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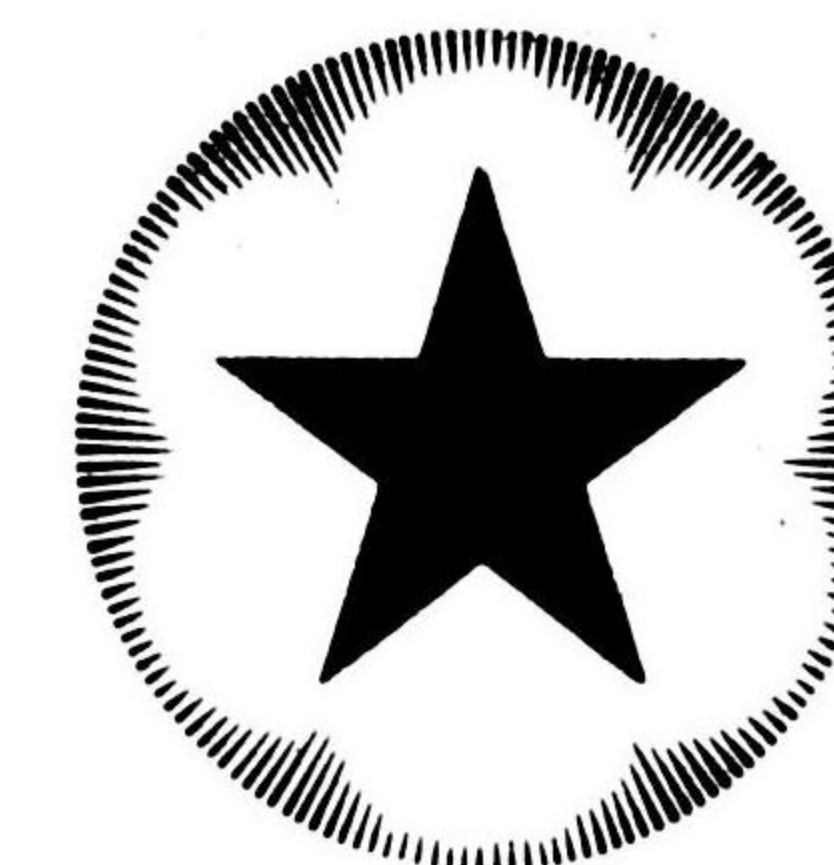
ARMY SERVICE FORCES MANUAL

M 354-3

CIVIL AFFAIRS HANDBOOK

# JAPAN

SECTION 3: LEGAL AFFAIRS



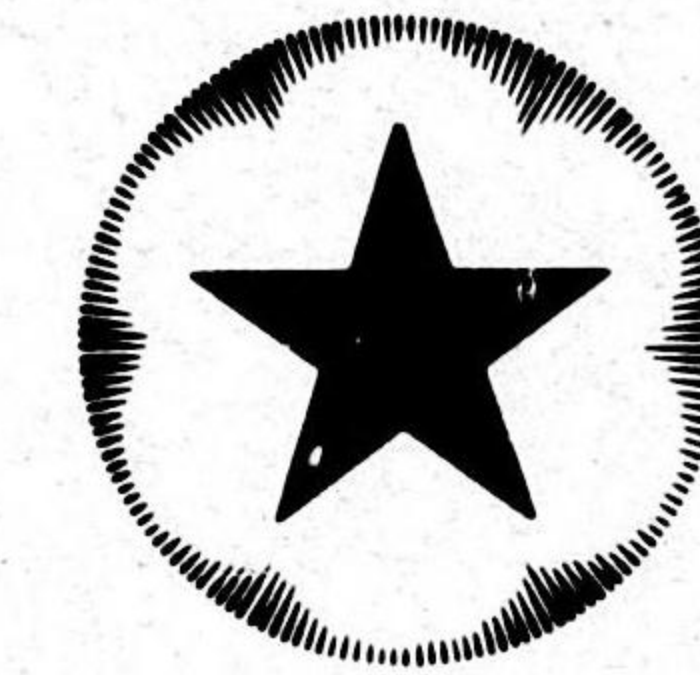
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HEADQUARTERS, ARMY SERVICE FORCES 26 SEPTEMBER 1944

CIVIL AFFAIRS HANDBOOK

**JAPAN**

SECTION 3: LEGAL AFFAIRS



Headquarters, Army Service Forces 26 September 1944

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NUMBERING SYSTEM OF  
ARMY SERVICE FORCES MANUALS

The main subject matter of each Army Service Forces Manual is indicated by consecutive numbering within the following categories:

M1 - M99 Basic and Advanced Training  
M100 - M199 Army Specialized Training Program and  
Pre-Induction Training  
M200 - M299 Personnel and Morale  
M300 - M399 Civil Affairs  
M400 - M499 Supply and Transportation  
M500 - M599 Fiscal  
M600 - M699 Procurement and Production  
M700 - M799 Administration  
M800 - M899 Miscellaneous  
M900 - up Equipment, Materiel, Housing and Construction

\* \* \* \* \*

HEADQUARTERS, ARMY SERVICE FORCES,  
Washington 25, D. C., 26 September 1944

Army Service Forces Manual M 354 - 3, Civil Affairs Handbook -  
Japan - Legal Affairs, has been prepared under the supervision of  
The Provost Marshal General and is published for the information and  
guidance of all concerned.

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By command of Lieutenant General SOMERVELL:

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Major General,  
Adjutant General.

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This study on Legal Affairs in Japan was prepared for the  
MILITARY GOVERNMENT DIVISION, OFFICE OF THE PROVOST MARSHAL GENERAL

by the

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RESEARCH AND ANALYSIS BRANCH

OFFICERS USING THIS MATERIAL ARE REQUESTED TO MAKE SUGGESTIONS  
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## INTRODUCTION

### Purposes of the Civil Affairs Handbook

The basic purposes of civil affairs officers are (1) to assist the Commanding General by quickly establishing those orderly conditions which will contribute most effectively to the conduct of military operations, (2) to reduce to a minimum the human suffering and the material damage resulting from disorder, and (3) to create the conditions which will make it possible for civilian agencies to function effectively.

The preparation of Civil Affairs Handbooks is a part of the effort to carry out these responsibilities as efficiently and humanely as possible. The Handbooks do not deal with plans or policies (which will depend upon changing and unpredictable developments). It should be clearly understood that they do not imply any given official program of action. They are rather ready reference source books containing the basic factual information needed for planning and policy making.

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## CIVIL AFFAIRS HANDBOOKS TOPICAL OUTLINE

1. Geographical and Social Background
2. Government and Administration
3. Legal Affairs
4. Government Finance
5. Money and Banking
6. Natural Resources
7. Agriculture
8. Industry and Commerce
9. Labor
10. Public Works and Utilities
11. Transportation Systems
12. Communications
13. Public Health and Sanitation
14. Public Safety
15. Education
16. Public Welfare
17. Cultural Institutions
18. Japanese Administration of Occupied Areas

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SUMMARY

The Japanese legal system is under the jurisdiction of the Ministry of Justice. Established by the Constitution, the courts and the legal system may be modified only by law and are free from the effects of the executive ordinance power. The courts do not interpret the Constitution nor review law in its substantive aspects but have fairly wide powers of review over ordinance.

The legal codes derive on the whole from European models and are enforced by local, district, and appellate courts. A Supreme Court sitting in Tokyo is the tribunal of final appeal and there exists in addition a Court of Administrative Litigation which hears cases arising from administrative action. In recent years there has been a pronounced trend toward increased use of arbitral procedure and juvenile courts have also been established.

Trials, for the most part, are conducted publicly, rules of evidence are few, the doctrine of stare decisis is not generally followed, and jury trials are provided for in certain cases.

Judges and procurators are selected by examination and hold office during good behavior. In general they are men of integrity and wide knowledge of the law. The bar, on the other hand, has little prestige or influence.

The prison system is also under the jurisdiction of the Ministry of Justice and is based on modern principles of penology emphasizing rehabilitation of those confined. Juveniles, as far as possible, are confined in separate institutions.

The Japanese Constitution contains a Bill of Rights but its guarantees apply only in the absence of laws modifying them. Since the passage of the Peace Preservation Law in 1925 civil rights have been almost completely nullified by law and separate procedure has been established for the trial and punishment of thought offenders.

The three basic divisions in the Japanese government service are, according to rank, chokumin, sonin, and hannin. The chokumin rank is further divided into officials of highest rank, the shinnin and those of ordinary chokumin rank.

The shinnin rank, of which there is only one grade, is composed of officials appointed directly by the Emperor and receiving their appointments in personal audience with him. Officers of ordinary chokumin rank, of which there are two grades, (numbered one and two) are appointed by the Emperor upon recommendation of the Premier. Members of the sonin rank, which exists in seven grades, (numbered three to nine) are appointed by the appropriate minister with the approval of the Emperor. The lowest or hannin rank, which exists in four grades, (numbered one to four) consists of those in minor positions appointed by the heads of the department in which they serve.

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I. GENERAL STRUCTURE

A. THE PLACE OF THE JUDICIARY IN THE JAPANESE GOVERNMENT

1. Constitutional Position of the Judiciary

The Japanese system of justice is organized on a national basis under the jurisdiction of the Ministry of Justice. Chapter V of the Japanese Constitution provides for the exercise of the judicial power "by the courts of law according to law in the name of the Emperor." This clause, providing for the relatively independent exercise of the judicial function is in marked contrast to Chapter I Article V relating to the legislative power which reads: "The Emperor exercises the legislative power with the consent of the Diet."

That which chiefly distinguishes the Japanese judiciary from the other branches of government is its freedom from the effects of the ordinance power which in Japan may be exercised by executive agencies not only for the purpose of making regulations for the carrying out of laws but also as a method of legislation limited only by the constitutional provision that "no ordinance shall in any way alter any of the existing laws."<sup>1/</sup> Emergency ordinances, issued when the Diet is not in session, are not so limited but must be approved by the Diet at its next session.

The Japanese Constitution has vested in the Emperor the power (which may be delegated) to issue emergency ordinances, police ordinances, and ordinances necessary for the execution of the laws and in addition the sweeping power of issuing "the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects." Finally, the Emperor determines the organization of the administrative branches and appoints, dismisses, and determines the salaries of officials.<sup>2/</sup>

Delegation of these powers to the Premier and the Cabinet has contributed in large part to executive independence of the legislature. The judicial system is protected from the executive exercise of these powers, however, by the provision that "The organization of the Courts of Law shall be determined by law."<sup>3/</sup> Modification of the judicial structure by executive ordinance is thus impossible whereas in other branches of the government the

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effect of the ordinance power may be legislative as well as administrative. In 1931, for example, an Imperial ordinance brought about a general reduction of the salaries of government officials. The judges of Tokyo having protested against the inclusion of the judiciary, the government excepted judges from the application of the ordinance.<sup>4/</sup>

Under present conditions executive control of the Diet has somewhat reduced the importance of this distinction between law and ordinance.

## 2. Political Independence of the Judicial System

All Japanese judges are appointed after training and examination and the independence of judicial personnel is protected by the Constitutional provision that "No judge shall be deprived of his position unless by way of criminal sentence or disciplinary punishment. Rules for disciplinary punishment shall be determined by law."<sup>5/</sup>

To some extent, however, the immunity of the judicial system from political interference is diminished by the relationship between the procurators and the Minister of Justice. The procurators, whose functions resemble those of federal attorneys in the Solicitor General's office under the American legal system, are attached to all courts conducting preliminary examinations and prosecuting criminal cases. Courts take cognizance of such cases only upon the initiative of the public prosecutor and the latter may not inaugurate prosecution without the approval of the Minister of Justice, who thus acquires a means of political interference in criminal cases if he choose to exercise it. The fact that judicial promotion is dependent upon the recommendation of the Minister of Justice is another, though less direct source, of political influence and control.<sup>6/</sup>

## B. RELATIONSHIPS: JUDICIAL, EXECUTIVE, AND LEGISLATIVE FUNCTIONS

### 1. Interpretation of the Constitution

Judicial review of constitutional questions exists in Japan only in the most limited sense. The Constitution itself

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contains no provision indicating the location of the power of interpretation. The Ordinance of 1888, however, which created the Privy Council provided that the Council was to advise the Emperor "as to the interpretation of the Constitution or of laws appertaining thereto." <sup>7/</sup> In 1892 a dispute between the two Houses of the Diet with regard to their powers over the budget was referred to the Council for settlement but there has been no subsequent instance of interpretation of the Constitution by this body. <sup>8/</sup>

### 2. Judicial Review of Law

Judicial review of law extends only to an examination of its form. If a law meets all procedural requirements - passage by the Diet, sanction by the Emperor, and promulgation in due form - a court of law must declare it valid and does not look into its constitutionality in the substantive sense. <sup>9/</sup>

### 3. Judicial Review of Ordinance

Judicial review of ordinance extends to substance as well as form as the courts may refuse to enforce ordinances conflicting with the Constitution, the Imperial House Law, laws, or treaties. Should this conformity be established, however, the question of the necessity of the ordinance is not examined.

When an emergency Imperial ordinance receives subsequent parliamentary approval it is regarded as law and court interpretation is subject to the limitations described above. <sup>10/</sup>

### 4. Powers over Administrative Acts

Jurisdiction over cases arising from administrative action is lodged in a separate court in accordance with Article 61 of the Constitution which reads: "No suit at law which relates to rights alleged to have been infringed by the legal measures of the executive authorities and which shall come within the competency of the Court of Administrative Litigation shall be taken cognizance of by a court of law."

The Court of Administrative Litigation takes cognizance both of law and of fact. It may declare administrative

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acts invalid, annul them, substitute its own judgment for an administrative decision, and issue a writ of mandamus to compel the authorities to perform specific acts. 11/

#### 5. Advisory Functions

According to the law of judicial organization, courts and public procurators' offices, when required to do so by the Minister of Justice or by the judge or public procurator having power of supervision over them, must give their opinion on any matter of a legal nature or on any question which concerns judicial administration. No procedure has been established through which Diet members or executive officers not members of the Department of Justice can obtain advisory opinions. 12/

### C. THE LEGAL CODES

#### 1. Origins

Law in Japan under the Shogunate was in part local and in part national. National law was derived from the edicts of emperors, shoguns, and daimyos influenced by the ethical elements of Confucianism, Buddhism, and Shintoism, while local law was customary in nature. The great majority of cases, however, were settled by arbitration by the village elders although in larger towns and cities appeals to the higher authorities were more frequent.

With the Restoration the Japanese legal system was completely remodeled on the basis of study of Western institutions. In 1882, after nine years of drafting, a criminal code and a code of criminal procedure were placed in operation and in 1899 a civil code and a commercial code were placed in operation. Two major objectives were achieved by the codes which form the basis of the legal structure of modern Japan. First, uniformity and centralization replaced the feudal shogunate system, and, secondly, Japan rid itself of extraterritoriality by bringing its legal codes into conformity with those of the West (or in certain matters applying the laws of the foreigners' domicile).

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## 2. Derivation

### a. The Civil Code

The provisions of the civil code of 1899 regarding persons, juridical persons, ownership, real rights, and obligations are predominantly of Continental, especially German, origin, while the law relating to the family and succession is primarily a codification of Japanese customs. 13/ Divergence from western models of the Japanese codes on inheritance, marriage, and divorce has resulted in the provision that where foreigners are concerned the applicable law is that of the foreigner's domicile and not that of Japan. 14/

### b. The Commercial Code

The Commercial Code of Japan is largely of nineteenth century German origin although it contains certain elements derived from the codes of other Continental countries of that period. 15/

### c. The Criminal Code

The Japanese Criminal Code, dating from 1882, is of Continental European origin, its distinctive feature being its provisions with regard to lèse majeste, under which acts endangering the persons of members of the royal family are punished by death while acts disrespectful to them may be punished by penal servitude up to five years. 16/ In practice, however, Japanese criminal procedure departs from its models in its emphasis on obtaining a confession from the accused before trial. This is a carry-over from practice under the Shogunate. 17/

### d. Arbitration

Arbitral procedure has been widely applied in recent years to cases concerning rent, commercial questions, and family disputes. The use of arbitral methods is firmly rooted in Japanese traditions, its modern revival having been inspired in part by dissatisfaction with the results of wholesale adoption of Western legal practice. 18/

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The Law for the Arbitration of Disputes Concerning Leased Land and Rented Houses was the first to be adopted and was put into effect in October 1922. It was followed by the Law for the Arbitration of Tenancy Disputes in December 1924, the Law for the Arbitration of Commercial Disputes in November 1926, and the Law for the Arbitration of Domestic Disputes in March 1939.

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## II. THE MINISTRY OF JUSTICE (SHIHOSHO)

### A. JURISDICTION

Legal affairs in general come under the jurisdiction of the Minister of Justice. The Ministry has under its administrative supervision the law courts, the procurators' offices, juvenile courts, penal institutions, reformatories, and bureaus of deposit. Like all members of the Cabinet the Minister is of shinnin rank.

### B. STRUCTURE 19/

#### 1. The Secretariat (Daijin Kambō)

The Minister's Secretariat in 1940 contained four sections each headed by a third class official. These are the Secretarial Section (Hisho-ka), the Personnel Section (Jinji-ka), the Accounts Section (Kaikei-ka), and the Protection Section (Hogo-ka).

#### 2. The Bureau of Civil Affairs (Minji-kyoku)

In 1940 the Bureau of Civil Affairs contained four sections and was headed by a first class official. It has jurisdiction over matters pertaining to the establishment and discontinuance of courts and their jurisdiction, civil cases, arbitration and non-contentious cases, registration of personal relations (marriage, divorce, adoption), property rights, and deposits in civil actions.

#### 3. The Bureau of Criminal Affairs (Keiji-kyoku)

In 1940 the Bureau of Criminal Affairs contained six sections and was headed by a first class official. It has jurisdiction over matters pertaining to criminal cases and prosecution, pardons and amnesty, and lawyers.

#### 4. The Bureau of Penal Affairs (Gyokei-kyoku)

In 1940 the Bureau of Penal Affairs contained three sections and was headed by a first class official. It is

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concerned with the execution of sentences, penal institutions, parole, and identification of criminals.

5. The Bar Examining Board (Bengoshi Shinsa Iinkai)

The Vice Minister of Justice (Shihō Jikan) is chairman of the Bar Examining Board. The six members of the committee include the head of the Bureau of Criminal Affairs, a judge, a procurator and three lawyers.

6. Committees

Also included in the Ministry of Justice are various committees performing investigatory functions, the membership of which includes bureau heads of the Ministry of Justice, members of the Diet, judges, procurators, lawyers, prison governors, and scholars. In 1940 these bodies included the Legal Research Institute (Shiho Kenkyūjo), the Legislation Committee (Hōki Seibi Sanjikan), the Committee for the Investigation of the Judicial System (Shiho Seido Chōsa Iinkai), and the Committee for the Investigation of the Domestic Arbitration System (Kaji Shimpan Seido Chōsa Iinkai).

7. Bureaus of Deposit

Fifty-one bureaus of deposit with twenty-nine branches were maintained by the Department of Justice in 1923. During this year the bureaus accepted deposits in civil actions of 28,000,000 yen in cash and 229,000,000 yen in negotiable bonds. 20/

III. JUDICIAL PERSONNEL AND THE LEGAL PROFESSION

A. JUDGES AND PROCURATORS

1. Qualifications

Judges and procurators are men of university training appointed under civil service regulations upon examination. Candidates who pass the preliminary examinations must serve eighteen months as probationers either in a court or a procuratorial office. They must then pass a second examination.

Examinations and probationary terms are waived for candidates who have been practicing lawyers or professors of law at Imperial universities for more than three years.

Five years experience is required for appointment as a judge in an appeals court, ten years for a position on the supreme bench.

Five years experience either as a judge or as an administrative officer is required for appointment to the Court of Administrative Litigation. In practice few judges are appointed to this court, its membership being composed largely of former Home Office officials, prefectural governors, and others of administrative experience.

Persons barred from judicial and procuratorial positions include those who have been convicted of a grave crime with the exception of rehabilitated political offenders; of those who have served sentences for minor offenses; and those who have been adjudicated bankrupt and could not be exempted from the responsibility. 21/

2. Appointment and Retirement 22/

All judicial officers are centrally appointed and hold office during good behavior.

With the exception of the president of the Supreme Court, who retires at 65, judges and procurators retire at the age of 63. By permission of the Supreme Court or Court

of Appeals, however, a judge may retain his position for three years beyond the normal age limit.

3. Restrictions on Activities of Judicial Personnel

Judges and procurators are legally forbidden to take a public interest in politics, to become members of a political party, or of a prefectural or local assembly, to occupy any public office from which financial gain may accrue or to carry on certain types of business.

4. Character of Judicial Personnel

While judicial personnel is notable for its knowledge of law, few judges or procurators have ever been practicing lawyers. Thus, in 1928, only 133 of 2,043 judges and procurators had ever practiced law. Successful lawyers are not tempted into the judiciary where salaries, as in all Japanese civil service positions, are low. Judges and procurators, a large proportion of them graduates of Tokyo Imperial University, enjoy life tenure and develop an official esprit de corps which keeps them aloof from the ordinary lawyer. In consequence of this rather rigid division between judicial personnel and practicing lawyers the judiciary "...suffers from lack of experience at the bar and from insufficient acquaintance with social and economic conditions such as naturally comes to practicing lawyers." 23/

5. Number of Judicial Officials as of 1935 24/

Courts and Procurators' Offices

Judges. . . . .	1,340
Procurators . . . . .	619
Probationers. . . . .	176
Secretaries . . . . .	5,293

Juvenile Courts

Judges. . . . .	12
Probation Officers. . . . .	21
Secretaries . . . . .	19

Bureaus of Deposit

Officials . . . . .	5
Secretaries . . . . .	212

6. Judicial Salaries as of 1935 (in yen) 25/

Chief Justice of Supreme Court. . . . .	6,600
Procurator General. . . . .	6,600
Division President Supreme Court. . . . .	4,000 - 4,800
Procurator of Higher Rank attached to Supreme Court . . . . .	4,650 - 5,800
Chief Procurator attached to Court of Appeal. . . . .	4,050 - 4,650
Other Judges and Procurators. . . . .	1,130 - 4,050

(It should be noted for purposes of comparison that the Prime Minister's salary is 9,600 yen, that of other ministers is 6,800 yen.)

B. THE BAR

1. Qualifications

Candidates for the bar need not be graduates of a law school but must pass an examination set by the Ministry of Justice. The passing grade varies as only a set percentage of those taking the examination are admitted to the bar. It is believed that this percentage is unusually small. In 1928 there were only 6,304 lawyers in Japan. 26/

2. Associations of Lawyers

Bar associations exist in all the leading cities of Japan but until the formation of the All-Japan Lawyers Association (Zen Nippon Bengoshi-kai) in February 1944 27/there was no central organization.

Bar associations have little prestige or influence. Their advice is not sought by the Justice Ministry and they make no attempt to influence legislation or court procedure, nor do they play any role in disbarment proceedings, these being under the jurisdiction of the courts.

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For the most part lawyers' associations seem to confine themselves to an attempt to keep legal fees as high as possible. In 1943, however, perhaps under government stimulus, the establishment of wartime legal consultative offices to give free advice was announced. There were to be five of these offices in Tokyo, four in Osaka, two each in Kyoto, Nagoya, Kobe, Yokahama, and Fukuoka, and one in each of the district courts. In December the first of these offices was established in the Kyobashi ward in Tokyo. 28/

### 3. Ability and Status

The development of the legal profession in Japan has been comparatively slight. In court proceedings the role of the lawyer as opposed to that of judge and procurator is a minor one and, as a class, lawyers are lacking in initiative and are inferior in ability to judges and procurators.

Membership in the legal profession confers no particular prestige and the average lawyer occupies an economic and social position similar to that of the small business man or the well-paid clerk. To the average individual, particularly in rural districts, the lawyer is likely to be an object of dislike and suspicion.

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## IV. THE COURTS

### A. TYPES

There are four principal types of courts in Japan,\* the Supreme Court (Daishin-in), the Appellate Courts (Kosō-in), the District Courts (Chihō Saibansho), and the Local Courts (Ku Saibansho). Also under the jurisdiction of the Ministry of Justice are a number of juvenile courts and a single Court of Administrative Litigation. In addition, both the police and the military maintain their own courts.

### B. SUPERVISION AND ADMINISTRATION

#### 1. Powers of the Minister of Justice

General supervision of judicial activities lies in the hands of the Minister of Justice. Under Article 136 of the Law of the Constitution of the Courts of Justice the power of supervision includes:

"1) The power of drawing the attention of officials to any business that has been improperly or insufficiently transacted, and of instructing them to transact it in a proper manner;

"2) The power of warning officials on account of any conduct unbecoming their position, whether in the discharge of their official duties or not; but before giving such warning the official must have had the opportunity of offering an explanation."

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\*The areas understood in this handbook to be included under the term "Japan" are those at present administered under the direct supervision of the Ministry of Home Affairs. These areas include Karafuto, Hokkaido, and the Kuril and Ryukyu Islands, but exclude Formosa, Korea, and all areas under colonial or military administration.

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## 2. Disciplinary Tribunals

The disciplinary tribunal in the Supreme Court has disciplinary jurisdiction over the justices of the Supreme Court and the chief judges and division heads of the appellate courts. In the appellate courts the disciplinary tribunal consists of the chief judge and three other judges and has jurisdiction over appellate judges other than those within the Supreme Court's jurisdiction and judges of the lower courts. Appeals from its decisions may be taken to the Supreme Court tribunal. 29/

A resolution by the entire bench of the Court of Administrative Litigation is necessary before the removal of one of its members for cause. 30/

## 3. Distribution of Business

The Supreme Court, Appellate Courts, and District Courts are collegiate and sit in divisions. In the district courts and the courts of appeal the president of the court and the division presidents together decide on the distribution of business, while in the Supreme Court the division presidents are consulted but do not vote. 31/

## C. PROCEDURE - GENERAL PRINCIPLES

### 1. Open Conduct of Trials

Chapter V Article 59 of the Constitution provides that "Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provision of law or by the decision of the Court of Law."

### 2. Evidence

There are no fixed rules of evidence in Japan and the court has full discretion as to what may be admitted as

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evidence. In practice, a judge will allow all types of evidence, even hearsay, to be entered in the records, and will give each item the weight he feels it deserves in arriving at his decision. Similarly, while a lawyer's challenge of a statement submitted in evidence has no legal status, it may influence the judge in assigning the statement its proper value.

### 3. Court Reports

All courts (including police courts) are courts of record. There are neither official court reporters nor official public reports but the Hosakai, an incorporated body of judges and procurators, publishes a quasi-official volume of Supreme Court reports each month. In addition, brief reports are published in certain law journals. 32/

### 4. Precedent

The doctrine of stare decisis has not been adopted in Japan. Article 49 of the Law of the Constitution of the Courts of Justice, however, attempts to ensure consistency of Supreme Court decisions on the same points of law in different cases. It reads: "When a division of the Supreme Court after hearing an appeal is of an opinion contrary to a former decision of one or more divisions of the court upon the same point of law, such division shall report the same to the President of the Court, who shall, upon receipt of such report, order all the civil or all the criminal divisions, or all the civil and criminal divisions of the court, according to the nature of the appeal, to sit together, and re-try and decide the appeal."

Authorities differ as to the extent to which consistency of decisions has been attained under the Japanese legal system. One authority, long a practicing lawyer in Japan, declares that "upon almost identical facts contrary decisions are often reached." 33/ Another, on the other hand, asserts that "...in practice the courts follow precedent rather closely..." 34/ In any case lawyers do not argue on precedent nor do judges cite it in their decisions. In practice it would appear that inconsistency is most marked in the lower courts. While appellate courts frequently arrive at widely divergent decisions on the basis of the same facts, within each court a fairly high degree of consistency is attained. The Supreme Court, in effect, observes stare decisis although it is not legally bound to do so.

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5. Civil Procedure 35/

Inauguration of Civil Action

A civil action is inaugurated by means of a complaint. Revenue stamps must be attached to this document to cover court costs but if the plaintiff wins the case the costs are added to the judgment against the defendant. This practice tends to eliminate frivolous suits and to limit claims to the amounts which the plaintiffs can expect to substantiate. The defendant is allowed two weeks from the service of papers in which to file an answer.

Preliminary Procedure 36/

Provision for preliminary procedure, similar to that employed in criminal cases, was incorporated in the revised Civil Code of 1929. At the preliminary procedure both parties must state their allegations before the designated judge, the results to be put in writing, the resultant document being known as the "record".

Court Proceedings

Witnesses are informed in advance of the questions that will be asked them. The presiding judge conducts examination and cross-examination, and while counsel may submit questions to the judge, the latter may modify or even disregard them.

All persons must testify unless the law provides otherwise. Husband or wife, employers, and relatives by blood or marriage may refuse to testify should they believe that their testimony might expose them to disgrace, criminal prosecution, or punishment. Should they waive this right, however, their testimony is taken but no oath is administered.

The court may examine necessary evidence on its own motion when it is not satisfied with the evidence presented by the parties.

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Summary Civil Procedure

A claimant for a fixed sum of money, securities, or other goods may apply to a local court for an "order of payment." If the debtor does not object within two weeks after the order is served upon him an additional order is issued for execution. 37/

6. Criminal Procedure 38/

Inauguration of Criminal Action

After the complaint is filed, inquiries are begun by the procurator of the court having jurisdiction over the suspected offense. Even if the accused confesses, the procurator, taking into consideration the age, character and behavior of the offender as well as the circumstances under which the offense was committed, may dispense with prosecution. This takes place in about one third of the cases investigated by the procurator, the offender being allowed to expiate his crime in some agreed manner and thereby to avoid disgrace.

If the alleged offense is found to be within local court jurisdiction trial commences without further preliminaries. In more serious offenses, however, court trial is preceded by prolonged investigation.

Preliminary Investigation

In more serious criminal cases investigation by a "preliminary" judge from the district bench takes the place of grand jury proceedings.

Persons under examination may not employ counsel, and proceedings are in camera. As the accused has no right of habeas corpus and as the object of the examination is to secure confession before trial, investigation may last for months or even years. After six months the accused may be released on bail or, under sekifu (parole) procedure, may be entrusted to the care of his friends or relatives. There is, however, no legal limit on the length of the preliminary investigation.

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TABLE 1

CRIMINAL INVESTIGATIONS  
1933 - 1937

	<u>1933</u>	<u>1934</u>	<u>1935</u>	<u>1936</u>	<u>1937</u>
Total Criminal Investi- gation Concluded	502,974	539,736	516,574	498,853	447,264
Prosecuted	108,410	116,610	114,928	117,583	111,173
Suspended	37,647	38,688	33,759	33,328	26,682
Transferred to Other Courts	43,949	46,697	48,195	47,605	45,544
Total Cases Dismissed	312,968	337,741	319,692	300,337	263,865
Acquitted	10,359	9,885	8,054	5,661	4,550
Lack of Evidence	48,721	48,946	48,362	42,944	37,708
Disciplinary Disposi- tion and Postponement of Prosecution	234,318	259,132	245,513	234,807	206,046
Others	19,570	19,778	17,763	16,925	15,561

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TABLE 2

PRELIMINARY HEARINGS IN CRIMINAL CASES  
1933 - 1937

	<u>1933</u>	<u>1934</u>	<u>1935</u>	<u>1936</u>	<u>1937</u>
Total	8,329	8,467	8,731	10,246	7,226
Acquitted	65	79	69	60	144
Committed for trial	8,196	8,304	8,498	10,129	7,025
Jurisdictional error	68	84	164	57	57

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Formal Trial

Indictment occurs automatically when a case is reported for trial. Trials are usually kept open to the public but need not be. On the whole the atmosphere of the court room is unfavorable to the defendant.

The presiding judge takes a prominent part in the case, conducting the examination of defendant and witnesses. The defendant's counsel may cross-examine only through the judge and in practice cross-examination is virtually non-existent. In contrast to the American system the judge has knowledge of the accused's previous conviction as the latter's personal record (koseki), kept in full detail for every Japanese subject, is placed before the judge before the trial begins.

The accused is not compelled to testify. When he does testify he is the first to be questioned and is examined very minutely but not under oath. Relatives of the defendant by blood or marriage, his guardian or wards, and his servants, employees, or persons living with him are not called upon to testify but their statements may be presented without administration of the oath. By virtue of their professions doctors, lawyers, notaries, and ministers of religion may refuse to testify.

7. The Jury System

Application

The law providing for the employment of juries in certain types of cases was passed in 1923 and put into effect in 1928. Jury trial is mandatory unless waived by the accused in all cases in which the accused is liable to the death penalty, perpetual penal servitude, or life imprisonment. Persons accused of crimes involving liability to limited penal servitude or a prison term not exceeding three years are entitled to jury trials upon demand. 39/

Cases which cannot be tried by jury include those in which the defendant has confessed to the crime, 40/ those involving offenses which come under the special authority of the

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TABLE 3

NUMBER OF CRIMINAL CASES HANDLED

<u>Year</u>	<u>Investi- gations</u>	<u>Preli- minary Exami- nation</u>	<u>Cases of First Instance</u>	<u>Cases of Se- cond Instance</u>	<u>Appel- late Cases</u>	<u>Rehear- ing</u>	<u>Re- trial</u>	<u>Extra- Ordinary Appeal</u>	<u>Civil Suit Attached to Prosecution</u>
1933	509,355	7,736	113,939	7,814	2,493	77	39	1	402
1934	545,360	7,660	123,488	7,301	2,270	69	36	2	344
1935	524,358	6,920	121,084	8,278	2,364	91	37	2	327
1936	505,500	7,100	124,494	10,424	4,123	75	40	-	272
1937	452,025	5,841	117,038	8,772	3,665	60	50	-	255

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TABLE 4

NUMBER OF CIVIL CASES HANDLED - 1938

<u>Courts</u>	<u>Total</u>	<u>New</u>	<u>Settled</u>
Local Courts	936,232	875,595	886,026
District Courts	93,886	64,395	66,442
Courts of Appeal	9,208	4,615	4,520
The Supreme Court	4,412	3,379	3,280
Total	1,043,738	947,984	960,268
Total 1937	1,198,478	1,098,664	1,102,689
Total 1936	1,364,841	1,259,440	1,264,987

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Supreme Court, offenses against the Imperial House, causing an internal disturbance, helping an enemy, disturbing international relations, and sedition, violations of the Peace Preservation Law, violations of the Military Secrets Preservation Law, the Army or Navy Criminal Laws, or any other offenses in connection with military secrets, and violations of the Public Election Laws. 41/

Composition of Juries

Juries are composed of twelve male citizens at least thirty years old who have lived in one place for two years or more, pay at least three yen in taxes and can read and write. They are selected by the court, the procurator, and counsel for the defense from a panel of eligible persons. There is no limit on the right of challenge either by the state or the defense. 42/

Those not eligible to serve on juries include Ministers of State, judges, procurators, officials of the Imperial Household, Army and Navy officers on active service, prefectural governors, policemen, prison officials, secretaries of law courts, tax collectors, customs officials, those connected with postal, railway, telephone, telegraph, and tramway services, seamen, mayors, lawyers and notaries, bailiffs, primary school teachers, priests, physicians and pharmacists, students, and persons interested in the case. 43/

Persons over sixty, officials and teachers, members of the Diet or of local assemblies when such bodies are in session, may decline to serve. 44/

Procedure

Jurymen act under oath. They may and do question both the accused and the witnesses.

The verdict is decided by simple majority vote and is confined to questions of fact. It is not binding on the court which may throw it out, empanel another jury, reject its verdict in turn, empanel a third jury, and so on indefinitely. 45/

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Public Attitude Toward the System

Jury trials are not popular in Japan. In the first place, there can be no review of the facts when a jury case is appealed. Secondly, the Japanese appear to have greater confidence in judges than in juries. And finally, the possibility of increased cost may enter into the defendant's decision to waive a jury trial as the court is empowered to divide the cost of the jury between the defendant and the state, place it all on the defendant, or all on the state. The weight of this factor should not be overestimated, however, as the state usually pays all because of the defendant's inability to do so. 46/

8. Judgments

Judgments are reached by a majority vote and the opinion is prepared by a judge delegated to do so who presents it to the other members of the panel for their approval. 47/ Dissenting opinions are never given.

9. Appeals

Until the adoption of emergency wartime measures establishing a two instance system of appeals, a three instance system was in use in all ordinary cases. 48/

Appeals must be lodged within two weeks from the day on which the decision was handed down. 49/ Decisions in jury trials may be appealed to the Supreme Court on the law but there can be no review of the facts. In practice such few appeals as there are in jury cases are made by the state. 50/

D. THE FUNCTIONS OF THE PROCURATORS

A procurator's office is attached to every court but in cases of necessity police officers or gendarmerie may act as procurators in local courts and in courts of all grades judges may be designated to serve as procurators by court presidents.

The functions of the procurators in criminal cases are principally those of prosecuting attorneys. They conduct

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preliminary investigations, prosecute criminal cases on behalf of the state, and supervise the execution of criminal judgments. Procurators may not make arrests but it is on their findings that a judge's order to arrest is usually based.

In civil cases of public concern the procurators represent the public interest but they play no part in civil actions against the state, such cases being heard in the Court of Administrative Litigation. 51/ The procurators have no functions in ordinary civil cases but in probate of wills they examine all the documents involved.

E. LOCAL COURTS (Ku Saibansho)

1. Organization

In 1940 there were 283 local courts in Japan, with 1790 branches. 52/ A single judge presides in each court and the branch offices handle registration matters only.

2. Jurisdiction 53/

Civil

Local courts have civil jurisdiction in cases of demands for money involving less than 1,000 yen, or for articles valued at less than 1,000 yen. They also have jurisdiction regardless of the value claimed in cases involving:

Legal actions brought by lessors against lessees or vice versa for receipt, vacation, use, occupation, or repair of houses or other buildings or parts thereof, or for the seizure of the furniture and fixtures or belongings of lessees by lessors.

Legal actions concerning the boundaries of real estate.

Legal actions concerning occupations.

Legal actions brought by employers against employees, or vice versa, for contracts of employment the terms of which do not exceed one year.

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Legal actions brought by travellers against hotels or innkeepers, or vice versa, for matters concerning board and lodging, or by travellers against water or land forwarding agents or vice versa.

Matters concerning bankruptcy.

Criminal

Local courts have criminal jurisdiction, provided the case has not been subjected to preliminary examination, in cases involving:

Offenses punishable with detention or fine.

Offenses punishable with penal servitude, imprisonment for fixed terms, or the imposition of fines, except those punishable with penal servitude or imprisonment for more than one year.

3. Reduction of Functions

Recent legislation has drastically curtailed the activities of the local courts, trial of penal and civil cases having been suspended in 101 of the courts which, however, were to continue to handle arbitration and registration. The new policy has been attributed to the desire to simplify judicial administration and to the need for sending judicial personnel to occupied territories. 54/

F. DISTRICT COURTS (Chiho Saibansho)

1. Organization

In 1940 there were 52 district courts in Japan, 55/ with 87 branches. 56/ Tokyo has two district courts, one dealing with civil, the other with criminal actions. 57/ District courts are collegiate for working purposes, three judges constituting a division. Branch offices handle registration matters only.

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2. Jurisdiction

Original

District courts have jurisdiction in the first instance in civil and criminal cases involving demands other than those falling under the jurisdiction of the local courts or of the courts of appeal.

Appellate

In the second instance district courts have jurisdiction over civil and criminal cases involving appeals from judgments rendered by the local courts and demands, determined by law, for revision of decisions or orders rendered by the local courts. 58/ They review both the facts and the law.

G. COURTS OF APPEAL (Kosō-in)

1. Organization

In 1940 there were seven courts of appeal in Japan located in Tokyo, Osaka, Nagoya, Hiroshima, Nagasaki, Miyagi, and Sapporo. 59/ Each of these courts is headed by a president who is a first class official. The appellate courts are collegiate for working purposes, three judges making up a division. The number of judges in each court varies from 42 (of second, third, and fourth rank) in Tokyo, to six in Sapporo.

2. Jurisdiction

Original

Original jurisdiction in civil cases brought against members of the Imperial Family is vested in the Tokyo Court of Appeal. Such cases may not be brought without prior consent of the Emperor. 60/

Appellate

The courts of appeal have jurisdiction over appeals lodged against judgments rendered in the first instance by the

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district courts and in complaints, determined by law, against decisions or orders rendered in the first instance by the district courts except those falling under the jurisdiction of the Supreme Court. 61/ Cases are heard anew in the appellate courts. The introduction of new evidence is permitted and both facts and law are reviewed.

H. THE SUPREME COURT

1. Organization

The Supreme Court sits in Tokyo. In 1940 it consisted of a president, of shinnin rank, twenty-five judges of the first rank, fifteen judges of the second rank, and five judges of the third. 62/ It is collegiate for working purposes, five judges constituting a division.

2. Jurisdiction

The Supreme Court is the court of final appeal from judgments rendered by the lower courts, from local or district court decisions to deny appeals, and in complaints, determined by law from decisions or orders rendered in the second instance by the district or appeals courts. The Supreme Court may accept decisions of fact made in the appellate courts but is not bound to do so. 63/

Jury cases are appealed directly from the district to the Supreme Court and the facts are not reviewed. 64/

The Supreme Court has original and final jurisdiction over the preliminary examination and adjudication of offences against the Imperial House, offences of internal disturbance, and offenses committed by members of the Imperial Family, for which punishment heavier than imprisonment should be imposed. 65/

I. THE COURT OF ADMINISTRATIVE LITIGATION 66/

1. Structure

The Court of Administrative Litigation sits in Tokyo in its own building. It consists of a president (chōkan) and a

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varying number of councillors (hyōjōkan) as may be determined by law. In 1938 the court had fourteen full time councillors.

2. Jurisdiction

In general the jurisdiction of the Court of Administrative Litigation includes all actions in which the question to be decided is the validity or invalidity of an administrative act. Damage suits brought by private individuals against the government or its officials are handled like private damage suits in the ordinary courts.

The court has jurisdiction over the following:

Cases arising out of the levying of taxes and administrative fees (exclusive of cases arising out of the tariff).

Cases involving an attempt to recover taxes.

Cases arising out of the refusal of a license or the revocation of a license already issued.

Cases arising out of administration of public works.

Disputes concerning boundaries between public and private lands.

Cases arising out of local police administration.

Miscellaneous cases provided for in a large number of statutes and ordinances such as the law which authorizes a prefectural assembly to sue a governor if he revokes one of its resolutions.

Disputes concerning acts of Ministers of State and prefectural governors may be submitted to the court directly. In cases involving other officials, administrative disputes must be laid before the executives supervising them by means of petition. The case is then heard either by the executive acting as an administrative tribunal or by a specially constituted tribunal. It may then be appealed to the Court of Administrative Litigation. 67/

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### 3. Procedure

The court sits in three divisions, each consisting of five or more judges and acting independently of the others. Each division has a head. The president of the entire court assumes the position of head of one division while the other two are headed by councillors of chokunin rank. Decisions are arrived at by majority vote and in the event of a tie the vote of the judge of lowest rank is eliminated. Should the division contain two judges holding lowest rank, the vote of the judge having seniority is the one considered.

The Court takes cognizance both of fact and of law.

## J. ARBITRAL TRIBUNALS 68/

### 1. Origins

In 1921, as a result of dissatisfaction with Occidental procedure, the use of arbitration, a method firmly rooted in Japanese traditions, was inaugurated in cases arising between landlords and tenants in large cities. In 1924 it was extended to disputes between landlords and farm tenants, in 1926 to commercial disputes, and in 1939 to domestic disputes. With some variations procedure follows a similar pattern in all types of arbitration.

### 2. Structure of the Arbitral Court

Cases for arbitration come under the jurisdiction of a law court or of an arbitral committee. In practice the law court takes jurisdiction over simple cases, the committee over more complicated ones. Regardless of the simplicity of the case, if both parties desire it, the arbitral committee is required to take jurisdiction.

The arbitral committee consists of a chief arbitrator appointed annually from among the judges by the president of the district court concerned, and two or more members chosen from a panel by the arbitrating judge. The panel is drawn up annually by the president of the district court. While engaged in a case

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the lay members of the arbitral committee receive a daily allowance as well as travelling and hotel expenses.

### 3. Jurisdiction

Under Article I of the Law for the Arbitration of Domestic Disputes "an application may be filed...for arbitration for disputes between members of a family or relatives, or other cases generally concerning family affairs." In addition, the law applies in cases of a domestic nature involving those not legally in the family.

In other cases the court may accept jurisdiction at the application of either or both parties.

Applications for arbitration in cases involving a cause unreasonable or not in keeping with good custom must be rejected.

### 4. Procedure

The application for arbitration must be filed at the local court within the jurisdiction of which the other party lives or at a local court jointly chosen by both parties. A court receiving an application in a case not within its jurisdiction may not simply reject the case but must refer it to the correct court. In any event the question of jurisdiction is not strictly interpreted.

Law suit proceedings are suspended in cases subsequently brought up for arbitration.

The proceedings are not open to the public and are directed by the chief arbitrator. The parties involved and those otherwise interested in a case for arbitration must appear in person unless unavoidably prevented from doing so. In domestic disputes lawyers desiring to represent their clients may do so without the special permission of the court, but laymen wishing to act on behalf of either party must obtain the permission of the court concerned. In other disputes neither lawyers nor laymen may appear on behalf of the parties without permission of the judge. The committee is authorized

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to summon witnesses and may order such action as may be deemed necessary prior to effecting arbitration.

When expenses are required the court may order one or both parties to pay in advance.

### 5. Decisions

Arbitration committee decisions are arrived at by majority vote. If accepted by the parties they are submitted to the court for confirmation. Unless they are considered unfair to a serious extent, the court must accept these decisions and they then become binding. In cases other than domestic disputes, if the decision is not accepted by the parties, the committee formulates a written award which is communicated to the parties and, if neither protests within thirty days, the decision becomes binding.

## K. JUVENILE COURTS (Shōnen Shimpansho)

### 1. Principles of Treatment

Under the Juvenile Criminal Law of 1922 boys and girls under eighteen are defined as juveniles. 69/

The principles on which juvenile offenders are treated in Japan are protective rather than punitive and various measures have been devised to avoid confinement when possible. There is a separate system of punishments for juvenile offenders and when confinement is necessary youthful prisoners are segregated in special sections or in separate prisons. On the physical side, however, Japanese treatment of youthful delinquents would seem to be hampered by the fact that both juvenile courts and juvenile prisons are few in number.

### 2. Location of Courts

In 1939 there were four juvenile courts located respectively in Tokyo, Osaka, Nagoya, and Fukuoka, 70/ and having jurisdiction over fourteen prefectures in all. 71/ The Tokyo juvenile court has jurisdiction over Tokyo and Kanagawa prefectures, the Osaka court over Osaka, Kyoto, and Hyogo prefectures,

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and the Nagoya court over Aichi, Mie, and Gifu. It was planned in 1935 that juvenile courts are ultimately to be set up all over the country; in the meantime those districts were selected that contained the big cities in which juvenile offenders and those needing protection were most likely to be found. 72/ The courts are housed in new and unofficial looking buildings distant from the ordinary courts. 73/

There is evidence that since 1939 additional juvenile courts have been established at Sendai, Hiroshima, and Sapporo. 74/

### 3. Personnel

The personnel of the juvenile courts includes juvenile arbitrators (shonen shimpan kan), probation officers (shonen hogoshi), and clerks. A juvenile arbitrator may simultaneously hold a position as judge in an ordinary court if he is qualified.

Probation officers assist the arbitrators by providing material used in trials or by assisting in the supervision of juveniles. They are of two kinds: officials appointed by the government because of their special knowledge and experience in dealing with juveniles; individuals commissioned by the Minister of Justice from among voluntary probation workers experienced in dealing with juveniles. 75/ Probation officers are frequently former schoolmasters. 76/

In 1940 personnel figures were as follows: 77/

<u>Juvenile Court</u>	<u>Juvenile Arbitrators</u>	<u>Juvenile Probation Officers</u>
Tokyo	3 (third class) 3 (fourth class)	2 (fifth class) 1 (seventh class)
Osaka	1 (third class) 1 (fourth class) 1 (fifth class)	2 (fourth class) 1 (fifth class) 1 (sixth class)
Nagoya	3 (third class)	2 (fifth class) 1 (seventh class)
Fukuoka	1 (third class) 2 (sixth class)	1 (fifth class) 1 (sixth class)
<u>Total:</u>	15	12

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In addition in 1935, before the establishment of the Fukuoka Court, there were 372 probation officers commissioned by the Minister of Justice. 78/

4. Procedure - Investigation 79/

A single arbitrator hears the trial and supervises the work of his subordinates. If two or more arbitrators are assigned to the same court, the one holding the highest rank exercises this power.

Juvenile cases may be brought to trial by a variety of procedures including notification, recognition by the court, transfer by the procurator, transfer by the ordinary court, commitment by the prefectural governor, and the transfer of a case from one juvenile court to another.

When the case is first brought before the court, the arbitrator makes a preliminary investigation and decides whether or not to proceed with it. He may call upon the probation officer to gather materials to aid in this decision. If the court decides to proceed with the case it must investigate the character, environment, past record, physical and mental condition, education, and family circumstances of the juvenile as well as the status and fitness of his guardian. In 1935 a number of specialists in psychiatry and forensic medicine were attached to the Tokyo and Osaka juvenile courts.

These investigations are carried on principally by the probation officer who interviews the juvenile and his guardian in the court or in the juvenile's home. The probation officer may also interview members of the juvenile's household, his employer or former employer, teachers, acquaintances and the injured party in the case. After completing his investigation the probation officer reports to the arbitrator on his findings and makes recommendations regarding suitable protective measures.

The court may summon any person or persons to appear before the court to give evidence, order the probation officer to present himself with the juvenile at any time, or order the

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juvenile's guardian or a protective institution to investigate the facts in the case.

5. Procedure - Trial

If necessary, the court may nominate a counsel for the juvenile or, subject to the permission of the court, counsel may be nominated by the juvenile, his guardian, or the protective institution concerned. On the day of trial the juvenile and his counsel are summoned and the guardian may be called at the court's discretion. The probation officer may also be present at the trial. The probation officer, the juvenile's guardian, and his lawyer may express their opinions at the trial, the court ordering the juvenile to retire when there is no reason for his presence.

Trials are not open to the public and newspaper publication of information regarding them is a punishable offense. The court may permit relatives of the juvenile, persons engaged in juvenile protection or other interested persons to attend.

6. Decisions 80/

With the exception of cases where the court considers that the juvenile should be tried before an ordinary court, the presiding judge decides whether protective measures are necessary and if so orders them applied.

When a juvenile has been referred to the court by a procurator or an ordinary court and new facts are discovered making it necessary to refer the juvenile back to the ordinary court, this is done after consultation with the competent procurator.

L. POLICE COURTS

Police courts have summary jurisdiction over offenses involving not more than twenty days detention or a twenty yen fine. Hearing in a local court may be obtained by protest against the police decision. 81/ Should a police court refuse

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to act on a complaint within its jurisdiction the complainant may bring the same complaint before the procurator of the local court.

M. MILITARY COURTS

Military courts composed of civilian judges and military officers deal only with criminal actions against persons in military service. 82/

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V. PENALTIES

A. KINDS 83/

There are six main types of penalties, the most severe of which is capital punishment carried out by hanging within prison grounds.

Penal servitude may be for a limited term or for life and carries with it compulsory labor.

A sentence to imprisonment involves voluntary labor only.

A monetary penalty is one of twenty yen or more. It may be reduced by decision. Those who cannot pay are kept in the workhouse as an alternative.

Custody involves detention from one to under thirty days.

Fines of from ten sen to twenty yen may be imposed, and, as in the case of monetary penalties, those unable to pay are confined in workhouses.

In general repetitious offenders are more severely punished than first offenders.

The term of punishment is calculated as from the day on which judgment has become irrevocable.

B. DETERMINATION OF PUNISHMENT 84/

In general the Japanese judge has wide latitude in imposing sentence. Such latitude is most marked in punishments of political crimes. Lèse majeste involving danger to a member of the Imperial House, organizing sedition, and certain offenses under the Peace Preservation Law 85/ automatically involve the death penalty, but in other offenses of a political nature the range of possible punishments varies widely. Forgery of an

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TABLE 5

TYPES OF CONVICTIONS

	Terms of those newly convicted in 1938	Average terms: newly convicted 1929-1938	Terms of Prison Inmates: end of 1938	Average terms Prison Inmates at end of year 1929-1938	Terms: convicts under 18 1938	Average terms: convicts under 18: 1929-38
<u>Penal Servitude</u>						
Total	30,679	31,728	46,686	46,497	560	630
Life	44	48	558	516	2	1
Over 15 yrs.	29	36	461	712	2	1
Under 15 yrs.	36	53	449	623	0	0
Under 10 yrs.	607	798	4,822	5,032	32	31
Under 5 yrs.	1,947	1,993	7,972	7,430	96	123
Under 3 yrs.	3,220	3,281	9,035	8,374	379	416
Under 2 yrs.	6,938	6,864	11,303	10,752	43	51
Under 1 yr.	11,486	11,958	9,723	10,136	3	6
Under 6 mos.	4,128	4,705	1,828	2,208	3	1
Under 3 mos.	1,884	1,982	343	408	0	0
<u>Imprisonment</u>						
Total	681	616	80	106		
Life	0	1	0	0		
Over 15 yrs.	0	1	0	0		
Under 15 yrs.	0	0	0	0		
Under 10 yrs.	0	1	0	0		
Under 5 yrs.	0	3	0	0		
Under 3 yrs.	1	1	0	0		
Under 2 yrs.	4	4	0	0		
Under 1 yr.	40	18	0	0		
Under 6 mos.	199	122	0	0		
Under 3 mos.	437	466	0	0		
<u>Detention</u>	2,932	4,660	107	200	0	0
<u>Death Sentence</u>	15	20	0	0	0	0
<u>Total</u>	34,307	37,023	46,686	46,497	560	630

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TABLE 6

CRIMES FOR WHICH CONVICTIONS WERE IMPOSED-1938

Crimes	First Offenders	Repeaters	Total	Average Number First Offenders	Average Number Repeaters	Average Total Offenders	Average Offenders Under 18
<u>Offense: Against Criminal Law</u>							
Theft	6,725	10,567	17,292	404	7,211	10,235	17,446
Gambling & Lotteries	987	844	1,831	0	988	612	1,600
Fraud, Threat & Embezzlement	3,304	3,193	6,443	24	3,720	2,734	6,454
Forgery of Documents, Securities, & Seals	214	93	307	2	329	102	431
Inflicting Injury	698	268	966	14	1,040	334	1,382
Stolen Goods	397	162	559	1	303	133	436
Murder	456	51	507	17	526	60	586
Burglary	342	205	547	58	449	237	686
Arson	348	42	390	19	533	47	580
<u>Crimes Obstructing Executive Office Duty</u>							
Office Duty	0	0	30	0	0	0	66
Destruction & Concealment	0	0	14	0	0	0	16
Forgery of Currency	6	5	11	0	27	9	36
Abortion	16	1	17	0	27	6	33
Obscenity, Adultery, Rape, Bigamy	202	51	253	18	211	43	254
Housebreaking	0	0	504	3	0	0	296
Perjury	0	0	10	0	0	0	34
False Accusation	0	0	22	0	0	0	17
Others	0	0	406	0	0	0	472
<u>Offences Against Special Laws</u>							
Criminal Law of Army & Navy	0	0	140	0	0	0	58
The Forest Law	0	0	16	0	0	0	34
The Military Service Law	0	0	16	0	0	0	14
The Mail & Telegraphy Law	0	0	5	0	0	0	4
Police & Prefectural Laws	0	0	2,932	0	0	0	1,393
Others	0	0	1,074	0	0	0	4,654
<u>Total</u>			34,307	560		37,023	630

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official document for example may be punished by penal servitude from three years to life; inciting to riot by penal servitude or imprisonment from one to ten years; participation in a seditious plot by penal servitude from three years to life; bribery of an official by penal servitude from one to ten years.

Most crimes against the person or of a tortious nature other than murder are punishable by penal servitude, a few by fines and only two, libel and slander, by imprisonment. Homicide may be punished by death. A major distinction, consistent with the important position of the family in Japanese society, is made between murder of one's own or one's spouse's lineal ascendants and other types of murder. In the former case penal servitude for life is the alternative to the death sentence; in the latter the alternative may be penal servitude for as little as three years.

Here too the judge has wide latitude. Kidnapping may be punished by terms of penal servitude varying from three months to ten years; certain types of rape by terms varying from six months to seven years; and performance of an abortion by penal servitude from three months to five years.

In a number of crimes against property rights a minimum sentence but no maximum is set by the law. Punishments for embezzlement, robbery, certain classes of counterfeiting, and certain types of arson, all involving penal servitude are of this type. Punishment for arson endangering human life may vary from five years to life; for theft, no distinction being made between petty and grand larceny, sentence to penal servitude may be imposed for any term not exceeding ten years.

#### C. WARTIME REVISION OF PENALTIES

Emergency wartime regulations have increased the punishments for such offenses as assault, rape, theft, robbery, arson, incitement to riot, traffic obstruction, and pollution of water. 86/

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#### D. MITIGATION OF PUNISHMENT 87/

Punishment may be mitigated when extenuating circumstances exist but the Criminal Code does not define such circumstances.

The death penalty may be mitigated by reduction to penal servitude or imprisonment for life or for not less than ten years. Penal servitude or imprisonment for life may be mitigated by reduction to penal servitude or imprisonment for not less than seven years. Limited penal servitude or imprisonment may be mitigated by reduction of the term by half. Fines and minor fines may be mitigated by reduction to one half their maximum amount. Detention may be mitigated by reduction by one half of the maximum term.

#### E. SUSPENDED SENTENCE 88/

The execution of sentences of persons condemned to penal servitude or imprisonment for not more than two years may be suspended for from one to five years if they have not been previously sentenced to imprisonment or graver punishment. Even those who have been previously sentenced to imprisonment or graver punishment may receive suspended sentences if after the expiration of seven years from the end of the previous sentence they have not again been sentenced to imprisonment or graver punishment. When the period of suspended sentence has elapsed without revocation of the suspension, the original sentence loses its effect.

Suspension of sentence is revoked when a further crime has been committed within the period of suspension and a sentence of imprisonment or graver punishment is imposed; and when a sentence of imprisonment or graver punishment is received for a crime committed prior to the suspension of sentence.

#### F. AMNESTY, PARDON, COMMUTATION, REHABILITATION 89/

Article 16 of the Constitution provides that "the Emperor shall have power to grant amnesty, pardon, commutation

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and rehabilitation." Amnesty may be granted either before condemnation, in which case all criminal proceedings are stopped, or after, in which case the execution of the sentence is nullified. It carries with it full rehabilitation and obliteration of the legal effects of crime. It is not granted to a particular individual or individuals but only to criminals who have committed crimes belonging to a particular category.

Pardon may be granted only after sentence has been pronounced and exempts the guilty from penalties but not from the other consequences of his crime.

The Emperor grants commutation within the limits of the provisions of the criminal law. 90/

Rehabilitation restores to the individual concerned the full civil status which he forfeited by the commission of crime. It thus restores his eligibility to public office, his right to vote, his capacity to enter licensed professions and to wear the titles of nobility, decorations, orders, and other symbols of honor, and the right to be appointed a guardian.

#### G. CRIMINAL COMPENSATION SYSTEM

Compensation is granted to persons who have been kept in detention and subsequently pronounced not guilty, and to persons declared not guilty by an appeals decision who have already suffered execution of sentence or detention. Should the accused have died compensation is awarded to the bereaved.

The compensation for unlawful arrest, detention, imprisonment or penal servitude is a sum of less than five yen a day, paid for the entire period.

In the case of a fine or monetary penalty wrongly imposed, the money involved is merely restored. If, however, the accused had been unable to pay and consequently confined in the workhouse, compensation of five yen for each day of confinement is granted. 91/

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#### H. JUVENILE PUNISHMENTS

##### 1. Protective Measures 92/

Under the protective system, juveniles whom it is not felt necessary to confine may be treated in a variety of ways. They may simply be admonished or required to declare their sincere repentance in a written statement. Or they may be placed under the guidance of a school principal, their parents, a probation officer, or specially qualified bodies including protective associations, temples, or churches.

##### 2. Measures of Confinement 93/

Juveniles may be confined in reformatories or houses of correction or may be placed under proper treatment in hospitals.

##### 3. Modification of Punishments for Juveniles 94/

A juvenile who has committed a crime punishable by the death penalty or penal servitude for life may be punished by penal servitude or by imprisonment for ten to fifteen years.

Indeterminate sentences are authorized for juveniles who have committed crimes calling for penal servitude or imprisonment for more than three years.

Juveniles sentenced to penal servitude or imprisonment may be released provisionally (on parole) after serving seven years of a life sentence, three years of a ten to fifteen year sentence, or one-third of a sentence for a shorter period.

Juveniles are not sent to workhouses.

Should a juvenile commit an offense for which a penalty lighter than capital punishment or life imprisonment is imposed, his status and privileges as a citizen are not affected once the sentence has been carried out. 95/

Leniency is waived in the treatment of a juvenile who has committed lese majesté or homicide against his own ascendants

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or against ascendants of his spouse. 96/

4. Supervision of Juveniles Under Protection 97/

After juveniles are placed by the Court the probation officer visits them periodically and receives reports on their status from the individuals or institutions to whom they have been entrusted. The probation officer in turn makes a monthly report to the court. Court supervision may continue until the juvenile has reached the age of 23 and during that time the court may cancel or alter its decision.

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VI. THE PRISON SYSTEM

A. PRINCIPLES OF JAPANESE PENOLOGY

Since the first World War the trend in Japan, as in other countries, has been away from the principle of harsh punishment and severe treatment and in the direction of the concept of a prison as a place of rehabilitation and reform. On 11 October 1927 Kado Hara, then Minister of Justice, instructed governors of prisons as follows:

"The object of enforcing punishments on the inmates of prisons is to cause them to reflect on and repent their offenses and to turn them into good members of society. There are many and various means of attaining this object, but they are, in the final analysis, to cultivate their character, to give them training for different occupations, and to maintain their health in good condition, while improving the circumstances which constitute the causes of their offenses so as to enable them to lead a decent life. In order to realize the end aimed at, therefore, a mere confinement and watching of them is not sufficient; on the contrary, it is necessary to know their individual characteristics and to inquire into and ascertain the motives and causes of their crimes, giving them thereby appropriate treatment." 98/

B. ORGANIZATION

1. Prison Population 99/

According to the Prison Law of 1908 a prison is a place to keep those sentenced to penal servitude, imprisonment, or detention, those awaiting execution of capital punishment, and persons suspected of an offense and ordered by writ to be detained. Persons unable to pay fines and hence detained for compulsory labor are kept in a workhouse which is attached to every prison. An infant under one year of age may be taken to prison with its mother should the mother desire it. Children born in prison may be left with their mothers until reaching the age of one.

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TABLE 7

PRISONS AND PRISON OFFICIALS  
(as of 1938)

Head Office		Governor of Prison	Ass't. Gov. of Prison	Chief Warders	Interpreters	Doctors	Internes	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
Tokyo (Confinement prison)		1	1	17		3	2	1	4			4		301	42	388
Nagoya		1	1	3		2	1	1	1					56	8	70
Kosuga		1	1	12		2	1	1	2					153	36	224
Toyotama		1	1	10		2	1	1	2					146	31	207
	Urawa	1	1	5		1	1	1	1					92	12	120
	Kumagaya	1	1	1		1	1	1	1					5	1	7
	Total	1	1	16		3	1	1	3					243	44	334
Funaka		1	2	14		3	1	1	4					217	48	315
Yokohama		1	1	11		1	1	1	3					143	31	206
Chiba		1	1	7		2	1	1	3					105	23	149
	Yokaichiba	1	1	1		1	1	1	1					5	1	7
	Kisarazu	1	1	1		1	1	1	1					5	1	7
	Total	1	1	9		2	1	1	3					115	25	163
Mito		1	1	8		3	1	1	2					89	19	128
	Tsuchiura	1	1	1		1	1	1	1					7	1	10
	Shimozuma	1	1	1		1	1	1	1					4	1	6
	Total	1	1	10		3	1	1	3					100	21	144

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Table 7 Cont'd. (11)

Head Office		Governor of Prison	Ass't. Gov. of Prison	Chief Warders	Interpreters	Doctors	Internes	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
Utsunomiya		1	1	1		1	1	1	2			7		86	19	122
	Tochigi	1	1	1		1	1	1	1			1		7	4	34
	Total	1	1	1		1	1	1	1			1		93	23	156
Maebashi		1	1	1		2	1	1	3			7		99	18	138
	Takasaki	1	1	1		1	1	1	1			1		5	1	7
	Total	1	1	1		2	1	1	1			1		104	19	145
Shizuoka		1	1	1		2	1	1	3			10		100	17	138
	Hamamatsu	1	1	1		1	1	1	1			1		35	5	45
	Numazu	1	1	1		1	1	1	1			1		8	1	10
	Total	1	1	1		1	1	1	1			1		143	23	193
Kofu		1	1	1		1	1	1	2			5		79	18	112
Nagano		1	1	1		1	1	1	2			4		76	15	105
	Matsumoto	1	1	1		1	1	1	1			1		39	6	51
	Iida	1	1	1		1	1	1	1			1		5	1	7
	Uyeda	1	1	1		1	1	1	1			1		5	1	7
	Kami Suwo	1	1	1		1	1	1	4			1		130	24	177
	Total	1	1	10		2	1	1	1			5		72	15	102
Niigata		1	1	1		2	1	1	2			5		3	1	5
	Takata	1	1	1		1	1	1	1			1		3	1	5
	Nagaoka	1	1	1		1	1	1	1			1		4	1	6
	Shibata	1	1	1		2	1	1	1			5		82	18	118
	Total	1	1	7		2	1	1	2			5		82	18	118

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TABLE 7 Cont'd. (iii)

Head Office		Governor of Prison	Ass't. Gov. of Prison	Chief Warders	Interpreters	Doctors	Internes	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
Kyoto		1	1	8	1	2	1	1	3	1	1	10	1	115	20	160
	Miyazu	1	1	2	1	1	1	1	1	1	1	1	1	5	6	34
	Chukyo Ku Maizuru	1	1	2	1	1	1	1	1	1	1	1	1	27	4	36
	Total	1	1	12	1	3	1	1	4	1	1	10	2	151	31	235
Osaka		1	2	18	1	3	1	1	6	1	1	21	4	281	51	387
	Kita Ku	1	1	4	1	2	1	1	1	1	1	1	4	75	15	102
	Wakayama	1	1	3	1	1	1	1	1	1	1	1	1	55	13	76
	Tanabe Sakai	1	1	1	1	1	1	1	1	1	1	1	1	6	1	8
	Total	1	4	27	1	6	1	1	8	1	1	23	4	422	81	580
Kobe		1	1	8	1	2	1	1	3	1	1	11	1	148	32	208
	Tachibana	1	1	4	1	1	1	1	1	1	1	1	2	28	5	40
	Dori Toyooka Sumoto	1	1	1	1	1	1	1	1	1	1	1	1	3	1	5
	Total	1	1	14	1	3	1	1	3	1	1	11	2	184	39	260
Nara		1	1	5	1	2	1	1	3	1	1	6	1	92	18	127
	Gojo	1	1	1	1	2	1	1	3	1	1	6	1	4	1	6
	Total	1	1	6	1	2	1	1	3	1	1	6	1	96	19	133

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TABLE 7 Cont'd. (iv)

Head Office		Governor of Prison	Ass't. Gov. of Prison	Chief Warders	Interpreters	Doctors	Internes	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
Shiga		1	1	4	1	1	1	1	2	1	1	4	1	75	16	104
	Hikone	1	1	1	1	1	1	1	1	1	1	1	1	5	1	6
	Total	1	1	5	1	1	1	1	2	1	1	4	1	80	16	110
Tokushima		1	1	7	1	2	1	1	3	1	1	5	1	111	19	150
	Takamatsu	1	1	1	1	1	1	1	1	1	1	1	1	5	1	7
	Total	1	1	8	1	2	1	1	3	1	1	5	1	116	20	157
Kochi		1	1	6	1	1	1	1	2	1	1	6	1	91	19	130
	Nakamura	1	1	1	1	1	1	1	1	1	1	1	1	3	1	5
	Total	1	1	7	1	2	1	1	2	1	1	6	1	94	20	135
Nagoya		1	1	12	1	2	1	1	3	1	1	13	3	170	30	239
	Mie	1	1	4	1	2	1	1	2	1	1	7	1	109	22	148
	Total	1	1	16	1	4	1	1	5	1	1	10	1	179	52	231
Gifu		1	1	1	1	1	1	1	1	1	1	1	1	5	1	7
	Yokkaichi Ujiyamada	1	1	1	1	1	1	1	1	1	1	1	1	5	1	7
	Total	1	1	2	1	2	1	1	2	1	1	2	1	119	24	162
Gifu		1	1	5	1	2	1	1	2	1	1	6	1	102	19	137
	Takayama	1	1	1	1	1	1	1	1	1	1	1	1	4	1	6
	Takamimachi Mitake	1	1	1	1	1	1	1	1	1	1	1	1	10	1	12
	Total	1	1	8	1	2	1	1	2	1	1	6	1	120	22	161

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TABLE 7 Cont'd. (v)

		Governor of Prison	Ass't. Gov. of Prison	Chief Warders	Interpreters	Doctors	Internes	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
Head Office																
Kanazawa		1		5		1	1		2					71	18	107
	Fukui		1	3			1		1					31	8	46
	Toyama		1	3			1		1					31	6	44
	Nanao													4		4
	Takaoka													6		6
	Total	1	2	11		1	3		4					143	32	207
Hiroshima		1	1	11		2	1	1	2	1	2	10	2	149	35	220
	Onomichi			3			1		1	2		2		34	3	46
	Miyoshi			1					1					6	3	24
	Kure			1									13	7	1	9
	Total	1	1	16		2	2	1	4	3	2	14	15	196	42	299
Yamaguchi		1		2		1	1		2			7		82	17	113
	Shimonoseki			1			1		1					23	4	30
	Tokuyama			1										3	1	5
	Funaki			1										3	1	5
	Total	1		5		1	2		3			7		111	23	153
Okayama		1		7		2			3			8	2	162	21	206
	Tsuyama			1										5	1	7

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TABLE 7 Cont'd. (vi)

		Governor of Prison	Ass't. Gov. of Prison	Chief Warders	Interpreters	Doctors	Internes	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
Head Office																
	Takahashi			1										4	1	6
	Tamashima			1										3	1	5
	Total			10		2			3					174	24	224
Matsue		1		4		1			2					67	15	96
	Tottori			3		1			1					37	10	55
	Yonago			2			1		1			2		20	3	27
	Hamaoka			1										4	1	6
	Total	1	1	10		2	1		4			7	1	128	29	184
Matsuyama		1		5		1			2			6		80	17	112
	Saijo			1					1					5	1	7
	Uwajima			1					1					15	3	20
	Daishu			1					1					4	1	6
	Total	1		8		1			3			6		104	22	145
Nagasaki		1		7		1			2			9		92	22	135
	Uragami			3	1	1			1			1	2	42	10	62
	Shimabara													4	1	5
	Fukue													3	1	4
	Sasebo			1										3	1	4
	Hirado			1										3	1	4
	Saga		1	3		1			2			3	13	53	10	86

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TABLE 7 Cont'd. (vii)

Head Office		Governor of Prison	Asst. Gov. of Prison	Chief Warders	Interpreters	Doctors	Internes	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
	Omura Kaijo	1	1	1	1	1	1	1	1	1	1	1	1	14	9	28
	Total	1	1	16	1	1	1	1	1	1	1	1	1	216	55	332
Fukuoka		1	1	11	1	1	1	1	1	1	1	1	1	131	26	188
	Kokura	1	1	5	1	1	1	1	1	1	1	1	1	64	15	92
	Dotemachi	1	1	1	1	1	1	1	1	1	1	1	1	18	2	22
	Iizuka	1	1	1	1	1	1	1	1	1	1	1	1	8	1	10
	Itsukuhara	1	1	1	1	1	1	1	1	1	1	1	1	10	2	14
	Total	1	1	19	1	3	1	1	1	1	1	1	1	231	46	326
Kumamoto		1	1	5	1	2	1	1	2	1	1	1	1	96	19	134
	Kyomachi	1	1	1	1	1	1	1	1	1	1	1	1	15	2	19
	Yatsushiro	1	1	1	1	1	1	1	1	1	1	1	1	5	1	7
	Total	1	1	7	1	2	1	1	2	1	1	1	1	116	22	160
Kagoshima		1	1	7	1	1	1	1	2	1	1	1	1	73	17	108
	Oshima	1	1	1	1	1	1	1	1	1	1	1	1	12	2	15
	Total	1	1	8	1	1	1	1	2	1	1	1	1	85	19	123
Miyazaki		1	1	5	1	1	1	1	2	1	1	1	1	67	14	95
	Nobeoka	1	1	1	1	1	1	1	1	1	1	1	1	4	1	5
	Oita	1	1	3	1	1	1	1	2	1	1	1	1	4	1	6
	Nakatsu	1	1	1	1	1	1	1	2	1	1	1	1	4	1	5
	Total	1	1	9	1	2	1	1	4	1	1	1	1	121	25	171

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TABLE 7 Cont'd. (viii)

Head Office		Governor of Prison	Asst. Gov. of Prison	Chief Warders	Interpreters	Doctors	Internes	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
Okinawa		1	1	4	1	1	1	1	1	1	1	3	3	49	13	75
	Hirara	1	1	1	1	1	1	1	1	1	1	1	1	4	1	6
	Total	1	1	5	1	1	1	1	1	1	1	3	3	53	14	81
Miyagi		1	1	8	1	3	1	1	2	1	1	9	11	113	27	177
	Sendai	1	1	1	1	1	1	1	1	1	1	1	1	12	3	16
	Furukawa	1	1	1	1	1	1	1	1	1	1	1	1	5	1	7
	Ishinomaki	1	1	1	1	1	1	1	1	1	1	1	1	4	1	6
	Fukushima	1	1	2	1	1	1	1	1	1	1	3	1	37	10	54
	Koriyama	1	1	1	1	1	1	1	1	1	1	1	1	4	1	6
	Shirakawa	1	1	1	1	1	1	1	1	1	1	1	1	4	1	6
	Wakamatsu	1	1	1	1	1	1	1	1	1	1	1	1	7	1	9
	Taira	1	1	1	1	1	1	1	1	1	1	1	1	1	8	10
	Total	1	1	17	1	4	1	1	2	1	1	12	11	194	46	291
Akita		1	1	6	1	1	1	1	2	1	1	6	1	77	14	108
	Odate	1	1	1	1	1	1	1	1	1	1	1	1	3	1	5
	Omagari	1	1	1	1	1	1	1	1	1	1	1	1	4	1	6
	Yokote	1	1	1	1	1	1	1	1	1	1	1	1	5	1	6
	Yamagota	1	1	3	1	1	1	1	1	1	2	1	1	37	8	53
	Yonezawa	1	1	1	1	1	1	1	1	1	1	1	1	5	1	6
	Tsuruoka	1	1	1	1	1	1	1	1	1	1	1	1	4	1	5
	Sakata	1	1	1	1	1	1	1	1	1	1	1	1	3	1	5
	Total	1	1	12	1	1	1	1	3	1	1	8	1	138	28	194

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TABLE 7 Cont'd. (ix)

Head Office		Governor of Prison	Ass't. Gov. of Prison	Chief Warders	Interpreters	Doctors	Internes	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
Aomori	Hirosaki	1	1	3	1	1	1	1	1	1	1	1	1	4	17	76
	Yanagimachi	1	1	1	1	1	1	1	1	1	1	1	1	4	11	6
	Hachinohe	1	1	1	1	1	1	1	1	1	1	1	1	4	11	7
	Total	1	1	6	1	1	1	1	1	1	1	1	1	6	20	96
Sapporo	Odori	1	1	7	1	1	1	1	3	1	1	1	7	100	25	147
	Otaru	1	1	3	1	1	1	1	1	1	1	1	1	19	2	32
	Asahigawa	1	1	4	1	1	1	1	1	1	1	1	1	8	11	10
	Iwamizawa	1	1	1	1	1	1	1	1	1	1	1	1	4	11	66
	Muroran	1	1	1	1	1	1	1	1	1	1	1	1	3	1	5
	Nayoro	1	1	1	1	1	1	1	1	1	1	1	1	3	1	4
	Total	1	2	17	1	1	1	1	5	1	1	1	8	180	42	268
Hakodate	Mikawa	1	1	5	1	1	1	1	2	1	1	1	4	78	17	108
	Total	1	1	1	1	1	1	1	1	1	1	1	3	10	2	16
Abashiri	Futamigaoka	1	1	9	1	2	1	1	2	1	1	1	3	88	19	124
	Kushiro	1	1	3	1	1	1	1	2	1	1	1	3	101	20	143
	Total	1	1	1	1	1	1	1	1	1	1	1	3	24	3	28
	Total	1	1	3	1	1	1	1	1	1	1	1	3	38	12	59

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TABLE 7 Cont'd. (x)

Head Office		Governor of Prison	Ass't. Gov. of Prison	Chief Warders	Interpreters	Doctors	Pharmacists	Prison Chaplains	Instructors	Experts - Industrial Work	Assistants - Industrial Work	Wardress	Warders	Hired Help	Total
Karafuto	Obihiro	1	1	15	1	1	1	1	4	1	1	10	1	35	42
	Maoka	1	1	3	1	1	1	1	1	1	1	1	1	8	10
	Total	1	1	4	1	1	1	1	1	1	1	1	1	39	57
Odawara (Juvenile)	Uruga Kaijo	1	1	5	1	1	1	1	1	1	1	6	1	4	12
	Total	1	1	6	1	1	1	1	2	1	1	5	1	5	14
Kawagoe (Juvenile)	Himeji	1	1	3	1	1	1	1	1	1	1	6	1	4	15
	Okazaki	1	1	3	1	1	1	1	1	1	1	6	1	4	15
	Toyohashi	1	1	4	1	1	1	1	1	1	1	5	1	5	15
	Total	1	1	4	1	1	1	1	1	1	1	5	1	5	10
Iwakuni (Juvenile)	Kurume	1	1	4	1	1	1	1	1	1	1	5	1	4	13
	Morioka	1	1	2	1	1	1	1	1	1	1	5	1	3	11
	Ichinoseki	1	1	1	1	1	1	1	1	1	1	5	1	3	11
	Total	1	1	3	1	1	1	1	3	1	1	7	1	56	12

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TABLE 7 Cont'd. (xi)

Head Office	Hokkai	Hachioji	Grand Total
Governor of Prison	43	33	490
Ass't. Gov. of Prison	1	1	2
Chief Warders	2	4	3
Interpreters	1	1	3
Doctors	1	1	94
Internes	1	1	26
Pharmacists	1	1	10
Prison Chaplains	1	1	141
Instructors	2	1	35
Experts - Industrial Work	1	1	18
Assistants - Industrial Work	3	1	428
Wardens	30	33	6635
Hired Help	6	5	1370
Total	46	47	9461

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TABLE 8

PRISON INMATES

	1938	Average 1929-1938
<u>Prison Inmates</u>		
Convicted persons (Jukeisha)	34,307	37,022
Suspected persons (Higisha)	13,700	16,982
Criminal defendants (Keiji hikoku nin)	33,383	36,383
Detained in prison workhouse (Rōekisho Ryūchisha)	5,811	8,866
Infants (Myūji) Born in prison	3	5
Carried in	21	28
<b>Total</b>	<b>87,225</b>	<b>99,286</b>
<u>Persons Confined in Prefectural Police Stations</u>		
Convicted persons (Jukeisha) Police crime (punishment order)	81,228	97,759
Prefectural police order	2,846	3,370
Others	1,241	960
<b>Sub-Total</b>	<b>85,315</b>	<b>102,089</b>
Criminal defendants	7,939	8,026
Inmates of prison workhouse	1,046	1,443
<b>Total</b>	<b>94,300</b>	<b>111,558</b>

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## 2. Segregation of Prisoners 100/

As a rule certain sections of ordinary prisons are specially arranged for persons awaiting trial. Small prisons near court houses are also used for this purpose.

Persons considered likely to exert a bad influence on fellow inmates are subjected to strict discipline in special prisons or special parts of ordinary prisons. Those of inferior mentality and very old persons are also segregated.

First offenders and repeaters are separated in all prisons and in some places separate prisons are provided.

Certain prisons are used exclusively for those serving long penal or life terms, some of them specially constructed for training in agriculture and mining.

In provincial districts segregation of different types of prisoners usually occurs within the same prison. In metropolitan areas, however, different prisons are frequently provided for various types of offenders. Tokyo, for example, has the Tokyo Detention Prison, the Kosuge Prison for those serving long sentences, the Fuchu Prison for those with previous records, the Toyotama Prison for first offenders, and the Hachioji Juvenile Prison for juvenile offenders, particularly those with mental perversions. 101/

## 3. Administrative Personnel

### Composition

Prison officials include governors, sub-governors, chaplains, teachers, doctors, apothecaries, technical experts, chief wardens, and male and female wardens. Prison governors are usually selected from among judges, procurators, or wardens of long experience. In the larger prisons one or two sub-governors are appointed to assist the governor. 102/

### Training

Training courses for prison officials are conducted by the Japanese Prison Association, an organization composed

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largely of prison officials which was set up in 1888. Two training courses are carried on, one lasting two months a year for higher prison officials, and the other for officials of lower rank. In each case selection of students seems to be based on examination. Courses are organized as follows:

Higher officials are given courses in penal policies, prison systems, prison industries, prison hygiene, welfare work, criminal procedure, comparative prison laws, prison architecture, criminal sociology, psychology of labor, factory management, efficiency, industries in general, financial law, psychopathology, social work, principles of moral (religious) instruction, theories of purchase and sale.

Lower officials are given courses in European and American prison systems and their histories, criminal law, criminal procedure, parole systems, criminal psychology, ethics, principles of jurisprudence, juvenile law, discharged prisoners' aid, the fingerprint system, the history and practice of prison administration, general sociology.

Courses for prison physicians include internal medicine, surgery, ophthalmology, otorhinolaryngology, dermatology, venereal diseases, psychology, bacteriology, serum therapy, labor hygiene.

In addition all prison officials are required to practice judo (wrestling) and kendo (fencing). 103/

## C. PHYSICAL CONDITIONS 104/

### 1. Buildings

Prison buildings vary in size and structure according to the requirements of the location. Prison enclosures vary in area from 33,055 to 14,001,461 square meters. Office cell and factory buildings are surrounded by fields in which the inmates raise the vegetables consumed in prison. Recreation grounds are provided for those confined in solitary cells. Cells and factory buildings occupy different parts of the prison area.

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2. Cells

Cells are of two types, solitary and associate. Solitary cells are further classified into those for use only at night which need not have an air space of more than fifteen cubic meters. Solitary cells for continuous use are occupied by prisoners during their first three months of confinement as well as those who are thought to have a pernicious influence on others. Such cells are required to have an air space of not less than eighteen cubic meters.

Associate cells usually hold from eight to twelve persons and must have an air space of at least nine cubic meters per person. Each cell is provided with a scullery and lavatory and furnished with rice bowl, chopsticks and a dish, toothbrush, dentifrice, soap, toilet paper, and towel, desk, water basin, broom and dust cloth, prison magazines, the Sutra of Buddhism, a Bible, and a catalog of books in the prison library.

3. Health and Living Conditions 105/

Prison infirmaries are separated from other buildings and are heated when necessary. They include rooms for treatment, a dispensary, ordinary wards, and wards for infectious diseases.

Heating is provided in factory buildings but not in cells. While the average Japanese is not accustomed to much heat in his living quarters prisons are built in the European style and are hence much colder than the average Japanese house. A Japanese authority claims, however, that the prisoners' health is not seriously affected by the cold as most of their time is spent in factories, the cell being used only for sleeping purposes for which adequate bedding is provided.

Every prisoner may have a bath at least once in five days between June and September and once in seven days during the other months.

Daily food consists of a mixture of rice (40%) and barley (60%) together with a side dish. The quantity of food

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allotted to each prisoner varies, ten grades being established on the basis of the kind of work done. The minimum is 4.2 go (about 514 grams), the maximum 9. go (about 1,285 grams) a day. Side dishes consist of vegetables with a small quantity of meat or fish added about twice a week. Side dishes may not cost more than five sen but vegetables are supplied very inexpensively as large quantities are grown in prison fields.

Uniforms are of brick red or blue cotton made to suit the climate. Three sets are supplied, one for winter, one for summer, and one for spring and fall. An extra shirt may be worn. Every prisoner changes his ordinary clothes for working clothes before entering the factory.

Bedding, a sheet, pillow, and mosquito net, are supplied.

D. SOCIAL AND EDUCATIONAL ACTIVITIES

1. Religion 106/

Chaplains are selected from among Buddhist priests. Legally Christians may be appointed but in 1935 there were no chaplains of Christian faith. In some cases, however, Christian volunteers are allowed to visit their co-religionists or others who wish instruction in Christianity. In addition to preaching to inmates both individually and in groups, the chaplains interest themselves in the prisoners' education and personal affairs. They give lessons for two hours a day to illiterate first offenders and, where necessary, seek to restore relations between prisoners and their families. Addresses are given in the chapel on all holidays by the governor or the chaplain and occasionally outsiders are invited to speak to the prisoners or educational films are shown.

2. Recreation

Outdoor recesses occur morning and afternoon, during which the prisoners participate in physical exercise, singing of war songs, and walking. 107/ Prisoners may also make use of

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the library, listen to the victrola and radio, and participate in other types of recreation according to their status under the progressive system. 108/

3. Visits and Letters 109/

The number of visits and letters written is limited to one in two months for those undergoing penal servitude, once a month for those undergoing imprisonment, and once every ten days for those undergoing detention.

Persons being detained during trial enjoy full liberty of communication provided it is not forbidden by the judge in charge of the case. Communication between the accused and his lawyer cannot be prohibited under any circumstances.

E. PRISON LABOR 110/

1. Categories

Fifty percent of Japanese prison labor is performed under the contract system. The remainder represents either labor for state use or production of goods to order.

2. Distribution of Work

For the first three months of his term the prisoner is kept in solitary confinement. During this time his term of servitude, physical condition, ability, former occupation and future prospects are considered in order to make possible a decision as to the kind of work he is to perform.

In 1931 86% of the prison population was at work.

3. Hours of Work

In 1921 the working day for prisons was fixed by the Ministry of Justice at twelve and one half hours including a forty minute recess. The prisoners receive two days a month off as well as the national holidays (about twelve.)

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4. Income

The income from prison labor reverts to the national treasury. In several prisons income from work carried on exceeds maintenance expenditure.

Prisoners do not receive wages but may be given a sum of money as a reward for their work. Skilled laborers may receive from one to ten yen a month, unskilled from fifty sen to seven yen. Special rewards may also be given. Prisoners disabled by injury or illness may be given compensation of from 50 to 180 yen which in the event of death is sent to the surviving family.

5. Criticism

A Japanese authority paints an unfavorable picture of the work carried out in Japanese prisons. He says:

"For the sake of the future it is most desirable that the trades learned in prison should be such that the men are prepared to earn their living when they return to ordinary life. From this point of view work that requires a great deal of machinery and the cooperation of many people is not suited to prisons. Prison officials consider it their first duty, however, to manage the work as economically as possible rather than consider the needs of the prisoners. It is difficult also to get orders for work which is best suited for the training of the inmates. For these reasons it is often necessary to do certain types of work which are quite useless as a training for the future. It is necessary to exercise some kind of control to prevent prison officials from being obsessed by the idea of making profits regardless of the welfare of the inmates." 111/

6. Participation in War Production

On 1 September 1943 the Deutsche Allgemeine Zeitung reported that 45,000 Japanese convicts had been mobilized for

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ship building, mining and ammunition production and that general mobilization was planned. 112/

An interpellation in the January 1944 Diet provides evidence of the use of young criminals in war industry, 113/ and in a speech in March 1944 ex-Premier Tojo indicated that almost all Japanese prisoners were engaged in war production. 114/

#### F. THE PROGRESSIVE SYSTEM 115/

##### 1. Aims

Treatment of prisoners on the progressive system is a recent innovation in Japanese penology. According to a Japanese description, "This treatment aims at leading them [convicts] to repent and their treatment is graded in proportion to their aspiration and diligence, thereby gradually bringing them to the conditions of ordinary social life. The relaxation of the enforcement of penalties not merely extends the scope of the personal liberty of convicts, but serves to cultivate a sense of responsibility on their part and strengthens their will for self-reclamation. In short, its chief purpose is not to make 'good convicts' but to turn them into 'good citizens.'"

##### 2. Application

The progressive system is not applied to those sentenced to less than six months imprisonment, to the aged and the decrepit, and to persons of unsound mental or physical faculties.

##### 3. Stages of Treatment

The four classes of prisoners under the progressive system are organized as follows:

those under investigation  
those in the course of correction and training  
those in the process of improvement  
those who have developed a sense of responsibility

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After their characters have been studied, newly admitted convicts are assigned to the first class. They are promoted to a higher class only after they have earned a sufficient number of marks by diligence, good conduct, and growth of the sense of responsibility and of the will for self-improvement.

Should a prisoner violate regulations, progressive treatment may be suspended for a maximum period of three months. Such suspension may be postponed, however, if mitigating circumstances exist or if the prisoner shows marked signs of sincere penitence. A further violation of prison regulations brings about immediate enforcement of the postponed suspension.

Should a prisoner who has been punished with suspension again violate regulations he may be transferred to a lower class. Upon showing marked signs of penitence he may be restored to his former category without reckoning his marks.

##### 4. Position and Privileges of Prisoners of the First Class

Prisoners of the first class are kept in confinement in association and are given individual moral and religious instruction. They may be visited by or correspond with only those concerned with their protection or their relatives. Those earning more than five yen a month may use less than one-fifth of the total for postage stamps and other necessary purchases.

##### 5. Position and Privileges of Prisoners of the Second Class

Prisoners of the second class are kept in confinement in association and receive religious and moral instruction en masse. They may change the type of labor in which they are engaged, are permitted to interview or send letters to persons other than relatives who do not interfere with their moral instruction, and may listen to radio or gramophone music twice a month. A second class prisoner earning more than five yen a month may spend less than one-fourth of the total for postage stamps and other necessities.

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6. Position and Privileges of Prisoners of the Third Class

Prisoners of the third class are confined in association during the day and in solitary cells at night. They receive religious and moral instruction en masse. Third class prisoners are responsible for keeping the prison grounds in order and once a month must clean and sweep them.

At the order of the prison governor a third class prisoner may be elected by the convicts in his workshop to keep it in good order. Third class prisoners of superior skill or efficiency may be appointed to direct industrial work and during their free time may work for not more than two hours a day for their own profit.

A third class prisoner earning more than five yen a month may spend less than one-third of it on postage stamps and other necessities.

7. Position and Privileges of Prisoners of the Fourth Class

Prisoners of the fourth class are confined in association in a special room. They pledge themselves and are held responsible for the search of their cells and the maintenance of order among themselves. Should any one of them violate his pledge his privileges or those of the group may be suspended.

Fourth class prisoners may nominate three or four of their number from whom the governor selects two men to represent them.

Fourth class prisoners of superior skill or high efficiency are chosen to direct and supervise industrial work.

Fourth class prisoners may take walks in designated places in the prison grounds during recess and may take walks in groups or hold athletic games twice a month. Such prisoners are permitted to talk among themselves as long as it does not interfere with the maintenance of discipline.

Prisoners of the fourth class receive individual moral and religious instruction. They may listen to radio or gramophone music twice a month, may read books or look at

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pictures in the prison library on days free from labor and are allowed to borrow suitable books or magazines.

Fourth class prisoners wear white garments, are permitted to decorate their cells with flowers and pictures, and are lent table wear and other items of daily use.

A fourth class prisoner earning more than five yen a month may spend less than one-half for postage stamps and other necessities.

G. DISCIPLINE 116/

1. Punishments

According to prison law twelve types of punishment may be applied. These are:

- 1) reprimand;
- 2) suspension of privileges given for good conduct
- 3) deprivation of privileges given for good conduct
- 4) suspension of reading privileges up to a limit of three months
- 5) suspension of working privileges in the case of prisoners detained for trial
- 6) suspension of the use of clothing and bedding provided by prisoners detained for trial
- 7) suspension of special food provided by prisoners detained for trial
- 8) suspension of exercise up to a limit of five successive days
- 9) reduction of wages
- 10) reduction of food supplies to a maximum of two-thirds of the ordinary fare within a limit of seven successive days (as carried out at present consists in depriving the prisoner of the side dish or reducing its quality)
- 11) continuous confinement in a special ward up to a limit of two months
- 12) continuous confinement in a dark cell up to a limit of seven successive days during which time the

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prisoner is deprived of bedding but sufficient light must penetrate the cell to enable the prisoner to attend to his own needs without the aid of a lamp.

2. Other Forms of Coercion

In order to control prisoners liable to commit suicide or other acts of violence prison officials are permitted to use means of physical restraint precisely prescribed by regulations. When prisoners are noisy and refuse to maintain quiet they may be restrained by a vulvular instrument the form of which is prescribed by regulation.

H. RELEASE OF PRISONERS BEFORE EXPIRATION OF TERM 117/

1. Probation

On the theory that "...it is...better for people convicted of light and incidental offenses to be excused from the real infliction of the penalty under special conditions and to be given proper admonitions in order to make them repentant by self-examination," 118/ execution of sentence may be postponed from one to five years in cases where penal servitude or imprisonment for less than two years has been inflicted.

2. Provisional Release

Under Article 28 of the Penal Code "when the convicts who are under penal servitude or imprisonment are found to be evidently repentant, provisional release may be authorized by the administrative office after they have finished one-third of the limited term or ten years of the term for life."

Provisional release may be cancelled and the offender made to complete his term when the parolee has committed another offense during the term of release and has been sentenced to a monetary or heavier penalty; when he has been sentenced to a monetary or heavier penalty because of some other offense committed before provisional release; when he was sentenced to a monetary or heavier penalty because of another offense committed before provisional release and the penalty must be carried out; when he has broken the rules of provisional release.

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TABLE 9

PRISON RECEIPTS AND EXPENDITURES (YEN)

		1938	1930
		Statement	Statement
<u>RECEIPTS</u>			
<u>Annual Basis</u>			
Current Accounts	Receipts from State Industries and State Properties	21,737,811	5,623,853
	Prison receipts Proceeds from State-owned commodities Sub-total	176 21,737,987	671 5,624,524
Current Accounts	Miscellaneous receipts	2,244	1,110
	Indemnities and forfeitures	3,249	943
	Miscellaneous receipts	63,302	13,415
	Receipts under Pension Law Sub-total	68,796	15,468
<u>Total</u>		21,806,783	5,639,992
Emergency Accounts	Sales receipts of State-owned commodities	94,270	34,757
	Proceeds from sale of commodities	70	198
	Proceeds from sale of domestic animals Sub-total	94,340	34,955
<u>Grand Total</u>		21,901,123	5,674,947
<u>EXPENDITURES</u>			
Current Accounts	Salaries	603,454	666,010
	Office expenses	6,327,032	6,614,713
	Housing expenses	20,053,943	6,921,513
	Miscellaneous expenses Sub-total	26,460	12,147
		27,010,889	14,214,383
Emergency Accounts	Building and Repairing expenses	187,158	209,052
	Disaster expenses	239,478	336,111
	Emergency prison expenses	1,193,187	-
	Amnesty execution expense Sub-total	7,210	-
		1,627,032	545,163
<u>Grand Total</u>		28,637,922	14,759,546

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I. PROTECTION OF EX-CONVICTS

1. Origin of Program

In 1923 the Department of Justice created a Bureau for the protection of ex-prisoners which supervises the various associations carrying on this work. By 1932 in Japan proper there were 517 associations engaged in protecting ex-prisoners as well as many individuals working privately. Large sums of money were donated annually by the Imperial House for the furtherance of this work. 119/

2. Effects

According to Hioki, writing in 1926, there were about 30,000 convicts annually who were aided in earning a legitimate livelihood by the protective organizations. Of the cases under their care only 6% were reported as failures. 120/

J. JUVENILE PRISONS

1. Penal Measures for Juveniles

Juveniles are usually given indeterminate sentences and they are confined in juvenile prisons specially constructed for the purpose or in places set apart within ordinary prisons. Although juveniles are defined as persons under 18, the execution of sentence may be continued up to the age of 23. 121/

2. Temporary Detention 122/

In March 1928 branches of the Houses of Correction were opened adjacent to each Juvenile Court for the detention of juveniles requiring supervision during the period of investigation.

Provisional protective measures may be altered or cancelled at any time and if the court decides that the trial is not to be proceeded with, provisional protection is cancelled. The juvenile's guardian must be informed whenever such measures are ordered or changed in any way.

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3. Houses of Correction 123/

a. Scope and Aims

The three Houses of Correction in Japan were set up to correct the character and conduct of the older and more dangerous juveniles.

b. Personnel

The staff is composed of a superintendent, instructors, doctors, clerks, and directors of work.

c. Methods

The Houses of Correction provide mental and moral education and teach trades which will enable the juvenile to earn a living.

Discipline is graded according to a progressive system, well-behaved inmates being allowed more freedom than those who give trouble, or than new arrivals.

Those in the highest class under the progressive system are permitted to leave the House and learn a trade in places approved by the authorities. They can also be released on parole under the supervision of a probation officer. They are then finally released if their behavior warrants such treatment. The release on parole and the final release are granted by the Juvenile Court.

4. Reformatories 124/

Under the Reformatory Act of 1900 every prefecture was to establish and supervise its own reformatory. While reformatories are still under the supervision of the prefectural government their expenses are defrayed by the national treasury.

5. Juvenile Prisons

Those who are not sent to reformatories are confined

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in juvenile prisons of which there are nine in Japan proper. 125/  
A superannuated battleship moored in Uraga Bay is utilized as a juvenile prison extension and in 1935 some forty inmates were being trained there as fishermen. 126/

In March 1944 the establishment of a Youths Training Hall in Okazaki city to replace the Okazaki Juvenile Prison was announced. This Training Hall, which may well be the forerunner of similar developments elsewhere in Japan, was officially described as having two functions - the bringing about of an increase of fighting strength, and the creation of a class of special "industrial fighters" through spiritual discipline. Destined to accommodate three hundred delinquents the Training Hall was to receive an initial group of fifty selected by the juvenile courts of Tokyo, Osaka, Nagoya, Sendai, Fukuoka, Hiroshima, and Sapporo, to be mobilized for ditch drainage and cableway projects in Okazaki city. 127/

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## VII. CIVIL RIGHTS AND THE LEGAL SYSTEM

### A. THE CIVIL RIGHTS OF JAPANESE SUBJECTS

#### 1. The Constitution

The rights and duties of Japanese subjects are set forth in Chapter II of the Constitution. It should be noted that, in distinction to the American Bill of Rights which protects all those within the jurisdiction of the United States, Japanese provisions regarding civil liberties apply only to Japanese subjects.

The relevant constitutional provisions are:

Article 22. Japanese subjects shall have liberty of abode and of changing the same within the limits of the law.

Article 23. No Japanese subject shall be arrested, detained, tried, or punished except according to law.

Article 24. No Japanese subject shall be deprived of his right of being tried by the judges determined by law.

Article 25. No Japanese subject's house shall be entered or searched without his consent save in cases provided by law.

Article 26. The secrecy of the letters of every Japanese subject shall remain inviolate save in cases mentioned by law.

Article 27. The property rights of every Japanese subject shall remain inviolate except that measures necessary for the public benefit shall be provided for by law.

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Article 28. Japanese subjects shall within limits not prejudicial to peace and order and not antagonistic to their duties as subjects enjoy freedom of religious belief.

Article 29. Japanese subjects shall within the limits of the law enjoy liberty of speech, writing, publications, public meetings and association.

Article 31. The above and other rights shall not affect the exercise of rights appertaining to the Emperor in time of war or national emergency.

#### 2. The Law

It is apparent that the Constitution provides no safeguard against restrictions on civil rights as long as such restrictions are the product of law. In this, however, the Japanese have followed well-established Western precedent and it is the American system of rights which cannot be altered by law and which is protected by the courts that is atypical. But while civil rights in Japan theoretically occupy the same position that they do in Great Britain, in practice, the absence of a tradition of individual freedom, of the right of habeas corpus, and of strongly developed representative institutions has facilitated the negation by law of many of the rights for which the Constitution provides. Such negation is typified by the Peace Preservation Law, first passed in 1925 and revised several times thereafter in the direction of increasing strictness, which imposes severe penalties on those who support movements vaguely defined as intending changes "in the national polity" be it by word, deed, or monetary contribution.

Despite the emphasis on "law" in the Bill of Rights executive ordinance has also been a fruitful source of limitation of the civil liberties of Japanese subjects. The power of the Emperor under the Constitution to issue "the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the

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promotion of the welfare of the subjects" is limited by the provision that "no Ordinance shall in any way alter any of the existing laws." 128/ But loose construction of this clause together with the Japanese practice of couching legislation in the most general terms leaving the details to be filled in by ordinance have produced a large body of restrictive executive ordinances. The Home Ministry, which has under its jurisdiction the entire Japanese police system, has been particularly active in this respect and the police have gained wide powers over publications, meetings, and the expression of opinion.

B. THE PEACE PRESERVATION LAW 129/

1. Definition of Offenses

The Peace Preservation Law provides the death penalty and varying terms of penal servitude for those acting as organizers, officers, members, or supporters of organizations having as their object "changing the national polity," or groups serving to aid or prepare for such organization, for those conferring with or instigating other persons to change the national polity, for "circulating matters" disavowing national polity, or leading, joining, or aiding an organization having this purpose, for contributing money to such persons or organizations described above, for organizing, or joining an organization, or conferring with others, or instigating others, or giving money with the object of disavowing the system of private property.

2. Variations in Criminal Procedure - in the Case of Thought Offenses

The period of preliminary detention for examination on charge of thought offense is limited to two months but may be renewed by the procurators for periods up to one year.

Attorneys for the accused must be selected from among lawyers previously nominated by the Justice Minister and may not include more than two for each defendant.

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If public trial is instituted the procurator may demand a transfer of jurisdiction in order to facilitate the handling in one or two courts of large numbers of offenders rounded up all over the country.

No appeal is allowed from a judgment of the first instance which finds any person guilty of a crime specified by law, but, if there exist conspicuous reasons which indicate that such a crime has not been committed, the Supreme Court may nullify the original decision and transfer the case to an appellate court.

C. PROTECTION AND SURVEILLANCE OF OFFENDERS AGAINST THE PEACE PRESERVATION LAW 130/

1. Aims

Japanese thought control has been directed not only toward eradication of subversive opinion and activity but also toward the reform and rehabilitation of those convicted of thought offenses. For this purpose the Protection and Surveillance Law for thought offenders was put into effect in 1936.

2. Application

The provisions of the law may be applied only to offenders against the Peace Preservation Law who have been granted a reprieve in indictment by the procurator, or a stay of execution of sentence by the law court, or who have been released on bail, or who have served their term.

3. Organization

The Protection and Surveillance Commission, the members of which are chosen by the Minister of Justice, is the central administrative body and its consent is required for all actions taken under the law. It is under the direct supervision of the Minister of Justice.

The law is enforced through Protection and Surveillance Stations. In 1940 there were twenty-two of these located in

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Tokyo, Yokohama, Mito, Maebashi, Shizuoka, Nagano, Niigata, Osaka, Kyoto, Kobe, Takamatsu, Nagoya, Kanazawa, Hiroshima, Okayama, Fukuoka, Kumamoto, Sendai, Akita, Aomori, Sapporo, and Hakodate. 131/

4. Personnel

The staff of the stations includes station masters, guiding officials, protecting officials and secretaries.

The station masters are chosen from among the guiding officials who supervise protection and surveillance. The protecting officials carry on the necessary investigations under the guidance of the station masters.

5. Procedure

When a thought offender falls into any of the categories appropriate to the enforcement of the act, the station must be notified by the officials concerned.

Upon notification the station must investigate the offender's career, environment, character and conduct, mental and physical condition, and any changes that have occurred in his thoughts and attitudes.

On the basis of this investigation the station may decide to place the offender under protection and surveillance. Its decision must then be referred to the commission without whose approval it cannot be enforced.

6. Methods of Enforcement

The maximum protection and surveillance period is two years. The period may be prolonged, however, by decision of the commission.

The individual concerned may be placed under the personal surveillance of the protecting official or of some duly authorized guardian or he may be entrusted to a protective body, temple, church, or hospital.

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D. PRECAUTIONARY DETENTION OF OFFENDERS AGAINST THE PEACE PRESERVATION LAW

1. Aims

The Department of Justice has declared that "The chief aim of this system under which those who refuse to give up their dangerous thoughts and who show signs of repeating their offenses are to be isolated from society, is to prevent the possible disturbance of public peace and the occurrence of dangerous crimes and at the same time to rectify their ideas through a coercive method, so that those segregated may return to society as loyal Japanese subjects." 132/

2. Application 133/

Precautionary detention is applied to those who have completed sentences for thought offenses or who have been under protective observation and show signs of unwillingness to reform.

3. Organization and Personnel

Precautionary detention is under the general supervision of a committee appointed by the Minister of Justice from among experienced scholars and senior officials of the Department. The committee is composed of a chairman, six committee members and four alternates who serve for two years. 134/

Precautionary Detention Wards for men and for women have been established but it is not clear whether they are located in existing prisons or in separate buildings. They are under the direction of a superintendent and their personnel includes two instructors, two assistant instructors, and a secretary. The superintendent is empowered to appoint other minor officials such as wardens. 135/

4. Procedure

The demand for commitment of an offender to precautionary detention is made by the competent procurator after investigation of the individual's career, environment, character, conduct, physical and mental condition, and trend of thought. 136/

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The case is then brought before a court which, prior to arriving at its decision, may summon the offender and witnesses to appear before it. 137/

The Committee for Precautionary Detention must be consulted before inauguration, renewal, or termination of detention. 138/

5. Methods of Enforcement

The maximum term of preventive detention is two years, but it may be renewed by decision of the court if necessary. 139/ Those under detention may be released at any time by the decision of the competent administrative office when further detention has become unnecessary. 140/

Under the Precautionary Detention Control Law (Yoho Kokin Shogu Rei, Department of Justice Law, No. 59) regulations are established for the education of prisoners, their food, clothing, health, labor and discipline.

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