Rules Relating to Suits on Marriage, Adoption and Incompetency*. The date of enforcement for the *Law of Procedure in Non-contentious Litigation*, like that of the *Civil and Commercial Codes*, was postponed until 1898, during which time this law was amended. The *Law of Procedure in Non-Contentious Litigation* dealt with procedure for court related matters that were contained in the *Civil and Commercial Codes*. The *Procedural Rules Relating to Suits on Marriage, Adoption, and Incompetency* were enacted as a special law to complement the *Code of Civil Procedure* owing to the latter's failure to include any provisions on the procedure and the jurisdiction of the court in marriage, adoption, and incompetency cases. This special law was repealed when the *Law of Procedure in Personal Matters* which accompanied the new *Civil Code*, was put into effect in 1898. The *Law of Procedure in Personal Matters* incorporated and elaborated certain provisions that were formerly in the *Law of Procedure in Non-Contentious Litigation*, such as the provisions on parent and child relations, disinheritance of a successor, and disappearance. Lastly, the *Law for Official Auction at a Higher Price* was superseded in June 1898 by the *Law for Official Auction*.

Another important law that was promulgated in the same year with the *Code of Civil Procedure* was the *Law of Insolvency* for non-traders, which brings us now to the general subject of bankruptcy. During the Edo Period bankruptcy had been known by the term *bunsan* (distribution), a system by which the debtor who was unable to satisfy a majority of his creditors abandoned his entire estate to them for distribution after having obtained the consent of all of them. Following the Meiji Restoration there was no comprehensive bankruptcy law until one was framed and promulgated as Book III of the *Old Commercial Code* (1890).¹ But because this bankruptcy law was primarily a law

¹ The Commercial Code of 1890 is designated the Old Commercial Code in order to distinguish it from the New Commercial Code of 1899.
of mercantile bankruptcy, the Law of Insolvency for non-traders was also prepared and given effect on January 1, 1891. Bankruptcy for non-traders differed from mercantile bankruptcy owing to the fact that the debtor (non-trader) lost the ability to perform his obligations as a result of having suffered compulsory execution under the terms of the Code of Civil Procedure. And bankruptcy for non-traders was adjudged by a ruling of the court ex-officio or upon petition, the adjudication being publicly posted at the court and on the municipal post boards. From the day of the court's pronouncement the insolvent lost his rights to vote and to be elected, and, in addition, he was also subject to similar disabilities that were imposed by the terms of existing bankruptcy (shindai kagiri) legislation that antedated the Commercial Code and the Law of Insolvency. The restitution of civil rights to the insolvent was governed by provisions of the Old Commercial Code. The reason that the non-mercantile bankrupt was obliged to forfeit his civil rights is that it was considered unfair and discriminatory for only the mercantile bankrupt to forfeit his civil rights.

The general regulations for bankruptcy (hasan) were first promulgated in 1890 as Book III of the Old Commercial Code. By including the law on bankruptcy in the Old Commercial Code and thus keeping it an integral part of private law, Japan was following the French legal tradition with respect to bankruptcy rather than that of the Germans. The difference between the two legal traditions is that the French, in accepting the principle that the creditors should protect their own interests, made bankruptcy a liquidation measure by which the creditors took possession of the property and effected its realization and distribution. The German tradition on the other hand accepted the principle of court control of bankruptcy proceedings, which made bankruptcy in Germany a non-contentious matter and which thus allowed the court to take possession of the bankrupt's property and supervise its realization and distribution.

The enforcement of the Japanese bankruptcy regulations as part of the Old Commercial Code was originally scheduled for
January 1, 1891, but owing to a postponement of the enforcement of the *Old Commercial Code* until 1896 the bankruptcy regulations could not go into effect as planned. Nevertheless, since such provisions of the *Old Commercial Code* that concerned bankruptcy, companies, and bills and checks were urgently needed in order to cope legally with the rapidly changing business practices of the day, the government placed these portions of the *Old Commercial Code* before the Diet for advance deliberation in late 1892. After being revised by the Diet the provisions on bankruptcy, companies, and bills and checks were put into force in July 1893. In this way Book III of the *Old Commercial Code* became the *Bankruptcy Law*.

The provisions of the *Bankruptcy Law* were as a whole incomplete and gave rise to considerable doubt as to their interpretation. In addition, the *Bankruptcy Law* failed to make any general distinction between substantive and procedural rules, which may have resulted from the fact that this law was compiled as a part of the *Old Commercial Code*. And one other especially important defect of this law was that it contained no stipulation requiring the provisions of the *Code of Civil Procedure* to be applied generally as supplementary rules.

In Chapter I of the *Bankruptcy Law*, which concerned the adjudication of bankruptcy, the first problem that presented itself to the drafters was whether to make bankruptcy apply only to traders or to all persons in general. Generally speaking, the drafters had one of two choices. They could either follow the French, the Italian and all others who accepted the French principle of mercantile bankruptcy or they could follow the late nineteenth century trend that was gradually bringing the French principle of mercantile bankruptcy closer to the Germanic concept in which the trader and non-trader were not distinguished. But in Japan neither alternative was accepted, and the *Old Commercial Code* simply provided that any person who did not fulfill his obligations that arose from business activities could be adjudged bankrupt upon application filed by himself, by his creditors or by an *ex officio* ruling of the court. This peculiar
approach to bankruptcy in which the trader and non-trader alike were subject to bankruptcy proceedings was due to Roessler, who, on account of this innovation, boasted of having advanced Japanese commercial law to a point midway between mercantile and general bankruptcy. Such a hybrid type of bankruptcy, however, was without analogy anywhere in the world and in 1899 it was amended so that Japanese bankruptcy would conform to the principle of mercantile bankruptcy. Besides determining what category of persons was liable to bankruptcy, the Japanese jurists also had to decide what the primary condition for bankruptcy would be. Passing up the German system in which inability to make payments was the essential condition, the Japanese again followed the French by adopting suspension of payments as the crucial factor. Suspension of payments was the basic criterion in declaring bankruptcy for either juridical or natural persons. The court of jurisdiction in bankruptcy cases was designated as the District Court. As for the adjudication of bankruptcy, this was done as we have seen upon application by the debtor, by the creditors or it could be done ex-officio by the court. Upon writing out the bankruptcy decision the court had to transmit it to the public procurator, and at the same time a notice of the decision had to be made public by posting it at the court and at the debtor's place of business and by publishing it in the local newspaper. When the bankrupt estate was of insufficient value to defray the bankruptcy proceedings, these proceedings were to be cancelled and the public was to be notified accordingly. In such case the only effect of bankruptcy would be the suspension of the debtor's civil rights. However, proceedings could be re-instituted by petition or by the court itself when there was proof that a surplus could be expected. The court that handed down the bankruptcy decision was composed of several judges, and from among their number the commissioner in bankruptcy was appointed and given the authority to direct and supervise the proceedings.

In Chapter II (The Effect of Bankruptcy), which was the
most defective chapter in the *Bankruptcy Law*, an adjudication of bankruptcy caused the bankrupt, pending the proceedings, to lose the right of control and disposition of his property, and thus any suits or executions concerning movables or immovables could only be brought by and against the administrator. There existed of course the right of denial ("avoidance" as it was then termed) which nullified, as against the bankrupt estate, the validity of legal acts done prior to the formal declaration of bankruptcy; although this left a great deal to be desired owing to the inadequate protection the right of denial afforded third acquirers in good faith and because the period during which the right of denial could be exercised was left undefined. And the claimants were not allowed to levy execution against the assets unless they held preferred claims. With regard to the right of set-off, the law only stated that the creditor having such right was entitled to use it against a foundation even when his claim was not yet due nor its precise amount determined. As regards the right of recovery, by which a third person presented a claim to the administrator claiming that property not belonging to the bankrupt was not a part of the bankrupt estate, these suits were handled by the court having jurisdiction over bankruptcy; and suits on immovables that were brought against the administrator were adjudicated by the court having territorial jurisdiction over such suits. (Chapter V).

Chapter III of the *Bankruptcy Law* set forth regulations concerning the right of separation, i.e., the right to receive satisfaction ahead of other claimants for claims on specific portions of the bankrupt's property. In this respect the right of separation belonging to a person with a prior right and the right of separation belonging to the creditors and legatees of a decedent were both recognized. There was some confusion however as to whether the right of separation belonged to holders of a right of retention and of a general lien inasmuch as Chapter III only made plain that the right of separation was enjoyed by holders of pledges, mortgages, and special liens.

In Chapter IV (*Preservation of the Assets of the Bankrupt*),
the court immediately upon adjudication of bankruptcy was required to order the movable property of the debtor, or of all members with unlimited liability, if it were a company, to be placed under seal. In addition to these measures, the draft bankruptcy law of 1890 had originally allowed the court to order immediate arrest or surveillance of the debtor unless he made such action unnecessary by fulfilling the necessary formalities; yet the severity of these precautionary measures was relaxed before this law became effective in 1893, and apart from placing the property under seal, the court was only allowed by the final version of the Code to order surveillance of the bankrupt (the managing partners and directors in case of a company) when there was a danger that he might abscond or conceal his property. But neither the 1890 or 1893 versions permitted the bankrupt to leave his place of residence without permission of the court, which could at any time order the bankrupt to make a court appearance. The seal was removed from the debtor’s property when the administrator completed an inventory of the property and took possession of it.

In Chapter V (Administration and Realization of the Estate), the first requirement was to determine the size of the estate, and here again the drafters of the Bankruptcy Law had to choose between German and French law. Rather than exclude from the bankrupt assets the property that was acquired by the bankrupt following the adjudication of bankruptcy, as done in Germany, the drafters adopted the French practice of including such property, no matter whether it was inherited after suspension of payments or whether it was acquired by the bankrupt’s own efforts after he had been declared bankrupt.

Control of the bankrupt estate was placed by the court in the hands of an administrator in bankruptcy, or several of them when the estate was scattered. The selection of the administrator was made from a previously prepared list of eligible administrators that the court had on hand. Therefore, it was the court, not the creditors, that made the selection; and the range of choice was limited. At its discretion the court
could change the administrators or increase their number. The duty of the administrator, once the estate was declared bankrupt, was to take possession of the estate and its administration and to proceed with the realization of the assets. In converting the property into money, the real estate was to be placed on auction with the consent of the commissioner in bankruptcy. Movable property was generally auctioned, too, although if the commissioner gave his approval this property could be disposed of without auction. The auctions were governed by the formalities found in the Code of Civil Procedure.

In Chapter VI (Creditors), the scope of the term "bankrupt creditor" should have been made clear, yet this chapter included no regulations for the definition of bankruptcy claims, the computation of their value, their order of precedence, nor how to dispose of claims involving several parties. Nevertheless there were provisions that required the creditors, in accordance with a public announcement of the bankruptcy ruling, to present their claims to the commissioner in bankruptcy within the time limited for this purpose. The determination of claims took place by way of admission or court decision. A claim was regarded as determined if, at the meeting of creditors opened by the commissioner, neither the administrator nor any creditor whose claim had been determined or entered in the balance-sheets (annexed to the payment suspension report) objected. A creditor who failed to present his claim within the proper time limit or who failed to have his claim determined could only share in distributions rising from subsequent determinations. Although there were provisions in this part of the law relating to special creditors, there was only one article concerning superior obligations. And there were no regulations for the matters to be decided upon by the meeting of the creditors. When the meeting of creditors made a decision, a majority in number and value of the creditors' had to be present; and all resolutions required the consent of the court.

Chapter VII (Compulsory Composition) provided for an agreement between the creditors and the bankrupt in order that
the creditors might renounce a part of their claims or grant more time for payment. Under such an agreement bankruptcy proceedings were ended without resorting to distribution and the control of the estate was returned to the bankrupt. But the making of a compulsory composition, probably of German origin, was so hedged with conditions that it was not easily put to use. An application for compulsory composition could only be made by a bankrupt who had fulfilled the obligations of the Bankruptcy Law and who had neither been convicted nor had been on trial for penal bankruptcy. A person who failed to report to the court within five days after suspending payments to his creditors was regarded as not fulfilling his legal obligations and was therefore ineligible to apply for a compulsory composition. The time for presenting the application was at the first meeting of the creditors; and the application had to have the consent of the commissioner in bankruptcy. When there was sufficient reason, the application could be presented at the second meeting, but it could only be submitted once. It was for this reason that the making of a composition was a difficult matter. Acceptance of the composition required the assent of a majority of the creditors present, and the claims of the assenting creditors had to be three-fourths the value of the claims of all creditors entitled to vote. The composition that was accepted by the creditors was only valid after being confirmed by the court. When the composition became final, the administrator was obliged to cease his functions and render an account of his activities. Then if the composition did not state otherwise the estate was returned to the control and disposition of the bankrupt. If for any reason prescribed by law the composition became void, bankruptcy proceedings were revived and the realization and distribution of the estate proceeded forthwith. The fact that the Bankruptcy Law did not provide in any way for compositions for juridical persons has been especially singled out as one of the law's shortcomings.

Chapter VIII of the Bankruptcy Law dealt with distribution. This consisted in an even apportionment and division among
the creditors of what remained of the estate after the superior obligations and preferred claims had been satisfied. But if at the time of distribution the debtor was directing several different businesses with separate funds, the creditors of a particular business had a prior claim on the assets of that business for which they were entitled to satisfaction. This provision on prior claim, which was not included in Roessler's draft, appeared during a later revision of the Bankruptcy Law. The distribution of an estate was carried out upon conclusion of a regular meeting of the creditors and in accordance with a distribution scheme that was drawn up by the administrator and approved by the commissioner in bankruptcy. Before the apportionment and division could be made, however, there had to be enough assets for a partial distribution. If any objections were raised within two weeks after the distribution scheme was publicly notified the distribution was postponed until these were settled. Then following the completion of the realization and distribution of the estate the administrator was to give the final account of his administration at a creditors' meeting; whereupon the court, by a motion of the commissioner, would then rule without delay that bankruptcy proceedings were closed. And finally, the court's ruling that closed the proceedings had to be published. If there were any unsatisfied creditors, they were permitted to enforce against the debtor without limitation any claim to which they were entitled by a determination of the bankruptcy proceedings.

In Chapter IX (Penal Bankruptcy), penal bankruptcy was classified into three kinds: fraudulent bankruptcy, negligent bankruptcy, and bribery of members of the creditors' meeting. The punishment for fraudulent and negligent bankruptcy, which was comparatively heavy, was determined by statute in 1890. It should be noted that punishment for negligent bankruptcy was imposed when the bankrupt failed to 1) prepare inventories and balance-sheets, 2) report suspension of payments, and 3) when he left his place of residence without permission of the court.
Chapter X pertained to the effects on personal status that resulted from bankruptcy. These effects were primarily the deprivation and restitution of private rights in commercial affairs. The Bankruptcy Law of course was not the only legislation that dealt with the deprivation and restitution of private and public rights. Rehabilitation of the individual, it may be observed, was possible even after death.

In Chapter XI (Postponement of Payment), the last chapter of the Bankruptcy Law, there were provisions that granted a respite to a person engaged in business when he was compelled to temporarily suspend payments through no fault of his own. Under this arrangement it was possible for the debtor, with the consent of a majority in number and value of the creditors and by a court decision, to postpone the payment of his commercial liabilities as much as one year. As long as the respite was in force no execution for any previous commercial liabilities could be issued against the debtor, nor could he be declared bankrupt. By thus avoiding the adverse effects of bankruptcy, the debtor would be able to remain in business, the creditors could escape the rigors of a settlement of partially satisfied claims, and in general the good reputation of all would be preserved. Although this device for granting a respite was not a part of the German law of bankruptcy of 1877, Roessler included it in the Japanese Bankruptcy Law so that Japan might become better prepared to adjust to the severe European bankruptcy laws to which Japan was not yet accustomed. But in spite of Roessler’s good intentions, the arrangement for postponement of payments seems to have been almost unused.

If what we have just seen in our description of Japan’s Bankruptcy Law is compared with the bankruptcy laws of other countries after these laws had, in the course of time, been purged of their harsh and preventive principles on behalf of more lenient principles having as their goal the equal satisfaction of the creditors, it must be admitted that the Japanese Bankruptcy Law of 1893 was still strongly punitive in nature.
c. The Code of Criminal Instruction and the Code of Criminal Procedure

(1) The Code of Criminal Instruction

The Code of Criminal Instruction was promulgated on July 17, 1880 and was enforced on January 1, 1882. This code, essentially a compilation of criminal procedure, shares with the Old Criminal Code,¹ which was also enforced on January 1, 1882, the very significant distinction of being one of Japan’s first modern law codes. Together these two codes have the additional distinction of inaugurating, from the legal history standpoint, the middle period of the Meiji Era.

The initial work on the Code of Criminal Instruction was begun by the Justice Department in 1876 and was continued by a committee that was set up in December 1877 under the direction of Kishinaga Kenyō, the Procurator General. Aside from the Japanese jurists who were on this committee, M. Boissonade was also a member; and it was he who prepared the original draft, basing it mainly on the French code of criminal instruction and to some extent on the laws of such countries as Germany, Austria, and Egypt. After being translated into Japanese the draft was then revised, with due reference being made to current Japanese laws and customs. When completed by Kishinaga’s committee, the draft was presented to the Throne in September 1879. From there it was sent to another committee headed by Yanagibara Maemitsu, the Secretary of the Genrō-In. This latter committee, which was the same one that examined the Old Criminal Code, was composed of judges, procurators, and government officials from the Genrō-In, the Council of State, and the Justice Department. Upon conclusion of their deliberations, the draft was sent in revised form to the cabinet where several alterations were made including the deletion of the provisions establishing a jury system. By April 1880 the draft Code of Criminal Procedure

¹ In order to distinguish the two Japanese criminal Codes of 1882 and 1908 from each other the former is designated the Old Criminal Code and the latter is designated the New Criminal Code.
finally reached the Genrō-In for final modifications. Within a few months the code was promulgated, although it was not enforced until January 1882.

It will be seen that the Code of Criminal Instruction was comprised of six books, the most important parts of which we shall now briefly sketch. In Book I (General Provisions) the significant provisions dealt with the legal procedure for civil suits that were incidental to criminal actions and with the extinction of the right of public and private action. First of all, however, the definitions for public and private action should be noted. A public action was defined as a legal proceeding carried out by a public procuratorial officer in accordance with law for the purpose of providing that an offense had been committed and for the purpose of applying a punishment to the offender. A private action had as its purpose the return of stolen goods or the compensation for damages resulting from the commission of an offense. The right of instituting a private action belonged to the aggrieved party under the terms of the civil law. If a private suit was incidental to a public action, the private suit could be tried in a criminal court regardless of the sum of money involved. While the deferral of an incidental action to a criminal court was based on the French code of criminal instruction, this procedure may also be regarded as akin to the Japanese gimmi negai (petition for criminal investigation) of the Tokugawa Period. Through recognition of this procedure it became possible to collect evidence needed to determine damages simultaneously with the collection of evidence that was needed to prove an offense. As to the causes for the extinction of the right of public action, release by prescription (manki menjo) was given recognition by the Code of Criminal Instruction for the first time. The term "manki menjo" was synonymous with the term "jikō" which was used at a later date to denote "prescription".

In Book II of the Code of Criminal Instruction the constitution and the jurisdiction of the courts were defined. Although these matters should have been included in the Law of the
Constitution of the Courts, this was not possible at the time, for the aforementioned law was not yet drafted. According to Book II, the Peace Court and the Court of Original Jurisdiction, as courts of first instance, judged the police offenses and misdemeanors respectively that were committed within their territorial jurisdiction. However, by a decree of 1881, the misdemeanors that were not considered by the procurator to be in evident need of a preliminary examination were made justiciable in the Peace Court in those areas lacking Courts of Original Jurisdiction. The Court of Original Jurisdiction, aside from trying misdemeanors, also tried the appeals against judgments in police offenses that were delivered in first instance by the Peace Courts. The court that judged felonies was held every three months by the Court of Appeals or by the Court of Original Jurisdiction. On such occasions the court for felonies was to consist of one presiding judge and four associate judges. While still in draft form the Code of Criminal Procedure had limited the number of associate justices to two, but when the cabinet eliminated the code's provisions on the jury system the number of associate justices was increased to offset the loss of a jury. In practice, however, it was difficult to find four associate justices for each court and in 1881 a Council of State decree made it possible temporarily for their number to remain only two. Above the Peace Court and the Court of Original Jurisdiction stood the Court of Appeals, the Supreme Court, and the Special Higher Court. Each Court of Appeals had a criminal division with three or more justices who judged appeals against decisions in misdemeanor cases that were handed down in first instance by the Court of Original Jurisdiction. But the Court of Appeals did not admit felony cases since the Code of Criminal Instruction did not recognize appeals (kōso) for major crimes. The Supreme Court, too, had a criminal division and it sat in judgment on 1) re-appeals, 2) appeals for trial renewal, 3) appeals for a decision on court jurisdiction, and 4) appeals for a change of venue for reasons of public peace or local prejudice. In general the above mentioned courts were used
for civil and criminal trials alike, but there was one court, the Special Higher Court, which was purely a criminal court. Only opened by Imperial sanction upon petition from the Justice Minister, the Special Higher Court consisted of one presiding justice and six associate justices—all of whom were appointed by the Throne each year in advance from among the Genrō-In members and the justices of the Supreme Court. The Special Higher Court tried the 1) offenses against the Imperial family and state, 2) felonies, and the misdemeanors punishable by imprisonment that were committed by members of the Imperial family, and 3) felonies committed by chokunin rank officials. That a special court was created for chokunin officials, to say nothing of the Imperial family, is a fair indication of the continuity of traditional Japanese concepts of justice.

With respect to court jurisdiction, the Code of Criminal Instruction provided that when the site of an offense was uncertain or when several courts exercised simultaneous jurisdiction over a single offense, the jurisdiction over the preliminary examination and trial of the offense, which ordinarily belonged to the court situated in the area where the offense was committed, would be given to the court of the location where the offender was arrested, if all the courts asserting jurisdiction were of the same class. The Code also stipulated that no judge who had conducted a preliminary examination of a case would be permitted to take part in the public trial of such case nor would a judge be allowed to join in judgment of an appeal if he had conducted the original preliminary examination or trial, unless the appeal happened to be a requête respectueuse (aisy) or an objection to a judgment by default.

Book III of the Code dealt with investigation of offenses, indictment, and preliminary examination. As to the first of these three items, an investigation for evidence and for the offender was conducted by the procurator whenever, in his judgment, an offense had been committed or whenever he was made aware of an offense by way of complaint, accusation or by the commission of a flagrant offense. Upon conclusion of
the investigation the procurator was expected to seek a preliminary examination if he regarded the offense as a felony, but if the offense seemed to be a misdemeanor it could be submitted either to a preliminary examination or sent directly to the court handling misdemeanors, depending upon the complexity of the case. When the examination disclosed a police offense, the procurator transferred the case along with the documentary evidence and a statement of views to the procurator attached to the court for police offenses (Peace Court), or in case the offense happened to fall outside the jurisdiction of the investigating procurator, owing to the defendant’s status or to the nature and location of the offense, the case was sent to a procurator who was competent to handle it. Of course the procurator was barred from filing any indictment when the investigation failed to turn up an offense or when he considered a public action unacceptable to the court. And in the absence of any indictment by the procurator no offense could be tried by the court. Although the general rule of “no indictment, no trial”, which had originated after the creation of the public procurator in 1872, was confirmed by different provisions of the Code of Criminal Instruction, there were nevertheless certain exceptions to this general rule. First of all, when a judge learned of a felony or misdemeanor in advance of the procurator and the case demanded urgency, the judge was allowed to notify the procurator and then immediately commence the preliminary examination without further delay. In this case a public action was regarded as having been accepted by the court when the examining judge prepared a protocol of inspection. Secondly, an examining judge could accept a private action without an indictment from the procurator when, during preliminary examination, a criminal defendant filed application to become a plaintiff in a civil suit. Both the public action under examination and the civil suit could be accepted by the court at the same time. And as a third exception to the rule of “no indictment, no trial”, any incidental cases disclosed during the course of pleadings and any offenses occurring within the courtroom could be
accepted by the judge without indictment from the procurator. If necessary the judge could suspend the trial of the original action and conduct a preliminary examination of the incidental suit. The right of the court to try courtroom offenses and incidental suits that were disclosed during examination without the need of the court to receive any indictment from the procurator had been permitted as early as 1878. In origin this prerogative of the court was based on French legal procedure.

With respect to the preliminary examination, the Code of Criminal Instruction caused a change in existing procedure. That is, the preliminary examination, which had been conducted prior to the indictment since the year 1875, was caused by the Code\(^1\) to be held subsequent to the indictment following enforcement of the Code on January 1, 1882. According to the Code, the preliminary examination began when the examining judge summoned the defendant to court in response to a felony or misdemeanor charge that was filed by the procurator or civil plaintiff. In case the defendant disregarded the summons the judge was entitled to issue a warrant of production. And in case the defendant absconded or when, after questioning, the evidence pointed to a sentence of imprisonment or heavier penalty the judge could issue a warrant of detention. But ten days following the execution of the warrant of detention, this warrant had to be replaced either by a warrant of commitment or the defendant had to be placed in the custody of his relatives or close friends. In either case, the warrant of commitment or the warrant of detention had to show in writing the name of the prison in which the defendant was located. While the defendant was in prison a copy of the Code of Criminal Instruction and the Old Criminal Code were to be made available to him. The defendant who was served either a warrant of detention or commitment could be kept in solitary confinement upon demand of the procurator or by authority of the judge, if the examining judge considered such action necessary for gaining information during the preliminary examination.

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1) The word Code in the following paragraphs refers to the Code of Criminal Instruction.
Though the ordinary defendant was allowed to receive relatives, close friends, and his lawyer in the presence of a prison official, the defendant who was kept in close confinement was not allowed to receive anyone or anything without the examining judge's permission.

In the evaluation of evidence by the examining judge, Article CXXXVI of the Code proclaimed the principle of free conviction. According to this article, when there was nothing in the circumstances surrounding the case that permitted a lawful presumption of guilt, the defendant's confession, the official protocol of inspection, the material evidence, the statements of witnesses, the declarations made by experts, and all other evidence were to be left to the discretion of the judge. Furthermore, the judge *ex officio* or upon request of the procurator, the civil plaintiff, or the defendant could collect the necessary evidence for the purpose of discovering facts, though the judge had to be accompanied by the court clerk when the judge made a visit of inspection or a house search, or when he seized articles or questioned the defendant and witnesses. The examining judge, who was the principal questioner of the defendant, was obliged to examine the defendant before questioning anyone else, and the examination had to be conducted without resorting to intimidation or false allegations. During the examination the procurator was barred from taking part, yet he was allowed to inspect the documents on the condition that he return them within twenty-four hours. As for witnesses, any one called to testify had to swear to state the facts honestly and without partiality or fear. In case a member of the Imperial family or a *chokunin* official happened to be a witness, the examining judge, accompanied by the court clerk, was required to go to them to take their statements. This again is another indication of the privileges of the *chokunin* official. Lastly, the examining judge was entitled to order an expert witness to testify in order to clarify the nature of the offense, the way in which it was committed, and its effects.

When during the examination the defendant who had
received a warrant of detention or commitment requested to be liberated on bail, the judge, in consultation with the procurator, was allowed to release the defendant provided that the defendant furnish documentary evidence showing that he would appear in court when summoned. Further than this, the person being released on bail had to deliver a sum of money as security. But whether there was a request for bail from the defendant or not, the examining judge, after hearing the views of the procurator, was allowed to entrust the defendant to the custody of his relatives or friends. Upon conclusion of the examination the judge had to pronounce which of several dispositions the case deserved. He could declare the case outside his jurisdiction, he could dismiss the case for lack of evidence, or if the defendant was deemed guilty the judge could have the case transmitted to the proper court. Whatever the decision, the judge had to attach to it the appropriate reasons in fact and in law. The decision of the preliminary examination could be appealed by either the procurator or the defendant, and if the appeal decision of the three or more judges in council was also unsatisfactory the procurator or defendant could submit a re-appeal.

It should be remembered that the bail system, to which we have just referred, did not originate with the Code of Criminal Instruction; it was established by the Bail Regulations of 1877.

Now judging by what has been said of the preliminary examination it is plain that this examination was inquisitorial in its methods. This peculiarity may be explained by the fact that when the Japanese adopted the examination system they modeled it after the preliminary examination found in the French code of criminal instruction (1808) rather than after the more liberal form which had evolved subsequent to the reactionary period of the French Revolution. Since the preliminary examination of the French code of criminal instruction was a revival of the inquisitorial procedure of the ancien régime, it was thus only natural for the preliminary examination in Japanese criminal procedure to be conducted inquisitorially by a judge who was endowed with excessive power and authority.
In Book IV (*Public Trial*), the important aspects of criminal procedure that deserve our attention are the principle of party presentation, the advocate, public trials, and appeals. First, in illustration that the *Code of Criminal Instruction* accepted the principle of party presentation, reference may be made to the points outlined by Viscount Kiyoura Keigo as the basis for proper trial procedure under the terms of Book IV of this *Code*. According to Kiyoura, who was a member of the *Genrō-In* and an important figure in the enactment of the *Code of Criminal Instruction*, the important elements of trial procedure were these.

1. Public trial
2. Explanation of the charges by the procurator
3. Cross examination by the plaintiff and witness
4. Refutation of the charges and defense of the defendant by the defense counsel
5. Judgment by a calm and silent judge who does not enter into debate with the advocates.

These points should suffice to show the *Code's* respect for the principle of party-presentation in the conduct of trials.

Next, with respect to advocates, the *Code* greatly enlarged their role in criminal trials. Though advocates had been generally recognized in civil suits after 1872, this had not been the case in criminal cases. But under the terms of the *Code* the criminal defendant was not only allowed to use the service of an advocate selected from those attached to the court but in felony trials the court itself could select a defense lawyer when the defendant failed to do so. Furthermore, no sentence imposed by the court was to be valid if the pleadings had been conducted without a lawyer. All courts however did not have lawyers on hand and, recognizing this, the Council of State decreed in January 1882 that for the time being the judgments of a court where lawyers were not available would be valid.

The conduct of a public trial as we have seen was the first point mentioned by Viscount Kiyoura. To him a trial in open court was the foremost rule of procedure. The *Code*, too, made
a public trial essential, for any judgment was considered void if rendered in any criminal case (police offense, misdemeanor, felony) where the questioning, pleading, and pronouncement of judgment had not been carried out in public. Even when the questioning and pleading in cases which might endanger the public peace or which might jeopardize public morals because of indecent disclosures were held *in camera* upon request of the procurator or by discretion of the court, the judgment of the court could only be delivered while the court was open to spectators.

During the trial the *Code* forbade the defendant to be placed under physical restraint while in the courtroom. The evidence presented in court had to be identical to that employed in the preliminary examination; and the same witnesses heard in the preliminary examination could again be summoned to testify in court. However the trial developed, even if the procurator waived the action, the judge still had to deliver a decision. And whether the judge imposed a penalty or dismissed the case, he had to clearly show the reasons for his decision in both fact and law. Whenever an incidental suit arose during the trial the judge pronounced judgment on it at the same time that he delivered the judgment on the principal action.

As for appeals in criminal actions, it will be remembered that, by contrast to the early recognition of appeals in civil suits, recognition was long in coming for criminal appeals. Nevertheless, with the enactment of the *Code of Criminal Instruction* it became a recognized practice for an appeal against a judgment of a police offense court to be filed with the court for misdemeanors (Court of Original Jurisdiction), and an appeal against a judgment of a misdemeanor to be submitted to a Court of Appeals. In a felony case, however, the only remedy against a judgment was a re-appeal. The absence of an appeal in felony cases is perhaps explained by the fact that in the original draft of the *Code* felony cases were to be heard by a jury that could request either a mitigation or increase of the convicted person’s penalty depending upon the circumstances.
of the case, and it was thus considered unnecessary to allow a trial of fact in appeal instance. And even though the cabinet ultimately removed the provisions allowing a trial by jury, no appeal was introduced in the final version of the Code to offset the loss of the jury. Consequently, felonies were the only offense that the Code denied an appeal. But shortly before the Code was to go into effect in January 1882 the Council of State also temporarily disallowed any appeals against judgments in police offenses and misdemeanors. This meant that when the Code came into force there could be no appeals in any criminal offense. On the surface it might appear that the right of appeal in misdemeanor cases was withdrawn so that the absence of an appeal in felonies would not look unfair and so that the defendant in a misdemeanor case would be spared the ordeal of a second trial originating from an appeal by the procurator. Yet if this had been the purpose of the government, the same end could have been achieved by simply permitting an appeal to be filed in felony cases rather than denying it to misdemeanors, and the defendant could have been spared a second trial by simply reserving the avenue of appeal to the defendant alone. The fact that the cabinet resorted to the contrary solution of abolishing the appeal in misdemeanors as well as in felonies may be attributed, it seems, to the cabinet’s oppressive designs. Nevertheless, when it came time to revise the unequal treaties, the non-existence of a criminal appeal was regarded as a blemish on Japanese law and therefore the Council of State decreed that an appeal in misdemeanor cases was permissible on the condition that the appeal be restricted to the principal action upon which judgment had been passed and that the defendant pay ten yen in advance as security for court costs. The requirement of a ten yen payment, a device designed to prevent an abuse of the appeal, was not without precedent, for similar arrangements had been instituted in 1878 and 1881. One other aspect of appeal procedure that is worthy of note was the Code’s provision that made appeal and re-appeal possible only when the defendant or his legal representative was present at court for the decision;
for in case both the defendant and his legal representative were absent and the judgment went by default, it was only possible for the defendant to file a protest. And when an appeal was filed only by the defendant the final penalty could be no more severe than the one pronounced by the original court.

In Book V (Duties of the Supreme Court) the important provisions dealt with re-appeal, extraordinary re-appeal, and requête respectueuse. The re-appeal could be filed by the procurator or defendant with the Supreme Court against the preliminary examination or against the judgment of a court by reason of a violation of law. Eleven such reasons were cited in Book V as grounds for the re-appeal. The extraordinary re-appeal, which could be initiated by the Procurator General of the Supreme Court either ex officio or upon order of the Justice Minister, could be filed whenever a judgment that imposed excessive punishments or that imposed sentences for non-punishable acts had become final through failure of the interested party to file an appeal within the prescribed period. This form of the re-appeal may perhaps be considered a revival of the extraordinary scheme of re-appeal that had been established in 1876. The requête respectueuse was filed with the Supreme Court in specially provided cases by the Procurator General and by any other persons having an interest in a case already adjudicated. In addition to the foregoing types of appeals, there was also an appeal to the Supreme Court for a retrial. In filing a re-appeal concerning the payment of a fine and further charges, it became necessary in June 1886 to pay one-tenth of them in advance of the re-appeal petition. When such a petition for re-appeal was turned down by the Supreme Court, the re-appellant lost all or part of the sum advanced. This fee for re-appeal was no doubt demanded as an attempt to discourage the indiscriminate filing of re-appeals.

The last book (VI) of the Code of Criminal Instruction was devoted to the execution of judgments, rehabilitation, and amnesty, but since there is nothing in particular about these subjects that deserves comment here we shall pass on to the
Code of Criminal Procedure, which superseded the Code of Criminal Instruction in 1890.

(2) The Code of Criminal Procedure

As pointed out earlier the Code of Criminal Instruction was one of the first Japanese criminal codes to abjure Chinese legal influence for the modern legal principles of the West. And because this change was so drastic it was impossible to put all the provisions of the Code of Criminal Instruction into immediate effect and enforce them literally. For that reason a number of special laws, some of which we have mentioned, were enacted both before and after this code was enforced in order to modify its provisions and thus bring the Code into accord with actual Japanese conditions. Because of the Code's inadequacies from the very beginning, therefore, a revision of the Code was urgent and this revision had to be accomplished before the Law of the Constitution of the Courts would go into effect, for this law was incorporating the Code of Criminal Instruction's provisions on the constitution of criminal courts. Hence to achieve the aims of revision the Code of Criminal Procedure was compiled and put into force on November 1, 1890. On this same date the Code of Criminal Instruction was repealed.

Although it has been believed that the German code of criminal procedure (1877) served as a reference in compiling Japan's new Code of Criminal Procedure, it should be noted that the substance of this new code was only a slight modification of the old Code of Criminal Instruction which it replaced. A comparison of the old and new criminal procedure would show that the principal changes consisted in the omission of the provisions on the constitution of the criminal courts and in the rearrangement of the subject matter contained in the Code of Criminal Instruction. Otherwise the provisions of the Code of Criminal Procedure were practically the same as the provisions found in the Code of Criminal Instruction. The major differences between the two codes will be examined in the following.
The first change of note, aside from the omission of the portion on the constitution of the courts, concerns court jurisdiction. Among courts of the same class, jurisdiction over preliminary examination and public trial was given not only to the court within whose territorial boundaries the offense was committed, as in the old code\(^1\), but this jurisdiction was also given to the court in whose territory the defendant was located. If an offense fell within the jurisdiction of several courts, the offense went to the court that first began the preliminary examination or public trial rather than going, as previously, to the court in whose territory the offender was apprehended. As to the removal of court personnel who might be biased, the new code not only included the old provisions on challenge (kihi) and refrainment (kaihi) but also new ones on exclusion (joseki).

The investigation of offenses (Book III) was conducted under the new code by persons who served as judicial police and who received orders from the procurator as his assistants. As for the institution of an action, the new code differed from the old in that courtroom offenses could not be accepted by the judge without indictment from the procurator, nor could an examining judge accept a private action without procuratorial indictment when, during preliminary examination, a criminal defendant filed application to become a plaintiff in a civil suit. And the only offenses that could be submitted for a preliminary examination without procuratorial indictment were flagrant misdemeanors and felonies. (Procuratorial indictment was regarded as having been instituted when an examining judge prepared a protocol of inspection). However, when an offense was revealed during the course of courtroom pleadings it could be tried without any indictment having been filed by the procurator. As a result of the new code's various provisions on indictment the principle of procuratorial institution of public actions was advanced another step forward.

\(^1\) In the following paragraphs old code shall mean the Code of Criminal Instruction and new code shall mean the Code of Criminal Procedure.
The only notable change in the new code concerning the preliminary examination was the abolition of the warrant of commitment and the discontinuance of the preliminary examination appeal.

In regard to trials, the old code's classification of the ordinary courts of first instance into courts for police offenses, misdemeanors, and felonies was done away with; and under the new code the courts of first instance were classified as the Local and the District Courts, as provided in the Law of the Constitution of the Courts. Police offenses and minor misdemeanors fell to the jurisdiction of the Local Courts and the major misdemeanors and felonies fell to the District Courts. The difference in trial procedure between the old and new code was not one of fundamental principles but rather a clarification of uncertainties. One problem of the old code, for example, was how to treat a misdemeanor when the defendant admitted his guilt. Was admission of guilt enough to make further evidence unnecessary, as in a police offense, or was additional evidence needed as in a felony case? This question had become an issue in the old code for lack of any specific provisions to define the proper procedure in a misdemeanor case. But in the new code all doubt was dispelled. For in Local Court trials it was made plain that no further proof beyond a confession was required as long as the procurator or civil plaintiff did not object; while in District Court trials the new code made further investigation of the facts obligatory regardless of a confession by the defendant. Another dubious point under the old code concerned witnesses. Apart from the judicial police whose task it was to prepare the protocol and the examining judge who was to explain it, there was no certainty as to who else the procurator and the other interested parties to the case could call to testify as witnesses. The judicial police and the examining judge had been the only persons definitely cited by the old code as witnesses. In the new code this uncertainty was solved by certain indirect and vague provisions that simply allowed the procurator, the defendant, and the civil plaintiff to summon witnesses by making
a request to the court.

There were changes, too, in the old system of recourse. Formerly recourse had consisted of 1) protest (koshō), 2) appeal (kōso), 3) re-appeal (jōkoku), and 4) requête respectueuse (aiso). Strictly speaking the protest, which was lodged against a final decision of a preliminary examination, was not a genuine form of appeal since it was tried in the same court where the preliminary examination had been held. The protest was heard, however, by a judge other than the one who conducted the preliminary examination. In the new code the protest was replaced by the complaint. Another of the above forms of recourse that did not constitute an appeal in the true sense of the word was the requête respectueuse; and it was not carried over into the new code. Thus in the new code there were generally three means of recourse: 1) appeal, 2) re-appeal, and 3) complaint; and the old protest (koshō) simply remained as a device to be filed against a judgment by default.

By the new recourse procedure the procurator or other interested parties were allowed to initiate any of the different forms of appeal, and the procurator was even able to petition in the interest of the defendant. Any of the appeals could also be filed independently of the defendant by the defendant's legal representative; and so long as the defendant’s wishes were not violated any of the appeals could be filed on his behalf by the defense counsel. The kōso appeal was filed against 1) a judgment in the principal action that was delivered in first instance by a Local or District Court and against 2) certain judgments rendered prior to the pendency of the principal action (i.e., judgments dismissing a plea of incompetency or a plea of inadmissability). The jōkoku appeal (or re-appeal) was brought against a judgment in the principal action that was delivered in second instance by a Local or District Court and against certain judgments handed down prior to the pendency of the principal action (as in the kōso appeal). In both the new and old code the ground for a jōkoku appeal was a violation of law, but the two codes differed by the fact that
this re-appeal was restricted under the old system to the exact instances of law violations that were cited by the old code. This meant that if a violation of the law occurred during the pendency of the case—even in the judgment itself—and yet was nowhere specifically mentioned in the old code there could be no re-appeal. In the new code this defect was remedied by a general provision that allowed any adjudication made in violation of law to be re-appealed; and a violation of law was defined either as a failure to apply a rule of law or as an improper application of such a rule of law.

The changes between the old and the new code in the duties of the Supreme Court concerned appeals for change of venue and for determination of jurisdictional competency. Though both of these appeals were formerly a part of the Supreme Court's jurisdiction, the new code deferred appeals relating to jurisdictional competency to Article X of the Law of the Constitution of the Courts and left the appeals for a change of venue (for reasons of local bias and public peace) to a superior court.

In the matter of court costs it has been seen that a ten yen advanced payment for kōso appeals in misdemeanors was established in 1885; and in view of the fact that the Code of Criminal Procedure recognized kōso appeals in felonies no less than in misdemeanors there was need therefore to have this advance fee system extended to cover felony appeals. Consequently, the Regulations for Pre-payment in Felony Appeals were promulgated in February 1890.

In concluding this account of criminal procedure it should be observed that a separate code of criminal procedure was enacted for the Army in 1883 and another for the Navy in 1884. By 1889 both of these military codes had been revised.

9. THE CRIMINAL CODE

The drafting of the Criminal Code was begun in September 1875 by a committee created by Justice Minister Oki Takatō. As a member of the committee M. Boissonade was commissioned to prepare the initial draft. By December 1876 an incomplete
draft was submitted to the government on the condition that it be returned later for the inclusion of necessary corrections. Subsequently the Justice Department drafting committee, which underwent reorganization in the meantime, reworked the original copy of Boissonade's draft; and when their work was done the draft was almost completely based on French law. This draft was then delivered to the Council of State in November 1877 and the other provisional draft of 1876 was returned to the Justice Department. In order to examine the code just received the Council of State set up a committee in December 1877, appointing Itō as its head. Later he was succeeded by Yanagihara. The members of the committee came from the Council of State, the Justice Department, and the Genrō-In. In the ensuing year and a half the examining committee consulted foreign laws, the opinions of the bench, and, for issues not easily resolved, the committee sought the sanction of the Emperor. During this time deletions and additions were made as they were needed. By March 1880 the revised draft was submitted to the Genrō-In for further review. The biggest problem confronting the Genrō-In was what to do about the legal status of the concubine, who had been granted the status of a second degree relative under the terms of the Outline of the New Criminal Law (1870). Upon order of the Council of State, the code committee withdrew from the criminal code draft the provision allowing the concubine to keep this status; and the provision was never restored in spite of the efforts of certain members of the Genrō-In. The revisions made in the Genrō-In, mostly limited in scope, were accepted without further change; and the cabinet allowed the draft law to be promulgated as the Criminal Code in 1880. The Criminal Code along with the Code of Criminal Instruction went into effect on January 1, 1882. By contrast to the Outline of the New Criminal Law, which was initially restricted to the perusal of government personnel, the Criminal Code was announced from the very

1) This code is sometimes referred to in this book as the Old Criminal Code in order to avoid confusing it with the New Criminal Code of 1908.
beginning to the public at large. This fact and the fact that
the code derived from the French criminal code of 1810 is
evidence of the Criminal Code's modern orientation.

This code, according to M. Boissonade, neither adhered
to the concepts of absolute justice nor social utilitarianism; it
embraced the eclecticism then current in Europe. In so many
words this meant that the Criminal Code was aimed at the
prohibition and punishment of acts that were morally evil and
socially harmful. Expressing his views on the special charac-
teristics of the code, M. Boissonade also made it known that
the Criminal Code shared with the Outline of the New Criminal
Law (1870) and the Amended Criminal Regulations (1873)
the spirit of leniency in punishments, and he claimed, too, that
the Criminal Code sought to make a more even and precise
balance between the degree of a crime and its punishment.

The code was very significant for its attitude towards
punishments. As in the criminal law of post Revolutionary
France, the code made it explicit that no punishment would be
meted out except by an express provision of law. The adoption
of this principle on punishments, which was unknown to the
Outline of the New Criminal Law and to the Amended Criminal
Regulations, brought an end to the traditional practice of punish-
ment by analogy for unspecified offenses. As a consequence the
old contraventions (ishiki, isei) and the offenses against reason
and sentiment (fuōizai) were discarded. The Code\(^1\) also made
clear that its provisions did not have retroactive effect over
offenses committed prior to the Code's enforcement; such offenses
were to be judged by consulting both the old and the new
criminal legislation with emphasis being placed on lighter
penalties.

The offenses of the Criminal Code were classified into felo-
nies, misdemeanors, and police offenses; and each type of offense
was punishable by a specific court. This classification of offenses
was another aspect of the Code that followed French law.

The punishments of the Code were divided into two kinds:

\(^1\) In the following paragraphs Code refers to the Criminal Code (1882).
1) principal punishments and 2) accessory punishments. The principal punishments in the case of felonies were 1) death, 2) deportation with penal servitude, 3) deportation with imprisonment, 4) penal servitude, and 5) imprisonment. The principal punishments for misdemeanors were imprisonment and fine; and for police offenses the chief punishments were detention and minor fine. The accessory punishments consisted in deprivation or suspension of civil rights, adjudication of incompetency, surveillance, fine, and confiscation. The death penalty, which had originally called for decapitation in M. Boissonade's draft, was executed by hanging under the terms of the finished version of the Code. A sentence of deportation with penal servitude was fulfilled on an island off Japan proper where certain prescribed labor was performed for a limited term of ten to fifteen years or for a life term. In case this sentence was imposed on a woman prisoner, she remained on the mainland to serve her prescribed term of labor. Anyone over sixty years old was only worked according to his physical capacity. A sentence of deportation with imprisonment, imposed for offenses against the state, obliged the prisoner to spend a term of ten to twelve years or a life term without hard labor in an island prison. A sentence of penal servitude (major or minor) forced the prisoner to do hard labor in a mainland prison, while a sentence of imprisonment only required six to eight years (minor) or nine to eleven years (major) confinement in a mainland prison. So far as imprisonment was concerned, there was also another and lesser form of imprisonment in which the prisoner served from eleven days to five years with or without hard labor. As for the prisoner's wages, which were only paid if the prison term exceeded 100 days of hard labor, a certain portion of them were deducted and kept by the prison. In the matter of fines, which were imposed for criminal offenses, these were assessments of two yen and higher, although they could be converted to minor imprisonment on the basis of one day per yen when the fine failed to be paid within one month after the judgment became final. This type of im-
prisonment, however, could not exceed two years. A sentence of detention required no labor and ran only from one to ten days. And the imposition of minor fines ranged from five sen to 1.95 yen, this kind of fine being convertible to detention on the same basis as minor imprisonment.

With respect to the costs of a criminal trial, the defendant had to pay either all or part of it.

After having been sentenced and confined to prison, the prisoner still had the opportunity to have his term of punishment reduced. This could be done by release on parole, an arrangement introduced to Japan for the first time by the Criminal Code. Apparently the parole systems of Germany, England and other countries served as models for Japan’s scheme of parole. According to the Code, a prisoner who observed prison regulations and showed repentance while serving a term for conviction in a felony or misdemeanor case was eligible for parole upon completion of three fourths of his sentence. Parole applied also to convicts who had finished fifteen years of a life term of deportation with imprisonment at hard labor. But in case the deported convict was paroled he still had to remain on the island to which he had been deported. For prisoners who were simply deported and imprisoned without hard labor, parole was possible after completion of the third or fifth year of the sentence, depending upon whether the term was limited or for life. These parolees were also bound to stay on the island where they had been imprisoned.

Having spoken of the different types of punishments in the Criminal Code and the prisoner’s opportunity for parole, some mention should now be made of the criminal offenses that were non-indictable. First in this category were the acts committed under irresistible coercion and against one’s will; acts taken in defense of oneself or one’s relatives to avert imminent danger caused by natural calamities and emergencies; and acts committed in the performance of one’s duties in accordance with the order of a competent superior. Of these three acts only the second one does not appear in French criminal law. Other non-
indictable acts of the *Code* had to do with criminal intent. That is, acts committed without criminal intent or without knowledge of the fact that an offense was being committed could not be prosecuted, and a person who committed a grave offense without knowing its true gravity could not be punished to the full measure of the law. Ignorance of law, however, could not be used to establish absence of intent. Such provisions on criminal intent did not exist in French law, they were derived by M. Boissonade from the criminal law of Germany and other countries. For instance, the provision that allowed leniency in a grave offense whose true seriousness was known to the offender originated in Chinese law of the T'ang Period and belonged to the criminal law heritage of the Orient. In addition to these various non-indictable offenses, there were still others, including the acts committed by persons who were unable to discern right from wrong owing to a loss of their sensory and mental faculties, and the acts committed by deaf mutes and by persons less than twelve years old. Furthermore if a person between twelve and sixteen years of age committed an offense and it was proven by an examination that he could not distinguish right from wrong the offender could not be prosecuted. And even if it was proven that the young offender did know the difference, his punishment was still reduced two degrees in a felony or misdemeanor case and one degree in a police offense. If the offender belonged to the sixteen to twenty year age group the punishment for a felony or misdemeanor was only reduced one degree and for a police offense there was no reduction of penalty at all. Now, apart from these ordinary non-indictable offenses there was a class of special non-indictable offenses for which the specific reduction of penalty was stipulated in the provision covering the particular offense. Of these special non-indictable offenses perhaps the most notable example was justifiable self defense. For instance, the person who was compelled to kill an assailant in the legitimate defense of his own person and life or that of someone else was given no punishment at all. But the killing could not be excused if the offender provoked the
assailant. The fact that justifiable self defense was included among the Code’s provisions that dealt with offenses involving fatal injuries was yet another aspect of the Code that yielded to French legal influence.

Non-indictable offenses were not the only instances in which the offender could escape the full rigor of the law. When, for example, the offender surrendered himself to the authorities before his offense had been discovered the penalty was reduced one degree, unless the offense happened to be murder or manslaughter. However, the Criminal Code did not recognize a complete remission of penalty. The offender was also judged according to the regulations governing self-denunciation when, in an offense against property, the offender confessed his guilt to the aggrieved party.

The mitigation of a penalty by reason of extenuating circumstances, which was introduced to Japanese criminal legislation in 1874, was also accepted by the Criminal Code. But whereas extenuating circumstances had previously allowed the penalty to be reduced as much as five degrees, the Criminal Code only allowed the penalty to be diminished one or two degrees.

In the disposition of concurrent offenses, the Code followed the legal tradition handed down from the T’ang Period. A sentence, in other words, was imposed for the graver of two offenses when a second offense was charged to the defendant before the first offense (misdemeanor or felony) had been adjudicated. But in case two or more police offenses were committed at the same time the punishments for the different offenses were concurrently imposed. In the event that a second offense was placed before the court subsequent to the adjudication of a first case no further penalty was imposed on the offender unless the second offense was more grave than the first. When the second offense was more serious than the first, the penalty for the second offense replaced that for the first one.

With respect to the offenses committed through the cooperation of several persons, the Code drew a distinction between
the principal and the accessory. If all parties to the offense took an active part in the commission of an offense they were all punished as principals. Likewise, a person who instigated another to commit a misdemeanor or felony was regarded as a principal. Yet the person who, knowing that a misdemeanor or felony would be committed, only aided and abetted the principal by such acts as handing him the weapon, inducing or instructing him and thereby facilitating the commission of the offense, was simply regarded as an accessory, and he was given one degree less punishment than the principal. In case the principal received an increased sentence by virtue of his status the accessory was given one degree less punishment than required by the heavier sentence; but when the principal received a mitigated punishment because of status the accessory was simply judged on a lighter charge without being eligible for any mitigation of penalty at all.

The penalty for criminal attempt in a felony was one or two degrees lighter than the penalty for the consummated crime, while a penalty for an attempted misdemeanor was only imposed when there were explicit provisions in the Criminal Code that specifically covered the offense concerned. There were no penalties however for attempted police offenses. The provisions of the Criminal Code that allowed mitigation of penalty for criminal attempt were based by M. Boissonade on German criminal law since such provisions were lacking in French law. Conspiracy and the preparation for committing an offense were punishable only when the provisions referring to such offenses definitely provided a punishment. And the offenses which were stopped in the stage of preparation were not liable to any punishment.

The offenses in the Criminal Code were classified in the French tradition into 1) felonies and misdemeanors relating to the public interest, 2) felonies and misdemeanors against the individual's person and property, and 3) police offenses; and even more in the French tradition each general category of offense was divided into several distinct offenses. Larceny, for
example, was classified as 1) simple larceny, 2) larceny committed in the aftermath of natural calamities, 3) larceny committed by breaking enclosures and entering locked dwellings, 4) larceny by armed entrance into homes, 5) theft of farm produce in the field, and the like. This detailed classification of offenses was the final result of the principle of "no punishment without a previous law". The policy for imposing punishments nevertheless was one of leniency and the death penalty was prescribed only for premeditated murder, certain cases of manslaughter and arson, and for offenses against the Imperial family and the state.

Among the different felonies and misdemeanors against the public interest it should be noted that the "offenses against the Imperial family" originated as a specific category of offenses with the enactment of the Criminal Code, for no such classification of offenses had been cited previously by the Outlines of the New Criminal Law (1870) nor by the Amended Criminal Regulations (1873). The appearance of this type of offense was perhaps inevitable once the view was accepted that punishments must be imposed only in accordance with established law. Although objections were raised in the drafting committee against the introduction of "offenses against the Imperial family" into the Code, M. Boissonade rejected the protests and drew up the necessary provisions anyway; his reasoning being that an offense against the Emperor, the Empress, or the Crown Prince was no less than a felony or misdemeanor committed by an offspring against his parents or grandparents. M. Boissonade even framed provisions for the punishment of disrespectful acts committed against the members of the Imperial family. As independent offenses those against the Imperial sepulchre and Imperial family were inserted into the code during its revision.

At the time the Criminal Code was being compiled, the arguments for liberal rights were just then at their most strident pitch and, being at wit's end for a means to deal with the opposition, the government thus included provisions in the Code that dealt with riot and offenses against the state. The
provisions on riot seem to have been written into the Criminal Code draft, upon request of the Inner Council, during the course of the draft's revision. But the provisions concerning offenses against the state (insurrection, etc.) had been in the draft all the time, though originally they had only demanded that the leaders and instigators be deported for an indefinite term. By the time the draft had been revised the penalty of deportation had been replaced by capital punishment. Other offenses that were newly added during revision of the draft Code were the offense of avoiding fulfillment of accessory penalties and the offense of destroying corpses and excavating graves. In the matter of police offenses, any such offense that was not provided for by the Criminal Code fell under the purview of the regulations for police offenses that were established by the prefectural authorities.

Following the enforcement of the Criminal Code and the enforcement of the separate criminal codes for the Army and Navy, the other significant legislation that was enacted by the government dealt with the control of explosives (1884), protection of the Diet and its members (1889), dueling (188), violation of ordinances (1890), official seals, documents and licenses (1890), penal bankruptcy, and control over the counterfeiting of currency and securities (1895).

The execution of penalties imposed under the terms of the Criminal Code and other criminal legislation was governed by the Prison Regulations (1881) that were revised in 1882. For the prisoners being sent to the Hokkaido Reformatory provisional detention wards (used as assembling points) were set up in 1884 in Hyogo and in the reformatories located in Tokyo, Miyagi and Miike.

The Bureau of Prisons, which had been established in 1879 in the Home Department, was disestablished in 1885 and its duties were transferred to the Police Bureau. Four years later Kiyoura Keigo, the Chief of the Police Bureau, initiated a variety of improvements among which the most outstanding was the complete amendment of the Prison Regulations (1881). By the
amended version, prisons were divided into reformatories, provi-
visional detention wards, district prisons, prisons for confine-
ment, houses of detention, and houses of correction. The per-
sons accused of offenses that were still pending in court were
housed in the prison of confinement; such prisoners were allowed
to furnish their own clothing and purchase their own food. The
juvenile offenders and deaf mutes who were involved in non-
indictable offenses were kept in the houses of correction, although
under the new *Prison Regulations* these individuals could not
be placed in a house of correction merely upon an application
of their parents or guardian. The prisons were equipped with
separate wards for men and women, and further distinctions
were made in the cell accommodations according to the nature
of the crime and the age of the offender. In the houses of
correction the cell classification was based on age. The earnings
of the prisoners during their imprisonment went in part to
the prison in order to defray expenses. The convicts who served
a prison sentence on a felony conviction only received twenty
percent of their earnings, those serving terms on misdemeanor
convictions received forty percent, while the prisoners who
were sentenced to no prescribed labor, the inmates of the houses
of correction, and criminal defendants received sixty percent
of their earnings. During the late 1880's the movement for the
improvement of prisons attracted a growing number of support-
ers, and in 1888 private individuals established the Prison
Society of Japan. In 1895 Ogawa Shigejirō was sent as Japan's
representative to attend the Fifth International Prison Conven-
tion held in Paris. And in 1897 the Bureau of Prisons was
once again reestablished.
CHAPTER III.

THE PERIOD OF COMPLETION
1898–1912

1. THE CABINET, THE ELDER STATESMEN, AND THE PRIVY COUNCIL

a. The Cabinet and the Elder Statesmen

Once the organization and functions of the cabinet were established in 1889 no major alterations in the cabinet were made for the rest of the Meiji Period. With respect to the signing of state documents, however, there was a slight change in 1907. Whereas, under the Regulations Governing Cabinet Organization (December 1889), the Prime Minister along with the competent state minister countersigned documents relating to general administration and the state ministers alone countersigned the state documents that only involved their respective departments, the Prime Minister after promulgation of the Law Concerning Forms of Promulgation (February 1907) was required to countersign all Imperial proclamations with the exception of foreign policy documents.

The way in which a Prime Minister was selected also changed to a certain extent. In the beginning, during the first decade or so subsequent to the establishment of the cabinet system of government, the premier of a new cabinet was usually recommended to the Emperor by the retiring premier, but in the last part of the Meiji Period (1898–1912) it became a firmly established procedure for the new premier to be recommended by the elder statesmen. In all six of the cabinets formed
between the fall of the Okuma-Itagaki cabinet in 1898 and the formation of the Saionji cabinet in 1912 the premier in each case was put forward by either a council of elder statesmen or by an individual member of this group. Not only the premier but the cabinet itself and its general conduct of national affairs fell under the tutelage of this coterie of statesmen. In the field of finance, for example, the determination of any financial issue had to have the approval of Matsukata Masayoshi. The pervasive influence of the elder statesmen or genrō was especially striking from 1901 to 1906 when the cabinet was headed by Katsura Tarō. Of the elder statesmen, Itō Hirobumi was the leading member until he died in 1909; afterwards his place was taken by Yamagata Aritomo. The other genrō included such figures as Oyama Iwao, Matsukata, Inoue, and Katsura; and it was to this group of statesmen that Emperor Taishō addressed an Imperial rescript in July 1912, subsequent to Emperor Meiji’s death, calling upon them to continue in their advisory capacity to the Throne.

Owing to the influence of the genrō the relationship between the cabinet and the parties was not as direct and intimate as is ordinarily demanded by the principles of parliamentary democracy. Nevertheless it should be remembered that party cabinets were formed in 1900, 1906, and 1911. The party cabinet of 1900 was led by Itō Hirobumi, the head of the Seiyūkai, and all his cabinet ministers except the ministers of the Army, Navy, and Foreign Affairs were members of the same party. The party cabinets of 1906 and 1911 were again led by the head of the Seiyūkai, Saionji Kimmochi, but on these two occasions the cabinet only included two or three Seiyūkai party members.

b. The Privy Council

The Privy Council during the closing years of the Meiji Period was instrumental in keeping the political party influence in government to a minimum. This restraining role was occasioned by Yamagata Aritomo’s attempt to put an end to the
spoils system which had become particularly flagrant under the Okuma-Itagaki cabinet of 1898. As soon as this cabinet fell and Yamagata became the next premier he decided to achieve his ends by amending the Civil Service Appointment Ordinance. The ordinance was changed so that chokunin rank positions in the government would only be available to persons possessing definite qualifications. Furthermore, by consultation with the Privy Council, Yamagata ensured that this amendment could not be changed arbitrarily by the political parties. The effectiveness of this restraint against the parties was guaranteed by the issuance of an order that made any measures concerning the civil service system as well as any Imperial ordinances concerning education and cabinet organization subject to the advice giving authority of the Privy Council. Thus while any fear of sudden change was dispelled by this order, there was on the other hand little possibility of any improvements being easily made in civil service or any other aspect of government that had been singled out for close watch by the Privy Council.

2. THE IMPERIAL DIET

In both the written and customary laws that governed the Diet certain changes were made during the last part of the Meiji Period. With respect to the changes in written law, the Law of the Houses was amended in 1889 and again in 1906. By the former amendment the annual pay of the Diet members was increased and a provision was inserted by the lower house that made it possible for the individual Diet member to decline his annual allowance. The amendment of 1906 extended the period allotted to the lower house budget committee for examining the budget from a period of fifteen to a period of twenty-one days. These were the only changes made in the Law of the Houses during the Meiji Period.

Though these changes were not very important, there was a significant development in the customary law of the lower house. This development occurred in the 1904-5 session of the Diet when a conference of representatives from all political
factions met for the first time in the House of Representatives. This type of conference was convened by the President of the House of Representatives whenever he considered a meeting necessary, even if the Diet were not in session, and the matters discussed by the conferees concerned the proceedings of the lower house, the order for taking the floor, and various and sundry other matters. For the purpose of managing the Diet this conference was of considerable import. In the House of Peers no such organization emerged until 1920.

The seating arrangement for lower house members, determined originally by lottery, was changed about 1905 by the President of the House of Representatives. He set a precedent by seating the representatives according to party affiliation. In the Upper House party affiliation was not a factor in the seating order; instead the Peers were arranged by the President of the House of Peers in accordance with their age and their precedence at Court.

Another innovation of great significance for the Diet was the Diet member's right to interpolate state ministers. At first the procedure that was prescribed by the Law of the Houses for questioning state ministers required at least thirty members of either house to join in submitting a list of questions to the government through the president of their respective house. Independent of this law, however, customary practice produced a rule that allowed the Diet members to directly request clarification of any obscure point that might develop during the speech being made by a minister or that might occur whenever a bill was introduced or whenever a motion was being raised.

One other change in basic Diet legislation that should not be overlooked is the amendment of the Law of the Election for Members of the House of Representatives. This law was finally amended in 1900 after repeated amendment proposals had been put forward at every session of the Diet since its creation in 1890. Having first been drawn up in such a way as to favor landowners, the election law came under the criticism of the commercial and industrial elements of the population as these
groups acquired more wealth and influence in the expansion of Japanese capitalism following the Sino-Japanese War. As a result of the election law's amendment the changes were these. First, whereas the qualified voter previously had to pay a direct national tax of fifteen yen on land and income as much as three years prior to the preparation of the electoral list, under the amended version of the law the tax, now reduced to ten yen, only had to be paid one year prior to the preparation of the electoral list if the tax were being paid on land holdings. If the tax payment included both taxes on land and other direct national taxes (income or business tax) that were not imposed on land, the payments had to be made two years prior to the preparation of the electoral list. Hence as a consequence of the reduction of the qualifying tax from fifteen to ten yen, the reduction of the tax payment period from three to two years, and the acceptance of the business tax as a valid qualifying requisite for voters, both the merchant and industrialist stood to reap more benefits in the lower house. Even so, the majority of the Japanese male population could not vote until all tax qualifications were removed in 1925. The second change brought about by the amendment of the election law removed the tax qualification that previously had to be met by the electoral candidates. Thirdly, small electoral districts were replaced by large ones that were generally co-extensive with the prefectural boundaries; and the cities and islands under prefectural jurisdiction were separated from the rural areas and made into independent electoral districts. By the fact that the cities, which were defined as having 30,000 or more inhabitants, were allowed at least one representative and the rural areas were only entitled to one representative for every 130,000 persons, the merchants and industrialists further increased their political advantage. Fourthly, the ballot no longer had to be signed by the voter, but also the voter could no longer have the ballot marked by proxy. The fifth and last of the amendment changes caused the plural ballot to be replaced by the single ballot system. This last change was perhaps brought about by the minority
parties which were claiming that the plural ballot gave an edge to the majority party. Further revisions of the election law took place in 1902, 1908, and 1910, but the changes only concerned election districts.

Amendment of the *Ordinance Concerning the House of Peers* was effected in 1905 and 1909, and on both occasions the proposals came from a cabinet headed by Katsura Tarō. Under the existing rules concerning the number of Peers in the Upper House, counts, viscounts and barons were not to exceed one fifth the entire number of their respective orders, and the number of Peers nominated directly by the Emperor or who obtained their seats because they were the highest tax payers in Japan were not permitted to exceed the total number of patented nobility. But in virtue of the 1905 amendment the total number of counts, viscounts and barons was limited to 143 with each order having proportionate representation as in the past. The number of Imperial nominees was set at 125 which thus ensured that they would not outnumber the titled nobility. By the Amendment of 1909 viscounts were limited to 17 seats, counts to 70 seats, and barons to 63.

3. LOCAL GOVERNMENT

a. Local Autonomy

Limited changes were made in the *Regulations Governing the Organization of Cities* and in the *Regulations Governing Organization of Towns and Villages* in the year 1900. The innovations included 1) provisions for wards in cities having a population in excess of 200,000, with the exception of the cities of Tokyo, Kyoto and Osaka; 2) the delegation of the state ministers' sanctioning powers to the prefectural governors wherever possible; and 3) the requirement that approval be obtained from both the Home and Finance Ministers whenever a surtax on land that exceeded one fifth the land tax was imposed. Heretofore the approval of these two ministers had only been needed when the surtax exceeded one seventh the land
Again in 1906 and 1907 there were attempts to make major alterations in the above mentioned municipal legislation, but it was not until 1911 that the cabinet was successful in getting this legislation repealed. In its place new Regulations Governing the Organization of Cities and new Regulations Governing the Organization of Towns and Villages were enacted. The differences between the repealed regulations and the new ones were several. Cities, towns and villages were now explicitly designated as public corporations; the sphere of their functions and liabilities were clearly determined; the designation of wards was left to Imperial ordinance; residents were regarded as anyone having a resident in the municipalities; the provisions relating to the rights of municipal residents were more fully elaborated; and the restrictions on the number of city council members were removed. Electors were still divided into three classes in the city and two in the towns, though the way they were divided was somewhat changed. The restrictions on the establishment of electoral districts were eliminated; the term of incumbency for municipal assembly members was set at four years; and all assembly members had to stand for reelection every four years. Voting was done by the single ballot system and the voter was required to mark his own ballot. To be elected the candidate of each class had to obtain more than one-seventh of the figure resulting from the division of the number of elective offices in each class. The punitive regulations concerning elections were based on similar regulations found in the Diet's lower house election law. The city assembly was permitted to delegate a portion of the items within its competency to the city council; the municipal heads summoned, opened, and closed the municipal assemblies, and it was possible for a municipal assembly to be convened upon the demand of one third of its members. The city council served as the city's deliberative organ and the mayor was the city executive. In the appointment and dismissal of salaried municipal officials the municipal heads were allowed to act according to their
discretion; and the annual municipal budgets had to be voted upon by the municipal assemblies one month prior to the commencement of the fiscal year. The new municipal legislation also spelled out in more detail the provisions concerning supervision of the municipalities. But so far as the city was concerned the most important change was that the mayor rather than the city council became the city’s executive. Formerly the city council had exercised general control over the city, had been the city’s representative and had discharged the city’s administrative duties, while the mayor as president of the council had only been encharged with the direction and supervision of city affairs; but in consequence of the revision of the city regulations the mayor was given general control over the city and he was made the city’s representative. The city council on the other hand became the deliberative organ on an equal par with the city assembly. The powers of the council entitled it to deliberate upon matters delegated to it by the city assembly, to state its views to the mayor on proposals which he submitted to the assembly, and to exercise jurisdiction over matters assigned to it by law and ordinance. As in the past the council was composed of the mayor, his assistant and the honorary councilors, although the latter were now chosen by and from the city assembly. With but little modification made in 1921 and again in 1926, when local assemblies were accommodated to universal suffrage, the new municipal legislation of 1911 lasted until drastic reforms were carried out after World War II.

Following the 1892 amendment of the Regulations Governing Prefectural Organization, proposals calling for further amendment were put forward on several occasions, but none of them ever became law. But owing to the fact that a large number of prefectures had not yet implemented these regulations and because a number of changes were deemed desirable in those prefectures where they were already in effect, the Yamagata Cabinet succeeded in getting the Diet in 1899 to accept, with little alteration, the cabinet’s proposed changes for prefectural organization. The amended regulations were to take
effect in July 1899 in all prefectures where the repealed prefec-
tural regulations had already been in force and in the other
prefectures they were to take affect whenever the governors
communicated to the Home Minister that their prefectures were
ready for them.

The new *Regulations Governing Prefectural Organization*
made quite clear that the prefecture was a juridical person;
also they made it explicit that the prefecture was an administra-
tive division of the state by declaring that, under the supervision
of the central government, the prefecture would dispose of
public matters and those affairs delegated to it by law, ordinance
and custom. With respect to the assembly, which was to be
composed of members elected by each electoral district, the new
law perfected th provisions relating to the assembly’s powers;
it abolished the existing rural and urban divisions of the Tokyo,
Kyoto, and Osaka prefectural assemblies; it repealed the former
provision that restricted the opening of the regular assembly
sessions to the fall season; and it redefined a quorum so that this
number was one half the assembly members rather than one
third. The governor was given the right to prorogue the as-
sembly after having set a date for this action, and the Home
Minister was only allowed to dissolve the assembly after
obtaining the Emperor’s sanction. The number of honorary
prefectural councilors was increased to six and their powers
were more fully prescribed. With respect to the governor, the
new law was explicit in giving him general control over, and
making him the representative of, the prefecture. The governor
was allowed to create, supervise, and discipline municipal
officials anywhere in the prefecture and to establish the amount
of their salaries, their traveling expenses and to determine the
way in which the allowances were to be granted. In the sphere
of prefectural finance the new law recognized the creation of
a reserve fund and a reserve stock of grain, and it permitted
the collection of rents and fees. In the levying and collection
of prefectural taxes the issuance of detailed regulations were
defered to Imperial ordinance; likewise the allotment of taxes
to the municipalities was left to the determination of ordinances. A special account for the prefecture was authorized, and the report on final accounts had to be delivered at a regular session of the assembly two years after the accounts had been closed. The Home Minister was vested with the power to issue ordinances and to take measures necessary for the supervision of the prefectural administration. Such in sum were the chief amendments, although the amendments of special importance were those that perfected the provisions specifying the governor’s functions and powers, and those that changed the election procedure for prefectural assembly members. Under the old indirect method of electing assembly members each rural division assembly and city assembly had combined with its respective council to conduct the balloting, but by the new system the ballots for the assembly candidates were cast directly by the qualified voters. The indirect system, adopted originally to avoid the waste of time and money as well as the confusion and strife identified with the direct election system, had more or less defeated its own purpose since it had caused over zealous competition for the municipal assembly posts and had thus prevented a sound development of local government. Therefore the change was made in 1899 to the direct election system. To be an elector under the new scheme of election, the individual had to possess these qualifications: 1) be a resident of a municipality within the prefecture, 2) be qualified to vote in a municipal election, and 3) be a taxpayer who had paid within the prefecture at least three yen in direct national taxes a year previous to the election. The qualifications for candidates were almost the same as under the old law. And the voting procedure followed the single, anonymous ballot, the candidate receiving a majority of votes being elected.

Once again in 1908 the Regulations Governing Prefectural Organization were amended but only to the extent of having a provision inserted that would make it possible to provide special rules through Imperial ordinances for the administration of Okinawa. Accordingly, in March 1909 an Imperial ordinance
detailed the exceptional procedure for Okinawa, including special election procedure for Okinawa assembly members, assignment of the duties of the prefectural council to the governor, etc.; and in April the *Regulations Governing Prefectural Organization* were put into effect on this island. Like the municipal legislation, these regulations for the organization of prefectures remained in effect without undergoing any major changes until after World War II. As for Hokkaidō, legislation was enacted in 1901 for the assembly and for the expenditures of Hokkaidō.

When the *Regulations Governing Prefectural Organization* were amended in 1899 so were the *Regulations Governing Rural Division Organization*. After amendment the latter regulations became effective in July 1899 in those prefectures where the old law had been in force, though they were not enforced in the other prefectures until the governors informed the Home Minister that local conditions were suitable. For the most part the change in rural division organization coincided with those made in prefectural organization. However attention may be drawn to the fact that now 1) the honorary rural division council members were elected by and from the division assembly, 2) rural division associations for the disposal of specific business through cooperative action could be established as public corporations with approval of the Home Minister, and 3) the election procedure for rural division assembly members was changed. Owing to the importance of the changes in election procedure we shall confine our remarks to this aspect of the amendment. Under the old procedure part of the assembly members were elected indirectly by the town and village assemblies and the other part by the major landholders of the rural division, but as a result of the amendment (1899) of the *Regulations Governing Rural Division Organization* the vote of the major landowner category was abolished and the indirect balloting was replaced by a direct ballot of the rural division electorate. The reasons for abandoning the voting privilege of the major landowners were that this privilege, based on historical precedent peculiar to Germany, was ill suited to Japan and also the
voting privilege had failed to bring about the election of men of high public esteem upon whom the government was relying for the development of a sound local autonomy. Instead the voting privilege of the major landowners had engendered party politics. Under the new law the important features of the election process were as follows. The towns and villages constituted the electoral districts; the number of assembly members ranged from fifteen to thirty, and if necessary to forty, and the incumbent's term of office was four years. A town and village resident was qualified to vote in the division assembly election if he had paid a three yen direct national tax within the division at least a year prior to the election. But to qualify as an assembly candidate the individual had to show payment of a five yen direct national tax. The voting was done by the single anonymous ballot and the candidate's election to office was determined by a majority vote.

Though the *Regulations Governing Rural Division Organization* were thus amended, there nevertheless existed a long standing argument against the very existence of this piece of legislation; and after 1904 proposals for its repeal were raised by both Diet members and the government. The proposals, however, always met with failure in the House of Peers owing to the opposition of Yamagata, the originator of the rural division legislation. But finally in 1921 repeal legislation passed both houses of the Diet and in April 1922 the rural division was abolished.

b. Local Government

During the last part of the Meiji Period the *Regulations Governing the Organization of Local Government Official* (1886) were amended several times. Of the important changes it may be noted that the provisions on the prison warden and other prison personnel were deleted; a school inspector was created (1899); and prison affairs were removed from the control of the governor (1905).
4. THE ADMINISTRATIVE BRANCHES OF THE GOVERNMENT

a. Finance

Subsequent to the amendment made in the Finance Law in the 1890's, there were only two other amendments of this law before the beginning of the Taishō Period. Both of these amendments were made in 1902. One of them, originated by the lower house, provided that no supplementary budget could be presented except for expenditures need to cover unavoidable contingencies and for deficits arising in expenditures that were based on law or contract. The other amendment, sponsored by the government, raised the amount of prepayments to correspond with the rise in commodity prices. Aside from these two changes the Finance Law underwent no further alteration until it was radically changed in 1921. Thus the principal developments in Finance during the late Meiji Period were unrelated to accounts; they pertained, as we shall see, to the perfection of the tax structure and to the increase of revenue collections, which was the result of the Wars with China (1894-5) and Russia (1904-5).

With respect to the collection of revenue the government on November 1, 1902, promulgated the Ordinance for the Organization of the Bureau of Revenue Administration, giving this bureau control over internal revenue. Simultaneously the Bureau of Revenue Control was abolished. On the same date the Ordinance for Organization of Revenue Offices was promulgated.

As observed earlier taxes were increased subsequent to the Sino-Japanese War, but collections were still insufficient and a further increase was needed owing to a build up in armaments and an expansion of the Taiwan Administration. Therefore the 2.5% tax on the residential land located within cities and eight-thousandths in other places was increased between 1898 and 1903. Connected with this increase in taxes the assessed value of agricultural land was reduced in those districts where the value estimates had been placed too high, and in March 1899
the imbalance between urban and rural residential land was corrected by enactment of the *Residential Land Tax Law*. While these financial measures were being enforced on the main islands of Japan the traditional scheme of land holding and land taxation on Okinawa was abolished in accordance with the *Okinawa Land Readjustment Law* (1899). Upon completion of this Okinawa land reform, the *Land Tax Regulations* (1873) and the *National Revenue Collection Law* (1897) were then put into effect in part of Okinawa in January 1903 and in the remaining part in January 1904. In addition to the adjustments made in the taxes on land, the rate of the income tax was raised in 1899 and imposed thereafter according to the type of income rather than simply as a general income tax. An increase was also made in the liquor tax (1898) and in the soy sauce brewerage tax (1899). Again in 1899 changes were made in the tax on the soy sauce that was brewed for home consumption, in the registration tax, and in the customs tax; and new taxes were created for the issuance of convertible bank notes, for tonnage, for stamps (*inshi*), and, furthermore, a monopoly for imported tobacco was established. The new legislation on stamps caused the repeal of the existing stamp tax regulations for securities. Of the aforementioned revenue items the most important was the increase in the liquor tax, which caused the revenue from liquor (¥49,000,000) to surpass that derived from land (¥44,860,000).

With the outbreak of the North China Boxer Incident in 1900 the liquor brewerage tax and the customs tax were raised and taxes on sugar, beer, and on alcoholic spirits and beverages were newly created in an attempt to obtain funds for military expenditures. Then, on behalf of a naval expansion program, the Katsura cabinet attempted in 1902 to have the eight thousandths increase in the land tax (which had originated in 1898) extended beyond the date of its termination in 1903; but this proposal was finally dropped after being vetoed in two consecutive sessions of the Diet. Nevertheless as soon as the *Russo-Japanese War* began in 1904 a large scale increase in
revenue for military needs was effected on two different occasions in the form of extraordinary special taxes.

The first such extraordinary tax legislation, enacted in April 1904, resulted in the creation of certain new taxes and in higher rates for old taxes. Of the old taxes that were raised the most striking increases occurred in the taxes on land, incomes, business, in the consumer’s sugar tax, and in the customs duties on manufactured tobacco. As for the tax on tobacco, it should be noted that the Tobacco Monopoly Law, promulgated in April 1904, aimed at bringing the manufacture and sale of cigarettes under government control in July 1904 and the sale of shredded tobacco under government control in April 1905. But because of the difficulties in consolidating the manufacturing process, the government had to leave a segment of the tobacco manufacturing industry in private hands for a short while. By virtue of this extraordinary tax legislation the fiscal year of 1904 witnessed a tax increase of ¥64,000,000.

Still, the added revenue could not adequately offset the expanded expenditures caused by the Russo-Japanese War, and on January 1905 three more tax measures were promulgated. The first one, the Special Tax Law, again increased existing taxes and brought more new ones into existence; the second one, known as the Law of Succession, placed a tax on the individual succeeding to the headship of a house or to an estate, and the third or Salt Monopoly Law placed the sale of salt under government control. By the end of the fiscal year 1906 the government had thus added more than ¥86,000,000 in new annual tax receipts to its revenue.

The total revenue for 1906, amounting to ¥283,160,000, was almost double the 1903 figure; and no doubt this tremendous sum was a considerable tax burden for the nation even if allowances are made for inflation. An interesting feature of the revenue picture at this time is that the liquor tax had increased forty per cent since 1903 and the land tax had increased over eighty per cent, which meant that the land tax had regained its position as the foremost contributor to the national coffer.
Together the land and liquor taxes were still the two greatest sources of revenue. Though not to be compared in absolute value with the tax on land or liquor, the taxes on incomes and business showed a very sharp rise, both totaling almost three times their earlier figure.

Born of necessity the extraordinary tax measures were scheduled to be repealed a year after the return of peaceful relations with Russia. Their repeal, however, was frustrated by a number of factors. First of all Japan failed to receive an indemnity from the Russo-Japanese War as she had in the Sino-Japanese War; secondly, the payments on the principal of war bonds and the payments of veterans’ pensions increased; and, thirdly, outlays had to be made for strengthening the military forces. Therefore the government had a bill passed through the Diet in March 1906 that would allow the special tax legislation to remain in effect. But simultaneously the government announced that a tax reduction would be carried out in two years and action was taken to diminish taxes in a limited way in 1906. Yet, again, the government’s good intentions were thwarted by the post war recession in 1907; and by the poor showing of its bond subscription drive, the government was compelled to resume a program of heavy taxation which could not be curtailed until 1910.

As a consequence of the readjustment made in taxes in 1910 the major revenue categories of 1912, in the order of their importance, were the taxes on liquor (¥93,860,000), land (¥75,360,000), customs (¥68,490,000), incomes (¥38,980,000), business (¥26,020,000), textiles (¥20,170,000) and sugar (¥13,510,000). By contrast to the types and amounts of taxes collected in 1887 (land: ¥42,15,000; liquor: ¥130,060,000; tobacco: ¥1,590,000; soy sauce: ¥1,250,000; customs: ¥4,130,000; and income: ¥520,000) it is apparent that the taxes on liquor and customs, and particularly on incomes had risen rapidly. If we consider the sum of these taxes together with the growing sum of business and consumer taxes, a fair impression may be had of the development of trade and industry in the twenty-five
year period from 1887-1912.

In concluding our remarks on finance it should be observed that, owing to the restoration to Japan of her complete territorial jurisdiction and her tax rights by the enforcement of the revised treaties in July and August 1897, the Fixed Rate Customs Tax Law was put into effect in January 1899. This law was amended in 1906 and again in 1911 when Japan completely regained her right to set her own tariffs.

b. Police

In the late Meiji Period the control over the administrative police in all parts of Japan originated at the highest government level with the Home Minister. From him this control passed through the Home Department's Police Bureau to the prefectural governors at the local level. In Tokyo of course control over the administrative police was exercised by the Superintendent-General of the Metropolitan Police. Ordinarily the regular duties of the administrative police were classified into the three categories of police affairs, peace preservation, and sanitation, but accompanying the growth of party politics the administrative police in all parts of Japan added a section of higher police to their units between 1911 and 1916. Herefore the higher police had only been employed in the most important prefectures.

Of the legislation relating to the police that was enacted during the period under review (1899-1912) the Law for the Execution of Administration (1900) and the Peace Preservation Police Law (1900) were of major significance. Other police legislation of minor importance that was enacted about this same time concerned the disposition of travelers falling sick or dead on the wayside, the control of prostitutes, reformatory work, and the control of articles of food and drink. This broadening of police legislation was important in two respects: it prepared the way for foreigners to reside in the interior of Japan, as allowed by the revised treaties, and it furnished the legal controls for the labor disputes that arose as Japan moved from prosperity to depression after the Sino-Japanese War.
Further police legislation, beginning with the *Newspaper Law*, was enacted between 1909-1912 after the labor movement had reached a second peak of development in 1907. In 1912 the *Factory Law* was promulgated, though it was not enforced until 1916. Another important enactment was the *Regulations for the Punishment of Police Offenses* which accompanied the enactment of the *New Criminal Code* in 1908.

Since space does not permit an account of all the police legislation of the late Meiji Period a brief sketch shall only be made of the *Peace Preservation Police Law*, the *Law for the Execution of Administration*, and the *Regulations for the Punishment of Police Offenses*. The *Peace Preservation Police Law* (1900), which was meant to replace the *Public Meeting and Political Party Law* (1890), was at once more lenient and more severe than the law it superseded. With respect to the more lenient provisions of the *Peace Preservation Police Law*, the time for submitting an advance notice to the police authorities for an impending public political meeting was reduced from forty-eight to three hours; outdoor public meetings were given recognition; the notice for outdoor public meetings and for mass demonstrations only had to be given to the police twelve hours rather than forty-eight hours in advance of the event; and outdoor meetings and demonstrations were made permissible during the period in which the Diet was closed. With regard to that portion of the law that was made more strict, secret societies were placed under ban; and the display, distribution, or recitation of written matter, the pictures or poetry or the speeches and activities in the streets and other places freely frequented by the public that the police regarded as disturbing to peace and order or harmful to public morals were prohibited. In addition, there were new provisions concerning the disputes between management and labor. These latter provisions specified that no violence, intimidation or public defamation could be used against anyone for the purpose of 1) forcing him to join or refrain from joining an organization designed to take cooperative action relating to labor conditions or wages, 2) forcing
an employer to dismiss employees or to refuse employment applications in order to bring about a mass dismissal of workers, or forcing workers to quit their work or to turn down offers of employment in order to bring about a mass strike; or 3) forcing another's consent regarding labor conditions and wages. Prohibited also was the inducement or instigation of a person with the aim of accomplishing item (2) above. And prohibitions were introduced against the use of violence, etc., to force another to agree to the conditions of a lease agreement for the cultivation of land.

As concerns the second important piece of police legislation that was enacted in 1900, i.e., the Law for the Execution of Administration, this law specified that in order to compel action or forbearance as ordered by law and ordinance or as ordered by dispositions based on them, an administrative agency, after a prior warning, could effect an execution by proxy or impose a fine not to exceed twenty yen; though direct compulsion was not to be allowed when it was considered that the action or forbearance could not be compelled by proxy execution or fine or when the situation was not urgent. This law also contained provisions relating to detention, provisional custody, the banning of raids on private residences between sundown and sun up, compulsory health examination and detention of illicit prostitutes, the use of land and goods for sanitation purposes, and the prevention of injury in the wake of natural calamities. Detention was defined as 1) protective arrest for drunkards, lunatics and persons attempting suicide or as 2) preventive arrest for persons who might endanger the public peace by acts of violence. Legally a person could not be detained after sun down on the day following arrest, though in practice it is a well known fact that persons were detained a number of days by simply releasing them from one police station and transferring them to another. Provisional custody simply meant that the administrative agency concerned was authorized to retain for safe keeping, for as much as thirty days, any weapons and arms belonging to drunkards, lunatics, attempted suicides, and
the like.

Lastly, the Regulations for the Punishment of Police Offenses, which were enacted as a special law to take the place of the section on police offenses that was not carried over from the old to the New Criminal Code, dealt with offenses punishable by detention and minor fine. The measures authorized by the Regulations for the Punishment of Police Offenses were based on the Summary Trial Regulations for Police Offenses (1885) which continued in effect even after the enforcement of the New Criminal Code (1908).

5. SOCIAL LEGISLATION

The interest of the government for social controls since the early Meiji Period may have been weak but it was not altogether lacking. Apart from providing employment for the ex-samurai, the Meiji government issued enactments which authorized rice grants for abandoned children (1871), provided relief (1874), caused food provisions to be stored against times of famine (1880), and the government issued regulations dealing with travelers who died during the course of their trip (1882). The weakness of the government’s concern for social legislation, however, was made clear by the Relief Regulations (1874), which remained in effect until superseded in 1929 by similar legislation. According to the preface of these regulations, the basic policy underlying the administration of relief was that aid to the needy should depend upon the charitable feelings of private individuals; the government’s role was simply that of furnishing relief to certain types of hardship cases that could not be ignored.

Nevertheless as the Japanese economy was becoming more industrialized subsequent to the Wars fought with China (1894) and Russia (1904) and social problems were becoming more prominent, the government finally turned its attention to the creation of legislation that would deal with the new problems. Indicative of the government’s interest in current social problems were such enactments as the Law for Cash Assistance to
the Disaster Stricken (1899), Law Concerning the Disposition of Travelers Falling Sick or Dead while Traveling (1899), Reformatory Work Law (1900), Law for the Care and Custody of the Mentally Ill (1906), and the Law for the Disabled Soldiers' Home (1906). But the most important piece of social legislation in this period was the Factory Law (1911).

Since the early years of Meiji were a period when the government supported and managed industry to a large extent, regulations concerning compensation for workers who suffered injury or death in government-run industry were framed in 1879, although they were far from adequate. In 1882 the Department of Agriculture and Trade, which had been created only the year before, initiated a survey of factory production in 1883. As a consequence of the survey, draft regulations for factories and factory apprentices, based on German and Austrian Legislation, were prepared in 1887. Still, these regulations never became more than a tentative proposal. Despite this failure in the field of factory legislation, certain protective provisions for miners were included in the Mining Regulations of 1890.

After 1897 factory legislation was drawn up on a number of occasions, but until 1912 a number of obstacles always prevented the bills from becoming law. Once in 1910, for example, the government was compelled to withdraw its factory bill owing to the cotton spinning mill owners’ staunch opposition to the bill’s provisions outlawing night work for young girls. The government therefore drew up a new proposal and, after consulting the Production Investigation Committee, submitted the proposal to the Diet where it was considerably revised and finally promulgated as the Factory Law in March 1912. Though fairly progressive in nature, considering the times, the Factory Law embodied a compromise that permitted a fifteen-year period of grace for the prohibitive regulations on all-night work. Besides this compromise, the law was not put into effect until five years after promulgation because the budgetary allowance needed for its enforcement were disallowed by the government’s
austerity program and because additional obstacles to its enforcement were created by several changes in government.

No description of the contents of the Factory Law shall be made since the law was not enforced until the Taishō Period (1912-25); it is only necessary to say here that the economic and social developments after 1898 demanded the enactment of nationwide factory legislation. In so far as social legislation was enacted in the closing years of the Meiji Period it was accompanied by legislation that was oppressive to the labor movement, as we have observed in the description of the police and as we shall note again in reference to the New Criminal Code.

6. CHANGES IN THE JUDICIAL SYSTEM

The major legislative changes in the administration of justice during the last part of the Meiji Period affected the Law of the Constitution of the Courts (1890), the Code of Civil Procedure (1891), the Bankruptcy Law (1891), and the Code of Criminal Procedure (1891).

The Law of the Constitution of the Courts was amended four times between 1905-1911, the last of the changes being the repeal of the rules concerning the Courts' summer vacation.

With respect to the amendment of the Code of Civil Procedure, the government had recognized the need for procedural changes shortly after this code's initial enforcement in 1891, and had thus set up a committee in 1895 to prepare the necessary amendments. The work of this committee was continued by several successive committees. In the process of this enduring task opinions were solicited from all quarters, and the core of revision work was based directly on Japanese experiences and the actual requirements of the code's enforcement. By 1926 this inquiry, which was finally completed by a committee within the Justice Department, culminated in a new Code of Civil Procedure (Books I-V); and this code was given effect in October 1929.

The Bankruptcy Law, enacted originally as Book II of the
Old Commercial Code, was modified somewhat when the New Commercial Code was enforced in 1899. The most important of the changes introduced to the Bankruptcy Law was the provision specifying that when payments were suspended by a trader the court would make a bankruptcy ruling upon petition of the trader or his creditors. By excluding any reference to persons other than traders, this provision meant that traders alone was subject to the Bankruptcy Law, and in turn this meant that the New Commercial Code had given recognition to genuine mercantile bankruptcy. Accompanying the adoption of mercantile bankruptcy, the trader was allowed a stay of payments when through no fault of his own he was obliged to suspend payments on obligations arising from commercial acts. Subsequent to this minor change in the Bankruptcy Law, plans for complete amendment were formulated, and, following the completion of prolonged investigations begun in 1902, a bankruptcy law was enacted in 1922. Being based on the principle of general bankruptcy, the new Bankruptcy Law disallowed a period of grace, and it also deferred compulsory composition to a separate law.

Now as to the Code of Criminal Procedure, it was amended in March 1899. The chief alterations consisted in the abolition of certain solitary confinement regulations and in the revision of the form used in the writing of judgments. The new form for writing judgments required the judge to clearly point out the facts and the evidence for the adjudicated offense; and, of course, the judge had to include his reasons for applying whatever law that he applied to the case. Another amendment permitted the court ex officio or upon application of the procurator to appoint a professional advocate for the benefit of children under fifteen years or for women who failed to select a defense counsel on their own accord. In 1908 a further change of importance in the Code of Criminal Procedure concerned the extension of the time period allowed for filing the statement of reasons for re-appeal. Under the existing provisions of this code the defendant had originally been at a disadvantage in
adequately preparing new points of argument, since he had to submit a written answer within five days after he received notice of the re-appeal motion and statement of reasons; and since the Supreme Court, in trying to help the defendant, by allowing more time for the answer, had inadvertently given the defendant enough time to create so many new points of arguments that re-appeal cases could not be readily adjudicated, the amendment legislated in 1908 was aimed at providing a more satisfactory time schedule with regard to the re-appeal procedure. By the terms of the amendment, the court of re-appeal had to notify both parties to the case at least thirty-five days in advance of the date fixed for the trial; and the re-appellant had to submit a statement of reasons fifteen days in advance, during which time the other party could also lodge a re-appeal. The amendment also provided that no statement of reasons could be filed when the court of re-appeal gave a decision quashing the re-appeal; and, lastly, a professional advocate was designated as the only person besides a procurator who could plead a case.

Aside from the amendment of the Code of Criminal Procedure that we have just mentioned, the Justice Department had intended to make a comprehensive revision of this code since the year 1895. As in the case of the Law of Bankruptcy, research and investigation were conducted over a period of years by different committees and thus it was not until 1922 that a new Code of Criminal Procedure was promulgated.

7. ENACTMENT OF THE NEW CRIMINAL CODE

In the ensuing years after the enforcement of the Old Criminal Code in 1882, the government sought the Diet's approval for the amendment of this code on four different occasions. The first amendment proposal, based on a draft completed by M. Boissonade before 1886, was essentially French in origin. Though placed before the Diet in 1891 this proposal never reached a vote. The work on the next amendment proposal was begun in 1892 under the Justice Department.
When tentatively completed this proposal was distributed to judges and bar associations throughout Japan and was even announced to the public in order to obtain a large sampling of views. By 1899 the draft was completed and in 1901 the government submitted it to the Diet. In contrast to the first amendment proposal, the second one was based on German criminal law. This change may perhaps be explained by the fact that the tenets (preventive justice, corrective punishment, subjectivism) of the new school of positivistic criminology which had appeared in the West since promulgation of the old code (1880) had in the meantime influenced Japanese jurists. Nevertheless the second proposal fared no better in the Diet than the first one, for the Diet again closed while the proposal was under deliberation. And even though the second proposal was revised and placed before the Diet in 1902 and 1903 it once again failed to be voted upon.

Despite the consistent record of failure for the attempted amendments, another amendment proposal—though quite limited in scope—was presented to the Diet in 1905 by Motoda Hajime. Motoda’s proposal, which only concerned the suspension of execution of penalties and remission of punishment, was practically the same as analogous provisions contained in the abortive amendment proposal of 1902. When passed by the Diet as a special law this amendment allowed a suspension of execution for a period of two to five years for sentences of less than one year if the convicted person had no previous record of imprisonment or more serious punishment, punishment being remitted after the fifth year.

Within a year after Motoda’s proposal became law the government organized a committee to review the proposed amendment of the *Old Criminal Code* that had failed to pass the Diet in 1903. After being revised by this committee and by both houses of the Diet the amendment was finally promulgated in 1907 as the *New Criminal Code*. This code took effect on October 1,

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1) In the following paragraphs the terms old code and new code will refer to the *Old Criminal Code* (1882) and the *New Criminal Code* (1908) respectively.
1908. It is interesting to note that during the Lower House deliberations on this amendment Hanai Tokuzō proposed, though unsuccessfully, that prison terms of underdetermined length be substituted for life term sentences and for capital punishment.

The special characteristics of the *New Criminal Code* were that, in contrast to the old code, German rather than French law was used as a reference in its preparation; subjectivism was clearly visible; and judges were given an extraordinary latitude in meeting out punishments. The judge's discretionary powers, however, were related to the new code's method of combining different offenses of a similar nature into one broad general category. Whereas, for example, the general category of theft may have been classified into several well defined offenses under the old code, the *New Criminal Code* simply disposed of this subject with one article specifying that "any person who has stolen property of another person has committed theft and shall be punished with penal servitude not exceeding ten years". Whether compared to the *Old Criminal Code* or to the criminal code of Germany this provision on theft was quite brief. In fact the general nature of the *New Criminal Code*’s scheme of classifying offenses made it the most advanced code in this respect of any code anywhere in the world at this time.

The latitude in determining punishments that the judge enjoyed under the old code only allowed him a certain exercise of discretion in the lesser offenses such as simple theft where he could sentence the prisoner anywhere from two to four years of imprisonment at hard labor; and the judge could not exercise any discretion at all in serious offenses where, for instance, the death penalty was automatically imposed for premeditated murder and life imprisonment was imposed for manslaughter. In the *New Criminal Code* the discretionary power of the judge was far greater, for in cases involving homicide the punishment of the guilty party ranged anywhere from three years penal servitude to capital punishment, and in cases where extenuation was possible the judge could even suspend the punishment.
Although the *New Criminal Code* followed the principle of dispensing punishment only in accordance with existing provisions of law, this principle was nowhere stated in the new code. The government defended this omission on the ground that the general tenor of the new code made it apparent that this principle still prevailed; though apparently another reason for its omission was that the new code had gotten further away from the principle of no punishment without a previous law in a formal sense by subsuming different offenses under a general category and by permitting a broader sphere of judicial discretion.

In the first six chapters of the *New Criminal Code* the major points to note are these. First of all, the code was applicable to Japanese citizen living beyond the confines of the Japanese Empire. The principal punishments of the code were classified as capital punishment, penal servitude, imprisonment, fine, detention, and minor fine. Confiscation constituted an additional punishment. The practice of keeping close watch on released prisoners, which the government had strenuously insisted upon retaining as late as 1903, was abolished. Discarded also was the practice of suspending or depriving the individual of his civil rights. The scope within which a suspension of punishments could be applied was broadened to include persons sentenced to two years or less of penal servitude or imprisonment. Parole, which under the old code was possible after the prisoner had served three-fourths of a limited term and fifteen years of a life term, was now possible after he had served one-third or ten years of these terms respectively. Although there was no great difference between either code's version of prescription, the completion of prescription for fines was reduced from seven to three years, and from five to one year in the case of confiscation.

In Chapter VII of the Code (*Non-Constitution of Offenses and Mitigation and Remission of Punishments*), it is significant to note that no one could be prosecuted for offenses committed while following the order of his competent superior, which was
no different than in the old code; but, in addition, the new code extended this immunity to include any act done in accordance with laws or in pursuance of legitimate business. As for justifiable defense, the new code was made more general, stating in effect that unavoidable acts done in order to protect the rights of oneself or another person against imminent and unjust violation were not punishable. Formerly unavoidable acts were limited to those performed in the defense of oneself or one's relatives in time of natural calamity or other unexpected upheaval, but now they could be done in order to avert present danger to life, person, liberty or property of oneself or another person, providing the injury occasioned by such acts did not exceed in degree the injury one was seeking to escape. For acts exceeding this degree of injury, punishment could be mitigated or remitted according to circumstances. With respect to offenses committed by juveniles, the new code regarded such offenses as non-indictable if the person was not yet 14 years of age, while in the old code the indictability of a juvenile offense depended on certain complicated provisions and on an age limit of less than 12 years. The new code however lacked the earlier provision on juvenile correction and the provision, appearing in the 1901 and 1902 drafts, that allowed persons to be placed under restraint. In the matter of self-denunciation the former code specified that punishments would be mitigated one degree without fail except for premeditated murder and manslaughter, yet the new legislation went no further than to point out that punishment might be mitigated for anyone turning himself over to the competent authorities, or for turning himself over to the person entitled to make a complaint in offenses for which prosecution could only be made upon complaint.

In Chapter VIII (Criminal Attempt) of the new code the definition and disposition of criminal attempts differed with that of the old code. Under the old code criminal attempt had been restricted to those offenses that failed to be consummated owing to an unexpected hindrance or blunder, and in such offenses a one or two degree extenuation of punishment had
been provided; but in the new code criminal attempt was defined as any offense undertaken but left unconsummated, and the degree to which the punishment might be mitigated was left unspecified. In proposing amendment of the old code’s provisions on extenuation, the government’s proposal had made the mitigation of punishment for criminal attempt a matter of course, but the House of Peers modified this proposal so that mitigation would only be a possibility rather than an automatic operation of law. The new code also differed from the old in that the former included a provision, non-existent previously, that called for the mitigation or remission of penalty when preparation for an offense had been voluntarily stopped. And one other difference is that in the new code the punishment of any unconsummated misdemeanor or felony was determined by the particular provision governing the unconsummated offense, while in the old code all unconsummated felonies were punished and the unconsummated misdemeanors were only punished if the provision governing the misdemeanor in question required punishment.

In Chapter IX (Concurrent Offenses) the New Criminal Code sought to remedy the old code’s lenient treatment of concurrent offenses. For with the exception of police offenses, where punishments were imposed concurrently, concurrent offenses under the old code were dealt with in the Chinese penal law tradition, i.e., punishments were meted out only for the gravest offense of the several committed. This procedure meant that between the time an offense was committed and irrevocably judged, any other offense of equal or less gravity, no matter how many times committed, was not subject to separate punishment, since the punishment for the offense under adjudication was deemed sufficient. To correct this abuse of justice the Western principle of imposing punishments concurrently for each offense was adopted in the new code, though naturally a sentence of capital punishment and a sentence of life imprisonment could not be imposed at the same time. But in case there was a possibility that the concurrent imposition of liberty
restraining punishments for separate offenses might result in a prison sentence lasting for several decades, the prisoner could only be sentenced to one and one half times the maximum term of punishment specified for the gravest of the offenses committed. Such a concurrent sentence, however, was not allowed to exceed the sum total of the maximum terms prescribed for each offense. Likewise a fine and another punishment, excluding the death penalty, could be imposed together; and two or more fines could be imposed if they did not exceed the sum of the fines specified for the several offenses. Detention or a minor fine could be imposed together with another punishment, and two or more sentences of detention or two or more minor fines could also be imposed concurrently. In the event that one of the concurrent offenses had been judged and the other had not, the latter still had to be adjudicated; and when two or more separate trials were held for concurrent offenses, the punishments were to be imposed together, although the term of the imprisonment could not exceed the maximum sentence that might be handed down in a single judgment for the same concurrent offenses. With respect to a single act resulting in several offenses or to an act where the means or result of committing an offense constituted another offense, the new code was an improvement on the old since it specifically allowed the punishment of the gravest offense to serve as punishment for all of the offenses. Heretofore such acts had not been mentioned in the old code and there had been some doubt as to their proper disposition. Doubt had also been occasioned by the old code’s omission of any provision on continuing offenses, but this defect was remedied in the new code by the inclusion of a provision that designated several consecutive acts as offenses of the same category and allowed them to be judged as a single offense.

In Chapter X (Repeated Offenses) the new code was a contrast to the old in that it was more lenient. Under the old code a repeated offense was any offense committed after the first offense, even if committed ten years later. But since this definition was harsh on the offender and was not compatible
with the old code’s intent in respect to this type of offense, the new code redefined repeated offense as any offense liable to limited penal servitude that was committed within five years subsequent to the completion of a sentence of penal servitude or to the remission of such penalty. And whereas the old code provided a one degree mitigation of punishment for a repeated offense, the new code gave the judge more discretionary power by simply stating that punishment could not exceed twice the maximum term of penal servitude that was specified for the offense in question.

In Chapter XI (Complicity) there was little difference between the old and the new codes. A person who instigated another to commit an offense or who abetted an instigator was still considered a principal. Under the old code the accessory used to receive one degree less punishment than the principal, while under the new code the degree of mitigation was left for the judge to determine. Although there was some question in the old code, owing to a lack of specific provisions, as to whether a person who lacked the status of the offender was to be regarded as an accomplice to an act that was an offense only because of the status of the offender, the new code made it definite that such a person was an accomplice. And the new code made it clear that the accomplice received only an ordinary punishment when the offender, because of his status, was liable to special punishment.

In Chapter XII (Extenuation), the new code’s provisions were much like those of the old code, because both codes allowed a reduction of penalty when the circumstances surrounding an offense deserved sympathetic consideration. But where the old code simply allowed a general mitigation of one or two degrees in any case that could be extenuated, the new code required each specific reduction of penalty to be determined in accordance with the provision governing the penalty concerned.

In Chapter XIII (Rules Concerning the Adjustment of Punishments), if there existed one or more grounds for reducing a penalty, a death penalty could be commuted to a term of
penal servitude or imprisonment that ranged from ten years to life; a sentence of penal servitude for imprisonment for life could be reduced to a limited term of penal servitude or imprisonment that did not fall under seven years; and a limited term of penal servitude or imprisonment could be mitigated by one-half the fixed term of punishment. Fines and minor fines could be reduced by half their amount, and detention by half its maximum term.

Among the portions of the old code that were not retained in the new one were the provisions on damages, rehabilitation, and relatives. Since damages by their very nature appertained to the *Code of Criminal Procedure* and rehabilitation appertained to the sovereign power of the Emperor, they were consequently omitted from the *New Criminal Code*. And the provisions on relatives were unnecessary to the new code, since they were incorporated into the *Civil Code*.

The new code also discarded the old code’s scheme of separating the felonies and misdemeanors against the public interest from those committed against one’s person and property; in the new code these offenses were all incorporated in Book II (*Offenses*). Furthermore Book IV (*Police Offenses*) of the old code was done away with, and the police offenses that properly belonged to the *New Criminal Code* were arranged under Book II (*Offenses*) and the others were left to special legislation on police offenses. Of the additions to the new code brief mention, in passing, may be made of the offense relating to diplomatic relations.

During the Diet’s deliberation on the *New Criminal Code* there were certain items of the code that presented themselves as particular problems. These were the offenses of rebellion (*nairan*), contempt of a public official or office, defamation, and riot. The problem over the offense of rebellion was whether or not to impose the death penalty on its ring leaders. Although the lower house wanted a less severe punishment, the extreme penalty was retained as a result of a conference held by both houses. The offense of contempt was likewise retained because
of a joint meeting of the houses. As for the crime constituted by the failure of rioters to disperse, the Lower House was finally able to obtain recognition of its proposal that rioters not be made subject to punishment until a dispersal order by a public official had been given at least three times instead of merely once.

As we have said, one of the major differences between the old and new criminal codes was that the judge under the old system was permitted little freedom of judgment, since each type of offense was subdivided into a number of well defined particular offenses with narrowly prescribed punishments. And this rigidity in dispensing punishments sometimes meant that lesser offenses received excessive penalties while more serious offenses were only lightly punished. But the new code, to the contrary, broadened the scope of punishment for every offense and allowed the court to impose a sentence corresponding to the actual circumstances of the case. In fact, owing to the generous acceptance of the subjectivist trend in criminal law, judicial discretion had a far reaching role in the new code and the extent of its application even compared favorably with that of the German criminal code.

Prior to the enforcement of the New Criminal Code in October 1908, the Law for Enforcing the Criminal Code was put into effect in March of this same year. The latter piece of legislation gave immediate validity to those portions of the new code that dealt with the forging of public election ballots, violations of the regulations on contagious diseases, and deprivation of civil rights.

In April 1908 criminal codes for both the Army and Navy were issued.

Though our attention up to now has been focused primarily on the New Criminal Code, it should not be overlooked that additional criminal legislation was enacted as special laws in the late Meiji Period. The most important of these special laws outlawed smoking by minors (1900); made representatives of juridical persons punishable for tax and tobacco monopoly
violations (1900); created regulations concerning corruption of officials elected or appointed to public office (1901); and provided laws dealing with foreign currency, bank notes and securities. Further legislation of this type was aimed at preventing securities from resembling paper currency (1906), preventing stamp violations (1909) and aimed at governing the use of firearms and explosives (1910).

In addition to these different enactments, there was also legislation concerning the execution of punishments. In January 1900 the prison expenses and the expenses for prison construction and repair that were previously defrayed by the prefectures became the responsibility of the national treasury. The shifting of this financial responsibility to the central government was no doubt a significant step in the improvement of the prison system. Another enactment in April 1901 transferred the Bureau of Prisons, which had been re-established in 1897 under the Home Department, to Justice Department control. This did not mean, however, that the Justice Department exercised control over each prison; for the prisons, with the exception of the reformatories (shūchi kangoku) and provisional detention wards (kari ryūkan), were left under the jurisdiction of the prefectural governors. Then in 1903 the Ordinance for the Organization of Prisons and the Prison Regulations were amended so that prisons fell to the direct control of the central government; and from this time on until the end of the Meiji Period the prisons were renovated and enlarged.

In March 1908 the Prison Law, whose provisions were based on the German prison system, was promulgated. Having been enacted as a companion piece of legislation to the New Criminal Code (1908), the Prison Law took effect on October 1, 1908, simultaneously with New Criminal Code. The Prison Law classified prisons into 1) prisons for penal servitude, 2) prisons for imprisonment, 3) prisons for detention, and 4) prisons for confinement. In the fourth category the criminally accused and persons sentenced to capital punishment were housed. Under the terms of the Prison Law the house of detention
attached to the police station could also be used as a prison. Although houses of juvenile correction were not authorized, certain supplementary regulations to the *Prison Law* allowed the stipulations of the old *Prison Regulations* that related to the juvenile house of correction to remain in force for the time being. In comparison to the provisions of the earlier *Prison Regulations*, the provisions of the *Prison Law* were indeed more complete, but between the two there was no difference in general principles.

One final enactment concerning prisons was the *Law Governing Reformatory Work*, which was promulgated in 1900. According to this law, reformatory schools were to be established in each prefecture and in Hokkaido; and any person between eight and sixteen years old who lacked someone to exercise proper parental authority over him or who committed offenses or who was apt to commit them could be placed in such a reformatory school for correction. Besides the regular reformatory schools, this law also permitted the creation of substitute reformatory schools. Later on when the *New Criminal Code* came into effect in 1908 the *Law Governing Reformatory Work* was amended so that persons up to eighteen years old could be placed in the reformatories.
PART THREE

PRIVATE LAW
Part Three
 Nhận Law
CHAPTER I.

THE CODIFICATION OF PRIVATE LAW
AND ECONOMIC LEGISLATION

1. COMPILATION OF THE CIVIL CODE
AND THE CONTROVERSY OVER
THE NEW LAW CODES

The work of preparing a civil code was begun by the government in September 1870, only shortly after the collapse of the Bakufu and only a year after the restoration of the daimiate holdings to the Emperor. This codification project, however, was not the first attempt by the new government to prepare a code of law, because the preparation of the Outline of the New Criminal Law had already begun in 1869. Nevertheless the Civil Code project did have the distinction of being the first attempt to prepare a modern code. The urgency in compiling a civil code was a result of both domestic and foreign pressures. Within Japan the government was pressed by the need for a uniform corpus of law that would have a unifying effect upon the country as a whole. For the only laws in existence in the early Meiji Period were a disparate lot that had been drawn up and enforced during the Edo Period by the 270 different domains then in existence. And in view of the fact that the Meiji government was striving to introduce a centralized form of government and was trying to build up Japan’s industrial and military potential as a means to rank Japan among the world powers, it was only natural that a code of law common to all of Japan should have been one of the government’s first endeavors. The other pressure upon
Japan, which was being exerted from without, also made the compilation of the *Civil Code* an urgent matter, because the *Civil Code* was needed as part of Japan’s efforts to put the domestic scene in order and thus hasten the day that the nation would be spared the unequal treaties with their humiliating provisions on foreign consular jurisdiction. Aside from the foreign and domestic pressures as a factor in the preparation of the *Civil Code*, it is not surprising that this code was the first of the modern codes to be undertaken if we consider that the person in charge of the often changing legislative organs (Office of Laws, Left Chamber, Justice Department) was Etō Shimpei.

As for the origin of the Japanese term for “civil law” (*minpō*), it may be observed here that this term first appeared as a direct translation of the Dutch words *Burgerlyk Regt*, in *Taiseikoku Hōron* (*A Treatise on the Law of Occidental Countries*). This book was published in 1866 by Tsuda Shin’ichirō a year after his return to Japan from Holland where he had voyaged with Nishi Amane in 1863 to study law and economics under Simon Vissering at Leiden University. In explaining the concept of civil law the book cites such subjects as human rights, real rights, agreements (*yakusoku*), and civil procedure. It is also interesting to note in connection with the preparation of Japan’s *Civil Code* that Kurimoto Aki no Kami, the Commissioner of Foreign Affairs, who traveled to France in 1867, published a book in 1869 entitled *Gyōsō Tsuiroku* (*Reminiscences*) in which he lavished praise on the *Napoleonic Code* and mentioned the desire to render it into Japanese.

In view of the importance of foreign legislation as a basic reference to the compilers of the *Civil Code* and other new legislation, it is appropriate here that the name of Mizukuri Rinshō be mentioned as one of the government officials who was prominent in making foreign laws available to Japanese law makers. Mizukuri had gone to France in 1867 in the company of the Bakufu’s Vice-Minister of Civil Affairs, and after returning in 1869 Mizukuri was encharged with the translation of a variety of French laws including the French
criminal, civil, and commercial codes, the code of civil procedure, the code of criminal instruction, and the constitution. His assignment, which was not easy from the outset, was made even more difficult by the need to create terminology in Japanese that would correspond to such legal terms as “movables”, “real estate”, “set-off”, and “constitution”. And for such terms as “rights” and “duties”, it was even necessary to borrow equivalents from a Chinese translation of a work on international law. The translation of the French word droit civil into Japanese was another special problem, apparently, since it is said that the equivalent Japanese term minken, which was created by Mizukuri, was opposed by members of the first civil code committee on the ground that common people were not entitled to any such thing as rights.

The early attempts to compile a civil code, as we have said, were identified with Etō Shimpei. Etō was chairman of the first civil code committee while he was still head of the Office of Laws. Under him this civil code committee, which was in existence from September 1870 to August 1871, gave its attention to what was little more than a translation of the French civil code. Although the committee finally approved of certain portions of this code’s book on persons and supplemented these portions of the code so that they would conform to Japanese conditions, there is no indication as to what happened to this piece of legislation once the office of Laws combined with the Left Chamber in September 1871. It does appear, however, that the work of compiling a civil code was continued by the Left Chamber in virtue of Etō’s subsequent appointment as this chamber’s Vice President. Whatever the outcome of this initial effort, there were two additional but equally abortive code projects that were also closely associated with Etō’s name. One of these projects, completed in August 1872, came from the Meiho-ryō Law School, which had been established (November 1871) through Etō’s efforts. The other civil code project, which was begun in December 1872, was initiated upon Etō’s order after he had become Justice Minister; for Etō was
apparently dissatisfied with the draft put forward by the Meihō-ryō Law School. Among those taking part in this third project were Kusuda Hideyo, the head of the Meihō-ryō, and M. Bousquet, who had advised Kusuda on the Meihō-ryō's unsuccessful draft. As in the first endeavor by the Office of Laws, Mizukuri's translation of the French civil code was again the basic source for the drafters. When completed the draft code got as far as the Central Chamber, but it never became law.

The next and fourth attempt to compile a civil code was made in 1873 under the direction of Ōki Takatō after he had replaced Etō as Justice Minister. The work of compilation began within the Left Chamber and continued in the Justice Department after disestablishment of the Left Chamber in 1875. During this time Ōki despatched the code committee to all parts of Japan to gather data on civil customs, and the committee's findings were ultimately published in two books: Minji Kanrei Ruishū (1877/Classified Collection of Civil Customs), and Zenkoku Minji Kanrei Ruishū (1880/Classified Collection of Civil Customs for all Japan). Owing to Ōki's efforts, the first complete draft of a civil code was tentatively finished by 1878, though this draft, too, was practically a direct translation of the French code and quite incomplete.

Ōki therefore gathered another committee in January 1880, of which he was the head, and embarked upon what was to become known as the Old Civil Code\(^1\). For this project the Civil Code Compilation Bureau was especially established. The work of the code committee was then parcelled out to different committee units, with the task of preparing the draft being charged to M. Boissonade and the work of translating this draft into Japanese being assigned to Mizukuri. The plans for the code called for five separate books on 1) persons, 2) property, 3) acquisition of property, 4) mortgages, and 5) evidence. By March 1886 Ōki was able to present parts of the code (real

\(^1\) Called the Old Civil Code (1890) to distinguish it from the New Civil Code that was enforced in 1898.
rights, civil liberties, and acquisition of special title) to the cabinet for examination.

At the same time that these portions of the code were presented to the cabinet the Civil Code Compilation Bureau was abolished and its duties relating to the code were transferred to a committee within the Justice Department where work was continued on the book of the code that was devoted to persons. The Justice Department committee, however, was temporarily interrupted in its work in the spring of 1887 when the Foreign Department suddenly took over the work of the code committee. The sudden switch came as a result of the demands by Germany and England that Japan, as a condition to having the treaties revised, enact civil, criminal and commercial codes on par with Western standards of law. But with the indefinite postponement of treaty revision in July 1887 the civil code committee was again established in the Justice Department in November 1887. The new committee was headed by Justice Ministr Yamada Akiyoshi and its members were either Genrō-In members or judges. Besides this committee a lesser committee was created and given the duty of making a preliminary examination of the code. In the deliberation on the code none of the foreign jurists who drafted the code were allowed to take part.

The Civil Code that Yamada's committee examined consisted of the book on property and part of the book on the acquisition of property, and the two books on mortgages and evidence. The committee's deliberations lasted from December 1887 to September 1888, though in the case of the book on evidence the period of review had to be extended. Upon completion of the committee's work the separate books of the code were submitted to the Prime Minister in December 1888, then to the Genrō-In, and finally to the Privy Council. These four books of the code were promulgated in April 1890 and they were scheduled to be enforced on January 1, 1893.

Apart from the four books just mentioned there still remained two parts of the code that could not be promulgated
until October 1890. One was the book on persons and the other dealt with universal title (i.e. the remaining portion of the book on the acquisition of property). These two parts of the code had not accompanied the rest of the code when it had been presented to the cabinet upon dissolution of the Civil Code Compilation Bureau in 1886; they had only been prepared later by the preliminary investigation committee which was established under Yamada's code committee in 1887. The drafters of these two unfinished parts of the code were Japanese (Kumano Umezo, Isobe Shirō), as had been planned from the very beginning. Though it is commonly believed that M. Boissonade had no hand in this final portion of the code, there does seem to be some indication that he helped with the drafting. Both the book on persons and the part on universal title were quite progressive in their draft form, having taken into account the French and other modern civil codes of Europe. Although the traditional Japanese title and position of "househead" was preserved in the book on persons, the position was not accompanied by any rights or obligations; and, as was desirable from the standpoint of reason, heirs were made equal in that part of the code which dealt with universal title. Nevertheless, because of the special obligations borne by the successor to the headship of the house, the househead was allowed to assign the privileges belonging to the house and a certain position of the house's property to the possession of the successor to the house headship; but when no specific assignment of property was made by the househead, the ordinary heir, if there was only one, was to receive two-thirds of the amount inherited by the successor to the house headship. If there were two ordinary heirs their lot would be one-half the portion received by the successor to the house headship, and if there were three they would receive only one-third. Another significant stipulation of the part on universal title was that the house head could not assign to his successor more than was allowed by the law nor less than would be received by an ordinary heir. Both the book on persons and the part on universal title were most likely
examined by M. Boissonade, but even if this were not the case it appears that these progressive provisions were formulated under the influence of his thought.

However, by the time these progressive provisions had passed through Yamada's code committee and the Genrō-In, their general tenor had become much more conservative. Even before reaching the Genrō-In, the provisions concerning the rights of the house head and the rights of the house head's successor to inherit all property were so completely revised that no further revision of them were made, not even in the final draft. From the Genrō-In the two remaining parts of the code were next sent to the Privy Council, where they were finally approved and allowed to be promulgated in October 1890 along with the Code of Criminal Procedure. Since this promulgation of the remaining parts of the code occurred shortly after promulgation of the Code of Civil Procedure, the Commercial Code, and other new legislation and immediately before opening of the Diet for the first time, it is difficult to tell whether the government was trying to complete the civil code in order to hasten revision of the unequal treaties or whether it was trying to avoid the opposition of the Diet.

The promulgation of the Civil Code was not quite as auspicious an event as might be expected, in spite of the fact that two decades had been spent in various attempts to produce just such a code. The reason the code failed to receive a welcome is that for several years prior to its promulgation a general undercurrent of ultranational reaction had been building up against the Westernization of Japan and, what is more, the very content of the code itself had become the subject of a debate between different schools of jurists. The ultranational reaction was aided by such figures as Nishimura Shigeki, Miyake Setsurei, and Tani Tateki. Since 1886 Nishimura Shigeki had been publicly lecturing against the introduction of Western knowledge, his view being that the acceptance of such knowledge in an unmodified form would bring about the destruction of the fundamentals of Japanese morality. Miyake Setsurei, for his
part, had been disseminating super-patriotic and conservative thought through the *Seikyōsha* (Society for Moral Instruction) and the magazine *Nihonjin* (The Japanese) which he had originated in 1888. And Tani Tateki, the then Minister of Agriculture and Trade, is noted for his strong criticism of the government's reliance upon foreigners who were ignorant of Japan's history and polity to help in the revision of Japan's laws. Tani regarded such interference by foreigners as an infringement upon Japan's sovereignty. Since his views were made known during Inoue Kaoru's negotiation with the powers for treaty revision the position of the government was seriously compromised.

While these and other chauvinists were creating a proper atmosphere for the impending controversy over the new law codes, the Japanese jurists in both government and private employment were converting the codes into political issue through their factional devotion to French and English law. The devotees of French law who were connected with the government had their stronghold in the Justice Department and in the Meihōryō Law School. Ever since Mizukuri Rinsho had become one of its officials the Justice Department had had a French law orientation; and it was the French law faction in the Justice Department that had compiled the *Old Civil Code*. The English law supporters that were connected with the government were found originally in the government operated Tokyo Kaisei Gakkō, though later they were identified with Tokyo Daigaku (Tokyo University), which succeeded the Kaisei Gakkō in 1877. (In 1886 Tokyo Daigaku became known as Teikoku Daigaku). English law continued to be highly esteemed in Tokyo Daigaku even after the French law faction formerly associated with the Meihō-ryō Law School had been combined with the Tokyo Daigaku's law faculty in 1885. As for German law, which was first taught at Tokyo Daigaku in 1887, it had but slight influence over the Japanese jurists. Aside from the factional division among the jurists in government service, there was also a split among the legal scholars found in the
private universities. The French law universities of importance were the forerunners of the present day Meiji Daigaku and Hōsei Daigaku, both of which were and still are located in Tokyo. The former, established in 1881, was originally known as the Meiji Hōritsu Gakkō; and the latter, established in 1879, was first named the Tokyo Hōgakusha. The private seat of learning for English law was I girisu Hō Gakkō. Founded in 1885, this school was the forerunner of the present day Chūō Daigaku. The high feeling produced between the two law factions stemmed from the fear of the English law supporters that the enforcement of the French oriented Old Civil Code would mean the triumph in Japan of the French natural law school over the English historical school and thus spell the doom of English law influence in Japan. Therefore the promulgation and enforcement of the Old Civil Code was a life and death matter to the English law faction. And when this faction's opposition to the code's enforcement flared into the open a sort of chain reaction provoked an immediate and heated academic controversy that resulted in an alliance between the political reactionaries and the faction that wanted the enforcement date of the codes postponed on the one hand and an alliance between the progressives and the faction demanding immediate enforcement on the other.

The fuse that set off the code controversy was lit a year prior to the promulgation of the Old Civil Code by the Jurists' Society. This society, which was composed of a group of English law supporters, provoked the argument in May 1889 by publishing their "Statement of Views on the Compilation of the Law Codes". Written in an air of academic detachment, the "Statement" called for serious consideration to be given to the new codes, since, unlike the European codes, they were generally a compilation of new-fashioned laws having little connection with existing Japanese legal usages. Furthermore the codes were criticized for not being based on any consistent principle, a defect which was attributed to the accepted view that German jurists had prepared the original draft of the Old
Commercial Code and the Code of Civil Procedure while French jurists had created the first draft of the Old Civil Code. The “Statement” therefore demanded that, instead of hastily enforcing the new codes, special laws should be enacted only where they were needed, and the completion of the different codes should be postponed until public sentiment had calmed down. In the mean time the “Statement” suggested that the different codes be placed before the public for extensive criticism and revision.

The “Statement’s” opposition to the codes was not prompted simply because the jurists belonged to the English tradition, it was only voiced in order that the codes’ enforcement might be postponed so that the government could take a more cautious and deliberate attitude toward the new legislation. But because of the latent antagonism between the French and English law factions, this “Statement” touched off a fierce polemical skirmish that continued until the following year in April when the Old Commercial Code was promulgated. Since this code, which preceded the promulgation of the Old Civil Code by several months, was scheduled to take effect in January 1891—only a short time away—the contestants then turned their attention and arguments to the pros and cons of postponing the enforcement date of the Old Commercial Code. The first victory of the argument was won by the postponement advocates when the Diet, in December 1890, voted to delay the date of enforcement to 1893. But the Diet’s decision was like adding fuel to the fire and the feud became only more intense. Of the many heated exchanges between the contestants it should be observed that Hozumi Yatsuka’s famous article “The Birth of the Civil Code is the Death Knell of Filial Piety” appeared in the Hōgaku Shimpō (New Law Review) in August 1891; however, the codes controversy did not reach its high point until a half year before the Old Commercial Code was scheduled to go into effect. It was only then that the basic ideas of the two groups were outlined in the academic journals and in various other publications. Kishimoto Tatsuō and seven other jurists who favored immedi-
ate enforcement of the codes used the *Hōchi Kyōkai Zasshi* (Journal of Association for Constitutional Government, May 11, 1892) to publicize their view that a delay of the enforcement date would

1. Bring turmoil to the nation
2. Destroy Japanese ethics
3. Place the nation’s sovereignty in jeopardy and bring about the loss of national independence
4. Jeopardize the enforcement of the Constitution
5. Result in the abandonment of the legislative power to judges
6. Deprive the individual of the protection of his rights
7. Bring confusion to civil suit proceedings
8. Cause the individual to lose his security and livelihood
9. Disorganize Japan’s economy.

These charges, however, were immediately refuted point by point by the *Hōgaku Shinpō* (May 25, 1892). Of the sentiment that was critical of the immediate enforcement of the codes mention may be made of the “Views on the Postponement of the Enforcement of the Codes”, which was drafted in April 1892 by Tomoe Kiyoshi and other members of Tokyo Hōgaku-Insha. The “Views”, which were distributed to the leading political figures of the day, claimed that the new codes

1. Undermined morality and social ethics
2. Reduced the ordinance powers of the Constitution
3. Violated the principles of the budget
4. Lacked national ideology
5. Changed the source of taxation

This criticism was refuted not only by M. Boissonade but by Ume Kenjirō and several other jurists. However, without going into any further detail about the charges and countercharges, suffice it to say that the polemical exchanges of the disputants were heavily laden with emotional outpourings.

No matter what might be thought of this controversy, there is no question that the *Civil Code* was technically inferior as
a code of law, and even Tomii Masaaki, a supporter of the French law faction, was opposed to the Old Civil Code's enforcement on academic grounds. Pointing out the code's faults Tomii specified that 1) it frequently violated Japanese folk ways and customs; 2) it was defective from a legal theory standpoint owing to exclusive reliance on French and Italian law and to the neglect of more recent and advanced legislation and theories; 3) it overlapped and clashed with the Old Commercial Code because neither of the two codes had been drafted by the same persons and because German rather than French law had provided the orientation for the Old Commercial Code; 4) it had an extremely complicated text and contained many duplications, contradictions, and omissions because each particular matter was covered by a specific provision instead of having provisions of a general nature; 5) it failed to observe the bounds of private and substantive law and hence contained innumerable provisions on public and procedural law; 6) it did not have the appearance of a code because of the unnecessary definitions, explanations, citations, etc., that littered up the text; and 7) it was in general too much like a translation and it lacked clarity. These seven points, which were an accurate appraisal of the code, were particularly appropriate with respect to the portions drafted by M. Boissonade.

Apart from the controversy over whether the codes should or should not be immediately enforced, the argument at one point became an issue between the forces of progress and reaction. This aspect of the controversy developed when the code committee headed by Yamada Akiyoshi made a conservative revision of the controversial book on persons and the provisions on inheritance. These two parts of the code and certain others had been drafted by M. Boissonade, and originally they had been quite progressive in spirit, since the French jurist had intended to introduce to Japan a civil law based on natural law concepts—a law that would be appropriate to a modern civilized society. Therefore, as a result of the changes made by the Yamada committee and those made later by the Genrō-In,
the issue over the code became momentarily a conflict between conservatives and progressives. This momentary turn of the argument, however, should not lead us to the hasty conclusion that the Old Civil Code was generally progressive.

In the course of the dispute, Murata Tamotsu, a member of the House of Peers, proposed to the Diet in May 1892 that the enforcement of both the Civil and Commercial Codes be delayed until 1896. After two days of further debate on the issue in the House of Peers the proposal was eventually passed by an overwhelming majority. Interestingly enough, Tani Tateki and other conservatives spoke in favor of the postponement during the debate on Murata's proposal, and Tomii Masaaki, despite his affiliation with the French jurist, also approved of postponement for scholarly reasons. When the proposal was sent to the Lower House, there was an attempt by a segment of the pro-enforcement group to postpone only the book on persons and the disputed provisions in the book on acquisition of property, but the party of postponement had enough influence to obtain a majority vote in favor of delaying the two codes as had been advocated by the House of Peers. At this point the Minister of Justice Tanaka Fujirō resigned his post. Nevertheless, after a committee under the direction of Prince Saionji Kimmochi had examined both codes and had also decided in favor of their postponement, the enforcement of the two codes was officially delayed until 1896.

As a result of this delay in the codes' enforcement, the government set up the Codes Investigation Committee in April 1893 for the purpose of revising the two pieces of legislation. Prime Minister Itō Hirobumi and Prince Saionji were appointed as chairman and vice-chairman respectively; and Hozumi Nobushige, Tomii Masaaki, and Ume Kenjirō—all members of the Law Faculty of the Tokyo Imperial University—were commissioned to prepare the revision. At first a certain number of business men were included in the membership of the final revision committee, but they were later excluded when the committee was reorganized.
Before actually beginning the task of revision a general meeting of the committee decided in advance on a general policy for guiding the investigation. In accordance with their decision, the principal objectives of the revision included a certain rearrangement of the Old Civil Code's contents, the elimination of duplication between the two codes, the elimination of superfluous citations, and simplification of the legal terminology. And in order to avoid complications from arising in a later stage of the revision process the members of the drafting committee obtained a prior decision from the final revision committee on a number of items that were of serious importance to the code. Put briefly, the drafting committee was given the authority to

1. recognize the effect of customary law and actual custom
2. eliminate the provisions on natural obligations, the right of usufruct, use, and right of domicile
3. confine the definition of things to material things and limit the scope of real rights to those specifically cited by law
4. make superfecies and emphyteusis into real rights
5. convert rights of hiring that existed as real rights in the Old Civil Code into obligations
6. establish a right of common (iri'ai-ken).

Beginning its inquiry in May 1893, the committee deliberated upon each book of the Old Civil Code separately, and by April 1896 three books (General Principles, Real Rights, Obligations) of the old code were revised and promulgated. But the remaining two books (Relatives and Succession) still needed further revision, so the Diet passed a law granting the committee another eighteen months to complete its work. Finally, in May 1898, after these two books had been completed, Ume Kenjirō, representing the government's committee, took the two books before the lower house to explain them. He emphasized that in revising the old code traditional Japanese institutions and practices had been taken into account and he stressed the need of having this remaining portion of the code enacted in the interests of treaty revision. The Diet made only minor changes in the two books
and then promulgated them in June 1898. In the following month the two books were put into effect.

By contrast to the Old Civil Code the New Civil Code seems to have given more regard to custom, particularly in the provisions that dealt with relatives and succession. Custom was also respected wherever it differed with the new code's provisions on emphyteusis and right of common. (Though in case a common had the nature of joint ownership the code's provisions on joint ownership applied, and if a common lacked the nature of joint ownership the code's provisions on servitudes applied.) In general the new code adopted the nineteenth century concept of individualism with its three basic principles of absolute ownership, freedom of contract, and responsibility for negligence. For example, the new code did away with the strong real rights (usufruct, use, domicile) of the old code that were opposed to the concept of absolute ownership, and it also converted the old real right of hiring into an obligation.

Besides giving more regard to custom, the New Civil Code also took into account the most up-to-date foreign legislation. While the old code had limited its references to the French and Italian code, for which it had been greatly criticized, the new code took advantage of the civil codes of Holland, Austria, Saxony, Spain, Zurich, Belgium, Russia, Montenegro, Portugal, and California. Other sources that were consulted included the Swiss law of obligations, the special laws of England, the Indian law of contract, and the Prussian constitution. But of most value to the new code were the civil codes of France and Germany. Using the Old Civil Code with its French orientation as the basis of the New Civil Code, the drafting committee made the revisions in the light of the German civil code and other recent civil legislation. The blending of the different legal sources was the accomplishment of three renowned jurists: Ume Kenjirō, Tomii Masaaki, and Hozumi Nobushige. Because Ume was the outstanding authority on French law and Tomii was well versed in German as well as in French law there seem to have been frequent differences of opinion between the two, but apparently
Hozumi, the senior members of the committee, who was a specialist in English law and adept at compromise, was able to prevent the arguments from splitting the committee.

The promulgation and enforcement of the *New Civil Code* was accompanied by the promulgation and enforcement of the *Law Concerning the Application of Laws* (1898). The *Law Concerning the Application of Laws*, a revised version of the old unenforced *Law Concerning the Application of Laws* (1890) which had been based on Belgian legislation, followed German legal principles by including stipulations on international private law in addition to the provisions on the enforcement of legislation and on the validity of customs. It is important to observe here that the *Law Concerning the Application of Laws* (1898), in accordance with the *New Civil Code*’s esteem for custom, provided that any customs which were neither in violation of public order nor good morals had the same effect as law, irrespective of whether or not such customs had been given legal recognition.

As associate legislation to the *Civil Code*, the *Law for the Enforcement of the Civil Code* and the *Household Registration Law* were promulgated in June 1898, and the *Deposit Law* and the *Real Estate Registration Law* were enacted in February 1899.

Of the important civil legislation enacted subsequent to the enforcement of the *Civil Code*, brief mention may be made of the *Law Concerning Responsibility for Accidental Fires* (1899), the *Lost Articles Law* (1899), the *Law Concerning Superficies* (1900), the *Law Concerning Eternal Leases by Foreigners* (1901), the *Law Concerning Timber* (1909), the *Law Concerning Protection of Buildings* (1909), the *Law Concerning Land Ownership by Foreigners* (1910), and the *Law Concerning Preferential Rights to Timber* (1910).

2. COMPILATION OF THE COMMERCIAL CODE

From the closing years of the Tokugawa regime to the early part of the Meiji Period, trade in Japan was suffering from a temporary decline, but after 1871 conditions changed so much
that there was a visible trend toward the formation of all types and kinds of profit making companies and business associations. For the most important of these enterprises the government enacted special laws such as the Regulations for National Banks (1872), the Regulations for Stock Trading (1874) and Regulations for Companies Trading in Cereals (1875). Yet these laws alone did not provide adequate controls for the ever increasing number of business organizations, and the government, keenly feeling the need for more general legislation, decided in September 1880 to enact regulations for companies and business associations. A legislative committee was thus established, and by April 1881 the Regulations for Companies (unlimited partnerships, joint stock companies) were presented to the Chancellor of the Council of State. These regulations as we shall see never became law.

In addition to the legislation for business organizations the government also issued laws concerning marine commerce. In October 1869, for example, peasants and townsmen were permitted to own Western type sailing vessels and steamships; in 1870 commercial shipping regulations were enacted; and in the years following more and more regulations for commerce at sea were enacted. But in spite of these various regulations, the Navy Department, which was contemplating a general maritime law, appointed an official in February 1878 to investigate the subject of maritime legislation; and by December this official presented the Navy Minister with a draft entitled the Japan Maritime Ordinance. The contents of the draft ordinance dealt with shipping, marine contracts, damages, shipwrecks, and war booty. And in the ordinance’s appendix there were regulations on ship registration, ship tonnage, rescue operations, on-the-spot investigations, and distribution of war booty. But while this and other legislation concerning the establishment of a maritime court and legal procedure were under study, the government commissioned M. Boissonade to compile the Old Civil Code, and, because this happened to be a time when the government had become acutely aware that codification of Japanese law would
serve to hasten treaty revision and help to unify Japan, the
government in April 1881 also commissioned Hermann Roessler
to draft a commercial code. In this code, which was to be based
on the laws of France, Germany and other countries, Roessler
was expected to include regulations for companies and marine
commerce. Because of these new plans of general codification,
the government suspended in April 1881 th Navy's project for
codifying maritime law and disbanded in March 1882 the legis-
lative committee that had been working on the aforementioned
Regulations for Companies.

The drafting of the *Old Commercial Code*;¹ which had had
an abortive start under the Justice Department in 1876, was
begun by Hermann Roessler in April 1881. Roessler's underta-
taking marks the end of the government's attempt to create
separate laws relating to commerce. The drafting work was
at first under the direction of the Legislative Division (*hōsei-bu*),
since it was the head of this division who had requested Roessler
to undertake the code project. But in October 1881, when
the Legislative Division was abolished, the code project was
taken over by the *Sanji-In*; and owing to the importance of the
code a special committee, headed by Tsuruda Hiroshi, a member
of the *Sanji-In*, was created in March of the following year.
As an aid to compiling the code a survey of each district's
commercial practices was made and the findings were published
in 1883-1884 as the *Nihon Shōji Kanrei Ruishū (Classified Col-
lection of Japanese Commercial Practices)*.

Even after the work on the *Old Commercial Code* had begun,
the urgency for special legislation did not completely disappear,
particularly with respect to legislation for bills of exchange and
companies. The need for remedial legislation on bills of ex-
change was caused by the obstacles that were preventing the
bills of exchange from freely circulating after the Restoration.
Thus in order to clear away the obstacles as quickly as possible
the government removed from Roessler's draft of the *Old Com-

¹) Hereafter called *Old Commercial Code* to distinguish it from the *New Com-
mmercial Code* of 1899.
mercial Code the provisions on bills; and, after revising these provisions, submitted them to the Genrō-In as the Bills of Exchange Law. In the Genrō-In this law's provisions on checks was deleted and the remainder of the law was promulgated in December 1882 as the Regulations for Bills of Exchange and Promissory Notes. Although other similar attempts were frequently made to issue different parts of the Old Commercial Code as special laws, the regulations just mentioned are the only evidence that this was actually accomplished.

As for a special law on companies, an attempt to use part of Roessler's Old Commercial Code draft for just such a law was made in 1882, but this proved unsuccessful. However another attempt at preparing company regulations was initiated in 1884, just shortly after Roessler had completed his draft of the Old Commercial Code. This second attempt was prompted by the large number of companies that had appeared during the inflation following the Satsuma Revolt and by the appearance of large business organization such as the Japan Bank (established in 1882). To clear the way for the preparation of the special legislation on companies the government dismissed the commercial code committee and, then, in May 1884, established a special drafting committee under the direction of Terajima Munenori. The company regulations were drafted by March 1886 and the government submitted them to the Genrō-In in June. Although the Genrō-In passed the regulations in almost their original form, the regulations failed to become law, perhaps because the task of compiling the different codes was suddenly transferred in August 1886 to the Foreign Affairs Department.

But returning to Roessler's draft of the Old Commercial Code, this draft was taken up for deliberation as soon as the task of compiling the new law codes was relinquished by the Foreign Affairs Department to the Justice Department in October 1887. The deliberations were made by a subcommittee of the legal research committee that was headed by Yamada Akiyoshi, th Justice Minister. After having made revisions in the draft, the subcommittee sent the draft to Yamada's
committee where it was approved with practically no changes. From Yamada's committee the *Old Commercial Code* draft went to the cabinet and then to the *Genrō-In*. Finally the *Old Commercial Code* was promulgated in April 1890, with its effective date being set for January 1, 1891.

Of course, as we have seen, the *Old Commercial Code* was not enforced in 1891 because of the vociferous opposition displayed toward it during the controversy over the new codes. The critics of the *Old Commercial Code* were opposed to this code on the ground that its hasty enforcement might throw Japanese commerce into chaos; and even the *Genrō-In* advised the Throne that the *Old Commercial Code* should not be enforced until the *Old Civil Code* was put into effect. On the other side of the argument the government insisted that enforcement of the *Old Commercial Code* was an urgent matter as a means to ensure fairness in complicated transactions and as a means to prevent companies from being used for evil purposes now that domestic commerce and foreign trade had begun to flourish. The government's pleas notwithstanding, the Diet passed a bill in December 1890 to delay enforcement of the *Old Commercial Code* until 1893. Moreover, before this date arrived, a committee headed by Prince Saionji again postponed the date of enforcement until 1896. Only those portions of the *Old Commercial Code* that were urgently needed were allowed to take effect in July 1893. These portions concerned trading companies, partnerships (*shōgyō kyōsan kumiai*), bills, and bankruptcy. The provisions on bills superseded the *Regulations for Bills of Exchange and Promissory Notes* (1882) while the provisions dealing with companies, partnerships and bankruptcy were being enacted for the first time. These different parts of the *Old Commercial Code* that were enacted in 1893 constituted forty per cent of the code and were by far its most important parts.

Although the unenforced portions of the *Old Commercial Code* draft were scheduled to be revised and passed into law by 1896, the revision could not be done so quickly, and once again the Diet was obliged to set the date of enforcement forward.
to 1898. The jurists in charge of making the revisions were Okano Keijirō and Ume Kenjirō, of the Tokyo Imperial University’s law faculty, and Tabe Kaoru of the Justice Department. Once they had completed their draft, it was deliberated upon by the Code Investigation Committee from May 1896 to December 1897. From this committee the revised draft then went to the House of Peers, but before this house could examine the code the lower house was dissolved. The government thus retrieved the draft code, added a few more provisions to it, and returned it to the House of Peers when the Diet opened again in May 1898. Although the draft passed the House of Peers and got as far as the lower house, this house was once more dissolved before deliberations were completed. In the meantime the period for postponing the enforcement of the Old Commercial Code expired and much to the consternation of the government and the opposition the unrevised version of the code became law. This turn of events, however, did not produce any particular confusion since most of the provisions taking effect were optional. Anyway the government was finally able to obtain passage of the revised draft, which was promulgated as the New Commercial Code in March 1899. On June 16 when the New Commercial Code went into force all parts of the Old Commercial Code except the Law of Bankruptcy were repealed. In both appearance and content the new code was generally similar to the German commercial code, if we ignore the new code’s law on bills.

Since the New Commercial Code was not exactly free of defects, it was not long before this code, too, was being considered for revision. The problems of interpreting and applying the provisions of the code had been a frequent irritant to jurists both within and outside the government and, moreover, certain of the code’s provisions had created obstacles to business transactions. Therefore as soon as Matsuda Masahisa became Justice Minister in 1906 he created a committee to examine the New Commercial Code. The members of the drafting committee were Okano Keijirō, Totani Shotarō, and Saitō Jūichiro. The
changes that were made affected each and every book of the code, though the most important of the changes were those relating to the law for companies and the addition of sea rescue clauses. With only minor revision of the committee’s work, the Diet accepted the various amendments and made them effective as law as of October 1, 1911.

3. ECONOMIC LEGISLATION

The economic legislation of the Meiji government was formulated with the objective of achieving that part of the government’s program that was succinctly expressed in the contemporary slogan “Increase Industrial Production”. This slogan and the one that called upon the Japanese to “Enrich the Nation and Strengthen Defenses” formed the general outlines of the government’s policy for accomplishing its ultimate goal of raising Japan to an equal status with the world powers. For the accomplishment of this policy any institution that stood in the way was to be eliminated and, likewise, any institution that might be of value was to be imported or created. Hence in order to fulfill that aspect of national policy that anticipated increased industrial power, all manner and kind of feudal economic restrictions were eliminated on the one hand and such far reaching innovations as the land tax reform (1873) were carried out on the other. Having already discussed earlier in the book the legislation that brought about the land tax reform, it is only to our interest here, with reference to the Meiji government’s economic legislation, to sketch briefly the government’s measures relating to finance, industry, and intangible property rights.

First of all, in the field of finance, the Meiji government found itself confronted with a chaotic currency system that had been bequeathed from the Edo Period. During the Edo Period the right to mint metal currency had as a rule been reserved to the Bakufu and the domains had been allowed to issue local paper currency (hansatsu), but owing to the acute financial conditions of the late Edo Period the domains had competed
with each other in issuing paper currency and the currency system had thus been brought to a state of anarchy. To remedy this confusion and create a sound monetary system the government at first attempted to standardize the currency by making silver the monetary standard. The silver standard, however, was later changed to gold upon issuance of the *New Currency Regulations* (May 1871); and then back to silver by 1875. But finally in virtue of the indemnity received from China for the Sino-Japanese War, Japan was able to enforce the gold standard on October 1, 1897 under the terms of the *Currency Law* (1897). In addition to establishing a metallic money standard, another important financial measure of the government was its issuance and subsequent conversion of paper currency. In order to meet the government’s financial obligations incurred after the Restoration, the Council of State had issued non-convertible paper currency, but as soon as the domains were abolished in 1871 and their old paper currency had become the liability of the central government there were attempts to redeem the old currency that had been issued by both the domains and the Council of State. At first the Finance Department and then, in 1872, the Colonization Commission issued convertible securities so that they might be exchanged for this old currency, but this was not a successful measure since the securities were really convertible in name only. Other attempts to convert the old currency were embodied in the *Regulations for National Banks* (1872) and in the *Regulations for Convertible Bank Notes* (1884), but the old currency did not disappear from circulation until enforcement of the *Law Concerning the Time Limit for Circulation of the National Banks’ Paper Currency* (1896) and the *Law Concerning Circulation of Government Currency* (1898).

Bringing order to Japan’s currency was just one financial problem. The government was also confronted with the annoying fact that Japan had no modern banking institutions and thus no adequate source of credit for the promotion of domestic and foreign trade. To overcome this handicap the Office of Trade established exchange companies in Tokyo and other lead-
ing cities in 1868. But these exchange companies were ill fated and soon passed from the scene. Consequently the government created several stable banking organs, known as national banks, that served as sources for loans and were even used as a means to liquidate the inconvertible currency issued by the Council of State. These banks, organized as joint stock companies, were brought into existence under the authority of the *Regulations for National Banks* (November 1872), which was Japan’s first bank law and the first legislation dealing with the organization of companies. Only the national banks had the right to issue currency and only they could refer to themselves as banks, despite the fact that other companies were also engaged in the banking business. Such companies, among which the Mitsui Bank was the largest, were not allowed to refer to themselves as banks until the *Regulations for National Banks* were completely amended in 1876. Once created by the *Regulations for National Banks*, Japan’s banking system was subsequently shaped by a series of laws promulgated prior to the end of the Meiji Period. In June 1882, first of all, the *Bank of Japan Regulations* centralized Japanese banking around the Bank of Japan and permitted it, of all the banks, to have the exclusive right to issue convertible bank notes. In May 1883 the *Regulations for National Banks* were amended so that the national banks, after twenty years from the date of their organization, could only continue as private banks; and in the meantime the national banks were ordered to devise means to redeem their paper currency. With respect to the formation of private banks or bank like companies, the Finance Department announced on May 6, 1882, that the new banks and bank like companies would have to submit their articles of association, regulations, etc., to the Finance Department for approval. For the control of ordinary banks the first written law was enacted in August 1890, though this law never went into effect until 1893 owing to the postponement of the enforcement date of the *Old Commercial Code*. The first legislation for savings banks appeared in 1890 also, even though such banks had been in existence for
some time. In addition to these varied laws on banking, there were other special laws for the creation of the Hypothec Bank of Japan (1896), the agricultural and industrial banks (1896), the Hokkaido Development Bank (1899), the Industrial Bank of Japan (1900), the Bank of Taiwan (1897), and the Bank of Korea (1911).

In connection with the foreign banking legislation, the Council of State issued the Stock Trading Regulations in October 1874 and, in December, ordered any companies trading in cereal commodities to follow these regulations in applying for an operation license. In 1876 the Regulations for Rice Trading Companies was enacted. In 1878 the Stock Exchange Regulations replaced the Stock Trading Regulations and thereafter stock exchanges were opened in Tokyo, Osaka, and in other cities. In 1887 the legislation concerning rice trading companies and stock exchanges were combined into a unified Stock Exchange Law. The first legislation concerning a chamber of commerce was promulgated in 1890, though this was superseded by the Chamber of Commerce Law of 1902.

Although it was the avowed policy of the Meiji government to promote industrialization both in the production of raw materials and finished goods, there was little legislative activity relating to industry during the early part of the Meiji Period. Aside from the General Regulations for Factory Disposal (November 1880), which were a significant contribution to Japanese capitalism in that they brought about the sale of government industries to private interests, the Japan Mining Law (July 1873) was the only law relating to industry that was enacted at this time. Under the provisions of this mining law, all minerals discovered in Japan belonged to the nation and the nation alone had the right to extract them. Previously, since 1869, it had been possible for people resident in the locality of the minerals to mine for them after obtaining government permission. In 1890 regulations for mining and in 1893 regulations for placer mining were promulgated, but these two enactments were later superseded by the Mining Law (1905) and the
Placer Mining Law (1909). Both of these laws contained comprehensive provisions regulating their own respective fields of mining, and they both followed the principle of the Japan Mining Law that made unmined minerals the property of the nation. By the terms of either law the right to conduct mining operations was granted to the first person who requested a mining permit; though in the case of placer mining the owner of the land where the mining operations were to be conducted had to give his approval. Two other pieces of legislation concerning natural resources were the Forest Law (1907), which superseded the Forest Law of 1897, and the Fishery Law (1910). The Forest Law (1907) contained provisions on the planting and management of forests, their protection and supervision, and special criminal law provisions relating to forests. The Fishery Law, which succeeded the fishery legislation enacted in 1886 and 1901, contained provisions on fishing rights, fishing police, fishermen associations, marine product associations, and related matters.

As for the industry related legislation enacted by the government subsequent to the early part of the Meiji Period, brief mention may be made of the Regulations for Private Railroads (1889 and 1900), the Regulations for Street Cars (1890), the Hunting Law (1895), the Promotion of Navigation and Shipbuilding Law (1896), the Promotion of Deep Sea Fishing Law (1897), the Arable Land Adjustment Law (1899), the National Forests and Wasteland Law (1899), the Light Railways Law (1910), and the Electric Power Supply Enterprise Law. But the most important of this type of legislation was the Railroad Nationalization Law (1906), which authorized the nationalisation of all rail lines used for general transportation except those devoted to local traffic. In accordance with this law the government bought up the Japan Railroad and the other principal private lines.

With respect to intangible property rights, the government enacted the General Regulations for Monopoly in April 1871. By this law, which was repealed in March 1872, a monopoly
was permitted for any and all inventions. In April 1885 the *Monopoly Patent Regulations* were promulgated. Then with the promulgation in 1888 of separate regulations for patents, designs, and trade marks the right of industrial ownership was adequately defined for the time being. In 1899 Japan joined the Convention for the Protection of Industrial Property, and in accord with this convention the Diet enacted in the same year three separate laws for patents, designs, and trade marks. By these three enactments the right of industrial ownership in Japan was modernized. In February 1905 the *Model Utility Law* was promulgated. Four years later this law and the 1899 legislation for patents, designs, and trade marks were amended.

The protection of an author's copyright during the Meiji Period was secured by a variety of legislation. At first the author was protected by the *Regulations Governing the Publication of Books* (1869; 1872; 1875) until this was superseded by the *Book Law* (1887). This law in turn gave way to the *Copyright Law* in April 1893. Then, in order to become a member of the Convention for the Protection of Works of Art and Literature another *Copyright Law* was promulgated in March 1899. And finally a convention between Japan and America was concluded in 1906 for the protection of copyrights belonging to Japanese and American authors.

In concluding this brief description of economic legislation in the Meiji Period, it should be observed that for the protection of the medium and small business man the *Industrial Association Law* and the *Staple Products Association Law* was promulgated in March 1900; and the *Agricultural Association Law* was promulgated in June 1900.
CHAPTER II.

THE CIVIL CODE

1. GENERAL PROVISIONS

a. Persons

The natural person's enjoyment of private rights during the Edo Period was, depending on the individual's status, limited in varying degrees. Some persons, like the nago or hikan, who existed as serf like dependents of landed peasants, did not even enjoy the liberty of establishing their own residence. Descended from semi-slave ancestors in the Middle Ages, the nago or hikan remained in a subordinate position to their master for a house, arable land, and the privilege of getting forage from commons. Even in purely personal matters such as related to marriage and death ceremonies and to the providing of food and clothing the authority of the landlord was binding. In other cases adults or children were pledged to the service of another as a form of security for a loan, and the pledged individual had to remain in the service of the money lender until the loan was repaid. These human pawns might work for only a limited term or they might be obliged to serve the lender for life. Still other persons were sold outright under the guise of contract work or adoption, notwithstanding the fact that the sale of human beings had been forbidden in the early Edo Period.

In order to do away with these unfree categories the Meiji government issued a number of sumptuary laws between 1870
and 1875. First, in 1870 the government authorized the local authorities to suppress the sale of Japanese children to Chinese buyers. Next, in 1872 diverse legislation was enacted for the banning of the servile nago-hikan, for the prohibition of repeated terms of indentured service, and for the suppression of slave trade. And in 1875 the government prohibited the giving of individuals as security for loans.

Then in 1898 by way of the New Civil Code the enjoyment of private rights was granted equally to all persons by virtue of birth, and by birth the person acquired the capacity to enjoy these rights. Such was the meaning of Article I of the New Civil Code. By virtue of this article the existence of the servile nago-hikan was no longer legally permissable. As for proof of birth, this was generally provided by the record of birth that was entered in the household register in accordance with the Household Registration Law; though, in the final analysis, this record alone did not constitute indisputable evidence.

With regard to the rights of the person (unborn child) before birth, nothing definite is known prior to the enactment of the New Civil Code, except that the unborn child had no title to succession. While the Old Civil Code, which was never put into effect, guaranteed the protection of the general interests of the unborn child, the New Civil Code was construed so that the unborn child, no less than the born child, had a right to compensation for damages and a right to succession.

The extinction of a person's capacity to enjoy rights came at death. And death, like birth, was entered in the household register. The enjoyment of private rights, however, was not effected by the confiscation of property that attended a court imposed penalty.

The rights of aliens in Japan, in lieu of any significant legislation during the Edo Period on their legal character, was

1) Hereafter, owing to the author's comparison of the civil code that was promulgated in 1898 and the one that was promulgated in 1890, the former will be called the New Civil Code or the new code and the latter will be called the Old Civil Code or the old code.
first determined in the 1850's when Japan signed treaties of friendship and commerce with America and Europe. Under these treaties the respective foreign nationals were entitled to reside, rent land, purchase buildings, and construct residential homes and warehouses in the open ports, and to obtain perpetual leases on land within the settlement area restricted for their use. Later, under the terms of the New Civil Code, the foreigner was allowed any private right not denied to him by law or ordinance. Of course, as a result of the revision of the unequal treaties in 1889, foreigners forfeited their extraterritorial rights and foreign settlement privileges, and at the same time gained the right to live in the interior. Nevertheless it was not until 1926 that foreigners could own, pledge, and mortgage land, and not until 1942 that their right of perpetual lease was changed to the rights of ownership and lease.

Though all persons were assured the enjoyment of private rights under the New Civil Code, not all persons were allowed to exercise these rights. The persons who lacked the legal capacity to do acts in the exercise of private rights were designated in the new code as incapacitated persons. This category of persons included minors, incompetent persons, quasi-incompetent persons, and married women.

1. Minors—During the Edo Period a commoner ordinarily celebrated his attainment of majority at the age of fifteen, though in some places a commoner attained majority by marriage. In 1876 the dividing line between a minor and a person of full age was set at the age of twenty. By the New Civil Code twenty years remained the age of majority. Anyone under this age was a minor, and he needed the consent of his legal representative (person exercising parental authority or guardian) in order to do juristic acts. In case the minor did a juristic act without the representative's consent the act could be cancelled.

2. Incompetent Persons—The term for incompetency (kinjisan) appeared among the accessory penalties of the Old Criminal Code (1880) and was also recognized by the Old Civil
Code in both a civil and criminal law sense. In the New Civil Code any person of an habitually unsound mind could be adjudged incompetent by the court upon application of a certain person. In addition, the incompetent had to be placed under a guardian, and the incompetent’s acts were subject to cancellation.

3. Quasi-incompetent Persons—Anyone who was weak minded, deaf, dumb, or blind could be adjudged quasi-incompetent upon application of a certain person. The quasi-incompetent was placed under a curator (who was not the legal representative), and the curator had to consent to the juristic acts of his charge. Otherwise the acts could be cancelled. Both the old code and the new code were almost identical with respect to quasi-incompetency, and even before the new code went into force quasi-incompetents were often placed under guardianship.

4. Married Women—The legal capacity of the wife was largely the same as that of a quasi-incompetent. Her status was thus defined for the sake of matrimonial harmony.

The domicile was important because it determined such legal relations as the place where obligations were performed and the place where succession commenced. By the terms of the Old Civil Code the domicile was defined as the place where the individual was registered, although when the place of livelihood were not one and the same the latter, as an exception, became the domicile. Under the new code the exception became the rule: the principal place of one’s livelihood was the domicile and when the domicile was unknown the place of residence became the domicile.

When a person left his domicile and there was little expectation that he would return it was necessary to devise suitable measures to prevent any loss to his estate or surviving wife and heir. During the early Meiji Period, before enactment of the New Civil Code, several different laws contained provisions concerning the disposition of disappearance cases. In the Outline of the New Criminal Law (1870) and in the Amended Criminal Regulations (1873) punishments were
prescribed for the person who disappeared, though these punishments were abolished in 1877. In 1870 legislation was enacted for the purpose of reinstating persons whose names had been cancelled from the domicile register. Then in April 1871 by enactment of the *Household Registration Law* the relatives of the absent person or his house association were made responsible for conducting a search to find him and for reporting upon the progress of the search every six months. Thirty-six months after the beginning of the search a permanent investigation was to be ordered. This search procedure, which had its origin in the Edo period, came to an end in 1878. After this date nothing is known exactly about the arrangements for dealing with disappearance, although the *Old Civil Code* provided for an adjudication of disappearance. This adjudication was made upon application to the court by the person who was entitled to the property in case the missing person died. When the missing person had no legal representative the application could be made five years subsequent to the disappearance, and if the missing person had a legal representative the application could only be made after the person had been missing seven years. Once the adjudication was made the absentee was considered dead, but in case the absent party reappeared or sent a message, the declaration of disappearance lost its effect. Under the *New Civil Code* the court could adjudicate disappearance on the petition of an interested party when the fate of the absent person was unknown for a period of seven years (three years in special cases), and the person adjudicated against would be regarded as dead. When the missing person was found to be alive subsequent to the adjudication, the absent person himself could have the court revoke its ruling; and when the missing person was found to have died at a different time than previously determined, an interested party could likewise have the adjudication revoked. When revoked for these reasons the adjudication was deemed to be non-existent; and all relations pertinent to the missing person's status and property were restored and acts which had been done in good faith, as the
marriage of a spouse, kept their full validity. Furthermore any person who acquired property by virtue of an adjudication of disappearance was only required to make restitution of the property to the extent to which he was actually enriched.

b. Juridical Persons

During the Edo Period towns, villages, shrines, temples, and the business offices (kaisho) that were established for economic, political, or social purposes were viewed as juridical persons, a status they continued to enjoy even after the Restoration. Shrines and temples were clearly juridical foundations subsequent to the Restoration, and of the business offices some, like the town assembly halls, seem to have been placed in the category of public juridical persons while others were classified as juridical foundations. This assortment of juridical persons was joined in the early year of the Meiji Period by companies (kaisha), which were classed as juridical foundations for profit. Among the joint stock companies the most typical were the national banks.

In the Old Civil Code there were only two articles devoted to juridical persons. One prescribed that a juridical person, whether public or private, had to obtain lawful approval in order to be formed and the juridical person had to observe the law if it wished to enjoy private rights. The second provision made the existence of a foreign juridical person conditional upon the authorization of a treaty provision or upon special permission, though if once established any foreign juridical person could enjoy the same private rights as any Japanese juridical person, with the exception of those rights denied by treaty or by the authorities. In the New Civil Code the provisions on juridical persons were similar to those in the old code except that the juridical character of foreign states, and of commercial companies were given recognition in Japan as a matter of course. The New Civil Code classified juridical persons into 1) profit making juridical persons (i.e., private commercial companies), and 2) non-profit associations and
founded that were concerned with public welfare (i.e., Shinto worship, religion, charity, science, and the arts). The former were established in accordance with the regulations relating to commercial companies and the latter were established by permission of the authorities. Without a special law, therefore, the only types of juridical persons that could be formed were those motivated by profit and those that worked for the public good.

c. Things

Things were first classified into movables and immovables about 1872 under the influence of Western law. Then when the Old Civil Code was drawn up, things were given a very complex classification and even incorporeal things were recognized. As a matter of fact, much criticism was heaped on the Old Civil Code because it created a category for incorporeal things.

In the New Civil Code things were restricted to material things. Land and things firmly fixed to land were defined as immovables, and everything else including bearer obligations became movables. Electricity and other incorporeal things were excluded from the "things" category, though in the New Criminal Code (1908) electricity was specied as goods in connection with the provisions on theft.

d. Juristic Acts

Although the Old Commercial Code contained provisions on juristic acts, there were no provisions applying in general to such acts until the New Civil Code appeared.

Generally, in business transactions, the Meiji government had consistently favored a wide latitude of freedom in doing juristic acts ever since the Outline of Commercial Law (May 1868) had abolished the wholesaler's federation and had removed price restrictions; yet freedom to do acts was not unlimited and any act that might violate reason was not permitted. The Old Civil Code, for example, permitted the parties to an act
to disregard or modify common law by mutual agreement, but they were forbidden to violate public order and good morals. The *New Civil Code* also violated any act against public order and good morals, and made the expressed intention of an act the governing factor whenever the intention was at variance with any provision of law that happened to be unrelated to public order.

Inasmuch as the relationship between the interpretation of juristic acts and customs during the Meiji Period has already been discussed in our treatment of the sources of Japanese law, it will suffice here to briefly outline the manner in which the early Meiji courts were expected to interpret contracts. The rules for interpreting contracts, which were communicated to the courts by the Justice Department in 1877, are as follows:

1. Consideration of the intentions of the contracting parties should take precedence over a literal interpretation of the contract.
2. A clause with a double meaning should be given an interpretation that would make the clause valid.
3. Words and sentences having a double meaning should be read so that they most suitably fit the intention of the contract.
4. An unclear sentence should be interpreted according to the customs of the place of the contract.
5. When a contract fails to include ordinary details that are customarily inscribed they should be regarded as present in the contract.
6. The clauses of a contract should be interpreted according to the general meaning of the entire contract.
7. In case of doubt the interpretation should favor the interests of the obligor.
8. When the text of a contract is imperfectly written no meaning other than that which may be presumed to have been mutually intended by the contracting parties should be implied.
9. In the interpretation of contractual obligations one item
of a contract should not be mentioned to the exclusion of another item that, by the very nature of the contract, should be naturally implied.

Although these nine articles show trace of having been directly translated from foreign sources, their actual influence upon the judges seems to have been very great.

As to the time when *inter absentes* an expression of intention should take effect, there was a heated debate among the drafters of the new code over whether the intention should become effective at the time the notification of the intention was sent or when it was received, but eventually the issue was settled by adopting the principle that the expression of intention should take effect when it reached the other party.

Juristic acts in which the intention and expression of the act were not in accord were divided by the *New Civil Code* into four types. The first, originating with the new code, was a case of mental reservation, where the discord between the intention and the declaration was known to the person making the declaration. As a general rule the declaration of intention in this case was valid. The second was a case of fictitious declaration of intention that was made in collusion with another party, and this kind of declaration was void except when it involved a third party acting in good faith. In order to create this provision of fictitious declaration in the *New Civil Code*, the *Old Civil Code*’s stipulation on contrary documents was simply revised so that it would have a wide application in respect to the declaration of intention. The third was a case of a mistake in the essential elements of the act which caused the declaration of intention to be voided, except when the person making the declaration was guilty of gross negligence. Again this was a revision of several provisions in the old code which treated different aspects of mistake. And the fourth was a case of fraud and compulsion. In either fraud or compulsion the declaration was voidable, although a declaration of intention made as a result of fraud could not be voided when a third party acting in good faith was involved. This provision, too,
resulted by simplifying similar provisions in the *Old Civil Code.*

In case a juristic act could not be done by the principal himself it was possible during the early Meiji Period, according to the *Regulations for Legal Representatives* (1873), for a principal to appoint another person to act as his representative. The relation between the principal and the representative was regarded as one of mandate, and although a letter of attorney bearing the mark of the principal's registered seal was needed by the representative before he could make contracts, etc., with another person, this letter of attorney was not necessary when the representative was disposing of ordinary business at the principal's place of business. Whether the representative was expected to act as a general or partial representative and what type of authority was being delegated to him had to be explicitly stated in the letter of attorney. To act as a representative, a person had to be at least twenty one years old. Although these regulations concerning representatives were quite likely prompted by the growing increase in commercial transactions and particularly by a growing international trade, there were still no provisions in these regulations for sub-representatives. Legal representatives were also treated in the *Old Civil Code,* but the primary emphasis there was upon the defining of the relations between the principal and his representative. By contrast to the *Old Civil Code,* the *New Civil Code* emphasized the third party's relations with the principal and with the principal's representative. Thus, under the new code, an expression of intention which was made by a representative within the scope of his authority and which showed that he was acting for his principal took effect directly for or against the principal. As for the protection of the third party, the new code included three articles on sub-representatives. One other point of interest concerning the representative is that in neither the old or the new code did he have to be a person of legal capacity.

In both the old and the new codes void and voidable acts, conditions and time limits were provided for, but the new code, unlike the old code, did not permit the debtor to claim the
benefit of time when he was adjudged bankrupt, or when he had destroyed, diminished, or failed to furnish security.

e. Periods of Time

Although the Code of Civil Procedure, the Old Criminal Code, the Code of Criminal Procedure and other laws contained provisions on periods of time and on prescription for their own respective needs, the New Civil Code included a special chapter on periods of time in an attempt to define periods of time for general purposes; and these provisions of the New Civil Code were binding unless periods of time was calculated according to the calendar whenever it was fixed by the week, month or year; and it had to be calculated from the given moment when it was fixed by the hour. The first day of the period was not included in the calculation when the period was fixed by the day, week, month, or year; and the period matured on the expiration of its last day.

f. Prescription

Before the New Civil Code came into effect, the existing rules governing prescription dealt with the extinction of obligations and time limits for filing suits; but since these topics shall be treated later, we shall only concern ourselves here with general prescription, acquisitive prescription, and the extinctive prescription which falls outside the scope of obligations.

In the Old Civil Code prescription fell within the book on evidence owing to the fact that M. Boissonade regarded prescription as legal presumption and regarded presumption as one form of evidence. In the New Civil Code prescription (acquisitive and extinctive) fell under the general provisions of the code.

By the terms of the New Civil Code, a court could not base its decision on prescription unless it was claimed by the party concerned; the benefit of prescription could not be waived in advance; and the effect of prescription had to be traced back to the day when it began to run. These provisions on prescrip-
tion were practically the same as in the *Old Civil Code*. Also identical to the old code was the provision that allowed the completion of prescription to be prevented by an interruption or suspension.

The requisite for acquisitive prescription in the new code was that a person, with an intention of ownership, should peacefully and publicly possess another's thing for twenty years, regardless of whether the person so doing knew that he was acting with or without fault. At the end of this twenty year period ownership of the thing passed to the possessor. In the case of immovables, ownership was acquired by only ten years possession, provided that the individual had acted in good faith and without fault at the beginning of such possession. And any property right other than ownership which was exercised with the intention of so doing on one's own account was also acquired in either twenty or ten years depending upon whether the right was exercised with or without fault. Under the old code the time requisite for acquisitive prescription had been thirty years. Although a thirty year period was often found in foreign legislation, the new code's choice of a twenty year period was based on the example of the Belgian civil code draft in order to avoid placing the individual's right in a prolonged state of insecurity.

With respect to extinctive prescription in the new code, property rights other than obligations or other than ownership were extinguished when they were not exercised for a period of twenty years. Under the old code extinctive prescription had referred to obligations alone and to no other property rights.

2. REAL RIGHTS

The book on real rights in the *New Civil Code* consisted of the *Old Civil Code*'s sections on real rights and material security. In the new code, however, the old code's right of usufruct, use, habitation and contract of hiring were omitted. Usufruct was the right to use and enjoy for a limited period of time the profits of a thing that belonged to another, provided
that the substance of the thing was not impaired. Use was the right of usufruct limited in scope to the needs of the user and his family. Habitation was the right of a person to live in the house of another without prejudice to the property. These rights were omitted from the New Civil Code apparently on the ground that, being such strong real rights, they might render the right of ownership meaningless and thus be incompatible with the concept of absolute ownership. Another difference between the old and the new is that the New Civil Code introduced a right of common (iri'ai-ken).

a. General Provisions

The only real rights recognized by the New Civil Code were those that were specifically mentioned in the new code or other laws. No such restriction on real rights existed in the old code.

The creation and transfer of a real right were, according to the new code, to take effect simply by a declaration of intention of the persons concerned. This provision was handed from the Old Civil Code, though originally it came from French law. Also coming from French law were the provisions that made registration and delivery prime conditions for a set up against third persons. That is, the acquisition or loss of, or alteration in, a real right in immovables could only be set up against a third person if such fact were registered according to the Registration Law; and the transfer of a real right in movables could only be set up against a third person when the movable had been delivered.

Although the New Civil Code made registration an essential condition to a set up in real rights in immovables by way of French law, this is not to say that registration as such was non existent in Japan prior to enactment of the new code. To gain some brief idea of the development of registration before the enforcement of the new code perhaps it will be enough to briefly sketch the formalities attending transactions in land that had to be observed before 1890. First, to begin with the practices in effect at the end of the Edo Period, it will be
remembered that the sale of land, whether in town or village, had to be recorded in a land register kept by the head official of the respective community. In the town, moreover, the land transaction was publicly announced by a town crier. In case land was pledged rather than sold it was necessary for the village or town head to affix his seal to the pledge instrument. Within seven years after the end of the Edo Period, during which time the unrestricted sale of land was officially sanctioned, the government made the delivery of a land deed a basic condition to the transfer of land. A receipt of payment for a land purchase was in itself deemed inadmissible as evidence of complete ownership. As a deed was important to the selling of land so was the notary seal of the town or village head to the pledging or mortgaging of land. According to the Land Pledge and Mortgage Regulations (January 1873), an instrument of pledge or mortgage had to be given a number and this number had to be inscribed in the land register; and then both the instrument and the register had to be affixed with the indorsing and tally seal of the town or village head. This was a practice that had come down from the Edo Period. Without these seal impressions the pledge or mortgage instrument could not be used as evidence of a loan. The indorsing and tally seals were also indispensable to the pledging, mortgaging, or sale of buildings, according to the Regulations for the Mortgage, Pledge, Sale, and Transfer of Buildings (September 1875). In March 1877 these regulations were extended to cover shipping vessels as well as buildings. Thus within a decade after the Restoration the impression of the indorsing and tally seals had become a requisite for a set up against a third person in the pledging and mortgaging of land and in the pledging, mortgaging, and sale of buildings and ships.

In the sale of land, too, the indorsing and tally seals soon became recognized as the requisite for a set up against third persons. Since a land title could not be obtained immediately by the purchaser following the purchase of a plot of land owing to the several months delay in acquiring the title from the
prefectural office, the disputes which occurred in the meantime over the ownership of land came to be settled on the strength of the record bearing the indorsing and tally seals of the village or town head. Having thus become evidence of a transfer of ownership, the indorsing and tally seals were looked upon as nothing more than the requisite to a set up against third persons. The land title on the other hand came to be nothing more than evidence that its owner was obliged to pay the national land tax and local taxes. This characteristic of the land title was made clear by the Regulations for the Sale and Transfer of Land (November 1880) which, in setting forth the conditions for sale and transfer of land, specified that the land title would simply be appended to the instrument of sale or transfer when this instrument was submitted to the village office for the affixing of the indorsing and tally seals.

Though the use of the seals of the town and village heads as notarial seals caused the notarial system to become universal throughout Japan, this system in itself did not make an efficient scheme of registration. After all the land registers remained scattered throughout Japan in each and every town and village and, in addition, the contents of the registers continued to be arranged in such a way that they defied efficient use. Hence for the sake of improving the registration system and perhaps also with an eye to the revenue to be gained from a registration tax, the Home Department initiated an investigation for a registration law. During the course of the investigation the project was moved to the Justice Department in 1884 where it was completed two years later. The legislation that resulted from this project was entitled the Registration Law. By its terms, the old indorsing and tally seal procedure was replaced by a new scheme of registration that was to be handled by the registration offices. The officials of the new registration offices were placed under the control of the presidents of the Courts of Original Jurisdiction. Being organized for the registry of things, the registry book was divided into three parts: land, buildings, and ships. The real rights subject to registration
were ownership, pledges, mortgages, and executed mortgages; usufruct being omitted. As for the effect of registration, the *Registration Law* stipulated that it was a requisite for set up against third persons.

The *Registration Law*, however, was not perfect and it had to be amended along with the *Old Civil Code*. After being amended, the Registration Law was renamed the *Immovables Registration Law* and was enforced in June 1899. Under the changed registration procedure, which was classified into provisional and warning registration, preferential rights, superficies, emphyteusis, servitudes, and hirings became subject to registration the same as ownership, pledges, and mortgages. Of the improvements in the registration system that resulted from the amendment, it may be said that the old system of having a separate registry folio set apart for each parcel of land was now fully established.

b. Possessory Rights

The possession prescribed by the *New Civil Code* as well as the *Old Civil Code* was an offshoot of European law, notwithstanding the fact that Japan during the Middle Ages had had a form of possession (*chigyō*) which was intermediate to the *possessio* of Roman law and the *gewere* of German law. The Roman *possessio*, which was separated from the title of ownership, was an arrangement by which the mere fact of possession was protected, and its essence lay in the right to a possessory action. The German *gewere* on the other hand had the nature of an apparent form of real right, and a person who had a *gewere* was presumed to have a real right manifest as a *gewere*. In Japan’s *New Civil Code* possession was simply a combination of the *possessio* and *gewere*.

Possessory rights in the new code were dealt with at the beginning of the book on real rights. They were dealt with first because possession formed the basis for almost all real rights and because the protection of possession was vital to the complete protection of all the other real rights. In the old
code possessory rights, though falling within the book on real
demands, was located between the chapter on servitudes and the
chapter on emphyteusis and superficies.

The acquisition of possessory rights depended in the new
code on the possessor's holding possession of a thing with the
intention of doing so for his own account. In the old code,
where possession was classified into 1) legal possession, 2) natural
possession, and 3) precarious possession, the acquisition of
legal possessory rights was acquired by the act of acquiring a
thing or enforcing a title to it with the intention of making
the right of ownership or the title to it one's possession. This
definition of possessory rights in the old code was later revised
in accordance with Heinrich Dernburg's theory. As for the
question of whether possession was a fact or a title, which
was a sore problem for the German common law scholars,
the New Civil Code left no doubt that possession was a legal
fact. But the right of possession was only a device to afford
protection to factual control as such, and was not, like the
right of ownership and other rights of usufruct, a means to
secure the direct use of the material things of the physical
world. While the new code thus afforded protection to the
fact of detaining things, it also gave protection to property
rights when they were exercised with the intention of doing
so for one's own account (quasi-possession).

Being real rights, possessory rights could be transferred,
and the transfer was effected by the delivery of the thing
possessed. In certain cases, however, the transfer took effect
by a mere declaration of intention, such as when the transferee
or his representative were actually holding the thing (brevi
manu traditio) or when the transferer, subsequent to the
transfer, continued to possess the thing as the transferee's
representative (constitutum possessorium). Both of these
examples of transfer, in which delivery was not a basic condition
to the transfer, were also contained in the old code.

The effect of a possessory right, which in the new code
meant first of all the right to a possessory action in the Roman
law tradition, consisted in right to bring 1) action for the preservation of possession when the latter was disturbed, 2) action for the protection of possession when the possession was apt to be disturbed, and 3) action for recovery of possession when the possessor was dispossessed. In the old code the right of possessory action was classified into 1) action for the maintenance of possession, 2) action against the owner of adjoining property to prevent him from doing an injury to one’s own possession (dénonciation de nouvelle oeuvre), 3) action protesting imminent injury (dénonciation de dommage imminent), and 4) action for recovery of possession. The first and fourth of this series of actions needs no comment. The second action (dénonciation de nouvelle oeuvre) corresponded to the Roman operis novi nuntiativ and the third action (dénonciation de dommage imminent) was equivalent to the Roman cautio damni infecti, although in Roman law these two actions were not recognized as rights of possessory action. But when the old code was revised the second and third actions just mentioned were combined, and they appeared in the new code as an action for the preservation of possession by which a possessor, when fearful that his possession might be disturbed, was entitled to demand prevention of such disturbance or security for damages. Furthermore this combined action was extended to cover movables as well as immovables, and it afforded a general demand for collateral instead of a mere guarantee of security against possible damage. As to the relation between the possessory action and the petitory action (action on title), the old code did not regard these two actions as completely independent of each other, but rather the possessory action was included in the petitory action. Thus when a petitory action was made, a possessory action could not be made concurrently nor could it be made in the event that the petitory action were withdrawn or met with final and conclusive failure. To this extent the possessory action was subordinate to the petitory action, though not completely so. For once a possessory action had been filed, if a petitory action were initiated at the same
court or at another by one of the parties to the suit the proceedings on the petitory action would have to be suspended until a conclusive decision were rendered on the possessory action; and either party that failed in the possessory action was entitled to start a petitory action. By contrast to this relationship between the two actions as found in the old code there was no connection at all between the petitory action and the possessory action in the new code. Under the new code the initiation of, or decision on, a petitory action did not prejudice the filing of, or judgment on, a possessory action; and, likewise, the withdrawal of a petitory action did not prevent the institution of a possessory action. But when a possessory action, which was confined to merely investigating the fact of possession, was instituted, no judgment could be rendered on the grounds on which the principal right (ownership, superficies, servitudes, etc.) was based.

Besides these effects of a possessory right, there were two others that originated in the gewere of German law. The first was the presumption of right. This meant that a right exercised by a possessor over a thing possessed was presumed to be lawfully done, a presumption that applied to both moveables and immovables in the new code. The old code contained a similar provision on the presumption of right, although it went further and added that the possessor must always be the defendant in a petitory action relating to his possessory rights. This additional provision of the old code never appeared in the new code. The second effect of German origin was that a possessor in good faith acquired the fruits derived from the thing possessed. In the old code the possessor's claim to the fruits depended not only on a possession in good faith but upon a possession by just title.

The effect of a possessory right in moveables was that the person who peacefully and publicly commenced possession of a movable immediately acquired the right over the movable, if he acted in good faith and without fault. This effect, which was based on the German maxim that moveables cannot be
followed, was known in the old code as "instantaneous prescription". Though immediate acquisition may have developed as an arrangement for limiting the owner's right of pursuit once he had given possession of a movable to someone in whom he had trust, it did not apply of course to stolen and lost articles. For the owner was allowed to pursue to any length a movable that was separated from his possession against his will. But if a stolen or lost article had been bought by the possessor in good faith at an auction sale, in a public market, or from a trader dealing in articles of the same kind, the owner could not recover the article without repaying the price paid by the possessor.

c. Ownership

Ownership under the *New Civil Code* was the right of freely using, receiving the profits of, and disposing of the thing owned. The right of ownership, however, was not unbounded; it was subject to the limitations imposed by laws and ordinances. Of the important restrictions on ownership, those relating to land ownership and to the mutual scope of ownership between adjacent owners of immovables were specially provided for by the new code. In certain instances custom was allowed to take precedent over the provisions of the code, particularly whenever custom and the code clashed as to the restrictions to be imposed on fence building and the construction of structures that would overlook the grounds of someone else's residence.

The special ways for acquiring ownership, as provided in the new code, were 1) prior possession, 2) finding of lost articles, 3) discovery of hidden treasure, and 4) adjunction. First, prior possession, as it concerned ownerless movables, meant the taking of possession of a thing with the intention of owning it; and so far as ownerless immovables were concerned they belonged to the national treasury.

Secondly, with respect to lost articles, there were a number of laws dealing with this subject prior to enactment of the *New Civil Code*. In the early part of the Meiji Period the *Outline*
of the New Criminal Law (1870) prescribed that a lost article, if found, should be delivered to the authorities. If the article belonged to the government, the government was to keep it; and if it belonged to a private individual the article was to be shared between the owner and its finder. But when the owner did not appear within thirty days, the finder was permitted to keep all of it. Sunken things and stolen articles were subject to the same disposition, according to the Amended Criminal Regulations (1873). However things found in the aftermath of a catastrophe at sea were governed by separate laws, such as the sea casualty regulations that were posted on the coastal post boards in 1869 and by the Regulations Governing the Disposition of Inland Shipwrecks and Floatsam that superseded the coastal post boards in 1875. Though lost articles were initially governed in the Meiji Period by provisions of criminal law, as we have just noted, such articles were again dealt with by special legislation in April 1876. According to this legislation, known as the Regulations for the Disposition of Lost Articles, anyone finding a lost article had to return it to its proper owner within five days or, when the owner was unknown, deliver it to the authorities. In case the owner did not appear within a year after the authorities had publicly announced the finding of the article, then the article was given to the finder. On the other hand when the owner did appear and the article was restored to him, he was obliged to pay the finder for his expenses and give him from five to twenty per cent of the article's value for his trouble. As for the finding of lost articles under the terms of the New Civil Code, ownership of such articles was acquired by the finder when the owner was not located within one year after public notice had been given in accordance with the Lost Articles Law (March 1899). The Lost Articles Law superseded the Regulations for the Disposition of Lost Articles (1876).

Thirdly, as concerns the ownership of hidden treasures, the Outline of the New Criminal Law provided that when such treasures were dug up on either government or private land
they were to be delivered to the authorities and then to be divided between the government and the landowner. Though similar provisions were included in the aforementioned Regulations for the Disposition of Lost Articles (1876), these regulations were amended in 1881 so that buried goods would be awarded to the landlord instead of being shared with the government when the owner could not be found; and in case a lessee dug up any buried goods on the land he had leased the goods were to be divided between himself and the landlord. In the New Civil Code ownership of hidden treasure was acquired by the finder when the owner could not be found within six months after public notice had been given in accordance with the Lost Articles Law; but when hidden goods were found among articles belonging to another person, half of the hidden goods were acquired by the finder and half by the owner of the articles.

The fourth and last special way of acquiring ownership was by way of adjunction, mixture, or application of workmanship, the details of which we need not go into here.

In addition to prescribing the limitations of ownership and the special ways in which it was acquired, the New Civil Code also set forth provisions on the nature of joint ownership. In origin the joint ownership of the new code came from Roman law, notwithstanding the fact that several forms of joint ownership had been known to Japan during the Edo Period. According to the new code, each joint owner was entitled to use the whole of the common property in proportion to his share therein; the shares of the joint owners were presumed to be equal; and a joint owner could at any time demand partition of the common property. However, it could be provided by contract that no partition could be made for a period up to five years. In case the joint owners desired to dispose of the property and were unable to reach a mutual agreement as to the partitioning of the property, an application of partition could be made to

\[ \text{collective ownership (sōyū/gesamteigentum), joint right (gōyū/eigentum zur gesamten hand), and joint ownership (kyōyū/miteigentum).} \]
the court. And each joint owner had the right to freely dispose of his share.

With regard to a right of common (iriaiken) which had the nature of joint ownership, the new code's provisions on joint ownership applied in addition to the custom of the particular district where the common was located. The reason that the provisions of the code took a back seat to custom with respect to commons is that there were several different types of commons throughout Japan and the villager's rights to them were not well enough understood to allow the drafters of the code to establish any uniform and binding provisions that would replace custom. As a matter of fact there were about four or five different types of commons that survived the Edo Period. The most typical of such commons was the type which was owned collectively by the whole village and which could be used directly by each villager in virtue of his status as a member of the village. The other types of commons might be owned by several villages, by a neighboring village, by a private individual or by the authorities. The villager's use of a privately owned commons depended upon the benevolence of the private owner.

d. Superficies

Under the New Civil Code a superficies was the right to use the land of another person for the purpose of owning thereon structures or trees and bamboos. (In the old code the term "possess" rather than the term "use" was used.) The person who exercised the superficies could at any time renounce his rights whenever the duration of the superficies was not fixed by the act of creation nor determined by any special custom. In case the superficiary did not renounce his right, the court was entitled to fix the period of the superficies' duration from twenty to fifty years upon demand of the parties concerned. Although the superficies was a lease in the new code, the same as a hiring, the superficies was distinguished from a hiring in that the superficies was classified as a real right while a
hiring was made an obligation. The effects of these two forms of lease were of course different, for the superficies as a real right could be set up against third persons while the right of hiring could not. But since owners of land did not fancy the creation of a strongly protected superficies they rented residential land for the most part under contracts of hiring rather than as superficies. Consequently the lessee remained without complete protection and a number of laws had to be enacted on the lessee's behalf. The first of these laws (Law No. 72, March 1900) provided that persons who previous to the enforcement of the New Civil Code had the right of using the land of other persons for the purpose of owning thereon structures or trees and bamboos would be presumed to be persons entitled to a superficies, although the superficies could not be set up against third persons unless it were registered within a year after enforcement of the New Civil Code. Despite thist law, there was still no protection to the lessee against third persons when the lease was contracted subsequent to the enforcement of the new code; and in the land boom that followed the Russo-Japanese War the lessee became a victim to the landlord who, in an attempt to increase his land rent, forced the lessee to evacuate his land on the pretext of illegal occupancy. Therefore another law was enacted in May 1909 which made it possible for the lessee and the superficiary to set up against third persons if their buildings were registered, regardless of whether or not the contract of hiring or the superficies itself was registered.

e. Emphyteusis

Emphyteusis originated during the Edo Period, and of all forms of tenancy it was the strongest. Generally, there were only three forms of tenancy in the Edo Period: 1) ordinary tenancy, 2) fixed term tenancy, and 3) emphyteusis. The ordinary tenant worked without agreeing to any specific period of time and his landlord could recover the tenanted land whenever he wished. The fixed term tenant held land for a definite period as fixed by custom or agreement, and this land could
not be recovered by the landlord until the term expired, unless the tenant failed to pay his rent or was otherwise guilty of misconduct. These two forms of tenancy had the effect of an obligation. The emphyteuta on the other hand held his land permanently, provided he paid his rent and was not guilty of gross misconduct. The emphyteuta could lease his tenancy rights to a third party and he could even set up against a new landlord when the land under emphyteutic contract was sold. In short emphyteusis had the effect of a real right. To become an emphyteuta, a peasant might reclaim waste land; he might tenant the same plot of land for twenty years (a qualification established by Bakufu law); he might tenant the land of a landlord whose family was too small to provide adequate farm labor; or as in Tosa he might own the top soil while the landlord retained ownership of the subsoil.

However, with the coming of the Restoration and the land tax, which made it necessary for the government to distinguish tenant from landowner so that the latter could be issued a land title, the existence of the emphyteutae became quite a problem, particularly in those cases where emphyteusis had been the right of a tenant family over the generations and the family felt like the land was rightfully theirs. Consequently, in order to reduce the number of the emphyteutae and facilitate the issuance of deeds, the government in 1875 directed that the landowner and the emphyteuta work out a mutual agreement in which one would buy out the interest of the other; otherwise, failing an amicable settlement, the deed was to be issued to the landowner. The government also ordered that the title "emphyteuta" be abolished for anyone who had enjoyed this status for twenty years and ordered that no period of tenancy could be contracted for more than 20 years at a time. These restrictions on emphyteusis, however, were not necessarily observed throughout Japan.

Later, when the Old Civil Code was drawn up, an emphyteusis was permitted to run from thirty to fifty years. Emphyteusis was used by this code as a special term to indicate
the leasing of immovables and, like a contract of hiring, it was a real right. Under the new code, emphyteusis, which continued as a real right while a contract of hiring became an obligation, was defined as a right to carry on agriculture or stock farming on the land of another person in consideration of a rent. The period of time for the duration of an emphyteusis was not less than twenty years and not more than fifty years. And any emphyteusis already in existence when the new code went into effect was limited to a period of fifty years from the date of the code's enforcement. As a final comment on emphyteusis it should be observed that there was an attempt on the part of the Department of Agriculture and Commerce to abolish the emphyteuta category of tenancy altogether, but the attempt came to nought when the department's proposed tenancy regulations (1887) failed to be enacted.

f. Servitudes

A right similar to servitudes existed in the Edo Period, but nothing is known about it in detail. In the Old Civil Code as in the French civil code, a servitude was distinguished either as a servitude created by law or as one created artificially. In the New Civil Code servitudes created by law were included as part of the limitations (or extent) of ownership and hence the only type of servitude remaining was the artificial servitude.

Under the new code a servitude, which was based on the predial servitude of Roman law, allowed one person the right to use the land of another for the benefit of his own land in accordance with the object fixed by the act of creation. The land of the beneficiary was the dominant land while the land being used to the advantage of the beneficiary was the servient land. Although all other real rights of use had to have a limited period of duration with a fixed maximum term, servitudes suffered from no such limitations; the new code allowed them to run indefinitely. The duration of the servitudes was perhaps left unlimited because they imposed few restrictions on ownership.
The provisions of the new code on servitudes, in addition to the customs of the district concerned, applied correspondingly to rights of common not possessing the nature of joint ownership.

**g. Liens**

In the *Old Civil Code* the provisions on security were classified either as material or personal security and all were grouped in one book entitled *Obligations and Security*. For example, the provisions on liens, pledges of movables and immovables, preferential rights, and mortgages were treated as material security while suretyship, joint and several obligations, and indivisibility of obligation were treated as personal security. In the new code material security was placed under the book on real rights and personal security fell under the book on obligations. The provisions on liens were concentrated in a single chapter in both the old and the new code, as in the draft of the German civil code.

A lien, according to the new code, allowed a possessor of another person’s thing, when entitled to a claim with respect to such thing, to retain it until the claim was repaid. But the lien could not be exercised if the claim was not due and if possession had commenced by way of an illegal act. The old code was almost identical to this except that things which could be retained were specified as the movables and immovables of a debtor, and the causes for possession were prescribed as just causes; also the lien of the old code seems to have come into existence at the same time that the claim came into being, and the causes for the rise of the claim were specifically determined by law. By contrast, the provisions of the new code, just mentioned above, broadened the scope of the things to be retained by simply specifying that the lien holder was entitled to retain another person’s “thing”; the cause for possession was stated negatively so that it only barred an illegal act; the rise of the lien was made unequivocally conditional on the maturity of a claim; and the special enumeration of the causes for the commencement of the claim was omitted.
h. Preferential Rights

Though rights resembling preferential rights were not altogether lacking in the Edo Period, the preferential rights that were found in the new code were simply a revised and more complete version of the preferential rights that the old code had modeled after similar rights found in French law.

According to the new code a preferential right entitled the creditor, in accordance with the provisions of the new code and other laws, to receive payment of his claim from the property of his debtor in preference to other creditors. The preferential right, in other words, was a real right and it obtained satisfaction prior to other claims by legal rather than conventional sanctions. Previously the old code had left doubt as to whether the preferential right was a special effect of a claim or a real right, because the preferential right had simply been defined at that time as a “preferential right attached by law to the cause of a certain claim”.

The preferential right was classified by both the old and new codes into general and special preferential rights. The special preferential rights embraced preferential rights in movables and immovables.

i. Pledges

The term “pledge” (shichi) prior to the Edo Period referred to the creation of security for a debt irrespective of whether the security was transferred from the debtor to the creditor or not. Only during the Edo Period was the meaning of pledge restricted to a debtor-creditor relationship in which the thing serving as security was necessarily transferred to the possession of the creditor. If the security for the debt remained in the possession of the debtor, this was known during the Edo Period as a mortgage (kakiire). Security could also be created by a conditional sale that allowed the seller to repurchase the thing at a future date. But returning to pledges, a pledge of movables during the Edo Period was given chiefly to pawn brokers and
the pledge could only be accepted when the instrument of pledge bore the seal impression of the pledgor and a witness. The pledge obligation was extinguished if the pledged article was destroyed by fire or was stolen. Such sharing of the loss had been a custom since the Heian Period. The time for redeeming the pledged article was determined by a specific agreement, but in the absence of an agreement the article had to be redeemed at the end of eight months or be forfeited. As for pledges in land, there were several types. Some had to be redeemed within ten years after being made and others had to be redeemed within two months or within ten years after the term of the pledge expired. Those that had a two months period of grace were the most common in the late Edo Period. To prevent the pledging of land from undermining the Edo Period's ban on the perpetual sale of land the pledge transaction was made subject to certain strict conditions, among which the impression of the village or town head's seal on the pledge instrument was especially important. This seal was vital because it proved that the pledgor was the real owner of the land and it also evidenced that the instrument was legal. In case the basic requirements for pledging land were not met, no suits on this land would be accepted; and, furthermore, the land would be regarded as mortgaged and the parties concerned would be punished. While it was necessary for the pledgor to transfer the possession of the pledged land to the creditor, the pledgor often remained on this land as a tenant.

The pledging of houses, which was a common transaction in the towns during the Edo Period, was accomplished after 1842 by the following procedure. In the city of Edo, at least, the pledgor deposited with the pledgee the house title deed and a pledge instrument inscribed with the term and amount of the loan; in return the pledgor received a receipt for the title deed. For all practical purposes this type of house pledge was more akin to a mortgage than a pledge.

The mortgage as we have just mentioned required no transfer of property from the mortgagor to the mortgagee; the mortgage
loan was granted simply upon the preparation and transfer of a mortgage instrument. Whether the object of the mortgage was a movable or immovable was of no consequence. Since the mortgage was nothing more than security, no effects of a real right were created in the interest of the creditor. Nothing however could be mortgaged twice.

Following the Restoration the Meiji government at first accepted the Bakufu laws relating to the pledging of immovables, but, owing to the Finance Department's concern over the contract violations and confusion that the unrestricted sale of land portended for the land tied up in pledge agreements, the Council of State shortly issued the Regulations for Pledging and Mortgaging Land (January 17, 1873). These regulations governed the pledges and mortgages for immovables that were created subsequent to January 17, 1873, while the pledges and mortgages of immovables already in existence prior to this date continued to be governed by the practices of the Edo Period. Under the terms of the Regulations for Pledging and Mortgaging Land, a pledge was a form of credit in which a landowner who borrowed money or cereals transferred to the possession of the creditor as proof of future performance a plot of land, an instrument of pledge, and the title deed to the land. As part of the pledge the landowner also had to apply the rent from the pledged land as payment of the interest on the loan. The term of a pledge could not exceed three years, and the exact period had to be inscribed on the pledge instrument. In the case of a mortgage the debtor transferred to the creditor the instrument of security, not the deed, as evidence of future performance; and as payment of interest on the loan the debtor might pay all or part of the rent derived from the mortgaged land or he might make a delivery of rice or money. Though mortgages were not subject to any officially prescribed time limit, the time limit agreed upon by the debtor and creditor had to be shown on the mortgage instrument. Whether the credit transaction was in the form of a pledge or mortgage, the instrument of agreement had to be sealed with the indorsing and tally seal
of the village or town head and had to be registered in the village or town register. And any instrument that failed to bear the proper seal marks was not accepted as evidence of a loan until January 1874 when the government ordered that, in case the debtor went bankrupt, the creditor should lose nothing more than his preferential rights. Interestingly enough there were no obstacles to prevent the forfeiture of the pledged or mortgaged land upon expiration of the term specified for performance, provided both parties agreed to the forfeiture. And by a Justice Department directive of March 1873, any land under pledge or mortgage could be brought to public auction immediately after the expiration of the period specified for the performance of the debt, irrespective of the terms of the pledge or mortgage.

In the event that land in pledge was ruined by natural disaster, the *Regulations for Pledging and Mortgaging Land* allowed the pledgor's obligation to decrease in proportion to the land damage sustained. But this safeguard of the pledgor's interests was short lived, for the Justice Department considered it too favorable to the pledgor, particularly in view of the fact that a pledgor was eligible to receive any surplus accruing from an auction of his pledged land. Hence by May 1874 the Council of State decreed that the pledgor should be declared bankrupt when he was unable to pledge to the pledgee additional things to take the place of the land that was ruined.

The pledging of movables, like the pledging of immovables, was at first dealt with during the early Meiji Period on the basis of Edo Period legislation, but in November 1872 the Justice Department issued orders giving recognition to the right of action relating to pledges of movables and to loans that were secured by title deeds. The pledging and mortgaging of public bonds was also dealt with by a series of enactments during the early Meiji Period.

In the *New Civil Code* pledges were classified into pledges of movables, pledges of immovables, and pledges of rights. By general definition a pledge allowed the pledgee the right to keep possession of the thing received from a debtor or third
person as security for his claim and to receive payment of this claim in preference to other creditors. With respect to the creation of a pledge it is important to remember that the new code as well as the old code forbade any agreement between the pledgee and pledgor as to the forfeiture of the thing pledged. This ban against forfeiture to the pledgee, which was probably of French origin, reversed a tradition that had prevailed since the early days of Japanese history and had been affirmed as late as 1873 by the Regulations for the Pledging and Mortgaging of Land. The creation of a pledge for both moveables and immovables in the old code depended upon the preparation of a pledge instrument while in the new code creation of a pledge depended on the delivery of the thing pledged. Once the pledge had come into being it was not possible, according to the new code, for the pledgee to leave the thing pledged in the possession of the pledgor. Consequently it was no longer possible for a landowner to pledge his land and then remain on it as a tenant (jiki kosaku) as was customary in the Edo Period. As for repledging, this practice was recognized by both the old and new code, provided that the pledgee be responsible for any loss or damage caused by an irresistible force (vis major).

As for a pledge in moveables, both the old and the new code provided that a pledgee could not set up his right of pledge against third persons unless he held continuous possession of the thing pledged; but if a pledgee did not receive payment of his claim, he could, if there was a legitimate reason, apply to the court to have the pledged thing immediately appropriated for the satisfaction of his claim according to the valuation of an appraiser. The new code differed from the old code with respect to the pledging of moveables in that the new code carried provisions specifying that when pledges were created on the same movable in order to secure several obligations, the ranks of such pledges would be determined by their order of creation.

Though the pledging of immovables was not often seen in Europe owing to the development of the mortgage and because it was forbidden in countries where law of French origin
prevailed, this type of pledge was frequently contracted in Japan during the Meiji Period. The term of duration for a pledge of immovables was first set at thirty years by the old code, but this period was considered too long and reduced in accordance with Japanese custom to ten years in the new code.

j. Mortgages

Since there is no need to repeat what has just been said about mortgages in our discussion of pledges, it will suffice here to make reference to only a few miscellaneous aspects of mortgages as they stood in the early Meiji Period, and, then, mention the pertinent provisions on mortgages that were included in the *Old* and *New Civil Code*. First, if a mortgaged movable or immovable was destroyed by natural calamity before 1873 the mortgagor and mortgagor shared the loss; if the thing was sold at auction and the realized price did not satisfy the obligation the mortgagor alone suffered the loss; but if the realized price was more than enough to satisfy the obligation the surplus was returned to the mortgagor. Since this disposition of the credit relations between mortgagor and mortgagor was considered too favorable for the mortgagor, the Council of State issued regulations in August 1873 that caused the mortgagor to be treated like a bankrupt in case the mortgaged thing was destroyed or failed to be sold at auction at a high enough price to satisfy the obligation. Secondly, double mortgages were not permitted in the early Meiji Period any more than they were in the Edo Period, although, according to the *Regulations for Pledging and Mortgaging Land*, a double mortgage could be made if the mortgagor was aware of the existence of the prior mortgage obligation; and, in that case, preferential payment would have to conform to the order in which the mortgages were made. Thirdly, with respect to the mortgaging of buildings, the Council of State decreed the *Regulations for Mortgaging Buildings* in September 1875. By these regulations the debtor delivered to the creditor as security and as proof of future repayment a diagram of the building and an instru-
ment bearing the notary seal of the town or village head. This type of mortgage, which was a latter day version of the Edo Period "house pledge" was treated in much the same way as the mortgaging of land. In March 1877 the above mortgage regulations were made applicable to ships.

In the *New Civil Code* a mortgage was defined as a right in virtue of which preferential payment of an obligation could be obtained out of an immovable which had been furnished as security for such obligations by the debtor or a third person without transferring possession of such immovable. Since superficies and emphyteuses were legally regarded as immovables, they, too, could be the subject of a mortgage. The qualifying phrase in the new code's definition of a mortgage that permitted the giving of an immovable as security "without transferring possession" was non-existent in the old code relating to the destruction, depreciation and damage of mortgaged property that did not appear in the new code. Neither did the new code retain the old code's provision that made the creation of a mortgage dependent on the preparation of an instrument of mortgage.

When mortgages were created on the same immovable in order to secure several obligations, the new code specified that the ranks of such mortgages would be determined by their order of registration. On this point the old code differed very little. But established for the first time by the new code was the rule that the mortgage was extinguished as to the third person if the third person who had bought the ownership of, or a superficies on, a mortgaged immovable had paid the price to the mortgagee on the latter's demand. In respect to "removal", which was another way for the third person to free the immovables from the pursuit of the mortgagee, the new code simply revised an article of the old code and prescribed that a third person who had acquired the ownership, superficies or emphyteusis of a mortgaged immovable could remove the mortgage by paying or depositing the amount tendered and agreed to by the mortgagee in accordance with certain provisions of
the new code. In freeing the immovables from the mortgagee the old code had allowed the third acquirer to select one of five methods: 1) performance of the obligation, 2) removal, 3) defense of search, 4) surrender of immovable, or 5) auction. Of these methods the most natural course to follow was the performance of the obligation. In the new code defense of search and surrender were eliminated, thus leaving performance of the obligation, auction, and removal as the only ways by which to free the immovable. Auction became the general rule and removal the exception. That this form of removal was peculiar to French law needs no comment here.

3. OBLIGATIONS

Obligations in the Edo Period were classified according to their effect into 1) obligations protected by ordinary civil procedure (hon-kuji), 2) obligations protected by special civil procedure (kane-kuji), and 3) obligations unprotected by any legal procedure (nakama-goto) such as the obligations of mutual financing associations and other associations. The obligations protected by special civil procedure were interest bearing obligations that were unsecured by collateral. Characteristic of this particular type of obligation, a certain sum of money had to be involved to qualify it for legal protection, private settlement was strongly encouraged, and judgment against the debtor was so lax that he was only compelled to fulfill his financial obligations by way of a series of monthly or yearly installment payment. The interest bearing obligation was afforded such weak protection because in feudal society this type of obligation was looked upon as a low form of personal relationship. Being a mutual agreement the interest bearing obligation was based on the sincerity of the parties concerned and, therefore, the performance of the obligation was usually regarded as their own private problem. Whatever legal assistance that came from the authorities was only granted as an act of benevolence. Nevertheless the Bakufu authorities were constantly receiving petitions seeking an official disposition of
the disputes connected with these interest bearing obligations, and by the late seventeenth century the authorities had become so annoyed that they issued laws clearly making the settlement of such disputes the sole and final responsibility of the parties themselves. Thereafter throughout the remainder of the Edo Period similar laws were issued, and, as a consequence, suits on interest bearing obligations were no more susceptible to legal protection than were the suits on the obligations of associations. The Bakufu's action against interest bearing obligations did not of course extinguish the obligations, it only reduced them to natural obligations. There were laws however in the late Edo Period that did extinguish obligations, but these laws only brought about the repudiation of debts contracted by the samurai.

a. General Principles

During the Edo Period obligations were viewed not so much as rights to demand performance as they were rights to control the thing to be delivered. Though this concept of obligations was also in evidence in the early Meiji Period, it soon disappeared.

Following the Restoration obligations were no longer generally classified according to their effects, though at the beginning of the Meiji Period, as we shall see later, the absence of interest on an obligation (deposit or loan) determined whether or not it was justiceable. As in the Edo Period the very earliest years of Meiji witnessed the issuance of a number of orders that either completely repudiated obligations or simply reduced them to natural obligations. In brief the dates and contents of these orders, which were emergency measures taken in a time of revolutionary change, are as follows:

1868—Legal action banned with respect to loans previously granted in the name of the Court (legal action made possible in 1872).

1870—Village loans to minor fief holders (jitō) were to be settled by mutual agreement. (In January 1873
these loans were identified as private loans in contra-
distinction to the loans made by a village to a domain
proper.)

1872—The loans made by various Bakufu agents to former
domain governments or to domain inhabitants were
repudiated.

1872—Legal action banned with respect to loans made to
samurai prior to the return of fiefs to the Emperor
in 1869.

1872—Legal action banned with respect to loans made
among commoners before January 24, 1868. (In
January 1873 pledged moveables and immovables were
exempt from this order.)

1873—Repudiation of all loans granted by the domain
governments prior to 1843; and repudiation of one
third the number of loans contracted between 1846-
1876.

Actions on unperformed obligations had to be brought
within a definite time period or they could not be instituted.
To begin with the late Edo Period, no legal action concerning
a sale on credit would be entertained after 1843 unless it was
filed within five years subsequent to the expiration of the period
set for payment of the loan. In the Meiji Period there were
several enactments concerning time limitation for legal action.
In 1872 the government announced that any future loan which
was not brought to court within five years after its date of
expiration could not be attacked; and in 1873 this rule was
applied to any loan contracted prior to 1872. Then in November
1873 the government issued the _Statute of Limitations_. By this
law, which was to govern all future contracts, obligations were
classified into several different types, each having a correspond-
ing time limit for legal action (six months, one year, or five
years); and when a suit was not instituted within the proper
time limit the contract was deemed cancelled. Since the debtor
was absolved from paying his debt by these regulations and
the creditor lost the right to receive payment, there was a loss
of substantive law right rather than a loss of right to bring action. Though the New Civil Code had no provisions limiting the time for filing action, there were provisions in the new code on extinctive prescription.

Claims which were ordered to be settled between the parties concerned without any chance of being brought to court became, as we have noted, natural obligations. In the old code this type of obligation was considered important enough to have an entire chapter reserved for its treatment. But natural obligations were such a bone of contention during the controversy over the codes that the new code omitted the natural obligations category altogether.

Another bone of contention during the codes controversy was the old code's concept of the subject of an obligation. The subject was limited by the old code to a thing which could be valued in money while the new code allowed anything to be the subject of an obligation whether it possessed monetary value or not.

The charging of interest for obligations, which was provided for in both the old and new codes, was not new to the Meiji Era. In the Edo Period the charging of interest on loans was at first a matter for the parties to the loan to decide, since the loans depended on the sincerity and good faith of the borrower and lender. But as this mutual relationship became corrupted and the lender demanded an exhorbitant interest, the Bakufu limited interest on loans to twenty per cent a year. And when any loan bearing more than twenty per cent interest was made subject to a law suit before 1736 the Bakufu reduced the interest on that loan to five per cent. After the year 1736 interest was generally lowered to fifteen per cent per year and in 1841 the maximum interest rate was set at twelve per cent. This twelve per cent rate was accepted by the Meiji government until March 1871 when the government removed the limitation on interest and simply prescribed that whatever interest rate was agreed upon by the contracting parties would have to be inscribed in the loan instrument. In March 1873, however, the
Meiji government decreed that whenever the word "interest" or "reasonable interest" were the only reference to interest in the loan instrument, the rate of interest would be judged as six per cent per year, and this rule also applied to overdue interest. Then in September 1877 the Council of State enacted the Interest Limitation Law which specified that conventional interest would be set at twenty per cent for sums of cash amounting to less than one hundred yen, fifteen per cent for sums between one hundred and one thousand yen, and twelve per cent or less for sums over a thousand yen: and any interest exceeding these rates was made inadmissible to court action. Legal interest was set by this law at six per cent regardless of the size of the cash principal. In both the old and new code the borrower was obliged to pay the legal rate of interest whenever the loan agreement failed to specify the exact rate. This rate was six per cent a year under the terms of the old code and five per cent under the new code.

As for the effect of an obligation, the fact that the existence of an instrument was necessary to any suit related to the obligation was an established principle that dated back to the Edo Period. In the matter of defaulted obligations, the Old Civil Code accepted the French idea that the arrival of a definite time limit was not the sole criterion of default; whereas in the New Civil Code the arrival of a time limit was the basic condition of default. Although default of the obligee was no where mentioned in the Old Civil Code, the New Civil Code, in following the Austrian civil code and the draft of the German civil code, stated that if an obligee refused to accept or was unable to receive performance of an obligation, he was in default from the time when performance was tendered. As concerns compulsory performance, the basic requirement of the old code was that the obligor should not be subject to physical restraint, while in the new code nothing was said of physical restraint and the obligee was entitled to apply to the court for compulsory performance so long as the obligation permitted performance. In calculating damages for the non-performance of an obligation
the old code included the damages for loss incurred by the obligee as well as the compensation for lost profits, while the new code simply specified that a demand for damages had for its object the making good of such damages as might normally arise from non-performance of the obligation. The damages, according to both the new and the old code had to be paid in money. Also common to both codes were the different provisions concerning the advance determination of damages, the claimant's right of subrogation, and the right to cancel prejudicial acts of the obligor.

Obligations with a plurality of parties were classified in the New Civil Code as indivisible obligations, joint obligations, and suretyships. Our attention here, however, shall only be directed to joint obligations and suretyships. First, with respect to joint obligations, the obligee during the Edo Period was not only entitled to but was compelled to bring suit against all the obligors for the full amount whenever the performance of joint obligations fell in arrears. This rule continued to be observed even after the Restoration as is indicated by certain provisions of the Illustrated Guide to Pleading (1873). Then, in 1875, the Council of State issued a significant decree announcing that when the loan instrument failed to indicate the amount borrowed by each obligor of the group or failed to clearly indicate separate loans, the existing signers could be ordered to make payment for the entire amount of the loan including the amount borrowed by the obligors who had disappeared or who had died without heir. Though there existed some question as to whether each individual obligor was responsible for the entire loan or whether the obligors were jointly responsible, the Justice Ministry finally decided in 1880, after reversing an earlier directive, that obligors were jointly responsible. Legal action therefore had to be taken against all the obligors together. In the Old Civil Code, where the provisions on obligations followed the example of foreign legislation, the joint and several obligations of both obligees and obligors were recognized, while in the New Civil Code the joint and several obligation of obligees
was rejected along with the old code’s provisions that gave recognition to a representative relationship among the obligors in certain cases and not in others. But there was very little difference between the old and new code with respect to the new code’s provision that allowed the obligee to demand total or partial performance against anyone of the obligors, or against all the obligors simultaneously or successively whenever two or more persons were bound to a joint and several obligation. By virtue of this provision Japan’s indigenous law on joint obligations was replaced by law of Roman origin.

Suretyship, the other aspect of an obligation with a plurality of parties, has been known to Japanese law for many centuries. From the Nara to the Edo Period suretyship was classified into two different types in accordance with Chinese tradition. One type of suretyship was a guarantee that the surety (honin) would perform the obligor’s obligation only if the latter should abscond; the other type was a guarantee that the surety (shōnin) would perform the obligor’s obligation no matter what the reason for default. In 1704 this distinction disappeared and no distinction in title was made thereafter between a surety who guaranteed against absconderce and the one who guaranteed against default. In the late Tokugawa Period the surety was not only obliged to perform the obligor’s obligation when the instrument of suretyship included a clause to that effect but he was also compelled to perform even when such clause was not included, if upon examination it became clear that the surety originally had the intention of making good the obligor’s default. Immediately after the Restoration the surety had to make performance whenever a creditor was not fully reimbursed after bankruptcy proceedings or whenever the obligor absconded or died without leaving a successor, provided the instrument made the surety’s obligation clear. But a person whose name only appeared on the instrument in the capacity of a witness and nothing else was free of any liability. In June 1873 the Regulations Governing the Repayment of Loans by a Surety were promulgated and applied to
all loan instruments signed after August 1873. Accordingly, the surety, no matter whether he identified himself as ukein or shōnin, was relieved of any obligation to make vicarious compensation if the instrument failed to charge him with any obligation and bore nothing more than a sign of his title as surety. However, a decree of June 1875 modified these regulations so that, regardless of the absence or presence of any clause concerning liability, the surety was fully responsible for the debtor’s obligation even if nothing more than the surety’s signature appeared on the instrument. The obligation of the surety, interestingly enough, was distinguished in the Meiji Period into two different types according to the wording of the instrument as had been the practice in the early Edo Period. One type concerned the performance of a defaulting debtor’s obligation and the other concerned the performance of a dead or absconded debtor’s obligation. After 1872, in either case, the obligation was succeeded to by the surety’s heir, an innovation that upset the traditional system of limiting suretyship to only one generation.

Under the Old Civil Code suretyship was classified as optional, legal, and judicial suretyship, but in the new code these categories were not accepted because of their similarity in content. In the new code as well as in the old code the surety was liable for the performance of an obligation when the principal debtor did not perform, and no distinctions were made as to whether the debtor absconded or simply fell in arrears. The two codes were also alike in allowing the surety to make pleas of notice and search.

The assignment of an obligation was understood during the Edo Period as a transfer of the instrument of obligation, and, although this assignment was recognized by the Bakufu, every description of restriction was imposed to prevent this transaction from being abused. In the first few years of the Meiji Period obligations were assigned without restriction, but in July 1876 the Council of State ordered the debtor to rewrite the instrument of loan when it was transferred from the creditor
to anyone other than his successor; otherwise the assignment was to be voided. Though the Council of State established this rule presumably as a means to do away with the abuses which, as in the Edo Period, accompanied the assignment of obligations, the rule was counter to the trends of a growing economy. In the old code it was assumed that an obligation could be assigned, but in order to set up the assignment of an obligation performable to a named obligee against the obligor the latter had to be formally notified or he had to consent by a notarial or privately signed instrument. While this provision did violence to Japanese custom and even became the butt of attack during the controversy over the new law codes, it was nonetheless incorporated in the *New Civil Code* with but little change.

The extinction of obligations, as treated in the old code, was attributed to performance, set-off, novation, release, confusion, impossibility of performance, revocation, rescission, and completion of prescription. In the new code the section on obligations mentioned only performance, set-off, novation, remission, and confusion; the other four causes were either included in the new code’s book of general provisions or in the general rules relating to contracts.

b. Contracts

The provisions in the old code concerning the formation, effect, and rescission of a contract were scattered about in all parts of the code while in the new code these different provisions were consolidated under the chapter of general provisions relating to contracts. In the formation of a contract *inter absentes* (between persons at a distance) it is important to note that the new code made the formation dependent upon the dispatch, not the receipt, of the notice of acceptance of the contract offer. That the dispatch of the notice rather than its receipt was made a basic condition to the formation of the contract was the result of a compromise among the code drafters; for, as observed earlier, when we discussed the general
provisions of the new code, an *inter absentes* declaration of intention was only allowed by the general provisions to take effect upon receipt (not dispatch) of the notice by the other party. As for the effect of a bilateral contract in non-specific things, both the old and new codes made the debtor bear the responsibility for danger (risk) when the obligation of one party was extinguished by an impossibility of performance, but in case the subject of the contract was the creation or transfer of a real right in a specific thing the creditor bore the responsibility. However, according to the old code, if the debtor was responsible he had a right to the thing to the extent that he had already contributed to the fulfillment of the obligation. In the new code the debtor was in no way allowed to demand any counter prestation. The old and new codes also differed in respect to a contract made for the benefit of a third person. Such a contract was voided by the old code as having no reason for existence unless its benefits could be valued in money. While valuation in money was not a qualifying condition in the new code, the right of the third person only came into existence when he declared to the debtor an intention to take the benefits of the contract. The rescission of a contract in the old code depended either upon the completion of the conditions for rescission or upon a judicial rescission; but in the new code, where rescission was based on German and Swiss law, a rescission was effected when the party entitled to rescind a contract made a declaration of intention to the other party. Although a rescission of contract resulting from an overdue performance was limited to bilateral contracts in the old code, this type of rescission was applied to any form of contract in the new code. And while the old code required the court to set the period of grace for the defaulting party after performance had been demanded by the injured party, the new code simply allowed the injured party himself to set a reasonable period of time and allowed him the right to demand performance before the period expired; if the contract was not performed within this fixed period the injured party was entitled to rescind the
contract. As concerns the effect of recision, the old code provided that upon the fulfillment of the conditions for recision each party concerned would restore himself to the position he held prior to the contract, while the new code obliged each party to restore the other party to his original condition, but without prejudice to the rights of third persons.

The way in which ambiguous contracts were to be interpreted, as we have already seen, was defined by the Justice Department in 1877 in a nine point memorandum.

1. Gifts—Gifts and testamentary gifts in the old code were treated together under the book on acquisition of property, though in the new code gifts were included in the book on obligations, and testamentary gifts were deferred to the law on succession. In keeping with the rules found in foreign legislation, the old code specified that a gift did not arise unless effected by a notary instrument, with the exception of customary gifts and gifts formed by simple delivery. In the new code gifts by notary instrument were abolished in consideration of existing customs; and in order to avoid litigation and encourage serious deliberation by the donor, any gifts not in writing were made subject to revocation by either party.

2. Sale—During the Edo Period a sale was distinguished as either a "permanent sale" (eidai baibai) or a "conditional sale" (honmotsu gaeshi, nenki uri) and, although the term permanent sale was in evidence as late as 1872 when the ban on the permanent sale of land was lifted, the term thereafter was little used. The word for "sale" (baibai) alone became sufficient to indicate a permanent sale. The Edo Period terminology for conditional sales also passed rapidly from use. In October 1871 a specific form for a contract of sale was prescribed in order to prevent future disputes from arising as a result of ambiguous sales contracts, and, at the same time, it was decided that if the instrument of contract were improperly prepared there would be difficulty in having it accepted as evidence in a civil action. However, in 1875 this contract form was abandoned and the parties to a contract were permitted to draw the
contract up in whatever form they pleased. Although sales in the Edo Period were apparently real contracts, they were consensual contracts in both the *Old* and *New Civil Code*. The payment of earnest money and the recision of a contract by way of forfeiting the earnest money (purchaser) or returning it in double (seller) were common practices to both the Edo Period and to the old and new code. With respect to the effect of a sale, the seller's obligation of warranty was classified into a warranty against eviction and a warranty against defects. The warranty against eviction clause in the sale instrument used during the Edo Period was quite brief, consisting either of a provision for simple security, if there were no illegal action by the third party in connection with the item being sold, or of a provision requiring a settlement in case of unlawful action by the third party. The obligation to make a settlement was probably a legal warranty. No doubt similar customs concerning warranty of obligation continued on into the early years of Meiji and even later, for, according to the *New Civil Code*, when the right of another person was made the subject of a sale the seller was bound to acquire such right and transfer it to the purchaser. This provision of the new code was a revised version of a provision in the old code that made the sale of another person's thing null and void between the parties to the contract, though nullity could not be invoked unless the seller were ignorant that the thing belonged to another. As for a warranty against defects in the quality of the thing sold, the old code contained provisions in some detail while the new code on the other hand simply provided that the purchaser was entitled to demand damages and to rescind the contract if he were ignorant of the defects. The right of action to obtain a reduction in the price of the object of sale, which heretofore had been recognized in the old code, was eliminated in the new code.

In regard to the repurchase of immovables, the right of the seller to repurchase was a right of long standing in Japan. In the Edo Period this right was known as *honmotsu gaeshi* or *honsen gaeshi*. In the *Old Civil Code* the right of repurchase
extended to either moveables or immovables, though in the New Civil Code the right of repurchase was restricted to immovables, as was the case in the Austrian civil code. The time period for repurchase was not permitted to exceed five years under the old code, but in the new code this period was extended to ten years.

Finally it should be noted that the provisions of the new code that related to earnest money, warranty against eviction, and warranty against defects applied correspondingly to contracts with consideration other than sales (i.e., exchange, loans for consumption, loans for use, etc.).

3. Exchange—In the new code exchange took effect when the parties agreed to transfer to each other property rights other than the ownership of money. If the ownership of money was transferred together with the property rights, this sum of money was governed by the provisions of the code that related to the purchase price of a sale.

4. Loans for Consumption—During the Edo Period loans were distinguished by the presence of interest or material security, and loans were classified in the same category with interest bearing obligations (kane-kuji). Deposits on the other hand were distinguished by the absence of interest or material security and they were classified as non interest bearing obligations (honkuji). The effects of this distinction were also evident in early Meiji legislation. For example, deposits of money and cereal that were free of any interest charges or fees (reikin) were made admissible in court by Council of State decree in November 1872 while loans of money and cereal that were contracted by the nobility and all strata of the bushi class before the Restoration were made inadmissible in court by a Justice Department order for December 1872. A loan of consumption in the new code was clearly defined as a real contract in the Roman law tradition. Hence a loan of consumption took effect when one of the parties received from the other party a sum of money or other things and agreed to return things of the same class, quality and kind. In case the parties to the loan did not fix a time for return, the lender could fix a reasonable
period of time and demand the return. According to the old code, which observed French law with respect to loans for consumption, the court rather than the lender set the period for return.

5. Loans for Use—In the new code a loan for use took effect when one of the parties received a thing from the other party with the agreement to return it after making use of and taking the profits of the thing without consideration. This definition of a loan for use was practically the same in the old code.

6. Hiring of Things—The customs of the Edo Period that related to the hiring of things was apparently carried over into the Meiji Period, and for the first few years after the Restoration there was no new legislation on hirings except for the order of the Council of State in September 1872 that lifted the traditional restrictions on land and building rent. As indirect legislation the Statute of Limitations (1872) made it necessary for legal actions concerning house and land rent and tenant fees to be filed within a period of five years subsequent to the commencement of the grievance for which a remedy was sought. The hiring of land by ordinary tenants and by fixed term tenants continued into the Meiji government was to have either the emphyteuta or the landlord buy out the interest of the other so that there would be fewer obstacles in determining who was the rightful owner of the land. And the Department of Agriculture and Commerce prepared some tenancy regulations in 1887 that aimed at the eventual abolition of the emphyteutae on the ground that dual control over the same land violated the right of ownership and worked a great inconvenience in the collection of the land tax. These regulations, however, failed to become law. Finally the Old Civil Code was drawn up and a hiring that involved a tenant right was made a real right. In the New Civil Code a tenant right as a hiring was made an obligation. This change of the status of a hiring from a real right to an obligation was most likely made because of the impropriety of designating the right of a hirer a real right rather
than an obligation merely because a hiring was subject to a rent. Further reason for making a hiring an obligation was that the hirer was responsible for making repairs during the period of the hiring; and, moreover, as an obligation, a hiring was more in accord with traditional Japanese custom. As defined by the new code, a hiring took effect when one of the parties agreed to let the other party use and take the profits of a thing belonging to him and the other party agreed to pay him a rent for it.

7. Hiring of Services—During the Edo Period the hiring of services was referred to by the word hōkō. Originally hoko meant the obligation of a vassal to render services to his lord, though in the Edo Period its meaning was enlarged to embrace contracts of service in general. But in spite of its broader meaning, hōkō was still not a mere contract of service as known in private law, for the service relationship between the employer and employee was regarded as having a nature similar to the bond that existed between the bushi lord and his vassal. In an attempt to eradicate this type of relationship, the Meiji government issued its famous Emancipation Order for Prostitutes (1872). As a consequence the sale of human beings was prohibited, all licensed prostitutes, geisha girls, and similar apprentices were ordered released, and any litigation for the recovery of loans made to such persons was disallowed. This order also limited the term of a trade apprentice to seven years and the term of an ordinary servant to one year. But despite the Emancipation Order for Prostitutes, the Outline of the New Criminal Law (1870) gave continued recognition to the traditional master-servant relationship by prescribing punishment for an absconding servant and by prescribing a heavier than ordinary punishment for a servant who stole from his master. The hiring of services was further connected to the past by a Council of State order of January 1871 that obliged the employer, as was customary in the Edo Period, to obtain a surety’s personal reference certificate for his servants and to report the names of his servants to the proper government office. Nevertheless, the discriminatory treatment against servants as found in the
Outline of the New Criminal Law was done away in 1882 upon enforcement of the Old Criminal Code.

In the Old Civil Code contracts of service and apprenticeship were separated, and the hiring of service referred not to mental and high class labor but to trade assistants (shiyō-nin), senior and junior clerks, and factory workers. The period of employment was limited to five years for trade assistants, senior clerks and junior clerks, and to one year for factory workers. In case longer terms had been agreed upon, one of the parties could voluntarily reduce it to the five or one year limit respectively. In the New Civil Code no distinctions were drawn between contracts of service and apprenticeship. The hiring of service meant that all contracts of service arose when one party agreed to render services to the other and the latter agreed to pay him a remuneration for it. Periods of employment exceeding five years (ten years for industrial and commercial apprentices) or enduring the lifetime of one of the parties or of a third person were legally valid, but either party could rescind the contract at any time after the expiration of five years (ten years for industrial and commercial apprentices). The reasons for placing limitations on the period of time for hiring services was vindicated differently in the two codes. While the old code considered long term service too restrictive of the liberties of the worker and harmful to the quality of his work, the new code took the view that long term service obstructed the full utilization of labor and created disadvantages to the economy generally.

8. Contract Work—By the Old Civil Code, an agreement to accomplish, for an estimated price, all or part of a certain work requiring skill or labor formed a contract for work when the ordering party supplied the principal materials; but in case the contractor supplied the principal materials as well as the work the agreement then constituted a sale conditional upon the accomplishment of the work. In the new code contract work was defined as a contract that took effect when one party agreed to complete certain work and the other party agreed to pay him a remuneration for the result of such work. In either case
the object of contract work was the work resulting from labor and not, as in the hiring of services, the mere supply of labor. The difference between the two codes is that the existence of an estimated price and the question of who was to supply the materials was of no consequence so far as the new code was concerned.

In the event that the subject of the work was defective, the old code allowed the ordering party to demand a reduction in price; whereas in the new code the ordering party was permitted to rescind the contract, provided it was impossible to attain the object for which the contract was made. The right of the ordering party to rescind the contract before the work had been completed was common to both the old and new codes, yet, while the old code stipulated in detail the obligations borne by the ordering party upon rescission of the contract, the new code simply specified that the ordering party would pay the contractor compensation for damages.

9. Mandate—In the Old Civil Code a mandate was limited to a representative, and the provisions concerning mandate were included in the chapter on representatives. In this respect the old code followed the French civil code. Under the New Civil Code a mandate was not limited to a representative; it took effect generally whenever one party commissioned another party to perform a juristic act and the other party accepted the commission. The new code's provisions on mandates also applied correspondingly to a mandate whose subject was other than the doing of a juristic act.

10. Deposit—As we have seen, deposits during the first few years of the Meiji Period were distinguished from loans by the fact that they bore no interest. But on May 1, 1874, the Council of State made deposits just as inadmissible to judicial determination as loans if the former were contracted prior to the 1869 surrender of fiefs and if the instrument of deposit failed to state explicitly that the deposit was to remain out of circulation or to be kept just as received under seal. And on January 29, 1877, irrespective of the wording of the instrument,
all deposits were made inadmissable to court action if they were contracted prior to 1857. In regard to the depositary's criminal liability, the *Outline of the New Criminal Law* provided that when the thing deposited (property, live stock) was expended by the depositary it must be pursued and restored to the depositor, though no charges could be pressed if the thing deposited was destroyed or lost by flood, fire or theft, or if the livestock left in custody died of sickness. The civil liability of the depositary in such cases was apparently not to be brought in question, for no such provisions on civil liability were in existence.

In the old code deposit was distinguished from sequestration in accordance with the French civil law tradition. A "deposit" referred to deposits in general while a "sequestration" referred to the deposit of a thing which was subject to a dispute among several parties. While a deposit, which was classified into a 1) voluntary, 2) necessary, or 3) inn deposit, had to be free of fees and be limited to movables, sequestration could be subject to a consideration and its object could be either a movable or immovable. In the new code these various distinctions did not exist; and a deposit was simply defined as a contract that took effect when one party agreed to take custody of a certain thing for the other party and received the thing. Deposit was thus a real contract, but it did not have to be free of charges nor did the subject matter have to be restricted to movables.

11. *Associations*—In defining a contract of association both codes specified that it was necessary for the parties to the contract to agree to make a contribution, but the purpose of the contract in the old code was profit, while in the new code it was the carrying on of a common undertaking. In the old code a private association could become a juridical person by an expression of intention of the member parties, or it was presumed to be a juridical person if it was given the name of an association or if the contract of association were announced on the proper public notice form for commercial associations. Furthermore, an association was obliged to conform to the
provision of the *Old Commercial Code* when its capital was divided into stock shares even if trade were not the objective of the association. None of these different provisions appeared in the new code. Nevertheless, both codes agreed that the property of the association was the common property of all members.

As concerns the management of affairs of an association, the old code distinguished management activities from the important activities identified with the association's objectives, while in the new code the management of the association's affairs (decided by a majority vote of the members) was distinguished from the transaction of ordinary affairs which could be performed by each member or exclusively performed by certain managing members. The distribution of profits and losses, according to the old code, was to be made equally among the association members; but by the new code the distribution ratio, if not fixed in advance, was determined in proportion to the respective values of the contributions.

The old code, following the practice of most codes, did not permit a member to withdraw from an association, although it did permit his death, incompetency, bankruptcy, or obvious insolvency to constitute one cause for the natural dissolution of an association. The new code on the other hand followed the *Old Commercial Code* and recognized death, bankruptcy, incompetency, and expulsion as grounds for withdrawal. In this respect the new code was a significant piece of legislation, for it eliminated the hazard of resting the company's fate on the status of a single member.

12. *Life Annuities*—A contract of life annuity in the new code took effect when one of the parties agreed to make a periodical prestation to the other party, or a third person, of a sum of money or other thing until the death of himself, the other party or the third person.

13. *Compromise*—By the terms of the new code a compromise was a contract by which the parties concerned agreed to settle a dispute existing between themselves by mutual concession. Th sections on life annuities and compromise were
included in both the old and new code, after the fashion of the Western codes, on the assumption that they would be of wide use in the future, but neither the one nor the other, particularly life annuities, seem to have been put to much practical use.

c. Business Management

Business management in the old code was dealt with under the section on unjust enrichment, because it was thought that interference in another person's affairs was generally illegal. But in the new code where business management was regarded as beneficial and even necessary, it was treated in an independent chapter. Whereas the return of profit and the continuity of management were the most important goals of business management under the old code, the primary objective of business management under the new code was that the business be managed according to its nature so that it would be most advantageous to the interests of the principal.

d. Unjust Enrichment

By the terms of the old code, anyone deriving profit from the property of another without just cause was obliged to restore the unjust gains. In a similar vein the new code specified that a person who without legal cause derived a benefit from the property or services of another person and thus caused loss to him, was required to make restitution of such benefit in so far as it still existed.

The new code included provisions on such cases of unjust enrichment as
1. When a person made a prestation in performance of an obligation which he knew to be non-existent (no claim for restitution allowed).
2. When the debtor made a prestation in satisfaction of an obligation prior to its due date (restitution disallowed unless the prestation were made by mistake).
3. When a person mistakenly performed the obligation of another person (restitution could only be demanded of
the obligor).

4. When a person made a prestation for an illegal cause (no restitution allowed if the person knew the cause to be illegal).


e. Unlawful Acts

Unlawful acts in the old code were treated in the book on property under the category of "unjust injuries", but in the new code this category of offense was changed to "unlawful acts" on the ground that an unjust injury had moral implications and included things beyond the protective reaches of the law. An unlawful act was defined by the new code as a violation of another person's rights by intention or neglect, and the perpetrator was liable for the resultant damages. In the old code, intention and negligence were also mentioned as basic conditions of an unjust injury, but, unlike the new code, there was no mention of the violation of another person's rights. The wording of the old code on this point was such that the unjust injury simply occurred when someone "caused damage or loss to another". In principle the old code took the view that unjust injuries could only be inflicted on objects of obligations that had value as property and, consequently, loss or damage resulting from unjust injuries was nothing more than loss or damage to property. But in the new code loss or damage to property was not an issue, so irrespective of whether the injury was caused to the individual's liberty, honor, or person, or to his property, the person who had acted negligently or intentionally was liable to make compensation for damages. And this compensation extended to consolation money for mental injury. In case a person injured the life (caused the death) of another person, the former had to make compensation for damages to the father, mother, spouse and children of the injured person even though no injury had been caused to the injured person's property rights. If a person's reputation was injured the party at fault was liable to take suitable measures for the rehabilitation of the injured reputation and in addition, he
might have to pay damages.

An unlawful act could only be done by a person possessed of a capacity for legal responsibility. Hence, in the new code, a minor who lacked sufficient mental capacity to discriminate the consequences, or a person of unsound mind was not responsible for his unlawful acts. Nevertheless, a person legally charged with the supervision of an incapacitated person was responsible for such acts. These provisions in the new code were only a revised version of analogous provisions in the old code. As for the employer’s responsibility for his employee, the new code made him not only responsible for misfeasance in the selection of an employee, as specified by the old code, but also responsible for careless supervision. The new code also differed from the old in that the former introduced a provision for the first time that made the employer liable for damages by a contractor whenever the employer was negligent in giving orders or instructions to the contractor. Under the new code, too, the possessor rather than the owner was responsible when damage was caused to another person by reason of defects in the construction or maintenance of a structure on land. However, if the possessor had taken necessary precaution to avoid causing damage, then the owner was liable. Any damage caused by animals was the responsibility of the owner in the old code, whereas in the new code the damage was the liability of the possessor. In regard to unlawful acts committed in common by several persons, the old and new code were practically the same. In both codes all persons who participated in the act were jointly bound to make compensation when it was impossible to discover which of the several participants actually inflicted the damage. The new code’s provisions that exempt from damage claims any person who committed harmful acts in justifiable self defense or in order to escape imminent danger were non-existent in the old code. Also non-existent in the old code was any equivalent of the new code’s provision which explicitly stated that a child in the womb would be regarded as already born with regard to the right of claiming
compensation for damage. In the old code this right of claim was assured by the provision that guaranteed the protection of the general interests of the unborn child.

4. RELATIVES

In drafting the civil code provisions with respect to relatives, the code drafters were confronted with the task of eliminating the different legal standards on relatives and succession that applied to the bushi on one hand and the commoners on the other. These different standards, which were based on social status, had developed between the late Middle Ages and the Civil War Period. For during this intervening span of time the territorial magnates had become more interested in the feudal obligations of their retainers and had thus tended to interfere in the acts of the retainer that pertained to status. As a result, the laws relating to the status of the bushi had become distinguished from the laws concerning the status of commoners. And once into the Edo Period this dichotomy in social status became even more marked, perhaps because during the Edo Period the livelihood of the samurai became completely enmeshed in a vassal-lord relationship that made the vassal both dependent on the lord for a grant of land and subject to the lords interference in all spheres of his personal relations. By contrasts to the changing standards of the bushi, the standards of the commoners with respect to their relatives and succession were left undisturbed except where these standards directly or indirectly affected feudal relations.

The different laws on status for the bushi and commoners continued even after the Restoration, only being ended when the traditional stipends of the bushi were converted into pension bonds in 1877. And although the nobility continued to receive special treatment for a long time to come, the substantial difference between the two classes was removed and there was a tendency for the standards governing relatives and succession to gradually become more uniform. But in attaining uniformity, there was uncertainty for a while as to whether the standards
of the bushi or those of the commoners would prevail. At first there was some chance that the civil code might adopt the standards of the commoners, which were less feudalistic than those of the bushi, and infuse them with the principles governing the modern family. This chance was not too far fetched, after all, because the first draft of the code—even including the book on persons and the section on succession—were indebted to French concepts of law. Nevertheless, in the end, by the time the civil code’s book on persons and the section on succession had run the gamut of revision by Yamada Akiyoshi’s Legal Research Committee, the Genrō-In, and the Privy Council, the law relative to status had become reactionary and had veered more toward the feudalistic standards of the bushi than those of the commoners. This result was perhaps only natural, because the officials responsible for reviewing and revising the draft code were mostly of bushi origin and, what is more, the government desired to keep the feudalistic Japanese house under the rule of the traditional house head.


The first classification of relatives in the Meiji Period was made by the Outline of the New Criminal Law (1870) without any regard being given to the Edo Period’s three way classification of relatives into 1) near relatives, 2) distant relatives, and 3) relatives by affinity. In truth, the Outline of the New Criminal Law classified relatives into five degrees rather than three, and placed the emphasis on the relationship between lineal ascendant and descendant as done in the Yōrō Code (718 A.D.). This classification of relatives in criminal law was also valid in civil law until the enforcement of the Old Criminal Code (1882), which, incidentally, did not classify relatives according to their degree of relationship. Thereafter criminal provisions on relatives did not apply to relatives in civil law, so the Council of State defined relatives vaguely as the related members of the main and cadet branches who traced their lineage back to the household ancestor as well as those persons who were presently
related to these houses. This definition was superseded however in July 1890 when the Enforcement Regulations for the Code of Civil Procedure specified that the term “relative” as used in the Code of Civil Procedure would conform temporarily to the stipulations on relatives as found in the Old Criminal Code. Finally in the New Civil Code relatives were defined as spouses, blood relatives within the sixth degree of relationship, and relatives by marriage within the third degree of relationship. The degree of relationship was determined by the number of generations between the relatives.

b. The Head and Members of a House

The house in the Edo Period, whether governed by the law for the bushi or that for the commoners, was a blood related group that lived in a common establishment and consisted of the househead and his spouse and their lineal descendants. But in the bushi house the househead was vested with a very broad patriarchal power of consent by virtue of his right and duty to serve as representative of the house in submitting petitions and reports relating to changes in the social position of any member of the house. By contrast, the relationship between a commoner househead and family was primarily a moral one, because as a rule no petitions or reports were required for making changes in their social status. But common to the house of either a samurai or commoner was the fact that the vocation of the house was the basis of its existence. The samurai house, for example, was distinguished by service to the feudal lord, in return for which the house received a stipend for its support. The commoner’s house on the other hand depended primarily on trade, handicrafts, or agriculture for support. This difference between the houses of the samurai and commoner continued even after the Restoration owing no doubt to the fact that the samurai continued to receive his stipend.

Before discussing the house family of the Meiji Period, it is appropriate here that we first speak of the household register (koseki) which contained all the important information
regarding the social status of the members of a Japanese house. A household register for each family was prepared shortly after the Restoration in a number of prefectures, but they were only prepared for such classes as the nobility, the samurai, and the commoners; consequently, certain elements of the population seem to have been overlooked. To make registration more complete the government promulgated the *Household Register Law* in May 1871. According to this law, a registration was to be taken of all Japanese subjects (nobility, samurai, foot soldiers (*sotsu*), shrine attendants, Buddhist priests, and commoners) every six years beginning in February 1872. The registration was to be accomplished by the officials appointed to the different districts (*ku*) of each locality. The major items to be recorded by the officials of each district were 1) the number of households within the district, 2) the number of house members, 3) the date of their birth and death, and 4) a record of their egress and ingress to the district. The first registers under this law were completed in 1872 and were known thereafter as the "1872 household registers" (*jinshin koseki*). The importance of the household register is suggested by a Home Department directive of 1884 in which it was stated that any house not registered in a house register could not be given legal recognition even though recognized by its own neighboring community. Aside from the registration required by the *Household Registration Law*, each villager was ordered by the government in August 1871 to register with his local shrine and receive a paper charm from the shrine deity, though this form of registration was suspended in 1873. The jurisdiction over household registration lay at first with the Department of Civil Affairs, then with the Department of Finance and, finally, after 1874, with the Home Department.

Additional legislation concerning household registration was issued in October 1886 and again in 1898. The legislation of 1886 contributed largely to the completion of the registration system by defining registration procedure and establishing a standard written form of registration. The legislation of 1898
was a new *Household Registration Law*, being promulgated in company with the *New Civil Code*. Under this new law a personal status book had to be compiled for the individual once a year in addition to the household register. The personal status book, however, was abolished in 1914.

The house in the early Meiji Period consisted of the house head and members of the house. The househead in the noble and samurai families was at first recognized only as a position to be occupied by a man, though in 1873 it became possible for a woman to succeed to this position when the househead died without a male heir and left no other alternative. But any woman who became househead in this manner was required to transfer the headship immediately to her husband or to an adopted son in case she married or adopted a son. This procedure for transferring the position of the house head from a woman to a man was probably modeled after the law that governed the bushi during the Edo Period. The early Meiji house head as we have already observed was vested with broad powers of consent relating to the changes in the status of his family members, because only he could submit petitions and reports concerning such changes. When the head was missing, however, the marriage of children, the adoption of a male heir, or the dissolution of an adoption could be permitted by authority of the family council, though this council could not go so far as to establish a branch family. In the first draft of the *Old Civil Code* the house head and the members of a family were both given recognition, but there was nothing that might be designated specifically as the powers of the house head. Nevertheless during the course of the investigation made by Yamada Akiyoshi’s Legislative Research Committee and by the *Genrō-In* a certain authority akin to the powers of a house head were included in the draft of the new code. In the old code the head was responsible for supporting the members of his house and providing expenses for an ordinary education, except when the members were living elsewhere without the head’s approval; and the head was vested with the power of consent.
over such matters as adoption and the marriage of family members. Since actions involving social status were to be performed under the old code in the name of the principal and since the head’s right of consent was broken down into the substantive rights of the individual, the powers of consent belonging to the househead were relatively minor in the old code. In the new code the househead’s powers of consent were strengthened by allowing him the right to determine the residence of the members of his house and by granting him a number of other rights. The right to fix residence was a Meiji Period version of an Edo Period practice that had permitted the father, elder brothers, and near relatives to sever ties with a lineal descendant in order to avoid the onus of joint responsibility for him. Of all the rights vested in the househead the right of fixing residence was one of the most abused.

In regard to the property relations between house head and house members, a house member during the early Meiji Period was entitled to own property separately from the househead. Yet if a member of a house sold or purchased land of his own, he still had to have the signature of the house head impressed on the deed. And any property not specifically registered in the name of the house member was presumed to belong to the househead; and such property was subject to attachment in case the househead went bankrupt. In the new code, too, it was presumed that all property of the house belonged to the house head unless clearly specified to the contrary.

The headship of a house might be lost naturally or by compulsion during the early Meiji Period. If a head retired or if a woman head married or adopted a son the headship was lost naturally. But if a househead was profligate, if he had been sentenced to a criminal punishment, or if he had disappeared, etc., the family council could petition the prefecture for his compulsory removal. After 1877 compulsory removal required the house head’s consent; otherwise the issue would have to be determined in court. The house heads of noble or samurai families were also liable to compulsory removal. In the new
code, however, there were no provisions for compulsory removal.

The establishment of a branch house by the house head was a practice common to both the Edo Period and the Meiji Period. But the branch house could not be established without the consent of the house head, for only he had the authority to submit petitions and reports concerning its creation. A branch house could be established easily even for an eldest son who was the presumptive heir, but after 1887 a branch house could only be set up for an eldest son if he were disinherited. The branch house of a samurai or noble family was at first not entitled to any of the stipend granted to the main house, although after July 1874 the branch of a noble house might receive whatever the main house wished to grant it. In the old code there were no provisions relating to the establishment of a branch house, while in the new code the establishment of a branch house was simply made dependent on the consent of the house head.

In regard to the abolition of a house, it had long been permissable in Japan to abolish a house if it were a branch house whose head was succeeding to the main house, but only in compelling circumstances was it permissable to abolish a house for the sake of allowing its head to be adopted into another house. In August 1877 either of these two cases of abolishing a house could be accomplished simply by submitting a report to the local authorities. While both the old and new code allowed a person who had newly established a house to abolish it and enter another, a person who had become the househead by succession could only abolish the house if he succeeded to the headship of the main house or if for any other just case he was given permission to abolish the house by order of the court.

c. Marriage

The law relating to marriage was one of the most changed sectors of law in the Meiji Period, even when compared to the changes that were made in the other parts of the law on relatives. As one of the foremost changes we may first mention the altered
status of the concubine. Though she was little more than a servant in the late Edo Period, the Outline of the New Criminal Law (1870) gave her the exalted status of a relative of the second degree, the same status enjoyed by the wife. This sudden change in status was in effect a return to the eighth century Ritsuryō Code, for it was in this code that her early Meiji Period status was found. As a second degree relative, however, the concubine was a controversial figure, and her position was attacked by the advocates of “civilization and enlightenment” who were demanding monogamy. Though defended by conservatives, even members of the Genrō-In, the concubine finally became legally non-existent in 1882 owing to the deletion of her favored status from the draft of the Old Criminal Code (1882).

In regard to marriage generally during the Meiji Period, there were certain formal and material conditions that had to be satisfied before a marriage was formed. These conditions were subject to various regulations before they were finally determined in the New Civil Code. First, as to the formal conditions, the Marriage Regulations of December 1870 prescribed that, in order to marry, the nobility would have to apply to the Council of State, and the samurai and other classes would have to apply to the proper prefecture or domain; then in October 1871 marriage was permitted between all classes simply upon notification of the town or village head and applications were unnecessary. Marriage with foreigners was recognized in March 1873. Although it is not clear what effect the notification of marriage had, the Council of State ordered in December 1875 that a marriage or divorce (of wife or concubine), an adoption or dissolution of adoption, even when effected after due consultation between the two parties, was invalid unless recorded in the household register of both parties. By this action the Council of State made it explicit that the principle of legal marriage was being adopted. But owing to the relation between the status of a person and the penalty he received under criminal law in the early Meiji Period, the Justice Department
instructed in June 1877 that whenever a married person whose marriage was yet unregistered committed an offense (daughter-in-law kills mother-in-law, etc.), the court would recognize the marriage as valid if the marriage was recognized by the married couple's neighborhood. Hence a de facto marriage as well as a legal marriage came to be accepted as valid by the Justice Department. Under the old code, marriage was to take effect upon performance of the customary marriage ceremony; and the ceremony had to take place between the third and thirtieth day after making a marriage application to the register of the place of residence of one of the engaged parties. In the new code marriage simply took effect when it was notified to the registrar.

As for the material conditions of marriage, they were as follows. Firstly, the parties to the marriage had to be a certain age. True, no such rule existed at the beginning of the Meiji Period, but a little later in this period girls had to be at least twelve years old. In both the old and new code women had to be fifteen and men had to be seventeen years old. Secondly, neither party could have a spouse at the time of marriage, for bigamy was punishable under the Outline of the New Criminal Law (1870) and also under the Old Criminal Code (1880). Bigamy was probably forbidden under private law as well. Thirdly, before a woman could remarry, a certain time had to elapse since the dissolution of her last marriage. In 1874 the period was set at three hundred days if there were signs of pregnancy. In the old and new code the waiting period was fixed at six months. Fourthly, the parties to a marriage could not have been parties to adultery. In the early Meiji Period marriage was not permitted to a man and woman who had been punished for adultery. Later, in the Old Civil Code, marriage was again denied to a man and woman if one of them had been judicially divorced for adulterous relations with the other. This rule was also contained in the New Civil Code along with an additional provision that barred marriage when one of the parties had been previously punished for adultery. Fifthly,
the parties to a marriage had to be unrelated to a certain degree. For a member of the bushi class the number and scope of relatives that he could not marry were quite extensive both before and after the Restoration. After the Restoration their number included not only his lineal blood relatives and collateral blood relatives within the third degree of relationship, but also the relatives who were relatives of his collateral relatives by affinity. And for women the scope of non-marriageable relatives was even larger than for men. Furthermore, if a widow wished to marry her husband’s brother she not only had to obtain special permission but she had to re-register in the register of her original household or become an adopted daughter. To be re-registered in the original family’s household register was a common practice for any widow who wished to remarry. Under the New Civil Code no person could marry his lineal blood relatives within the third degree of relationship, or his lineal relatives by affinity. And sixthly, a person could not marry unless he had the consent of certain lineal ascendants. In the early Meiji Period and again in the old and new code it was obligatory for the househead to consent to the marriage of a house member. Whether parents had to consent to their children’s marriage in early Meiji is not definitely known, though most likely they did. Under the Old Civil Code consent came from the parents, grandparents or guardian, and there was no provision as to what aged person could marry without this consent. In the new code no consent was needed after the man became thirty and the daughter became twenty-five years old.

Of the important effects of marriage during the early Meiji Period many are obscure; nevertheless a few of those that are known may be summarized as follows. First of all, as a result of the adoption of the principle of legal marriage, the ordinary wife entered the house of her husband upon marrying him, while the man who married the woman head of a house entered the house of his wife. But until enforcement of the New Civil Code the wife who entered her husband’s house continued to be called by her original surname. This was in keeping with custom. Yet if
the husband succeeded to the headship of the house or established a branch house the wife then took her husband's surname. The man who married a woman house head immediately succeeded to the headship of that house. Secondly, the wife was obliged to live with her husband. This effect of marriage obtained throughout the Meiji Period, being confirmed by a Supreme Court decision in 1896 and by a provision of the New Civil Code. The husband on the other hand probably had the obligation to support his wife. Thirdly the wife's capacity of action was limited by her husband. By the Code of Criminal Instruction (1880) she was deemed incapacitated: her husband acted as her representative and was responsible for her in civil cases. In the New Civil Code the wife had to obtain the permission of her husband in order to do certain acts. Fourthly, as to contracts between husband and wife, nothing definite is known for the early Meiji Period; but according to the old code, sales between spouses were prohibited, and gifts between husband and wife could be voluntarily withdrawn by the donor. In the new code a contract between a husband and wife could be rescinded during the marriage by either of them, although the rescission was not permitted to prejudice the rights of third persons. Though the property relations of husband and wife during early Meiji are unclear, there is no question that the wife was entitled to special property of her own. Both the new and old code included provisions on contracts relative to property and on legal property arrangements, although contracts between husband and wife relative to property were rarely formed. By the new code, legal property arrangements were managed in common. Fifthly, the wife was obligated to remain faithful to her husband. According to the Outlines of the New Criminal Law and the Amended Criminal Regulations the wife and the concubine, too, could be punished for being unfaithful and committing adultery; but under the Old Criminal Code, where concubines were not recognized, only the wife could be punished. In case the husband discovered his wife in an adulterous act, the Outline of the New Criminal Law permitted the husband
to kill the wife as well as the other party on the spot without any fear of prosecution. This prerogative of the husband had been accepted in Japan since the Civil War Period. Later in the Meiji Period the Amended Criminal Regulations (1873) allowed the husband to kill the adulterer if he were caught beyond the gates of the married couple’s house provided that the husband had pursued him from the scene of the act. The right of the husband to kill both parties to the adultery was passed on to the Old Criminal Code (1880), which provided that leniency be shown if the killing was done on the spot. No leniency was to be shown, however, if the husband had previously tolerated adultery on the part of his wife. The provisions concerning the wife’s faithfulness were perhaps kept alive in the criminal legislation of the Meiji Period owing to the fact that such provisions were common to both France and traditional Japanese law. However, with enactment of the New Criminal Code (1908) the provisions on the wife’s faithfulness were repealed.

A marriage was dissolved in the Meiji Period either by the death of one of the parties or by divorce. The former needs no comment. A divorce was effected in the early Meiji Period either by mutual consent or by judicial decision; and it should be remembered that, numerically, the divorces by mutual consent far outstripped the divorces by judicial decision. At first divorce required the sending of a petition to an administrative office, but later it was only necessary to send a notification. The petition or notification submitted at the time that a divorce was effected by mutual consent had to indicate that the relatives of both parties had given the matter careful deliberation. In the old code, too, a divorce by mutual consent that was reported by notification was given recognition, but, as in the old code’s provisions on marriage, a divorce had to have the consent of the parents or grandparents or the guardian. Divorce in the new code also required the consent of the persons who were entitled to give consent to the marriage, if the parties to the divorce were under twenty five.

In special divorce cases in the Edo Period the wife’s side
(wife, father, elder brother, etc.) had the right to demand a divorce, although such procedure was exceptional, because divorce was usually the exclusive right of the husband. Among commoners the marriage relations were simply dissolved by the husband's delivery to the wife of a letter of divorce. In the case of the bushi, Bakufu law required a divorce notification to be sent to the Bakufu stating that after due deliberation by relatives of both sides the divorce was being effected for exceptional reasons. Actually the deliberation was probably made only by the husband's side, since only he had the right of divorce.

In the first few years after the Restoration the wife still needed to obtain a letter of divorce from her husband in order to obtain a divorce. But in May 1873 it became possible for the woman to appeal directly to the court for a divorce provided that she were accompanied there by her father, elder brother or other close relative. That she be accompanied to court by a close relative was a basic condition of the divorce appeal. Her appeal was permitted on the ground that it would be an infringement of human rights to liberty for the woman to be deprived of her period of marriageable age by a husband's failure to consent to a divorce request that was based on compelling causes. And according to the Illustrated Guide to Pleading the wife was able to make the divorce appeal by herself whenever, owing to an emergency, there was insufficient time to communicate with her relatives. In case the husband was making the divorce appeal, he had to have the divorce petition indorsed by his parents or other close relatives. This arrangement for allowing a wife to appeal for a divorce was perhaps a revival of the Edo Period practice of permitting the wife's family to seek a divorce for her. Though the above rules for divorce were enacted before the principle of legal marriage was firmly established, it was necessary even then for a marriage to be registered in the household register before a divorce appeal could be made to the court.

The compelling causes that the wife might cite as grounds for a divorce were principally as follows:
1. Desertion or disappearance of the husband for twenty four months. If the wife deserted during early Meiji the husband could immediately divorce her, but somewhat later in the Meiji Period he had to wait twenty four months as in the case of disappearance.

2. Imprisonment of husband for one year or more. If the wife was sentenced to penal servitude during early Meiji the husband could obtain a divorce by delivering a letter of divorce to the relatives of the wife during her imprisonment and by notifying the proper government office of the reasons for divorce.

3. Profligacy of the husband. When the husband was an adopted son and house head he could be divorced by the wife if her parents were dead. If the parents were alive they could institute divorce proceedings. It is not clear however that a divorce appeal on the ground of profligacy was generally accepted.

4. Illness, particularly a malignant illness. An acute degree of mental illness also seems to have been grounds for a divorce.

Adultery was not necessarily a ground for divorce when committed by the husband, but it was a ground for divorce when committed by the wife. Whether or not the dissolution of a yōshi adoption (adopted son later marries daughter of the house) or a muko yōshi adoption (adopted son immediately marries daughter of house) had the effect of a divorce is not certain.

In the old code the grounds for judicial divorce were specifically enumerated, and the right to seek divorce was enjoyed only by the husband or wife—not by their relatives. The new code also specified the causes for divorce. In regard to adultery as a reason for divorce the new code allowed either spouse to divorce the other for adultery with the exception that a man could only be divorced if he had been criminally sentenced for his adultery. Another cause for divorce—discord too unbearable for a common existence—had been suggested by Hozumi Shigenobu when the new code was being compiled, but this
suggestion was rejected by both the code drafting committee and the code investigation committee.

d. Parent and Child

1. Real Children—During the Meiji Period real children were classified into 1) legitimate children, 2) illegitimate children, and 3) illegitimate children acknowledged by their father. At first, by provisions of the *Outline of the New Criminal Law*, a legitimate child was defined as the offspring of the wife or concubine. And after 1874 even if the child were born subsequent to the dissolution of the marriage he was still regarded as legitimate and presumed to be an offspring of the husband, provided he were born within 300 days from the date of the dissolution of the marriage. Furthermore a child born to a wife whose husband had been missing many years could be registered in the household register as legitimate (or illegitimate) if the notifying party so desired. Likewise a child born during the absence of an absconded father was treated as a legitimate child if there were no claims to the contrary. Later, in 1882, when the concubine lost recognition through enactment of the *Old Criminal Code* only the children of the wife were accepted as legitimate. Later still, under the terms of the *Old Civil Code*, a legitimate child was defined as a child conceived during marriage, or a child born 180 days subsequent to the marriage ceremony or born within 300 days of the dissolution of the marriage. In the *New Civil Code* a legitimate child was one that was born 200 days subsequent to the date of marriage or within 300 days from the date of the dissolution or cancellation of the marriage.

An illegitimate child in the Edo Period, though not legally defined, was born out of wedlock; and owing perhaps to a defective system of registration he was fated to be registered in the register of friends or relatives of the child’s parents or not at all. This disposition of the illegitimate child was carried over into the early Meiji Period and it caused a certain amount of confusion in the household registration system. To eliminate
this confusion the Council of State issued a decree in January 1873 that formally opened a way for the child to be correctly registered as illegitimate. According to the decree, any child delivered to a woman other than a wife or concubine would be regarded as illegitimate and would be the responsibility of its mother, though if a man acknowledged the child as his own and obtained permission from the city, town, or village head where the mother was located that man could become the child’s father. In spite of this decree, a parent was not encouraged to register his illegitimate offspring, because the Outline of the New Criminal Law provided a punishment of seventy blows with a stick for anyone guilty of illicit sexual relations. So as a final attempt to remove the remaining obstacle to registration of illegitimate children the Council of State deleted the penalty for illicit sexual relations from the law. In the Old Civil Code an illegitimate child was defined as one who was unacknowledged by his father, while in the New Civil Code an illegitimate child was not defined at all.

The illegitimate child who was acknowledged by his father and was entered in the father’s household register was distinguished from the illegitimate child who remained unacknowledged by way of a Council of State decree in January 1875. The distinction was made by allowing the acknowledged child to be referred to as a shoshi. The term shoshi ordinarily referred to the legitimate offspring of the concubine. The acknowledged child, furthermore, was given succession rights along with the other children of the concubine according to its seniority. When the concubine lost her status in 1882 the term shoshi came to be used only as a designation for an illegitimate child who was acknowledged by his father. This changed meaning of shoshi appeared also in the Old and New Civil Code.

During early Meiji the illegitimate child who was acknowledged by his father was deemed born upon the day that he was registered in the household register, and he became a legitimate child from the day his mother married his father. In this way legitimacy was extended to children born out of wedlock. The
old and new code also allowed an illegitimate child to acquire the status of a legitimate child by the marriage of its parents.

2. Adopted Children—Throughout all periods of Japanese history the adoption of children has generally been a means to obtain a successor to a house when the house has had no offspring available for this purpose. Though the forms of adoption may have varied according to the period of history and according to the status and vocation of the adoptive father, the aim has usually been the same. On some occasions, though, adoptions have been made in order to increase the influence of the family. In selecting a successor it has only been natural that a blood relative be chosen, but owing to the central importance of ensuring the perpetuation of the house’s vocation, a person other than a blood relative might be chosen whenever the available blood relative was not suited to the position. Nevertheless, the feeling that a son should succeed has been strong and this feeling was reaffirmed by the Council of State in 1873 when it allowed a son-successor to be adopted even after the death of the house head.

Adoption in the Meiji differed from marriage in that adoption continued to be governed generally by time honored custom rather than by concepts derived from foreign laws. In regard to the formal conditions of adoption, the Meiji government in 1870 made it possible for a childless noble or samurai to submit an application for adoption regardless of the adoptive person’s age. As for commoners, they were obliged to submit a notification of adoption in accordance with the *Household Registration Law* (1871). Shortly afterwards, in January 1873, nobles, samurai, and commoners were allowed permission to make adoptions from any social class; although permission for making an adoption came from the Central Chamber in the case of nobles, and from the competent government office in the case of samurai. For the commoner it was only necessary to make notification to the proper town or village head. After December 1875 the Council of State regarded the adoption of a son or daughter as invalid unless the adoption were registered
in the household register; but the Justice Department, after 1877, on the other hand, accepted an unregistered de facto adoption as equally valid as a legal marriage in cases where the adopted person was involved in a criminal offense that had a bearing on his status. One other formal condition relating to adoption is that until February 1879 an adoptive heir of a samurai house could not be transferred to another house unless an application were filed with the competent government office; but after this date it was only necessary to tender a notification to the town or village head, provided disinherance was not involved.

Turning from the formal conditions of adoption, let us now mention some of the important material conditions of adoption. As a rule adoption had to be made by the househead, though it could also be made by the successor to the house head whenever the latter reached the prime of manhood without having any son. Or again an adoption could even be made, as we have seen, after the death of the house head. If adoption were made by a person with a spouse, only the husband was a party to the contract. In case an adopted son failed to have a male child it was customary for another son to be adopted as the adopted son’s heir; however, the presence of an adopted heir or real son did not bar further adoptions of a second and third son. Sometimes, owing to the not so strong succession right of the first born son, another son would be adopted in the interim to help maintain the family vocation or to take care and custody of the infant first son who was the heir. But such an adoption during early Meiji was at first dependent upon the approval of the Council of State. Being so cumbersome, this procedure of approval for commoners was modified in 1876 so that it would be possible for the adoption to be sanctioned by the prefectural governor upon applicatin of the family council in case the parents happened to be poverty stricken or incapacitated by the infirmities of old age. In December 1877 this modified adoption procedure was also applied to samurai houses. Though the adoption of a person for the purpose of obtaining a
sort of guardian for an infant heir was meant to be an interim expedient, the nature and purpose of the adoption was not put in writing at the time of the adoption and it gradually became a practice for the parents to recognize the adopted son rather than the real son as the successor to the house. The age of the adopted person could be more or less than the adoptive parents until 1884, but thereafter the parents had to be the older of the two parties. And so far as possible the adopted person was to be selected from among blood relatives, provided he was not a lineal ascendant, a senior, a younger brother or younger sister. Since the Edo Period lineal ascendants and seniors had been barred from adoption and, according to a Council of State decree of 1873, any senior (father, older brother, uncle) who succeeded to the house of a junior (son, nephew, etc.) would have to be called a successor and not an adopted son. The time honored practice of adopting a younger brother or sister was forbidden at the beginning of the Meiji Period. Other persons usually barred from adoption were house heads and heir presumptives; and, of course, no ward could be adopted by his guardian. The house head of a branch house, however, was not prevented from succeeding to the main house. Additional types of adoption include the adoption of a son-husband (muko-yōshi) for the daughter of the house and the adoption of a person from a house into which he had previously been adopted. In the latter case, the adopted person could only move from the first adoptive house to the second after re-registering in his original household register.

Adoption in the new code was subject to the following conditions:

1. The adoptive parent had to be of full age
2. No ascendant or person older than the adoptive parent could be adopted
3. No person who had a legal male heir presumptive could adopt another male except as a husband to a daughter
4. No guardian could adopt his ward, except by will, as long as the account of his guardianship was incomplete.
5. A person having a spouse could only make an adoption conjointly with the spouse.

6. The adoption of a child under fifteen required the consent of its parents.

It is significant that the new code did not require the adoptive parent to be a house head nor did it include any provisions concerning an interim adoption of a person during the infancy of an heir. Although the conditions of adoption in the old code differed little with the above mentioned conditions, the old code nevertheless allowed anyone capable of making a will to effect an adoption by will.

In the early Meiji Period the same blood kinship as existed between the adoptive parents and their relatives came into existence between the adoptive parent and the adoptive child upon formation of the adoption; and, further, the adopted child who was heir was granted the status of a legitimate child. The decision to make the adopted child the heir did not always have to be made at the time of adoption; this decision could be made later. Once the adopted child had been decided upon as the heir, his right of succession was as a rule unaffected by the subsequent birth of a real son. Nevertheless, if the family council so decided the real child could be caused to succeed to the house in place of the adopted heir. Neither the elder son nor the adopted heir had a very strong right of succession. In the *New Civil Code* an adopted child entered the house of the adoptive parents by adoption, and from the day of adoption he acquired the status of a legitimate child. The *Old Civil Code*’s provisions on adoption were the same.

Whether in the early Meiji Period or in the *New Civil Code* an adoption was not extinguished by death, it could only be cancelled by a dissolution that occurred by mutual consent or by court decision. But in order to be valid after 1875 the dissolution by mutual consent had to be registered in the household registers of both parties. This does not mean, however, that all adopted persons were entitled during the early Meiji Period to a dissolution of adoption by mutual consent. The
ordinary and low ranking (sotsu) samurai house heads, for example, were denied this right in 1872. Yet if a samurai had been adopted into a house because of the disability of the house head and the house head subsequently recovered, the adopted samurai after 1873 was free to return to his original house or, on the other hand, the recovered house head could be married into another house depending upon the agreement reached between the two house heads concerned. After 1873 a dissolution by mutual consent was also possible for the adopted samurai house head whenever his sickness or profligate behavior prevented proper management of the adoptive house or whenever his behavior toward the adoptive mother was improper. As for the dissolution of the adoptive relation of an adopted samurai heir, the proper procedure required a petition corresponding to that for disinheritation. In the case of a common heir, the adoption was dissolved when the original and adoptive house conferred and then submitted a notification of dissolution. If the original house of the adopted person prevented a dissolution that had been requested on grounds of misconduct, the decision as to dissolution fell to the courts. Since the prefectoral offices rather than the courts sometimes disposed of these controversial cases, the Justice Department made it clear in July 1877 that such cases belonged exclusively to the courts of law; it made no difference in such cases whether the adopted person was a house head or not.

The causes for the dissolution of an adoption, other than those already mentioned, were 1) the disappearance of an adopted person for a period of two years (ten months in certain cases), 2) the return of the adopted house head to his original house as a successor subsequent to the death of his adoptive parents, 3) a request of dissolution by the adoptive house in case it was arranging to welcome a successor, and 4) a sentence of penal servitude for an adopted daughter. Upon dissolution of the adoption the adopted person re-registered in his original house and recovered his former position. A marriage was also dissolved between the adopted son and his wife upon dissolution.
of the adoption, according to a Home Department order of 1878, but another directive from the same department in the following year made it possible for the married couple to decide for themselves about the future of their marriage. This last directive probably became the precedent thereafter for determining the fate of marriages in adoption dissolution cases. However, in the dissolution of the adoptive relation of a muko-yōshi, the marriage could be dissolved in compelling circumstances if the adoptive and original house agreed to this course of action and petitioned for a dissolution of marriage. After dissolution of an adoptive relation the adopted house head could not as a rule take his heir (eldest son) back to his original house; and whether or not he returned with his other children was a matter to be decided mutually by the houses concerned. By contrast, an ordinary adopted son could return to his original house with all his children if he had not become the house head before the adoption were dissolved. With respect to property, the adopted person was allowed to return home with the property he had received from his own relatives during the period of adoption; and, in addition, he was entitled to any property which by special agreement had accrued to him as a result of his labors during his status as an adopted son. But without the consent of the adoptive house the adopted person could not take home any property, or any arising therefrom, which he had received as a relative of the adoptive house.

In the New Civil Code, too, a dissolution of adoption took place by mutual consent or by judicial decision. Although an adoption might be dissolved by mutual consent for any cause whatsoever, a judicial dissolution could only be brought about for certain specified causes. The formal condition for dissolving an adoption by mutual consent was the submission of a notice to the registrar. The material conditions for the dissolution were

1. Consent of the parties. But if an adopted child was under fifteen years old, dissolution of adoption was effected by agreement between the adoptive parents
and the person entitled to assent to adoption for the adopted child.

2. The adopted person must not yet be the house head or he must have already resigned this position.

The old code was generally similar except that it never allowed the adopted child to dissolve the adoption once he had become house head. As to the effect of a dissolution of adoption under the new code, an adopted child recovered the status which he had previously held in his original house, but without prejudice to rights already acquired by third persons. The effect of a dissolved adoption on a marriage when both parties were adopted was that, in case the wife's adoption was dissolved, the husband would have to decide for himself whether to dissolve his adoption or effect a divorce. In the old code no such provisions on the dissolution of adoption existed.

3. Parental Power—Parental power during the early Meiji Period was not distinguished from guardianship and apparently no concept of parental power independent of guardianship came into being until shortly before the enforcement of the New Civil Code. From all appearances the house head rather than the real father originally possessed the equivalent of parental power since only the househead was vested with the power of guardianship. However, a few years before enforcement of the new code a decision rendered by the Supreme Court determined that the real father and adoptive father, whether they were guardian or not, exercised the parental power. The disciplinary power of the parent, according to the Outline of the New Criminal Law (1870), allowed him to punish his offspring without fear of being criminally accused unless a bone breaking injury were inflicted; and, what is more, no legal charges would be preferred if accidental homicide resulted from punishment administered to the offspring by the grandparents or parents when they were abused by him or when he disobeyed their instructions. These provisions on punishment fell by the wayside in 1882 when the Old Criminal Code was enforced.

By the terms of the New Civil Code, unless a child was of
legal age and was leading an independent livelihood, he was subject to the parental power of the mother. The possession of parental power meant that the parent was responsible for 1) caring for and educating the child during its minority, 2) determining the place of the child’s residence, 3) approving the child’s enlistment into the military service, 4) punishing the child properly, 5) granting permission for the child to carry on an occupation, and 6) managing the child’s property and representing him in juristic acts relating to his property. If the mother exercised parental power in doing important acts relating to property she was obliged to obtain the consent of the family council. This restriction, which was non-existent in the old code, was no doubt imposed upon the mother because she was originally an outsider to the house into which she married. The new code, again unlike the old code, specified that the person having parental power over a minor exercised 1) the minor’s rights as head of a house, 2) the minor’s parental power, and 3) represented the minor husband in managing his wife’s property. Generally speaking, the new code’s provisions on parental power were more comprehensive than those in the old code.

4. Guardianship—During the Edo Period guardianship for minor heads of bushi houses was recognized in some domains and not in others. In Bakufu territory guardianship was only permitted for minor heads of daimyo houses. In regard to guardianship for commoners, there were two kinds: 1) ordinary guardianship (kōken) for a minor house head, and 2) interim guardianship (chūkei sōzoku). In the latter case the widow, or the younger brother, or other relative of the deceased heir acted as guardian of the child of the deceased heir until the child reached full age.

These forms of guardianship continued, of course, into the early Meiji Period; but for the moment we shall disregard the interim guardian and give attention only to the ordinary guardian of the minor house head. During early Meiji (after 1873) it was a cardinal rule of the Law of Guardianship that
a proper relative or even an outsider be selected as guardian whenever a minor of a noble or samurai house succeeded to house headship. This rule was also applied to commoners. Since the guardian was created only for the minor househead, it is apparent that the guardian's creation was meant to serve only in the interest of the house and not in the personal interests of the individual. Minority was defined as any age less than fifteen years old. After the house head reached fifteen the guardian could be removed upon agreement of the relatives. Though the Law of Guardianship permitted any suitable person to be appointed as guardian, in practice the guardian was chosen from a more restricted field of candidates. Foremost among guardians were the father and grandfather. The mother and grandmother could also fill this position, but only upon approval of the family council. Any other woman was barred from becoming guardian unless she happened to be the house head. Younger sisters, aunts, and uncles were ineligible. The guardian, supervised by the family council and governed in his authority and duties by custom, was entitled to act as the general representative of his ward in both public and private matters. Furthermore, when the minor was incapacitated the guardian was specially responsible for the care and custody of the minor's person and property.

In both the old and new code guardianship was not limited exclusively to the house head; it applied to other members of the family as well. A guardian was assigned when there was no one to exercise parental power over a minor, or when the person exercising parental power did not possess the right of management. A guardian could also be assigned when an adjudication of incompetence had been made. Besides managing the property of the minor, the guardian was responsible for his care, custody and education; and if the minor were incompetent the guardian had the right and obligation to provide medical treatment and nursing.

5. Family Council—The Japanese family council has a long history as a meeting of relatives for the purpose of
deliberating upon important matters relating to status and property of the family. In the Meiji Period as well the family council continued to play an important role. The family council, according to the *Hereditary Property Law for Peers* (1886), was to be composed of the house head and an heir over twenty years old or of a guardian and three or more relatives. This law however did not provide for the summoning of the family council, the making of decisions, nor did it stipulate the effect of the council. Furthermore this law did not apply to all family councils. The family council in the old code, if set up on behalf of an infant, was composed of three or more of the nearest relatives of the infant; and even if set up for any other purpose the council was still organized in much the same way. In the new code, where the provisions concerning the family council were of a general nature, the council was composed of three or less members who were to be selected by the court from among the persons principally concerned in the matter at hand and from among relatives of the house.

6. *Duty of Support*—After beginning of the Meiji Period mutual support between parent and child was obligatory, but what arrangements for support existed between other persons is unclear. In the *Old* and *New Civil Code* it is significant that relatives within a certain specified degree were required to furnish support for each other and that the house head was unilaterally obliged to provide support for the members of the family.

5. **SUCCESSION**

a. Succession to House Headship

Succession to a house or house headship in the early Meiji Period was synonymous with succession to the property, the vocation, and the name of the house. The causes for the commencement of succession to house headship were 1) death, retirement or disappearance of the house head, 2) expulsion of the house head from the family, 3) abolition of the house
head, 4) dissolution of the adoption of an adopted house head, 5) marriage or adoption of a son by a woman house head, and 6) divorce of a house head who had acquired his position by marrying into the wife's family. But succession was not necessarily retroactive to the time the cause arose; for example, the effect of succession occasioned by death came into being only when a notification of succession was made. In the Old Civil Code succession to headship of the house was made dependent on death or retirement of the house head, while in the New Civil Code it commenced when the head of the house 1) died, retired or lost his nationality, 2) left the house because his marriage or adoption was annulled, or 3) when the female head of the house married or divorced a husband.

The heir to a house was the eldest son; and unless his descendants were dead or diseased, or unless there were a similar justification, no other child of the wife or concubine could become heir. This rule was established by the Outline of the New Criminal Law and it applied to the noble, the samurai, and the commoner until the Old Criminal Code went into effect in 1882. In January 1873, however, a contradictory regulation of the Council of State made it possible for the noble or samurai father to send his eldest son to another house, whether for adoption or for the sake of getting rid of a troublesome son, and the father was allowed to replace this son with a second or third son or even with an outsider. Since this regulation contradicted the Outline of the New Criminal Law and seemed to weaken the eldest son's right as heir, the Council of State cleared up the confusion in July 1873 by reemphasizing the preeminent succession right of the eldest son. Yet at the same time certain qualifications were made as to the eldest son's rights. For example, if the eldest son were dead, chronically ill, or there were other "imperative reasons", the head could petition to have a second or third son become the heir or the head could adopt a son for his daughter. If a daughter were the only other child and adopted husbands were hard to come by, the daughter could even be made the successor. And in case an
incapacitated eldest son was the only child the head could petilion to have a blood relative made the heir. It should be noted before going any further that the above mentioned "imperative reasons" allowed the eldest son to be disqualified:

1. when he was unable to maintain the house because of irresponsibility or irrationality,
2. when symptoms of insanity were apparent during strong seizures of nympholepsy,
3. when he was left speechless by nervous disorders.

Furthermore the "imperative reasons" could be construed broadly enough to have the eldest son set aside for the convenience of the family or for family relatives. These rules concerning the succession and the disqualification of the eldest son of noble and samurai families were also applied to the commoner families in 1875.

Among the possible heirs to house headship, the status of the different candidates was a very important factor. Whether the child was an offspring of the wife or concubine, whether it was male or female, or whether it was adopted or not had to be taken into consideration. The legitimate son of a wife, for example, took precedence over a legitimate son of a concubine. The legitimate female child of the wife at first took precedence over the legitimate male child of the concubine, though later the former only had precedence over the latter if the house head or family council petitioned to make the female child the successor. And an illegitimate child had the right to succeed to the house head occupied by its mother, if there were no other heirs. Although no sweeping statements may be made about the succession rights of an adopted child, because of the different kinds of adoption, it is clear that the ordinary adopted son was entitled to succeed whenever there were no other successors; and, of course, the adopted heir was quite within his right to succeed to the house headship. In case a would be heir died or lost the right of succession before the succession occurred, his lineal male descendant had the right to succeed to the house (i.e., grandson succeeded grandfather
if the father died), although the succession right of the lineal male descendant was not completely secure because the succession right of the would be heir (eldest son) was not itself secure. In case of female descendant or an heir presumptive was disinherited or in case the adoptive relation of an adopted child was dissolved, the right of succession that each of these persons possessed was frequently taken away. It should be noted, too, that during the early Meiji Period an unborn child was not considered to have the right of succession.

When during the early Meiji Period an ancestor who was to be succeeded by an heir was without a real or adopted child, the ancestor could designate as heir (but not as adopted son) such persons as his father, elder brother, or uncle. Afterwards, however, lineal ascendants were barred from the field of eligible heirs that might be appointed during the life of the ancestor. If the ancestor died without designating a successor, the family name was deposited with relatives and they were allowed to select an heir for the deceased by mutual consent; and in case there were no suitable heirs among the deceased ancestor’s relatives, the heir could be chosen from among non-relatives. In the event that a real or adopted son succeeded a retired house head, and the son happened to be infirm or was conducting himself improperly, or he died a natural death, the retired house head, if in good health, was entitled after 1873 to resume the house headship upon submitting a petition. Likewise, a house head who, because of sickness or other disability, had retired in the prime of life and had adopted a son to serve as house head in his place was allowed to resume his headship upon recovery from sickness or removal of the disability. The return to house headship, however, was not automatic; for it might be decided between the original house head and the adopted house head that the former should marry into another house rather than displace the latter. If on the other hand it was decided that the original house head should resume his former position, the adopted house head then returned to his original house.

In addition to the ordinary successor to house headship, we
have observed earlier that on some occasions during the early Meiji Period it was necessary to have an interim successor to act as guardian for the infant successor. Ordinarily the interim successor was a man who married the widowed mother of the infant, although the interim successor might also be the widowed mother herself or the retired house head who had resumed his former position upon the death of the infant successor's father. The interim successor who married the widowed mother was given official recognition in 1876, but since his period of succession was not limited to any specific period of time the succession rights of the infant were gradually weakened.

The order in which heirs succeeded to the house headship under the terms of the *Old Civil Code* was as follows:

1. Among the lineal descendants who were members of the ancestor's house the person having the closest degree of relation to the ancestor took precedence.

2. Among lineal descendants of the same degree the male, whether legitimate or not, took precedence over the female.

3. Among several male (or female) children the first born took precedence. However the legitimate child took precedence over the illegitimate child who was acknowledged by the father.

The *New Civil Code* was more progressive than the *Old Civil Code* in that the illegitimate child was clearly ranked behind both the legitimate and the acknowledged female child. And yet the new code allowed the acknowledged male child to take precedence over the female child, a fact which earned the new code the criticism of the legal scholars. But both codes recognized that the heir might 1) be designated by the ancestor, or 2) be chosen by someone other than the ancestor or 3) the heir might be the lineal descendant of a would be heir who died just prior to succession. In regard to the succession right of a child in the womb, no direct reference to his right was included in the old code, while in the new code he was regarded as already born.
As for the effect of succession to the headship of a house, the heir inherited the former house head's legal position in regard to status and property and, apparently, he also inherited the right of consent relating to petitions and notifications that concerned the status of family members. In addition, if the heir was succeeding on account of the death of the former house head, the property rights belonging to the deceased were automatically transferred on the day of succession. But whether or not the property rights were transferred when the heir happened to succeed a living house head is uncertain. All that can be said on this question must be drawn from several enactments that were issued during the early Meiji Period. In May 1875, first of all, the Regulations Governing the Issuance of New and Old Bonds specified that while public bonds that were relics (ibutsu) did not have to be renewed, such bonds did require renewal if transferred or sold. Then, in October 1875 the transfer of property rights was made ineffective in inter vivos succession as long as the land deed was unrenewed, and in case of succession by death a fine five times the cost of the evidential seal was to be imposed if the deed were not renewed within six months of succession. And in 1880 a Council of State directive concerning inter vivos succession provided that the right of ownership to any notarized and registered property, whether moveable or immovable, would not be considered transferred unless it could show evidence of transfer. If the property were not notarized or registered, the right of the former house head was automatically transferred to the heir on the day of succession just as when succession occurred by reason of death. It may be suitably mentioned here, too, that in the case of inter vivos succession the house head who retired retained a retirement portion consisting of notarized and registered property that was reserved to him by contract.

In the Old Civil Code a successor to house headship became the house head by succeeding to the family name, family lineage, titles of honor and all property; and the succeeding house head had the special privilege of acquiring the ownership of the
house's genealogical records, hereditary property, articles of worship, tombs, firm name, and trade mark. Originally, the draft form of this part of the code was far more progressive than it appears here, but, as we have said before, conservative changes were made in the draft by Yamada Akiyoshi's Legislative Research Committee.

Lastly, in concluding our description of succession to a house, it seems proper to devote a few more words to retirement of the house head as a cause for succession. Ever since the Kamakura Period the retirement of the house head has caused the heir to succeed *inter vivos* to the house and property, and in the Edo Period this type of retirement was in widespread use among the commoners as well as the bushi. In the early Meiji Period nobles and samurai were allowed (December 1870) to apply for retirement at any age over fifty; though a noble might retire at any age if he suffered a chronic disease or was incapacitated. These qualifications for retirement were soon applied to commoners. Permission for retirement was readily given 1) when the head of a branch house succeeded to the principal house owing to some contingency, 2) when an adopted son retired in order to succeed to his original house, and 3) when circumstances compelled a house head to enter another house as an adopted son. But in any of these cases it was always necessary to establish a successor to take the place of the retiring head.

In the *New Civil Code* the essential conditions to retirement were that the retiring house head be at least sixty years old and that a successor having complete legal capacity make absolute acceptance to the succession. The conditions of the *Old Civil Code* differed very little except that the spouse of the retiring head also had to give her consent. By the new code a woman house head was allowed to retire regardless of her age, though if she were married she had to obtain the consent of her husband, unless there were justifiable reasons for the retirement. In the draft of the *Old Civil Code* that was submitted to Yamada Akiyoshi's Legislative Research Committee, retirement was ex-
pressed by a compound Japanese word denoting resignation from property (jisan). The coinage of this word came from the idea that the essence of retirement was the transfer of property; however, this term was later replaced by the Genrō-In with another word (inkyo) that was unrelated to concepts of property.

b. Succession to Property

By a decree of October 10, 1875 anyone who received land by legacy or donation—and this probably included land received by succession—had to have the title of the land transferred within six months after inheriting it in accordance with the same rules that governed succession to house headship. Again, in November 1880, the procedural rules for succession to property were set forth by the Regulations Governing Land Sales and Transfers. By these regulations, anyone succeeding to land left by a deceased member of the family would have to sign the land deed conjointly with his relatives and submit a petition for deed renewal via the village office to the proper government office within six months after succession. The order in which heirs succeeded to property was 1) child, 2) wife, and 3) househead. The transfer of a title for a piece of land received by legacy was the same as in the case of land inherited from a deceased family member.

In the Old Civil Code “succession to property” was caused by the death of a family member; and the property of the deceased was succeeded to exclusively by his heirs in the following order:

1. lineal descendants (who shared the house with the deceased family member).
2. spouse.
3. house head.

In case a lineal descendant succeeded to the property, the old code’s rules on succession to house headship were to govern the succession. Originally, before the Old Civil Code draft was revised by Yamada’s Legal Research Committee and the Genrō-
In succession to property was based on the principle that, with the exception of the share accruing to the househead, all other shares should be divided equally among the heirs. In the *New Civil Code* where succession to property had no bearing on the family system, the right of inheritance was enjoyed by the direct lineal descendants of the ancestor irrespective of whether they shared the ancestor’s house or not. Furthermore, persons of the same degree of relationship became successors to property in equal rank and share. In case there existed no lineal descendant who could become heir, the order of succession passed from spouse to lineal ascendant to house head. So far as succession to property is concerned, there seems to be no doubt that the new code was more progressive than the old.

**c. Failure of Heirs**

During the early part of the Meiji Period, if a samurai house head died without leaving any offspring, it was customary to allow a fifty day period or, if necessary, a hundred days in which to find a successor. In January 1880, when this practice was written into law, the family council for the house of the deceased samurai or noble was given as much as six months after the elapse of the first fifty days to locate a successor before the house became extinct. Then in June 1885 the Council of State decided that the house would become extinct in six months after the death of the house head or after the removal of his name from the household register unless a successor were found. In case a house head died and it was not clear whether he did or did not have any heirs, any excess property remaining subsequent to the payment of funeral expenses and debts was to be kept in custody for a period of five years by his relatives. If the deceased head had no relatives, the property was to be kept by the town or village head. Upon expiration of this period the relatives could jointly agree as to the property’s disposal, but if the property had fallen to the custody of a town or village head it was officially allocated to local taxes and miscellaneous revenue.
Under the old code the property that was unclaimed owing to a failure of heir was to be placed under an administrator by the court of the place of succession. The administrator was then expected to convert the property and deposit the proceeds; and when it became certain that no successor existed the proceeds were to be confiscated. Although the new code also transferred unherited property to the national treasury after it was evident that no heir existed, the new code was peculiar in that it regarded the property of succession as a juridical person.

d. Wills

During the Edo Period the making of wills was a widespread practice among commoners, and even among bushi wills were made for property (other than stipends) that was subject to their control. In the late Edo Period, however, the making of wills seems to have been gradually discarded, and by early Meiji the practice was not very much in evidence. Perhaps the apparent absence of wills in early Meiji is connected to the paucity of historical records relating to wills. Prior to the drafting of the Old Civil Code there were only two enactments concerning wills. One, in January 1873, simply made it possible for an ancestor to request a combination of the principal and branch house. The other, in 1886, provided that even a noble under twenty years of age could establish hereditary property whenever a will had been made by the former head.

Wills in the old code were recognized as a means to make a legacy, and the provisions on wills were therefore placed under the chapter on legacies. Exceptional forms were required for legacies but not for other types of wills. In the new code wills were not just a means to make a legacy but were given wide recognition as a kind of juristic act for effecting adoptions, designating guardians, and the like. A separate chapter for wills, therefore, was created and each different type of will was enumerated. The reason that wills were dealt with under the new code's book on succession is that wills were mostly
concerned with succession. Although a minor in the old code did not have the capacity generally to make a legacy, any minor over fifteen years old under the new code was allowed to make a will. As for the different forms for wills, both codes were alike in that they recognized ordinary forms (holographic, notarial, or secret deed) and exceptional forms. Both codes agreed also that a will should take effect upon the death of the testator. But the new code differed from the old code in that the former contained detailed rules on the execution of wills.

e. Legal Portions

By the terms of the old code, if there was a legal heir to the house headship, no legacy could be made by the ancestor on behalf of another unless it constituted half of the property of succession. This rule also applied when a lineal ascendant succeeded to the property of a member of the family. A legal share, in other words, was one half the property of succession. In the old code draft that was presented to Yamada’s Legal Research Committee and later to the Genrō-In there were gradations in the legal shares, depending upon whether or not a successor to the house existed and upon the number of successors to the property of the deceased person. In the new code a lineal descendant who was the legal heir to a house received one half of the property of the ancestor as a legal portion, while the other heirs to a house received one third of the property. Again, a lineal descendant who was heir to property received as his legal portion one half the ancestor’s property, while the spouse or lineal ascendant received a third.
CHAPTER III.

THE COMMERCIAL CODE

Having already sketched the process by which the Old Commercial Code (1890) was compiled, we shall only attempt in the present chapter to compare this code with the New Commercial Code that was put into effect in 1899. The rather extensive amendments that were added to the New Commercial Code in 1911 will have to be neglected owing to a lack of space. In passing, however, it might be observed that the important amendments of 1911 sanctioned the amalgamation of companies and permitted the ordinary partnership and limited partnership to be changed one into the other. Other important amendments provided for minimum capitalization, debentures, penal regulations, and for nullification and cancellation of company formation.

It should be observed also that the New Commercial Code was as much influenced by foreign law as was the New Civil Code's law of obligations. Needless to say this foreign influence appears as a marked contrast to the New Civil Code's provisions on relatives and succession, which were derived for the most part from Japanese law.


The general principles of the New Commercial Code contained the rules that were to be applied to traders and to the different types of commercial transactions.

First of all commercial matters were governed by three sources of law: 1) the New Commercial Code, 2) customary
commercial law, and 3) the New Civil Code. Ordinarily the provisions of the New Commercial Code took precedence over the other two sources of law. But if there were no applicable provision in the New Commercial Code, then, customary commercial law applied. And in case customary law was inapplicable the provisions of the New Civil Code applied. The order in which the different sources of law applied was clearly set forth in the New Commercial Code, because the Old Commercial Code had failed to indicate specifically whether it was the customary commercial law or the civil law that applied next after the commercial code.

A trader was defined in the New Commercial Code as a person who, in his own name, engaged in commercial transactions as a business. This definition of a trader was practically the same as the definition given in the Old Commercial Code. As for registration, the old code\(^1\) did not permit matters subsequent to their registration to be set up against third persons acting in good faith, while the new code only disallowed a set up against third persons if the third person in good faith was ignorant of the registration for a just cause. In the matter of trade names, the old code required the trader to use either his shop name or his family name or his full name, but in the new code the trader could use any trade name that suited him.

2. Companies

Both the old and the new code had provisions on companies (kaisha), but the company of the old code, which was designated as a "trading company" (shōji kaisha) seems to have been more similar to an association than a company, because the trading company was dealt with in the same chapter that included provisions on the "joint account trading associations" (kyōsan shōgyō kumiai) Furthermore, the trading company of the old code was not definitely specified as a juridical person.

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\(^1\) Hereafter, for the sake of brevity, the Old Commercial Code and the New Commercial Code will sometimes be referred to as the old code and the new code respectively.
A company as defined in the new code was an association (shadan) constituting a juridical person that was founded with the object of doing commercial transactions as a business. Companies were classified as 1) ordinary partnership, 2) limited partnership, 3) joint stock company, and 4) joint stock limited partnership. The only one of these companies not mentioned by the old code was the joint stock limited partnership.

Of the different provisions for ordinary partnership that were established for the first time by the new code, mention may be made of the following.

1. The formation of a partnership had to be accomplished by drawing up a contract which contained certain particulars.
2. The provisions of the New Civil Code as to association were to apply to the relations between the partners in so far as they were not determined by the partnership contract or by the New Commercial Code.
3. Each partner had the right and duty to manage the business of the partnership, unless it was otherwise provided by the partnership contract.
4. The partnership was to be represented by each partner unless representatives of the partnership were especially appointd by the contract or by consent of all the partners.
5. The nature of the contributions of the partners and the value of the contributions consisting of property had to be recorded.
6. A partnership could not begin to distribute profits until the losses had been made good.
7. A partnership could be dissolved when the object of the partnership had been attained or, in case the object were unattainable, when the partnership consolidated with another partnership, or when only one partner remained.

Though consolidation of companies was not permitted by the old code, it was recognized by the new code owing to the promulgation of the Bank Consolidation Law in 1896. And whereas
the old code had only allowed a partnership to dissolve upon court order when the object of the partnership could not be attained, the new code allowed the partnership to dissolve naturally without a court order.

The limited partnership of the new code differed greatly from its counterpart in the old code, because the new limited partnership not only had to have partners with limited liability but also partners with unlimited liability. The major amendments added to the old code's provisions on limited partnership were these.

1. Each partner with unlimited liability had the right and obligation to manage the affairs of the partnership, unless the contract provided otherwise.

2. The partnership was to be represented by each partner with unlimited liability, unless particular partners with unlimited liability were specifically designated to represent the partnership by the partnership contract or by agreement of all the partners.

3. A partner with limited liability was not entitled to manage the affairs of the partnership or to represent it. Furthermore the new code omitted the old code's provisions relating to a general meeting, and it allowed a limited partnership to dissolve if all the partners with unlimited liability or if all the partners with limited liability withdrew from the partnership.

The old and new code were also at variance on the joint stock company. The old code, for example, made the issuance of a government permit an essential condition to the company's formation, but this was not the case in the new code. And whereas the old code drew a line between the promotion and the formation of a joint stock company and required the provisional contract drawn up by the promoters to be confirmed at the general meeting for organization, the new code only gave the meeting for organization the authority to alter the provisional contract, and it abolished the provision of the old code that required the promoters to prepare a prospectus. The new code
also contained certain provisions on the joint stock company that did not appear in the old code. To begin with, the new code established the examiner system; it authorized the issuance of shares above face value; and it forbade the issuance of shares below face value. If any shares were not taken up or payment on them were not fully made, the promoters were jointly and severally bound to take the shares or pay for them. When all the shares had been taken the company came into existence, or if the promoters did not subscribe to all of them, the company came into being at the conclusion of the meeting for organization. The amount of the shares could not be less than fifty yen unless the whole amount of the shares was to be paid at one time, in which case the shares could be reduced to twenty yen. (In the old code the shares were reduced to twenty yen unless capitalization exceeded ¥100,000.) Shares could be transferred to others without the consent of the company, unless such transfer was contrary to the company contract. If the procedure for calling a public meeting or the manner in which a resolution was passed was contrary to law and ordinances or to the company contract, the shareholders could request the court to declare the resolution null and void. Each individual director of the company represented the company; but no director was entitled to do commercial business of the same kind as that of the principal company nor could he become a partner with unlimited liability in another company carrying on the same kind of business without the consent of a general meeting of shareholders. Furthermore, a director was not entitled to do business with the company on his own account or on that of a third person without the consent of the auditors. In addition to these innovations the New Commercial Code permitted the payment of construction interest, it recognized a preferential share arrangement, it provided detailed regulations on debentures, and it disallowed an increase in the company's capital until after the total amount of the previously subscribed shares had been paid. The new code also reduced the tenure of the auditors from two years to one year; it permitted a joint stock company
to dissolve without obtaining the authorization of a court order; and it omitted a provision of the old code that made the company's dissolution obligatory when the company's capital decreased three-quarters.

The joint stock limited partnership, which was the fourth and last type of company described in the new code, was composed of partners of unlimited liability and of share holders. Although this type of company was thought to have the advantages of both the limited partnership and the joint stock company, it was actually little used.

Another facet of the new code that did not appear in the old code was a special chapter devoted to foreign companies.

3. Commercial Transactions

The new code's book on commercial transactions was reduced to about half the size of the same book in the old code, since the new code eliminated all the provisions that could also be found in the New Civil Code. Of the changes between the two commercial codes it is indicative of the economic development in Japan that the new code permitted the acquisition, transfer, and letting of immovables to be classified as commercial transactions. The other miscellaneous provisions introduced by the new code were as follows. A trader who performed a transaction for another person within the limits of his business was entitled to demand a reasonable remuneration. The legal rate of interest in commercial matters was six percent a year (old code: seven percent). A debtor was considered to be in default only from the time that the claimant presented the document subsequent to the due date and claimed satisfaction, even though a time may have been fixed for satisfaction of a claim payable to order or to the bearer. With regard to a sale having a fixed time limit for performance, if one of the parties failed to perform his obligation by the proper time, the other party was deemed to have rescinded the contract unless he demanded immediate performance. If an obligation arising from a bill or other commercial instrument had been
put into a current account and the debtor did not make performance, the item relating to the obligation could be struck out from the account by the parties. As conditions for termination of an anonymous association, the new code specified certain new causes, such as 1) attainment or inability of attainment of the objects of partnership, 2) the death of the active partner or a declaration of his incompetence, and 3) the bankruptcy of the members to the anonymous association. But the new code omitted as a cause for termination the discontinuance of the active partner’s business. In regard to brokerage, a broker was not entitled to receive payments or other performances on behalf of the parties concerned in connection with the transactions negotiated by him, unless a different intention were expressed or a different custom existed. A forwarding agent could on his own account undertake the carriage of goods unless a special agreement had been made to the contrary. Carriage of goods and passengers, which were treated separately under the old code, were combined under a single chapter in the new code. The new code also contained provisions on certificates of deposit and pledge, and it introduced for the first time the provisions on bills of lading. With respect to insurance, the old code classified it into insurance for fire and earthquakes, land products, freight, life, sickness, annuity, and marine insurance. Aside from marine insurance, which was left in the book relating to commerce at sea, the new code classified insurance into two major categories: 1) loss insurance and 2) life insurance. Loss insurance was subdivided into fire and freight insurance, and the earthquake insurance of the old code was deleted. One other significant point about commercial transactions in the new code is that provisions for a short period of prescription were established for each type of transaction.

4. Bills

The major amendments relating to bills that were introduced by the new code were as follows. A person who signed a
forged or falsified bill was liable according to the tenor of the forged or falsified bill. A debtor on a bill could not set up against a person who made a claim under the bill any defense not provided in the book on bills. Each bill had to be designated either as a bill of exchange, a promissory note, or a check. As concerns bills of exchange, a referee system was created; the minimum amount of a bill was fixed at ¥30 (old code: ¥25); and the bill could be made payable to the bearer on demand. The holder of a bill payable on a fixed day after sight had to present it to the drawee for acceptance within one year from its date (old code: two years). When it was not clear for whom a person had become surety, he was deemed to have become surety for the acceptor. The portions of the old code concerning acceptance and payment for honor were subsumed in the new code under a chapter on intervention where they were treated as acceptance and payment by intervention. If claims on a bill were made against several persons, it sufficed to draw up only one protest for all of them. Each part of a bill had effect as an independent bill unless each part was designated as a part only. With respect to promissory notes, the holder of a promissory note that was payable on a fixed day after sight was required to present the note to the maker within one year of the day of making. As to checks, the old code’s restriction that limited the drawee to banks was removed. A holder who did not present a check for payment within a week from the date of making forfeited his right of recourse against prior parties. In the old code the holder had to present the check within three days of its making, but in 1893 more time had been allowed in case the place of issuance and the place of payment differed. And, lastly, the new code explicitly provided that a check was payable on sight.

5. Commerce by Sea

The types of vessels subject to the provisions of the Old Commercial Code were merchant ships, fishing vessels, and the like; but under the New Commercial Code any vessel used for
commercial purposes in navigation at sea were made subject to the provisions of commercial law. In regard to the ownership of commercial vessels, the old code simply provided that a contract for ship construction or a sales contract for the acquisition of all or part of a vessel required the drawing up of an instrument, while the new code specified that a transfer of the ownership of a ship could be set up against third persons only if the ship had been registered and noted in the certificate of nationality. As for the ship owner's liability for the actions of the ship's crew members done in the pursuit of their duties, the old code operated on the Germanic principle that he was responsible to the extent of forfeiting the freight and the ship, and, in case the owner and the captain were one and the same the owner then had unlimited liability. By contrast, the new code, following French law, prescribed that unless a shipowner were himself at fault he could free himself from liability for acts of the captain that were done within the limits of his legal authority or for damages which the captain or any member of the ship's company had done to other persons in the performance of his duties, by abandoning to the creditor at the end of the voyage, the ship, the freight and his claims for damages and commission accruing to him in connection with the ship. Other innovations of the new code were these. The authority of the ship's husband was clearly defined. The chartering of a ship, if duly registered, was made valid also against any third person who afterward might acquire a real right in the ship. The charterer of a ship who used it in navigation at sea for commercial transactions had as against third persons the same rights and duties in all matters relating to her use as a shipowner. During the voyage the captain of the ship was required to take such measures in respect to the cargo as would be to the best interest of all the parties concerned. Outside of the ship's home port, the captain had authority to do all acts in or out of court necessary for the voyage. A limitation upon the rights of representation of the captain of the ship could not be set up against third persons acting in good faith. The
new code also amplified the circumstances under which the captain could hire crewmen, and it limited the term of hiring to one year. Although the old code required a contract of carriage to be drawn up, the new code, which operated on the assumption that commercial contracts needed no set forms, provided that a contract of carriage only had to be given to the other party if it were requested. Revisions were made in the old code's provisions concerning rescision of contract by the charterer prior to the ship's departure from port, and a standard for computing freight was clearly stipulated. In case the whole ship or a part of a ship was subject to a freight contract and the freighter made a subcontract of carriage with a third person, the owner alone was responsible to the third person for the fulfillment of the subcontract, so far as it was within the limits of the duties of the master to carry it out. The reason for automatically terminating and rescinding a freight contract were also included in the new code. Upon the loading of the goods it was necessary for a bill of lading to be furnished upon the request of the freighter or shipper. The old code's provisions on bottomry were not included in the new code. In respect to common sea damage, all persons interested had to contribute to common sea damage according to the proportion of the value of the ship or cargo thereby saved and according to the proportion which half the freight bore to the common sea damage. Any person liable to contribute to common sea damage was not responsible beyond the values remaining at the time of the arrival of the ship or of the delivery of the cargo with regard to insurance. The new code also provided a basis for determining the insurable value of the cargo; it specified the time when the risk of the underwriter began and ended; and it defined his liability in case alterations were made in navigation routes, ship captains, or ships. Furthermore, detailed provisions were set forth concerning the cases in which the insured, upon abandoning the object of the insurance contract to the underwriter, could claim the full amount of the sum insured. And other important provisions
gave certain specied claimants preferential rights against the ship, her accessories, and the unpaid freight.
APPENDIX

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APPENDIX 1

Yamanouchi Toyoshige's Memorial Calling for Return to Imperial Rule and Government Reforms. Presented to Itakura Katsushizu, a Senior Councilor of the Bakufu

October 29, 1867

"In all due humility we respectfully present this memorial. It is indeed a dire hour when the patriots of the land stand lips tight, without daring to voice their opinions. That there is, in addition, an apparent divergence of opinion among the Court, the Bakufu, the Court nobility and the barons is also an appalling state of affairs. These two contingencies, while our great misfortune, work to their [the Westerners] advantage and thus their stratagem will likely prevail. Having come to these straits, it will avail us nought to denounce those responsible or to prattle out censure of standing evils. Our sole prayer is that, with infinite vision and decisive judgement, we unite in our efforts with all the people in the realm and that we abide by the principles of justice and fairness in laying a solid foundation that will stand before countless generations and before all the world without cause for shame. Despite having presented this memorial point by point and in an orderly manner when in Kyoto the past month, I was confronted with nothing but obstacles. In the meantime, suffering from the recurrence of an old ailment, I have been obliged to return home, and, though active since that time, I have now become incapacitated. Being a matter of serious regret that another trip to Kyoto is impossible at the moment, I have done nothing but dwell on the matter day and night with sore distress, and for this reason I am making my humble opinions known to you by a few of my retainers. I believe in all seriousness that this is the fateful opportunity in which we must be open and straight forward; we must, in concert with the people, reform the centuries old polity of the Empire; and we must be utterly sincere in treating with all nations. In this way can be achieved
the task of restoring the ancient form of Imperial government. Further, I request that you have the attached paper given serious and minute attention. Unable to stifle my heart felt and true sentiments or to bear my anxiety, I remain

September 1867

Matsudaira Yōdō

[Lunar calendar] [i.e. Yamanouchi Toyoshige]

[Attached to the above memorial is the following document which bore the names of Teramura Sazen, Gotō Shōjirō, Fukuoka Tōji and Kamiyama Satae.]

"In view of the present state of affairs now confronting the country and with due respect for the lessons of the past, we take the liberty to present our humble and respectful opinions. If we desire to lay the foundation for a resurgent country under Imperial rule we must clearly define the national polity, reform the government, restore the ancient form of Imperial government, and we must stand unashamed before all nations and all ages to come. At present our most urgent concern is to replace corrupt officials with men of excellent character, to be magnanimous in the exercise of government, and it is most urgent that the Court, the Bakufu and the barons alike give their attention to this great undertaking. In the past month four domains [Echizen, Tosa, Uwajima and Satsuma] visited Kyoto and presented several memorials. Then after returning to his province due to sickness, Yōdō [Yamanouchi] has once again given serious thought to the matter and, owing to the truly grave nature of the situation, has concluded that now is the time for a vital decision. Inadequate as his abilities are, he nevertheless has desired to hasten back to Kyoto to present his petition. But now he is ailing and in misery, and, with no other alternative, his humble views will be respectfully presented through us, ignoble as we are.

1. All authority to deliberate on the administration of the realm should be vested in the Court and all institutions and laws for our land should, without exception, emanate from a deliberative assembly [giseisho] in Kyoto.

2. The assembly should be divided into an upper and lower
branch and the legislators should be honest and good men, with their selection ranging from high ranking Court nobles down to rear vassals and commoners.

3. Schools graded to accommodate various age levels must be established in the towns and there in science and handicrafts should be taught.

4. In regard to all agreements with the foreigners concerning the port of Kobe, new treaties which are reasonable and explicit must be concluded through the joint deliberation of Court ministers and the domains; and commercial laws must be faithfully executed in order not to lose the good will of the foreigners.

5. Naval and land defenses are our most pressing need. We must create a Bureau of Military Affairs, located between Kyoto and Settsu, as an Imperial Guard for the protection of the Emperor; and these troops must be without match anywhere in the world.

6. Since the Middle Ages, government has been in the hands of the military. Subsequent to the arrival of the Western ships in Japanese ports, the realm has been thrown into confusion and has faced many crises; and in turn the administration has been vacillating in its action. This is to be expected. However, our guiding principle must now be the reform of our ancient and outmoded practices and, without deviation for unessentials or for shallow concepts of reason, we must lay an enduring foundation of government.

7. Without regard to the fact that the institutions and laws of the Court derive from the age old Ritsuryo Code, we must, in view of present circumstances, abandon the unreasonable, do away with outworn customs, make a complete reform and thereby create the essentials for national independence.

8. The legislative officials must take it as their principle to forsake their private interest, to be impartial, above intrigue, and honest; and, without denunciation of exist-
ing evils, must begin afresh with an outlook for the future. They must abjure the common evil of much talk and little action...."
APPENDIX 2

Tokugawa Keiki’s Memorial Restoring Sovereignty to the Emperor*
November 9, 1867

"Contemplating the various changes through which the Empire has passed, your humble servant Keiki observes that when the authority of the ancient Imperial government became weakened the power was seized by the Ministers of State [Fujiwara family], and that afterwards, owing to the Hogen (1156-59) and Heiji (1159-60) civil wars it passed into the hands of the military class. Later on again my ancestor received special favor from the Throne by being appointed Shogun, and his descendants have succeeded him for over 200 years. Though I fill the same office, the laws are often improperly administered and I confess with shame that the conditions of affairs today also shows my lack of virtue. Now that foreign intercourse becomes daily more extensive, unless the government is directed from one central source, it will not easily maintain itself. If, therefore, old practices are reformed, and the administrative authority be restored to the Imperial Court, if national deliberation be conducted on an extensive scale and the Imperial decision be then invited, and if with a united mind and effort we join together in giving protection to the empire our country will stand with equal footing among all the nations of the world. Your humble servant Keiki can do only this and no more for the country. Nonetheless I shall inform the barons that if other views on the subject are entertained they should be stated. In conclusion, I respectfully submit the foregoing to the Throne.

October 14

Keiki

[Lunar Calendar]

* Adapted from Gubbins, J. H., The Progress of Japan, Oxford, 1911, p. 305.
APPENDIX 3

Keiki’s Resignation Accepted
November 10, 1867

“Whereas we have placed profound trust in your family for many generations, we have regarded your petition as justified in consideration of the conditions which exist throughout the realm at this time, and, therefore, we have acceded to it. Nevertheless, you are further advised to unite with the country in doing your utmost to preserve the realm and thus place his Majesty’s mind at ease.”

As a tentative measure to deal with the Restoration the following Imperial message was issued when Keiki’s resignation was accepted.

“Important matters of state and foreign affairs will be submitted to general discussion. Other matters such as inquiries from the daimyo and orders from the Court will be disposed of by the two officials [in Kyoto who are in charge of transmitting documents to and from the Court]. Remaining affairs shall be resolved after summoning the barons to Kyoto. The territories and cities heretofore under Bakufu control will continue to be administered as in the past, though subject to orders which shall be issued in due time.”
APPENDIX 4
Imperial Restoration Order
January 3, 1868

"At this time we explicity acknowledge the Restoration of Imperial authority heretofore under mandate to Tokugawa Lord Keeper of the Privy Seal, and we also accept his resignation from the office of Shogun. That the late Emperor [Kōmei] was distressed by unprecedented national crises arising constantly since 1853 is known to the public at large. Therefore, as His Majesty has decided upon the Restoration of the ancient form of Imperial rule and upon laying the foundation for recovering the prestige of the country, the offices of Sesshō [Regent], Kanpaku [Chief Councilor], Bakufu and other similar offices are henceforth discontinued; and from this moment the Three Offices of Sōsai [Supreme Head], Gijō [Senior Councilor] and Sanyo [Junior Councilor] are tentatively established. In these Three Offices all affairs of state shall be administered. All matters shall seek their foundation in the work begun by Emperor Jimmu in Ancient times. And whereas it is His Majesty's concern that a proper public discussion be conducted without regard for the distinctions separating high court nobles, the bushi and Court officials, and as He is concerned that you share in the public weal and woe, each one of you is hereby enjoined to be diligent in your pursuits, to purge yourselves of impure habits of extravagance and indolence, and to render loyal and patriotic service to the country.

1. The foregoing posts are abolished.
Nairan [Imperial Examiner], Chokumon Goninsuū [High Imperial Advisers],Kokuji Goyōgakari [State Affairs Councilor], Gisō [Court official who transmitted replies of Emperor to daimyo and samurai], Bue Densō [Court official who transmitted communications of Bakufu to Emperor], Shugo-shoku [High Constable], Shoshidai [Military Governor of Kyoto].
2. The personnel for the Three Offices are as follows:

Sōsaì [Supreme Head]:
[Imperial Prince] Arisugawanomiya [Taruhito: head of the princely house that was next in seniority to the Emperor and heir presumptive to the Throne].

Gijō [Senior Councilor]:
[Imperial Prince] Ninnajinomiya [Junnin], [Imperial Prince] Yamashinanoamiya [Akira], Nakayama [Tadayoshi] Saki no Dainagon [Court noble], Ōgimachisanjō [Sanenaru] Saki no Dainagon [Court noble], Nakamikado [Tsuneyuki] Chūnagon [Court noble], Owari Dainagon [Tokugawa Yoshikatsu; lord of Owari], Echizen Saishō [Matsudaira Yoshinaga; lord of Echizen], Aki Shōshō [Asano Nagakoto; lord of Aki], Tosa Saki no Shōshō [Yamanouchi Toyoshige, former lord of Tosa], Satsuma Shōshō [Shimazu Mochihisa; lord of Satsuma].

Sanyo [Junior Councilor]:
Ōhara [Shigetomi] Saishō [Court noble], Madenokoji [Hirofusa] Udaibien Saishō [Court noble], Hase [Nobuatsu] Sammi [Court noble], Iwakura [Tomomi] Saki no Chūjō [Court noble], Hashimoto [Saneyasu] Shōshō [Court noble].

Owari domain: 3 members
Echizen domain: 3 members
Aki domain: 3 members
Tosa domain: 3 members
Satsuma domain: 3 members

3. You are hereby informed that the Council of State shall proceed gradually in beginning to discharge its duties.

4. Court etiquette shall be modified gradually, but as an initial step the Sesshō and Kanpaku families are here-with disestablished.

5. For the reform of existing abuses the path to free expression is open; anyone, therefore, regardless of status, who has opinions on the matter should present
them without hesitation. Furthermore, as the appointment of able persons is of the utmost urgency, any person who fits this category should be immediately recommended.

6. As a result of inequitable government in recent years the prices of goods have gone particularly high, and there has been a continuous trend for the wealthy to become wealthier and the poor to become more impoverished. As the common people are the supreme treasure of the [true] monarch, His Majesty’s mind is ill at ease on this occasion of momentous reform; hence if any resourceful and farsighted remedial measures exist, anyone, whosoever he may be, should submit them.

7. In the immediate past, Princess Kazunomiya removed herself to the Kantō [Edo] to become the bride of the Shōgun [Iemochi]. However, the Shōgun has since passed away, and inasmuch as the marriage itself was only permitted because the late Emperor [Kōmei] desired to achieve success in expulsion of the foreigners, and since obstructionists have engaged in intrigue from the very beginning, you are hereby informed that, under compelling circumstances and also because it is desirable to urge her immediate return to Kyoto, a mission of Court nobles shall be despatched shortly to welcome her return.

The above will be confirmed and proclaimed in a separate document.”
APPENDIX 5

The Imperial Edict Announcing Abolition of Domains
and Creation of Prefectures*
August 29, 1871

"In order to preserve the peace of Japanese subjects at
home and to stand on equal footing with countries abroad at
this present time of reform, We deem it necessary that the
government of the country be centered in a single authority,
so as to effect a reformation in substance as well as in fact.
Some time ago, We permitted the barons to surrender their
domains and We appointed them anew to the governorship of
their respective districts, however, the conventions that have
persisted through the past centuries make it impossible in some
cases to achieve real results. If matters are left in this way,
how can Our subjects be assured of peace and how can Our
Empire have an equal status with other countries. It is about
this that We feel greatly concerned. We therefore at this belated
hour disestablish the domains and create prefectures in their
place. All this is for the purpose of doing away with superfluity,
for issuing in simplicity, for removing the evils of empty forms
and in order to avoid the grievance caused by the existence of
many centers of government. It is Our wish, ye Our officials,
that this be clearly borne in mind, and may ye acquit yourselves
accordingly."

* Adapted from McLaren, W. W., Japanese Government Documents, Trans-
APPENDIX 6

Imperial Edict Announcing Establishment of the Genrō-In, the Supreme Court, and the National Assembly*
April 14, 1875

"On ascending the Imperial Throne, We assembled the high officials of government and took oath before the National Dieties to maintain the five principles in which We have set forth the national policy and the means to protect the welfare of the people.

Fortunately assisted by the spirits of Our ancestors and the efforts of Our officials We have today attained a slight measure of tranquility.

Looking back in review upon the brief period since the Restoration, We see in the administration of affairs in Japan many matters which stand constantly in need of improvement and reform.

In order now to enlarge upon the principles of Our oath, We herewith establish the Genrō-In in order to broaden the source of legislation and We establish the Supreme Court in order to consolidate the judicial authority of the courts. Also We now summon district officials so that conditions among the people may be better known and the public interest better consulted.

By so doing, We hope to gradually set up a constitutional form of government and together with ye Our subjects place Our confidence therein.

Be ye not addicted to customs and usage of the past nor yet rash in the cause of progress.

Take, then, Our wishes well to heart and give us the fullest support."

APPENDIX 7

Imperial Message Announcing Creation of the Prefectural Governors Conference and the Conference's Parliamentary Procedure
May 2, 1874

"In keeping with the oath sworn to the National Dieties upon ascending the Imperial Throne, we are gradually amplifying the principles therein. In this respect We are summoning forth the representatives of the people from all parts of the country to establish law on the principle of open discussion and public opinion; We are clearing a path toward the goal of complete accord between the government and the people, a path on which there will be no obstacles to prevent an easy familiarity with the conditions of the people, and We are making each and every person secure in his vocation. In this way We hope to make known the obligation of bearing the grave responsibilities of State. Therefore, We have first called the principal officials of the districts, as deputies of the people, to participate in a spirit of cooperation in a public discussion; and for this occasion We thus proclaim the Parliamentary Procedure which must be fully observed by each member [of the Prefectural Government Conference]."
APPENDIX 8

Emperor’s Announcement of the Establishment of a
National Assembly in 1890*
October 12, 1881

“We, sitting on the Throne which has been occupied by Our ancestors for over 2500 years, and now animating the Imperial prerogative dormant since the Kamakura Period and exercising supreme authority over an undivided administration, have desired to establish a constitutional form of government since shortly after acceding to the Throne, to the end that our Imperial heirs may be provided with a rule for their guidance.

It was with this object in view that in the eighth year of Meiji [1875] We established the Genrō-In and in the eleventh year of Meiji [1878] authorized the inauguration of the prefectoral assemblies. In all these actions any alternatives other than creating, step by step, a basis for reform and proceeding therewith in orderly fashion is unwarranted. Ye, Our subjects, take this Our will to heart. In Our consideration, the national principles on which each country is founded differ according to circumstances, and extraordinary achievements are not to be attained by thoughtless and unplanned action.

Since Our ancestors keep close watch over our actions from heaven above, it is Our personal duty to proclaim their distinguished achievements, to extend their far reaching plans, and to turn all experience, past or present, to advantage. These Our duties We shall discharge with firm resolve. Therefore in order to give effect to Our original intentions We shall summon representatives and open a national assembly in the 23rd year of Meiji [1890]. And We now commission the officials of Our Court to assume charge in the meantime of the necessary planning. With regard to the limitations of the assembly and to its constitution We shall personally make an impartial decision and in due time issue a proclamation.

We perceive that, striving only to advance rapidly, Our
people compete against each other to set forward the opening date of the assembly and stir up each other by spreading rumors which in the long run will bring about the failure of Our great and farsighted plans. Hence, at this time, to make clear Our instructions We must make an announcement to all Our people, be they in government or not. If there should still be anyone who purposely clamors for speed and disrupts the public peace by creating disturbances, he shall be punished by the law of the land. To ye Our subjects We expressly announce this declaration."

APPENDIX 9

Imperial Edict Accompanying the Land Tax Reform Regulations
July, 28, 1873

"Know ye that taxation is a matter of serious moment for the state and is intimately connected with the welfare of the people; and because methods of taxation have been many and diverse—harsh in some instances, lenient in others—fairness has not prevailed. Therefore it has been Our desire that this be reformed.

With this in mind, the resolutions of numerous officials have been adopted, a general discussion by the district officials has been obtained, and then through the efforts of the Inner Cabinet Ministers the diversity has been reduced to a fair and uniform procedure which now enables Us to proclaim the Land Tax Reform Law.

It is Our earnest hope that the tax be levied impartially in order that the burden may be shared equally among the people. The foregoing shall be enforced by the proper authorities.
APPENDIX 10

Imperial Edict Concerning National Conscription
December 28, 1872

"Know ye that in ancient times, under the centralized prefectural system, men strong in body were conscripted throughout Japan to form military units, thereby providing protection for the state. Though there was no distinction between soldier and peasant in the beginning, the right to be a soldier rested with the military aristocracy after the early Middle Ages. Then, for the first time, soldier and peasant were separated and feudal rule was eventually established.

Now at this time when the Boshin [Meiji] Restoration stands as one of the greatest reforms in the last two thousand odd years of Japanese history, the Navy and Army must conform to the times and also be reformed in the most advantageous manner.

Following today the essentials of Japan's system of ancient times and taking into consideration the system in foreign countries, We hope to lay the basic foundation of national security by creating a nationwide conscription law.

Ye, Our officials, comply wholeheartedly with Our wishes and make them known in all of Japan."

On the same day the Council of State issued an announcement concerning army reorganization. In part it reads:

"Those who have worn the two swords during the Tokugawa regime have been known as bushi, and in their bearing they have been obdurate, they have lived at the expense of others, and, in extreme cases, they have put people to the sword; their crime being regarded by officials as no offense... No such practices prevailed in ancient Japan... At the time of the Restoration, the domains surrendered their land patents and in 1871 the prefectural system of ancient times was reinstated. After living a life of idleness for generations, the samurai have had their stipends reduced and they have been authorized to take
off their swords so that all strata of the people may finally gain their rights to liberty. By these innovations the rulers and ruled will be placed on the same basis, the rights of the people will be equal, and the way will be cleared for the unity of soldier and peasant. Therefore, neither the samurai nor the common people will have the status to which they were accustomed in the past. Nor will there be any distinction in the service they render to their country, for they will all be alike as subjects of the Empire."
APPENDIX 11

The Constitution of the Empire of Japan*

CHAPTER I. THE EMPEROR

Article I. The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.

Article II. The Imperial Throne shall be succeeded to by Imperial male descendants, according to the provisions of the Imperial House Law.

Article III. The Emperor is sacred and inviolable.

Article IV. The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.

Article V. The Emperor exercises the legislative power with the consent of the Imperial Diet.

Article VI. The Emperor gives sanction to laws and orders them to be promulgated and executed.

Article VII. The Emperor convokes the Imperial Diet, opens, closes and prorogues it, and dissolves the House of Representatives.

Article VIII. The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law.

* Ito H., Commentaries on the Constitution of the Empire of Japan, Tokyo, 1889, 1906.

Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said Ordinances, the Government shall declare them to be invalid for the future.

Article IX. The Emperor issues or causes to be issued, the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no Ordinance shall
in any way alter any of the existing laws.

Article X. The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon).

Article XI. The Emperor has the supreme command of the Army and Navy.

Article XII. The Emperor determines the organization and peace standing of the Army and Navy.

Article XIII. The Emperor declares war, makes peace, and concludes treaties.

Article XIV. The Emperor declares a state of siege.

The conditions and effects of a state of siege shall be determined by law.

Article XV. The Emperor confers titles of nobility, rank, orders and other marks of honor.

Article XVI. The Emperor orders amnesty, pardon, commutation of punishments and rehabilitation.

Article XVII. A Regency shall be instituted in conformity with the provisions of the Imperial House Law.

The Regent shall exercise the powers appertaining to the Emperor in His name.

CHAPTER II. RIGHTS AND DUTIES OF SUBJECTS

Article XVIII. The conditions necessary for being a Japanese subject shall be determined by law.

Article XIX. Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any other public offices equally.

Article XX. Japanese subjects are amenable to service in the Army or Navy, according to the provisions of law.

Article XXI. Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

Article XXII. Japanese subjects shall have the liberty of
abode and of changing the same within the limits of law.

Article XXIII. No Japanese subject shall be arrested, detained, tried or punished, unless according to law.

Article XXIV. No Japanese subject shall be deprived of his right of being tried by the judges determined by law.

Article XXV. Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent.

Article XXVI. Except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolate.

Article XXVII. The right of property of every Japanese subject shall remain inviolate.

Measures necessary to be taken for the public benefit shall be provided for by law.

Article XXVIII. Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

Article XXIX. Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meeting and associations.

Article XXX. Japanese subjects may present petitions, by observing the proper forms of respect, and by complying with the rules specially provided for the same.

Article XXXI. The provisions contained in the present Chapter shall not affect the exercise of the powers appertaining to the Emperor, in times of war or in cases of a national emergency.

Article XXXII. Each and every one of the provisions contained in the preceding Articles of the present Chapter, that are not in conflict with the laws or the rules and discipline of the Army and Navy, shall apply to the officers and men of the Army and of the Navy.

CHAPTER III. THE IMPERIAL DIET

Article XXXIII. The Imperial Diet shall consist of two
Houses, a House of Peers and a House of Representatives.

Article XXXIV. The House of Peers shall, in accordance with the Ordinance concerning the House of Peers, be composed of the members of the Imperial Family, of the orders of nobility, and of those persons who have been nominated thereto by the Emperor.

Article XXXV. The House of Representatives shall be composed of Members elected by the people, according to the provisions of the Law of Election.

Article XXXVI. No one can at one and the same time be a Member of both Houses.

Article XXXVII. Every law requires the consent of the Imperial Diet.

Article XXXVIII. Both Houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law.

Article XXXIX. A Bill, which has been rejected by either the one or the other of the two Houses, shall not be again brought in during the same session.

Article XL. Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

Article XLI. The Imperial Diet shall be convoked every year.

Article XLII. A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by Imperial Order.

Article XLIII. When urgent necessity arises, an extraordinary session may be convoked, in addition to the ordinary one.

The duration of an extraordinary session shall be determined by Imperial Order.

Article XLIV. The opening, closing, prolongation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses.
In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.

Article XLV. When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution.

Article XLVI. No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one third of the whole number of the Members thereof is present.

Article XLVII. Votes shall be taken in both Houses by absolute majority. In the case of a tie vote, the President shall have the casting vote.

Article XLVIII. The deliberations of both Houses shall be held in public. The deliberations may, however, upon demand of the Government or by resolution of the House, be held in secret sitting.

Article XLIX. Both Houses of the Imperial Diet may respectively present addresses to the Emperor.

Article L. Both Houses may receive petitions presented by subjects.

Article LI. Both Houses may enact, besides what is provided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.

Article LII. No Member of either House shall be held responsible outside the respective Houses, for any opinion uttered or for any vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any other similar means, he shall, in the matter, be amenable to the general law.

Article LIII. The Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, except in cases of flagrant delicts, or of offenses connected with a state of internal commotion or with a foreign trouble.
Article LIV. The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

CHAPTER IV. THE MINISTERS OF STATE AND THE PRIVY COUNCIL

Article LV. The respective Ministers of State shall give their advice to the Emperor, and be responsible for it. All Laws, Imperial Ordinances and Imperial Rescripts of whatever kind, that relate to the affairs of the State, require the counter-signature of a Minister of State.

Article LVI. The Privy Councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of State, when they have been consulted by the Emperor.

CHAPTER V. THE JUDICATURE

Article LVII. The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor. The organization of the Courts of Law shall be determined by law.

Article LVIII. The judges shall be appointed from among those who possess proper qualifications according to law. No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment. Rules for disciplinary punishment shall be determined by law.

Article LIX. Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provision of law or by the decision of the Court of Law.

Article LX. All matters that fall within the competency of a special Court shall be specially provided for by law.

Article LXI. No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the
administrative authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by a Court of law.

CHAPTER VI. FINANCE

Article LXII. The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law.

However, all such administrative fees or other revenue having the nature of compensation shall not fall within the category of the above clause.

The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the Budget, shall require the consent of the Imperial Diet.

Article LXIII. The taxes levied at present shall, in so far as they are not remodelled by a new law, be collected according to the old system.

Article LXIV. The expenditure and revenue of the State require the consent of the Imperial Diet by means of an annual Budget.

Any and all expenditures overpassing the appropriations set forth in the Titles and Paragraphs of the Budget, or that are not provided for in the Budget, shall subsequently require the approbation of the Imperial Diet.

Article LXV. The Budget shall be first laid before the House of Representatives.

Article LXVI. The expenditures of the Imperial House shall be defrayed every year out of the National Treasury, according to the present fixed amount for the same, and shall not require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.

Article LXVII. Those already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and such expenditures as may have arisen by the effort of law,
or that appertaining to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.

Article LXVIII. In order to meet special requirements, the Government may ask the consent of the Imperial Diet to a certain amount as a Continuing Expenditure Fund, for a previously fixed number of years.

Article LXIX. In order to supply deficiencies, which are unavoidable, in the Budget, and to meet requirements unprovided for in the same, a Reserve Fund shall be provided in the Budget.

Article LXX. When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures, by means of an Imperial Ordinance.

In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto.

Article LXXI. When the Imperial Diet has not voted on the Budget, or when the Budget has not been brought into actual existence, the Government shall carry out the Budget of the preceding year.

Article LXXII. The final account of the expenditures and revenue of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board.

The organization and competency of the Board of Audit shall be determined by law separately.

CHAPTER VII. SUPPLEMENTARY RULES

Article LXXIII. When it has become necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order.

In the above case, neither House can open the debate, unless
not less than two-thirds of the whole number of Members are present, and no amendment can be passed, unless a majority of not less than two-thirds of the Members present is obtained.

Article LXXIV. No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

No provision of the present Constitution can be modified by the Imperial House Law.

Article LXXV. No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article LXXVI. Existing legal enactments, such as law, regulations, Ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Art. LXVII.
CHAPTER VII: GOVERNMENTAL RULES

Article 347. The Governor-General may, in his discretion, extend or suspend the powers or jurisdiction of the President in matters affecting the affairs of any territory or any part of the Union in the interest of the public peace and order.
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