

JAPAN'S RECEPTION OF THE LAW OF NATIONS

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I. *Opening of Japanese Ports and the Law of Nations*¹

Japan's renunciation of her traditional isolation, opening her ports to the European and American nations and making herself a member of the Family of Nations, is regarded as the result of the expedition commanded by Commodore Matthew Perry. The present year (1953) being the centenary of the Commodore's visit to Uraga, gala celebrations were held in this country in commemoration of the event.

In July, 1853, Perry, with his four ships-of-war, left Napha and arrived at Uraga, where he demanded the opening of the country to foreign intercourse. The letter of President Millard Fillimore addressed to the Emperor of Japan, which document the Commodore carried with him ("Public letter of Millard Fillimore, President of the United States of America, to His Imperial Majesty the Emperor of Japan"), was delivered July 14 (Thursday) on the shore of Uraga to Toda Izumo-no-Kami and Ito Iwami-no-Kami, who represented the Japanese Tycoon. In his letter dated November 13, 1852, President Fillimore stated the aims of the expedition in the following terms:—

"These are the only objects for which I have sent Commodore Perry, with a powerful squadron, to pay a visit to your Imperial Majesty's renowned city of Yedo: friendship, commerce, a supply of coal and provisions, and protection for our shipwrecked people."

That the Shogunate Government received the American state document at Uraga was itself an anomaly, but by amending the ancient law, Japan signed a Treaty of Peace and Amity between the Empire of Japan and the United States of America at Kanagawa on March 31 the following year. This Kanagawa Treaty, which heralded the opening of the country, was a brief document of twelve Articles, but laid the foundations for friendly intercourse between Japan and the United States, which continued over a

¹ The following are the author's Japanese language articles on this subject: *The Reception of the Science of the Law of Nations* in the Takushoku Ronshu, Vol. 7, Number 1, (1936); *The Reception of the Science of International Law and the Theory of the Law of Nature* in the Hitotsubashi Ronso, Vol. 2, Number 4, (1938); *Three Phases in the Opening of the Country* in The Problems of Contemporary Jurisprudence published by the Hitotsubashi University (1952).

century. The First Article of the treaty was a great declaration of the ideal and aspiration:

"There shall be a perfect, permanent and universal peace, and a sincere and cordial amity between the Empire of Japan on the one part, and the United States of America on the other part, and between their people respectively, without exception of persons or places."

The Kanagawa Treaty led to the agreements with Britain and Russia. On October 14, 1854, a convention between Japan and Britain (Sterling's convention) was signed at Nagasaki, while on February 7, 1855, a treaty between Japan and Russia (Poutiatine's treaty) was concluded at Shimoda. Poutiatine's treaty belonged, in respect of wording, to the same category as the compacts with the United States and Britain; but what was interesting about the treaty was, that in Article 2 it settled the boundary between Japan and Russia in regard to the Kuriles, giving to Japan the island of Etoroep and to Russia the Kuriles north of the island. But the treaty made no division of Saghalien, but treated it as a condominium. However, in a treaty signed May 7, 1875, between Japan and Russia (*Traité d'échange de l'île de Sakhaline et du groupe des îles Kouriles entre le Japon et la Russie*), Japan secured to herself, in exchange for her rights in Saghalien, the whole group of islands including Choumcheu at the northern tip of the insular chain. This historical fact is here referred to because of its extreme importance in interpreting the territorial clauses of the Peace Treaty with Japan signed in September 8, 1951.

By the visit of Commodore Perry, Japan was enabled to conclude the Kanagawa treaty. Under this treaty, however, Japan opened only three ports (Hakodate, Shimoda, and Nagasaki), recognizing them as ports of call where the ship's fuel-wood, water and food could be procured; but general commerce was by no means permitted, to say nothing of the mutual visit of traders. It remained for Townsend Harris, who next appeared on the scene, to open the country to foreign trade in general.

On August 4, 1855, the United States Government appointed Harris Consul-General and Diplomatic Representative in Japan, and gave him full powers to negotiate a commercial treaty with Japan. In August next year, Harris arrived at Shimoda on board the *San Jacinto*, where, on September 4, he had the first consular flag of the United States hoisted at the Temple Gyokusenji.

Harris insisted that, in the Law of Nations, a Diplomatic Envoy was entitled to visit, and reside in, the capital of the receiving State. Entering Yedo toward the end of November, 1857, he succeeded in obtaining an interview with the Shogun on December 6, and explaining the world situation, he urged the need of a commercial treaty. In dealing with this country, Perry had shown a dignified front, as he had the naval power as his background; whereas the method of Harris was that of patient but eloquent

pleading on the needs and customs of international society. In a speech which he delivered on December 12, 1857, at the residence of Hotta Bicchuno-Kami, Harris started from the invention of steamships and described how international trade came to flourish and asserted that it was now impossible for Japan to maintain the exclusion policy any longer. He added that the three great points would be: 1st, the reception of foreign ministers to reside at Yedo; 2nd, the freedom of trade with the Japanese without the interference of Government officers; 3rd, the opening of additional harbors.

In demanding the residence of himself, as a diplomatic representative, in Yedo and foreign trade, Harris referred frequently to the Law of Nations as the ground for his demand. To the Japanese, the Law of Nations even as a term was something new. On the ground of the Law of Nations, he insisted upon the franchise de l'hôtel and demanded the withdrawal of the police surveillance to which he was subjected. Upholding the extraterritorial privileges of the diplomatic envoy, he allowed himself to walk freely in the street. He protested against the refusal of local people to supply the envoy with articles for his use, declaring that it would be a violation of the treaty to do so.² At the same time, he did not forget to exert a psychological pressure on the Japanese authorities, pointing to the China situation which had arisen in consequence of the Arrow affair. T. H. Donker Curtius, the Netherlands Consul in Nagasaki, informed the Shogunate of the Anglo-Chinese imbroglio, pointing up the advisability of concluding a commercial treaty between Japan and the Netherlands—a treaty favourable to Japan. Thus, on October 16, 1857, a supplemental treaty (*Additionele Artikelen, overeengekomen tusschen de Nederlandsche en Japansche Gevolmagtigden*) was signed at Nagasaki.³ This was the first commercial treaty ever signed by Japan with a foreign Power. But then Japan had been trading for long with the Netherlands at Nagasaki, and the treaty meant by no means the adoption by Japan of the general policy of open ports. Harris' insistence upon the country being opened to foreign trade in conformity with the general principles of international society, therefore, could not only shake the foundations of the old conception of things to which Japan was still adhering.

In diplomatic negotiations, the plenipotentiaries on the other side did not fail to appeal to the Law of Nations. In the negotiations of those days, Dutch and Chinese (particularly the former) were the usual languages used as medium. English was first translated into Dutch and then re-translated into Japanese. For the Japanese delegates, the order was reversed, and the translation was anything but excellent. The delegates on the other

² The Complete Journal of Townsend Harris, First American Consul General and Minister to Japan, published for the Japan Society, New York, 1930, pp. 297, 457.

³ Okuma Shin, *The History of Far Eastern Diplomacy in the Closing Period of the Shogunate*, 1944, Tokyo, p. 74.

side frequently used the term of the Law of Nations, but the Shogunate officers had little knowledge of the system, to say nothing of individual rules of that law. These officers, however, took the general meaning of the term and variously rendered it as 万国普通之法 (Bankoku-futsu-no-hō; common laws of nations), 万国普通之常例 (Bankoku-futsu-no-jōrei; Usual practice of nations), 万国普通之公法 (Bankoku-futsu-no-kōhō; Common public laws of nations), 欧羅巴之法 (Yoroppa-no-hō; Laws of Europe), or 欧羅巴通国之法 (Yoroppa-tsukoku-no-hō; Common laws of European countries). Their understanding of the subject was only rudimentary. However, the traditional culture of the Japanese, especially the knowledge of Chinese classics, stood them in good stead, for they intuitively understood the general tenor of the Law of Nations as 天地之道 (Tenchi-no-michi; Nature of the universe) or 宇内之公道 (Udai-no-kōdō; Public road of the world), which recalled the Confucian theory of 天道 (T'ien-tao; Way of Heaven). The Japanese thought had long been nurtured by Buddhism and Confucianism, and the Shogunate officers revealed the influence of Confucianism, particularly of the school of Chu-tsu (1130-1200). Neo-Confucian Philosophy 朱子学 (Chu-tsu hsüe), otherwise called 宋学 (Sung Study), was a school of Chinese philosophy established by Chou Tung-I (1017-73), developed by Chang Hêng-Ch'ü and the Ch'êng brothers (Ch'êng Ming-Tao and Ch'êng-I-Ch'uan), and completed by Chu-tsu. This school, which emphasized reason and order, was the natural law school of the Orient. The doctrine of Chu-tsu was recognized by Tokugawa Ieyasu (1542-1616) as the official philosophy of the Shogunate and the advisers to the Shogunate administration were chosen from among the followers of this school.

There is no existent record showing that the foreign negotiators were anxious enough to see how the Japanese accepted the term of the Law of Nations which they were so fond of using. Upon an interrogation, Harris had a long and unpleasant debate about his diplomatic rights.⁴ Meanwhile the Japanese were preparing their minds, in order to revise the traditional policy of exclusion and to adopt the policy of open ports; further, they were learning how to make use of the Law of Nations in their domestic relations, in order to overcome opposition. If the open port policy was what the public road of the world required, there would be no ground for the followers of Confucianism to refuse any longer the opening of the country to foreign intercourse.

A pioneer diplomat of Japan, Hotta Bicchu-no-Kami Masayoshi (1810-64) who acted as host to Harris, had learned a conception of the Law of Nations before the Envoy came up to Yedo, from the letters which he received from Shimoda. In the spring of 1855, he took up the pen and wrote refuting the obstinate officials and asserted that mutual trade was the

⁴ The Complete Journal of Townsend Harris, *op. cit.*, pp. 487, 491.

common law of nations. He sought the excuse for the opening of the country in the Law of Nations, and frankly admitted that it was now inevitable to revise the exclusion policy. Regarding the request of Harris to come up to Yedo, Hotta refused to listen to the bigoted opponents, and in the face of the majority who were still in the old rut, he advised the Shogun, Tokugawa Iesada, in favour of the new policy. Obtaining the permission of the Shogun for the presentation by Harris of the state document, for his visit to Yedo, and for his attendance at the Castle, Hotta had the proclamation issued, declaring that Harris would now be received in Yedo. This proclamation of August 28, 1854, not only recalled the precedent prior to the Exclusion Ordinances (1635 and 1639) of the Kan'ei era, but it had the usual practice of nations for its ground. Ii Kamon-no-Kami Naosuke (1815-69), a strong proponent of amity and commerce with the United States of America, had presented in 1853 a memorial, in which he argued that it was the way of heaven and earth to minister to each other's needs in trade.

The Shogunate authorities began the effort for the study of the Law of Nations in order to meet the need of diplomatic negotiations with foreign countries but also for the furtherance of the new policy. Being believers in Confucianism, they interpreted the naturalistic character of the Law of Nations in an Oriental manner, treating it as a panacea for the policy of opening the country to foreign intercourse and commerce.

II. *Beginning of the Study of the Law of Nations in Japan*

The first Japanese who made a study of the Law of Nations in the institutions of the Netherlands were Nishi Shūsuke (later Amane, 1826-94), Tsuda Shinichirō (later Masamichi, 1829-1903), Enomoto Kamajirō (later Takeaki, 1836-1908), etc. In 1862, the Shogunate Government, while placing the order of a warship with the Netherlands, sent at the same time a group of students, 15 in number, to that country, Uchida Tsunejiro (later Masao) acting as the leader of the group. Leaving Japan in June, 1862, and going by way of the Cape of Good Hope, they arrived at Rotterdam in April the next year. After acquiring knowledge and technics in their several fields, they returned home to contribute to the development of Japanese culture in their respective spheres.

At the university of Leyden, Nishi Shusuke and Tsuda Shinichiro studied Jurisprudence, the Law of Nations, and Constitutional Law under the personal guidance of Prof. S. Vissering. Returning to Japan earlier than the others, they both served the Shogunate, Nishi lecturing on the law of nations, and Tsuda on constitutional law. Later their lectures were edited and published. These works were well known Nishi's 万国公法 (Bankoku-kōhō;

Law of Nations) and Tsuda's 泰西国法論 (Taisei-koku-hō ron; Constitutional laws of Western Countries). Nishi's book was in four volumes printed from wood-blocks.

Enomoto Kamajiro, assistant leader of the group, who studied naval matters, received instruction from Frederich, a Dutch professor, in the *Règles internationales et Diplomatie de la Mer* written by the French savant, Jean Félicité Théodore Ortolan (1808-74). He came home in 1867 on board the warship Kaiyō-maru built in a dockyard at Dordrecht, and made use of his knowledge of maritime international law on various occasions as assistant commander of the Shogunate navy. When he made his escape to Hakodate, he notified the Ministers of different countries and asked for the recognition of his force as a belligerent body, and planned the first colonization of Hokkaido in order to fulfil the conditions of belligerency.⁵ Enomoto was later appointed Vice-Admiral. In 1874, he became the Japanese Minister to Petersburg and signed the Treaty of Exchange of Saghalien and the Kurile Islands. In 1888, Ortolan's book on Maritime International Law, *livre troisième, état de guerre*, appeared in Japanese translation at the hands of the Japanese navy.

In 1865, with a view to establishing iron-works in Yokosuka, Shibata Hyuga-no-Kami, magistrate for foreign affairs, was dispatched to Great Britain and France as special commissioner. Fukuchi Genichiro (later Ōchi), 1841-1906, a member of the suite, had received an informal order to study the Law of Nations, but he failed to complete his studies on account of his inadequacy in the knowledge of French and other circumstances. Already in 1861, Fukuchi had joined the mission of Takenouchi Shimoosa-no-Kami, Matsudaira Iwami-no-Kami, and Kyogoku Noto-no-Kami, which was dispatched to the six countries of Great Britain, France, Russia, Holland, Prussia, and Portugal in order to negotiate a delay in the opening of treaty ports. Fukuzawa Yukichi (1834-1901), a prominent scholar of the Japanese Enlightenment, he it remarked, had also joined the mission. For Fukuchi, the visit of 1865 was his second one; it is presumed that he had enough opportunity to study the conditions of foreign countries. During this visit, he was interested in the newspapers. He came later to preside over the Tokyo Nichi Nichi Shimbun, but it was during this period that he had laid the foundations to become a well known writer. In 1869, Fukuchi translated from Hudson's English version the *Guide diplomatique ou Précis des droits et des fonctions des agents diplomatiques et consulaires*, 1832, written by the German author Baron Charles de Martens (1790-1863), and published the translation under the title of 外国交際公法 (Gaikoku-kosai-kōhō), in two volumes which were bound in Japanese style. This may be regarded as a by-product of his foreign visits. This *Guide diplomatique* was

⁵ Osatake Takeshi, *the Story of Diplomacy in the Closing Period of the Shogunate*, 1930, Tokyo, pp. 3, 378-392.

translated into Chinese by 丁韪良 (Ting Wei-liang otherwise William A. P. Martin, 1827-1916) and published with the title of 星軺指掌 (Hsing yao chih chang).

The science of international law introduced into Japan through Chinese translations exercised a very large influence. The Chinese defeat in the Opium War and the Arrow affair was a serious shock to the Japanese, which event accelerated the opening of Japan to foreign intercourse and the signing of the Harris treaty (1858). After the Opium War, the study of the West was in vogue in China, with many Westerners coming over to that country; as a result, a large number of books on the West appeared, which publications were directly exported to Japan. In 1864, the American missionary above referred to and known as 丁韪良 (Ting Wei-liang) published in Peking in Chinese translation the Elements of International Law of an American author Henry Wheaton, (1785-1848), under the title of 万国公法 (Wan kuo kung fa). In 1850, Martin, or 丁韪良, a Presbyterian preacher, had arrived at Nigpo; not only did he become leader of the Christian Church in Peking, but he had a good knowledge of the native language. Commencing the Chinese translation of the Bible, he first published the Gospel of St. John which was fraught with the Logos idea of Greece.⁶ He rendered the first verse "In the beginning was the Word, and the Word was with God, and the Word was Good" as (T'ai ch'u yu tao, tao yü shang ti t'ung tsai, tao chiu shih shang ti) (In the beginning was the Way, Natural Reason, and the Way was with God, and the Way was God.) In 1854, he wrote the Evidences of Christianity, which Burdon translated into Chinese and published in three volumes with the title of 天道溯原 (T'ien tao su yüan)⁷. This was an attempt to prove the Gospel and Christianity in a manner consonant with the Oriental thought of Heaven and the Way. The Chinese version of the book was read with admiration in China, and in May, 1886, it was translated into Japanese by Nakamura Masanao (1832-91) and published in Yokohama, to exercise a useful influence in Japan.

Martin became president of the Tung Wen Kuan, Peking University, and did his best in the training of the Foreign Office (Tsunqli Yamen) officials. Besides the translation of Wheaton, he also translated into Chinese works of Theodore Dwight Woolsey (1801-89) and Johann Kaspar Bluntschli (1808-81). Woolsey's Introduction to the Study of International Law, first published in New York, 1860, appeared in Chinese translation in 1877 under the title of 公法便覽 (Kung fa pien lan). Bluntschli's Das moderne Völkerrecht, published in 1868, was translated by Martin from M. C. Lardy's French version. This Chinese translation was published in Peking in 1880 with the title of 公法会通 (Kung fa hui tung). Imported into Japan, the

⁶ K. S. Latourette, *A History of Christian Missions in China*, New York, 1929, p. 430.

⁷ Latourette, *op. cit.*, p. 433. *China Mission Hand-Book*, Part 2, p. 40.

latter book was translated into Japanese by Kishida Ginko in 1881.⁸

Martin rendered the Law of Nations as 万国公法 (Wan kuo kung fa) or simply as 公法 (Kung fa); his attempt to link up the Oriental thought of Heaven or the thought of Natural Reason with the Occidental idea of the Natural Law, making it easier to introduce into the Orient the Occidental thought and institutions, must be highly appreciated. Martin, who lived for many years in China and was conversant with the Oriental modes of thought, not only made use of the theory of T'ien Tao in the propagation of Christianity, but seems to have utilized the knowledge of the theory in the explanation of the Law of Nations. He did this not merely as a matter of convenience but was himself an adherent, it is presumed, of the Natural Law school. But when we compare his translations with the original texts, it is seen that the ideas of the Natural Law are more prominent than in the original. He stated that the sources of the Law of Nations are in the Natural Law, asserting the identity of the Natural Law and Law of Nations. By using discretion in his translations, he attempted to introduce to the Orient, it must be said, the theory of the Law of Nations strongly tinged with the Natural Law.

Wheaton's Elements of International Law in Martin's Chinese translation was imported into Japan in the following year and was reproduced in Tokyo by the Kaiseijo, the university of the Tokugawa Government. The intellectual class of those days consisted very largely of the scholars of Chinese classics, and those who were able to read Western writings in the original were few and far to seek. The intellectuals, therefore, vied with one another in reading Martin's translation, and this exercised an extremely large influence in the formation of the new orientation. This book, which was later reproduced in various places, and also translated into Japanese, was regarded as possessing the authority of a Bible. In 1868, that is, Tsutsumi Koshiji translated it into Japanese. His translation, which was easy to read, ended with Book II, Chapter II, Paragraph XIII. In May the same year, Uriu Mitsutora, it has to be remembered, translated into Japanese Wheaton's International Law directly from the edition of William B. Lawrence.

Woolsey's International Law was translated and published by Mitsukuri Rinsho (1846-97) in March, 1873, under the title of 國際法一名万国公法 (Kokusaiho ichimei Bankokukohō). Mitsukuri will long be remembered as the scholar who proposed the settled Japanese rendering of Kokusaiho for the Law of Nations.

The Commentary on International Law by James Kent, (1763-1847), was translated in 1874 by Daion Ryutarō, etc. of the Colonization Department during the Expedition to Formosa, for the convenience of negotiations with

⁸ W. Martin: *A Cycle of Cathay*, 1896, pp. 234, 235. *The Awakening of China*, 1907, pp. 288 et seq. *The Lore of Cathay*, 1901, p. 427.

the Chinese Government. The Elements of International Law by Henry Wager Halleck (1815-72), Major-General of the United States Navy, was translated by Akiyoshi Shogo in 1874 and was published in Tokyo in 1878.

August Wilhelm Heffter (1796-1880) was a professor of Berlin University, whose work on *Das europäische Völkerrecht der Gegenwart auf den bisherigen Grundlagen*, translated jointly by Arakawa Kunizo and Kinoshita Shūichi, was published by the Department of Justice in 1877. Of this book, there was the French version of F. Heinrich Geffcken, but the translation was presumably made directly from the German original.

In the opening years of the nineteenth century, most of the international lawyers were either of the Natural Law school or of the eclectic school more or less closely allied to the former. Wheaton, Ortolan, Woolsey, Halleck, Bluntschli—writers on International Law who were introduced to Japan in translation—while standing on the eclectic grounds, made an affirmation of the Natural Law. Vissering, in particular, adhered to the Natural Law. Wheaton in Martin's translation had this tendency to the Natural Law greatly strengthened; while Kent, Heffter and Martens, though classed as positivists emphasizing the conventions among nations, were not extreme in their assertions, lending their influence by no means to the denial of the Law of Nature. The study of International Law in Japan began from the approach to the Western theories which had the tendencies toward the Natural Law.

III. *The Meiji Restoration and the Law of Nations*

The Meiji Restoration meant at once the downfall of the Tokugawa Shogunate and the renovation of the political regime. The coming of the foreign warships shook the foundations of that Government. The financial difficulties of the Shogunate, poverty of the Samurai class, and agrarian discontent—these phenomena announced the internal collapse of feudal society. The riots occurring in many places of peasants and Ronins and such like events demonstrated the unfitness of the old regime for the new call. The rising influence of money-lenders of Osaka and Sakai heralded the nature of the coming age. Men desired political reforms and economic reconstruction under the authority of the Emperor of Kyoto, by bringing about the downfall of the Shogunate Government of Tokyo. The movement which accelerated this Restoration of the Imperial authority and the reforms was carried through under the banners of the reverence for the Emperor and expulsion of foreigners.

Toward the close of 1867, the Tycoon, Tokugawa Yoshinobu (1837-1913), returned the reins of government to the Emperor of Kyoto. The

New Regime of Meiji which had attained the aim of reverence for the Emperor, was not so foolish as to get perplexed about the policy of expelling foreigners. The party or parties, who carried through the restoration of the Emperor to the seat of authority, tightened liaison with Harry S. Parkes, the British Minister, and sections of the Diplomatic Corps, and New Government, which was still very weak, was rather anxious to obtain the confidence of foreign countries. The New Regime had the need of fiscal revenue and desired the opening of the country, and could not but think of the convenience of donations from the traders. The expulsion of foreigners, which had indeed been intended as tactics to bring down the Shogunate, could not become the policy of the New Regime. The change of tactics was, therefore, found necessary: the open port policy which the Shogunate had adopted with extreme reluctance was now pushed forward with energy. And what was made use of in this change of tactics was the conception of 宇内之公法 (Udai-no-kōho; Public Law of the Universe).

As noted in the preceding Chapter, the Meiji regime was established at a time when, in this country, the idea of the Law of Nations was rapidly spreading. Martin's translation of Wheaton's International Law had been read by the informed groups of the country, who, being Confucianists, were now able to accept the theory of International Law as their own, linked up as it was with the theory of T'ien Tao (天道). The school of Chu-tsu had wanted to see the reason and order of things by the method of 格物窮理 (Kê Wu Ch'iung Li), but now they came to regard the method of modern science, which stood upon the ground of the Natural Law of the Occident, as more exact compared with the attempt of "Investigating things and carrying knowledge to the utmost extent (格物窮理, Kê Wu Ch'iung Li).⁹ The classical theory of Tien Tao was now newly linked up with Occidental civilization, supplying the New Government with a motive power for reforms.

The modern idea of the Natural Law concerns the rule of conduct deriving from the nature of man as a rational being. The Natural Law, which respects as it does the reason and nature of things, is rather inclined to be conservative. When, however, the idealistic aspect of the Natural Law is taken hold of, and this used for the criticism of the existing institutions, it will be seen that it forms an instrument of change and progress. The Natural Law contains within itself elements not merely of naturalism but of idealism, and individualistic idealism, when confronted with feudal absolutism, easily becomes the doctrine of the Enlightenment asserting the laissez-faire. The Chu-tsu school whose teachings had formed for the last three centuries the spiritual basis for Japan as official philosophy of the Shogunate, came to supply the chance for a change from conservatism to

⁹ "Kê wu ch'iung li," a quotation from 大学 Ta hsüe (The Great Learning), was highly prized by the Chu-tsu school as the Golden Rule. James Legge, *the Chinese Classics*, Hongkong, 1861, Vol. 1.

renovationism, after a baptism of the Natural Law of the Occident. The Law of Nations as a term, which the Shogunate officers learned from Harris, rather meant the usage or practice among nations, but on the introduction to Japan of Martin's Chinese translation of Wheaton, a noteworthy change occurred; they came, that is to say, to regard the Law of Nations as the Law of Nature or the Public Law of the Universe itself. The conception of the Law of Nations was turned hereupon into an instrument of renovation as the hands of the New Regime.

In January, 1868, the Meiji Government notified the Ministers of different countries, that it alone was the *de jure* Government representing Japan, making it clear that this Government monopolized the diplomatic authority. On January 15 of the same year, the New Regime issued the proclamation on the opening of the country to foreign intercourse, in which document it was stated that matters of foreign intercourse would be regulated by the public law of the world. At the same time, the presentation at court of the diplomatic representatives was planned: on February 7, 1868, that is, the chiefs of six feudal clans headed by Matsudaira Yoshinaga (Shungaku), 1828-90, jointly memorialized H. I. H. Prince Arisugawa urging the desirability of receiving at court the foreign representatives, the treatment of the Western Powers on an equal footing with China, and the fixation of court institutions and ceremonials, thus supporting the plan of receiving the foreign envoys in audience by the common public laws of nations. Upon this memorial, an edict was issued on February 15 of the same years, and further, on February 17, a proclamation was issued to the effect that this audience would take place in accordance with the common rites of nations. In an accompanying document from the Three Offices of the Dajōkan, this plan was justified by an appeal to the common public laws of nations. The parties, who had advocated the expulsion of foreigners, changed over to the out-right policy of opening the country to foreign intercourse, now that they came to power. This change of policy invited a strong opposition on the part of ultra-nationalists, causing serious anxiety to the New Regime; but here again the common public laws of nations served as a sedative. On February 30, the French and the Netherlands Ministers were received in Kyoto, and on March 3, the British Minister had a similar audience, the foreign Ministers leaving Kyoto on March 4. In this manner, the audiences came off—an unprecedented event which set a new example. In these audiences, the foreign envoys when saluting the Emperor were seen standing. This needs recording for the Japan of these days.

In view of the attempt on the life of British Minister Parkes, the Government issued, March 4, 1868, a declaration for the protection of foreign envoys, prescribing a severe punishment for international law-breakers. It is interesting to note that when, on January 19th same year, the soldiers of

Bizen had injured the Britishers, it was asserted in the council of the Government that the punishment of the culprits be left to the Law of Nations.

In the discussion over the responsibility for the disloyalty of Tokugawa Yoshinobu, the Law of Nations again played a part. In appealing in February, 1868, for the suspension of the plan to send a punitive force against Tokugawa Yoshinobu, the same Matsudaira Yoshinaga remonstrated that it would amount to a violation of public law to call to account an ex-ruler who was now doing penitence in retirement. Before the evacuation of Yedo Castle, it was strongly urged that the castle be entered in good order in conformity with public law.

On the eve of a general attack on Yedo Castle, March 14, 1868, a Program of Five Articles was proclaimed. In the Fourth Article, it was stated that the evils of the past should be done away with and everything be based upon the justice of Heaven and Earth. This settled the national policy of opening the country and prosecution of reform. The author of this Fourth Article was Kido Takayoshi (1833-77), and research has established the fact that Kido stood under the influence of Wheaton's International Law as translated by Uryu Mitsutara.¹⁰

On January 23, 1868, the Accountant-General issued a notice calling for subscription to a national loan amounting to 3 million Ryo, (silver dollar), promising to redeem the debt contracted at an early opportunity in accordance with the common public laws of nations. At this period, the Law of Nations was very much in fashion; in fact, it was something of an open-sesame.

The Meiji Government, in July, 1872, discontinued the lunar calendar and adopted the solar system. This would accord, it was explained with a good deal of flourish, with the Law of Nations.¹¹

In no country, the Law of Nations, it is submitted, exerted so powerful an influence on the national law as in the period of Meiji renovation. In the early years of Meiji, the Japanese people knew that the Law of Nations possessed a primacy over the national law; but at the same time, it will be seen that in the reception by the Japanese of the Law of Nations, an Oriental adjustment and interpretation were found necessary.

¹⁰ Osatake Takeshi, *the Constitutional Ideas around the Meiji Renovation*, 1925, Tokyo, Chapter 9, Section 2, Paragraph 3.

¹¹ Shimazaki Tôson, *Before the Dawn* (wellknown historical novel in Japan), Part 2, Chapters 2 and 7.