

2-1-1926

The Taiho Code, the First Code of Japan

Vivian M. Carkeek

University of Washington School of Law

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Comparative and Foreign Law Commons](#)

Recommended Citation

Vivian M. Carkeek, *The Taiho Code, the First Code of Japan*, 1 Wash. L. & Rev. 182 (1926).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol1/iss3/3>

This Article is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

THE TAIHO CODE, THE FIRST CODE OF JAPAN.

PROFESSOR EDWARD S. CREASY, in the eighth edition of his "Fifteen Decisive Battles of the World," published in 1858, predicted war between China or Japan, and the United States. Fortunately for the civilization of the world, there has been none, nor is there likely to be. But as was so well stated by Viscount Uchida, "A knowledge of each other's legal institutions is one of those things which is so essential to an understanding and to the creation of good feeling between nations." The increase of commerce and intercourse that is certain to take place within the next few years, makes such a knowledge important for its own sake, aside from that of engendered friendliness. For these reasons, then, are submitted the following remarks upon Japan's first code, the Taiho Code.

In order that the reader may have an idea of Japanese legal history at the outset, it should be stated that the history of Japanese law may be divided into five periods:

1. The period from about 660 B. C. to 702 A. D.
2. From 702 A. D., the date of the Taiho Code, to 1232 A. D., the date of the Shikimoku Code. This is the age of feudalism in Japan.
3. From 1232 A. D., the time of the Shikimoku Code, to 1600 A. D., the date of the Tokugowa Codes.
4. The period of the Tokugowa Codes, from 1600 A. D. to 1868 A. D.
5. From 1868 A. D. to the present time.

The first period was one largely of unwritten laws. It is the second that is the subject of discussion in this article.

We have now arrived in a period of Japanese jurisprudence, when for the first time Japan commenced to have a definite system of law, and contrary to the legal history of England and of the United States, put all of these laws into a code called the Taiho Code. The Taiho Code is so called from the fact that it was enacted in the second year of the period of Taiho (702 A. D.) For many years before this time, China had a thoroughly developed system of law, courts and legal procedure which had reached a high state of efficiency under the Tang and Sui dynasties. Before this time the Chinese had begun to travel in Japan and had brought over the laws, customs and what was more important, the writing of China with them, for before the advent of the Chinese, writing was unknown in Japan. It was in the year 284 A. D., or thereabouts, that writing was introduced into Japan.

The beginning of written law starts with the promulgation of certain ethical precepts by the emperor Shotoku, a great thinker, and the

person who is usually regarded as the founder of Buddhism in Japan. Just as the United States commenced its career as a nation with its principles of government set forth in the Declaration of Independence, so Japan commenced her system of jurisprudence by the adoption of certain ethical precepts under which all government and law was supposed to exist. And as the spirit of the Declaration of Independence was afterward incorporated into the Constitution of the United States, so the spirit of Shotoku was incorporated into the Taiho Code or the Taiho Constitution. In both cases, then, we have a Bill of Rights or Principles incorporated into the organic law of the country.

These precepts were followed by a code, which has been lost, and finally appeared the Taiho Code. The precepts of Shotoku were promulgated in 645 A. D., and the code under discussion appeared in 702, and now for the first time Japan was placed upon a definite framework of government and system of law. Prior to this time, with the exceptions which have been stated, all laws were unwritten.

If time and space permitted, it would be advantageous to take up in detail the precepts of Shotoku, analyze them and make a comparison with some of the Bills of Rights of other nations. All that can be done under the circumstances, however, is to summarize them. The Taiho Code, appearing later, was interpreted in the light of these precepts, just as the constitution of the United States is interpreted in the light of the principles of the Declaration of Independence, and just as constitutions the world over are interpreted in the light of certain declarations usually found after the preamble and known as a Bill of Rights.

The precepts epitomized are as follows: 1. Harmony shall be esteemed and obedience shall be held in regard. 2. Reverence the three treasures—Buddha, the law and the priesthood. What man in what age can fail to reverence the law? Few men are utterly bad, they may be taught to follow it. 3. To the command of the Emperor men must be duly obedient. The earth contains all things and heaven stretches over it. Four seasons pass orderly and the spirit of the universe is harmonious. If the earth were to cover the heavens, the effect would be distraction, hence Superiors must act and Inferiors yield. 4. Politeness must be the chief rule of conduct and the first principle of the government's subjects must be politeness. When Superiors are not polite, then Inferiors will not keep in the right. 5. Covetousness and rapacity must be expelled from the hearts. If the man who is to decide suits at law makes gain his ordinary motive and hears causes with a view to receiving bribes, then will the suits of the rich man be like a stone flung into water, while the plants of the poor

will resemble water cast upon a stone and the poor man will not know whither to betake himself. 6. To punish vice and encourage virtue is the rule of law, and virtuous men must be promoted and vicious men must be punished, for flatterers and deceivers are a sharp weapon for the overthrow of the state and a pointed sword for the destruction of the people. 7 The duties of men in the government must be assigned according to their capacity, therefore, the wise king never selects the office for the man but selects the man to suit the office. 8. Officers and their colleagues go early to their offices but retire too soon, so that the public business is neglected. More time must be devoted to their tasks. 9. Everything must be faithfully done because fidelity is the origin of justice. The distinction between good and bad, between success and failure depends upon fidelity 10. Be not angered on account of a disagreement of opinion. Though you may think yourself in the right, it is safer to follow the opinions of the many 11. Merit and demerit must be carefully considered and rewards and punishments must be meted out accordingly 12. Governors of provinces must be careful not to impose too heavy duties upon their subjects. 13. Officers of the government must not make a pretext of their duties and by their neglect interrupt public affairs. 14. Subjects and officers must not be jealous of each other. If men shall envy each other on account of talent and wisdom, no single wise man would ever be obtained for the government service in a thousand years. 15. To turn away from that which is private and to set our faces towards that which is public is the path of a government official. If a man is influenced with private motives and if he is influenced with resentments, he will assuredly fail to act harmoniously with others. 16. To select a convenient season in which to employ men for public work is the rule of good ancient law 17 Important matters should only be settled after due conference with many men, trifling matters can be decided without conference.¹

There is a remarkable distinction at the very outset between these precepts and the rules laid down in the Declaration of Independence. The first thing that is noticeable is the entire lack of any statement or guarantee of individual rights. The Declaration of Independence has as its central idea that all men are endowed with inalienable rights, among which are life, liberty and the pursuit of happiness. These precepts, on the other hand, have for their central idea the laws of nature, the laws of harmony, that everything has been ordered in a certain way and that it is not for man to change the existing order

¹Translations from Murray's HISTORY OF JAPAN and Longford's HISTORY OF OLD JAPAN.

of things, and that every man shall hold the position that nature has ordained. There is not even the semblance of political rights mentioned in any of these precepts.

However, it is interesting to note that at this time Shotoku made a law, which remained in force until 1600, although long grown into disuse before that time, that people might petition for a redress of grievances. A little hollow ball was hung in public places and subjects were invited to drop their complaints therein.

These precepts had been in use for some sixty years, when they were followed by the promulgation of the Taiho Code, 702 A. D., and it is with this code that it is proposed to spend the rest of this study. It may be mentioned that the population of Japan was estimated to have been at this time about three and one-half millions.²

Before coming to the provisions of the Taiho Code, however, the following is referred to, for the sake of historical correctness:

"This code of Taiho was, however, not the earliest body of Japanese law, for we are told that that great worker Tenchi Temno had compiled a code of law in twenty-two books which was revised and issued to all the provincial governors in the time of the Empress Jito, 686-697, but the Code of Taiho is the earliest body of Japanese law that has come to us. The old Japanese penal code of 702 has been lost and exists today only in scattered quotations in other old documents. The civil code has come down to us almost in its entirety but not in the original edition of 702. What we possess is the edition of 833 which contains the text of 702 interwoven with the official commentaries compiled in 718 and 833.³

It may be said that the Taiho Code was a constitution as well as a code. It established a complete framework of government. It contained no bill of rights. It codified what might be called the fundamental laws and dealt with the most minute details. The code was framed out of materials drawn from the doctrines of Confucius, from Buddhism, and from the legislation then in force in China under the Sui and Tang dynasties.⁴

First, let us say a word or two about the framework of government. At the head of the government was the Mikado. The code provided for a legislative body, the Council of State. Under this Council of State were eight departments as follows: 1. The Ministry of the Imperial Household, 2. The Ministry of Court Ceremonies; 3. A depart-

² Brinkley, *HISTORY OF JAPAN*, p. 160.

³ 1 Murdock, *HISTORY OF JAPAN*, p. 189.

⁴ 1 Okuma, *MODERN JAPAN*, p. 235.

ment of somewhat the same thing; 4. The Home department; 5. The Ministry of War, 6. The Ministry of Justice; 7 The National Treasury, 8. The Treasury of the Imperial Household.⁵

Let us compare briefly this government of Japan with that of the United States. By the Taiho Constitution the executive power was lodged in the Mikado. Under the United States constitution, the executive is the President. In the latter country the legislative is separated from the executive, and we have Congress. Under the Japanese law at this period the Mikado exercised legislative functions but he was assisted by the Council of State. The laws were passed or promulgated in his name by the ministry appointed by him, and the people had nothing to do in regard to the passage of the laws.

There are some features of the local government that require explanation. The Taiho Code "made provisions for the taking of the census and divided the country into fifty-eight provinces, with a certain amount of self-government in each province. These provinces were subdivided into over five hundred subdivisions, in each of which there was a certain amount of self-government."⁶ Over each province there was a governor appointed by the Mikado and a governor was placed over each of the five hundred districts. The district governors, however, according to some authorities, antedated the code.⁷

It should be noted that counties in Japan were entirely different from those in England in the early days or those in the United States. The Saxons developed a complete system of county government but in Japan this was not so. Counties were geographical units only, and had no government.

"This Taiho Constitution embodied the principals of constitutional monarchy and the organization of the government was brought to a fairly perfect state."⁸ The framers of this constitutional code had three things in mind. First to make a strong central government and concentrate power. Second to prevent any signs of feudalism with its accumulation of large estates and creation of a distinct class in the body

⁵ For a statement of the powers of these different departments at this time, see I Murdock, HISTORY OF JAPAN, p. 158, *et seq.*, and for a statement of these powers just before the restoration, see Dickson's HISTORY OF JAPAN.

⁶ Lampe, JAPANESE SOCIAL ORGANIZATION, p. 22.

⁷ In speaking of the provincial governors it has been said, "As the provincial governors were at first strictly prohibited from exercising judicial functions, and were severely reprimanded if not subjected to more serious punishment when they presumed to take cognizance of suits, the heads of the Kori (departments) still found ample scope for making themselves both feared and respected. The only innovation in connection with their judicial position was that an appeal from their decisions to the central government was now possible." I Murdock, HISTORY OF JAPAN, p. 154.

⁸ Lampe, JAPANESE SOCIAL ORGANIZATION, p. 20.

politic of warriors. The third was to maintain the government in a position in which it could be in touch with the needs of the people.⁹

All real estate under the Taiho Code was held by the Mikado, just as in England all real estate was held by the King, and in each country the title was derived from the monarch. The aristocracy was divided into five classes and a certain amount of land, from twenty to one hundred sixty acres, was given in fee to the different members of these classes, dependent on their rank.

The next class of land was known as "office land" and was assigned for the support of the officials of the government. This was also exempt from taxation.

There was a third class of land known as "public merit land." This land was granted to persons who rendered signal service to the nation. It was divided into three classes. The first class was given to a person and to his heirs forever; the second to a person and his heirs for three generations only; the third to a person and to his children. Reversion was to the monarch.

In addition, certain lands were granted to the various religious associations for their support. This latter land was also exempt from taxation.

The exempting of so much land from taxation at first made no real

⁹ Nevertheless, as will later be shown, by reason of allowing certain lands to be exempt from taxation, large estates grew up and a warrior class was created, with the result that the main ideas of the framers did not succeed. Then again, the nobility, in the course of a hundred years or so, gave up more and more of their time to pleasure, neglecting the affairs of state, and bit by bit the government became weakened.

Yet another thing happened that entirely altered the framework of this code, effecting a change which lasted until 1868. For years there had been an official who corresponded to the modern prime minister, but in 939, or thereabouts, the office of Shogun was created. Shogun meant "Barbarian Subduing General" but by an assuming of powers on the part of that official, Japan in the course of time became an absolute monarchy with the Shogun at its head. This change was gradual, the Shogun being careful not to wound the susceptibilities of the people or nobles. The Mikado still reigned and no effort was made to take his place. All writs ran in the name of the Mikado. All officers were nominally appointed by him, but with some few exceptions he exercised only perfunctory duties of government and became but little more than a social head.

It was not until the year when Yoritomo became Shogun that such changes were made in the government as finally placed practically all power in the hands of the Shogun. The office of Shogun, like that of Mikado, had now become hereditary. The court nobles were sunk into effeminacy by the luxury and the extravagance of the age. Moreover, a custom had grown up in the Goho of choosing certain men to become soldiers for defense and these had gradually become very powerful in numbers, and demanded some share in the government. Yoritomo now had two governors appointed over each province, the old provincial governor and a Shuge or high constable known also as a military governor. These governors reported directly to the Shogun and this still further increased his power, with the result that in the course of time the Taiho Code had completely ceased to answer the needs of the nation.

difference, but later on, when large estates were granted and the population increased, the result was a great impoverishment of the people, and the same thing happened in Japan as occurred during similar periods in Rome, England and France.

The Taiho Code established acts corresponding to the English statutes of Mortmain, *i. e.*, laws prohibiting land from being transferred to the church. The Statute of Mortmain, passed in the reign of Edward I., prohibited any religion or religionist from acquiring title to real estate. The provisions of the Japanese code were identical. The code prohibited gifts or sales of land to temples, and individual priests and nuns were prohibited from holding real estate. In each country the evil was the same, a granting of the land to the religion or order by the owner and a leasing back on the payment of a nominal rent. By this means, in Japan at least, the land became free from the land tax.¹⁰

A complete system of land nationalization was made and private ownership of real estate was forbidden. The land was declared to be held by the Mikado and was allotted for six years, at the end of which period the land was again allotted. It is to be noted that a similar system was used by the Hebrews, and the Germans, and is today in force in Russia.¹¹

Another interesting provision of the Taiho Code was that in the early stages of law the wife was given far more latitude in the management of her property than at any time in English law, or in England today. The property relations of husband and wife were almost the same as under the community property systems in Louisiana and some of the western states of the United States. The husband had the management of the wife's property but in case of a divorce he had to return it to her. This is the same as the community property law of the State of Washington.

¹⁰ Murdock, HISTORY OF JAPAN.

¹¹ The feudal system of land tenure in Japan really started a short time after this code was enacted. The military feature of it arose from necessity. A great deal of land was becoming exempt from taxation, the population was increasing, and the dual system of government, heretofore discussed in footnote 9, was beginning to establish itself. As a result, a large portion of the people, having nothing else to do, became military from mere necessity.

As the owners of the lands were largely holding their land illegally, they hired these mercenaries to protect their title, and of course the next step was to settle on them an allotment of land in consideration of their rendering military services to the lord. Here we have the same condition of affairs as arose in England at the time of the Norman conquest. In England, however, there was not the allotment system that existed in Japan.

For a very scholarly discussion of this subject, see "Origin of the Feudal Land Tenure in Japan" by K. Asakawa, published in the AMERICAN HISTORICAL REVIEW for October, 1914.

The theory of modern community property law is that the wife by her help aids the husband and hence in equity should be entitled to one-half of whatever is acquired by the family. This is today considered a great advancement over the early English law, by which all property of the wife went to the husband upon marriage and all that the wife had was a one-third interest called dower, and yet in the Taiho Code it was provided that the husband might obtain a divorce on seven grounds but five of them were not available when the husband was poor and humble when married, but subsequently accumulated wealth or dross in office or distinction, as it was presumed in this case that the influence and help of the wife was a contributing cause.¹²

Taxes by the Taiho Code were paid in produce from the soil, usually rice. The theory of this system was that the rate should run about five per cent of the value of the produce. Hall, in his article found in the *TRANSACTIONS OF THE ASIATIC SOCIETY OF JAPAN*, says that the tax eventually ran as high as seven-tenths of the produce.

It was in the time of the reign of the Emperor Kwammu that laws were passed fixing the due apportionment of the proceeds of the provincial rice tax. The tax was divided into three parts, the principal tax, the government tax and the miscellaneous tax. The principal tax was further subdivided into three parts, one of which was sent to the capital at Kyoto, another was stored in the provincial or district granaries established by the government, and the third part was advanced to needy farmers as a loan by the government.

The government tax is too involved to be here discussed.¹³

¹² We must differ from those Japanese writers (Okuma, *FIFTY YEARS IN JAPAN*, p. 260) who conclude that husband and wife did not own property in common. The idea of husband and wife owning everything in common, and what is technically known as the community property system, came from the North of Europe. It was taken from there to Spain and written in the first Spanish code, *El Feuro Juzgo*, compiled at the same time as the Taiho Code. If a Japanese husband had to return the wife's property to her if he divorced her and if it was presumed that wealth and distinction acquired by the husband after marriage was acquired on account of the influence of the wife, then we have the very essence of that system taken from the North of Europe. This is another fact from which we may infer that the laws of the tribes in the North of Europe and the laws of the early Japanese came from the same source. The idea of the wife and husband owning everything in common is the law of Germany, found in the present German Civil Code but it has never been recognized in English law since the advent of the Normans. It did have some traces in the early Saxon law but disappeared entirely under the Normans. At any rate, it is a singular coincidence that that rule of property which has just evolutionized, so to speak, out of the English and American law, found its way at this early day into the fundamental law of Japan, particularly when there was no intercourse whatever between Japan and Europe. For the history of the community property system, see MCKAY ON COMMUNITY PROPERTY, p. 36, *et seq.*

¹³ See Asakawa, *EARLY INSTITUTIONAL LIFE OF JAPAN*, p. 305.

The miscellaneous tax was devoted to such purposes as the repair of government buildings, the post stations, embankments, ponds and ditches, the support of shrines and temples, the provincial schools and communities of Ainu prisoners. A part of this tax also, was available for loans to needy farmers.¹⁴

At this point one thing is strikingly apparent and that is the absence of taxes for war purposes. At this time in China the soldier was lowest in the social scale, and was looked down upon by all classes alike.¹⁵ At this time the war department was the least important of the eight boards of the government heretofore described. Next to the noble the farmer was highest in the social scale and in spite of every change in the laws and jurisprudence of Japan this rule never changed. There were times in the civil wars later when his lot was not a happy one, but in the eyes of the law he was supreme and in every code that was enacted he was carefully protected and taxes were carefully adjusted that he might not be crushed. This is true even at the present time.

The code had also to do with education. Remember that we are in the year 702. A university was established in the capital and a school in each province. The university was placed under the jurisdiction of a special bureau. Its object was to educate children of those who had been raised to the fifth or higher rank, those of a lower rank were sometimes allowed to attend by special permission but children of common people were not admitted.¹⁶ The number of scholars was limited to four hundred, who received their education free and were provided with food by the government.¹⁷ About the middle of the eighteenth century education was extended to the common people to a degree that placed them far ahead of the common people of Europe of the same period. This education was not given by the establishment of government public schools but by financial aid extended by the government. When one examines the provisions of the Taiho Code relating to education it appears in vivid contrast to the laws of Europe, which nowhere provided any system of education until recent times. Doubtless these provisions were brought over from China, but nevertheless it speaks well for the rulers of Japan that they adopted them. The idea of the necessity of education has never left the Japanese. The force and effect of this is seen when one reads the memoirs of General Kuropatkin, throughout which he pays tribute to the education of the Japanese private soldier.

¹⁴ I Murdock, *HISTORY OF JAPAN*, p. 223.

¹⁵ Gowan, *OUTLINE HISTORY OF CHINA*, Vol. 1.

¹⁶ Baron Kikuchi, *EDUCATION IN JAPAN*, p. 15.

¹⁷ Same author.

It appears that there were no laws relating to the practice of medicine in Japan prior to this time. Even in the English laws the legislators seem never to have felt any necessity to regulate the practice of medicine.

"At the time that the Taiho Code was ushered in there was also introduced from China the medicine and the medical knowledge of that country. There were some interesting provisions of the Taiho Code relating to medicine. In the first place, physicians who had official appointments were required to send to their alma mater their first year's income as an expression of their gratitude for their education. This was thank money that was paid to the lord and afterward paid to the government by the various guilds for protection by the government. Later this thank money was fixed by law at one-tenth of the first year's income. In the second place, it was enacted that should a physician make a mistake in his prescription or in his directions he was to be punished by three years in jail and a fine of eighty pounds of copper coin, while should any impurity be found in the medicine given, sixty lashes were to be administered and a fine of eight pounds of copper coin imposed by the Emperor."¹⁸

It might be explained in this connection that in China and also in Japan the physician mixed his own medicines. They had not reached the age of the corner druggist and the soda fountain.

The code undertook to regulate the rigorous law that had grown up in regard to insolvent debtors. The creditors had a right to take the insolvent debtor and make a slave of him. Insolvent debtors became the property of their creditors, but a definite time was fixed for their slavery and after such time they could not be held in bondage. If the creditor desired to take the debtor as a slave he could not charge any interest.¹⁹

The idea of putting the debtor into slavery has flourished in nearly every country in the world. The latest example of it in our own country is seen in the Vagrancy Acts which were passed by Mississippi and South Carolina after the Civil War. These provided that free negroes who had no visible means of support or who made improper gestures toward white people should be fined only and then sold for a certain period of time to any persons who would pay their fines.

The question of social status came in for legislation and in 800 A. D., in one of the supplementary laws to the Taiho Code, it was enacted that the social status of the children should follow that of the parent who

¹⁸"Medicine in Japan", by Berry, in *JAPAN AND JAPANESE AND AMERICAN RELATIONS*, p. 141.

¹⁹2 Brinkley, *HISTORY OF JAPAN*, p. 159.

had the highest rank in the social scale. This law only affected the common people, where there had been mixed marriages.

This code anticipated one of the great decisions in English law by one thousand years. There was a provision that if a slave came into Japan from another country he should become immediately free on touching Japanese soil.²⁰ It was not until 1771, in the famous case of *In re Sommersett, a Negro*, that Lord Mansfield held that a slave, upon landing in England, became immediately free. French, Scotch, Dutch and Roman law were cited against the decision of the court.²¹

In addition, the Taiho Code defined contracts, dividing them into two kinds, it defined loans and provided for interest, which could not be collected, however, unless the loan was for over sixty days. It defined trusts, it provided in detail for adoptions, and for succession. In regard to the latter, the house, not the real estate, went to the eldest son. Any interest in the lease of real property went according to the direction of the Shogun.

It now remains to speak of the penal provisions of the code. Crimes were divided into two sorts, first, those against the state, and second, those against private individuals. Where an arrest was made for a crime of the first type, the criminal was placed in charge of a relative; for the second type, he was jailed.

Prior to the promulgation of this code few crimes were known. Ninety-eight crimes were now defined and punishments fixed for their commission. The three greatest crimes were, first, treason, second, unfilial conduct on the part of children toward their parents; and third, adultery on the part of the wife. The influence of the Analects of Confucius are seen in these crimes. He taught particularly the doctrine of obedience of children to their parents, and as Japan was adopting the religion of China as well as its laws at this period, and as ancestor worship was a cardinal essential of the Chinese religion, adultery, as interfering with ancestor worship, was necessarily a most heinous offense.

A great advance was made in the establishment of a court of procedure with the abolishment of the ordeals of boiling water, fire and snakes.

The modes of punishment under this code were five. First, capital punishment by strangulation or by beheading; second, deportation, third, imprisonment at labor from one to three years, fourth, flogging with a stick, the blows being from sixty to one hundred, and fifth,

²⁰ 2 Brinkley, HISTORY OF JAPAN, p. 159.

²¹ 20 Howell, STATE TRIALS, p. 1.

flogging with a whip, the blows being from ten to fifty. These punishments certainly compare favorably with those of European countries of the same period. Note what Blackstone says of the English laws at the time that he wrote:

"It is a melancholy truth that among the variety of actions which men are liable to commit no less than one hundred and sixty have been declared by act of Parliament to be felonious without benefit of clergy, or, in other words, to be worthy of instant death."²²

The enactment of these laws resulted in the institution of official interpreters. This matter has been described by a well-known Japanese diplomat as follows:

"The publication of these and other codes during this epoch gave rise to the necessity of interpretation, and to this end to the education of interpreters—professional jurists. Here began actual legal education. Its first form was in the shape of an enlargement of the University Bureau which formed part of the governmental Department of Ceremony. This Bureau, which already had sections of Philosophy, History and Mathematics, now added a section of Jurisprudence. Its preceptors were two masters, or Doctors of Law (Myone-Hakase or Ritsugaku-Hakase) whose official duties were to interpret the codes and give opinions on legal matters, as well as to instruct and examine law students, the object of the instruction and examination being to train up the official interpreters of the law.

"This office of legal interpreter gradually tended, like other offices, to take on an hereditary character, and by the year 1100 A. D. it had become a perquisite of the families Nakahara and Sakanouye, so continuing for several hundred years. Under such conditions, real insurrection in jurisprudence died out, the more so because now the land was torn up by frequent civil wars, following the establishment of the feudal system under the military government of the Shogun."²³

The promulgation of these codes was the result of a great era of reform, reforms which extended in many directions not within the purview of this study. Some historians have taken a rather cynical view of them, as may be seen by the following quotation.

"The reform of 645 A. D. resembles the reform of 1867, inasmuch as we find the leaders of the reform and their partisans all occupying snug berths after the hurly burly. Never

²² Blackstone, p. 1227.

²³ From an address delivered before the American Bar Association by Viscount Uchida, at that time Japanese Ambassador to the United States. See 36 Reports, Am. Bar Assn. (1911).

had the theoretical reformer such a chance in the world's history as in this Japan of 645 A. D. The institutions suitable to themselves were imported ready made, and the main thing the lower classes seem to have gotten out of them was 'Duty' with a capital letter."²⁴

However, as one studies the legal reforms of this age, they are found to have been deep and lasting and the defects which arose from the Taiho Code were defects that are inherent in human nature. The provisions of this code had a lasting effect, for when in 1868 Japan became a modern nation, she divided her empire into prefectures and provinces, as had been done in the days of the Taiho Code.

This code was the foundation of Japanese law until about the year 1232, or approximately 500 years. Its fundamental provisions had now outlived their usefulness and it became necessary to enact a new code, known as the Shikomoku Code.

Whatever may have been the defects of the old Taiho Code, it is interesting to know that while Europe was spending a large portion of its time in wars and while England was governed by the Saxons, with no idea of a unified English spirit, the Japanese had unified their country, had established a thoroughly nationalistic spirit and had laid the foundation of a most interesting theory of jurisprudence by the enactment of their first code.

Vivian M. Carkeek,

Member of the Asiatic Society of Japan.

SEATTLE, WASHINGTON.

²⁴ De Benneville, *MORE JAPONICO*, pp. 29 and 30.