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Enforcing Discipline: The Institutional Development of the Imperial Japanese Army's Justice System (1868–1945)

Introduction

The beginning and end of the Imperial Japanese Military's history was marked by two wars: the Boshin War (1867–1869), a civil war that paved the way for the country's modern era, and the Asia-Pacific War (1937–1945), an imperial war which ultimately buried the dream of establishing a great empire in East Asia and meant the loss of the overseas colonial possessions that had been acquired in the meantime.

During this period, the Japanese military was engaged in a variety of functions and roles.[1] In the first two and a half decades of its existence, its primary functions were to protect the country from possible invasion by Western powers, to secure political rule against rebellion, and to mobilise large sections of the male population for the nation. A series of constitutional and other legal provisions prevented civilian control of the military, and in return ensured its institutional influence within the nation's power structure, making it a central and largely independent actor in domestic and foreign policy. From the 1890s onwards, the armed forces were engaged in projecting Japan's power abroad, winning and securing imperial supremacy in the Far East through successful wars against China (1894–1895), Russia (1904–1905) and Germany (1914), which resulted in the acquisition of a colonial empire, including Korea and Taiwan, that for

1 See, for the history of the Japanese army in English, Edward J. Drea, *Japan's Imperial Army: Its Rise and Fall* (Lawrence: University Press of Kansas, 2009); Edward J. Drea, *In the Service of the Emperor: Essays on the Imperial Japanese Army* (Lincoln: University of Nebraska Press, 1998); Danny Orbach, *Curse on this Country: The Rebellious Army of Imperial Japan* (Ithaca: Cornell University Press, 2017); Leonard A. Humphreys, *The Way of the Heavenly Sword: The Japanese Army in the 1920's* (Stanford: Stanford University Press, 1995). For the Navy, see Mark R. Peattie and David C. Evans, *Kaigun: Strategy, Tactics, and Technology in the Imperial Japanese Navy, 1887–1941* (Annapolis: Naval Institute Press, 1997). In Japanese, see Ōhama Tetsuya, *Tennō no guntai* (Tōkyō: Kyōiku-sha, 1978); Ōe Shinobu, *Tennō no guntai* (Tōkyō: Shōgakkan, 1982); Fujiwara Akira, *Tennō-sei to guntai* (Tōkyō: Aoki shoten, 1986); Tobe Ryōichi, *Gyakusetsu no guntai* (Tōkyō: Chūō kōron-sha, 1998); Yoshida Yutaka, *Nihon no guntai: Heishi-tachi no kindai-shi* (Tōkyō: Iwanami shoten, 2002). Japanese names are given in the order [family name] – [personal name].

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some time was also largely administered by the army.[2] Following a brief period in the 1920s, during which its influence within the domestic power structure declined to some extent, the military led the country in the 1930s into a protracted total war on the Asian mainland and eventually against the Western allied powers, which ultimately resulted in the catastrophe of the atomic bombings, unconditional surrender, and the disbandment of the Imperial Army and Navy.

Against this background and under these conditions, the Japanese armed forces established an independent military justice system in the 1870s, which was further developed and adapted in the following decades.[3] Its function and structure bore several similarities to those of comparable systems in the armed forces of other contemporary modern countries.[4] Throughout its existence, the primary objective of the Japanese system was to enforce order and discipline among the troops and thereby to ensure their proper functioning, or, in other words, to achieve what was regarded as military necessity. In relation to this, the objective of upholding the law or maintaining justice by punishing crime played only a sub-

2 William G. Beasley, *Japanese Imperialism, 1894–1945* (Oxford: Oxford University Press, 1991). For colonial rule see Mark R. Peattie and Ramon H. Myers, eds., *The Japanese Colonial Empire, 1895–1945* (Princeton: Princeton University Press, 1984); Peter Duus, Ramon H. Myers and Mark R. Peattie, eds., *The Japanese Informal Empire in China, 1895–1937* (Princeton: Princeton University Press, 1989); Peter Duus, Ramon H. Myers and Mark R. Peattie, eds., *The Japanese Wartime Empire, 1931–1945* (Princeton: Princeton University Press, 1996); Ōe Shinobu et.al., eds., *Iwanami kōza kindai Nihon to shokumin-chi*, 8 vol. (Tōkyō: Iwanami shoten, 1992–1993).

3 See, on the history of the Japanese military justice system, Matsumoto Ichirō, "Kaisetsu," in *Rikugun kōtō gunpō kaigi hanketsu yōroku*, *Rikugun gunpō kaigi hanrei-shū*, vol. 4, ed. Matsumoto Ichirō (Tōkyō: Rokuin shobō, 2011), 659–686; Yamamoto Masao, "Kyū-riku-kaigun gunpō kaigi seido no jittai," *Gunji shigaku* 50.1 (2014): 25–44; Kasumi Nobuhiko, *Gunpō kaigi no nai "guntai": Jiei-tai ni gunpō kaigi wa fuyō ka* (Tōkyō: Keiō gijuku daigaku shuppan-kai, 2017); Kumagai Teruhisa, *Nihon-gun no seishin kyōiku: Gunki fūki no iji taisaku no hatten* (Tōkyō: Kinsei-sha, 2012); Ishibashi Sanae, *Nihon rikugun no gunji shihō seido: "Shiki, tōsei" to "kōsei-sei, jinken" no shiten kara* (Tōkyō: Ichigei-sha, 2023).

4 On the history of military justice since the nineteenth century, see, in addition to the chapters in this volume, for example, Eugene R. Fidell, *Military Justice: A Very Short Introduction* (Oxford: Oxford University Press, 2016); "Évolution historique des jurisdictions militaires," *The Military Law and the Law of War Review* 19.3–4 (1980): 327–436; Gwenaël Guyon, Jean-Paul Laborde and Stéphane Baudens, eds., "Military Justice: Contemporary Challenges, History and Comparison," *Revue Internationale de Droit Pénale* 93.2 (2022). On Prussia and Germany, Hans-Dieter Schwind, *Kurze Geschichte der deutschen Kriegsgerichte* (München: Verlag Europäische Wehrkunde, 1966); Manfred Messerschmidt, "Die preußische Armee," in *Handbuch zur deutschen Militärgeschichte 1648–1939: Abschnitt IV/ 2. Teil: Militärgeschichte im 19. Jahrhundert (1814–1890): Strukturen und Organisation*, ed. Militärgeschichtliches Forschungsamt (München: Bernard & Graefe, 1979), 153–182; Manfred Messerschmidt, *Die Wehrmachtsjustiz* (Paderborn: Schöningh, 2005); Patrick Oliver Heinemann, *Rechtsgeschichte der Reichswehr, 1918–1933* (Paderborn: Schöningh, 2018).

ordinate role. This implies that the justice system was primarily a tool of institutional control in the hands of the army leadership at the top and of commanders and superior officers on the ground and could, at times, become an instrument of repression.[5] This nexus was reflected in the structures of the Japanese military justice system at different levels. It existed separately from its civilian counterpart, with distinct laws, regulations, institutions, and procedures.[6] It was invested with exclusive jurisdiction over military personnel, extending to both military and civil criminal offences. This meant that the actions of military personnel were almost completely and exclusively subject to this powerful sanctioning instrument of their superiors. In addition to its exclusiveness, the instrumental character was most evident in the procedures' commander-centredness. In contrast to current trends, where law enforcement in many armed forces tend to act independently, commanding officers played a pivotal role in the investigation and adjudication of crimes in the Japanese military through formal and informal means. Concurrently, the role of legal experts who oversaw the civil justice system independently, although increasing over time, was of lesser significance in the military.[7] Furthermore, the accused military personnel were afforded significantly fewer rights than those involved in a civilian criminal trial. Consequently, while serving their country, they were deprived of the civil protections that would otherwise be available to them.

Notwithstanding these characteristics, which delineate continuities, the military justice system had also undergone significant transformations over time. These shifts can be attributed to both internal and external influences. Internally, the impetus for change was largely driven by developments within the military, particularly the experiences gained during peacetime and wartime regarding the

5 It is evident that the initiation of formal criminal proceedings was only one possible, albeit the most severe, way for a superior to react to breaches of discipline. In addition, a variety of other formal and informal options were available to him, such as regular and extra training, warnings and reprimands, withdrawal of privileges or exclusion from promotions and awards, and disciplinary as well as extra-legal punishment.

6 The most important are reprinted in "Rikugun daijin kanbō, Rikugun seiki ruijū," in *"Rikugun seiki ruijū" shiryō shūsei: Meiji-ban*, vol. 3, ed. Morimatsu Toshio and Matsumoto Ichirō (Tōkyō: Ryokuin shobō 2011), 221–304; "Rikugun daijin kanbō, Rikugun seiki ruijū," in *"Rikugun seiki ruijū" shiryō shūsei: Shōwa-ban*, vol. 6, ed. Morimatsu Toshio and Matsumoto Ichirō (Tōkyō: Ryokuin shobō 2010), 5–286.

7 On the role of legal experts, see Nishikawa Shin'ichi, "Gun-hōmu-kan kenkyū josetsu: Gun to shihō no intaafeisu e no sekkin," *Seikei ronsō* 81.5–6 (2013): 737–784. For the pre-war period, Nishikawa Shin'ichi, "Senzen-ki Nihon no gun-hōmu-kan no jittai-teki kenkyū: Gun-hōmu-kan 193-nin no jitsumei to sono haizoku-saki o megutte," *Meiji daigaku shakai kagaku kenkyū-jo kiyō* 53.1 (2014): 73–117; and the chapter by Urs Matthias Zachmann in this volume.

enforcement of discipline and obedience, or the introduction of and changing patterns in the conscription of soldiers.[8] Furthermore, external factors increasingly challenged the instrumental character of the military justice system, exerting pressure on it. As in other countries, this can be primarily attributed to the successful formation of the nation-state, the expansion of political participation and broader trends towards a gradual liberalisation of the political system.[9] This resulted in an expansion of the number of actors involved in the development of military justice. In the context of the emerging public sphere, characterised by the presence of opposition parties and parliament, as well as the press, the conditions within the military were subjected to increasingly critical debate and scrutiny, leading to demands for change.[10] When the constitution came into force in 1890, the ability of the military leadership or government to unilaterally introduce or modify laws pertaining to military justice was effectively curtailed, rendering such measures subject to parliamentary oversight and approval.[11] This shift in institutional dynamics proved instrumental in facilitating the introduction of reforms to the army's legal system.

The military justice system in Japan thus found itself in a state of tension between its function as an instrument for maintaining order and discipline, on the one hand, and broader political and social developments, on the other, which called the system's principles and procedures into question and forced transformations and adaptations. This chapter analyses key stages in the development of the Imperial Japanese Army's justice system between 1868 and 1945 in relation to broader trends and changes within the military, as well as state and society.[12] The focus is on the institutions and laws that dealt with deviant behaviour within the

8 Katō Yōko, *Chōhei-sei to kindai Nihon* (Tōkyō: Yoshikawa kōbun-kan, 1996); Ōe Shinobu, *Chōhei-sei* (Tōkyō: Iwanami shoten, 1981); Yoshida Yutaka, "'Kokumin kaihei' no rinen to chōhei-sei," in *Guntai, heishi,* ed. Yui Masaomi, Fujiwara Akira and Yoshida Yutaka (Tōkyō: Iwanami shoten, 1989), 452–477.

9 See, on similar developments in Germany, Manfred Messerschmidt, "The Reform of the German Military Criminal Procedure: Army/Politics and Public Opinion in the Second Half of the 19th Century," *The Military Law and the Law of War Review* 19.3–4 (1980): 380–388.

10 James L. Huffman, *Creating a Public: People and Press in Meiji Japan* (Honolulu: University of Hawaii Press, 1997); Makinohara Norio, *Kyakubun to kokka no aida: Kindai minshū no seiji ishiki* (Tōkyō: Yoshikawa kōbun-kan, 1998).

11 Banno Junji, *The Establishment of the Japanese Constitutional System* (London and New York: Routledge, 1992); Andrew Fraser, R.H.P Mason, Philip Mitchell, *Japan's early Parliaments, 1890–1905* (London and New York: Routledge, 1995).

12 From 1872, following the institutional separation of the two branches of the armed forces, the Imperial Navy had its own judicial system, which largely corresponded to that of the army, although there were some differences, mainly in terminology and in addressing naval-specific issues.

army's rank and file. The initial steps towards the establishment of a modern military justice system between the Boshin War and the end of the 1870s are examined first, followed by an analysis of the formation of a comprehensive military justice system in the 1880s. The third section of the chapter considers the partial liberalisation that occurred during Taishō democracy, which spanned the period between the conclusion of the Russo-Japanese War and the outbreak of the Manchurian Incident in 1931. The final part analyses the institutional and legal changes that the military justice system underwent during the Asia-Pacific War. In order to demonstrate the relationship to the aforementioned broader developments, specific challenges, important factors and conditions that influenced the development of the army's juridical system are briefly discussed at the beginning of each of the four parts. While these would be important additions, it is not possible within the confines of this chapter to provide an analysis of the judicial system's practice of sanctioning criminal misconduct by Japanese soldiers.[13] Similarly, the institutional development of the military gendarmerie and military prisons, though integral parts of the legal system, cannot be discussed in detail, in part because a systematic analysis of these topics has yet to be conducted. Finally, the question of the treatment of prisoners of war or civilians – whether in Japan during a state of siege, in occupied territories abroad during wartime, or within the context of colonial rule – is equally beyond the scope of this overview.[14]

1 Initial Steps

Prior to the establishment of a comprehensive military justice system in the early 1880s, a number of preparatory steps had already been taken since the beginning of the Meiji period which laid the foundations for such a system.[15] The specific

13 Case studies on the treatment of Japanese soldiers during the Asia Pacific War are provided by Yuge Kin'ya, "Dai-Tōa sensō-ki no Nihon rikugun ni okeru hanzai oyobi hikō ni kan-suru ichi-kōsatsu," *Senshi kenkyū nenpō* 10 (2007): 42–62; Tino Schölz, "Military Justice in the Imperial Japanese Army during the Asia-Pacific War, 1937–1945," in *(Il)legality of Military Force and Violence: Navigating between Possibility, Necessity and Proportionality*, ed. Henning de Vries and Frank Reichherzer (Berlin: DeGruyter, forthcoming).

14 On the treatment of civilians, see Kelly Maddox, "Military Justice and Its Potential for Violence towards Civilians under Wartime Occupation: The Imperial Japanese Army in China, 1894–1941" in this volume.

15 On the early history of the military justice system, see Asakawa Michio, "Gunki no keisei," in *Meiji ishin to rikugun sōsetsu*, ed. Asakawa Michio (Tōkyō: Kinsei-sha, 2013), 203–252; Matsushita Yoshio, *Meiji gunsei shiron: Vol. 1: Meiji shonen yori Seinan sensō made* (Tōkyō: Yūhikaku, 1956);

challenge for the military during those years was to maintain political control in the context of civil war and numerous major and minor uprisings, while simultaneously undergoing a far-reaching structural reform as part of the country's modernisation process in order to counter the threat of Western imperialism.[16] The most significant elements of this reform were firstly, the integration of a multitude of armed forces that had been established in different domains (*han*) of the country into a single military, secondly, the introduction of a conscription system, which ended the century-long monopoly on the use of force by the samurai class, thirdly, the establishment of a military hierarchy that, at least in part, challenged the traditional, early modern social hierarchy and bonds of loyalty, and fourthly, the adoption of Western military technologies, fighting tactics and organisational patterns. The implementation of this reform, however, proved to be a significant challenge, particularly given the unrest among the former samurai who had to adapt to the new situation, namely the abolition of their former privileges, and were now often serving in the newly founded army as officers and non-commissioned officers (NCOs).[17] The situation was further complicated by the widespread unwillingness of peasants and urban dwellers to serve as conscripts, which made the enforcement of compulsory military service another important task during those years.[18] The introduction of a military justice system was therefore intended to serve two distinct purposes: It was conceived of as a means of ensuring the aforementioned control and discipline within the armed forces and at the same time it was regarded as a crucial building block in the introduction of an institutional system based on Western models.

However, these early years of development can only be analysed to a limited extent. This is for three main reasons. Firstly, those years were politically volatile, which meant that decision-making processes were often informal or not clearly defined or were themselves in the process of being reorganised. Accordingly, political and administrative measures were reflected in the sources only to a limited

Endō Yoshinobu, "1881-nen rikugun keihō no seiritsu ni kan-suru gunsei shiteki kōsatsu," *Hokkaidō kyōiku daigaku kiyō jinbun kagaku, shakai kagaku-hen* 54.1 (2003): 125–131.

16 Matsushita Yoshio, *Meiji shonen*; Tobe, *Gyakusetsu no guntai*, 23–77; Drea, *Japan's Imperial Army*, 10–46; Yui Masaomi, "Meiji shoki no kengun kōsō," in Yui, Fujiwara and Yoshida, *Guntai, heishi*, 423–452. On the broader political developments in those years, see William G. Beasley, *The Meiji Restoration* (Stanford: Stanford University Press, 1975); Mark Ravina, *To Stand with the Nations of the World: Japan's Meiji Restoration in World History* (Oxford: Oxford University Press, 2017); Matsumoto Ken'ichi, *Kaikoku, ishin: 1853–1871* (Tōkyō: Chūō kōron, 2012); Sakamoto Takao, *Meiji kokka no kensetsu, 1871–1890* (Tōkyō: Chūō kōron, 2012).

17 Matsushita, *Meiji shonen*, 402–409; Fujiwara Akira, "Tōsui-ken dokuritsu to tennō no guntai," in Yui, Fujiwara and Yoshida, *Guntai, heishi*, 480–481.

18 Tobe, *Gyakusetsu no guntai*, 40–45.

extent. Secondly, it was a period of rapid trial and error, during which it was possible for institutions to be established on paper but never become operational due to the emergence of new ideas. Thirdly, even in the case of existing institutions, it is important to recognise that they did not always function in practise as prescribed or suggested by official structures or administrative guidelines. Despite these constraints, the history of the Japanese military justice system during the early Meiji period until the end of the 1870s can be broadly characterised as follows. The initial stage of the *institutional development* was the establishment of a short-lived "Court" (*Saiban-sho*) within the "Military and Defence Administration Bureau" (*Gunbō jimu-kyoku*) in 1868, which was dissolved after just nine months.[19] This was followed in 1869 by the instigation of an "Office of Investigation" (*Kyūmon-shi*) within the Ministry of Military Affairs (*Hyōbu-shō*), which was tasked with conducting criminal proceedings against military personnel. Upon the division of the *Hyōbu-shō* into the Navy Ministry and Army Ministry in 1872, the *Kyūmon-shi* became part of the latter, signifying the division of jurisdiction into two separate military justice systems for the respective branches of the armed forces. Only a few weeks later, a provisional court martial was set up within the "Office of Investigation" in the capital to dispense justice, with the participation of a high-ranking officer from the accused's unit or garrison, who had to travel to Tōkyō.[20] As, during those days, the Japanese army was strongly influenced by the French model, this court martial was referred to as *gunpō kaigi* (*conseil de guerre*). Nevertheless, this arrangement was also of limited duration, as the "Office of Investigation" was superseded in June 1872 by an "Army Court" (*Rikugun saiban-sho*) to oversee military justice of the entire army. The establishment of this institution was largely due to Yamagata Aritomo, arguably the most

19 Endō Yoshinobu, "1880-nendai ni okeru rikugun shihō seido no keisei to gunpō kaigi," *Rekishi-gaku kenkyū* 460 (1978): 1. The importance of military justice to the functioning of armed forces was already evident in a memorandum by the infantry instructor Lieutenant Édouard Messelot during the so-called First French Military Mission (1867–1868) to the Tokugawa Shogunate. However, the return of the mission to France and the defeat of the pro-Tokugawa forces in the Boshin War meant that this had no consequences for the development of a legal system. Kasumi, *Gunpō kaigi no nai "guntai"*, 32–36. At the beginning of the Meiji period, the term *saiban* referred to a decision in government business and the term *saiban-sho* to an administrative office, namely a location where decisions were made. It was only at a later point in the Meiji period that the *saiban-sho* acquired its modern meaning as an institution of jurisdiction. Wilhelm Röhl, "The Courts of Law: Appendix: Execution of Penalty," in *History of Law in Japan since 1868*, ed. Wilhelm Röhl (Leiden: Brill, 2005), 717–718.

20 Matsushita, *Meiji shonen*, 432.

important figure in the history of the Japanese army in the Meiji era.[21] At this time, Yamagata had recognised the central importance of military justice not only for the army itself, but also for the political system as a whole, as evidenced by his "Memorandum on the Establishment of an Army Court", which probably dates from May 1872.[22] In this text, the then Vice Minister of the Army also outlined the qualifications that personnel working in the court were required to possess. For example, individuals entrusted with military justice should not only have a comprehensive understanding of military matters but were also to have studied military politics and military law. Moreover, in consideration of the military hierarchies, Yamagata recommended that the president of the court should not only have the rank of a major, as was currently the case within the *Kyūmonshi*, but at least that of a colonel. Consequently, the Army Court was, after its foundation, to be staffed with officers and civilian employees, who were to serve as legal experts (*hyōji* and *shuri*), as well as record-keepers and clerks (*rokuji*).[23]

Another significant milestone in the nascent development of the Japanese military justice system was the publication of the "Regulations for the Treatment of Criminal Offences in Headquarters of Garrisons and Detached Garrisons" on 28 June 1872 (Meiji 5-5-23).[24] This document set forth detailed regulations pertaining to the procedures to be followed in courts martial which were to be established in the garrisons and detached garrisons throughout the country. The "Regulations" delineated the jurisdiction of courts martial and specified that they should be staffed and headed according to the rank of the accused and the crime in question. This represented the first instance in which the Japanese army had established a nationwide system of courts martial to adjudicate crimes perpetrated by its soldiers and civilian employees. With regard to jurisdiction, in 1875, a decision was reached that the garrison courts martial would be competent to

21 Oka Yoshitake, *Yamagata Aritomo: Meiji Nihon no shōchō* (Tōkyō: Iwanami shoten, 1958); Roger F. Hackett, *Yamagata Aritomo in the Rise of Modern Japan, 1832–1922* (Cambridge, MA: Harvard University Press, 1971); Kobayashi Michihiko, *Yamagata Aritomo: Meiji kokka to kenryoku* (Tōkyō: Chūō kōron, 2023); outdated in its political assessments, but still indispensable due to its wealth of detail, Tokutomi Iichirō (= Sohō), ed., *Kōshaku Yamagata Aritomo-den*, 3 vol. (Tōkyō: Yamagata Aritomo-kō kinen jigyō-kai, 1933).

22 Yamagata Aritomo, "Rikugun saiban-sho setchi kengi," in *Yamagata Aritomo iken-sho*, ed. Ōyama Azusa, (Tōkyō: Hara shobō, 1966), 47–51; Kasumi, *Gunpō kaigi no nai "guntai"*, 56–57.

23 Matsushita, *Meiji shonen*, 433.

24 "Chindai hon-bun'ei zaihan shochi jōrei," JACAR Ref. A24011410700, in Dajō ruiten, dai-2-hen, Meiji 4-nen kara Meiji 10-nen, dai-238-kan, heisei 37, gunritsu oyobi kōkei 2 (Kokuritsu kōbunshokan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img.pdf/1390609; Fukuin-kyoku, "Rikugun gunpō kaigi haishi ni kan-suru tenmatsu-sho," in Matsumoto, *Rikugun kōtō gunpō kaigi hanketsu yōroku*, 593.

try crimes that carried a maximum penalty of house arrest for subaltern officers (*ikan*) or forced labour for NCOs and soldiers. This implied that other trials, especially those of generals and staff officers (*sakan*) or crimes punishable by death, were to be held at the Army Court in Tōkyō.[25] This effectively constituted a twofold division: one between ranks, and another between higher and lower legal jurisdictions. However, it seems that in the early years, no complete autonomy of military justice from civil justice was sought, as evidenced by the apparent possibility of appealing to the Supreme Court of Judicature (*Dai-shin'in*), established in 1875.[26]

A further crucial step towards the institutionalisation of the military justice system and the enforcement and maintenance of discipline within the units was the clear assignment of responsibilities and the establishment of a chain of command and information in the event of crimes.[27] The "Internal Duty Regulations" (*Naimu-sho*) defined, for instance, a duty (*sekinin*, lit.: "responsibility") to ensure discipline in the troops for regimental commanders, while it became mandatory for battalion and company commanders to "be attentive" (*chūi*) of the same. Commanders were also required to report criminal acts and, in certain instances, punishments to their superiors. In addition, they were obliged to obtain approval for the imposition of severe penalties. These regulations established firstly that officers became liable for the conditions within their units, for offences against military discipline and against the law; secondly, that they were now also subject to at least formal control with regard to whether and how they punished specific offences.

Concurrently, initial steps towards the establishment of independent *substantive legal provisions* for the military were taken. At the beginning of the Boshin War, definitions of prohibited conduct for soldiers were primarily delineated in individual orders (*tasshigaki* or *reitatsu*) directed towards units or individual commanders.[28] Although no specific penalties were outlined, these orders effectively criminalised a range of behaviours, including arson, the looting of civilian homes, the destruction of temples and shrines, the disseminating of rumours, quarrelling and fighting between soldiers, and, in order to preclude any pretext for the feared intervention by Western powers in the civil war, the imposition of penalties upon foreigners or the entering of places where foreigners were present. The "Laws of the Army Bureau" (*Rikugun-kyoku hatto*) of 22 June 1868 (Meiji 1-5-3), followed by the enactment of the "Military Law" (*Gunritsu*) of 9 June 1869

25 Matsushita, *Meiji shonen*, 434.
26 Matsushita, *Meiji shonen*, 435.
27 Kumagai, *Nihon-gun no seishin kyōiku*, 211–218.
28 Matsushita, *Meiji shonen*, 411–412.

(Meiji 2-4-29), represented the inaugural attempt to codify military penal law, although it is unclear whether this legislation was applicable to the entirety of the Imperial forces.[29] Most notably, the Military Law established conspiracy and desertion with weapons and uniforms as serious crimes, while also penalising, for example, gambling. Punishments varied considerably. They included death (in the case of the ringleader of a conspiracy, at the hands of his followers), deportation, or a period of house arrest lasting a few days.

The steps that followed can be described as a search for how the relationship between military law and civil law, and its validity in times of war and peace, should be organised in concrete terms.[30] These steps did not proceed in a linear fashion, but rather in a manner that could be described as a back-and-forth. Moreover, they were not always consistent with one another. With the promulgation of the first post-restoration penal code, the "Outline for a New Criminal Law" (*Shinritsu kōryō*) in 1871, the application of military law was initially limited to troops "in the field".[31] This meant that military law became a legal instrument for dealing only with exceptional situations, whereas civilian penal law typically sanctioned the misbehaviour of soldiers. However, this principle was formally revoked in 1873, with the introduction of a rule stating that the penal laws for the military should be applied to any crime committed by a soldier or a civilian employee of the military, regardless of whether in the field or not. This marked the transition to a system whose jurisdiction over soldiers was no longer limited to exceptional situations but became the norm.

Furthermore, the "Navy and Army Criminal Code" (*Kai-rikugun keiritsu*) of 1872 represented an additional attempt to establish a distinct legal framework for the military that was independent of civilian criminal legislation.[32] Consequently, the Code encompassed both military and non-military delicts. 204 articles defined offences, including rebellion, resistance and conspiracy, defecting to the enemy,

29 "Gunritsu," in Yui, Fujiwara and Yoshida, *Guntai, heishi*, 178–179. Whilst "*gunritsu*" here referred to military law, it was used later in the sense of martial law regulations enacted in occupied territories. On this, see Kelly Maddox, "An Instrument of Military Power: The Development and Evolution of Japanese Martial Law in Occupied Territories, 1894–1945," *Law and History Review* 42 (2024): 1–2, footnote 1.

30 On the development of the Japanese judicial system, see Röhl, "The Courts of Law," 711–769.

31 Ishibashi, *Nihon rikugun no gunji shihō seido*, 31. For the Shinritsu kōryō, see Paul Heng-Chao Ch'en, *The Formation of the Early Meiji Legal Order: The Japanese Code of 1871 and its Chinese Foundation* (Oxford: Oxford University Press 1981); Ishii Ryōsuke, ed., *Japanese Legislation in the Meiji Era* (Tōkyō: Tōyō bunko, 1969), 343–358; Karl-Friedrich Lenz, "Penal Law," in Röhl, *History of Law in Japan*, 608–609.

32 "Kai-rikugun keiritsu," in Yui, Fujiwara and Yoshida, *Guntai, heishi*, 180–199; Endō, "1881-nen rikugun keihō no seiritsu," 126–127.

wartime and peacetime desertion, violence and looting, conduct unbecoming, robbery, and fraud. The Navy and Army Criminal Code continued to exhibit a strong Chinese and early modern Japanese influence, with different punishments for different ranks.[33] These punishments were divided into two categories: main punishments and so-called "generous punishments" (*junkei*), which could be imposed instead. For officers, for example, the main punishments were honourable suicide (*jisai*), dismissal from service (*dakkan*), banishment to the homeland (*kaiseki*), resignation (*taishoku*), demotion (*kōkan*) and finally house arrest (*heimon*) for 90, 49, or 15 days. The *junkei* included deportation or house arrest for half a year followed by dismissal from service (instead of suicide), house arrest for half a year followed by banishment to the homeland (instead of dismissal from service), house arrest for half a year or 42 days followed by resignation (instead of banishment to the homeland), etc. NCOs could be sentenced to death (*shikei*), forced labour (*tokei*), banishment (*hōchiku*), dismissal from service (*chuttō*), demotion (*kōtō*) and imprisonment (*kinko*), while ordinary soldiers and sailors could be sentenced to death, forced labour for one, two or three years, banishment, and imprisonment between 12 and 45 days. In addition, the accused could be beaten up to 50 times with a stick (*tsue*) or up to 40 times with a whip (*muchi*). For both groups, there existed fewer "generous punishments", with ordinary men facing only deportation (instead of execution).[34] In other words, corporal punishment, which was rejected as inappropriate for citizens in uniform in many contemporary European countries, was still considered an appropriate means of punishment in Japan at that time, at least for ordinary soldiers.

2 The Establishment of a Comprehensive Military Justice System in the 1880s

Although a rudimentary system of military justice had been established in the early years of the Meiji period, it proved inadequate to the task of disciplining and controlling the ever-expanding army. This was particularly evident in three "incidents" that caused concern to the army command. The first was the so-called Takebashi Incident (*Takebashi jiken*) of August 1878, a short-lived armed uprising by approximately 260 members of the Imperial Guard in Tōkyō. The rebels

33 On the Chinese and early modern Japanese influence, see Kasumi, *Gunpō kaigi no nai "guntai"*, 51–54.

34 "Kai-rikugun keiritsu," 180–181.

planned to attack and burn down the Imperial Palace and killed several officers. Although the rebellion was swiftly suppressed by the military and police forces, its implications were so significant that 359 individuals were subsequently convicted by the Army Court (*Rikugun saiban-sho*), with 55 of them receiving the death penalty and being executed.[35] A second concern for the army leadership was the growing influence of the most important opposition movement in the country, the "Movement for Freedom and People's Rights" (*Jiyū minken undō*), on the army.[36] Thirdly, there were also conservative elements within the armed forces that formed factions and expressed their criticism of the government's policy. The most overt example of this development was an incident in 1881, when four army generals petitioned directly to the throne and asked for political reform, especially the introduction of a constitution, in response to a scandal surrounding the privatisation of state-owned property in Hokkaidō (*Yon-shōgun jōsō jiken*).[37] The army leadership viewed this as not only an intervention in political affairs, but also as a form of insubordination, in that it constituted a breach of the chain of command.

In light of the aforementioned context, the establishment of a comprehensive military justice system should be viewed primarily as a measure to ensure discipline and control over the army. However, it was also part of the broader attempt to construct a legal system in Japan that met the requirements of modern statehood during those years. This development had a domestic political dimension, in the sense of establishing state structures and securing political power, as well as a foreign policy dimension. Since the country's opening in 1853/54, Japan had been constrained by the terms of the so-called "unequal treaties", which granted resident foreigners a multitude of special rights. The most problematic of these was extraterritoriality, i.e. the lack of jurisdiction of Japanese courts over foreigners; the Western powers justified their opposition to any potential change to this rule primarily on the grounds of the perceived backwardness of the Japanese legal system. In this context, the establishment of a modern judicial system also

35 Matsushita Yoshio, *Nihon riku-kaigun sōdō-shi* (Tōkyō: Tsuchiya shoten, 1965), 75–151; Takebashi jiken hyaku-shūnen kinen shuppan hensan iin-kai, ed., *Takebashi jiken no heishi-tachi* (Tōkyō: Takuma shoten, 1979); Kasumi Nobuhiko, "Takebashi bōdō ni kan-suru ichi-kōsatsu: Toku ni rikugun hōhei shōi Uchiyama Sadago no shobun o chūshin ni," in *Meiji shoki keiji-hō no kiso-teki kenkyū,* ed. Kasumi Nobuhiko (Tōkyō: Keiō gijuku daigaku hōgaku kenkyū-kai, 1990), 335–350.

36 Tobe, *Gyakusetsu no guntai*, 64–65. On the history of the "Movement for Freedom and People's Rights": Anzai Kunio, *Jiyū minken undō-shi e no shōtai* (Tōkyō: Yoshida shoten, 2012); Inada Masahiro, *Jiyū minken undō no keifu: Kindai Nihon no genron to chikara* (Tōkyō: Yoshikawa kōbun-kan, 2019); Roger W. Bowen, *Rebellion and Democracy in Meiji Japan: A Study on Commoners in the Popular Rights Movement* (Berkeley: University of California Press, 1980).

37 Matsushita, *Nihon riku-kaigun sōdō-shi*, 152–161.

aimed to demonstrate the modernity achieved by Japan and thus create the conditions for the revision of the "unequal treaties".[38]

In the early 1880s, the army leadership under Yamagata Aritomo and Ōyama Iwao considered the further development of the existing laws and regulations as well as the expansion and transformation of the existing institutions into a comprehensive military justice system as central elements of a response to the aforementioned challenges. First and foremost, this entailed the reform of the substantive and procedural legal system for the military. This was mainly achieved through the introduction of a new "Army Penal Code" (*Rikugun keihō*), a new "Army Code of Criminal Procedure" (*Rikugun chizai-hō*), and a revised "Army Disciplinary Punishment Ordinance" (*Rikugun chōbatsu-rei*). Concurrently, the institutional organisation of the courts underwent a further transformation and new army legal enforcement agencies were established.

The new Army Penal Code was published in 1881 and came into force on 1 January 1882.[39] Its promulgation had been preceded by an extensive study of Western models by the "Army Ministry's Commission for the Study of Military Law" (*Gunritsu torishirabe-kakari*).[40] Ultimately, the Code was based on French, German and Swiss models, with the French model being the most important. This was due to the fact that the reforms of the civil justice system in Japan in those years were still modelled on the French system, although, at the same time, the army was already being reorganised along Prussian-German lines. In parallel with the French practise, criminal behaviour was divided into three categories: crimes, offences, and misdemeanours. In principle, the Army Penal Code applied to all crimes and offences committed by soldiers, civilian employees of the army, students of army educational institutions, and reservists. In addition, civilians

38 Daniel V. Botsman, *Punishment and Power in the Making of Modern Japan* (Princeton: Princeton University Press, 2005), 169–171. On the revision of the "unequal treaties": Iokibe Kaoru, *Jōyaku kaisei-shi: Hōken kaifuku e no tenbō to nashonarizumu* (Tōkyō: Yūhikaku, 2010); Komiya Kazuo, *Jōyaku kaisei to kokunai seiji* (Tōkyō: Yoshikawa kōbun-kan, 2022).

39 "Rikugun keihō," in *Rikugun keihō kaigun keihō gōkan* (Tōkyō: Nagao Keisuke, 1882).

40 The Commission for the Study of Military Law was established in May 1876 and comprised 11 officers and civilian employees of the Army Ministry. Further details regarding the composition of the group and biographies of its members can be found in Kasumi, *Gunpō kaigi no nai "guntai"*, 64–75. Notably, more than half of its members subsequently occupied various positions within the military justice sector following the drafting of the Army Penal Code. On the history of the new Army Penal Code, see also Endō, "1881-nen rikugun keihō no seiritsu"; Endō, "1880-nendai ni okeru guntai shihō seido no keisei"; Kasumi Nobuhiko, "Rikugun keihō hensan to Tsuda Mamichi," in Kasumi, *Meiji shoki keiji-hō*, 279–300; Kasumi Nobuhiko, "Rikugun keihō no seitei: Rikugun keihō sōan shisa-kyoku kaisetsu igo no rikugun keihō hensan," in Kasumi, *Meiji shoki keiji-hō*, 301–334.

could be convicted of specific crimes, including, for instance, violence against posts (Art. 80–81), mutilating corpses (Art. 87), destroying military facilities or objects (Art. 88), but also aiding the enemy or arson in wartime or during a state of siege (Art. 53–61).[41] In comparison to the Navy and Army Criminal Code of 1872, two significant alterations can be identified in the catalogue of penalties. Firstly, the formal distinction between ranks in sentencing was abolished; the same punishments were now applied equally to all offenders, regardless of whether they were officers, NCOs, or ordinary soldiers. Secondly, a new system of punishments was introduced. Following the French model and the newly introduced Civil Penal Code, a distinction was made between crimes and offences.[42] The main penalties for crimes included the death penalty (*shikei*), forced labour (*tokei*) and banishment (*ryūkei*), both for a fixed term or for life. Severe and less severe penal servitude (*chōeki*) as well as severe and less severe heavy imprisonment (*kingoku*) were also available as punishments. Offences were punished by severe or less severe imprisonment (*kinko*). In addition to the aforementioned principal penalties, supplementary penalties such as stripping or suspension of civic rights, dismissal from service, incapacitation, supervision, and confiscation could be imposed.[43] Forced labour and banishment were to be served on a remote island, while penal servitude and imprisonment were to be served in prisons in Japan. The length of the terms differed as well. Forced labour and banishment ranged from twelve years to life, penal servitude and heavy imprisonment from six to eleven years, while imprisonment could range from eleven days to five years.[44] Moreover, corporal punishments such as beating with a stick, which were now considered barbaric and outdated, were abolished. This meant that, with the exception of the death penalty and the supplementary penalties, all punishments were forms of imprisonment.

The Second Book of the Army Penal Code defined nine categories of crimes and offences: rebellion (*hanran*), insubordination (*kōmei*), abuse of authority (*senken*), conduct unbecoming (*jokushoku*), insult (*bujoku*), violence (*bōkō*), disobedience (*irei*), desertion (*tōbō*), and fraud (*sagi*). The majority of these were related to misconduct that directly endangered or impaired military discipline or the functioning of the army. This included disobedience and rebellion, violence against superiors, comrades or posts, desertion, the improper use or destruction of equipment, as well as conduct that impaired success in military conflicts, like

41 "Rikugun keihō" (1882), 3, Art. 12.

42 The third category, misdemeanours, was not punished under the Army Penal Code.

43 "Rikugun keihō" (1882), 4–6, Art. 16–18.

44 "Rikugun keihō" (1882), 7–8, Art. 21–25. The length of possible sentences was determined by analogy with the provisions of the Civil Penal Code. Botsman, *Punishment and Power*, 170.

assistance to or cowardice before the enemy, betrayal of secrets or spreading rumours. Penalties were frequently enhanced if the crime was perpetrated in the field, in the presence of the enemy, or during a state of siege. Article 100, which prohibited military personnel from engaging in political activities, such as writing memoranda to the throne, public speeches, or publications, is worthy of particular attention.[45] This article, which was added in the final stages of deliberations, directly referred to contemporary events, such as the entanglement with the "Movement for Freedom and People's Rights" and the memorandum of the four generals to the emperor. In other words, the attempt by Yamagata and Ōyama to bring the army into line was clearly reflected in criminal law.

The new version of the Army Penal Code was accompanied by a public reinterpretation of the meaning of military punishments and an emphasis on the distinction between military and civilian criminal justice. This is most evident in a four-volume commentary on the new Army Penal Code, published in 1882 by Inoue Yasuyuki, who was one of the authors of the Code and subsequently became the first legal expert and civilian employee to head the Army Ministry's Legal Affairs Bureau.[46] In the first volume, he made fundamental observations regarding the function of military criminal law as well as the relationship between civil and military law. Inoue identified two principal objectives of the Army Penal Code: the maintenance of discipline (*gunki o iji shi*) and the protection of the military (*guntai o hogo suru*).[47] He justified the particular severity of military criminal law, especially the frequent threat of the death penalty, with the observation that soldiers entered a "harsh world" when they joined the army and were permanently faced with death. Consequently, he argued, the punishments had to be correspondingly severe. Inoue also emphasised that, when assessing the severity of guilt, the relationship between individual moral (*dotoku*) misconduct and the damage caused to society should be considered. In contrast to civil criminal law, military criminal law was primarily concerned with the threat to society and the state. Therefore, military misconduct should be punished particularly severely as crimes against the state. While such a functional (and not moral-based or individual-centred) emphasis on the necessary severity of military criminal law was novel for Japan, it reflected contemporary debates on the topic, as they occurred, for example, in Germany.[48] Concurrently, the existence of this

45 Kasumi, *Gunpō kaigi no nai "guntai"*, 81–87.

46 Inoue Yasuyuki, *Rikugun keihō shakugi* (Tōkyō: Naigai heiji shinbun-kyoku, 1882).

47 Inoue, *Rikugun keihō*, fol. 3.

48 Endō, "1881-nen rikugun keihō no seiritsu," 131–132. In a speech to the German Reichstag on the reform of the German Military Penal Code in 1872, for example, Helmuth von Moltke, Chief of the General Staff, emphasised the need for arrest sentences to be accompanied by harsh circum-

argument at this juncture can be regarded as an indication that it was deemed necessary at that time to justify the distinctions between the civilian and military legal systems in the eyes of the public. Except for a minor amendment in December 1888, which increased the penalties for aiding the enemy and the disclosure of secrets, the Army Penal Code remained essentially unchanged until 1908.[49] This indicates that, at least in the eyes of the army leadership, it was regarded as sufficient to maintain order within the forces during the following two decades.

As the fundamental new procedural law, the Army Code of Criminal Procedure was promulgated in 1883.[50] This law defined the establishment, composition, jurisdiction, and procedure of courts martial as central institutions for fighting crime in the army. The process of formulating this law was lengthy and complex, yet, it is of interest precisely because it demonstrates the diverse perspectives of those involved, and thus the potential paths that could have been pursued.[51] The initial debates within the Commission for the Study of Military Law, which was again responsible for developing the first drafts of the subsequent legislation, but also within the following intra-governmental deliberations, in which agencies like the Grand Council of State were involved, focused on the role of the Army Minister and the commanders in the judicial process. This entailed considerations of the extent to which the prosecution and judiciary should be independent, as well as the questions of how different military procedural laws should be contrasted with civilian criminal prosecution, and which of the legal safeguards for the accused should be applied. Interestingly, it was not so much the military that pushed for a simplified procedure and a reduction in the rights of defence, but

stances. If the circumstances were less harsh than in the field, a soldier would be content to be confined, engage in laziness, sleep and "be glad that he did not have to stand guard or drill." Helmuth von Moltke, "Über Arreststrafen: Zweite Berathung des Militär-Strafgesetzbuches zu den Bestimmungen über Arreststrafen, Sitzung vom 7. Juni 1872," in Helmuth von Moltke, *Reden des Abgeordneten Grafen v. Moltke, 1867–1878* (Berlin: Ernst Siegfried Mittler und Sohn, 1879), 43–45.

49 "Rikugun keihō-chū kaisei," JACAR Ref. A03020018800, in Dajō-kan, naikaku kankei, goshomei Meiji 21-nen, hōritsu dai-3-gō (Kokuritsu kōbunsho-kan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img.pdf/152983.

50 "Rikugun chizai-hō o seitei su," JACAR Ref. A15110495800, in Kōbun ruijū, dai-7-hen, Meiji 16-nen, dai-19-kan, heisei 5, heigaku 2, gunritsu 1 (Kokuritsu kōbunsho-kan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img/2450756.

51 Endō, "1880-nendai ni okeru rikugun shihō seido no keisei," 1–9; Yamamoto Masao, "Kyūriku-kaigun gunpō kaigi-hō no seitei keii: Rippō katei kara mita dō-hō no honshitsu ni kan-suru ichi-kōsatsu," *Bōei kenkyū-jo kiyō* 9.2 (2006): 50–52; Kasumi, *Gunpō kaigi no nai "guntai"*, 103–106.

rather Inoue Kowashi as secretary of the Grand Council of State, officially because of issues of practicability.[52]

The law finally adopted in 1883 established the exclusive jurisdiction of army courts martial over military personnel, regardless of whether they had violated the Civilian or the Army Penal Code. Furthermore, jurisdiction was extended to civilians who had violated certain articles of the Army Penal Code and to those who had committed crimes collectively with military personnel. Additionally, prisoners of war could be tried (Art. 17). The *Rikugun chizai-hō* differed fundamentally from the Civil Code of Criminal Procedure of 1880. The latter already operated on the French model of the accusation principle, i.e. there was no trial without an indictment, there was a preliminary examination after the indictment, and the presumption of innocence applied. Judges were able to act relatively independently in proceedings and were, for example, free to assess the evidence. Furthermore, civil criminal procedural law contained many provisions designed to safeguard the accused, such as the public nature of the trial, the obligation to consult a defence lawyer in case of serious crimes, and the possibility of seeking appeal or retrial.[53] In contrast, the Army Code of Criminal Procedure followed the older principle of inquisition and, above all, established a procedure that was entirely based on the commander. He had the authority to order, on the basis of the investigation, the opening of a preliminary examination and the trial (Art. 36, 55), the pronouncement of judgement (Art. 65–66, 69), which was previously forwarded to him by the court martial, and the directing of a retrial by the court martial if the judgement forwarded did not appear to be justified (Art. 67). Prior to the indictment of an individual, an investigating officer (*shinji*) or assistant investigating officer (*shinji-ho*), who were legal experts, led the investigation, interrogated the accused or witnesses, and assessed evidence. The courts martial, which were established at all garrisons, consisted of a staff officer as presiding judge (*hanshi-chō*), three subaltern officers and an auditor (*riji*) or an assistant auditor (*riji-ho*, Art. 8). Additionally, there was also at least one clerk (*rokuji*) present. As the investigating officers, the auditors and clerks were legal experts with the status of civilian employees of the army. In addition to their roles in the hearings, they were responsible for the administration of the court martial proceed-

52 The extent to which Inoue Kowashi contributed to the formulation of the Army Code of Criminal Procedure remains to be fully elucidated. He made at least two interventions during the negotiations providing memoranda, which are reprinted in Inoue Kowashi denki hensan iin-kai, ed., *Inoue Kowashi-den: Shiryō-hen, vol. 1* (Tōkyō: Kokugaku-in daigaku tosho-kan, 1966), 317–318, 330–333.

53 "Chizai-hō: Meiji 13-nen 7-gatsu nanoka Dajō-kan fukoku dai-37-gō," in *Meiji 13-nen hōrei zensho*, ed. Naikaku kanpō-kyoku (Tōkyō: Naikaku kanpō-kyoku, n.d.), 163–239.

ings and the production of, for example, the written verdicts. This composition of a court martial meant that although the majority of the judges were legal laymen, the auditor provided legal expertise on the bench. Furthermore, there existed no safeguards for the accused. The court met in secret (Art. 2), with only the pronouncement of the verdict open to members of the army. Additionally, there was no provision for a defence, nor was there a right of appeal or retrial on the part of the accused.

However, the system in question proved to be relatively short-lived. As early as 1885, the first revision of the Army Code of Criminal Procedure took place. The investigating officer was abolished, and his role merged with that of the auditor, while the auditor was removed from the group of judges and replaced by another subaltern officer. This entailed that the auditors were compelled to assume a dual role: that of a pre-trial preliminary examination officer on the one hand, and of an authority on legal issues during the trial on the other.[54] Conversely, the entire bench now exhibited characteristics more aligned with that of a jury. In 1888, the Code was revised again, this time fundamentally.[55] The most significant changes were as follows: firstly, a number of key legal principles contained in the Civil Code of Criminal Procedure were extended to military criminal proceedings. These included the principle of the presumption of innocence and the *ne bis ad idem* principle, which restricted the possibility of a defendant being prosecuted repeatedly on the basis of the same offence (Art. 6).[56] Secondly, the role of the auditor (and thus legal expertise) in the proceedings was elevated. Article 85 defined that he could produce a written opinion (*setsumei-sho*) on the case. Furthermore, he was obliged to participate in the trial and could question witnesses, although this was subject to the authorisation of the presiding judge (Art. 76). Should the judges' verdict diverge from the *riji's* written opinion, the latter was to be appended to the case file. If the auditor deemed the judgement to be unlawful, he was required to inform the commander or the Army Minister (Art. 85). Consequently, in addition to his role as an advisor, the auditor assumed, although to a limited degree, the authority to review the legality of the proceedings and the judgement. Thirdly, the procedures for retrial (*saishin*), reinstatement of rights (*fukken*) and pardons (*tokusha*) were clearly defined (Chapters 7–9). While these procedures were limited to a few clear-cut cases, the accused was now also al-

54 Matsumoto, "Kaisetsu," 665.

55 "Rikugun chizai-hō kaisei," JACAR Ref. A03020018700, in Dajō-kan, naikaku kankei, go-shomei genpon (Meiji), Meiji 21-nen, hōritsu, go-shomei genpon, Meiji 21-nen, hōritsu dai-2-gō (Kokuritsu kōbunsho-kan), accessed 13 June 2025, https://www.digital.archives.go.jp/img.pdf/152906.

56 These principles were incorporated in Articles 146 and 261 of the Civil Code of Criminal Procedure.

lowed to apply for a retrial, for example, if he could prove that he was not at the scene of a murder at the time of the crime, in the case of a judgement handed down in absentia, or if he had been maliciously accused and charged with an offence (Art. 96). Although these cases were undoubtedly rare, they did, in principle, permit an application for a retrial by a convict. Additionally, he could apply for the reinstatement of his rights (Art. 102), though not for a pardon, as this right was reserved for his former commander, the auditor who had served in the trial, or the prison director in charge of the convict's current sentence (Art. 107). Fourthly, an "Army Supreme Court Martial" (*Rikugun kōtō gunpō kaigi*) was established in Tōkyō, which served both as a court for generals and for possible retrials (Art. 9, 20).

The reform of 1888 represented a slight improvement in the position of the accused in a court martial. However, it should be noted that numerous principles remained unchanged compared to the first version of the Army Code of Criminal Procedure of 1883. These included, above all, the strong position of the commanders in the proceedings (including his right to shorten them in wartime), the lack of legal protection mechanisms such as a defence counsel or the possibility of an appeal, or the greatly simplified procedure during investigation and trial. Consequently, army personnel were not afforded the same rights as ordinary citizens in civilian criminal proceedings, which would have been applicable had they been tried in such a context.

The new versions of the substantive and procedural criminal law were further supplemented by the Army Disciplinary Punishment Ordinance of December 1882.[57] This Ordinance revised an older version that had been in place since 1872.[58] It granted unit commanders the authority to impose disciplinary sanctions on military personnel, in the event that they had committed willingly, out of laziness, neglect of duty or negligence, an offence which was not covered by the Penal Code, or on soldiers who disgraced their profession and whose behaviour did not improve (Art. 1). However, these powers were explicitly limited to cases that were not dealt with in other laws and regulations. The authority of the commander varied according to their respective position. A battalion commander, for instance, was permitted to impose a sentence of house arrest (*kinshin*) of up to ten days on his subordinate officers and a sentence of guardhouse confinement (*eisō*) of up to 20 days for his NCOs or up to 30 days for common soldiers (Art. 2). A company commander, however,

57 "Rikugun chōbatsu-rei, Meiji 14-nen 12-gatsu," JACAR Ref. C09060340900, in Rikugun-shō dainikki, honshō fukoku, kisoku jōrei, kisoku jōrei, Rikugun-shō kisoku jōrei, Meiji 14-nen kisoku jōrei (Bōei-shō bōei kenyū-jo). Accessed 13 June 2025, https://www.jacar.archives.go.jp/das/image/C09060340900.

58 Ishibashi, *Nihon rikugun shihō seido*, 59; Matsushita, *Meiji shonen*, 427.

could only impose a maximum of ten days of guardhouse confinement on his subordinate NCOs and 20 days on his soldiers (Art. 3). Finally, Article 25 defined 29 potential offences for which disciplinary sanctions could be imposed. These included a wide range of behaviours, such as exceeding one's authority, engaging in immoral conduct, making errors in formulating texts or calculations, transmitting orders incorrectly, absconding from duty, becoming violent or threatening, being late for departure or embarkation, drawing a sword for no apparent reason, or becoming careless when under the influence of alcohol.

In addition to the establishment of new legal norms, the creation of new or the reform of existing institutions in accordance with these norms constituted another significant step towards the enforcement of discipline and control over the army. In September 1882, a year prior to the finalisation and publication of the Army Code of Criminal Procedure, the Army Court at the Army Ministry was abolished and a court martial for the Tōkyō garrison established instead, which was formally on the same level as the other courts martial.[59] Concurrently, steps were taken to appoint the requisite legal personnel at the courts martial, namely the auditors and their assistants. In 1888, the structure was further expanded with the establishment of the aforementioned Army Supreme Court Martial and the "Judicial Officers Department" (*Hōkan-bu*) in the Army Ministry, which was later renamed the "Legal Affairs Bureau" (*Hōmu-kyoku*).[60] The latter served as the central administrative authority of the army's military justice system. In addition, its members assumed the role of legal personnel, namely of prosecutors and auditors, at the Army Supreme Court Martial. The department was comparatively small, typically consisting of little more than ten individuals, and was in the first decade of its existence mostly headed by the Vice Minister of the Army.[61]

59 "Rikugun saiban-sho o haisu," JACAR Ref. A15110076000, in Dajō-kan, naikaku kankei, kōbun ruijū, Meiji, dai-6-hen, Meiji 15-nen, kōbun ruijū, dai-6-hen, Meiji 15-nen, dai-15-kan, heisei 2, rikukaigun kansei (Kokuritsu kōbunsho-kan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img/2480025.

60 "Rikugun-shō hōkan-bu kansei," JACAR Ref. A03020026700, in Dajō-kan, naikaku kankei, go-shomei genpon (Meiji), Meiji 21-nen, chokurei, go-shomei genpon, Meiji 21-nen, chokurei dai-77-gō (Kokuritsu kōbunsho-kan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img.pdf/153652.

61 The Vice Ministers of the Army who concurrently served as chiefs of the Judicial Officers Department / Legal Affairs Bureau were Katsura Tarō (1888–1891), Kodama Gentarō (1893–1896), Nakamura Yūjirō (1899–1902), and Ishimoto Shinroku (1902–1905). Watanabe Naka, who served from 1891 to 1893, was also an active soldier. The only legal experts to head the institution in the first three decades were Inoue Yoshiyuki (1896–1899) and Shimizu Koichirō (1905–1921). Hata Ikuhiko, *Riku-kaigun sōgō jiten*, 2nd ed. (Tōkyō: Tōkyō daigaku shuppan-kai, 2005), 317.

The institutional framework was completed with the establishment of a military gendarmerie (*Kenpei*) and a system of army prisons. One of the primary responsibilities of the *Kenpei*, which was formed in 1881, was to prevent breaches of discipline in the first place and to deal with those that did occur.[62] Despite never attaining the status of a fully independent institution of law enforcement, as it was subject both to the Army Ministry and (especially in wartime) to the commanders on the ground, the *Kenpei* developed into an important and powerful instrument of military justice. In the event of a criminal act, it was typically the military gendarmerie who conducted the initial investigation at the scene of the crime, engaged in interviews with victims and witnesses, apprehended suspects and conducted interrogations. Moreover, the foundation of army prisons gave the military jurisdiction over the institutions responsible for the execution of penalties. Initially, in the 1870s, the prevailing tendency was to place prisons exclusively under the supervision of the Ministry of the Interior.[63] This was, however, reversed in the 1880s. In 1888, the establishment of ten "garrison prisons" (*eiju kangoku*) in the military districts saw the nationwide introduction of facilities in which convicted military personnel were required to serve their sentences or, in the event of a death sentence, were executed.[64] Additionally, detention centres (*eisō*) were utilised in smaller units as a means of administering disciplinary punishments. In conclusion, a "correctional unit" (*chōji-tai*) was set up in Himeji for the purpose of accommodating soldiers with criminal or poor disciplinary records, who were then required to complete their military service.[65] These developments guaranteed the military's comprehensive and exclusive control over its personnel, rendering them subject to this institution in all instances of deviant behaviour.

62 Kumagai, *Nihon-gun no seishin kyōiku*, 204. On the history of the *kenpei* Kōketsu Atsushi, *Kenpei seiji: Kanshi to dōkatsu no jidai* (Tōkyō: Shin Nippon shuppan-sha, 2008); Zenkoku ken'yū-kai rengō-kai hensan iin-kai, ed., *Nihon kenpei seishi* (Tōkyō: Kenbun shoin, 1971).

63 Shigematsu Kazuyoshi, *Zusetsu sekai kangoku-shi jiten* (Tōkyō: Kashiwa shobō, 2005), 109–146.

64 "Eiju jōrei," JACAR Ref. A03020022000, in Dajō-kan naikaku kankei, go-shomei genpon (Meiji), Meiji 21-nen, chokurei, go-shomei genpon, Meiji 21-nen, chokurei 30-gō (Kokuritsu kōbunshokan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img.pdf/153041. The *eiju kangoku* established in 1888 were located within the garrisons of Tōkyō, Ōsaka, Sendai, Nagoya, Hiroshima, Kumamoto, Aomori, Kanazawa, Matsuyama and Kokura. "Eiju jōrei," 9.

65 Shimizu Hiroshi, "Rikugun chōji-tai no sōshutsu to sono jittai," in *Nihon teikoku rikugun to seishin shōgai heishi*, ed. Shimizu Hiroshi (Tōkyō: Fuji shuppan, 2006), 39–60.

3 The Reforms of the Late Meiji and Taishō Period

The military justice system, which had been comprehensively reorganised at the beginning of the 1880s, remained largely unchanged for almost three decades. This is notable in that both the Japanese state as a whole and the army in particular faced specific challenges during that period. These included, firstly, the transition of the political system to a constitutional monarchy. In an effort to safeguard the autonomy of the military, the government had incorporated certain imperial prerogatives, including the emperors right of supreme command (*tōsui-ken*), into the constitution, as well as through other institutional and legislative measures to that effect.[66] Nonetheless, following the parliamentarisation of the national budget and legislative procedures, the situation in the armed forces became, at least to a certain extent, subject to parliamentary procedures, discussions and control.[67] Secondly, the structural change in the political order was reinforced by the fact that, at the beginning of the 1890s and then again and to an even greater extent after the end of the Russo-Japanese War and during the Taishō period (1912–1925), both parts of parliament and of the Japanese public were highly critical of the ruling oligarchy and the military.[68] The latter was due to a number of factors, the most important of which were the high tax burden for the purpose of rearmament, the role played by military leaders in the factionalised political landscape, and a series of scandals within the military, which culminated in the so-called "Siemens scandal" of 1914.[69] Thirdly, both branches of the Japanese military underwent a period of continuous expansion during those years. The recruitment of an ever-increasing proportion of the male population and the necessity to integrate them required greater efforts to maintain discipline within the troops.[70] Fourthly, Japan's army and navy were deployed abroad for the first time in mod-

66 Tobe, *Gyakusetsu no guntai*, 72–77; Fujiwara, "Tōsui-ken no dokuritsu".

67 George Akita, *Foundations of Constitutional Government in Modern Japan, 1868–1900* (Cambridge, MA: Harvard University Press, 1967); Banno Junji, *The Establishment of the Japanese Constitutional System*; Fraser, Mason and Mitchell, *Japan's early Parliaments*.

68 On the Taishō Democracy see Peter Duus, *Party Rivalry and Political Change in Taishō Japan* (Cambridge, MA: Harvard University Press, 1968); Matsuo Takayoshi, *Taishō demokurashii* (Tōkyō: Iwanami shoten, 1994); Narita Ryūichi, *Taishō demokurashii* (Tōkyō: Iwanami shoten, 2007); Kitaoka Shin'ichi, *Seitō kara gunbu e, 1924–1941* (Tōkyō: Chūō kōron, 2013).

69 On the Siemens scandal and its aftermath: Nagura Bunji, Yokoi Katsuhiko and Onozuka Tomoji, *Nichi-Ei heiki sangyō to Jiimensu jiken: Buki iten no kokusai keizai-shi* (Tōkyō: Nihon keizai hyōron-sha, 2003); Joyce C. Lebra, *Ōkuma Shigenobu: Statesman of Modern Japan* (Canberra: Australian National University Press, 1973), 115–117.

70 Matsushita Yoshio, *Meiji gunsei shiron: Vol. 2: Meiji 11-nen yori Meiji matsunen made* (Tōkyō: Yūhikaku, 1956), 613–618.

ern history, thus requiring them to demonstrate their ability to function effectively against foreign enemies, including China, Russia and Germany.[71] During the Taishō period, Japan's involvement in the First World War and the Siberian Intervention (1918–1922) followed.[72] Finally, Japan's shift away from the French legal system towards the German model proved to be a direct challenge to country's military justice system. This trend was evident in various areas, primarily in the Meiji Constitution, which was heavily influenced by German examples, particularly those of Prussia and Bavaria, but can also be observed in the field of criminal law, where a new Penal Code (1907) and a new Code of Criminal Procedure (1922) were adopted.[73] The introduction of new or altered principles of criminal justice introduced by these laws also gave rise to a need for reform of military criminal law, in order to prevent the excessive divergence of the civil and military justice systems.

In terms of the legal provisions, the Army Penal Code was the first to be revised. The new version was introduced by the Army Ministry, passed by both houses of the Imperial Diet in March 1908 as Act No. 46, and came into force on 1 October of the same year. The rationale provided by the Army Minister, Count Terauchi Masatake, for the introduction of the revised Army Penal Code was that it was necessary to adapt the existing law to the recently amended Civil Penal

71 Gunji-shi gakkai, ed., *Nichi-Ro sensō*, 2 vol. (Tōkyō: Kinsei-sha, 2004–2005); Harada Keiichi, *Nis-Shin, Nichi-Ro sensō* (Tōkyō: Iwanami shoten, 2007); Harada Keiichi, *Nis-Shin sensō* (Tōkyō: Yoshikawa kōbun-kan, 2008); Yamada Akira, *Sekai-shi no naka no Nichi-Ro sensō* (Tōkyō: Yoshikawa kōbun-kan, 2009); John W. Steinberg et.al., ed., *The Russo-Japanese War in Global Perspective: World War Zero*, 2 vol. (Leiden: E.J. Brill, 2005–2007); Rotem Kowner, ed., *The Impact of the Russo-Japanese War* (London: Routledge, 2006).

72 Kobayashi Hiroharu, *Sōryoku-sen to demokurashii: Dai-ichiji sekai taisen to Shiberia kanshō sensō* (Tōkyō: Yoshikawa kōbun-kan, 2008); Jan P. Schmidt and Katja Schmidtpott, ed., *The East Asian Dimension of the First World War: Global Entanglements and Japan, China and Korea, 1914–1919* (Frankfurt: Campus, 2000); James W. Morley, *The Japanese Thrust into Siberia, 1918* (New York: Columbia University Press, 1957); Sven Saaler, *Zwischen Demokratie und Militarismus: Die Kaiserlich-Japanische Armee in der Politik der Taishō-Zeit (1912–1926)* (Bonn: Bier'sche Verlagsanstalt, 2000); Paul E. Dunscomb, *Japan's Siberian Intervention, 1918–1922: "A Great Disobedience Against the People"* (Lanham: Lexington Books, 2011).

73 Some scholars argue that already the Code of Criminal Procedure (*Keiji soshō-hō*) of 1890 marked the move towards the German system; however, the differences between the *Chizai-hō* of 1880 and the *Keiji soshō-hō* are not as important as sometimes emphasised. Petra Schmidt, "Law of Criminal Procedure," in Röhl, *History of Law in Japan*, 695. On the Code of Criminal Procedure of 1922, see Schmidt, "Law of Criminal Procedure," 698–702 and on the Penal Code of 1907, Lenz, "Penal Law," 614–621.

Code.[74] Moreover, the minister invoked the experiences (though without elucidating them) of recent decades as a motivating factor for the reform. Nevertheless, the plenary session of the House of Representatives and the committee responsible for discussing the Code raised critical questions regarding the absence of legal safeguards for the accused and the lack of legal protection against mistreatment of superiors, which, in fact, highlighted the primacy of safeguarding the military over the civic rights of the individual.[75] Consequently, parliament passed the reform with the implicit understanding that the government (or, more specifically, the army) would take steps to reform the Army Code of Criminal Procedure. This suggests that parliament had become a significant actor in the realm of military justice, utilising its influence to advocate for reform.

In comparison to the Army Penal Code of 1881, the revised Code exhibits a high degree of continuity, whilst also encompassing three fundamental changes.[76] Firstly, the catalogue of punishments was adapted to the new Civil Penal Code. While the death penalty remained the maximum punishment, the differentiation between banishment, forced labour, severe and less severe penal servitude, severe and less severe heavy imprisonment for crimes, as well as severe and less severe imprisonment for offences, was in 1908 replaced by a two-tier system of penal servitude (*chōeki*) and imprisonment (*kinko*, without forced labour), which were to be served in army prisons in mainland Japan. This also meant that the practice of sending convicts to remote islands was formally abandoned. Both *chōeki* and *kinko* punishments could be handed down for an indefinite or a definite term. In theory, there existed also two types of fines (*bakkin* and *karyō*), but these were only imposed as supplementary penalties. Furthermore, the Army Penal Code of 1908 no longer provided for older supplementary penalties, such as the temporary stripping or suspension of civic rights or dismissal from service. The second change concerned the definition of criminal offences. While the majority of crimes and offences were transferred to the 1908 version, some were combined into new articles. Unusual or outdated offences were excluded, for example, the lending of a house to soldiers for the purposes of preparing a mutiny.

74 Dai-24-kai Teikoku gikai Kizoku-in giji sokki-roku dai-8-gō, Meiji 41-nen 2-gatsu 21-nichi, 113. Accessed 13 June 2025, https://teikokugikai-i.ndl.go.jp/#/detailPDF?minId=002403242X00819080221&page=3&spkNum=9&current=-1. For an English version of the Civil Penal Code, see J. E. de Becker, trans., *The Criminal Code of Japan, translated from the Original Japanese Text* (Yokohama: Kelly & Walsh, 1907).

75 Matsushita, *Meiji 11-nen yori*, 621.

76 "Rikugun keihō seitei jūzen no dō-hō haishi," JACAR Ref. A03020745200, in Dajō-kan, naikaku kankei, go-shomei genpon (Meiji), Meiji 41-nen, hōritsu, go-shomei genpon, Meiji 41-nen, hōritsu dai-41-gō (Kokuritsu kōbunsho-kan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img.pdf/694032.

Conversely, new crimes were incorporated, such as looting and rape in occupied territories (Art. 86). It is probable that the latter two were added in response to experiences of military conflict overseas. Thirdly, the systematisation of crimes was adapted. The new Army Penal Code was comprised of eleven chapters, as opposed to the previous nine. These were rebellion (*hanran*), abuse of authority (*senken*), conduct unbecoming (*jokushoku*), insubordination (*kōmei*), violence and threatening behaviour (*bōkō, kyōhaku*), insult (*bujoku*), desertion (*tōbō*), destruction of military property (*gun'yō-butsu sonkai*), looting (*ryakudatsu*), crimes concerning prisoners of war (*horyo ni kan-suru tsumi*), and disobedience (*irei*). This resulted in the addition of chapters pertaining to the destruction of military property, looting, and rape, as well as the expansion of violence to encompass threatening behaviour. Notably, fraud, which had been an independent chapter in 1881, was no longer included.

As Matsumoto Ichirō has observed, despite steps toward alignment, the Army Penal Code still exhibited several significant differences from its civil counterpart.[77] Firstly, the Civil Penal Code distinguished between various circumstances, such as drunkenness or negligence, which could be considered mitigating factors in sentencing.[78] In contrast, the Army Penal Code was less concerned with individual guilt than with comprehensive crime prevention. Consequently, mitigating circumstances played almost no role. Conversely, drunkenness on duty, while serving as guard for instance, could itself become a criminal offence (Art. 48). Secondly, the applicability of modern criminal law principles such as those of necessity or proportionality, was significantly diminished. The most notable example of this was Article 41, which stipulated that a commander who surrendered with his troops would be penalised, even if he had previously "done his utmost" to prevent this outcome. On the other hand, commanders were afforded considerable latitude in the face of the enemy or in the case of violence committed by groups, in order to maintain discipline. In these instances, a special necessity was postulated, under which they could remain unpunished or expect a reduced sentence, even if they had exceeded the limits of what was necessary (Art. 22). Thirdly, the Army Penal Code was more severe than its civil counterpart. This is most evident in the case of the death penalty, which constituted the maximum penalty for over 36% of all offences in the former, but only for 9.8% of all offences in the latter.

In 1911, the Army Disciplinary Punishment Ordinance was also revised.[79] In terms of the country's legal system, disciplinary law was seen as part of the em-

77 Matsumoto, "Kaisetsu," 675–676.

78 *The Criminal Code of Japan*, 15–17 (Art. 35–42), 25 (Art. 66–67).

79 "Rikugun chōbatsu-rei," JACAR Ref. A15113830500, in Dajō-kan, naikaku kankei, kōbun ruijū, Meiji, dai-35-hen, Meiji 44-nen, kōbun ruijū, dai-35-nen, Meiji 44-nen, dai-17-kan 2, gunji, bessatsu,

peror's right of supreme command, which is why, like its predecessor, it took the shape of an ordinance and not a law, in which the Imperial Diet would have to be involved. The revised ordinance's scope extended to "cases where a soldier fails to fulfil his duty, violates military regulations, or otherwise contributes to the breakdown of military discipline and the deterioration of morale, which is not covered by the Army Penal Code" (Art. 1). In contrast to the older version of 1881, which had still provided definitions of such cases, this time a catalogue of cases was explicitly omitted. This suggests that it afforded commanding officers a considerable degree of discretion in determining which forms of soldierly conduct they deemed to be in violation of the aforementioned criteria. This was further facilitated by the fact that procedures were quite informal, with only the sentence being recorded in a list. The only protection for subordinates was that they could theoretically appeal against a disciplinary punishment, which was then heard by the competent court martial. Whether this option was used, and if so, how often, requires further research. In principle, the *Rikugun chōbatsu-rei* gave commanding officers (i.e., from company commanders upwards, but also commanders of schools and other training institutions or material depots) the right to punish their subordinates for misbehaviour. The potential penalties varied according to the rank of the individual in question (Art. 8–11). Officers could be subjected to hard or light confinement, suspension of privileges, or a reprimand, NCOs additionally to demotion. Ordinary soldiers could be punished with demotion, solitary or light solitary confinement, or reprimand. The different types of confinement had to be served in the unit's guardhouse.

The most significant aspect of the military justice system reform, however, was the amendment of the Army Code of Criminal Procedure, which was superseded by the "Army Court Martial Law" (*Rikugun gunpō kaigi-hō*).[80] This legislation was enacted in 1921 after a period of almost seven years during which the "Joint Commission for Research on the Reform Proposal for the Army Code of Criminal Procedure and the Navy Code of Criminal Procedure" (*Rikugun chizai-hō kaigun chizai-hō kaisei-an kyōdō chōsa iin-kai*), and subsequently both houses of the Imperial Diet, had deliberated on it.[81] It came into force the following year.

gakuji, gakusei kara zassai, gunrei riku dai-4-gō (Kokuritsu kōbunsho-kan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img/1681168.

80 "Rikugun gunpō kaigi-hō," JACAR Ref. A03021304500, in Dajō-kan, naikaku kankei, go-shomei genpon (Taishō), Taishō 10-nen, hōritsu, go-shomei genpon, Taishō 10-nen, hōritsu dai-85-gō (Kokuritsu kōbunsho-kan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img.pdf/159154; Yamamoto, "Kyū-riku-kaigun gunpō kaigi-hō no seitei keii".

81 The initial army draft seems to have been prepared by the Chief of the Army Legal Affairs Bureau, Shimizu Koichirō, in November 1914. "Shimzu Koichirō: Rikugun gunpō kaigi hōan," JACAR

This step occurred in parallel with the enactment of the new civil "Code of Criminal Procedure" (*Keiji soshō-hō*) of 1922, which marked Japan's final transition towards the German criminal law model. The lengthy consultation was necessitated by the fact that the new military law was closely aligned with the new civil legislation.

The Army Court Martial Law finally fulfilled parliament's 1908 demand for revision of the military's criminal procedure, explicitly attempting to reconcile competing principles: the maintenance of discipline (*gunki no iji*) and the protection of the military's interests (*gun no rieki o hogo suru*), on the one hand, and the interests of the accused (*hikoku-nin no rieki*) and the protection of human rights (*jinken no hogo*), on the other.[82] The acknowledgement of principles beyond the scope of military necessity represented a substantial stride towards liberalisation. Consequently, the new law fundamentally revised the principles and procedures of the Japanese military justice system. Compared to the Army Code of Criminal Procedure of 1888, several major changes can be identified. Firstly, the principle of accusation was formally introduced, namely that no trial could take place without prior indictment. Secondly, legal safeguards for the accused, which had already been in place in civil criminal procedure, were finally implemented. The most significant of these were the aforementioned right to appoint a defence counsel from among a group of eligible lawyers,[83] the introduction of a comprehensive system of appellation, which included appeal, special appeal, and retrial, and the publicity of trial (both of the hearing and the pronouncement of judgement). The public could only be excluded to prevent the disclosure of military secrets and to protect morale. Additionally, the abolition of trials in absentia, the introduction of a bail system for individuals in pre-trial detention, and the introduction of a preliminary examination that had to take place before an indictment – which represents a difference to the civil criminal procedure, where it

Ref. C02030699700, in Rikugun-shō dai-nikki, dai-nikki kō-shū, Taishō 3-nen, eison shorui kō-shū dai-3, 4-rui, Taishō 3-nen, Hōmu-kyoku-chō (Bōei-shō bōei kenyū-jo). Accessed 13 June 2025, https://www.jacar.archives.go.jp/das/image/C02030699700. The Joint Commission commenced its operations in December of that year. Its personnel included members of the Army and the Navy's Legal Affairs Bureaus and the Military Administration Bureaus, of the Ministry of Justice and the Prosecutor-General's Office, as well as members of the Imperial Diet. Some of its members, such as Hiranuma Kiichirō or Hanai Takuzō, served simultaneously in the committee which prepared the civil *Keiji soshō-hō*. See the minutes of the Joint Commission "Rikugun chizai-hō kaigun chizai-hō kaisei-an kyōdō chōsa iin-kai giji-roku," 3 vol., Ref. Hōmu 105–107 (Bōei-shō bōei kenkū-jo).

82 "Rikugun chizai-hō kaigun chizai-hō kaisei-an kyōdō chōsa iin-kai giji-roku," vol. 3, 2477, 2481.

83 Those eligible for this role were officers, higher civil employees of the military or probationers, and counsels designated by the Army Minister (Army Court Martial Law, Art. 88).

occurred after an indictment – served the purpose of strengthening the rights of a suspect.

A third amendment saw the role of legal experts strengthened. One legal affairs officer (*hōmu-kan*) – the former auditor (*riji*) – from the military justice administration now served as prosecutor (*kensatsu-kan*, Art. 68), another as preliminary examination officer (*yoshin-kan*, Art. 62), while a third was appointed as a judge (*saiban-kan*) on the bench (Art. 47, 49). However, Japan did not adopt the practice of trained lawyers presiding over court proceedings, as seen in Germany and France, for example.[84] In contrast, an officer of the combat branches (*heika*) served as presiding judge in Japan. The position of legal affairs officers was further reinforced because they were to be employed for life and, with a few exceptions, could not be dismissed from service (Art. 35–41). Finally, the principle of non-interference from outside in court proceedings was emphasised (Art. 46). This was intended to ensure the independence of the courts martial in assessing evidence and sentencing. Nevertheless, the Army Court Martial Law neither abolished the inherent commander-centred nature of the proceedings nor established an autonomously operating prosecutorial system. This demonstrates the constraints of the liberalisation of the Japanese military justice system. Formally, commanders were responsible for appointing prosecutors (Art. 68 and 71), preliminary examination officers (Art. 62) and judges (Art. 34, 48 and 80) to the court martial. They also had the authority to discontinue proceedings during the investigation and again before filing an indictment.[85] In both instances, they were not required to provide reasons for their actions. Finally, they also ordered the execution of a sentence. In this regard, commanders had a considerable degree of formal discretion in determining whether or not legal proceedings should be initiated or continued in a given case. It can be reasonably assumed that they also had numerous informal opportunities to influence judges and prosecutors or even defence counsels subordinate to them. The extent to which commanders did, or indeed did not, utilise this leeway, however, remains an unanswered question.

The Army Court Martial Law also delineated the procedural steps to be followed in the event of an offence. If a superior had knowledge or suspicion of a criminal offence having been committed, he was obliged to instruct either the competent military gendarmerie or a subordinate, usually his adjutant, to investigate. If the *Kenpei* witnessed a crime, they were also permitted to take up the in-

84 For the French example, see the chapter by Gwenaël Guyon in this volume.

85 This authority of commanders was based on a number of articles of the Army Court Martial Law, including 308, 310, 318, 321, 336, and 340.

vestigation on their own. This involved examining the crime scene, securing evidence, and questioning suspects and witnesses. Once a perpetrator had been identified, the case was forwarded to the responsible military justice administration, which was typically the legal affairs department (*hōmu-bu*) of the unit (usually the division). Here, the case was dealt with by a prosecutor and a preliminary examination officer, both senior civilian officials of the said *hōmu-bu*. If the evidence justified an indictment, it was forwarded with a corresponding recommendation to the responsible commander, to whom the department and the court martial were assigned. The commander then decided whether or not the suspect was indicted. If this was the case, the proceedings were opened before the competent court martial. There, four officers from the fighting branches and a legal affairs officer served as judges. Following a guilty verdict, the convicted individual had the option of appealing to the Army Supreme Court Martial in Tōkyō, which consisted of three officers and two legal affairs officers (Art. 51). Should the appeal be successful, the case was referred back to the court martial, which had heard the case originally; in the event of dismissal, the judgement became final. It was not possible to appeal to a civilian court, such as the Supreme Court of Judicature. That offences against Civil Penal Code and other punishable laws committed by military personnel were also tried before courts martial, suggests that the exclusive special jurisdiction for the military, established at the beginning of the Meiji period, continued.

It should be noted, however, that the above provisions only applied in peacetime, as the Army Court Martial Law clearly distinguished between times of war (including incidents, i.e., military operations without a formal declaration of war, and a state of siege) and peace. During wartime, so-called special courts martial (*tokusetsu gunpō kaigi*) could be established, in which the legal safeguards for the accused could be (and actually were) almost completely suspended. This included the rights to a defence counsel (Art. 93) and to appeal (Art. 418), as well as the publicity of the trial (Art. 417). Furthermore, procedures could be shortened, for instance by omitting preliminary examinations, and the number of judges reduced. This meant that the Army Court Martial Law liberalised military justice procedures only in peacetime, while in wartime it allowed the military to render these rights obsolete under the banner of military necessity, expediency, and the maintenance of discipline and morale.

4 The Army Military Justice System in the Asia-Pacific War

The years 1931 and 1932 marked Japan's entry into an era of domestic and foreign policy crises, which were largely triggered or forced by army and navy officers.[86] In terms of foreign policy, the Japanese Guandong Army, a major military force stationed in Manchuria, initiated a series of military conflicts on the Asian mainland. This resulted in the *de facto* annexation of the three north-eastern provinces of China and the creation of the puppet state of Manchukuo (*Manshū-koku*),[87] which ultimately precipitated an all-out and total war against China from 1937 (Second Sino-Japanese War), and from 1941 against the Western allied powers (Pacific War).[88] Furthermore, three attempted coups by army officers in March 1931 (*Sangatsu jiken*) and October 1931 (*Jūgatsu jiken*), as well as by navy and army officers in May 1932 (*Ketsumei-dan jiken*) also signalled the end of the so-called Taishō democracy, namely government by party cabinets, and marked the beginning of the resurgence of the Japanese military in the country's domestic politics.[89] The most significant event in this context was the large-scale attempted coup d'état by junior officers of the army and their units in February 1936 (*Ni ni-roku jiken*), which resulted in the assassination of leading political and military

86 For an overview on Japan during the Asia-Pacific War, see Gordon M. Berger, *Parties out of Power in Japan, 1931–1941* (Princeton: Princeton University Press, 1977); James B. Crowley, *Japan's Quest for Autonomy: National Security and Foreign Policy 1930–1938* (Princeton: Princeton University Press, 1966); for the Asia-Pacific War Kurasawa Aiko et.al., ed., *Iwanami kōza Ajia Taiheiyō sensō*, 8 vol. (Tōkyō: Iwanami shoten, 2005–2006); Katō Yōko, *Manshū jihen kara Nit-chū sensō e* (Tōkyō: Iwanami shoten, 2007); Yoshida Yutaka, *Ajia, Taiheiyō sensō* (Tōkyō: Iwanami shoten, 2007).

87 Mark R. Peattie, *Ishiwara Kanji and Japan's Confrontation with the West* (Princeton: Princeton University Press, 1975); Yoshihisa Tak Matsusaka, *The Making of Japanese Manchuria, 1904–1932* (Cambridge, MA: Harvard University Press, 2001); Louise Young, *Japan's Total Empire: Manchuria and the Culture of Wartime Imperialism* (Berkeley: University of California Press, 1999); Sandra Wilson, *The Manchurian Crisis and Japanese Society, 1931–1933* (London: Routledge, 2002); Yamamuro Shin'ichi, *Manchuria under Japanese Dominion* (Philadelphia: University of Pennsylvania Press, 2006).

88 Ikō Toshiya, *Manshū jihen kara Nit-Chū zenmen sensō e* (Tōkyō: Yoshikawa kōbun-kan, 2007); Yoshida Yutaka and Mori Shigeki, *Ajia Taiheiyō sensō* (Tōkyō: Yoshikawa kōbun-kan, 2007); Kasahara Tokushi, *Nihon-gun no chian-sen: Nit-Chū sensō no jissō* (Tōkyō: Iwanami shoten, 2010); Mark R. Peattie, Edward J. Drea and Hans Van De Ven, ed., *The Battle for China: Essays in the Military History of the Sino-Japanese War of 1937–1945* (Stanford: Stanford University Press, 2011).

89 Kitaoka, *Seitō kara gunbu e*, 151–285; Richard Storry, *The Double Patriots: A Study in Japanese Nationalism* (Boston: Houghton Mifflin, 1957); Berger, *Parties out of Power*.

figures and marked the beginning of a more repressive character of the political system.[90] The army in particular became increasingly challenging to control, exhibiting open (and occasionally violent) power struggles between competing factions and staff officers who took political initiatives, with or without the approval of their superiors.[91] The necessity for the army command to re-establish discipline and control over the army was, in some respects, reminiscent of the circumstances that had prevailed at the end of the 1870s and the beginning of the 1880s, which had led to the establishment of the comprehensive military justice system.

In addition to these domestic political issues, the outbreak of the war with China in 1937 led to a persistent rise in criminal offences perpetrated by Japanese military personnel.[92] These included not only the infamous assaults against Chinese prisoners of war and the civilian population, such as looting, sexual violence, and mass killings, but also violence within the military, such as threats or violence against superiors and comrades, insubordination and disobedience to orders, desertion and defection, and the embezzlement of military property. These developments prompted concern among the army leadership and numerous commanders in the field, leading to ongoing discussions regarding the most effective means of restoring discipline within the army.[93] The responses varied considerably and were subject to ongoing adaptation, as will be demonstrated firstly in the example of the handling of unruly officers and attempted coups, and secondly with the increase in crimes during the war in Asia and the Pacific.

With regard to the issue of unruly officers and attempted coups, the reactions at the beginning of the 1930s were diverse, encompassing a range of approaches, from indifference to strict adherence to the law. One example of the first approach is the so-called "Mukden Incident", in which officers from the Guandong Army on 18 September 1931 staged a Chinese attack on the South Manchurian Railway against the express orders of the army command, which subsequently led to the "Manchurian Incident."[94] Although the principal conspirators, Lieutenant Colonel Ishiwara Kanji and Colonel Itagaki Seishirō, were convinced that they would be court martialled for their involvement in the conspiracy, the army com-

90 Ben-Ami Shillony, *Revolt in Japan: The Young Officers and the February 26, 1936 Incident* (Princeton: Princeton University Press, 1973).

91 On the long-term history of army factionalism see Matsushita Yoshio, *Nihon gunbatsu no kōbō* (Tōkyō: Fuyō shobō, 1975).

92 Schölz, "Military Justice in the Imperial Japanese Army".

93 The debates within army circles are best documented in Yoshida Yutaka and Matsuno Seiya, ed., *Jūgo-nen sensō-ki gunki, fūki kankei shiryō* (Tōkyō: Gendai shiryō shuppan, 2001); Yuge, "Nihon rikugun ni okeru hanzai oyobi hikō."

94 Peattie, *Ishiwara Kanji,* 87–139; Kawada Minoru, *Ishiwara Kanji no sekai shinryaku kōsō* (Tōkyō: Shōden-sha, 2016), 13–71.

mand ultimately decided to ignore the case. There were probably three primary factors contributing to this decision. Firstly, the Japanese army had a long history of unauthorised actions by officers on the Asian mainland, which were rarely punished.[95] Secondly, the successful conquest of Manchuria justified the action in retrospect. Thirdly, Japan had in the meantime publicly refuted the international allegations that the attack was staged. In the long term, this ignorance of unauthorised actions by officers was to have negative consequences, as exemplified by the refusal of officers to cease hostilities at the outbreak of the Second Sino-Japanese War in July 1937. One example of the second approach, namely strict adherence to the law, are the courts martial that were held in relation to the so-called "March 15 Incident."[96] One year after the attempted coup in which Prime Minister Inukai Tsuyoshi was killed, the participants were prosecuted for mutiny.[97] The cases were tried separately, i.e., those in the navy stood trial in a navy court martial, those in the army in an army court martial, and the civilians involved in a civilian criminal court. In accordance with the provisions set forth in the Navy and Army Court Martial Laws, the military trials were public. The defendants utilised this opportunity to justify their actions and, as a result, garnered public support. In fact, more than 110,000 people signed petitions to the courts, requesting leniency in sentencing. Responding to public opinion, the judges handed down sentences that were significantly below the prosecution's demands. The navy defendants received prison sentences of between two and 15 years, while those in the army were each sentenced to four years in prison. In contrast, those civilians involved were handed down relatively harsh sentences, which ranged from penal servitude for life to seven years penal servitude. This indicates that although the military was willing to adhere to the law, it treated its personnel with considerable leniency, which was inappropriate in re-establishing discipline and control over the unruly elements of the army.

In the context of the significantly more dangerous attempted coup in February 1936, the army leadership adopted a repressive approach in dealing with the conspirators, utilising any opportunity offered by the law to restore discipline

95 Orbach, *Curse on this Country*.

96 For the broader context see also Stephen S. Large, "Nationalist Extremism in Early Shōwa Japan: Inoue Nisshō and the "Blood-Pledge Corps Incident" 1932" *Modern Asian Studies* 35.3 (2001): 533–564.

97 On the trial including a reprint of major sources Tanaka, Tokihiko, "Go ichi-go jiken: Nairan-zai, sōjō-zai, hanran-zai," in *Nihon seiji saiban shiroku: Shōwa-zen*, ed. Wagatsuma Sakae et al. (Tōkyō: Dai-ichi hōki, 1970), 462–550; Yamamoto Masao, "Kyū-riku-kaigun gunpō kaigi-hō no igi to shihō-ken no dokuritsu: Go ichi-go oyobi ni ni-roku jiken saiban ni miru dō-hō no honshitsu ni kan-suru ichi-kōsatsu," *Senshi kenkyū nenpō 64* (2008): 64–83.

and control.[98] This shift in strategy can be attributed to several factors, including the nature of the conflict. Whereas previous attempts had been primarily targeted at party politicians and business leaders, and therefore members of the civilian society, the 1936 *coup d'état* also constituted a direct assault on the centre of the army. This was evidenced by the fact that a member of the army's closest leadership circle, the Inspector General of Military Education Watanabe Jōtarō, was killed by the insurgents, and by the fact that the Army Ministry and the General Staff Office were occupied. In order to restore the government's and army leadership's authority, it was deemed necessary to avoid the same public sympathy for the conspirators that had been observed in 1932. The army command, in consultation with the government, invoked the provisions of the Army Court Martial Law for a state of emergency (similar to a wartime situation) and established a special court martial in 1937 through an Imperial Emergency Ordinance (*kinkyū chokurei*). This court martial convened in secret, hearing cases against both military personnel and civilians, and disregarded all legal safeguards for the accused that would have been observed in an ordinary peacetime trial.[99] The sentences handed down were considerably more severe than those imposed for the attempted coup in 1932. The court found all defendants guilty of mutiny and sentenced 18 individuals, including two civilians, to death, seven to life imprisonment, and a further 22 people to prison sentences of between one and a half and six years.

While the handling of the attempted coups remained within the legal framework of the existing military justice system, even if it became significantly more severe and even at times repressive, the sharp increase in both conventional and war crimes following the outbreak of the Second Sino-Japanese War in 1937 and the intense fighting on the Asian mainland prompted the question of whether the existing system was adequate to ensure discipline and control under the conditions of evolving total warfare. The army was unable to provide a coherent answer to this question, not least because there was no consistent analysis of the causes of the increase in criminal offences committed by soldiers.[100] Consequently, the pe-

98 Kita Hiroaki, *Ni ni-roku jiken zenken-sho* (Tōkyō: Asahi Shinbun-sha, 2003); Shillony, *Revolt in Japan*.

99 Kita Hiroaki, "Tōkyō rikugun gunpō kaigi no setchi to Rikugun-shō hōmu-kyoku," *Nihon rekishi* 427 (1983): 56–71; Kita Hiroaki, "Ni ni-roku jiken to Rikugun-shō hōmu-kyoku-chō Ōyama Ayao," *Gunji shigaku* 15 (1980): 30–37; Hayashi Shigeru et al., ed., *Ni niroku jiken hiroku* (Tōkyō: Shōgakkan, 1971–1972); Matsumoto Ichirō, *Ni ni-roku jiken saiban no kenkyū: Gunpō kaigi kiroku no sōgō-teki kentō* (Tōkyō: Ryokuin shobō, 1999); Matsumoto Ichirō, ed., *Ni ni-roku jiken saiban genpon shiryō*, 2 vol. (Tōkyō: Ryokuin shobō, 2012).

100 Yoshida and Matsuno, *Jūgo-nen sensō-ki gunki, fūki kankei shiryō*.

riod after 1938 saw the implementation of a series of individual measures designed to address specific issues.

Some of the measures were directed at the underlying causes and conditions that precipitated such behaviour.[101] As about two-thirds of all crimes committed by soldiers and civilian employees since the outbreak of the Second Sino-Japanese War were carried out under the influence of alcohol, reducing and controlling alcohol consumption was aimed at preventing criminal activity. The establishment of military brothels, the notorious "comfort women" stations (*ian-jo*), and the provision of other recreational activities were intended to prevent sexual assault and rape of women and girls in the occupied territories or crimes committed out of boredom or frustration.[102] Frequent inspections of soldiers' personal belongings by their superiors were intended to prevent or at least detect looting and theft. Those with a history of deviant behaviour and other potential criminals were classified as "soldiers in need of special attention" (*yō-chūi-hei*) and were to be deployed in close proximity to their superiors, with the aim of preventing them from becoming offenders.[103]

Other measures were oriented towards structural or institutional issues, although to a limited extent. One reform was related to the status of the army legal experts. In 1942, their status was changed from that of senior civilian employees (*bunkan*) to that of legal (military) officers (*hōmu shōkō*).[104] As a result, they were incorporated into the army officer corps and were now directly subject to its regulations. Accordingly, mechanisms that had originally protected their status, like lifelong employment, became less important or were outright abolished. In addition, the training requirements to become a legal officer were shortened. Although this change must be attributed, at least in part, primarily to a lack of personnel for the legal affairs administration in the numerous theatres of war, the change of status also likely had a further restrictive impact on the rule of law within the army's juridical system. Another central element was the reform of the Army Penal Code in 1942, which increased the punishments for offences such as insubordination, threats and violence against superiors, desertion, self-injury,

101 Yuge, "Nihon rikugun ni okeru hanzai oyobi hikō"; Schölz, "Military Justice in the Imperial Japanese Army".

102 See, for example, the testimony of Kodama Hisazō, former chief of the Army Ministry's Administration Office, given at the Tōkyō Tribunal on 5 September 1947 Kyoku-Tō gunji saiban-sho, ed., *Kyoku-Tō gunji saiban sokki-roku*, vol. 6, dai 265-gō (Tōkyō: Yūshō-dō, 1968), 495–496.

103 Yuge, "Nihon rikugun ni okeru hanzai oyobi hikō," 56–57.

104 "Rikugun hōmu-kan oyobi kaigun hōmu-kan nin'yō-rei haishi nado no ken," JACAR Ref. A03022722100, in Dajō-kan, naikaku kankei, go-shomei genpon (Shōwa [Shôwa 21-nen made]), Shōwa 17-nen, chokurei, go-shomei genpon, Shōwa 17-nen, chokurei dai-321-gō (Kokuritsu kōbunsho-kan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img.pdf/148849.

and rape.[105] Other measures aimed to strengthen the centre's supervision of military justice. These included regular inspection tours and attempts to monitor the work of commanders more closely. It became obligatory for them to report the circumstances of serious breaches of discipline and the action they had taken directly to the Army Minister in Tōkyō.[106] Concurrently, there was an analogous reporting obligation on the part of the judicial administration, which had to forward detailed information and copies of files on each case to the Legal Affairs Bureau (*Hōmu-kyoku*) at the Army Ministry. However, the army leadership did not go so far as to limit the institutional role of commanders or their discretionary powers, for example to dismiss cases.

In summary, the reforms undertaken during the Asia-Pacific War were designed to address specific issues and bring about improvements in certain areas. However, they did not aim to implement a systematic and far-reaching reform of the existing institutions and legal provisions of the juridical system analogous to those at the beginning of the 1880s. This suggests that the existing structures and their inherent flexibility and latitude were generally considered sufficient to address the challenges that arose in maintaining discipline in the context of total warfare. Conversely, this finding with regard to the military justice system demonstrates that, in contrast to National Socialism in Germany and Fascism in Italy, the continuities with the pre-war period in Japan outweigh the discontinuities in this field.[107] Consequently, it is challenging to categorise the Japanese military justice system as fascist or totalitarian, both in terms of the system itself and in relation to the treatment of its own soldiers. In the final years of its existence, the Japanese army's military justice system was as authoritarian in structure and objective towards its own soldiers as it had been between the 1880s and the liberalisation of the Taishō period.

105 "Rikugun keihō-chū kaisei hōritsu," JACAR Ref. A03022684800, in Dajō-kan, naikaku kankei, go-shomei genpon (Shōwa [Shōwa 21-nen made]), Shōwa 17-nen, hōritsu, go-shomei genpon, Shōwa 17-nen, hōritsu dai-35-gō (Kokuritsu kōbunsho-kan). Accessed 13 June 2025, https://www.digital.archives.go.jp/img.pdf/151215.

106 The obligation to report was introduced on 4 March 1941 with the reform of the "Regulations on Army Reports in Wartime". "Senji rikugun hōkoku kitei, Shō[wa] 16[-nen] 3[-gatsu] yokka, Rikufu 1389," in Matsumoto, *Rikugun seiki ruijū: Shōwa-ban*, vol. 6, 453–600.

107 See for Italy the chapter by Giovanni Focardi and Nicolò Da Lio, and for Germany by Maria Fritsche in this volume, as well as Messerschmidt, *Wehrmachtsjustiz*.

Conclusion

With the dissolution of the Imperial Japanese Army and Navy following the total defeat in the Asia-Pacific War, the history of an independent military justice system in Japan reached its conclusion – at least for the time being – and its liquidation was transferred to the Ministry of Justice in 1947.[108] As with numerous other institutions, the more than seven decades of its existence are characterised by a juxtaposition of continuities and discontinuities.

An analysis of the evolution of the institutional order and legal provisions of the Japanese military justice system reveals a comparatively high degree of continuity. Four points are of particular significance. Firstly, throughout its entire history, the function of the system as an instrument in the hands of superiors to enforce discipline and order, thereby ensuring the functioning of the army, remained predominant. This function overshadowed other possible objectives, such as the establishment of justice or the punishment of individual guilt. The instrumental character was, secondly, guaranteed by the central role of commanders in the proceedings, which became less prominent over time, but was never fundamentally questioned or challenged. This is also reflected in the fact that no autonomous law enforcement mechanism operating independently from superiors developed within the Japanese military prior to 1945. Thirdly, the instrumental nature was also guaranteed by the clear legal distinction between peacetime and wartime situations, including a state of emergency. Despite the partial liberalisation of criminal proceedings in peacetime by the enactment of the Army Court Martial Law in 1922, this separation afforded the army leadership with the legal opportunity to disregard the rights of defendants and to utilise the military justice system in a repressive manner, as was particularly evident in the February 26 Incident. Furthermore, during the Asia-Pacific War this distinction also permitted the shortening of proceedings or the denial of an adequate defence on the grounds of military necessity or expediency. Nevertheless, the Japanese military justice system during this period cannot be described, at least from the perspective of how it dealt with the indiscipline of its own soldiers, as either fascist or totalitarian. This is due to the absence of both a corresponding radicalism and a fundamental novelty within the system. Instead, the legal provisions and the legal practice – although the latter could not be discussed in this chapter – during the Asia-Pacific War are more reminiscent of the period before the turn of the century than they are comparable to contemporary practices in Germany, Italy, or the Soviet Union.

108 The documentary evidence of this liquidation is marked by Fukuin-kyoku, “Rikugun gunpō kaigi haishi ni kan-suru tenmatsu-sho”.

At the same time, however, the discontinuities in the history of the system should not be underestimated. Change was primarily caused by three main factors. Firstly, the emergence of new challenges, caused by developments within the military, political, and social spheres, necessitated a response. Secondly, the expansion in the number of actors influencing the military justice system, especially parliament and the press, resulted in a considerable pressure for change, most evident in the liberalisation of peacetime provisions and the acknowledgement of a necessity to balance military interests and human rights during the late Meiji and Taishō periods. Thirdly, the alignment between the military and the civil justice systems was significant, as transformations of the former also forced adaptations of the latter. This can be seen in the introduction of the French-oriented model in the 1870s as well as in the partial liberalisation of the system after the turn of the twentieth century, which was characterised by a shift towards the German legal model. Conversely, it must be noted that structural changes in the Japanese military justice system occurred to a much lesser extent as a result of war experiences than might have been anticipated.

The impetus for change in the military legal system demonstrates that the founding fathers of the Imperial Japanese Army were less successful than initially envisaged in ensuring the independence of their institution from the prevailing political and social influences of the time. However, the system's fundamental structures proved resilient, enabling it to fulfil its primary objective of maintaining order and discipline within the armed forces.