

B A I L

Preliminary Statement:

Under Japanese law a person who is arrested can be held in custody up to 72 hours by the police and for an additional 20 days upon permission of the court. No form of bail is provided during this period, although he may be liberated without bail at the discretion of the police or court. Once the suspect is formally indicted (meaning when the prosecutor files the written indictment with the court) he may be entitled to bail. Bail is a matter of right except in certain enumerated cases:

1. Where the offense charged is punishable by death or life imprisonment;
2. Where the accused was previously convicted of an offense punishable by death or imprisonment for 10 years or more;
3. Where the accused has "habitually" committed an offense punishable with imprisonment for 3 years or more;
4. Where it is suspected that the accused may destroy evidence;
5. Where the name and dwelling of the accused is unknown.

In the excepted cases, bail is in the discretion of the court. Upon conviction bail automatically terminates. Pending appeal, bail is discretionary with the court in all types of cases. Bail may be either a cash deposit, negotiable securities, or a bond furnished by a third person; in the majority of cases, bail is a cash deposit.

Topics for Discussion:

1. Is the Japanese law too strict in denying bail before indictment?
2. Are the limitations on bail as a matter of right under Japanese law too strict? Would it be preferable to make bail a matter of right except in capital cases where the "proof is evident or the presumption great" as is the general situation in the United States? (In New York, however, bail is discretionary.)
3. What factors should be considered in determining the amount of bail? In the interest of protecting the community from dangerous accused, is it permissible to set bail at a high figure which the individual is not likely to be able to provide and, therefore, will remain in confinement? In setting the amount of bail should the likelihood of further crimes being committed by the same person be considered?
4. Role of the prosecutor in connection with the amount of bail.
5. What action can be taken by the courts or what new procedures provided, to prevent the commission of new offenses by persons on bail?
6. Are there any statistics showing the number of new offenses committed by persons while out on bail?
7. Revocation of bail.
8. Methods of enforcing forfeiture.

Contacts:

1. Visiting hearings before magistrates and U. S. commissions, or regular courts, for setting of bail.
2. Inspection of various bail forms--bonds of different types, receipts, court records.
3. Attending hearings on forfeiture of bail.
4. Conferences with judges and prosecutors as to topics for discussion. If possible, conference with Judge George Harris, Federal District Court, San Francisco, in re cancellation of Harry Bridges' bail pending appeal.

JUDICIAL ADMINISTRATION IN THE JAPANESE COURT SYSTEM

Preliminary Statement

The highest administrative organ in the Japanese Court system is the Judicial Assembly of the Supreme Court. This assembly is composed of the full panel of the Supreme Court of 15 judges under the chairmanship of the Chief Justice. Only high policy decisions of court administration are considered by this body.

Directly under the Judicial Assembly are the various bureaus that perform functions as follows: public relations with the Japanese people; supervision of court clerks and their duties; supervision of preparation of court records; number of judges assigned to various courts; rules of admission for Japanese and foreign lawyers; budget preparation; statistics concerning number of cases received, pending, etc. in the various courts; case load per judge, etc.; publication of opinions; training of judicial apprentices; personnel work; purchasing of supplies and equipment and construction; maintenance of liaison with Diet on budget problems and prepare list of possible candidates for judgeship for submission to the Cabinet which makes the appointment from a list of candidates designated by the Supreme Court.

Practical Japanese Problems

The most crucial practical problem in the court procedure of Japan today is the slowness of the courts in civil and criminal cases. There are many reasons for this condition and a few are as follows:

1. The tremendous revolutionary changes made not only in the Constitution but in rules of procedure in practice since the end of the war. Thus, many of the problems before the courts are being presented for the first time and neither the lawyers, procurators nor the courts are familiar with them. Consequently, they proceed cautiously.
2. Since the Dodge austerity program, finances are a serious problem. Buildings are needed; funds for salaries that will attract competent judges are lacking; obsolete typewriters and office equipment are in use and badly need replacement. Transportation is a serious problem for court personnel, lawyers and litigants.
3. There is no shorthand used in the courts. There are only a handful of shorthand experts in Japan as the language does not lend itself to any phonetic system. The court reporters merely take down in long hand the gist of the proceedings, so that there is no complete record of trial and, on appeal, witnesses are often recalled for their testimony. Experiments are being made with wire and tape recorders but so far this has proved unsatisfactory.
4. Every decision, both in civil and criminal cases, must contain in writing a full presentation of the facts and the legal reasons on which it is based.
5. The Japanese do not use the continuous trial system. A single court may be hearing 50 different cases on 50 consecutive days. The case heard on the first day may not be heard again for 2 or 3 months, then another day of trial is held. If a third day of trial is needed, it may be another two or three months before the litigants go to court again, etc. Experiments are being made with the continuous trial system and the tendency is to gradually shift over to that system.

6. All judges and lawyers are keenly aware of the deficiencies set forth above and are showing avid interest in improving the situation. Many conferences have been held between representatives of SCAP and bar associations and judges in an attempt to solve the problems.

7. There is no arraignment and plea system in Japanese criminal proceedings. Consequently, except for petty offenses disposed of by summary procedure in the Summary Court in which the accused is not required to appear, all cases must be tried. In contrast, in the United States the vast majority of offenses, serious as well as minor, are speedily disposed of by pleas of guilty.

8. The Japanese courts have no authority to punish for contempt. As a consequence litigant, accused, attorney and witnesses are frequently rather casual in their promptness and attendance. Some cases have been marked by considerable disorder.

9. Nearly all Japanese attorneys are individual general practitioners. Two-thirds of them work at home. They have little or no clerical help, and due to the language problem previously mentioned, most of them draft and copy all their own documents by hand.

Topics for Discussion

1. Technique and advantages of the continuous trial system.
2. Detailed explanations of the docket system.
3. Proper distribution of cases among judges and the assignment of judges from one district to another to equalize tasks imposed on each.
4. Practice of principle that judicial time should not be expended on non-judicial duties.
5. Duties of administrative branch in auditing reports of expenditures, purchasing equipment and supplies, etc.
6. Requirement of each judge to make periodical reports on the work in his court.
7. Functions of judge of trial court and intermediate review court, as well as of attorneys, with reference to record of trial.
8. In what type of cases do the courts in America write opinions in support of judgments.

Contacts

1. Director of the Administrative Office of the United States Courts
Supreme Court Building, Washington, D. C.
2. Arthur T. Vanderbilt
Chief Justice, Supreme Court of New Jersey
744 Broad St., Room 1615
Newark, N. J.

Organization Chart of the Supreme Court of Japan

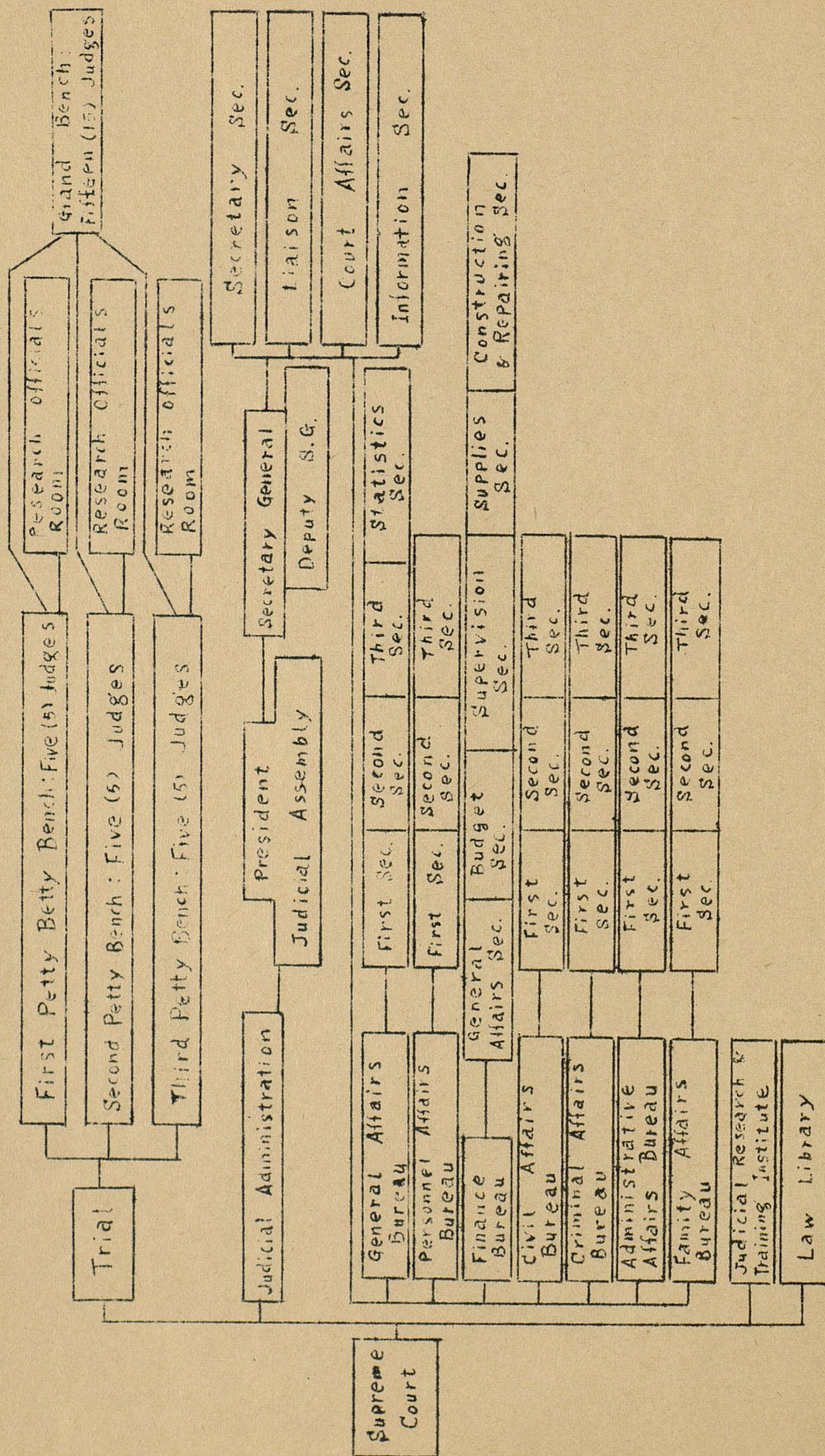
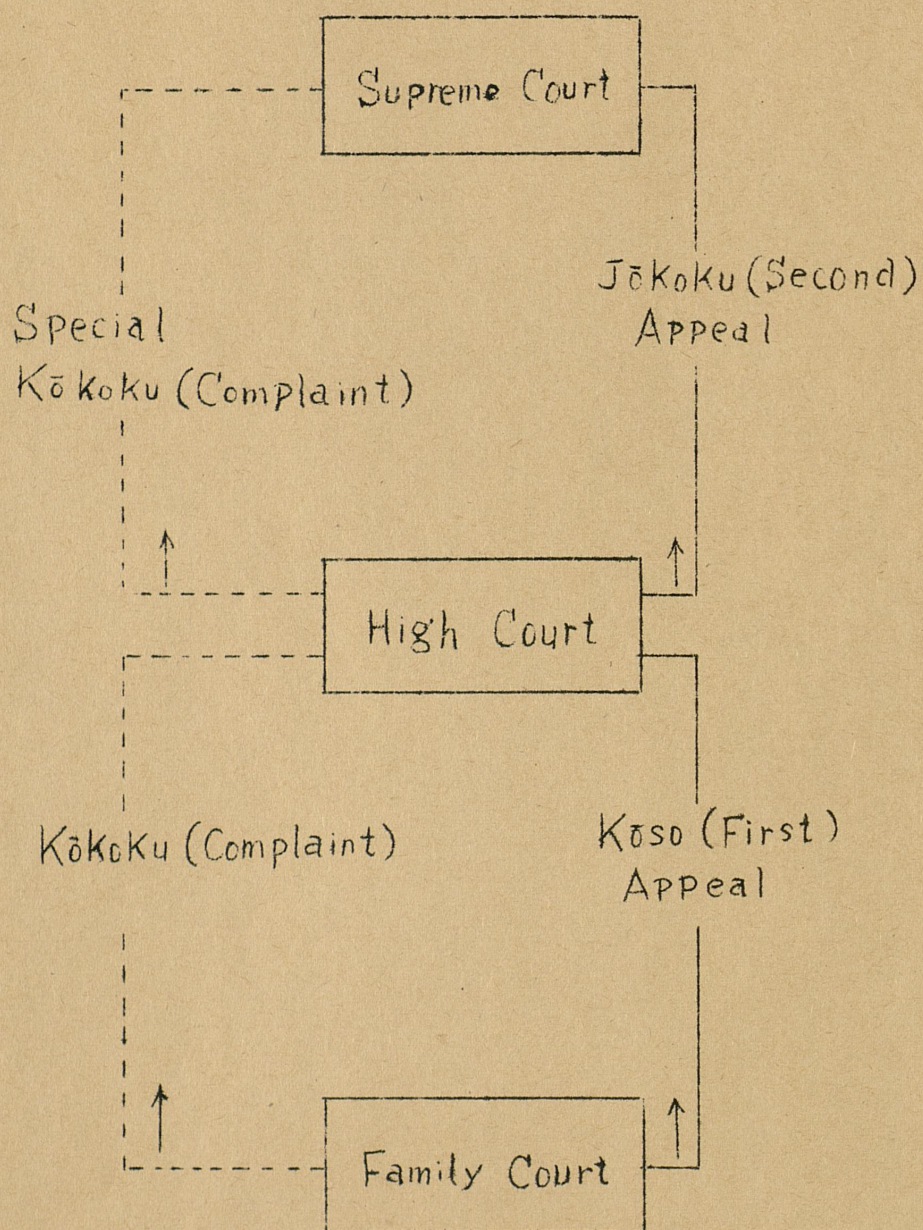
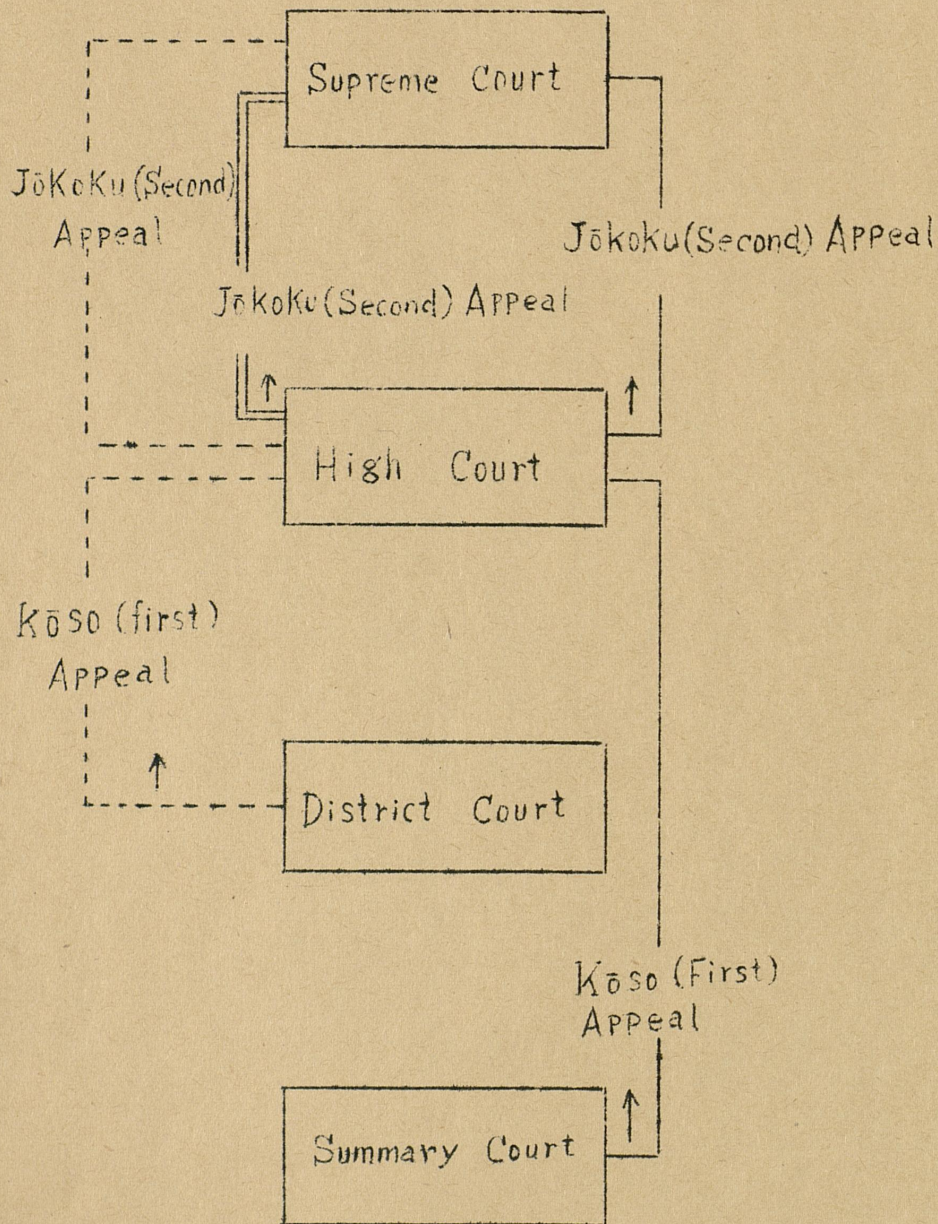


Chart of Grades of Instance in Family Case



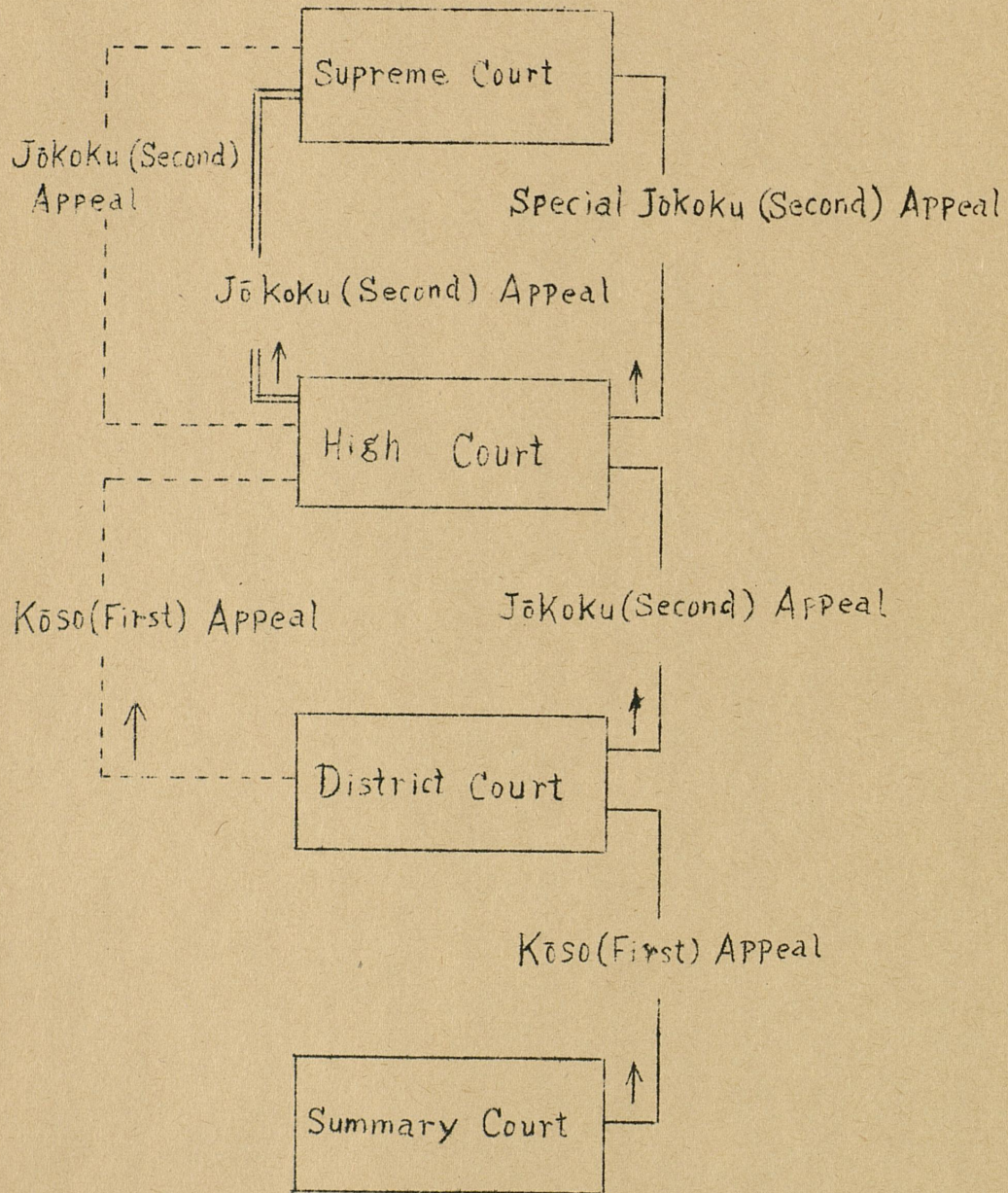
Remarks {
 —————> Adult criminal cases against juveniles.
 - - - - -> Other cases.

Chart of Grades of Instance in Criminal Action



- Remarks {
- Cases handled by the Summary Court in the first instance.
 - Cases handled by the District Court in the first instance.
 - ==> Cases handled by the High Court in the first instance.

Chart of Grades of Instance in Civil Action



- Remarks {
- Cases handled by the Summary Court in the first instance.
 - - - → Cases handled by the District Court in the first instance.
 - ⇒ Cases handled by the High Court in the first instance.

METHODS OF REACHING AND PREPARING APPELLATE COURT DECISIONS

Topics for Discussion:

1. Is it desirable to have shorter and more lucid opinions? Comment on the usual length of opinions.

2. Should appellate courts in reversing cases and granting new trials indicate their views on questions of law argued before them?

3. What is the best method of preparing more clear-cut and intelligible written opinions?

Comment on the following suggestions:

a. The author of an opinion must thoroughly familiarize himself with every essential fact in the case presented for decision.

b. He must determine the points of law involved.

c. He must ascertain the law which is applicable to the facts of the case presented for decision.

d. He must actually formulate in his own mind a logical plan of discussing the problems presented for determination.

4. Should all the essential and ultimate facts in the case be stated?

Should the opinion set forth evidence which is contrary to other evidence believed by the trier of fact?

Are lengthy quotations from other opinions useful?

Is there any value to voluminous statements of immaterial facts?

If the solution of one legal proposition will result in a reversal of the case, is there any point in discussing other collateral and immaterial propositions appearing in the case?

If the case is to be affirmed, should the opinion state and carefully analyze every proposition presented by the appealing party?

Should cases relied on by the appealing party be distinguished, if the case is to be affirmed? If the case cited by the appellant is clearly not in point because of factual differences is it necessary to discuss the facts, or will a simple statement that it is clearly inapplicable suffice?

5. Should the opinion contain a clear pronouncement of the question presented for the court's decision?

Should the question be directly answered either in the affirmative or negative before discussing the rule of law?

6. Should the opinion give the pertinent rule of law which is controlling, with appropriate citation of authorities?

In citing authorities is it necessary to cite more than one or two cases which are directly in point?

Does it add to the opinion to have a legal secretary copy a long list of authorities from some treatise or law journal in support of the declared proposition?

Is it necessary in the average case to give long and extended quotations from authorities cited in support of the proposition.

7. Should dictum be omitted from the opinion?

What is the value as precedents of discussion of collateral rules of law in an opinion? Does it clarify or tend to confuse the issue being decided by the court?

Should questions not absolutely necessary for disposition of the case pending before the court be discussed and decided in the opinion?

Which is more important, the reason for the answer to the problem presented, or the reasoning sustaining authorities cited in support of a rule of law? For example, are the reasons for the adoption of the statutory provision or decision cited material?

8. Should the opinion apply the rule of law announced by the court to the facts of the case?

Should the opinion state briefly and concisely or at length how the rule of law applies to the facts of the case?

9. Should the opinion state the ultimate decision?

In concluding the opinion should the judgment or order of the trial court, in so many words, be "affirmed", "reversed" or "modified"?

If the judgment is to be modified will it be helpful if the specific modification directed is set forth in the opinion?

10. Should the opinion contain diagrams, photographs, copies of exhibits or other devices which will tend to clarify and simplify it?

Give examples in actual opinions

11. What is the proper purpose of footnotes in an opinion?

Should they be used for excerpts of testimony?

Should they be used for incidental, collateral or additional cases not of sufficient importance to cite in the main opinion?

Is it helpful to set forth in a footnote the text of the statute or constitutional provision referred to?

12. Should the opinion scold the trial judge, counsel, parties or the colleagues of the author of the opinion?

Is it your duty to give your views on the numerous problems confronting humanity, or to decide the controverted questions presented?

Comment on the following sentences of Canon 19 of the Canons of Judicial Ethics of the American Bar Association:

"A judge should not yield to pride of opinion or value more highly his individual reputation than that of the Court to which he should be loyal. Except in case of conscientious difference of opinion on fundamental principle, dissenting opinions should be discouraged in Courts of last resort."

ORGANIZATION OF AND JURISDICTION OF FEDERAL COURTS

Preliminary Statement: The courts of Japan are organized in one national court system, consisting of the following courts:

Supreme Court: A Chief Justice and 14 Associate Justices. Court of last resort in civil and criminal matters.

High Courts: Eight High Courts and six High Court Branches. Intermediate appellate courts with original jurisdiction only in certain crimes of sedition.

District Courts: Forty-nine District Courts and two hundred and twenty-eight District Court Branches. The main courts of first instance for civil and criminal cases. Hears appeals in civil cases from Summary Courts.

Family Courts: Forty-nine Family Courts and two hundred and twenty-eight Family Court Branches. First instance courts for all matters relating to domestic relations and juveniles.

Summary Courts: Five hundred and fifty-nine Summary Courts. First instance courts for trial of petty civil and criminal matters and also for theft and robbery cases.

There are no municipal courts in Japan today, and no administrative courts.

Topics for Discussion

1. The Federal Judiciary: Its Organization

a. Constitutional provisions

(1) To what extent is the organization of the Federal judiciary, including that of the Supreme Court, wholly within the control of Congress?

(2) How does the Constitution provide for the tenure of office and mode of appointment of Federal judges and protect them against having their compensation reduced by Congress?

(3) What does the Constitution provide concerning the extent of the Federal judicial power?

(4) To what extent is the allotment of jurisdiction to the several Federal courts within the control of Congress?

(5) May Congress change the original jurisdiction of the Supreme Court concerning cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party?

(6) May Congress make exceptions to and regulations concerning the appellate jurisdiction of the Supreme Court, both as to law and fact, in all other cases declared by the Constitution to be within the Federal judicial power?

(7) What are the Constitutional limitations upon control of the practice and procedure in the Federal courts by Congress? (emphasis upon the inherent power to issue certain extraordinary writs, such as mandamus, injunction, certiorari, prohibition, etc., and, especially, to punish for contempt any disobedience to orders)

(8) Is the Judicial Article (Article III, Section 1 of the Constitution) self-executory? (emphasis upon the fact that even the Supreme Court which is expressly provided for in the Constitution, required for its existence an organizing statute of Congress)

b. Organization of the Supreme Court and inferior Federal Courts by statutes

- (1) The Supreme Court
- (2) Circuit Courts of Appeals
- (3) District Courts
- (4) Court of Claims
- (5) Courts of the District of Columbia
- (6) Court of Customs Appeals
- (7) United States Customs Court
- (8) United States Court of Customs and Patent Appeals
- (9) Tax Court of the United States
- (10) Emergency Court of Appeals

2. Federal Courts: Their Respective Jurisdictions

a. The Supreme Court

(1) In what instances has Congress granted jurisdiction to inferior Federal courts over cases within the original jurisdiction of the Supreme Court?

(2) Why is it that Congress may not give to the Supreme Court original jurisdiction in other cases than those specifically enumerated in the Constitution?

(3) What were the main steps in the process by which Congress greatly limited the right of litigants to resort to the Supreme Court by writ of error or appeal? (When were writs of error abolished?)

(4) What are the main classes of cases of and the present limitations on appeals of right to the Supreme Court? (from State courts, Circuit Courts of Appeals, "statutory" District Courts, cases certified by certain inferior federal courts, etc)

(5) Does the Supreme Court now have jurisdiction to reverse, modify, or affirm the judgments or decrees of all State courts of last resort in which is determined the constitutionality of a statute or treaty of the United States or of a State statute as tested by the Constitution of the United States?

(6) How much of the present appellate jurisdiction of the Supreme Court is discretionary in character?

(7) As Congress proceeded to greatly restrict appeals of right (in order to grant relief to the Supreme Court from the pressure of cases coming to it) how did it reserve the right to the Supreme Court by certiorari to review such cases, on such points of law as it may deem desirable?

(8) What are the prerequisites in order to obtain by certiorari a review by the Supreme Court of a decision of a State court? (Must the decision be final? Must a substantial Federal question be involved, or one not previously determined by the Supreme Court? Will the Supreme Court review a decision not in accord with applicable previous decisions of that court?)

(9) Is it true that in the exercise of its discretion, the Supreme Court grants petitions for certiorari upon the affirmative vote of four of its nine justices?

(10) Is there an appeal of right to the Supreme Court in the following cases:

Where a State court has upheld a State statute claimed to be repugnant to the Federal Constitution or laws or treaties of the United States?

Where a State court has held invalid a statute or treaty of the United States?

Where a Circuit Court of Appeals has held a State statute to be repugnant to the Federal Constitution or laws or treaties of the United States?

(11) What facts must a petitioner show in order to obtain review, by certiorari, of a decision of a Circuit Court of Appeals? (Conflict with decisions in other circuits? Conflict with decision of local or State tribunals? Conflict with applicable decisions of the Supreme Court? That the question involved has not been, and should be, decided by the Supreme Court? That a question of local law or an important question of general law has been improperly decided?)

b. Circuit Courts of Appeal

(1) Are the judgments of a Circuit Court final in the following classes of cases:

Where the jurisdiction of the District Court is dependent entirely upon the citizenship of opposite parties to the suit or controversy?

Cases arising under the patent laws? Under the copyright laws? Under the revenue laws? Under the criminal law? In admiralty cases?

(2) Is it true that where the jurisdiction of the District Court is invoked on the sole ground that a substantial question under the Federal Constitution, Federal statutes or treaties is involved, the appellate jurisdiction is exclusively in the Supreme Court?

(3) Do Circuit Courts now have appellate jurisdiction to review final decisions of District Courts in all cases except where there is a direct appeal to the Supreme Court?

c. District Courts

(1) Do District Courts have any appellate jurisdiction?

(2) What exceptions are there to the general statement that the original jurisdiction of District Courts extends to the trial of all cases coming within the Federal judicial power for which statutory provision has been made?

3. General Consideration of the Jurisdiction of the Federal Courts

a. Federal Judicial Power

(1) May Federal judicial power be vested in other than Federal courts?

(2) May State courts be permitted, in the exercise of their respective jurisdictions, to deal with causes which are within the Federal judicial power?

(3) Are all cases of the following classes within the Federal judicial power:

Cases in law and equity arising under the Constitution and laws and treaties of the United States?

Cases affecting ambassadors and other public ministers and consuls? (Does this include representatives of the US or only those accredited to the US?)

Cases of admiralty and maritime jurisdiction?

(4) Are all controversies of the following classes within the Federal judicial power:

Between two or more States?

Between a State and a citizen of another State?

Between citizens of different States?

Between citizens of the same State claiming lands under grants of different States?

Between a State or the citizens thereof and foreign States, citizens or subjects?

b. What are the classes of cases in which Federal Jurisdiction is made exclusive?

(1) Admiralty Cases?

(2) Prize Cases?

(3) Patent, Copyright and Bankruptcy laws Cases?

- (4) Cases in which the US is a party, controversies between the States of the Union, suits by a State against citizens of another State?
- (5) Suits affecting ambassadors, other public ministers and consuls?
- c. What are the ancillary powers of Federal courts? (including inherent power to punish for contempt and to make rules governing their own procedure)
- d. Do the Federal courts have power to issue writs of habeas corpus? Under what circumstances?
- e. May the States control or limit the exercise of Federal judicial power?
- f. What constitutes a "Federal question"? (That is, what is the technical meaning of "a case arising under the Constitution, laws or treaties of the United States"?)
 - (1) Does a case involve a Federal question simply because, in the progress of the litigation, it becomes necessary to refer to or give a construction to the Federal Constitution or laws of the United States?
 - (2) Is the fact that the defendant may set up a Federal right, privilege, or immunity sufficient to bring the case within the scope of Federal judicial power?
- g. What is the purpose of and what are the statutory provisions for removal of suits from State to Federal Courts?

INTERNAL PROCEDURE OF US SUPREME COURT
AND STATE SUPREME COURTS

Topics for discussion

1. Oral argument:

Is it encouraged?
Is oratory discouraged?
How is the questioning by justices carried on during the oral argument?

2. Conferences of the Justices:

How frequent and long are they?
Does every justice speak on every matter, whether an important case or a minor motion?
In what order do they speak and vote?
Does each justice state the pleadings, facts, and arguments as well as his conclusions, or is this done first by the Chief Justice?
Must each justice state reasons for his vote?

3. Assignment by the Chief Justice of cases for opinion-writing:

Is the assignment made after discussion and vote at the conference? Is the vote ever postponed until an opinion has been brought in by one justice?
If the Chief Justice is in the majority of a divided court does he always assign the opinion-writing to one of the majority?
If the Chief Justice is in the minority of a divided court who assigns the opinion-writing?
Does the Chief Justice have sole control over the assignments? Are his assignments ever questioned?

4. Distribution of draft opinions in print, for consideration by individual justices in advance of conference:

Is this practice followed and how is it carried out?
Is this followed by discussion of the draft opinions at subsequent conferences?
What is the practice concerning recirculation of revised opinions and writing dissents?

5. Rehearings:

Are rehearings discouraged?

6. Form of handing down opinions:

Is it the practice to hand down opinions in writing which are summarized orally from the bench by the justices who have written them for the court?

CONTEMPT OF COURT

Contempt of Court in Japan:

Unlike the American courts, Japanese courts do not have any broad power to punish for contempt. The theory of inherent power to punish for contempt to preserve the dignity and authority of the court does not exist in Japanese law. Prior to the new Constitution adopted in 1946 Japanese judges, instead of being independent, were under the executive branch of the government, and as representatives of the Emperor apparently had no difficulties in preserving order in the presence of the court.

Japanese penal law makes it a crime to interfere with or obstruct official business (Art. 95, Penal Code), but this, of course, does not permit the imposition of summary punishment, requiring instead the use of regular procedures as in the case of any other crime.

Authority for direct action by the court is severely limited. Under Article 71 of the Court Organization Law (Law 59 of 1947), a court may exclude from its presence anyone who interferes with its functions or who behaves improperly and may "issue such other orders or take such measures as are necessary for the maintenance of order". This is not interpreted as including authority to impose summary punishment. Under Article 71 (2) the judge may call in the police to maintain order.

Under Articles 150, 160, 133 and 137 of the Criminal Code of Procedure (Law 131 of 1948) the court has the power to impose by a ruling a fine up to ¥ 5,000 (\$13.89) if a witness fails to appear when called, refuses to testify, refuses to be sworn, or refuses to permit examination of his person.

Topics for Discussion:

1. Necessity for authority to punish for contempt.
2. Discussion of types of conduct constituting direct and indirect contempt, criminal and non-criminal contempt.
3. Nature of hearing in contempt proceedings: distinctions between indirect, direct, criminal, and civil contempts; summary action by judge; use of witnesses, affidavits, records, etc.; jury trial (in certain Federal cases).
4. Role of prosecutor in contempt hearings.
5. Different types of punishments imposed; factors considered in determining punishment; fines; confinement; barring attorneys from further participation in proceedings of the case; etc.

Contacts:

Arrangements will be made to attend any actual contempt hearings that are in session in State or Federal courts.

In addition, topics will be discussed with judges and prosecutors.

If possible, it is desired to confer with the following:

1. Judge Medina, Federal District Court of New York, in connection with the contempt proceedings in the conspiracy trial of the 11 Communists.
2. Judge Goldsborough, Federal District Court of the District of Columbia, in connection with various contempt hearings over which he has presided, particularly those involving labor disputes and labor leaders such as John L. Lewis.
3. Judge George Harris, Federal District Court of California, San Francisco, in connection with contempt proceedings in the Harry Bridges trial.

PROBLEMS INVOLVED IN TRIALS OF NUMEROUS ACCUSED

Topics for Discussion:

1. In general, special non-legal problems in connection with trials where there are several defendants, e.g.: Communist conspiracy case tried before Judge Medina
2. Arrangement for orderly procedure in each phase of the case; decided by court, or by agreement
3. Number of lawyers permitted each accused; extent to which each may participate in the trial
4. Sharing of time as to opening statements; arguments; closing summations; etc.
5. Limitations of witnesses
6. Cross-examination in behalf of each accused
7. Maintaining order; role of prosecutor in this connection

Contacts:

Prosecutors and judges, Federal and State courts, who have had experience with such trials

ORGANIZATION AND OPERATION OF BAR ASSOCIATIONS

Preliminary Statement

Since Japan has, under the Lawyers Law (No. 205 of 1949), what is known in the United States as an integrated bar, the bar associations are of great importance to the welfare and independence of the profession and the supervision of its members.

There is one bar association for each of the 48 prefectures, except that for historical reasons there are three in Tokyo. There is a national organization known as the Japan Federation of Bar Associations which unifies and coordinates the activities of the local associations. In order to practice all lawyers must pass an examination, be duly registered and become members of their local association.

Bar associations are organized on a basis similar to associations in the United States with the usual officers and committees

There are only approximately 6,000 lawyers admitted to the bar in Japan in a population of some 80,000,000. In the principal cities of Japan the number of attorneys are as follows:

<u>City</u>	<u>Populations (1947)</u>	<u>Attorneys (1949)</u>
Tokyo	5,000,771	2410
Osaka	1,559,310	586
Kyoto	996,660	196
Yokohama	814,379	120
Kobe	607,079	180
Nagoya	853,085	207

The foregoing figures do not include judges and procurators (prosecutors) who are not considered lawyers and who have their own, voluntary associations.

Topics for Discussion

1. Types of bar associations in the United States
 - a. National
 - b. State
 - c. Local
 - d. Specialized
2. Organization of various types
 - a. Permanent staff
 - b. Members; voluntary and compulsory (integrated bar); judges, prosecutors, lawyers in government employ, private practitioners, etc.
 - c. Dues
 - d. Statistics as to membership; per cent of total lawyers, etc.
3. Sectional organization for large associations

4. Position of American Bar Association as an over-all, coordinating institution
5. Publications (Get sample copies)
 - a. National and local
 - b. Subject matter of periodicals; bar activity news, legal articles, reports of cases, etc; magazines, bulletins, etc
 - c. Bar directories
 - d. Sponsoring publication of texts, studies, etc
 - e. Standard forms
6. Educational activities
 - a. Standards for legal education; American Bar Association; state associations
 - b. Post-admission legal education; legal institutes
 - c. Essay contests to promote legal scholarship
7. Insurance and Benefit Plans for Members; hospitalization; etc
8. Printing, mimeographing, typing services for members furnished by association or organized on cooperative basis
9. Legal aid work (See separate outline)
10. Legislation
 - a. Analysis of pending legislation
 - b. Developing and sponsoring a bar legislative program; reforms concerning courts, procedure, basic laws, etc
11. Prevention of unauthorized practice of law
12. Disciplinary activities as to members of bar; grievance committee; disbarment proceedings; canon of legal ethics
13. Participation in selection and election of judges

Contacts

1. Visit headquarters of American Bar Association, Chicago
2. Attend annual meeting of American Bar Association, Washington, D.C.
3. Visit offices of local bar associations, New York

LEGAL AID

Preliminary Statement

In Japan there are no organizations corresponding to legal aid societies or lawyers reference plans for furnishing assistance and representation to low income or indigent persons. On an individual basis, however, lawyers frequently accept clients who can pay little or nothing for their services. It is desired to obtain information on legal aid organizations in the United States.

Topics for Discussion

1. Inadequacy of volunteer work
2. Distinction between various types of aid:
 - (a) Legal Aid Societies
 - (b) Reference plans
 - (c) Low cost bureaus
3. Participation of bar associations in organization and operation
4. Legal aid organizations:
 - (a) How organized
 - (b) Staff; permanent; part time; pay for services; volunteer services
 - (c) Quarters
 - (d) Source of income; donations; fees for legal services
 - (e) Connection with court-appointment of counsel in criminal cases
5. Reference Plans
 - (a) Organizational set-up
 - (b) Primarily to provide advice and aid for middle class groups who can pay reasonable fees; amount of fees charged
 - (c) Lawyers participating
 - (d) Supervision; role of bar association
 - (e) Public advertising
6. Low-cost bureaus
 - (a) Organizational set-up -- differs from reference plans but designed to assist same groups of people
 - (b) Volunteer or paid staffs
 - (c) Quarters
 - (d) Public advertising
 - (e) Necessity of outside financial aid to bear part of cost

Contacts

1. Martin V. Callagy, Chief Attorney, Legal Aid Society,
New York
2. Legal Referral Service of the Bar Association, 42 West
44th St., New York.
3. Orison S. Marden, Committee on Legal Aid Work, American
Bar Association, 14 Wall Street, New York 5, N.Y.

PUBLICATION OF COURT OPINIONS AND OTHER RESEARCH MATERIAL

Preliminary Statement

Since the reorganization of the Japanese Courts following the adoption of the new Constitution in 1947, the Supreme Court is publishing all its own opinions, and a selection of the opinions of the High Court (the intermediate court of review). There is no publication of lower court opinions. Opinions under the old Constitution were published privately from 1905 to 1947. There are some earlier opinions which are of little value. All told, Japanese reports of cases occupy scarcely 10 or 12 feet of shelf space.

Topics for Discussion

1. Value of a systematic report of court opinions.
2. Preparation of syllabi and digests.
3. Shepherd's Citators; their use and preparation.
4. Index to Legal Periodicals.

Contacts

1. Clerk of Supreme Court to observe method of preparing texts of Supreme Court opinions for publication; preparation of syllabi.
2. Edward Thompson Company, Brooklyn, New York.
3. Bancroft Whitney Company, San Francisco, Calif
4. H. W. Winson Company, 950-72 University Avenue, New York 52, N. Y., to observe preparation of Index to Legal Periodicals.

ARRAIGNMENT AND PLEAS

Preliminary Statement:

Section 291 of the Japanese Criminal Code of Procedure provides that "The indictment shall be read aloud by the public procurator upon opening the public trial." However, no provision is made requiring the defendant to plead to the indictment. As a result all criminal cases undergo the various stages of a complete trial and it is necessary for the procurator to prove every material fact alleged in the indictment even though the defendant may desire to admit his guilt of the offense charged.

The criminal court calendars of all Japanese courts are congested and the trials of most criminal cases are of long duration. The situation is attributed in part to the absence of a system permitting pleas of guilty (It is said that in the United States upwards of 75% of all convictions result from pleas of guilty by the defendants).

Because of the special importance of this subject extensive information is desired concerning the operation of the arraignment and plea system in various courts of the United States.

Suggested Topics for Discussion:

1. What would be the effect upon the operation of the U.S. courts if all criminal cases were required to be tried either by the judge or the jury?
2. In receiving pleas of guilty what specific steps are usually taken by the judge to safeguard the rights of the defendant? Is counsel generally required?
3. To what extent does the judge examine the evidence before passing sentence upon a defendant who has entered a plea of guilty?
4. In passing sentence upon a defendant who has entered a plea of guilty to what extent is the judge's decision influenced by the opinion of the prosecutor or the pre-trial investigation report of the probation officer?
5. Are guilty pleas always disposed of in open court and in the presence of witnesses, jurors and spectators?
6. What reasons are usually sufficient to justify the court in permitting the defendant to plead guilty to a lesser offense than that charged in the indictment? What measures are taken to prevent abuse of this privilege?
7. Role of prosecutor as to suggesting sentence.
8. As a matter of actual practice is formal arraignment usually waived?
9. Statistics as to the number of cases disposed of by way of pleas of guilty as compared with those disposed of by trial before jury or judge. Of the total percentage of those pleading guilty, what percentage are pleas to the offense charged as compared with pleas to a lesser offense?

Contacts:

1. Visit sessions of the Federal and state courts when defendants are being arraigned and sentenced on their pleas of guilty.
2. Conferring with prosecutors and judges on various aspects.

GRAND JURY SYSTEM

Preliminary Statement

Under Japanese law a suspect is brought to trial by the filing of an indictment by the procurator (prosecutor) in the court.

The closest approach to the grand jury in Japan is the "Inquest of Prosecution," provided by Law No. 147 of 1948. This law specifies that there shall be an inquest in the area of each district court. It consists of a panel of eleven members, selected by lot from qualified voters. The inquest is empowered to hear complaints against decisions of a procurator in refusing to prosecute in a particular instance. They have authority to call and question witnesses, subpoena and examine documents, and to make findings and recommendations to the Chief Procurator of the High Court. Their conclusions, however, are advisory only, not being binding upon the prosecuting authorities. Sufficient time has not yet lapsed to warrant a fair appraisal of the value of this system.

Suggested Topics for Discussion

1. Merits and demerits of the grand jury system in the United States courts and State courts. Is the Grand Jury system still a useful institution considering the fact that it has been abolished in England except for cases involving treason and certain political offenses?

2. Use of grand jury to protect procurators from pressure, reprisals, etc. (In Japan, civil suit may be instituted against public officials under Article 709 of the Civil Code: "A person who violates intentionally or negligently the rights of another is bound to make compensation for damage arising therefrom." Recently a group of communist defendants, acquitted in a well known conspiracy case, filed suit against the prosecutors under this statute.)

3. Types of cases where prosecution is permitted on information as a matter of right.

4. Types of cases where prosecution may be instituted on information when the accused waives indictment by the grand jury.

5. Statistics as to the number of cases disposed of by information as compared to those disposed of by grand jury indictment.

6. Method of selection of members of the grand jury

7. Actual procedure followed by the grand jury

Contacts

1. Federal and State courts and prosecutors

2. If possible, attending grand jury session.

3. Studying documents and obtaining copies of forms, etc., in connection with grand jury proceedings

TRIAL JURY SYSTEM

Preliminary Statement

The Japanese Jury Law of 1923 provided for trial by jury in cases involving life imprisonment or death. In cases where the punishment was more than three years (except certain political offenses), a jury trial could be had upon demand of the accused. Due to the reactionary trend in political thinking, the use of the jury system never became common, and by the end of the war it was completely banished. The new constitution of Japan, adopted in 1947, makes no reference to trial by jury. Consequently, in both criminal and civil cases facts are tried by the court. However, the Court Organization Law (Law No. 59 of 1947) provides "The provisions of this law shall in no way prevent the establishment by other statutes of the jury system for criminal cases." No enabling statute has been passed.

Suggested Topics for Discussion

1. Comparison of average judgments by jurors with judgments by judge; as to bias, emotion, correctness, etc
2. Role of the jury in the democratic system of checks and balances in the government. Is it necessary as a safeguard against totalitarianism, bureaucracy, etc?
3. Corruption of jurors
4. The jury commission; how selected; safeguards against control by political majority parties
5. Selection of jurors; method; the problem of getting the best qualified individuals; women as jurors; exemptions from jury service
6. Role of the judge in jury trials
7. Cost of jury trials as compared with non-jury trials; more time required; accommodations for jurors; additional personnel; etc
8. Number of jurors; use of alternates
9. Provisions for less than unanimous verdicts
10. Statistics; number of and types of criminal cases in which jury trials were waived; same for civil cases

Contacts

1. Jury commissioners of Federal and State courts.
2. Observation of actual selection of jury list by commission; examination of jurors for qualifications by commission.
3. Observation of selection of jury panel in specific cases; also charge to jury by trial judge.
4. Observation of duties of bailiffs, clerks, and other personnel in connection with the jury system; inspections of jurors quarters; etc.
5. Obtaining copies of forms and other documents used in connection with selection of the jurors, performance of their duties, etc.
6. Discussions of system with a few lawyers, judges and prosecutors.

CIVIL RIGHTS

Preliminary Statement: On November 3, 1946 a new Constitution was adopted in Japan containing an elaborate Bill of Rights for the Japanese people. It guarantees many rights subsequently proclaimed by the United Nations in its Universal Declaration of Human Rights. The Japanese Supreme Court was charged for the first time in Japanese history with the grave responsibility of finally determining the constitutionality of all laws, orders, regulations or official acts under the new Constitution. It has therefore assumed the historic role of becoming a guardian of the civil rights of the people, as the US Supreme Court has been under the American Constitution. A few months after the enforcement of the new Constitution on May 3, 1947, a Civil Liberties Union, similar to the American Civil Liberties Union, was founded in Japan to protect basic human rights. Soon after, a Civil Liberties Bureau was established in the Attorney-General's Office of Japan, resembling the Civil Rights Section of the US Department of Justice. A system of regional Civil Liberties Commissioners was created throughout Japan to work in cooperation with the Bureau. However, effective governmental sanctions and prosecution of civil rights violations are lacking. Moreover, neither the Japanese Civil Liberties Union nor Bureau have the right to file briefs in the courts in important civil liberties cases as amicus curiae, or friend of the court. In the United States the right of private and public agencies to file amicus curiae briefs has been long recognized by the rules of the Supreme Court and has been extremely important in the field of civil rights. Such a rule could be enacted by the Supreme Court of Japan under its new constitutional rule-making power.

Suggested Topics for Discussion:

1. What is the significance of the Universal Declaration of Human Rights?

- a. How does the Declaration compare with the Bills of Rights of US and Japanese Constitutions?
- b. What is the history of adoption of the Declaration by the UN General Assembly?
- c. What are the Problems of Implementing the Declaration?

The Covenant of Human Rights
The work of UN Commissions and Human Rights
Division of the UN Secretariat

2. What has been the Historic Role of the US Supreme Court as a guardian of civil rights?

- a. How far has the Supreme Court protected the Bill of Rights?

Before the Civil War
1870 - 1925
Since 1925
In time of war or civil disturbance
In connection with
Slavery or peonage
Freedom of speech
Freedom of press
Contempt of Court
Censorship
Right of Assembly
Freedom of Religion
Education
Voting
Fair trials
Searches and seizures

Self-incrimination
Double jeopardy
The right to counsel
Labor relations
Congressional committees

- b. What are the Supreme Court Rules for the use of amicus curiae briefs in civil rights cases?

Old rule of the Supreme Court
New rule of the Supreme Court
Practical problems and considerations involved in granting permission for filing such briefs to public or private agencies in civil rights cases
Illustrations of requests for permission to file such briefs and of the briefs themselves
Evaluation of the importance of such briefs to the Court

3. What is the significance of the Civil Rights Section Experiment in the US Department of Justice?

- a. What was its purpose?
b. Who started it?
c. What has it achieved?
d. What are the imperfections in the federal civil rights enforcement machinery?

What are the weaknesses in the statutory tools?
How can investigation and prosecution of civil rights violations be improved?
How can cooperation of police and prosecutors be better obtained?
Should the status of the Section be elevated within the Department of Justice?

- e. What type of governmental sanctions are most effective to safeguard civil rights?

What types of criminal penalties?
What types of civil remedies?
What kind of administrative action? Publicity, negotiation, orders, withholding financial aid?

- f. What are the proposals now being considered in the US to strengthen the machinery for the protection of civil rights?

Report of the President's Committee
on Civil Rights (1947)
S. 1725, the Civil Rights Bill introduced in the US Senate by Mr. McGrath on April 28, 1949

4. What is the significance of the long fight for civil rights in the United States by the American Civil Liberties Union?

- a. What is the organization, method of operation and scope of activities of the Union?
What are its principles?
How does it work?
Who supports it?
Who sets its policies?

b. What use does the Union make of amicus curiae briefs?

Explanation

Illustrations

Contacts:

American Civil Liberties Union, New York City

United Nations, Lake Success, New York

United States Supreme Court, Washington, DC

United States Department of Justice, Washington, DC

JUDICIAL REVIEW OF CONSTITUTIONALITY OF LEGISLATION
AND ADMINISTRATIVE ACTS

Preliminary Statement:

Article 81 of the new Constitution of Japan, enforced since May 3, 1947, provides: "The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act." This article expressly recognized in Japan, for the first time in its history, the principle that the courts are the final interpreters of the constitutional powers not only of executive and administrative officers but of the legislature itself. Although not expressly stated in the United States Constitution, this power of judicial review of constitutionality of statutes and administrative acts has nowhere received the development and extended application that it has received in the United States. Therefore, one of the primary objectives of the Japanese Supreme Court Mission to the United States is to study the operation of this peculiarly American doctrine.

Suggested Topics for Discussion:

1. What is the origin and significance of the American doctrine of supremacy of the Constitution?
 - a. Early discussions and opinions prior to ratification of Constitution.
 - b. What are the leading decisions justifying judicial nullification of legislation?
 - c. What is the effect of an unconstitutional statute?
2. What are the number and nature of Supreme Court decisions holding legislation invalid?
 - a. Before the Civil War.
 - b. Between the Civil War and 1900.
 - c. 1900 to 1933.
 - d. 1933 to 1937.
 - e. 1937 to the present.
 - f. Broad classification of the categories of cases.
 - g. Evaluation of the statistics.
 - What have been the trends and why?
 - How important is the power with respect to federal laws compared with state laws?
3. What principles have been adopted by the Supreme Court for the exercise of its judicial power?
 - a. Why does the Court confine itself to actual cases instead of giving advisory opinions or taking on legislative or administrative functions?
 - b. Why does the court refuse to deal with purely political questions?
 - c. Why will the court decide questions of constitutional validity of legislation only when these questions are necessarily presented and must be decided?
 - d. Why does the court refuse to review questions of legislative policy?

e. How far does the court use principles of "natural law" to help construe the Constitution?

f. How far does the court refuse to be bound by the doctrine of stare decisis?

g. Illustrate and explain the foregoing principles.

4. What are the nature of Supreme Court decisions reviewing the Constitutionality of Administrative Acts?

a. Decisions concerning delegation of legislative power.

b. Decisions concerning delegation of judicial power.

c. Grounds for judicial review of administrative determinations.

d. How is the doctrine of due process of law applied to administrative proceedings?

Contacts:

Judges, lawyers and law professors to conduct seminars.

e. How far does the court use principles of "natural law" to help construe the Constitution?

f. How far does the court refuse to be bound by the doctrine of stare decisis?

g. Illustrate and explain the foregoing principles.

4. What are the nature of Supreme Court decisions reviewing the Constitutionality of Administrative Acts?

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d. How is the doctrine of due process of law applied to administrative proceedings?

Contacts:

Judges, lawyers and law professors to conduct seminars.

ADDITIONAL INFORMATION ON PROJECT NO. 117 -
JAPANESE SUPREME COURT MISSION

I. BACKGROUND AND INTERESTS OF PARTICIPANTS

(1) TANAKA, Kotaro AGE: 60 OCCUPATION: Judge

BIOGRAPHICAL DATA

PRESENT POSITION: Chief Justice of the Supreme Court
of Japan

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Chief Justice Tanaka graduated from the Law Division, Imperial University of Tokyo, in 1914. He served as professor of commercial law and jurisprudence at the Tokyo University, was a member of the Imperial Academy in 1941, and was Director of School Administration Bureau in the Ministry of Education from October, 1945, to May, 1946. In May, 1946, he became the Minister of Education. After one year in the Cabinet, he was elected to the House of Councillors (the Upper House of the Japanese Diet) where he remained until 3 March 1950, at which time he was appointed Chief Justice of the Japanese Supreme Court.

As the Chief Justice of the Supreme Court, he heads the judicial branch of the Government, which under the new Constitution has become independent of the executive. As such his status is equal in significance to the Prime Minister and the Speaker of the House of Representatives. He is responsible for the discharge of duties incumbent upon the post such as presiding over the collegiate court in trials of last resort and over the Judicial Assembly, as well as for the over-all administration of judicial affairs including supervision of lower courts. His position is comparable to that of the Chief Justice of the United States Supreme Court.

KNOWLEDGE OF ENGLISH:

Speaking: Fair Reading: Good

Understanding of Spoken Language: Good

HISTORY OF TRAVEL ABROAD:

Prior to and during World War II, he travelled extensively throughout the world. From 1919 to 1922 he went abroad to conduct special research in the field of commercial law, spending two months in the United States; 1 year in France; 1 year in Austria, Italy and Switzerland; about 6 months in England; and 3 months in Germany. In 1935 and 1936, he went to the United States, France, Italy and other western European countries on an exchange of professors program between Italy and Japan. From May to October of 1939, he went on a lecture tour in the South American countries, visiting universities in Brazil and Argentina, and also travelled through Chili, Peru, Panama, Mexico, and the United States. In 1943, he visited China at

the request of the Far Eastern Problems Research Institute to conduct research on commercial practices.

MEMBERSHIP IN ORGANIZATIONS:

Member of the International Culture Advancement Association from 1946 to date; Imperial Gift Foundation from 1945 to 1946; Japan Red Cross Society from 1945 to 1946 (Councillor of); Tokyo Catholic Student Association from 1945 to 1946; Imperial Academy from 1941 to date; National Learning and Study Society from 1942 to date.

MILITARY RECORD: None.

PUBLICATIONS:

Chief Justice Tanaka is a scholar and an educator, and has written many books and treatises in a wide variety of fields. Some of them are as follows: Treatise on Commercial Law; Corporation Law; Bills of Exchange Law; Theory of World Law (3 Vol.); Studies on Philosophy of Law (2 Vol.); Law and Morals; Law, Religion and Authority; Legal Positivism of Legalist School in Ancient China; Education and Politics; Studies on Commercial Law (2 Vol.), Logic of Law Concerning Balance Sheet; and a number of others.

SPECIFIC FIELDS OF INTEREST

Chief Justice Tanaka's specific fields of interest are jurisprudence, commercial law and international law, and also philosophy, religion, music, and painting. His religion is Roman Catholic.

He is especially interested in the following subjects:

- a. Expedition of trial proceeding - general problems related thereto; powers vested in the presiding judge to control the trial procedure.
- b. Contempt of court - as related to expediting trials and some concrete examples of contempt of court cases.
- c. Judicial Review - Court's power to review constitutionality of legislation, types of cases appealed on the ground of unconstitutionality and the effects of appeals on such a ground upon the question of speedy proceedings. Abuse by lawyers who raise constitutional questions.
- d. Trial procedure in cases involving mass offenses such as a case of communistic uprising or mass violence. Police power of presiding judge. How does he prevent the defendants from engaging in political propaganda work?

- e. Social Status of Judges - Station in life enjoyed by a judge; restrictions placed upon his personal activities such as expression of opinion on government policies, religion, or on political views; his attack upon communism; his participation in a movement designed to promote a particular political view, etc.
- f. Legal Education - The extent of teachings in legal philosophy in law schools in addition to practical legal training.
- g. Natural Law - New trend in the field of natural law; its effect upon the academic circles; effect of establishment of the Natural Law Institute at the University of Notre Dame, Indiana.
- h. General topics as UNESCO v. Communism; academic freedom and communism; political activities of university students.

(2) MANO, Tsuyoshi AGE: 62 OCCUPATION: Lawyer

BIOGRAPHICAL DATA

PRESENT POSITION: Associate Justice, Supreme Court
of Japan

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Justice Mano graduated from the Tokyo University, Law Department, in 1914. In the same year, he was admitted to the bar and remained in practice for 33 years until his appointment to the Supreme Court in August 1947. While in practice, he served as the President of the Second Tokyo Bar Association and held membership in the various committees of the Federation of Bar Associations of Japan. Later in 1947, he became the president of the Federation. He also served on the Cabinet Committees on Investigation of National Trial System, Selection of Lawyers, the Public Office Qualification, and the Consultative Committee for Designation of Judges; and the Justice Ministry Committees on Revision of Law for Compulsory Execution and Sale by Auction, Selection of Probational Lawyers, Judicial Legislation, Revision of Lawyer's Law, and Establishment of the Supreme Court. He also taught Civil Code at the University of Tokyo for many years.

His position is comparable to that of an Associate Justice of the United States Supreme Court.

KNOWLEDGE OF ENGLISH:

Speaking: Fair Reading: Good

Understanding of Spoken Language: Fair

HISTORY OF TRAVEL ABROAD:

China in August, 1919, for a short visit; Korea from 1929 to 1931 to handle a suit in Seoul District Court.

MEMBERSHIP IN ORGANIZATIONS:

Member of the Second Tokyo Bar Association from 1940 to 1947; The Japan Chinaware Society from 1946 to 1950; the Suemono (Old Chinaware) Society from 1941 to 1947; the Japan Poetry Society from 1940 to date; the Association of University Students from 1940 to date; the Artistic Appreciation Foundation from 1948 to date.

PUBLICATIONS:

Justice Mano has written and published several books and treatises, among which are Legal Questions involved in Earthquakes and Fires; and Articles on the Commercial Code, the Bankruptcy Law, and the Court Organization Law.

MILITARY RECORD: None

SPECIFIC INTERESTS:

- a. Trial procedure in the United States Supreme Court - from acceptance to disposal, method of assignment of cases, order in which Justices express their opinions.
- b. Conduct of Judicial Conference.
- c. Expedition of trials - practical measures adopted by the Supreme Court.
- d. Propriety of Single Judge System as against the Collegiate System.
- e. Contempt of Court - particularly examples of contempt of court cases arising in the Supreme Court.

Judge Mano expressed the wish to visit the office of a representative Lawyer.

- c. How far does the duty of a court go in civil and in criminal cases to find the true facts? In Japan there exists a strong trust and expectation of the people that the court is responsible for finding the true facts of the case. Inasmuch as the parties usually lack skill and experience in their pleadings, the role of the presiding judge in the Japanese courts has always been leading and very active. In the United States, apparently the Judge leaves the finding of the true facts to the initiative of the parties.
- d. Bail and Parole System in the United States; their institutions and practices; conflict between the individual rights of the accused and the protection of society as a whole. Public sentiment in Japan prevails that criminals should not be at large.
- e. Inter-relationship between Judge and other court officials, such as Clerks, Bailiffs and marshalls.
- f. Use of stenographers as court reporters.
- g. How are judgments prepared? Form of judgment and decisions. When and how are opinions written?
- h. In the Appeal System are only those issues being considered by the court which have been raised by the parties? Does a complete or partial retrial take place in certain cases? It should be noted that in Japan of the past a criminal case when appealed was retried all over again. This has been abolished by the new Code of Criminal Procedure.

(4) ISHISAKA, Shuichi AGE: 55 OCCUPATION: Judge

BIOGRAPHICAL DATA

PRESENT POSITION: President of Sendai High Court

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Judge Ishisaka graduated from the Tokyo Imperial University, Law Department, in 1919. After his graduation, he served in the Justice Ministry in various capacities, such as clerk, secretary, director, and division chief. Later, he served as Judge of the Hineji Local Court and the Tokyo Court of Appeal. In 1947, he was appointed to the Tokyo High Court to sit in the collegiate bench and in 1948, he became the President of the Sendai High Court.

His position as well as responsibilities are the same for the District of the Sendai High Court as described in connection with President Abe.

KNOWLEDGE OF ENGLISH:

Speaking: Poor Reading: Poor

Understanding of Spoken Language: Poor

HISTORY OF TRAVEL ABROAD:

Manchuria, North China and Korea from October, 1940, to November, 1940, on a tour to study and observe judicial system in those countries.

MEMBERSHIP IN ORGANIZATIONS:

Member of Tokyo Inquest of Supervision Association from 1944 to 1945.

MILITARY RECORD: None

PUBLICATIONS: None

SPECIFIC INTERESTS:

His special field is in Criminal Procedure and Judicial Administration, and he is particularly interested in the following subjects:

- a. Jurisdiction of Federal and State courts in criminal cases.
- b. Expedition of Trial Proceedings; possible measures within the powers of the court. How is the coordination among the bench, bar, and prosecution being achieved? The judge complains about lack of such coordination in Japan.
- c. Functions of auxiliary organs of trial such as court clerk, bailiff, marshal, etc.?
- d. Police power of the presiding judge in contempt of court. This problem has not yet been ade-

quately solved in Japan. Its solution has become particularly urgent in connection with regrettable events in recent communist mass trials.

Mr. Ishisaka expresses the wish to visit some law schools and universities, because he is interested in the education and training of judges and lawyers. He also wants to speak to judges who have experience in labor cases.

(5) HIGUCHI, Masaru AGE: 43 OCCUPATION: Judge

BIOGRAPHICAL DATA

PRESENT POSITION: Judge of Tokyo High Court and concurrently Chief, Liaison Section, General Secretariat, Supreme Court

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Judge Higuchi graduated from the Imperial University of Tokyo, English Law Division, in 1933. Until February, 1947, from the time of his graduation, he served in the Ministry of Justice in various capacities including that of clerk, secretary, procurator, and judge of a lower court. In February, 1947, he was appointed secretary of the former Supreme Court, and as such, participated in the drafting of the Court Organization Law as well as of the Rules of Civil and Criminal Procedure. He was taken over by the newly established Supreme Court and in June, 1949, was appointed to his present position, and simultaneously, was assigned to the post of Chief, Liaison Section, General Secretariat of the Supreme Court.

KNOWLEDGE OF ENGLISH:

Speaking: Good Reading: Good

Understanding of Spoken Language: Good

HISTORY OF TRAVEL ABROAD:

Manchuria and China in 1942 in order to attend conference of criminal affairs held under the auspices of the Manchurian Government.

MEMBERSHIP IN ORGANIZATIONS:

Member of the Japan Legal Association from 1933 to date; the Japan Jurisprudence Society from 1938 to date; the Imperial Japanese Association of Reservists from 1944 to 1945.

MILITARY RECORD: Private in Signal Corps from July to August, 1945.

PUBLICATIONS: None

SPECIFIC FIELDS OF INTEREST:

Judge Higuchi's special field is Criminal Justice and he is particularly interested in the following subjects:

- a. Assignment of cases; study and observation of the actual case load of a criminal judge in the United States and his possibilities of expediting trials.
- b. Observation of appeal procedures in a criminal case.
- c. Difference between trial by jury and trial without jury, particularly with regard to the law of evidence.

- d. By what considerations is the amount of penalty being determined?
- e. Study of records of criminal cases, if possible, in the Communist case tried by Judge Medina in New York and in the case against Harry Bridges tried by Judge Harris in San Francisco.
- f. Observation of hearings in Narcotic Cases and Tax Evasion Cases. Interested in the question of how severe offenses in these fields are being punished.
- g. How does the Certiorari procedure in the Supreme Court operate? Who handles the application when it first comes in? What considerations control the court in accepting or not accepting the case?
- h. Practical operation of the Bail System. Observation particularly in regard to security by bonds which does not exist in Japan.
- i. Functions of Bureaus of Information in the American Court.
- j. Impeachment procedure against judges in the United States. Particularly interested in the question as to what extent errors or negligence on the part of judges in the performance of their duties would be recognized as reason for impeachment.
- k. What are the reasons for the unique prestige and respect the judges in the United States enjoy among people.
- l. To what extent have the suggestions of the National Commission of Law Enforcement been followed and implemented by legislation?

(6) KISHI, Seiichi AGE: 42 OCCUPATION: Judge

BIOGRAPHICAL DATA

PRESENT POSITION: Judge of Tokyo High Court and concurrently Chief of Criminal Affairs Bureau, Supreme Court

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Judge Kishi graduated from the Tokyo University, Law Division, in 1931. Upon graduation, he served in the Ministry of Justice in various capacities, including that of a court clerk, secretary, public procurator, and judge of inferior court. Upon the establishment of the New Supreme Court, he was appointed the Director of the Criminal Affairs Bureau of the Supreme Court Secretariat, and in July, 1949, he was appointed Judge of the Tokyo High Court. To date, he holds the two posts concurrently. The duties and responsibilities of his position include drafting of the Supreme Court rules relating to criminal procedure and management of the administrative affairs concerning operation of criminal justice.

KNOWLEDGE OF ENGLISH:

Speaking: Poor Reading: Fair

Understanding of Spoken Language: Fair

HISTORY OF TRAVEL ABROAD:

Changchiakow, Inner Mongolia, from 1939 to 1940 for the purpose of working for the Mongolian Government as Chief of Criminal Affairs Section, Justice Department.

MEMBERSHIP IN ORGANIZATIONS:

Member of Imperial University Graduates from 1931 to 1939; Judicial Association from 1931 to date; and Study Society of Criminal Cases of the Supreme Court from 1938 to date.

MILITARY RECORD: None

PUBLICATIONS:

Report on the New Code of Criminal Procedure and Analysis of the New Code of Criminal Procedure.

SPECIFIC FIELDS OF INTEREST:

Indicated the same subject interest as Mr. Higuchi.

II. PURPOSE OF THE PROJECT

Under the new Constitution of Japan, for the first time in her history, the judiciary has become a genuine and equal third branch of the government independent of the executive under whose supervision it had been heretofore. The Supreme Court was established in August, 1947, as the apex of the court system under the new organizational set-up. New powers were conferred upon Japan's highest tribunal which the former Supreme Court did not possess. Among the most important is the power of judicial review over all legislative and administrative acts, a power which makes the Court the real guardian of the Constitution. Other prerogatives with the exercise of which Japan's judiciary was not familiar in the past are the rulemaking power and those administrative powers connected with organizational and personnel matters of the courts. Since the position and functions of the judicial branch of the Japanese government have been patterned on the American model to a greater extent than those of the two other branches, the project in which the newly appointed Chief Justice of the Supreme Court, Kotaro TANAKA, one associate justice, and other leading judges of Japan will participate, is of eminent significance. The project is designed to enable the leader of the Japanese judiciary and his colleagues to observe and study the structure and operations of the United States Supreme Court and of other representative Federal, State and Local courts in the United States. While the group will spend most of its time in Washington, D.C., and New York City, the program will be left flexible. As far as time permits visits will also be made to other agencies connected with judicial administration, leading universities, and the United Nations. The over-all objective of the Mission will be to collect information of value in improving the dignity, efficiency, and independence of the Japanese judiciary.

The group will be particularly interested in the personal and procedural aspects of the United States Supreme Court; in the way this Court makes use of its power of judicial review; and manages its administrative business. Since the Japanese court procedure has been frequently criticized for its slowness, the group will have to observe the methods of how American courts organize their dockets; how they prevent delaying tactics of the parties; and how they master comprehensive evidence. The Administrative Office of the United States Court will be contacted for the purpose of obtaining much of this information.

More specifically, the members of the Mission will be particularly interested in the following topics, concerning which, as far as possible, detailed outlines will be forwarded to the DA and to the sponsoring agency, the Institute of International Education in New York City:

- a. Organization, jurisdiction, and procedure of Federal and State courts;
- b. Judgments, decisions, and rulings;
- c. Publication of Court Decisions;
- d. Judicial Review over Constitutionality of Legislative and Administrative Acts.
- e. Court reporting;

- f. Administration of Courts, particularly in connection with the promotion of efficiency and expediting of trials;
- g. Civil Liberties;
- h. Grand Jury System;
- i. Trial Jury System;
- j. Arraignment Pleas in Criminal Cases;
- k. Contempt of Court;
- l. Certiorari Procedure in the United States Supreme Court;
- m. Mass trials;
- n. The Law of Evidence;
- o. Bail;
- p. Traffic Courts;
- q. Legal Aid.

INSTITUTE OF INTERNATIONAL EDUCATION

August 16th 1950

Name: THE JAPANESE SUPREME COURT MISSION - Project #117

Number of people in project: 6

Number of days in U.S.A.: 45

Appropriate time: October 15, 1950

Panel planning the program:

1. Expert consultant: MR. CHARLES L. KADES,
Hawkins, Delafield & Wood, 67 Wall Street, NYC
2. Army representative: PHILIP WOODYATT
3. IIE representative: LUCY BADGER

I. Composition of Group

A group of judges who are concerned with the organization and functions of the American judicial system. The group comprises the newly-appointed Chief Justice of the Supreme Court of Japan, an Associate Judge of the Supreme Court, the President of the Fukuoka High Court, the President of the Sendai High Court, and two judges of the Tyokyo High Court, one of whom is the Chief of Liaison Section, General Secretariat, of the Supreme Court and the other of whom is the Director of the Criminal Affairs Bureau of that Secretariat. The judges are keenly interested in the structure and operation of the Supreme Court of the United States as well as the highest state courts and the trial and intermediate appellate courts of both the federal and state judicial systems.

All members of the group graduated from Tokyo University Law School. The Chief Justice (Tanaka) is sixty years old and formally was Minister of Education and a member of Parliament. Early in his career he became a law professor and he is a prolific author of books and articles on legal, philosophical, historical, religious, (Catholic) and other learned subjects. The Associate Judge of the Supreme Court (Mano) is sixty-two years old and was a prominent practicing lawyer until his appointment to the Supreme Bench. The two Supreme Court secretariat judges (Higuchi, age 43; Kishi, age 42) were bureaucrats in the abolished Japanese Ministry of Justice. The Sendai High (intermediate appellate) Court judge (Ishisaka) is fifty-five years old and was a judge of the Supreme Court which was abolished when the new Constitution became effective on May 3, 1947. The Fukuoka High (intermediate appellate) Court Judge (Abe) is fifty-seven and has been a judge for various courts for ten years.

The judges (except Judge Mano) have served in official capacities in Mongolia, Manchuria, or China, but only the Chief Justice has previously visited the United States, Europe, and Central and South America. Judge Mano has been prominent in bar association activities and served on the Public Office Qualifications Appeal Committee of the Japanese Cabinet during the Occupation.

The group thus represents a blend of intellectual interests which equips it for an intensive survey of the Anglo-American system of law and justice to the end of enabling the participants upon their return to Japan to assume leadership in the current reorientation of Japanese jurisprudence.

II. Basic Objectives of the Program

The basic objective of the mission is to provide the newly-appointed Chief Justice and the other members of the group an opportunity to observe the whole gamut of the administration of justice in the United States, with a view to improving the administration of justice in Japan.

The Relationship of the Courts to the People.

a. To analyze and explain the sources of American jurisprudence; the higher law background of American constitutional law, with special reference to natural law and analytical jurisprudence, and their contributions to law as a social science.

b. To relate the history and development of the independence of the judiciary; to discuss the courts as the bulwark of the people's freedom and the relationship of the judiciary to the executive and to the legislature; to explain the concept of sovereignty as vested in the people and the expression of their will, their liberty of opinion and their freedom of action in relation to government and to the prohibitive, regulative, and proprietary functions of government; to discuss the role and significance of the courts in modern representative democracy, with especial reference to and emphasis on the concept of the rule of law and equality under law.

The Functioning of the Courts in the Organization of Government.

a. The Federal Courts.

1. To describe the structure of the national judiciary and constitutional and statutory provisions relative thereto; the organization and limited jurisdiction of the Supreme Court, the Courts of Appeal, and the District Courts, and the Court of Claims, the Customs Court, and the Tax Court, with emphasis on the independence of the judicial power.

2. To define and describe the national judicial power over persons and subject matter; the great writs of habeas corpus, mandamus, and injunction, their purposes and limitations; the power to pass upon constitutionality of statutes, federal and state, with emphasis on exercise of such powers to protect life and liberty of the individual.

3. To discuss the nature and functioning of the administrative process in the Federal Courts, with a detailed description of the methods of administering justice with equity, speed and dignity; to explain the role of the Administrative Office of the United States Courts, including procedural studies, probation, bankruptcy, and business administration, and the functions of clerks of court and the law officers, including United States attorneys and marshalls; and to emphasize the indispensability of scientific administration to attainment of the ends of justice.

b. The State Courts.

1. To explain the jurisdiction of state and local courts over great mass of litigation and extent of concurrent jurisdiction with federal courts; the structure of state courts from nisi prius courts to appellate courts of last resort; the work of special tribunals, including chancery courts, surrogates' or probate courts, juvenile and domestic courts.

2. To enumerate and distinguish various methods in selection of judges; their tenure, compensation, retirement and recall; their judicial powers, including power of contempt; their relationship to prosecuting attorneys and members of the bar generally and to courts of arbitration and conciliation.

3. To survey the manner in which state courts carry out the adjudicative process in civil cases and in protecting and enforcing the right of personal security, the right of personal liberty, and the right of private property, (including a description of structure, history and function of the jury in civil cases) and to explain state criminal procedure, with emphasis on safeguarding individual's constitutional rights during arrest, arraignment, bail, indictment, and trial; to describe the grand jury system and criminal trial procedures, including conviction, sentencing, and appeals, pointing out critical and constructive tendencies in the current administration of the law.

III. Character of Program Desired

Instruction at Seminars. In each area the program will provide for conferences between the Japanese judges and American judges, judicial officers and distinguished members of the Federal and State bars as well as law professors and scholars in the field of jurisprudence and legal philosophy. These conferences will be in the nature of seminars in the organization, structure, practice and procedures of the Federal and State judicial systems. In addition, the formulation of American law and policy in the safeguard of personal liberty against abusive use, at the same time effectively checking excesses of extremists, will be studied and considered.

Observation and Demonstration. In each area the program will provide for observation of the U.S. judicial process, in order that the group will be able to see the judicial process in action after having been instructed in its nature and theory. Day-to-day demonstrations of trial techniques, appellate procedures, and the law enforcement and adjudicative processes, will be a major part of the program and will include attendance at nisi prius trials, appellate arguments, and motion and equity calendars, covering civil and criminal cases of typical and varied types. The significance of what has been observed and demonstrated will be explained to the group, in order that in combination with the instruction at the seminars the group will gain a comprehensive understanding of the subject matter covered. The emphasis

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at all times will be on the practical, the specific, and concrete and the manner of solution of recurrent problems facing trial and appellate judges. Once the fundamental essentials have been expounded at the seminars and are understood by the Japanese, broad generalizations will be avoided and the approach will be pragmatic. In the elucidation of conceptual doctrines the application of those doctrines in the practical administration of justice will be stressed. Responsibility for avoiding ambiguities of expression or the exposition of exceptional or purely abstract theories and for hewing to the objectives of the program stated above will rest jointly upon the Institute of International Education's expert consultant and upon Dr. Alfred Oppler, Chief of the Legislative and Justice Division of the Legal Section, General Headquarters, Supreme Commander for the Allied Powers, and Mr. Frank Yamamoto, an able Nisei, interpreter and translator, who are accompanying the group to the United States.

Professional and Social Gatherings. The Chief Justice and his colleagues will be presented to the Chief Justice of the United States and the members of our Supreme Court, to the Attorney-General and other high justice officials, and to the judges, judicial officers and distinguished members of the Federal and State bar. In addition, organizations such as the Association of the Bar of the City of New York and the Commonwealth Club of San Francisco will be encouraged to arrange afternoon or evening social affairs at which the group will be guests with perhaps the Chief Justice responding to greetings by the president of the host organization. Luncheons with judges whose courts are observed by the group will also be arranged in order that the group may meet and converse informally with the judiciary. Apart from such semi-official luncheons, informal entertainment by individuals or organizations in the American communities visited will be given every encouragement. However, any attempt by organizations interested in influencing legislation or representing special interests to use the group as a mask for propagandizing any particular policy will be rejected. The details of the social program will be worked out on the spot in the area being visited by the group and will be geared to the balance of the program. Ample time will, of course, be allowed the separate members of the group to accept individual invitations and to engage in personal activities on their own without supervision and separately from the group.

IV. End-result of Study Program

The end-result of the program should be the discovery by the Japanese judges, first, that a democratic judicial system can properly, speedily and successfully administer justice and, second, that it can do this with the utmost efficiency and at reasonable cost of money and energy. The reformation and reorientation of Japanese jurisprudence toward democratic ideals must expand into efforts to improve, not only the system and methods

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of Japanese justice but also the personnel of the judiciary. Before the group finishes its visit here, it is necessary, therefore, to determine the appropriate stages in its study of American judicial administration at which to test the Japanese on their assimilation of the democratic viewpoint, and to make sure that the group carries back with it a clear and unequivocal democratic concept of equal justice under law.

Up to now the Chief Justice and his colleagues have thought, argued, written and dogmatized about the nature of justice, the source of law, the quality of the State, the essence and seat of sovereignty, popular power and imperial prerogative. The central field of discussion has been a huge arena of theory in which democratic political and legal principles have striven against the semantics of a bureaucracy steeped in Germanic feudal tradition. Amid this lofty atmosphere of scholasticism, the everyday administration of justice has tended to be put aside as a practical detail which clerks could handle after the learned philosophical doctors had agreed upon the correct dogma.

The idea of a "national polity" of Japan and the ideal of an "imperial way" of Japanese life have changed radically. Upon their return to Japan, the Chief Justice and his group will be able to assume dynamic leadership in perfecting the administration of justice and shaping the growth of democracy with practical skill and sagacity.

In old Imperial Japan no one who possessed power had ever long been at a loss as to how to use it; the sole question was: who should possess it? The result is that in the new democratic Japan it is getting to be harder for judges and lawyers to run a constitution than to frame one. For where a Court once might follow the whims of a Ministry of Justice, it must now follow the views of a nation broadened by the concept of constitutional responsibility.

A clear and unambiguous concept of what constitutes the democratic way of administering justice is not, however, widely current among Japanese judges or lawyers. Their old system adapted to the needs of a compact country with a highly centralized authoritarian government has been scrapped. In making their new judicial system work in a manner consistent with its democratic objectives, the Chief Justice of Japan and his colleagues must eliminate the bureaucratic ague which retards its growth. To achieve this, the group must absorb in thought and principle the American system by being exposed to and inhaling as much of the Federal and State judicial atmosphere as possible. The success of the Japanese Supreme Court mission will be measured by the initiative shown by the group upon their return to Japan in improving the caliber of the judges and the confidence of the people in the courts; no other examination or evaluation will serve as a substitute for this end-result; and every effort should be bent to accomplish this basic goal.

JAPANESE SUPREME COURT MISSION

1. BACKGROUND AND INTERESTS OF PARTICIPANTS

(1) TANAKA, Kotaro AGE: 60 OCCUPATION: Judge

BIOGRAPHICAL DATA

PRESENT POSITION: Chief Justice of the Supreme Court of Japan.

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Chief Justice Tanaka graduated from the Law Division, Imperial University of Tokyo, in 1914. He served as professor of commercial law and jurisprudence at the Tokyo University, was a member of the Imperial Academy in 1941, and was Director of School Administration Bureau in the Ministry of Education from October 1945 to May 1946. In May 1946 he became the Minister of Education. After one year in the Cabinet, he was elected to the House of Councillors (the Upper House of the Japanese Diet) where he remained until March 3rd, 1950, at which time he was appointed Chief Justice of the Japanese Supreme Court.

As the Chief Justice of the Supreme Court, he heads the judicial branch of the Government, which under the new Constitution has become independent of the executive. As such his status is equal in significance to the Prime Minister and the Speaker of the House of Representatives. He is responsible for the discharge of duties incumbent upon the post such as presiding over the collegiate court in trials of last resort and over the Judicial Assembly, as well as for the over-all administration of judicial affairs including supervision of lower courts. His position is comparable to that of the Chief Justice of the United States Supreme Court.

KNOWLEDGE OF ENGLISH :

Speaking: Fair Reading: Good

Understanding of Spoken Language: Good

HISTORY OF TRAVEL ABROAD

Prior to and during World War II, he travelled extensively throughout the world. From 1919 to 1922 he went abroad to conduct special research in the field of commercial law, spending two months in the United States; 1 year in France; 1 year in Austria, Italy and Switzerland; about 6 months in England; and 3 months in Germany. In 1935 and 1936 he went to the United States, France, Italy and other western European countries on an exchange of professors program between Italy and Japan. From May to October of 1939, he went on a lecture tour in the South American countries, visiting universities in Brazil and Argentina, and also travelled through Chili, Peru, Panama, Mexico, and the United States. In 1943 he visited China at the request of the Far Eastern Problems Research Institute to conduct research on commercial practices.

MEMBERSHIP IN ORGANIZATIONS:

Member of the International Culture Advancement Association from 1946 to date; Imperial Gift Foundation from 1945 to 1946; Japan Red Cross Society from 1945 to 1946 (Councillor of); Tokyo Catholic Student Association from 1945 to 1946; Imperial Academy from 1941 to date; National Learning and Study Society from 1942 to date.

MILITARY RECORD: None.

PUBLICATIONS:

Chief Justice Tanaka is a scholar and an educator, and has written many books and treatises in a wide variety of fields. Some of them are as follows: Treatise on Commercial Law; Corporation Law; Bills of Exchange Law; Theory of World Law (3 Vol.); Studies on Philosophy of Law (2 Vol.); Law and Morals; Law, Religion and Authority; Legal Positivism of Legalist School in Ancient China; Education and Politics; Studies on Commercial Law (2 Vol.); Logic of Law Concerning Balance Sheet; and a number of others.

SPECIFIC FIELDS OF INTEREST

Chief Justice Tanaka's specific fields of interest are jurisprudence, commercial law and international law, and also philosophy, religion, music and painting. His religion is Roman Catholic.

He is especially interested in the following subjects:

- a. Expedition of trial proceeding - general problems related thereto; powers vested in the presiding judge to control the trial procedure.
- b. Contempt of court - as related to expediting trials and some concrete examples of contempt of court cases.
- c. Judicial Review - Court's power to review constitutionality of legislation, types of cases appealed on the ground of unconstitutionality and the effects of appeals on such a ground upon the question of speedy proceedings. Abuse by lawyers who raise constitutional questions.
- d. Trial procedure in cases involving mass offenses such as a case of communistic uprising or mass violence. Police power of presiding judge. How does he prevent the defendants from engaging in political propaganda work?
- e. Social Status of Judges - Station in life enjoyed by a judge; restrictions placed upon his personal activities such as expression of opinion on government policies, religion, or on political views; his attack upon communism; his participation in a movement designed to promote a particular political view, etc.
- f. Legal Education - The extent of teachings in legal philosophy in law schools in addition to practical legal training.

TANAKA, Kotaro con'td.

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Japanese Supreme Court Mission.

- g. Natural Law - New trend in the field of natural law; its effect upon the academic circles; effect of establishment of the Natural Law Institute at the University of Notre Dame, Indiana.
- h. General topics as UNESCO v. Communism; academic freedom and communism; political activities of university students.

(2) MANO, Tsuyoshi

AGE : 62

OCCUPATION: Lawyer

BIOGRAPHICAL DATA

PRESENT POSITION: Associate Justice, Supreme Court of Japan.

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Justice Mano graduated from the Tokyo University, Law Department in 1914. In the same year he was admitted to the bar and remained in practice for 33 years until his appointment to the Supreme Court in August 1947. While in practice he served as the President of the Second Tokyo Bar Association and held membership in the various committees of the Federation of Bar Associations in Japan. Later in 1947 he became the president of the Federation. He also served on the Cabinet Committees on Investigation of National Trial System; Selection of Lawyers, the Public Office Qualification, and the Consultive Committee for Designation of Judges; and the Justice Ministry Committees on Revision of Law for Compulsory Execution and Sale by Auction, Selection of Probational Lawyers, Judicial Legislation, Revision of Lawyer's Law, and Establishment of the Supreme Court. He also taught Civil Code at the University of Tokyo for many years.

His position is comparable to that of an Associate Justice of the United States Supreme Court.

KNOWLEDGE OF ENGLISH:

Speaking: Fair Reading: Good

Understanding of Spoken Language: Fair

HISTORY OF TRAVEL ABROAD:

China in August 1919, for a short visit; Korea from 1929 to 1931 to handle a suit in Seoul District Court.

MEMBERSHIP IN ORGANIZATIONS:

Member of the Second Tokyo Bar Association from 1940 to 1947; The Japan Chinaware Society from 1946 to 1950; the Suemono (Old Chinaware) Society from 1941 to 1947; The Japan Poetry Society from 1940 to date; the Association of University Students from 1940 to date; the Artistic Appreciation Foundation from 1948 to date.

PUBLICATIONS:

Justice Mano has written and published several books and treatises, among which are Legal Questions involved in Earthquakes and Fires; and Articles on the Commercial Code, the Bankruptcy Law, and the Court Organization Law.

MILITARY RECORD: None

SPECIFIC INTERESTS:

- a. Trial procedure in the United States Supreme Court - from acceptance to disposal, method of assignment of cases, order in which Justices express their opinions.
- b. Conduct of Judicial Conference.
- c. Expedition of trials - practical measures adopted by the Supreme Court.
- d. Propriety of Single Judge System as against the Collegiate System.
- e. Contempt of Court - particularly examples of contempt of court cases arising in the Supreme Court.

Judge Mano expressed the wish to visit the office of a representative Lawyer.

(3) ABE, Hakaru

AGE : 57

OCCUPATION: Judge

BIOGRAPHICAL DATA

PRESENT POSITION: President of Fukuoka High Court

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Judge Abe graduated from the Tokyo Imperial University, Law Department, in 1918. Upon graduation, he entered the services of the Justice Ministry as judicial officer, and also as judge in various inferior courts. In 1946, he was appointed President of the Yokohama District Court; and, in 1947 he assumed his present post as President of the Fukuoka High Court.

The responsibilities of his position include supervision over the administrative affairs of the courts within the territorial jurisdiction of the Fukuoka High Court, an Intermediate Court of Appeal of which there are eight in Japan. He presides in the Judicial Assembly and in trials on civil and criminal cases.

His position is comparable to that of a Senior Judge of a Federal Court of Appeals.

KNOWLEDGE OF ENGLISH:

Speaking: Poor Reading: Fair

Understanding of Spoken Language: Poor

HISTORY OF TRAVEL ABROAD:

Changchiakow, Inner Mongolia, from September 1940 to April 1943.
Purpose: Accepted call of the Mongolian Government to the post of Vice Presidency of the Highest Court of Justice in that country.

MEMBERSHIP IN ORGANIZATIONS:

Member of Hosokai (Judicial Association) since 1919.

MILITARY RECORD: None

PUBLICATIONS: None

SPECIFIC INTERESTS:

His specific fields of interest are the Bankruptcy Law, Law and Morality, Culture and Art, World Affairs, etc., and, he is especially interested in the following subjects:

- a. How are the administrative affairs of the courts managed in the State and Federal system? What is the organization which would correspond to the Secretariat of Court in Japan; what are its functions and authority?
- b. Relationship between the Courts and Lawyers; the fundamental principles in maintaining smooth relationship; measures taken to correct disharmony.

- c. How far does the duty of a court go in civil and in criminal cases to find the true facts? In Japan there exists a strong trust and expectation of the people that the court is responsible for finding the true facts of the case. Inasmuch as the parties usually lack skill and experience in their pleadings, the role of the presiding judge in the Japanese courts has always been leading and very active. In the United States, apparently the Judge leaves the finding of the true facts to the initiative of the parties.
- d. Bail and Parole System in the United States; their institutions and practices; conflict between the individual rights of the accused and the protection of society as a whole. Public sentiment in Japan prevails that criminals should not be at large.
- e. Inter-relationship between Judge and other court officials, such as Clerks, Baliffs and marshalls.
- f. Use of stenographers as court reporters.
- g. How are judgments prepared? Form of judgment and decisions. When and how are opinions written?
- h. In the Appeal System are only those issues being considered by the court which have been raised by the parties? Does a complete or partial retrial take place in certain cases? It should be noted that in Japan of the past, a criminal case when appealed was retried all over again. This has been abolished by the new Code of Criminal Procedure.

(4) ISHISAKA, Shuichi

AGE: 55

OCCUPATION: Judge

BIOGRAPHICAL DATA

PRESENT POSITION: President of Sendai High Court

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Judge Ishisaka graduated from the Tokyo Imperial University, Law Department, in 1919. After his graduation, he served in the Justice Ministry in various capacities, such as clerk, secretary, director, and division chief. Later, he served as Judge of the Himeji Local Court and the Tokyo Court of Appeal. In 1947, he was appointed to the Tokyo High Court to sit in the collegiate bench and in 1948 he became the President of the Sendai High Court.

His position as well as responsibilities are the same for the District of the Sendai High Court as described in connection with President Abe.

KNOWLEDGE OF ENGLISH :

Speaking: Poor Reading: Poor

Understanding of Spoken Language: Poor

HISTORY OF TRAVEL ABROAD:

Manchuria, North China and Korea from October, 1940 to November 1940 on a tour to study and observe judicial system in those countries.

MEMBERSHIP IN ORGANIZATIONS:

Member of Tokyo Inquest of Supervision Association from 1944 to 1945.

MILITARY RECORD: None

PUBLICATIONS: None

SPECIFIC INTERESTS:

His special field is in Criminal Procedure and Judicial Administration, and he is particularly interested in the following subjects:

- a. Jurisdiction of Federal and State courts in criminal cases.
- b. Expedition of Trial Proceedings; possible measures within the powers of the court. How is the coordination among the bench, bar, and prosecution being achieved? The judge complains about lack of such coordination in Japan.
- c. Functions of auxiliary organs of trial such as court clerk, bailiff, marshal, etc.
- d. Police power of the presiding judge in contempt of court. This problem has not yet been adequately solved in Japan. Its solution has become particularly urgent in connection with regrettable events in recent communist mass trials.

ISHISAKA, Shuichi cont'd

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Mr. Ishisaka expresses the wish to visit some law schools and universities, because he is interested in the education and training of judges and lawyers. He also wants to speak to judges who have experience in labor cases.

(5) HIGUCHI, Masaru

AGE : 43

OCCUPATION: Judge

BIOGRAPHICAL DATA

PRESENT POSITION: Judge of Tokyo High Court and concurrently Chief,
Liaison Section, General Secretariat, Supreme Court.

MARITAL STATUS: Married

EDUCATION AND EMPLOYMENT:

Judge Higuchi graduated from the Imperial University of Tokyo, English Law Division, in 1933. Until February 1947, from the time of his graduation, he served in the Ministry of Justice in various capacities including that of clerk, secretary, procurator, and judge of a lower court. In February, 1947, he was appointed secretary of the former Supreme Court, and as such, participated in the drafting of the Court Organization Law as well as of the Rules of Civil and Criminal Procedure. He was taken over by the newly established Supreme Court and in June 1949 was appointed to his present position, and simultaneously, was assigned to the post of Chief, Liaison Section, General Secretariat of the Supreme Court.

KNOWLEDGE OF ENGLISH:

Speaking: Good Reading: Good
Understanding of Spoken Language: Good

HISTORY OF TRAVEL ABROAD:

Manchuria and China in 1942 in order to attend conference of criminal affairs held under the auspices of the Manchurian Government.

MEMBERSHIP IN ORGANIZATIONS:

Member of the Japan Legal Association from 1933 to date; the Japan Jurisprudence Society from 1938 to date; the Imperial Japanese Association of Reservists from 1944 to 1945.

MILITARY RECORD: Private in Signal Corps from July to August 1945.

PUBLICATIONS: None

SPECIFIC FIELDS OF INTEREST:

Judge Higuchi's special field is Criminal Justice and he is particularly interested in the following subjects:

- a. Assignment of cases; study and observation of the actual case load of a criminal judge in the United States and his possibilities of expediting trials.
- b. Observation of appeal procedures in a criminal case.
- c. Difference between trial by jury and trial without jury, particularly with regard to the law of evidence.

HIGUCHI, Masaru cont'd.

- d. By what considerations is the amount of penalty being determined?
- e. Study of records of criminal cases, if possible, in the Communist case tried by Judge Medina in New York and in the case against Harry Bridges tried by Judge Harris in San Francisco.
- f. Observation of hearings in Narcotic Cases and Tax Evasion cases. Interested in the question of how severe offenses in these fields are being punished.
- g. How does the Certiorari procedure in the Supreme Court operate? Who handles the application when it first comes in? What considerations control the court in accepting or not accepting the case?
- h. Practical operation of the Bail System. Observation particularly in regard to security by bonds which does not exist in Japan.
- i. Functions of Bureaus of Information in the American Court.
- j. Impeachment procedure against judges in the United States. Particularly interested in the question as to what extent errors or negligence on the part of judges in the performance of their duties would be recognized as reason for impeachment.
- k. What are the reasons for the unique prestige and respect the judges in the United States enjoy among people.
- l. To what extent have the suggestions of the National Commission of Law Enforcement been followed and implemented by legislation?

(6) KISHI, Seiichi

AGE: 42

OCCUPATION: Judge

BIOGRAPHICAL DATA

PRESENT POSITION:

Judge of Tokyo High Court and concurrently Chief of Criminal Affairs Bureau, Supreme Court.

MARITAL STATUS:

Married

EDUCATION AND EMPLOYMENT:

Judge Kishi graduated from the Tokyo University, Law Division, in 1931. Upon graduation, he served in the Ministry of Justice in various capacities, including that of a court clerk, secretary, public procurator, and judge of inferior court. Upon the establishment of the New Supreme Court, he was appointed the Director of the Criminal Affairs Bureau of the Supreme Court Secretariat, and in July 1949, he was appointed Judge of the Tokyo High Court. To date, he holds the two posts concurrently. The duties and responsibilities of his position include drafting of the Supreme Court rules relating to criminal procedure and management of the administrative affairs concerning operation of criminal justice.

KNOWLEDGE OF ENGLISH:

Speaking: Poor

Reading: Fair

Understanding of Spoken Language: Fair

HISTORY OF TRAVEL ABROAD:

Changchiakow, Inner Mongolia, from 1939 to 1940 for the purpose of working for the Mongolian Government as Chief of Criminal Affairs Section, Justice Department.

MEMBERSHIP IN ORGANIZATIONS:

Member of Imperial University Graduates from 1931 to 1939; Judicial Association from 1931 to date; and Study Society of Criminal Cases of the Supreme Court from 1938 to date.

MILITARY RECORD: None

PUBLICATIONS:

Report on the New Code of Criminal Procedure and Analysis of the New Code of Criminal Procedure.

SPECIFIC FIELDS OF INTEREST:

Indicated the same subject interest as Mr. Higuchi.

II. PURPOSE OF THE PROJECT:

Under the new Constitution of Japan, for the first time in her history, the judiciary has become a genuine and equal third branch of the government independent of the executive under whose supervision it had been heretofore. The Supreme Court was established in August 1947, as the apex of the court system under the new organizational set-up. New powers were conferred upon Japan's highest tribunal which the former Supreme Court did not possess. Among the most important is the power of judicial review over all legislative and administrative acts, a power which makes the Court the real guardian of the Constitution. Other prerogatives with the exercise of which Japan's judiciary was not familiar in the past are the rulemaking power and those administrative powers connected with organizational and personnel matters of the courts. Since the position and functions of the judicial branch of the Japanese government have been patterned on the American model to a greater extent than those of the two other branches, the project in which the newly appointed Chief Justice of the Supreme Court, Kotaro TANAKA, one associate justice, and other leading judges of Japan will participate, is of eminent significance. The project is designed to enable the leader of the Japanese judiciary and his colleagues to observe and study the structure and operations of the United States Supreme Court and of other representative Federal, State and Local courts in the United States. While the group will spend most of its time in Washington, D.C., and New York City, the program will be left flexible. As far as time permits visits will also be made to other agencies connected with judicial administration, leading universities, and the United Nations. The over-all objective of the Mission will be to collect information of value in improving the dignity, efficiency, and independence of the Japanese judiciary.

The group will be particularly interested in the personal and procedural aspects of the United States Supreme Court; in the way this Court makes use of its power of judicial review; and manages its administrative business. Since the Japanese court procedure has been frequently criticized for its slowness, the group will have to observe the methods of how American courts organize their dockets; how they prevent delaying tactics of the parties; and how they master comprehensive evidence. The Administrative office of the United States Court will be contacted for the purpose of obtaining much of this information.

More specifically, the members of the Mission will be particularly interested in the following topics, concerning which, as far as possible, detailed outlines will be forwarded to the DA and to the sponsoring agency, the Institute of International Education in New York City:

- a. Organization, jurisdiction, and procedure of Federal and State courts.
- b. Judgments, decisions, and rulings.
- c. Publication of Court Decisions.
- d. Judicial Review over Constitutionality of Legislative and Administrative Acts.
- e. Court reporting.
- f. Administration of courts, particularly in connection with the promotion of efficiency and expediting of trials.

- g. Civil Liberties.
- h. Grand Jury System.
- i. Trial Jury System.
- j. Arraignment Pleas in Criminal Cases.
- k. Contempt of Court.
- l. Certiorari Procedure in the United States Supreme Court.
- m. Mass trials.
- n. The Law of Evidence.
- o. Bail.
- p. Traffic Courts.
- q . Legal Aid.

II. PURPOSE OF THE PROJECT:

Under the new Constitution of Japan, for the first time in her history, the judiciary has become a genuine and equal third branch of the government independent of the executive under whose supervision it had been heretofore. The Supreme Court was established in August 1947, as the apex of the court system under the new organizational set-up. New powers were conferred upon Japan's highest tribunal which the former Supreme Court did not possess. Among the most important is the power of judicial review over all legislative and administrative acts, a power which makes the Court the real guardian of the Constitution. Other prerogatives with the exercise of which Japan's judiciary was not familiar in the past are the rulemaking power and those administrative powers connected with organizational and personnel matters of the courts. Since the position and functions of the judicial branch of the Japanese government have been patterned on the American model to a greater extent than those of the two other branches, the project in which the newly appointed Chief Justice of the Supreme Court, Kotaro TANAKA, one associate justice, and other leading judges of Japan will participate, is of eminent significance. The project is designed to enable the leader of the Japanese judiciary and his colleagues to observe and study the structure and operations of the United States Supreme Court and of other representative Federal, State and Local courts in the United States. While the group will spend most of its time in Washington, D.C., and New York City, the program will be left flexible. As far as time permits visits will also be made to other agencies connected with judicial administration, leading universities, and the United Nations. The over-all objective of the Mission will be to collect information of value in improving the dignity, efficiency, and independence of the Japanese judiciary.

The group will be particularly interested in the personal and procedural aspects of the United States Supreme Court; in the way this Court makes use of its power of judicial review; and manages its administrative business. Since the Japanese court procedure has been frequently criticized for its slowness, the group will have to observe the methods of how American courts organize their dockets; how they prevent delaying tactics of the parties; and how they master comprehensive evidence. The Administrative office of the United States Court will be contacted for the purpose of obtaining much of this information.

More specifically, the members of the Mission will be particularly interested in the following topics, concerning which, as far as possible, detailed outlines will be forwarded to the DA and to the sponsoring agency, the Institute of International Education in New York City:

- a. Organization, jurisdiction, and procedure of Federal and State courts.
- b. Judgments, decisions, and rulings.
- c. Publication of Court Decisions.
- d. Judicial Review over Constitutionality of Legislative and Administrative Acts.
- e. Court reporting.
- f. Administration of courts, particularly in connection with the promotion of efficiency and expediting of trials.

- g. Civil Liberties.
- h. Grand Jury System.
- i. Trial Jury System.
- j. Arraignment Pleas in Criminal Cases.
- k. Contempt of Court.
- l. Certiorari Procedure in the United States Supreme Court.
- m. Mass trials.
- n. The Law of Evidence.
- o. Bail.
- p. Traffic Courts.
- q . Legal Aid.

INDEX

JUDICIAL ADMINISTRATION IN THE JAPANESE COURT SYSTEM
METHODS OF REACHING AND PREPARING APPELLATE COURT DECISIONS
ORGANIZATION OF AND JURISDICTION OF FEDERAL COURTS
INTERNAL PROCEDURE OF U.S. SUPREME COURT AND STATE SUPREME COURTS
CONTEMPT OF COURT
PROBLEMS INVOLVED IN TRIALS OF NUMEROUS ACCUSED
BAIL
ORGANIZATION AND OPERATION OF BAR ASSOCIATIONS
LEGAL AID
PUBLICATION OF COURT OPINIONS AND OTHER RESEARCH MATERIAL
ARRAIGNMENT AND PLEAS
GRAND JURY SYSTEM
TRIAL JURY SYSTEM
CIVIL RIGHTS
JUDICIAL REVIEW OF CONSTITUTIONALITY OF LEGISLATION AND
ADMINISTRATIVE ACTS
ADDITIONAL INFORMATION ON PROJECT NO. 117 * JAPANESE SUPREME
COURT MISSION
PROBATION
MASS TRIALS

PROBATION

Preliminary Statement: There is no system of adult probation in Japan as known in the United States. In recent years numerous laws, however, have been enacted in Japan for the purpose of preventing crime and rehabilitating offenders. Law No. 142 of 1949 creates a National Offenders Prevention and Rehabilitation Commission (the NOPAR Commission) and two types of branch offices known as District Youth Offenders Prevention and Rehabilitation Commission (DYOPAR Commission) and District Adult Offenders Prevention and Rehabilitation Commission (DOPAR Commission). These commissions are external organs of the Attorney General's Office and are located at the situs of the eight High Courts of Japan with jurisdiction over the territorial area of such High Courts. Article 33 of this law places the following persons under the supervision of the NOPAR Commission and its branches.

1. Juveniles (accused of committing crime or otherwise incorrigible)
2. Persons on parole from reformatory.
3. Persons on parole from prison.
4. Juveniles who have been convicted and are under suspended sentences.

This law, however, does not give the Commission any jurisdiction whatever over adults who have received suspended sentences. Consequently, such adults are not only without supervision during the period covered by their suspended sentences but the conditions for revoking the suspended sentence and requiring service in the penitentiary are difficult of enforcement.

In the trial of criminal cases it is also the duty of the procurator to make recommendations to the judge concerning the nature and extent of punishment to be imposed within the limits of the penalty prescribed by statute for the particular crime.

Suggested Topics for Discussion:

1. Probation Officers:

- (a) Qualifications, methods of selection and removal; whether employees of court, city or county.
- (b) Salaries and term of appointment.
- (c) Number of officers in various cities.
- (d) General duties.
- (e) Average number of persons supervised per officer.

2. Investigation of Accused:

- (a) Nature of investigation; form and contents of report.
- (b) Method and sources of securing information.
- (c) Confidential character of report (officials entitled to inspect)
- (d) Liaison, if any, with prosecutor.
- (e) When presented to judge.

3. Probation of defendants:

- (a) Statistics; percentage of probation sentences following plea of guilty; also upon conviction by judge or jury.
- (b) Circumstances which are usually sufficient to justify probation (first offense, minor offense, past environment, family circumstances, assurance of future employment, personal supervision by sponsors, etc.)
- (c) Role of prosecutor. Does he usually express any opinions concerning probation, or differ with the contents of the pre-trial investigation report prepared by the probation officer?
- (d) Does the judge usually expect either the prosecutor or probation officer to express their individual opinion as to whether the defendant should be placed on probation?
- (e) Is defendant made aware of contents of pre-trial investigation report? If not, do statements of the defendant as a rule tend to contradict the information contained in such report?

4. Terms of Probation:

- (a) Period of probation; usual maximum and minimum.
- (b) Does a fine usually accompany probation sentences or are such fines exceptional cases?
- (c) Restitution, reparation of damage, or support of family, etc. as conditions.
- (d) Other usual terms of probation, such as maintaining fixed residence and employment, refraining from undesirable company, making periodic reports, etc.
- (e) Limitations on powers of judge to prescribe conditions of probation.

5. Post-Sentence Supervisory Activities:

- (a) Conferences of probation officer, if any, with judge or prosecutor concerning general policies.
- (b) Methods and extent of supervision usually exercised.
- (c) Activities of probation officer designed to aid and rehabilitate probationers.

6. Revocation of Probation:

- (a) Grounds of revocation.
- (b) Sources of information concerning violations.
- (c) Initiation of proceedings.
- (d) Relations between probation officer and prosecutor concerning revocation. Is concurrence of prosecutor necessary?
- (e) Hearings on revocation; informality of proceedings -- right of defendant to produce witnesses and contest proceedings, etc; extent of proof required.

7. Transfer of supervision over probationers to probation officers of other courts.

8. Annual report of probation officers concerning discharge of duties.

Contacts:

1. Conferences with:

- (a) U.S. District Court Probation Officers, State Court Probation Officers, Probation Officer of the District of Columbia.
- (b) Charles L. Chute, Executive Director of National Probation and Parole Association, 1790 Broadway, New York City.
- (c) Mr. F. Murray Benson, Chairman of Maryland State Board of Parole and Probation.
- (d) Richard A. Chappell, Chief of Probation, Administrative Office of U.S. Courts, Washington, D.C.

2. Visits to sessions of courts sentencing defendants on pleas of guilty. (See separate topic entitled "Arraignment and Pleas").

3. Inspection of various forms, reports and actual court records in typical cases involving probation.

4. Obtain copies of regulations, directives, guides, forms, etc. used by probation officers.
5. Obtain statistical reports on probation wherever available.

MASS TRIALS

Topics for Discussion

1. In general, special non-legal problems in connection with trials where there are several defendants, e.g.: communist conspiracy case tried before Judge Medina.
2. Arrangement for orderly procedure in each phase of the case; decided by court, or by agreement.
3. Number of lawyers permitted each accused; extent to which each may participate in the trial.
4. Sharing of time as to opening statements; arguments; closing summations; etc.
5. Limitation of witnesses.
6. Cross-examination in behalf of each accused.
7. Maintaining order; role of prosecutor in this connection.

Contacts

Prosecutors and judges, Federal and State courts, who have had experience with such trials.



GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
OFFICE OF THE SUPREME COMMANDER

Tokyo, Japan

14 March 1950

Dear Kades:

With the appointment of Dr. Tanaka as the new Chief Justice of Japan, I have decided to send him to the United States at the head of a select delegation of Japan's senior judges briefly to observe the workings of our American judicial system.

This delegation will be accompanied from here by Dr. Alfred Oppler, who as you know is eminently qualified to guide it due to his broad knowledge of our own practice and procedures and the structural details of the new Japanese judicial system. Much of the opportunity available to this delegation obviously will be found in the State of New York and the city of Washington, and I am hopeful that you may be able personally to assist in bringing to the group the enlightened knowledge and practical understanding for which the trip is intended.

Provided it is possible for you to arrange the time, I should be most grateful if upon the arrival of the delegation in the East you would, as my personal representative, present Justice Tanaka and his colleagues to the Chief Justice of the United States and the members of our Supreme Court, to the Attorney-General and other high justice officials, and to the judges, judicial officers and distinguished members of the Federal and State bar, and contribute your special knowledge and wisdom to the development of a comprehensive program of observation and study.

I should not call upon your assistance in this matter, as I know the pressure of your private affairs must be monumental, were it not for its great significance both to the United States and to Japan and your outstanding devotion to the common objectives which both countries have sought under the occupation. I am quite confident moreover that all Americans to whom you present this delegation and from whom it seeks counsel and advice, recognizing the vital public service involved, will respond in the traditional American way.

With warm personal regard,

Colonel Charles L. Kades,
c/o Hawkins, Delafield & Wood,
67 Wall Street,
New York 5, N.Y.

Most cordially,

Douglas MacArthur
DOUGLAS MACARTHUR.

Hawkins, Delafield & Wood
67 Wall Street, New York 5

Telephone: Hanover 2-5140
Cable Address: "Fieldston"

RECEIVED
OCT 12 9 29 AM '50
CHAMBERS OF THE
CHIEF JUSTICE

October 10, 1950

Mr. Paul Kelly
c/o Chief Justice of the United States
Supreme Court Building
Washington, D.C.

Dear Paul:

Confirming our conference last month and our telephone conversation yesterday, I expect to bring the following group to the Supreme Court Building at 11 o'clock Thursday morning, October 19th:

Kotaro Tanaka, Chief Justice of the Supreme Court
of Japan.

Tsuyoshi Mano, Associate Justice, Supreme Court of Japan.

Shigeto Hozumi, Associate Justice, Supreme Court of Japan.

Shuichi Ishisaka, President of Sendai High Court.

Masaru Higuchi, Judge of Tokyo High Court and concurrently
Chief, Liaison Section, General Secretariat,
Supreme Court.

Seiichi Kishi, Judge of Tokyo High Court and concurrently
Chief of Criminal Affairs Bureau, Supreme
Court.

At 11:⁴⁰~~30~~ O'clock the same morning in the conference room I will present Chief Justice Tanaka and his colleagues to Chief Justice Vinson and the associate justices of the Supreme Court in accordance with the letter from General MacArthur, photostatic copy of which is attached. Needless to say the courtesy and hospitality of the Chief Justice being willing to receive the Japanese Mission is deeply appreciated by all concerned.

Following the introduction, the group will go to the courtroom to observe the arguments which may take place that day. In addition to those mentioned above, I would be grateful if you could reserve space for Judge Alfred Oppler who has escorted the group from Japan and who is referred to in General MacArthur's letter, Mr. James Parker of the District of Columbia Bar, who is escorting the group

Mr. Paul Kelly

-2-

October 10, 1950

around the United States on behalf of the Institute of International Education, Messrs. Koshi and Tanaka who are interpreters, and myself.

After the argument at 4:35 in the afternoon, Chief Justice Tanaka accompanied by me and possibly one of the interpreters will go to the Chambers of Chief Justice Vinson to pay his respects and to express his gratitude for the opportunity afforded him. It is my understanding that in the forenoon of Friday, October 20th, the individual Justices of the Supreme Court will be glad to talk over any problems on which the Japanese Judges may be seeking some light or to greet any of the Japanese Judges who may wish to meet the associate justices personally.

I also wish to confirm the fact that the State Department through Adrian Fisher, Legal Adviser to the Secretary of State, has been informed of the proposed visit and believes it to be in the public interest.

Let me take this opportunity of telling you of how deeply I am indebted to you for your participation and helpfulness in making these arrangements.

Sincerely,

Charles L. Kades

CLK:ELM
Enc. 1

Supreme Court of the United States
Washington 13, D. C.

CHAMBERS OF
THE CHIEF JUSTICE

FOR CIRCULATION

October 9th, 1950 -

	OK	Comments
Mr. Justice Black	<i>[initials]</i>	
Mr. Justice Reed	<i>[initials]</i>	
Mr. Justice Frankfurter	<i>[initials]</i>	
Mr. Justice Douglas	<i>[initials]</i>	
Mr. Justice Jackson	<i>[initials]</i>	
Mr. Justice Burton	<i>[initials]</i>	
Mr. Justice Clark	<i>[initials]</i>	<i>See be there</i>
Mr. Justice Minton	<i>[initials]</i>	

I am attaching hereto copy of letter dated March 14, 1950 from General Douglas MacArthur, Supreme Commander for the Allied Powers to Mr. Charles L. Kades, whom you will note has been designated as the personal representative of General MacArthur, which is self-explanatory.

Mr. Kades called upon us on September 7th relative to the delegation attending a session of the Court and being presented to the Court.

We informed Mr. Kades that the question of visiting with the individual members of the Court was a matter that should be taken up with each of them.

With respect to their being presented to the Court, I informed Mr. Kades that I felt certain the Court would be agreeable to meeting the delegation on the morning of Thursday, October 19th at about 11:40am, and that the delegation could then attend the session of the Court which would commence at 12:00 Noon on that date.

Further, in connection with the delegation, or individual members thereof, calling upon the individual members of the Court: I informed Mr. Kades that in all probability a majority of the members would be in their Chambers the following morning, Friday, October 20th, and that such personal visits as may be desired could be arranged for by contacting the offices of the Justices after their visit on Thursday.

I trust that my commitment for the morning of Thursday, October 19th is satisfactory with you and meets with your convenience.

[Signature]

Original Filed in VIP Correspondence File



GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
OFFICE OF THE SUPREME COMMANDER

Tokyo, Japan

14 March 1950

Dear Kades:

With the appointment of Dr. Tanaka as the new Chief Justice of Japan, I have decided to send him to the United States at the head of a select delegation of Japan's senior judges briefly to observe the workings of our American judicial system.

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With warm personal regard,

Colonel Charles L. Kades,
c/o Hawkins, Delafield & Wood,
67 Wall Street,
New York 5, N.Y.

Most cordially,

Douglas MacArthur
DOUGLAS MACARTHUR.

UNITED NATIONS LEAGUE OF LAWYERS
530 Washington Building
Washington, D. C., U.S.A.

October 10, 1950

Dear Fellow Member:

The International Executive Counsel of the UNITED NATIONS LEAGUE OF LAWYERS has arranged an important dinner meeting to take place at the Army and Navy Club (Farragut Square and "I" Street), Washington, D. C., at seven o'clock on the evening of October 19, 1950, and we hope you will be able to attend.

The occasion of the meeting is the visit to this country under designation of General MacArthur of the Japanese Supreme Court Mission. The distinguished members of the high judiciary composing this mission will be our guests at this dinner meeting. The Honorable Katora Tanika, Chief Justice of Japan, will be the principal speaker. The Toast Master will be the Honorable Philip B. Perlman, Solicitor General of the United States.

The Japanese Supreme Court Mission is making a study of legal institutions in Western democracies, and their work will receive the sympathetic consideration and cooperation of all who wish to see Japan take its place as a peaceful nation in a better world order as envisaged in the Charter of the United Nations.

The price of the dinner is \$2.50 a plate, and members may bring guests. Black tie if convenient.

Due to space limitations, it is necessary that reservations for this important occasion be made ahead of time. Places will be reserved in the order reservations are received. You are requested to fill out the enclosed reservation card signifying your desires, and mail it at your earliest convenience to the Chairman of the Committee on Arrangements as indicated on the card.

Faithfully yours,

H. Milton Colvin

H. MILTON COLVIN
Secretary General

Enclosure

UNITED NATIONS LEAGUE of LAWYERS

530 Washington Building
WASHINGTON, D. C., U.S.A.

*Card returned
Regretting - 10/16/50*

President

HIS EXCELLENCY,
DR. DON HÉCTOR DAVID CASTRO
Ambassador of El Salvador
to the United States of America
2400 SIXTEENTH STREET, N.W.
WASHINGTON, D. C.

October 13, 1950

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Avocat à la Cour de Paris
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Assistant to the Attorney General
of the United States of America
DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

FRANK C. SAKRAN
5405 SIXTEENTH STREET, N.W.
WASHINGTON, D. C.

My dear Mr. Chief Justice Vinson:

On the occasion of the visit to the United States of the Chief Justice and members of the Supreme Court of Japan, in making their study of legal institutions in democratic countries, they will be guests at a dinner sponsored by United Nations League of Lawyers which will take place on October 19, 1950, at the Army and Navy Club of Washington, D. C.

Pursuant to action taken by the Executive Council of the League, I have the honor to extend to the Chief Justice and each of the Associate Justices of the Supreme Court of the United States a cordial invitation to attend the dinner on the same basis as our members as set forth in the enclosed announcement.

Your presence will be greatly appreciated, and the attached card is for your convenience in informing the Committee on Arrangements of your desires.

Most respectfully yours,

H. Milton Colvin
H. MILTON COLVIN
Secretary General

Enclosures

(Reprinted from the WASHINGTON LAW REVIEW, August, 1949, Vol. 24, No. 3)

FAR EASTERN SECTION

THE REFORM OF JAPAN'S LEGAL AND JUDICIAL
SYSTEM UNDER ALLIED OCCUPATION

ALFRED C. OPPLER

Chief, Legislation and Justice Division,
Legal Section, GHQ SCAP, Tokyo, Japan.

To Mr. Chief Justice Vinson
respectfully

Alfred C. Oppler

I. GENERAL BACKGROUND OF THE REFORMS

1. The Novelty of the Occupation

The novel character of Allied occupations after World War II has been repeatedly emphasized in recent literature.¹ The modern type of treatment of the occupied nation by the conquering authority assertedly aims at far broader objectives when compared to military occupations of the past. It no longer restricts itself to disarming the enemy from a purely military and technical point of view, but is designed to prevent him from future aggression by what may be termed as psychological disarmament. Yet it may be remembered that such effort is not without precedent in history.² Napoleon I, another military occupant, was a great reformer and succeeded in having the European countries he conquered adopt ideas and institutions resulting from the French Revolution whose son he has been called. However that may be, in the case of Japan the Allied occupants consciously and openly proclaimed at the outset the intention to bring about that minimum of political and legal changes in the pattern of government and law which appeared indispensable for eliminating such features, which were defined as militarism, imperialism, feudalism, and "police state."³ With the preponderance of the United States influence in the occupation it was only natural that the goal toward which Japan was to be guided was democracy in the traditional Western sense.

2. The Need for Moderation

The unique nature and gigantic scope of such an experiment when tried on a less advanced and oriental civilization might easily have discouraged the skeptic, who does not believe in the possibility of influencing the thoughts and customs of a strange people. Yet, the philosophy of occupation had changed to a point where mere resignation to military objectives was out of the question. On the other hand, the situation required an unusual degree of patience and moderation on the part of those assigned to the task of inducing the necessary reforms. Both extremes, doing too much as well as not doing enough, had to be avoided. The middle-of-the-road course recommended itself as the only promising method of dealing with the Japanese to most of whom our ideas and practices were something relatively new. To be sure, the intelligentsia was familiar with the theory of Western political philosophy; there had been progressive tendencies toward the modernization of legal institutions, especially in connection with the outmoded family system and criminal law as well as procedure; and the international labor

movement had exercised influence on the Japanese working classes. However, such tendencies were rigidly suppressed by the government and the powerful groups behind it, as soon as the prospect of war appeared on the political horizon, and even more during the war. The difference in Japanese historical experience from that of nations such as Germany, which once went through a period of democratic government, worked to the disadvantage as well as in favor of the Japanese adaptability to new concepts. The danger that these concepts would not be understood and easily digested was obvious. On the other hand, there was no association in the Japanese mind with any ill-fated past experience, as might have been in the case of those Germans who remembered the failure of the Weimar Republic. The occupation in Germany, apart from dealing with a more complicated human material, was probably often faced with the difficult task of convincing the reasons for and of overcoming discouragement or even cynicism because of that failure. The Japanese man on the street, on the contrary, reacted to the program of the Allied occupation with the attitude of one who eagerly, though somewhat puzzled, expects the dawn of a new era never experienced before.

Another fortunate factor has been that, with regard to their legal system, the Japanese have shown themselves particularly open to foreign ideas. The enactment during the Meiji Restoration of a whole series of basic codes patterned mainly on German and French models was certainly a unique phenomenon not unlike the reception of Roman Law which took place throughout northern Europe in the fifteenth and sixteenth centuries. In both instances local customs and traditions were merged with the imported institutions. The comprehensive codification in the initial Meiji era included the field of domestic relations, but left the semifeudal family system virtually untouched. Thus, while the first three books of the Civil Code, dealing with General Principles, Property Rights, and Obligations closely resembled the German Civil Code, the fourth and fifth books, covering Family and Inheritance Law, betray very little Western influence, but were based on Japanese customs. The fact that convention and tradition play a paramount role in Japan must always be kept in mind. In a conflict between the written law and the unwritten customs the latter weigh heavily, and the value of legislation designed to eliminate such customs will be dubious unless society wishes to free itself of them.

Hence, the legal reforms under the occupation had to take into consideration the two factors on which the Japanese legal system was based: (a) its continental character and (b) the strength of customs and traditions.

The occupation lawyers to whom the supervision over this reform work was entrusted had to beware of any over eagerness to impose the blessings of Anglo-Saxon legal institutions upon the continental law of Japan. However excellent these institutions may have proved at home, their adoption required conscientious scrutiny as to whether they fitted into this different system. Those who planned reforms could never lose sight of the fact that under the influence of native customs this system, as applied in practice, had undergone some considerable changes even from that to which the countries of its origin had developed. To exercise the needed restraint was all the more difficult as certain basic objectives of the occupation were absolutely binding and the time available to carry them out was limited. It is too early to arrive at a fair judgment as to what extent the occupation, in attempting to achieve these objectives, has avoided the mistake of imposing or even suggesting reforms for which the Japanese were not yet ripe. The writer is in no position to give an objective evaluation of this question because of his participation in this reform work as a member of the occupation. However, it should be pointed out that General MacArthur's consistent

policy as Supreme Commander of the Allied Powers (SCAP) has been toward inspiration and encouragement of the Japanese government rather than authoritative direction by fiat. The Japanese themselves acknowledge that once hostilities were ended they have been treated with statesman-like moderation, whereas they had expected revengeful subjection to the dictate of the victor. Different from Germany and Korea, where the method applied was direct military government, the occupation in Japan acted and continues to act through the media of the National Government,⁴ which has remained intact. As far as the reform legislation was concerned, it was enacted by the Diet as the law-making organ representative of the Japanese people. This indirect nature of the occupation made it possible for the views of the Japanese to receive much consideration, and their reactions to projects of change were usually not ignored. The longer the occupation lasts the more the controls over the Japanese government are being relaxed.⁵

3. Sources of Occupation Policy

Under the Potsdam Declaration⁶ the Japanese government was required to "remove all obstacles to the revival and strengthening of democratic tendencies. Freedom of speech, of religion, and of thought as well as respect for the fundamental human rights shall be established." It was obvious that these extremely broad objectives virtually constituted a program which called for a revolutionary change of Japanese society. What has happened since the surrender has fittingly been characterized as induced revolution, while an outstanding Japanese scholar used the term "August Revolution."⁷ It was clearly understood that the inner transformation of the minds and attitudes of the people could not possibly be achieved overnight. The construction of the new house had to start with laying the legal foundations. The necessity of a sweeping reform legislation with respect to legal and judicial institutions was outlined in the U.S. Initial Post-Surrender Policy for Japan, which stated: "... the judicial, legal, and police systems shall be reformed as soon as possible to conform to the policies set forth . . . and thereafter shall be progressively influenced to protect individual liberties and civil rights."⁸

4. Form of Enactment

As previously mentioned, in making use of the existing domestic machinery of government, the occupation left the enactment of the necessary reforms to the Diet, as a rule. As a matter of course, such legislation is subject to a right of veto by SCAP in case it is contrary to the basic objectives of the occupation. Nevertheless, in certain spheres of primary concern to the occupation the device of authoritative command of SCAP was chosen, as a rule, in the form of a memorandum to the Japanese government. Up to now innumerable such memoranda, called SCAPINS, have been issued. They cover measures such as the purge and abolition of vicious features of the police state as well as of wartime suppression of civil liberties. However, when this type of order, which might be characterized as occupational law, was issued, the principle of indirect military government was generally maintained by the practice of having the SCAPIN implemented into the Japanese Law. In doing so the Japanese government acts as an instrumentality of the occupation exclusively bound by the directive and not responsible within the limitations of the Japanese Constitution and other domestic law. The Diet, as a matter of principle, did not appear to be the appropriate organ for such

automatic implementation in which the freedom of determination was excluded. Therefore, the SCAP directives are usually not implemented by statute, but by government ordinance "under the Potsdam Declaration." In the beginning of the occupation the form of an Imperial Ordinance was used.⁹ After the new Constitution had abolished this type of enactment, the Cabinet Order took its place.¹⁰

Yet, in practice the distinction between "superconstitutional" occupation law and Diet-enacted statute has not been so clear-cut as it might appear from the above. In a few instances a milder and more courteous kind of command than the SCAPIN was chosen in the form of a letter written by General MacArthur to the Prime Minister. Such letter was usually implemented by Diet legislation.¹¹ In other cases such as the land reform legislation¹² the basic principles had been outlined by a SCAP directive and still the comprehensive legislation was enacted by the Diet. It remains to be seen whether the Japanese courts will treat this last-mentioned type of statute as occupation law or feel free to void it as unconstitutional. The issue has become a practical problem, since a great number of suits are pending in the courts which challenge the constitutionality of certain aspects of the land reform legislation.¹³

As far as the revision of the basic codes, such as Civil Code, Criminal Code, Court Organization Law, and procedural Codes was concerned, with one exception not a single formal directive was issued. This momentous reform was carried out by regular Diet legislation, whereby the occupation acted merely in an advisory and controlling capacity. Characteristically enough, the only case where authoritative insistence on such legislation became necessary was in connection with the required abolition of the lese majesty provisions of the Criminal Code.¹⁴

5. Initial Abrogation of Laws

In its very beginning the occupation had to concentrate on the military aspect of disarmament. This initial task required prerogative action, while a revision of the legal and judicial system of Japan even could not be considered without careful preliminary study and preparation. Nevertheless, the emphasis of the Potsdam Declaration, as well as of the occupant's philosophy on fundamental human rights, made the immediate abrogation of certain existing laws and practices imperative. Within the limited scope of this article it is not possible to discuss the various SCAP directives which did away with the most conspicuous legal devices for the suppression of political nonconformity with the will and whim of the government and the ruling warlords. The basic civil liberties directive is SCAPIN 93,¹⁵ entitled "Removal of Restrictions on Civil and Religious Liberties." It directed the Japanese government to abrogate and immediately suspend all laws, decrees, orders, ordinances, and regulations restricting political, civil, and religious liberties; to allow unrestricted discussion of the Emperor, the Imperial institution, and the Imperial Japanese government; to remove restrictions on the collection and dissemination of information; and abolish all legal discrimination on account of race, nationality, creed, or political opinion. The SCAPIN contains a list of the most important enactments falling under this general characterization.¹⁶

Further steps were taken to free the press from governmental control and remove restrictions on freedom of communication and expression.¹⁷ Separation of religion from the state, which had misused it for political ends, was ordered.¹⁸ Finally, licensed prostitution, with its Japanese by-product of involuntary servitude by women who bound themselves to serve for a fixed period, was abolished as inconsistent with the principle of equality of the sexes and individual liberty and dignity.¹⁹

6. A New Constitution

(a) The Issue of Legal Continuity. It has been pointed out that any reform aimed at the transformation of a national society must necessarily start with laying the legal foundations for such change unless the idea of government by law is abandoned in favor of a system of arbitrary personal rule. Japan had a written Constitution, which reflected the political philosophy of the Meiji period. The continuation in force of this so-called Meiji Constitution²⁰ would not only have been inconsistent with the actual situation brought about by the surrender and subsequent Allied Occupation, but would also have prevented a progressive development of the whole legal system for which the Constitution had been the framework and guide. The Supreme Commander might have suspended the Meiji Constitution. However, such step would have created a vacuum. The only other and by far more constructive alternative was to replace the old charter by a new fundamental law, which was to establish the guiding principles or the over-all program on which a democratic system of government could be built and from which modern legislation could be developed. By deciding in favor of this alternative, the Japanese followed the pattern of historical revolutions.²¹ Three main factors made the Meiji Constitution appear irreconcilable with the political realities: first, the change of the Emperor's position under the impact of the occupation; second, the postulate of a truly representative government; and third, the emphasis of the Potsdam Declaration upon fundamental human rights, which under the old Constitution were granted the people only "within the limits of law."

The new Constitution was promulgated on November 3, 1946, after long and sometimes heated debates in both Houses of the Diet and after lively discussions in the press and other media of public opinion. It came into force on May 3, 1947. Interestingly enough, since the Meiji Constitution had never been abrogated or suspended, the "Constitution of Japan," as the present instrument is called, was enacted as revision of the Meiji Constitution and in the forms required therein for constitutional amendments, which meant submission of the "project" of amendment to the Diet by Imperial Order, presence of at least two-thirds of all members of both Houses and majority of two-thirds of those present for the passing of the amendment.²² Thus constitutional continuity was maintained. While, from a formal legal point of view no revolution took place, the fact remains, however, that in substance the product of the so-called amendment was a completely new charter in which it is hard to find substantial features of the predecessor instrument. Still the contradiction between procedure and substance resulted in various controversies among Japan's solons, which not only might provide legal scholars with plenty of subjects for doctor's theses, but also call for the attention of the political analyst far beyond their merely academic aspect. As the Meiji Constitution was never amended since its enactment in 1889, there were no precedents available for the solution of these controversies. One of the problems raised was whether the Diet had the right to change the project of amendment as submitted by the Emperor or whether it could only accept or reject it in toto.²³ This question was actually decided in favor of the Diet's right to amend provisions of the proposed Constitution.²⁴ Another even more important issue arose in connection with the argument of some Diet members that certain basic principles embodied in the Meiji Constitution, namely, those characterized by the traditional and somewhat mythical term of "national polity"²⁵ were inviolable and not subject to amendment. This was the view originally expressed by Prince Ito, the father of that Constitution,²⁶ and led to the discussion of whether the new Constitution altered

the "national polity." To answer this question in the affirmative would, on the basis of the Ito doctrine, have meant a challenge to the continuity of the constitutional development or even to the legality of the new Constitution. The argument was advanced by some of the progressive speakers, predominantly University professors, that the change in the national polity would be effected by the shift of sovereignty from the Emperor to the people.²⁷ Others held that such change had been the logical result of the acceptance of the Potsdam Declaration by Japan. However, the Government, although itself divided on this issue, repeatedly emphasized through its official spokesman, Minister Kanamori, that while the "political structure" was essentially changed by the new Charter, the national polity as such had not suffered and would not suffer any alteration.²⁸ Thus the revolutionary character of the new Constitution was minimized.

(b) The Gist of the Constitution. It is not the purpose of this article to elaborate on the contents of the new Constitution of Japan, certainly one of the most advanced basic laws of the present time. Essential parts of it will subsequently be considered in connection with the implementing legislation. The Constitution drew freely on the experiences of the West.²⁹ Attempting to reconcile the survival of the imperial institution with the establishment of a representative government along the lines of traditional parliamentarism, the Constitution has many features in common with the English system of government. The Cabinet exercises the executive power. It is headed by a Prime Minister with strong prerogatives, who is appointed by the Emperor upon designation by the Diet, from among its members. The Prime Minister appoints the other Ministers of State, the majority of whom must be members of the Diet. The Cabinet is responsible to the Diet,³⁰ characterized as the "highest organ of state power." The bicameral system has been retained but, following the British example, with the supremacy of the lower house over the upper. The Emperor is not even recognized as a titular Chief Executive. The Constitution defines him as the "symbol of the state and the unity of the people, deriving his position from the will of the people with whom resides sovereign power." Powers related to government are denied him, and his "acts in matters of state"³¹ are merely formal and ceremonial. They require the advice and approval of the Cabinet. The judiciary has been made an independent third branch of the government, while in the past the judges in Japan were civil servants under the Ministry of Justice. In vesting the Supreme Court with the power of judicial review regarding the constitutionality of legislative as well as administrative acts, the Constitution decided in favor of the American pattern, frequently termed judicial supremacy. In the field of local government the constitutional provisions are not particularly elaborate. They stress the principle of local autonomy, which is defined as the right of local public entities to manage their property, affairs, and administration and to enact their own regulations within law. They furthermore require that these local entities shall establish assemblies and that the members of such assemblies as well as the chief executives shall be elected by direct popular vote. All other details are left to implementing legislation. The Constitution contains an extensive catalogue of "rights and duties" of the people with considerably greater emphasis upon the rights.³² While the Meiji instrument had restricted the guarantee of such fundamental rights by the clause "within the limits of the law" and thus actually made them meaningless as a safeguard for the individual, the new Constitution omits this limitation.³³ Finally, the renunciation of war and the permanent abolition of the Armed Forces, both connected with military defeat and surrender, may be mentioned as unique features of this Constitution.

7. Implementation of the Constitution by Diet Legislation

(a) The Dilemma of Transition. The enactment of any new Constitution at once raises an immensely practical problem as to its implementation into the law of the land. After all, the basic law sets forth only the broad principles for a legislative program, which requires considerable time for study, discussion, and coordination. There will always be a transitional period, during which the old laws are not yet replaced by legislation conforming to the new charter. This problem has been solved in different ways by various nations in connection with far-reaching constitutional changes. Thus constitutions have sometimes provided that certain principles would become effective only after a certain period from their enforcement or that the existing laws be continued until superseded by new enactments.³⁴

In the case of Japan particular care was taken not to jeopardize the prompt efficacy of the challenge expected from the Constitution to the past legal and political order. Therefore, when the Constitution was promulgated on November 3, 1946 it was defined in Article 98 as the supreme law of the nation and provided that "no law, ordinance, Imperial rescript or other act of government, or part thereof, contrary to the provisions thereof, shall have legal force or validity." As the Constitution was to be enforced on May 3, 1947, this meant that either all legislative changes necessary to bring the laws into harmony with the new constitutional principles must be accomplished within six months, or a chaotic legal vacuum would ensue since a large part of the existing law would have lost validity on constitutional grounds. It became clear from the outset that hasty implementation within the fixed time limit would not only discredit the very idea of reform, but also be physically impossible. The Japanese government, to solve this dilemma, resorted to the expedient of submitting to the Diet provisional bills, called bills for temporary adjustment pursuant to the enforcement of the Constitution. This legislation born of an emergency situation, was mainly used for the revision of the Civil Code and the Codes of Civil and Criminal Procedure.³⁵ It contained only the skeleton of the absolutely necessary revisions of these Codes, leaving much to constructive interpretation by the courts. It was provided that these provisional laws should become invalid at the end of the year 1947, thus indicating their temporary character and causing the Cabinet to speed up the final revision to replace them.³⁶ In the meantime the reform work has, generally speaking, been completed and all provisional laws have made way for definite revisions of the whole body of the Codes.³⁷

The temporary legislation, however irregular, proved convenient as a method of trial and error. The experiences made in the transitional period could be utilized in preparing the final enactments. While most of the provisional reforms were retained, some of their innovations did not stand the test of practical application and were either eliminated or altered.

It should be noted that the device of provisional legislation for obvious reasons did not appear feasible with respect to the fundamental changes in the organization and functions of the three branches of the government, as necessitated by the new Constitution. A clear basis for their structure and a definition of the scope as well as the limitation of their powers by legislation was needed at once, since here no gaps could have been filled by judicial interpretation. The Court Organization Law, the first law in the field of judicial administration, was not a revision but a completely new enactment. This was passed by the Diet in its 92nd Session, together with the closely related Public Procurators' Office Law.³⁸

(b) Planning by Agreement. It will be of interest to the American reader to learn what methods and technique have been applied with regard to the collaboration between SCAP officials in charge of the reforms and the representatives of the Japanese government. A description of this psychologically important aspect will substantiate and corroborate the previous statement that the occupation influenced the legislation by advice and assistance rather than imposed it by the fiat of the conqueror. In all their almost daily contacts with the Japanese the American legal experts were guided by the deep conviction that no revision would survive the occupation unless the Japanese themselves could be persuaded that the new law or provision thereof meant a real improvement and not just the incorporation of an alien element into their law. Because they were conscious of the danger that even "advice" given by members of the occupation to subjects of the occupied nation might easily be misinterpreted as a milder form of direction, they demonstrated their determination to refrain from any high-handedness by throwing the discussion into the open. The revision of the Code of Criminal Procedure may serve as an illustration of a complicated and, from the standpoint of civil liberties, a most important legal reform. After the preparatory research had been finished, Allied lawyers met Japanese drafting officials "on the working level" in order to receive full information on the Japanese view and to clarify the major controversies involved. The Americans then deliberated for two weeks in order to arrive at an agreement among themselves before they faced the Japanese. When this was done, the sixty odd major problems which remained unsolved were formulated in writing on different "problem sheets," which contained a brief analysis of the controversial issue and proposals for alternative solutions as a basis for the discussion with the Japanese. For the purpose of assisting the Cabinet in drafting the bill for the amendment of the Code, a high-level committee was established. Apart from only four members of the Allied occupation, more than thirty representatives of the Japanese ministerial and legal world took part in its conferences, namely, top officials of the Attorney General and of the public procurators' offices, as well as judges of the Supreme Court. In addition, for the first time in Japan's history the legal profession as such was given the opportunity to contribute to legislative official planning. Representatives of the leading Tokyo Bar Associations were admitted to the conferences. So was the newly established Japanese Civil Liberties Union. The Committee had daily meetings for three weeks in the spring of 1948.

The work with this Committee was one of the most fascinating and inspiring experiences of the American participants. Its progress and final success confirmed their belief that the democratic process is practicable within the framework of a military occupation. The hardship and strain involved in the method applied, was offset by the rewarding result. The atmosphere very much resembled that of a standing legislative Committee in a Western parliament. There was complete freedom of argument and criticism and the Japanese, at first reluctant and cool, made ample use of it after they had convinced themselves that the Allied representatives were genuinely anxious to hear their opinions. The relationship between the occupant and the occupied seemed eventually to be forgotten over the feeling of an international fellowship among jurists who have in common the ardent concern for the improvement of a law. The Allied representatives frequently served as moderators in the controversies between different Japanese groups such as the public procurators, on the one hand, who stressed the interest of the state in a vigorous enforcement of the criminal law, and the lawyers, on the other hand, who jointly with the representatives of the Civil Liberties Union put the emphasis upon individual rights. As a matter of course, the judges'

view was motivated by the endeavor to enhance the prestige of the judiciary and to relieve the courts from an overload of work. Amazingly enough, occasionally the Japanese went beyond the Allied reform proposals and suggested innovations which at first blush had appeared premature. Thus the judges of the Supreme Court successfully advocated a radical simplification of the existing appeal system in the criminal procedure. The result of the conference was agreement on the solution of all problems discussed by the committee. These solutions were usually reached by compromise according to deeprooted Japanese tradition. This might be considered the only deviation from the democratic process, which is characterized by the majority rule. Some timid attempts were made to submit problems after discussion to voting among the Japanese. However, it became clear at once that they disliked to overrule each other because they were afraid that those in the minority might "lose face."

After the termination of the conference, the Cabinet submitted the bill to the Diet in the form finally agreed upon.

It should be emphasized that the active participation of the occupation in the planning for the revision of the Code of Criminal Procedure was the exception due to the significance of this legislation from the standpoint of fundamental human rights. While similar procedures were applied in some of the other revisions, the initiative was left to the Japanese with the occupation representatives restricting themselves completely to the role of observers and critics.

In this connection it may be noted that another form of contact between the occupation and the Japanese legal world has proved extremely useful for the mutual understanding. Regular meetings take place with the judges of the Supreme Court and representatives of the Attorney General's Office, where current problems of the actual administration of justice are discussed. These conferences, informal in character over a cup of green tea, serve also as a source of information on how the new laws are applied in practice, and what further improvements are needed. Semi-official and private meetings with lawyers, University professors, and parliamentarians are designed to provide the reactions and opinions of groups and individuals outside the official hierarchy.

In most of these contacts the real handicap lies in the difference of language rather than that between Western and Oriental philosophy. When recognized on their merits and analyzed objectively, the two legal systems are not necessarily irreconcilable and might allow a sound synthesis in many respects. To be sure, there remains a nucleus of a conservative or, one may say, reactionary group, particularly among the ministerial bureaucracy and the older judges, who are opposed and hostile to any idea or institution not fully Japanese. But, on the whole, the occupation has resulted in a great eagerness of Japanese jurists to acquaint themselves or to improve their familiarity with Anglo-Saxon law. Many have expressed the wish to travel to the United States and add to this theoretical knowledge the observation of the working in practice of the American legal system. Nothing would, indeed, further promote the mutual understanding between jurists of the continental and common law school as the materialization of such a plan.

II. THE SUBSTANCE OF THE LEGAL AND JUDICIAL REFORMS³⁹

1. Judiciary

Japanese judges in the past enjoyed functional independence, but their official status and remuneration was that of civil servants. The

courts were under the jurisdiction of the Minister of Justice who was responsible for their budget as well as for the appointment and promotion of judges. Obviously, this arrangement endangered genuine independence, inasmuch as ambitious and opportunistic judges were tempted to adjust their opinions to the presumptive wishes of the government. In criminal cases of a political nature resistance to such temptation required a particularly high degree of personal courage and integrity. In addition, the public procurators, in their capacity as prosecutors of the state and administrative officials under the direction of the Minister of Justice, were closely attached to the courts and frequently served as observers of the judges' attitudes. The new Constitution separates the judicial branch of the government from the executive and vests the whole judicial power in a Supreme Court and in such inferior courts as are established by law. No extraordinary tribunal shall be established nor shall any organ or agency of the Executive be given final judicial power.⁴⁰

The court system continues on a nationwide basis. Although the local entities, such as prefectures, cities, towns, and villages have been empowered to enact local by-laws within the limitation of the Local Autonomy Law,⁴¹ the establishment of prefectural or municipal courts has not yet been authorized, but is under consideration.

The new Court Organization Law⁴² sets up a system of inferior courts, consisting of High Courts, District Courts, Family Courts, and Summary Courts.⁴³ The High Courts have taken the place of the former Appellate Courts, while the District Courts combine the functions of the old District Courts with some of those of the abolished Local Courts. The Summary Courts on the lowest level are an essential innovation, comparable to the American justice of the peace. In criminal cases they also replace the former police courts, which have gone out of existence.

As to jurisdiction, the Summary Court is in charge of less significant claims and tries petty criminal offenses. Otherwise, the District Court is the regular court of first instance. The High Court decides on appeal in questions of both fact and law, while the Supreme Court as the court of last resort is, as a rule, concerned only with issues of law.⁴⁴

In addition to these general rules the jurisdiction of the various courts is created in individual cases by special statutes.⁴⁵

The Court Organization Law, in order to relieve the judges of the Supreme Court from an overload of work, actually one of the gravest problems facing the Japanese administration of justice, provides that not all fifteen judges⁴⁶ who constitute the court must participate in the decision of every case however trifling. Decisions may be rendered either through a grand or a petty bench. The details are left to the rules of the Supreme Court,⁴⁷ except that the law requires a quorum of at least three judges for the petty bench and the decision of the grand bench, consisting of all justices, when questions of constitutionality are involved or when the Supreme Court wants to deviate from a precedent.⁴⁸

The High Court is a collegiate court which, as a rule, is composed of three judges one of whom acts as presiding judge. Only in the exceptional cases where it tries offenses as a court of first instance must the number of judges be five.⁴⁹ The District Court handles cases through a single judge except when the collegiate court consisting of three judges rules otherwise, in certain cases of felonies, and when it acts as appellate court in civil procedure.⁵⁰ Finally the Summary Court always handles cases through a single judge.⁵¹

Recently a new type of court with special functions has been established, namely, the Family Court.⁵² One division of this court is concerned with arbitration, conciliation, and limited determination of controversies within

the family, such as questions of marital relationship and divorce by agreement, parental power, custody of children, and guardianship.⁵³ This division has taken over many functions formerly exercised by the family council, which was connected with the old semifeudal house system. The second division constitutes the new Juvenile Court in charge of decisions formerly made by a quasi-official organization, the Judicial Protective Society under the control and supervision of the Ministry of Justice. The change puts the decision of the socially important cases of juvenile offenders into the hands of an independent judge.⁵⁴

The principle according to which judicial power shall be exclusively vested in the regular courts is implemented by the requirement of the Court Organization Law that courts shall decide all legal disputes.⁵⁵ This provision has brought about the abolition of the Court of Administrative Litigation in Tokyo. The jurisdiction of this court had been greatly restricted by law. The nonexistence of inferior administrative courts resulted in considerable slowness of procedure, and the preponderance of former ministerial officials among the judges did not contribute to the development by the court of a forceful protection of individual rights from bureaucratic interference. Such experiences discouraged the continuation of any system of administrative courts in spite of the fact that in Japan as in France and Germany, where such system proved far more effective, the legal theory clearly distinguishes between public and private law and holds that questions of public law should not be decided by the regular but by administrative courts.

As a consequence of these fundamental changes, the position and prestige of the new Supreme Court (Saiko Saibansho) have been strengthened tremendously. There is no identity of this court with the former highest tribunal (Daishinin), which among other differences, lacked the rule-making power as well as the power of judicial review.⁵⁶ There is no implementing legislation on the scope or nature of these new prerogatives, and development of both must be left to the interpretation of the Supreme Court itself. As to rule-making, the language of the Constitution by authorizing the court without modification to determine "the rules of procedure and of practice" might suggest that the procedural codes should be written by the Supreme Court instead of being enacted by the legislature. While in the conferences on the revision of the Code of Criminal Procedure individual judges expressed such view, the Supreme Court did not officially oppose the enactment by the Diet. However, according to agreement reached the detailed elaboration of the Code was left to rules of the Court and carried out minutely.⁵⁷

It remains to be seen whether the Supreme Court will apply its power of judicial review along similar lines to those developed in the United States during the past 150 years. Up to now no Diet statute has been declared unconstitutional in Japan. However, without defining the meaning of judicial review, several laws refer to this power. While the initial doubt resulting from the language of Article 81 of the Constitution, regarding the right of the inferior courts to determine on questions of constitutionality has been removed by the actual recognition of such right, the procedural Codes insist that whenever the constitutionality of legislative or administrative acts is challenged, jokoku appeal to the Supreme Court be admitted.⁵⁸ Furthermore, as has been mentioned before, questions of constitutionality must be decided by the Grand Bench of the Supreme Court.

The Constitution provides the principles for the appointment and removal of judges. While the fourteen associate judges are appointed by the Cabinet,⁵⁹ the Emperor appoints the Chief Justice of the Supreme Court upon designation of the Cabinet.⁶⁰ Other possibilities would have been either to require approval of the appointments by the Diet or to have the judges elected by the people. Both possibilities were considered, but rejected because of the

undeniable danger that under the conditions prevailing in Japan the choice of the highest judges would be dependent upon the whims of party politics of an immature quality and upon bossism⁶¹ apt to breed corruption. Still the framers of the Constitution felt that some check on the appointments of the Supreme Court judges was needed.⁶² Therefore, a popular review of judicial appointments to the Supreme Court at ten-year intervals has been provided as an interesting constitutional innovation. In connection with the first general election of the members of the House of Representatives following the appointment of an individual judge of the Supreme Court, the voter is given an opportunity to express the desire to have that judge removed from office. When the majority of the voters favor the removal, the judge must be dismissed. The same procedure is repeated after the judge has been in office for ten years.⁶³ Details pertaining to this popular referendum, which constitutes a recall and not an election, are provided by the Law for the People's Examination of the Supreme Court Judges,⁶⁴ which among other features, introduces a simple form of printed ballot for the use of the voter, something new in Japan's electoral history. On January 23, 1949, in connection with the last election to the House of Representatives fourteen judges of the Supreme Court, all newly appointed, were subject to this review, which resulted in what may be regarded a major victory on their part. Ninety-nine and six tenths per cent (99.6) of the total number of voters to the House of Representatives participated in the referendum and only 4.4 per cent of the participants voted in favor of the dismissal of judges. Still, by evaluating this seeming vote of confidence and its effectiveness as a popular check, the fact should be taken into account that the judges had been in office only for one year and a half and that the people knew little about their attitudes and decisions. Whether it will ever be possible to awaken and maintain interest in the members of the Supreme Court among large segments of the population appears more than doubtful.⁶⁵ The writer is inclined to interpret this popular review as a symbolic gesture of emphasis on the people's sovereignty rather than as an effective check on the appointment of the justices.

The appointment of the judges of inferior courts is also in the hands of the Cabinet which, however, must choose the appointees from a list of persons nominated by the Supreme Court.⁶⁶ This important provision actually empowers the Supreme Court to determine the personnel policy regarding these judges. Their tenure of office is ten years with the privilege of reappointment, while formerly all judges were appointed for life. However, a retirement age has been fixed at seventy years for judges of the Supreme Court and at sixty-five years for judges of the inferior courts.⁶⁷

Different qualifications are specified for judges of the Supreme Court and judges and assistant judges of the inferior courts. Summary Court judges are recruited under less rigid requirements.⁶⁸ The principle is that a certain period of experience as judge, assistant judge, public procurator, lawyer or university professor of law is a prerequisite for the appointment to the first category. In the case of the Supreme Court judges, the appointment must be made from among "persons of broad vision and extensive knowledge of law" as well as of a minimum age of forty years. However, only ten out of the fifteen judges must comply with specific requirement of a long legal career, while with regard to the remaining five the door is left open to the selection of outstanding personalities without the traditional training and background in jurisprudence.⁶⁹

Apart from the removal by popular review, termination of the tenure of office due to the age limits, and the expiration of the ten years tenure of inferior judges, the status of the judge is guaranteed. No judge may be removed from office except by public impeachment, or unless judicially declared mentally or physically incompetent, nor shall he be transferred,

against his will, to any other court or official position. No disciplinary action against judges shall be administered by any executive organ or agency.⁷⁰ The Constitution entrusts the impeachment to a court made up of members of both Houses of the Diet.⁷¹ In implementing this important provision, the Judge Impeachment Law⁷² establishes an Impeachment Committee consisting of twenty members of the House of Representatives, which performs the function of indictment, while an Impeachment Court of fourteen judges, seven from each House of the Diet, is in charge of the decision. Impeachment trials must be public. Any person may lodge a motion of impeachment with the Committee, which may also take action on its own initiative. Because of the reluctance of the courts to apply for impeachment procedure, a subsequent amendment⁷³ imposed the duty on the presidents of inferior courts to notify the Chief Justice of the Supreme Court whenever they consider that there is a reason for removal by impeachment of a judge under their jurisdiction. The Chief Justice must then request the committee to institute an indictment for removal. He is also bound to do so if he has arrived at the same conclusion independently of such notification.

Dismissal of judges for physical or mental incompetency, as well as disciplinary punishment in cases where no removal is deemed necessary, remain within the prerogatives of the courts on the basis of the Law Concerning the Status of Judges and other Court Officials.⁷⁴ When a judge of the Supreme Court or of a High Court is involved, decision is rendered by the Supreme Court, in all other cases by the High Court of the district, in which the judge holds office. Disciplinary punishment may be a reprimand or a nonpenal fine not exceeding 10,000 yen.

This brings to a close the analysis of the main reforms designed to create an independent judiciary. This aspect of the legislation deserved some elaboration because the fateful question of whether the rule of law will eventually be triumphant in Japan, as its advanced Constitution visualizes, depends foremost upon the caliber of her judges and upon the courage, integrity, and enthusiasm with which they will apply and construe the law. The legal framework for the independence of the judicial branch of the government is certainly laid. It remains to be seen whether the Supreme Court will live up to its hard and lofty task of being a guardian of the new Constitution. This task requires dynamic strength as well as imagination. There are unavoidable weaknesses in the system, such as the appointment power of the Cabinet. It is, of course, too early to judge about the first Supreme Court under the new Constitution. The period of adjustment to its own powers is still going on and no spectacular decisions have been rendered up to the present time. However, if we remember the slow growth of our own judicial institutions, we cannot possibly expect miracles with regard to the tempo of development. After all, the present group of Supreme Court judges, predominantly men of advanced age, cannot "escape history." The former judges or administrative officials among them must learn to overcome the deep-seated attitude of traditional subservience to the ministerial bureaucracy and must become conscious of their independent status. This consciousness apparently comes more easily to the former lawyers in the Court who, unburdened by an official past, seem to be willing to put on a fight against interference from other branches of the government. The recent public protest of the Supreme Court against the investigation of court decisions by the Judicial Committee of the Upper House,⁷⁵ regardless of its merit, may be considered a promising indication that the Supreme Court is determined not to surrender the powers conferred upon it by the Constitution. Still more important, however, will be the extent to, and the fervor with, which Japan's highest tribunal will protect the constitutional rights of the people.

2. Public Procurators

The clear-cut separation of the public procurators from the courts, to which they had been attached in the past, has been the logical consequence of the establishment of a judiciary no longer dependent upon the executive. Their status and organization are dealt with in the Public Procurator's Office Law.⁷⁶ They continue to be administrative officials of the national government under the general control and supervision of the Attorney General,⁷⁷ although the Public Procurator General as the chief of all procuratorial organizations enjoys a considerable functional independence. Thus, in individual cases the Attorney General can control public procurators only through the Procurator General.

As far as litigation is concerned, the public procurators are under the rule-making power of the Supreme Court to the same extent as the defense counsel. Their role has essentially changed to that of a party in the trial, a fact which finds its symbolic expression in the transfer of their seats from the place beside the bench to one in front of and below the court, on an equal level with the defense counsel.

The procurators' organization is made up of separate offices which correspond to the new type of courts. The Supreme Procurator's office, headed by the Procurator General, corresponds to the Supreme Court; the High Procurators' offices, headed by Superintending Procurators, to the High Courts; the District Procurators' offices to the District Courts; and the Local Procurators' offices to the Summary Courts.

As to the functions of the public procurator, it should be noted that he is the sole agent of the government in charge of prosecution. He may also investigate any offense and is responsible for the execution of criminal judgments.⁷⁸ Additional tasks are entrusted to him by specific laws. Thus he represents the public interest in divorce cases and suits concerning the status of children.

As in the case of the judges, the possibility of election was considered but finally rejected for similar reasons. The public procurators remain appointed officials. However, here again some check on their appointment was deemed advisable. Therefore a high-level committee was established by an amendment to the law⁷⁹ for the purpose of advising the Attorney General, either on his request or on its own initiative, with regard to the question of whether or not a public procurator should be removed from office as unsuitable to perform his duties. A periodic examination of all procurators is to be conducted by the committee every three years. This "Committee for the Examination of Qualifications of Public Procurator" consists of members of both Houses of the Diet, the Procurator General, and representatives of the Attorney General, the Supreme Court, the bar associations and the law schools.

In addition to this outside influence in the personnel policy, a popular check upon the functions of the public procurators has been introduced in the form of an Inquest of Prosecution,⁸⁰ which might be characterized as a mild beginning of a grand jury system. It investigates cases where the procurator did not institute public action, although he should have done so. The findings of the Inquest are, however, of an advisory nature only.⁸¹

3. Lawyers

It was realized early that the change in the position of the Japanese judiciary, if it was to result in a modern administration of justice, should be accompanied by an elevation of the legal profession. In the hierarchical society of the past the lawyers did not enjoy the same prestige as government

officials or judges. Their influence on legislation was negligible and their role in public life at large less significant than that of their brethren in Western countries. In the transitional phase, since the termination of the war, the leading bar associations of Japan made a concentrated effort to free the lawyers from governmental supervision formerly exercised by the Minister of Justice and continued by the Attorney General. There was general agreement on the need for relaxation of these controls. However, the question of whether the bar associations should be given complete or semi-independence became the subject of lengthy controversies between the three organizations concerned. While the Attorney General favored some limited continuation of the supervisory functions of his office, the Supreme Court held that the lawyers should be subject to its rule-making power and control. The bar associations, on the other hand, rejected both alternatives and strived for full autonomy of the legal profession. Due to this difference of opinions the revision of the Lawyers' Law⁸² had to be delayed for a long time, the occupation taking no position with regard to the issue. Gratifyingly enough, it was finally settled among the Japanese on the basis of the view of the bar association. At present a sweeping amendment to the Lawyers' Law, drafted as a member bill by the Attorney General's Committee in the lower House, is under discussion in the Diet.⁸³ As long as it has not been passed into law, a detailed analysis of its contents would be premature. Suffice it to point out here that, generally speaking, the affairs connected with the legal profession will be left to autonomous self-rule by the bar associations. A bar association shall be established in the area under the jurisdiction of each District Court, and the Japan Federation of Bar Associations will be the nation-wide top organization with the various bar associations as well as the individual lawyers throughout the country as its members.

All bar associations will have broad regulatory powers which cover matters such as codes of professional ethics and standards for fees. The rules of the local bar associations are subject to approval by the Federation.

The Japan Federation of Bar Associations keeps a name list of lawyers. Registration in this list is the prerequisite for admission to the bar. Application for registration must be made through the local bar association which the candidate wants to join. Upon recommendation of a Qualification Examination Committee the local bar association may refuse to forward the request to the Federation for specific and legally defined reasons. In this case the applicant may complain to the Federation which, on the recommendation of its own Qualification Examination Committee, either rejects the complaint or directs the local association to forward the request. Similar procedures are provided in case the local association wishes to have the registration of a lawyer cancelled. In both instances the person adversely affected by the determination of the Federation may bring action in the Tokyo High Court.

An important exception from the rule that administrative determination is made by the Federation of Bar Associations is provided for with regard to the admission and disbarment of foreign lawyers. They may be admitted to the Japanese bar even though they do not comply with the usual professional and educational requirement, provided they have a "proper knowledge of Japanese law." There is also a mode of admission to a more limited practice of law by persons qualified as lawyers of a foreign country. If they are not familiar with Japanese law, they may give advice to a foreign national and on questions related to foreign law. Here the Supreme Court passes on both forms of admission after having heard the opinion of the Federation. The same procedure applies to disbarment. Similar regulations are contained in the existing Lawyers' Law which leaves the decision to the Minister of Justice (Attorney General)

the admission. However, up to now a foreigner could be admitted to the practice of law in Japan only if the same treatment was granted Japanese nationals in his own country. By abandoning this principle of reciprocity the drafters of the bill have established a commendable example of good will toward international understanding.

4. Civil Law

The reform of the Civil Code was restricted to the Fourth and Fifth Books of this Law, which cover the fields of domestic relations and inheritance. The other three books dealing with general legal principles, Property Law, and Obligations have remained virtually untouched, since no immediate need for a revision of these basic parts existed on constitutional grounds.⁸⁴ Yet the revision of the Civil Code, even within this limitation, is of momentous importance for every man and woman, since it directly affects human relationship within the family. The Japanese thinks of himself as part of the family rather than as individual. This attitude, based on Confucian philosophy, has even been projected into the political sphere where the state takes the place of the largest family unit of supreme rank with the Tenno (Emperor) as the pater familias. Such attitude has influenced the ethics of Japanese society in manifold ways. Respect of parents and care for relatives by blood and marriage are certainly commendable traits. So is the love of one's country. However, feudalistic influences added to these positive elements the postulate of a complete subordination of the individual to the higher unit whether family or state.⁸⁵ Closely connected with such hierarchical set-up was the inferior role of women in Japanese society. The family system, integrated in the Civil Code, was based on these principles. The family unit was not the family in the Western sense, consisting of father, mother, and unmarried children, but a kind of clan group, namely the so-called "house." The head of the house (Koshu), usually the oldest male of the group, perhaps a grandfather or granduncle, wielded considerable legal and economic powers over the other members of the house, regardless whether he actually lived with them or not. His consent was required whenever a member of the house wanted to change his residence or be a party to marriage, divorce, or adoption. The sanction for noncompliance was expulsion from the house. The economic implication of such expulsion becomes evident by the fact that the head of the house owned most of the family property, succession to which was tied up with succession to the headship of the house. Since he had the duty to support needy members of the family, expulsion from the house frequently meant being deprived of the means for a living.

Obviously, this institution was not reconcilable with the new constitutional principles of individual dignity and equality. Moreover, the Constitution requires that marriage shall be based only on the mutual consent of both sexes and that it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. While this new conception would have made implementing legislation mandatory in any case, the Constitution explicitly demands that "With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce, and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes."⁸⁶

Still, the occupation was extremely reluctant to take the initiative with regard to this legislation. It was clear that the authoritative features of the "house" system were doomed to disappearance. But how far the system as such could be continued in a modified form was a subtle and controversial question, the decision of which it appeared wise to leave to the Japanese them-

selves. This was one of the important instances where the occupation exercised that self-restraint to which the first part of this article refers. The problem was thoroughly discussed among the Japanese in planning committees, in the press, and in public hearings of the Diet. Strangely enough, the final decision reached was a complete abolition of the house system. This outcome was considerably influenced by the vigorous arguments of leading women. It should be understood that the women are the largest group to benefit from such a radical change in the sphere of domestic life.

The revision of the Civil Code⁸⁷ implements this decision and replaces the "house" by the modern small family. Succession into property now takes place at equal shares among descendants, regardless of sex, and the surviving spouse, whether husband or wife, is entitled to legal shares.

All restrictions on the legal status of women as wives and mothers are abolished. This covers management of the wife's property, grounds for divorce, parental power and custody of children. Other important changes along the lines of greater emphasis upon individual independence have been integrated with regard to marriage, guardianship, and inheritance.⁸⁸

Closely connected with the revision of the Civil Code is a reform of the old Koseki (Family Registration) system, which was based on the abolished house system. The actual significance of this institution is evidenced by the rule that all essential events in the lives of the people, such as birth recognition, adoption, marriage, divorce, and death, must be registered in order to give them legal effect. While the continuation of registration as such was not considered in conflict with constitutional postulates, but convenient and even indispensable under the Japanese law, the system had to be adjusted to the change in the basic family unit, apart from the need of an overdue modernization and simplification. The new Family Registration Law⁸⁹ serves these purposes.

5. Criminal Law and Procedure

The need for a modernization of the existing Codes on the basis of a more advanced theory of criminology had been recognized by many Japanese jurists as well as laymen for some time.⁹⁰ Nevertheless, projects of an essential revision never materialized. Now a sweeping reform of the substantive as well as procedural elements of the criminal law became imperative in the light of the elaborate safeguards which the new Constitution provided in its Bill of Rights for the protection of the individual involved in the criminal process. The change in the position of the Emperor, the constitutional renunciation of war, and the new principle of equality of the sexes affected important parts of the Criminal Code. The substance of the revision of this Code as well as of the Code of Criminal Procedure will be treated in separate articles.

6. Habeas Corpus Act

The Constitution provides that no person shall be deprived of life or liberty, nor any other criminal penalty be imposed, except according to procedure established by law. The broad scope of this provision, the application of which is not restricted to arrest and detention within the criminal procedure, called for the introduction of some form of relief from illegal restraint of personal freedom. In a country where involuntary servitude of women and children had been almost customary, the need for protection from physical restraint was undeniable. The Anglo-Saxon writ of Habeas Corpus appeared so alien to continental law that no attempt was made by the occupation to suggest it as a model for Japanese legislation. There-

fore, the problem was thoroughly studied and discussed among the judges of the Supreme Court and lawyers and members of the Diet with the result that a member bill for a Habeas Corpus Act was finally submitted by the Chairman of the judicial Committee of the House of Councillors on his own initiative. When the law⁹¹ was enacted in the second session of the National Diet in the summer of 1948, the Supreme Commander publicly expressed his satisfaction as follows: "With the provision of the privilege of the Writ of Habeas Corpus, Japan now assumes a place among those people of the world who live under positive safeguards of the sanctity of individual life, liberty and human dignity."

Without going into the technicalities of the law, the limited nature of its relief should be pointed out. It applies only to illegal restraints. Therefore, the court cannot go into the merits of a detention, provided that it has been made by the authority having legal power to do so. Whether the Supreme Court will broaden the interpretation of illegality as covering abuse or grossly arbitrary use of such power remains to be seen. Specific time limits are provided for speedy judicial action. In spite of its limitation the remedy, in making the courts the guardians of the personal freedom of the people, should have tremendous ideological value. Here again the question of whether the right of Habeas Corpus will develop into a real protection of personal liberty depends upon the spirit in which it will be construed by the courts.

7. Civil Procedure

The revision of the Code of Civil Procedure⁹² was not directly required by the new Constitution. Being of a rather technical nature, it will be of little interest to the American reader. One of the main changes was aimed at a simplification of the existing appeal system, which permitted four instances in the petty cases starting in the lowest court. The result had been unbearable delays in the procedure. A continuation of this slow system was all the more out of the question as the new Supreme Court, consisting only of fifteen judges, had to be relieved from the burden of deciding on insignificant issues. Therefore, the new Code provides that decisions of the Summary Court may be appealed from by Koso appeal to the District Court and that the parties may lodge a jokoku appeal against the second instance decision of the District Court with the High Court which, as a rule, decides in the last resort. Thus in civil procedure the Supreme Court is no longer the only court to hear jokoku appeals. However, exceptions are made when constitutional issues are involved as well as in the interest of uniformity of judicial interpretation. The law authorizes the Supreme Court to determine by rules when a High Court deciding on jokoku appeal must transfer the case to the Supreme Court.⁹³

8. Administrative Procedure

The Constitution establishes the principle of judicial review of administrative acts. The implementing legislation goes far beyond opening the way to contests in the courts on constitutional grounds. While the abolished Court of Administrative Litigation had jurisdiction only in cases specifically listed in the law,⁹⁴ the regular courts are now authorized to annul or alter any illegal disposition made by an administrative office as well as other actions concerning public legal relations. This general clause, which subjects the executive branch of the government to judicial control with regard to legality, might be characterized as an amazingly liberal step toward the protection of the individual from bureaucratic encroachment.

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Already conferred upon the courts by the provisional revision of the Code of Civil Procedure, that power was reaffirmed and finally established in the Law For Special Regulations concerning the Procedure of Administrative Litigations⁹⁵ which provides that, as a rule, the Code of Civil Procedure shall apply to such type of actions.

There are, however, some important restrictions upon the citizen's right to litigation. The old rule that he must exhaust the administrative channels before he can institute an action has been retained. The law requires a preliminary petition,⁹⁶ defined as "request for examination, objection or any other complaint." Only after this petition has been rejected by the administrative office in charge of the determination is the way open to the courts. The law provides for two exceptions to this rule: (1) If the administrative office does not decide on the petition within three months, action can nevertheless be instituted. This prevents the office from obstructing litigation by delay; and (2) the court itself may dispense with the petition if serious damage is anticipated.

It might be argued that the Law confers excessive powers upon the courts. However, they are only concerned with the question of legality and cannot decide on the wisdom or administrative expediency of the contested act. There is little justification for the apprehension that the Courts may not exercise a reasonable degree of judicial self-restraint in the application of the Law. Moreover, the mere existence of the people's right to challenge administrative acts on legal grounds will serve as healthy check on the still powerful Japanese bureaucracy.

Still, the danger of judicial interference with the proper functions of the executive branch of government was clearly seen in connection with the injunctive power of the courts. Therefore, the Law provides, as a rule, that the courts cannot stop or suspend the administrative disposition by an injunction when action for its invalidation has been instituted. Injunctions are admitted only if the court considers them urgently necessary to prevent irreparable damage which may result from the execution of the disposition. Even in such case injunction is excluded if the suspension of the execution is against the public interest. Finally, when the Prime Minister declares that the national interest is affected, an injunction must be rescinded. For political reasons, he will make use of this exceptional power only in cases of great nationwide importance.

CONCLUSION

In an article of this length it was possible to give only the highlights of the judicial and legal reforms enacted to implement the new Constitution. The main objectives of this legislation have been the independence of the judiciary and the strengthening of its prerogatives; the promotion of fundamental human rights; and the protection of the individual from too much governmental interference with his private life. The approach to such broad elements of legal and political philosophy affects the very structure and interrelationship of governmental institutions as well as the position of the individual citizen in society. Because the law of the land reflects that approach in all its basic enactments, the ideological revolution behind the reforms has necessarily resulted in a fundamental change of the Japanese legal system. In evaluating this change, the fact should be taken into account that under the prevailing circumstances the implementing legislation had to be enacted in a breathtaking tempo. While the drafting of important Codes took sometimes twenty years in continental countries, the

postwar revision of a great number of such Codes was carried out in Japan within the short time from the autumn of 1946 to the summer of 1948. Yet, the ideal method of thorough lawmaking could not have been used in a situation which called for a swift break with the past. Consequently, even the normal degree of perfection cannot be expected in this particular case. Mistakes and omissions will certainly be discovered. However, these shortcomings can be remedied by subsequent amendments. As a matter of fact such process of improvement is going on at present. In any case, the essential legal groundwork for a new social and political order has been laid.

The administration of justice is now going through the unavoidable difficulties of transition from the old to the new system. Judges, public procurators, and lawyers are daily faced with problems of law for the solution of which no precedent exists. Nevertheless, the impression prevails that their adjustment to the changes will be smoother and more rapid than anticipated by those who expected an almost chaotic confusion.

More important than this technical aspect of transition, however, is the question of whether the Constitution and the implementing law will be applied by the courts effectively and in the right spirit. A long process of reorientation in the light of the new position of the judiciary will be necessary to replace the analytic and formalistic judge of the past by the creative type which the country needs. The legal profession also must become increasingly conscious of its mission as defender of civil liberties. Without such transformation in the attitude of those connected with the administration of justice the legal reforms would be nothing but blueprints in the textbooks of law.

Still, the judges and lawyers are only instrumentalities of society at large. Above all others, the most fateful issue will be the reaction of the people. What do the Constitution and the new laws mean to them? Has the new order, integrated into the reforms, become part of their lives and conquered their hearts or do they look at them as something alien and imposed by the occupant? Would they be willing to fight for their new rights if their rulers attempted to put the clock back? It is evident that the post-occupation survival of the reforms depends upon the answer to these questions. One should beware of both too much optimism and pessimism. Traditional attitudes toward the government or the family and centuries-old customs are hard to change overnight. This is particularly true in the case of the rural population which is less flexible than the urban and lacks the same educational possibilities. On the other hand, the danger that the reforms will be repudiated by the bulk of the people because of their connection with the Allied Occupation has been minimized by the method of collaboration with the Japanese who have shown themselves amazingly responsive and cooperative. What happened was that, in this meeting of two different civilizations, generally speaking, the Japanese were willing to adopt them. This willingness was motivated mainly by the recognition of the need for a progressive change in their legal system. Reforms which would have been due in any case merely materialized earlier and more rapidly under the influence of the occupation. To be sure, there are groups among the former ruling classes who criticize the new legislation as un-Japanese, but they use this criticism merely as an argument against innovations which they would have fought even more if there had been no occupation at all.

There are indications that the people are beginning to become increasingly mindful of their constitutional rights. Particularly, women leaders have been quick to grasp the benefits of the new order for their sex. The labor movement, strengthened in the postwar period, can become an effective

weapon against suppression of civil liberties, provided it avoids extremism. The final outcome is tied up with the political future of Japan, which will be influenced by unpredictable international developments and domestic economic and social conditions. Only if the people make courageous use of their new rights for the prevention of any authoritarian form of government, regardless of the brand, will the broad program visualized in the reforms be fulfilled.

NOTES

1. See, for example, FRIEDRICH, C. J. AND ASSOCIATES: AMERICAN EXPERIENCES IN MILITARY GOVERNMENT IN WORLD WAR II (Rinehart, 1948) Chapter 1; and Thomas L. Blakemore, Post-War Developments in Japanese Law, WISCONSIN LAW REVIEW, July, 1947, Part I.

2. American experience in that respect goes back to the period of occupation after World War I. In his critical analysis, Military Occupation and the Rule of Law (Oxford University Press, 1944), page 4, Ernst Fraenkel speaks of the application of Wilsonian principles to the field of military occupation. He characterizes the regime as a "symbolic mixture of realism and idealism."

3. U.S. Initial Post-Surrender Policy for Japan (Released to the Press by the White House, September 22, 1945) Part I.

b. "... The authority of the militarists and the influence of militarism will be totally eliminated from her political, economic and social life...."

c. "The Japanese people shall be encouraged to develop a desire for individual liberties and respect for fundamental human rights, particularly the freedoms of religion, assembly, speech, and the press...."

4. Item---Part II---2 "...the Supreme Commander has authority through Japanese governmental machinery and agencies, including the Emperor...."

5. See SCAP's message to the Japanese People on the Second Anniversary of the Constitution of Japan on May 3, 1949.

6. Potsdam Declaration of July 26, 1945.

7. Miyasawa, Toshimi, Professor of Constitutional Law at Tokyo Imperial University in an unpublished paper titled Outline Concerning the Reforms in Japan under the Control of the Allied Powers.

8. U.S. Initial Post-Surrender Policy for Japan, Part III---Political, para. 3d.
9. The legal basis for this device was Imperial Ordinance No. 542 of September 20, 1945. "...In accordance with the acceptance of the Potsdam Declaration, in order to carry out items based on the demands made by SCAP, the Government may when especially necessary, take the necessary steps through ordinances, and may establish necessary penal regulations...."
10. See Law 72 of 1947 (The Law concerning the validity of the Provisions of Orders in Force at the Time of coming into Force of the Constitution of Japan, etc.), English Edition of the Official Gazette, No. 313, April 18, 1947.
11. Examples: (a) Letter of SCAP, dated February, 1947, requiring the abolition of the lese majesty provisions in the Criminal Code, and (b) Letter of SCAP, dated September 16, 1947, concerning the decentralization of police and the establishment of the Attorney General's Office. These letters were implemented by the following Diet Laws: (1) by the revision of the Criminal Code, Law No. 124 of 1947, O.G. Extra, October 26, 1947; (2) by the National Police Law, Law No. 196 of 1947, O.G. No. 516, December 17, 1947 and the Attorney General's Office Law, Law No. 193 of 1946, O.G. No. 516, December 17, 1947.
12. Agricultural Land Adjustment Law, Revised by Law No. 42 of 1946, O.G. No. 168, October 21, 1946; Owner-Farmer Establishment Special Measures Law, Law No. 43 of 1946, O.G. No. 168, October 21, 1946.
13. The main issue is whether the legal price provided for by the law constitutes "just compensation" of the landowner in the meaning of Article 29 of the Constitution.
14. See footnote 11.
15. Issued on October 4, 1945.
16. Among them were the laws and ordinances which provided for "peace preservation," "protection and surveillance," "precautionary detention," "safeguarding military secrets," and the "Religious Body Law."
17. SCAPINS 51 of September 24, 1945 and 66 of September 27, 1945.
18. By the so-called Shinto Directive, SCAPIN 448, of December 15, 1945, which forbids the continuation of governmental sponsorship, control and dissemination of state Shinto as well as the affiliation of all religions with the government and with militarists and ultranationalistic ideologies.
19. SCAPINS 642 of January 21, 1946, which also caused the nullification of all contracts which had for their object the binding or committing, directly or indirectly, of any woman to the practice of prostitution.
20. Given to the people by Emperor Mitsuhiro on February 11, 1889. For a brief analysis of the Meiji Constitution see Blakemore, op. cit., part III.

21. Reference is made, for instance, to the several constitutions during the French Revolution, to the Constitution of 1871 enacted in France in the beginning of the Third Republic, and to the Weimer Constitution of 1919 in Germany.

22. Article 73 of the Meiji Constitution.

23. The orthodox theory, maintained by N. Matsunami in his textbook in English language: THE JAPANESE CONSTITUTION AND POLITICS, p. 62 (Tokyo, 1940), denies the Diet such power of amendment completely. TATSUKICHI MINOBE: COMMENTARY OF THE CONSTITUTION (in Japanese), p. 722 (Tokyo, Yuhikaku Co., 1923), holds a different opinion, with regard to change of the constitutional project, but wants to exclude additions to the project because they would interfere with the initiative power of the Emperor. On the same question, see also SHIMIZU TORU: ON THE CONSTITUTION (in Japanese), p. 201 (Tokyo, Shimizu Shobō Co., 1904), and Dr. Ushijiro Sato: Lecture on the Imperial Constitution (in Japanese), 1938, pp. 368-370.

24. Several amendments to the draft bill were enacted by the Diet, after the Government had recognized the right of the Diet to do so. (See Official Gazette Extra, No. 7, p. 11, of June 28, 1946, containing the minutes of the discussions of the House of Representatives, and the statement of Minister Kanamori; see O.G. Extra of June 24, 1946, No. 2, p. 20.)

25. The Japanese term is Kokutai. Its meaning is not clearly definable in legal language, but it implies the "unbroken line of imperial rulers."

26. See PRINCE HIROBUMI ITO: COMMENTARIES ON THE CONSTITUTION OF THE EMPIRE OF JAPAN (translated, Tokyo, 1931), p. 148.

27. This view was supported by reference to a decision of the Japanese Supreme Court of May 31, 1929 in connection with an interpretation of the Peace Preservation Law. See interpellation of Peer Asai in O.G. Extra No. 25 of August 29, 1946, p. 6.

28. Brief summaries of the endless arguments are given in the English language newspaper Nippon Times of August 28 and September 4, 1946.

29. For a comparative analysis of the new Constitution of Japan see Supreme Commander for the Allied Powers, Summation of Non-Military Activities in Japan, No. 14, 1946, pp. 25-40.

30. Article 69 of the Constitution provides: "If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en bloc unless the House of Representatives is dissolved within ten days." A heated constitutional controversy ensued when Prime Minister Yoshida as chief of a minority Cabinet, on November 15, 1948, threatened to suggest the dissolution of the lower House to the Emperor on the basis of article 7 of the Constitution, which lists the dissolution among the functions of the Emperor. The opposition maintained that the House of Representatives could only be dissolved in the case of Article 69. Pursuant to a compromise the dissolution of the House was actually preceded by a vote of non-confidence.

31. This distinction is somewhat ambiguous and escapes legal interpretation. The CONSTITUTION OF JAPAN states:

"Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

"Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to Government."

32. The outstanding elements of this Bill of Rights are individual dignity (see Articles 13 and 24) and equality under the law with explicit ban of discrimination in political, economic, and social relations because of race, creed, sex, social status or family origin (Article 14).

33. It appears, however, that the exercise of fundamental rights is somewhat limited by consideration of public welfare. Article 12 provides that "the freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare." The issue of public welfare might play an important role in future decisions of the Supreme Court on the constitutionality of legislation restricting economic freedom. The Constitution itself does not take any definite position in the question of controlled economy versus free enterprise. While property rights are declared inviolable, they may be "defined by law, in conformity with the public welfare." (Article 29) The recent judicial attitude regarding state control of economy in the United States is analyzed by Vincent M. Barnett, Jr. in The Supreme Court and The Capacity To Govern, POLITICAL SCIENCE QUARTERLY, September, 1948, p. 342.

34. See for instance, the CONSTITUTION OF THE FRENCH REPUBLIC of 1946, Articles 103 to 105, and the WEIMAR CONSTITUTION OF 1919, Articles 167, 169, 173 and 174.

35. These provisional revisions were enacted by the 92nd Session of the last Imperial Diet, December 27, 1946 to March 31, 1947.

36. As far as the provisional revision of the two procedural Codes was concerned, this deadline had to be extended subsequently.

37. The final revision of the Civil Code and the two procedural Codes was enacted in the 2nd Session of the National Diet, which lasted from December 10, 1947 to July 5, 1948.

38. Legislation concerning the legislative and executive branches of the government, such as the Cabinet Law, Law No. 5 of 1947, O.G. No. 237, January 16, 1947; the House of Councillors Election Law, Law No. 11 of 1947, O.G. 269, February 24, 1947; and the Imperial House Law, Law No. 3 of 1947, O.G. No. 237, January 16, 1947 were adopted even before the Court Organization Law.

39. This Article restricts itself to a brief analysis of the organizational changes connected with the administration of justice and of the revision of the basic legal Codes. No discussion is included of political, social, and economic reforms, such as the Election Laws, the Local Autonomy Law, the National Public Service Law, the labor legislation, and the land reform.

40. Article 76 of the CONSTITUTION OF JAPAN.

41. Law No. 67 of 1947, O.G. No. 312, April 17, 1947.

42. Law No. 59 of 1947, O.G. No. 311, April 16, 1947, as amended.

43. At the present time there exist eight High Courts, six High Court Branches, forty-nine District Courts, the locations of which roughly correspond to the prefectural districts--228 District Court Branches, 49 Family Courts, 228 Family Court Branches, and 559 Summary Courts.

44. The Japanese Law distinguishes between jokoku appeal, ko-so appeal, and kokoku complaint. Jokoku is an appeal from a judgment of an inferior court, usually restricted to issues of law and comparable to the French revision. Ko-so is an appeal involving both questions of fact and law. In the civil procedure the character of this appeal as a complete trial de novo has been retained, while in the criminal procedure it has been basically altered. (See subsequent article of R.B. Appleton, Reforms in Japanese Criminal Procedure Under Allied Occupation.) Kokoku is a complaint against rulings and orders other than judgments of the inferior courts. To give a more precise picture of the somewhat complicated jurisdiction, the Supreme Court as the court of last resort, has jurisdiction over jokoku appeals and kokoku complaints prescribed specially in codes of procedure. The High Court is basically an appellate court. It decides on ko-so appeals from judgments in the first instance rendered by District Courts; on kokoku complaints against rulings and orders rendered by District Courts; and on jokoku appeals in civil procedure from judgments in the second instance rendered by District Courts or from judgments in the first instance rendered by the Summary Courts. Only in exceptional cases does the High Court decide as a court of first instance. The Law mentions only the trial of offenses related to Civil War (riot, etc.). The District Court decides in the first instance unless the Summary Court or High Court has jurisdiction. In civil matters it also decides on ko-so appeals and kokoku complaints from judgments rendered by the Summary Court. Finally, the Summary Court is in charge of civil claims where the value of the controversy does not exceed five thousand yen (now about fourteen dollars) and of the trial of criminal offenses punishable with fine or lighter penalty and with fine as optional penalty. Only in the case of theft can the Summary Court impose penal servitude not exceeding three years.

45. Amendment to the Law for the Election of Member of the House of Representatives, Law No. 43 of 1947, O.G. Extra-5, March 31, 1947, Article 81.

46. The former Supreme Court was composed of thirty-two judges.

47. Issued in the meantime by Supreme Court Rule No. 5 of 1947, O.G. No. 478, November 11, 1947.

48. Article 10 of the Court Organization Law.
49. Ibid., Article 18.
50. Ibid., Article 26.
51. Ibid., Article 35.
52. By an amendment of the Court Organization Law. See Law No. 260 of 1948, O.G. No. 819, December 21, 1948.
53. These functions, based on the Law for the Adjustment of Domestic Relations, Law No. 152 of 1947, O.G. No. 507, December 6, 1947, were initially exercised by the Court of Domestic Relations as a branch of the District Court, and have now been absorbed by the new Family Court.
54. See Amendment of the Juvenile Law, Law No. 168 of 1948, O.G. Extra, July 15, 1947, which provides the details of the procedure before the Juvenile Court; and Amendment of the Reformatory Law, Law No. 169 of 1948, O.G. Extra, July 15, 1948, which is designed to modernize the institutional aspect of law enforcement against juvenile offenders.
55. Article 3, which however, explicitly admits "preliminary determination by executive agencies."
56. These powers are conferred on the new Supreme Court by Articles 77 and 81 of the Constitution.
57. See article of R.B. Appleton, footnote 44.
58. See Code of Civil Procedure, Law No. 149 of 1948, O.G. Extra, July 12, 1948, Article 409-62; and Code of Criminal Procedure, Law No. 131 of 1948, O.G. Extra, July 10, 1948, Article 405.
59. Article 79 of the Constitution.
60. Article 6, Par. 2, ibid. This mode of appointment was inserted by a Diet amendment in order to give the Chief Justice a prestige equal to that of the Prime Minister, who is also appointed by the Emperor, after having been designated by the Diet.
61. Oyabun-Kobun, feudal boss-henchman relationship. For illustrations see Justin Williams, Post War Politics in Japan, A Symposium, Party Politics in the New Japanese Diet, in POLITICAL SCIENCE REVIEW, Vol. XLII; December 6, 1948, p. 1171; and William Costello, Democracy vs. Feudalism in Post-War Japan (Tokyo, 1948), pp. 27, 29, and 85.
62. The Court Organization Law in order to guide the Cabinet in its choice established a Consultative Committee for the appointment of judges to give suggestions regarding candidates to the Supreme Court. This committee acted on the occasion of the first appointment of the judges. However, due to the reluctance of the Japanese to reject suggestions coming from outstanding figures of public life, such as the committee members, this device virtually had the effect that the power of appointment shifted from the Cabinet, where it belonged constitutionally, to the committee. A subsequent amendment, therefore, abolished the committee.

63. See Article 79, Pars. 2 to 4, of the Constitution.
64. Law No. 136 of 1947, O.G. No 493, November 20, 1947.
65. It will, however, be easier than before to satisfy such interest since the Court Organization Law (Article 11) has introduced the rule for the Supreme Court that dissenting opinions must be expressed in writing, while hitherto, in accordance with continental practice, the decision revealed only the opinion of the majority.
66. Article 80 of the Constitution.
67. Court Organization Law, Article 50. In a subsequent amendment the maximum age was raised to seventy years for judges of the Summary Courts due to difficulties of recruiting men for this low-paid category.
68. Articles 41 through 44 of the Court Organization Law.
69. One of the present members of the Supreme Court, Kuriyama Shigeru, for instance, has had a long career as a diplomat in European countries.
70. Article 78 of the Constitution and Article 48, Court Organization Law.
71. Ibid., Article 64.
72. Law No. 137 of 1947, O.G. No. 493, November 20, 1947.
73. Law No. 93 of 1948, O.G. Extra, July 5, 1948.
74. Law No. 127 of 1947, O.G. No. 475, October 29, 1947. Originally this Law covered also court officials other than judges, such as secretaries and clerks. In the current session of the Diet its application has been restricted to judges, since the other court officials are now temporarily subject to the National Public Service Law (Law No. 120 of October 21, 1947, O.G. No. 468). This law places the judges into the special service, which actually means their exemption from the general civil service rules.
75. The Committee, on the basis of Article 62 of the Constitution, according to which "each House may conduct investigations in relation to government and may demand the presence and testimony of witnesses, and the production of records," had investigated individual cases decided by the courts and criticized the wisdom of the decisions as well as the attitudes of judges. The House of Councillors refuted the charges of unconstitutional interference by referring to the principle that the Diet is the "highest Organ of State power." (See Nippon Times of May 21, 24, and 28, 1949)
76. Law No. 61 of 1947, O.G. No. 311, April 16, 1947.
77. The former Ministry of Justice has been replaced by the Attorney General's Office in connection with the reorganization of the Police (Law for Establishment of the Attorney General's Office, Law No. 193 of 1947). This change was mainly motivated by the separation of the courts from the executive branch of the government, which in the field of administration of justice left to the Ministry of Justice only the supervision over the public procurators. It was felt that a reorganization on the central level should emphasize the importance of such development. This resulted in the

abolition of the Ministry of Justice the name of which had been associated with ill-fated experiences of the past. The mission of the newly created Attorney General's Office has been defined in the law as that of the supreme legal advisor to the Cabinet. In this capacity it is also in charge of drafting legislation of bills to be submitted by the Cabinet to the Diet. Thus the Attorney General's Office has absorbed functions formerly performed by the Legislative Bureau of the Cabinet which also was dispensed with "in the interest of governmental efficiency and economy." A Civil Liberties Bureau has been established in the Attorney General's Office, something never heard of before in a Japanese bureaucratic agency.

78. His part in the Criminal Procedure is treated in the article of R.B. Appleton, footnote 44.

79. Law No. 31 of 1948, O.G. Extra, May 1, 1948.

80. Law No. 147 of 1948, O.G. Extra, July 12, 1948.

81. On details regarding this institution see article of R.B. Appleton, footnote 44.

82. Law No. 54 of 1933.

83. (EDITOR'S NOTE: This revision of the Lawyer's Law has since been passed by the Diet.)

84. The same is true of the Commercial Code, a partial amendment of which is, however, under consideration at the present time.

85. Similar doctrines with regard to the state in the Hegelian philosophy, although of different historical origin, greatly influenced the German development.

86. Article 24 of the Constitution.

87. Law No. 222 of 1947, Official Gazette 520, December 22, 1947.

88. An elaborate analysis of the new Civil Code will follow in a subsequent article.

89. Law No. 224 of 1947, O.G. Extra, December 22, 1947.

90. Thus an Extraordinary Legislative Committee pointed to the defects of the Penal Code in 1926 and passed a resolution in favor of its revision. In 1931 a Special Committee was established, which submitted plans for such revision to the Government.

91. Habeas Corpus Act, Law No. 199, O.G. No. 699, July 30, 1948.

92. Law No. 149 of 1948, O.G. Extra, July 12, 1948.

93. Rule No. 5 of the Supreme Court, O.G. No. 459, October 9, 1947, implements this provision in detail.

94. This system was based on what the continental theory called "principle of enumeration."

95. Law No. 81 of 1948, O.G. Extra-1, July 1, 1948.

96. The petition, which is to be submitted to the administrative agency specified in the law authorizing the contested act, should not be confused with the petition in the broader sense of Article 16 of the new Constitution. This latter provision gives every person the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters. It has been implemented by the Petition Law, Law No. 13 of 1947, O.G. No. 284, March 13, 1947, which requires that such petition be made in writing and that it be given "sincere consideration."

*To Hon. Chief Justice Fred M. Vinson
with best wishes from
KŌTARŌ TANAKA Kotaro Tanaka*

*Chief Justice of the Supreme Court of Japan, Member of the
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A SKETCH OF A THEORY OF WORLD-LAW

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A SKETCH OF A THEORY OF WORLD-LAW

by

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World-law,¹ as a subject of present juridical science, is as yet only an idea imperfectly realized. It will probably so remain for some generations. But who will assert that the ideal of today may not be the reality of tomorrow?

World-law is one of the products to which human society has given birth. It is a branch of civilization just as are international economy, world-commerce, and the organization of communications among different countries. However, while these last domains have attracted the attention of the intellectual world and have been the object of scientific studies, the existence of world-law has not yet been recognized even on the part of jurists. One finds but very rarely scientific works on this subject; I can cite you only a small but excellent pamphlet of Zitelmann entitled *The Possibility of a World-Law*, 1888, the range of which goes no further than the question of the unification of national laws. Quite recently I have to my great pleasure discovered in a German encyclopedia of political science (*Staatslexikon Herders*) an article entitled *World-Law*, written by Mr. Held, doubtless inspired by Zitelmann.

From the viewpoint of the present state of human society, this branch of science is not sufficiently developed; it is not capable of responding to the international juridical problems arising from the world communications and commerce. In short, world-law is not yet recognized, regrettably, as an object of scientific research. Nevertheless, if the problem is viewed in the light of the considerable development of relations between countries and individuals, one can deny neither the theoretical nor the practical importance of research in world-law. One will then commence to allow it the honor of figuring among the various systems of law. This science is one of those which have a future full of promise.

After these preliminaries, I shall consider the scientific justification of world-law and make an analysis of it.

¹) I have published on this question *A Theory of World-Law*, 3 vols., 1932-1934 (in Japanese).

Firstly, let us consider the foundations of law. They are composed of two elements: the real or empirico-sociological element, and the ideal or metaphysical element. (Here I permit myself to ask you to note that I am not a partisan of the dualistic Neo-Kantianism concerning the theory of the epistemology of law. I belong to the school of scholastic natural law. It is by it alone that we shall be able to surmount the difficulty arising from the dualism between the natural and the supernatural, sociology and metaphysics, for it has admitted the rational element into the manifestations of human activity.)

I shall apply myself first of all to the sociological element.

At the beginning of the XIX Century, juridical science was subjected to the influence of the historical school of Germany represented by Savigny. He maintains, in radical opposition to the said school of natural law, that law is a product of the common consciousness of the people. We all know that the historical school considered law as being in an analogous relation with language. It goes without saying that this point of view will lead us necessarily to the negation of world-law. Next, in the latter half of the XIX Century, the science was subjected to the influence of juridical positivism and above all of the analytico-exegetical school. Limiting the sources of law to the State, and concerning oneself only with code-provisions, this system never desired to reach to the sociological foundation of law. It was entirely natural that this pseudo-scientific tendency was energetically attacked by a new school of reaction, the movement of "free law" (*Freirecht*), the principal mission of which was, in my opinion, simply negative: to emancipate the science of law from the supremacy of the code, that is to say from the omnipotence of the legislation of the State. However, this school, in spite of its negative and liberal character at bottom, favored our science in two respects: the sociological method, the metaphysical method or that of natural law, which both, be it noted, are in no wise "free" (*frei*) as was claimed at the outset.

The sociological method, starting from the recognition of law as social rule, wants to undertake researches in the law of cause and effect which actually exist between social laws and juridical norms; in this case it does not limit the materials of the science to laws of the State. The State is nothing other than a species among human societies: in addition to this, there are, with their respective domains, communal, departmental, national societies, societies between several or all the States of the world, and lastly a society of mankind. The last two extend themselves beyond the borders of each State and have truly a supra-national or even world-wide character. It is the data of this kind that Mr. Georges Scelle has studied in the first volume of his *Traité de Droit des Gens*. Today, when economic and intellectual exchanges are more developed than ever, there result infinitely numerous types of international relations: in the first place, marriage and contract of sale between two individuals of different nationalities, and besides various rela-

tions of international economic collaboration, such as commercial companies of international character, international cartels; in addition, international organizations in matters of religion, charity, science, art, and technique; lastly, political or economic relations between several States—namely, the League of Nations, the International Economic Conference, or still again the Postal Union. Those are world-wide societies. They are thus required to be regulated by law. This regulation is realized in part by national laws, but there are also a number of rules which are proper to each society and entirely independent of the legislative power of States.

In sum, if on the one hand one admits law as essential to social life, if one recognizes it as a condition *sine qua non* of society according to the adage *Ubi societas ibi ius*; and if on the other one affirms the real existence of world-wide societies, we are obliged logically to end in the recognition of world-law.

Among the world-wide societies, there is a very remarkable one. It is nothing other than the society of world-economy (*Weltwirtschaft*). It is only a score of years ago that this was studied profoundly, especially by such German scholars as Messrs. Bernhard Harms and Sartorius von Waltershausen. Analytically examined, it is composed of national economies (*Volkswirtschaft*) and of individual economies (*Einzelwirtschaft*). In other words, we can say that the one side of world economy presents us relations between several national economies; the other side, those between numerous individual economies belonging to different States. In the case of the former, I speak of relations among many national economies, and the question is to regulate by the conventions the economic relations between two or several States; I could even say that these relations are themselves but international economy; whereas in the case of the latter, where arise above all the contracts of sale between private persons of different countries, we have world-economy in the narrow sense of the word. These different relations, having a world-wide character, should be regulated by a world-law.

What I have just enunciated is only the observation of the material data of world-law. I should next consider its spiritual data. If world-law truly exists, it should have a basis common to all nations. According to the historical school and the positivist tendency, above all the analytical school of Austin, the ethnological school of Post, the economic materialism of Marx-Engels, the idea of justice immanent in law is relative to each people, to each race and to each class. They push the relativity of law so far as to appropriate for themselves the words of Pascal: "Three degrees of elevation of the pole overturns all jurisprudence". There are thenceforth no more juridical conceptions common to the entire world. Under such a conception, the universal regulation of world-society must become impossible. On the contrary, humanity has the experience of that sort of society which has not ceased to exist from ancient times to our day, although its development varied with the era. Now the relations between nations and those between

individuals of various nations develop themselves on the basis of a common conception of justice and on the sentiment of solidarity.

The idea that affirms the existence of common principles among the people belonging to diverse nations, races and classes, is that of the school of natural law. It is nothing other than a series of moral and juridical principles which undergo no change on the part of societies according to space and time; of which the content remains always the same, because deduced from the reason which the Creator himself gave to man. As you know, the idea of natural law never ceased to exist. Wherever there is found a spiritual civilization, we find it expressed and developed in the manifestations of human wisdom, from the Greek epoch until the beginning of the last century. We can say without exaggeration that legal philosophy and political science have not existed beyond the compass of this idea. In the XIX Century the school of natural law appears to have lost its influence of former days by reason of the predominant tendency of historical and positivist ideas. It was a strange epoch when metaphysics had no longer any authority. A deplorable eclipse in the evolution of human thought! But, before long, ideas regained their normal course. At the beginning of our century, natural law had a remarkable revival of vitality. The idea had been already in embryo in a branch of the school of liberal law, represented in France by Mr. François Géný; it propagated itself little by little in the world of juridical science, despite violent attacks on the part of German Neo-Kantianism. Its value was of a practical and theoretical order. In the first place, it not only furnished legislation with a necessary foundation, but contributed also to the interpretation of laws and to the filling up of their lacunae; in the second place, thanks to the works of Catholic jurists, above all in France, in Belgium and in Germany, it founded on this common idea the integral system of diverse laws and thus realized the synthesis of the science of law, which until then had been divided into different branches preserved independent by their objects.

I add here that world-law is no other thing than a normal and legitimate product of the idea of natural law.

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Returning to my subject, I shall consider the present system of law in the light of world-law and give to each branch of law its respective position. The present system of law is erected with the law of the State as its logical starting-point. Also it considers only the juridical relations in the State. As regards international juridical relations and those of mankind, the former are happily regulated by public international law, but the latter are, as yet, regulated only by transitory and rather imperfect means. Let us then study each branch of the law involved in regulating international questions.

If observations on world-economy are applied to world-society, the latter is the result of two other societies. The one is the society that exists be-

tween various States, and I may call it "international society", and the other is the society composed of private persons appertaining to different States or even without any nationality; I shall call it "world-society" in the strict sense of the word. The former has public international law as its rules, while the latter is regulated by two systems of law: private international law in the traditional sense of the word, and world-law in the strict sense of the word, that is, uniform law.

In the first place, public international law. It has for its object the juridical relations between various States. As man is a sociable animal, it is quite natural that he should live in community as well from the material as from the spiritual viewpoint. Nevertheless mankind being incapable of constituting a single community, it must be divided into numerous groups, according to the differences of conditions—ethnological, geographic, historic and other—whence come the political units which we call "States". Now, a State cannot remain utterly independent in regard to others. As the individuals form a community by their social instincts, so the States necessarily establish between them common life that calls for their solidarity. The law that regulates the common life of States is called public international law, which, in my opinion, is nothing other than a part of the world-law.

This very simple logic has not been accepted, however, up to the present, except by such representatives of the scholastic school as Mr. LeFur. Juridical character has been very often denied to public international law; we find the cause thereof in the following facts: lack of organization of international society and the predominant theory of the absolute sovereignty of the State, supported especially by the Hegelian school represented by Adolf Lasson. Even if its juridical character be allowed, the will of States is to be given as its basis: that is, the obligation imposed by this law is created by the States themselves—such is the thought of Georg Jellinek. But, in my opinion, the law should be above those who submit to it, and no obligation can be derived from the will of those subjected to it; this is really the conception of the heteronomy of law, in opposition to the Neo-Kantian theory of the autonomy of law. In the contrary case, the law could not maintain the authority with which it should be clothed. As in a State the law is above the citizens, so, in the society among various States, international law should soar above each of the States. International law is by its very nature supranational, that is, world-wide, and can therefore take place in the world-law.

According to this conception, we can claim for international law the authority which should properly belong to it, but which has been wanting to it especially since the Great War.

In the second place, private international law. As I have indicated just above, there exists, forming part of the world-society, a juridical community in which private persons of various States, or even not belonging to any State, have among them some juridical relations without the intermediacy of the State. There we have truly a world-wide juridical society.

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Now, what is the juridical regulation of this society? The present juridical life has for its basis the systems of national law. There are between States few uniform juridical norms which regulate directly the relations between private persons; there are, for example, the uniform laws of Geneva on bills of exchange, on bills to order, and on checks, the regulations of autonomous character among the parties concerned, such as the rules of York and of Antwerp on general average. Very interesting efforts are at present being made to develop this uniformity in the law of obligations, for example between France and Italy, by the scholars of both countries, in the front rank of whom is found Mr. Capitant. In the absence of uniformity, we are obliged to apply the laws of each State according to the principles of private international law.

Let us illustrate the fact by an example: Suppose an Italian, "A", who draws up in France a contract of sale with a Japanese, "B". According to the principles of Japanese private international law, the capacity of "A" will be governed by his national law, that is to say, by the Italian law; the capacity of "B", by his national law, that is to say, by the Japanese law; while as to the form and the effect of the contract, the French law will be applied, unless a law be fixed for it by the will of the parties. Private international law points out to us the national law which applies to world-wide relations among private persons. It is a special rule imposing on each law the territorial limitation which results from its intrinsic nature. To my mind, the principles of private international law are no other than the rules determining the principles of interpretation of each national law to be applied to international relations.

According to a doctrine which has numerous supporters, above all in Germany, private international law is designed to resolve conflicts of laws. It is doubtless based upon the theory of unlimited sovereignty in space which, from the point of view of the relativity of the positive law, can be the object of scientific criticism. As law is not the work of sovereignty, but that of society, private international law is not designed to be the arbiter between two or several laws in conflict. It is but a method of authentic interpretation of each national law.

Actually private international law assumes again the form of national law; forming part of the system of law of the State, it considers necessarily the needs of each country, and on this account becomes nationalist. Each State wishes then to give a more extensive application to its laws. This tendency manifests itself in the theory of *renvoi* and that of public order, and practically, on the part of judges, in the fact of appealing very often to national laws in case of doubt (*in dubio, lex fori*). But private international law should be, by its very nature, unique for all the nations, since it functions as the common canal by which each national law can be applied in international relations. Whereas, for other branches of law, their unification comes above all from practical necessity, a unification that can be realiz-

ed only in an imperfect manner, for private international law this unification does not derive solely from a practical necessity, it imposes itself logically in spite of the difficulties of realization in fact, for private international law functions as a denominator common to all national laws, without which the latter cannot enter into relation or into conflict with others. It is thus that—permit me this comparison—Latin is a language thanks to which one can understand French and Italian in spite of differences in detail. In the same way, private international law presupposes the existence of common concepts in the legal systems of all countries. Naturally these juridical concepts are, in fact, very intimately linked with some national law, but in order that private international law may serve as common denominator, they should not be different from each other. No doubt, the judge cannot evade the question of qualification, that is to say, the question concerning the research of law which decides the juridical nature of concepts in the private international law of each country; but this question, which has been much discussed by Messrs. Bartin and Kahn—it is concerned with a controversy between those for whom the qualification appertains to the *lex fori* and those for whom it depends upon the law declared applicable—should, in my opinion, change its entire aspect. It should be emancipated from any national law whatever; it should be conceived as a problem of the interpretation of private international law, and this is no other than world-law.

Since, therefore, private international law possesses the character of world-law, the method of interpretation should be international, universal, that is to say, emancipated from any national law whatever. It goes without saying that this method will find its application in the cases where it should fill up a lacuna in private international law.

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In the third place, we shall consider world-law in the strict sense, that is to say, uniform law. Concerning the question of unification of law, we have such excellent works as those of Saleilles, Zitelmann, Georges Colin, Peter Klein, and recently those of Messrs. Capitant, Demogue and Lambert.

Private international law logically premises various national laws differing among themselves. To the extent to which the difference will be suppressed and unification realized, to that same extent, private international law will lose its *raison d'être*. The unifying of law brings an immense advantage to the interested parties in suppressing the very complicated questions of private international law, and in permitting them to recognize beforehand the law by which they should be governed. Besides, if one considers the case of bills of exchange or of the maritime law concerning general average, assistance and salvage, the responsibility of the owner of the ship, one will recognize at once that by private international law one cannot arrive at satisfying results. I cannot, for lack of space, here indicate to you the history of the unification movement of national laws, but it is a fact worthy of notice that above all in the domains of the law of bills of exchange and of mari-

time law unification has made the greatest progress.

On the other hand, the unifying tendency in the other domains of private law has made but little progress; and still the requirements of international life demand without doubt the unification little by little of law.

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Let us go further into the question, and discuss the problem of the possibility of world-law in the sense of unified law. Can its realization be theoretically hoped for? If it can, what is the limit?

The historical school which asserts that law is, like language, the product of the soul of the people, will therefore deny the possibility of unification of the laws of each people by international conventions or by private understandings between the parties concerned; or while admitting it, will deny its utility. But the facts of the past have sufficiently evidenced that that argument is far from being well-grounded. From the viewpoint of the possibility of unification of law, we should, in my opinion, distinguish two categories. The one comprises the laws which are intimately linked with the natural condition of a people and with its historical tradition, such as, in the law of the constitution of the State, the part that gives its fundamental principles furnished by history; or, in private law, the age of capacity in view of marriage and of juristic acts, the system of family and of succession, laws concerning landed property. The other comprises the laws which, depending rather upon a social technique, are on this account more or less independent of the people and of its history, as for example, administrative regulations, and the greatest part of the law of obligations, of the commercial law, of the law of bankruptcy and of the civil and criminal procedure. Even in constitutional law are found several institutions which can be liberated from the national milieu, for example the principle of separation of powers, parliamentary organization, the electoral law and the financial law. The first category of rules is of a character entirely national, it does not submit to the unifying tendency, which, on the contrary, is inherent in the second category.

The formal side, that is to say the logical element of a juridical rule, such as command, prohibition, right and duty, subject and object of law, or again juristic relations, has everywhere the same constitution.

The material side, that is to say the objective content of juridical rules, concerns the things which, like life, the human body, honor, property, marriage and succession, have a great importance for the individual and social life. As for the object of all juridical rules, it will be the realization of ideas of justice and of utility in social life. But law, in giving the rules to social life, takes account naturally of tradition and of custom, on condition that they be not contrary to justice, to good morals and to social utility. That part of law which is intimately linked with these traditions and customs assumes a national character rather strongly accentuated, so that it is very difficult to unify, while the other part which is uniquely penetrated with the

idea of justice and of utility, not only tends to unification, but furthermore, demands it in certain points, according to the needs of international life. This latter character is worthy of note in the domain of the law which regulates commercial operations and communications, like the law of bills of exchange, the maritime law and the police regulations concerning the movements of vehicles. Possessed of a technical character, they tend to unification in the same way as the technique of radio and that of industrial production.

I apologize here for not referring to the relations which exist between law and technique. In my humble view, it is, in the domain of philosophy of law, a subject entirely new but left aside even on the part of philosopher-jurists, one which should be treated in a separate study. From the ideas already expressed, I can conclude that there are two categories of juridical rules: the one has for its immediate and direct foundation the moral obligation or, if you like, the ethical mission of mankind; the other has its source in the practical considerations of utility. In its relation to life, the first category presents itself before us as an end in itself, while the second is only a means for some presupposed aim. I remember the division of human societies or groups made by a celebrated German sociologist, Mr. Tönnies: the *Gemeinschaft*, that is to say the community which is a product of the essential or unconscious will, and the *Gesellschaft*, that is to say the association, which is a product of the artificial or conscious will. The family, for example, will be a community in the sense of Mr. Tönnies, for it derives more from human nature and reason than from the will of individuals. A joint-stock company or a scientific grouping will on the contrary be associations, for their existence and their form are arbitrary creations of the will. To this division of societies corresponds the division of juridical rules into two categories: the rules of community and the rules of association. It is generally impossible or very difficult to unify the former because, though the ideas of justice and of utility may here be the same as elsewhere, the content thereof has been so much influenced by the social milieu that it provokes an infinity of nuances and a great complexity of elements.

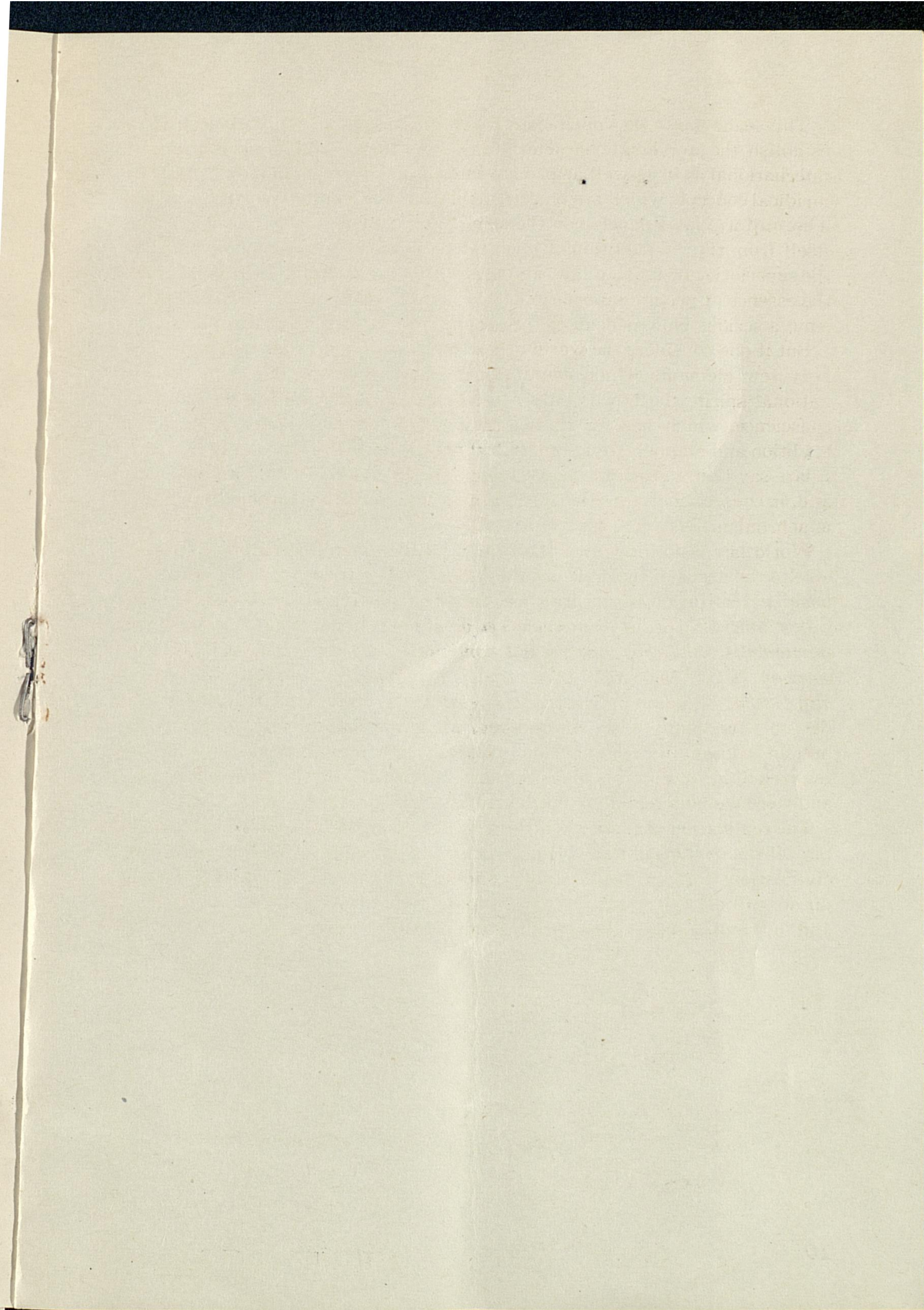
Besides, in a community, order is maintained by the different norms of religion, of morality and of custom; so that the role played by law is fairly limited, as we may judge it to be in the case of marriage, of family, of Church, and even of the State. The association is, as in the case of the joint-stock company, above all a product of cold reason; being purely rational, it counts much more on regulation by law, which is no less rational than the association itself. One could say that the latter is a purely juridical grouping. By their rational character the laws of associations tend naturally toward unification. And if society develops following Durkheim's law of division of labor, augmentation of associations paralleling communities or encroaching on the latter, one can hope that law will become more and more susceptible to international unification.

This leads me to the conclusion of my discussion, in which I desired to establish the universal character of law. As I have said previously, public international law as well as private international law cannot exist without juridical concepts which are objective, that is to say common to all countries. The uniform laws develop on the same basis. But no country can yet free itself from the old tradition of juridical nationalism: it thinks too much of the superiority of its own law, and this without any profit. In consequence, the essence of private international law is misapprehended, and at the same time a serious blow is dealt to the progressive realization of world-law.

But if one considers the world of law more attentively, one will find there very few elements which could efficaciously serve for the formation of national spirit: the law is only a feeble means to consolidate the national conscience, which has for its nourishing elements race, language, history, tradition and manners, religion, art, but not the law, which is purely rational. I dare say that, to rest its *amour-propre* on the originality of its own law and, in consequence, to reject foreign laws superior to the national law is an anachronism.

World-law is nothing other than the ancient Roman *ius gentium* conformable to the needs of the present international life. It can be said that it is a positive realization of natural law, though it is linked with religion, as Cicero affirms: *Sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit, unusque erit communis quasi magister et imperator omnium Deus.* And still: *Nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac*; or again as Zitelmann says: "We should think this: Over all the nations vying with one another, an immense and profound idea of human community should dominate; it will propagate itself and be realized according to this pious thought, 'are we not all brothers and sisters, and were we not created by a sole and a same God?'"

The realization of justice is a thing which interests not only one nation, but all the nations of the world. It appears, like religion, in the domain of civilization, for which all nations should and can collaborate. Japanese jurists will not fail in future to participate, they also, in the establishment and in the progress of this world-wide juridical community.



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Hawkins, Delafield & Wood
67 Wall Street, New York 5

Telephone: Hanover 2-5140
Cable Address: "Fieldston"

October 23, 1950

My dear Mr. Chief Justice:

I have just returned to New York and I want to express to you my deep appreciation for the cordiality and hospitality with which you and the Associate Justices of the Supreme Court received the Japanese Chief Justice and his colleagues last Thursday and also for the private interview which you granted him on Friday. The friendly manner in which you welcomed the Japanese made the task assigned me by General MacArthur much easier. Your willingness to receive the delegation in the Conference Room and to give them the inspiring talk which you did on that occasion made my function of presenting them to you a great privilege.

It goes without saying that the Japanese Judges were also highly honored by the warmth of your reception, their visit to the Supreme Court unquestionably being the climax of their trip in the United States.

May I take this opportunity of stating how much I appreciate the advice and assistance given me in making the arrangements by Mr. Paul Kelly whose cooperation made my task simple.

Respectfully yours,

Charles L. Kades

The Honorable

The Chief Justice of the United States

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FOREIGN STUDENT AND SPECIALIST PROGRAM

November 16, 1950

The Honorable Frederick M. Vinson
Chief Justice of the United States
United States Supreme Court
Washington, D. C.

My dear Mr. Chief Justice:

We would like to express our deep appreciation for the courtesy you and Associate Justices of the Supreme Court extended to Mr. Chief Justice Tanaka and the Associate Justices of the Japanese Supreme Court Mission during their recent visit to the United States.

We are fully aware of the tremendous demands on your time; therefore, we are doubly grateful to you for the time you so graciously gave Mr. Chief Justice Tanaka when the Supreme Court was not in session.

The great wealth of knowledge derived by these Leaders during their brief visit to the United States will, we feel certain, do much to extend democratic principles in many phases of Japanese life.

Very sincerely,

Kenneth Holland, President

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FMV

THE SUPREME COURT
OF
JAPAN, TOKYO

Dec. 28, 1950

Honorable Frederick Moore Vinson,
Chief Justice of the United States,
Supreme Court of the United States,
Washington, D.C., U.S.A.

Dear Honorable Chief Justice Vinson,

On behalf of the members of the Supreme Court Mission of Japan and of myself, allow me to express our most sincere gratitude for your overwhelming kindness and cordial hospitality extended to us on the occasion of our trip in your magnificent country.

All of us have returned to our country with extremely profitable experience which will, we are convinced, enormously contribute to carry out further reforms of the Japanese judicial system and to promote the mutual good will and cultural relations between our two nations.

Yours very sincerely,

Fai

Kotaro Tanaka

Kotaro Tanaka
Chief Justice, Supreme Court of Japan
Supreme Court Mission

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CHIEF JUSTICE



GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
OFFICE OF THE SUPREME COMMANDER

Tokyo, Japan

14 March 1950

Dear Kades:

With the appointment of Dr. Tanaka as the new Chief Justice of Japan, I have decided to send him to the United States at the head of a select delegation of Japan's senior judges briefly to observe the workings of our American judicial system.

This delegation will be accompanied from here by Dr. Alfred Oppler, who as you know is eminently qualified to guide it due to his broad knowledge of our own practice and procedures and the structural details of the new Japanese judicial system. Much of the opportunity available to this delegation obviously will be found in the State of New York and the city of Washington, and I am hopeful that you may be able personally to assist in bringing to the group the enlightened knowledge and practical understanding for which the trip is intended.

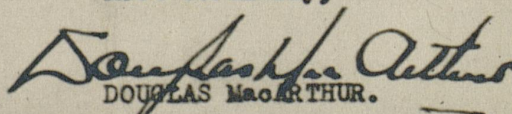
Provided it is possible for you to arrange the time, I should be most grateful if upon the arrival of the delegation in the East you would, as my personal representative, present Justice Tanaka and his colleagues to the Chief Justice of the United States and the members of our Supreme Court, to the Attorney-General and other high justice officials, and to the judges, judicial officers and distinguished members of the Federal and State bar, and contribute your special knowledge and wisdom to the development of a comprehensive program of observation and study.

I should not call upon your assistance in this matter, as I know the pressure of your private affairs must be monumental, were it not for its great significance both to the United States and to Japan and your outstanding devotion to the common objectives which both countries have sought under the occupation. I am quite confident moreover that all Americans to whom you present this delegation and from whom it seeks counsel and advice, recognizing the vital public service involved, will respond in the traditional American way.

With warm personal regard,

Colonel Charles L. Kades,
c/o Hawkins, Delafield & Wood,
67 Wall Street,
New York 5, N.Y.

Most cordially,


DOUGLAS MACARTHUR.