

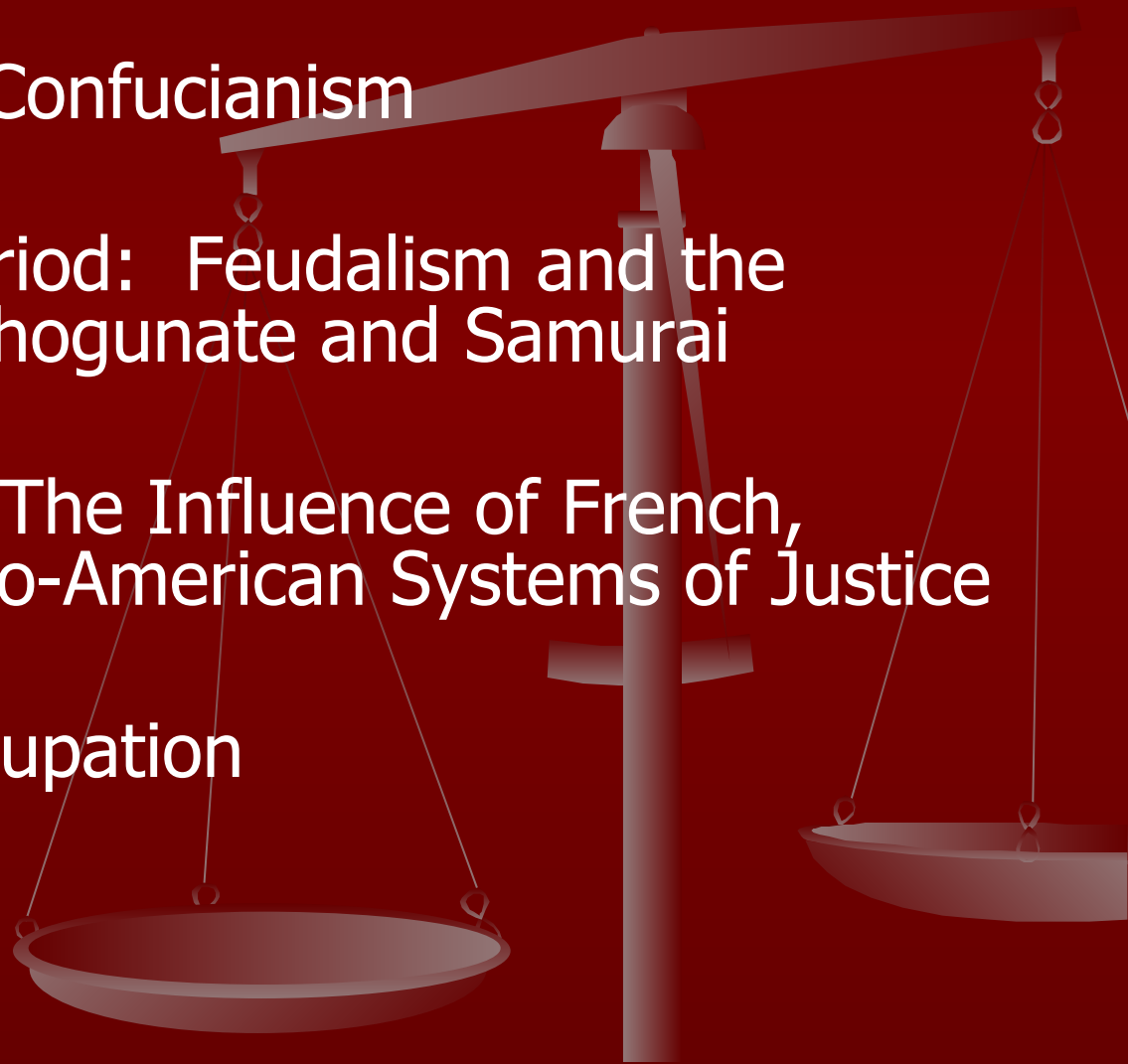
What is Justice in Japan?



A Comparative Analysis of the
Criminal Justice System in Japan

Crime and Criminal Justice in Japan: An Historical Overview

- Chinese Law and Confucianism
- The Tokugawa Period: Feudalism and the Influence of the Shogunate and Samurai
- Meiji Restoration: The Influence of French, German, and Anglo-American Systems of Justice
- The American Occupation



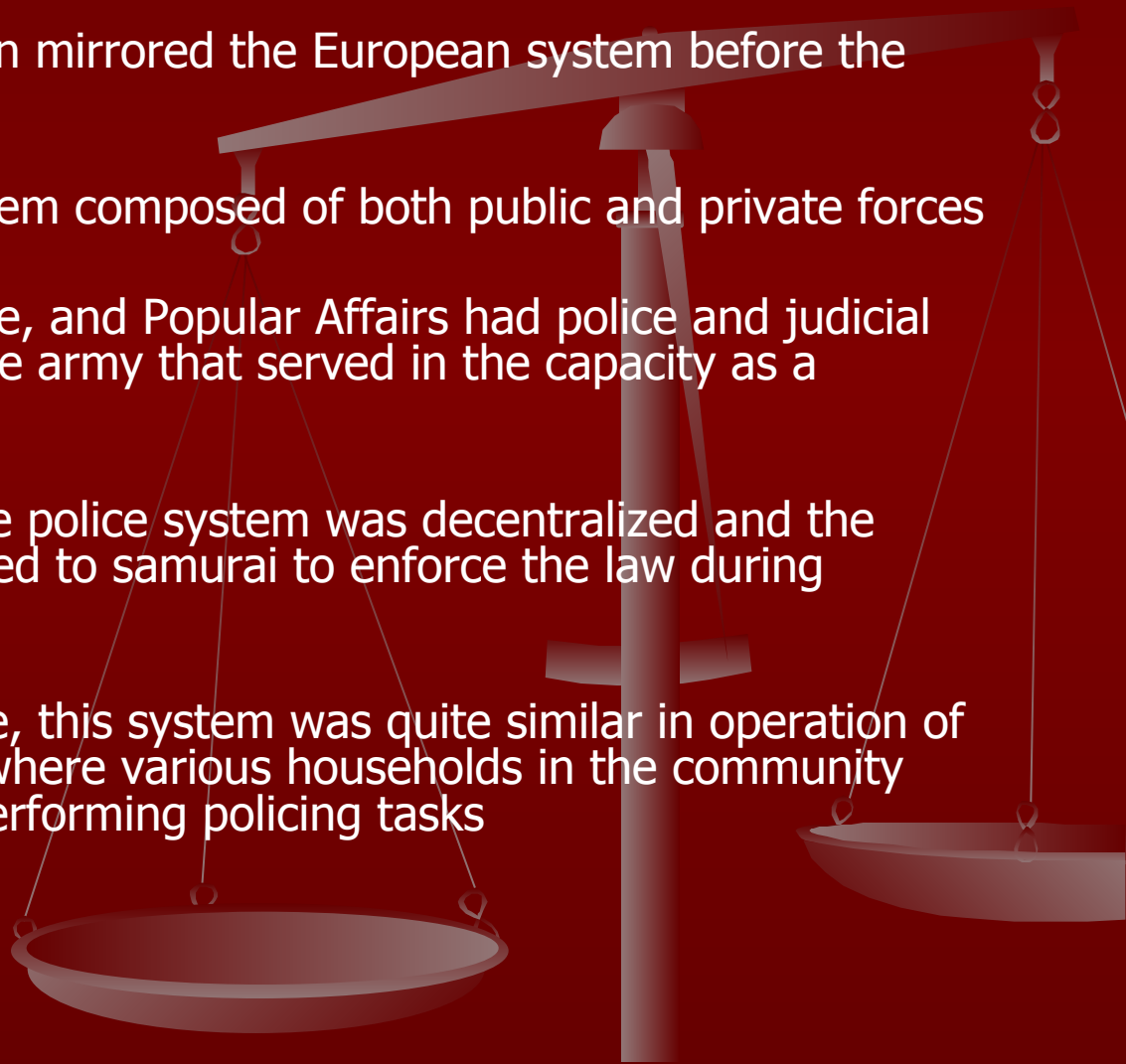
The Criminal Justice System in Japan



The Police

700- 1600 A.D.

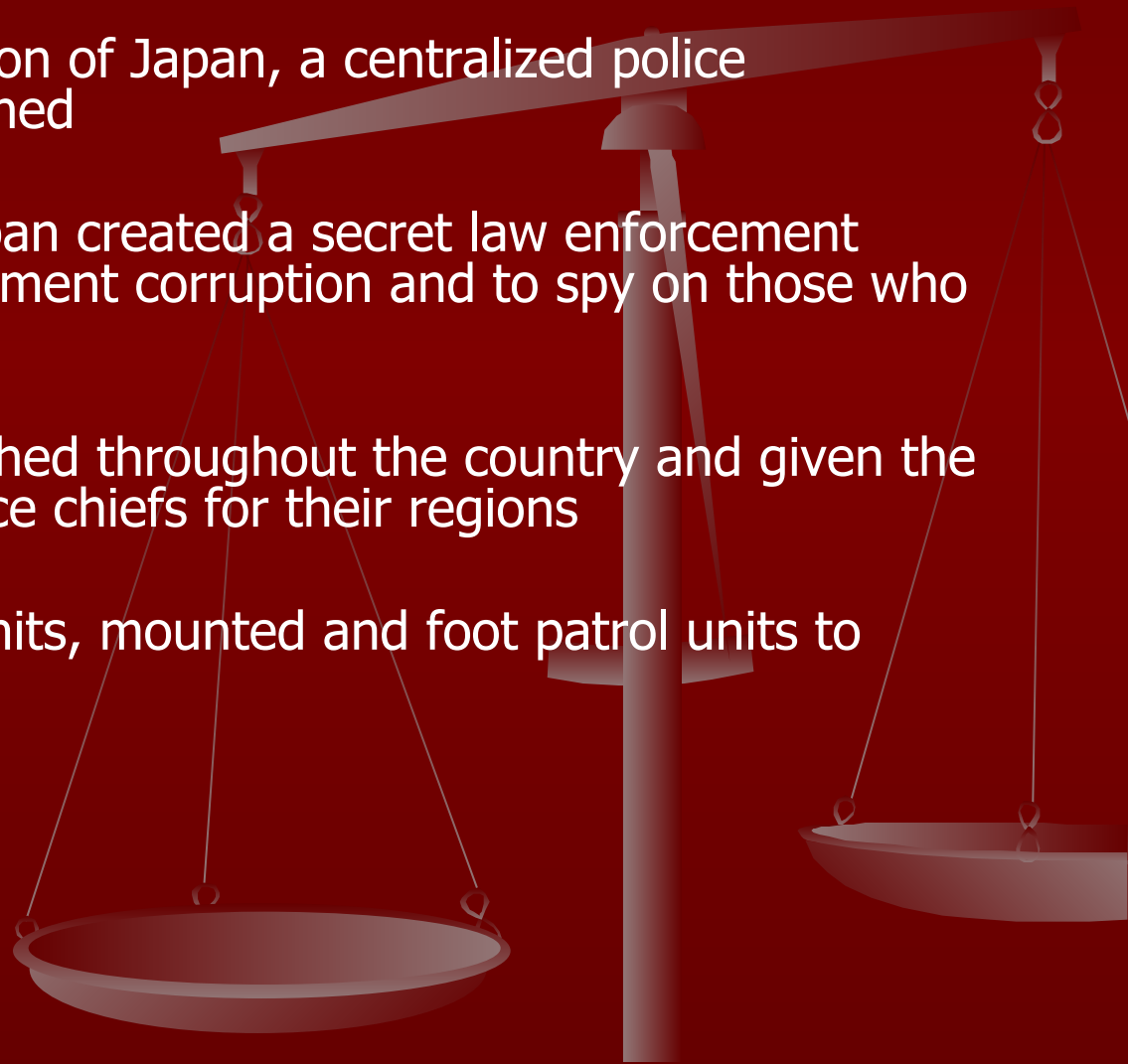
- The history of police in Japan mirrored the European system before the Meiji Restoration Period
- Japan had a dual police system composed of both public and private forces
- The Ministries of War, Justice, and Popular Affairs had police and judicial responsibilities and it was the army that served in the capacity as a professional police force
- During the feudal period, the police system was decentralized and the Shogunate increasingly turned to samurai to enforce the law during peacetime
- Mandated by the Taiho Code, this system was quite similar in operation of the English Tithing System where various households in the community were assigned the task of performing policing tasks



The Police

Tokugawa Period (1600-1868)

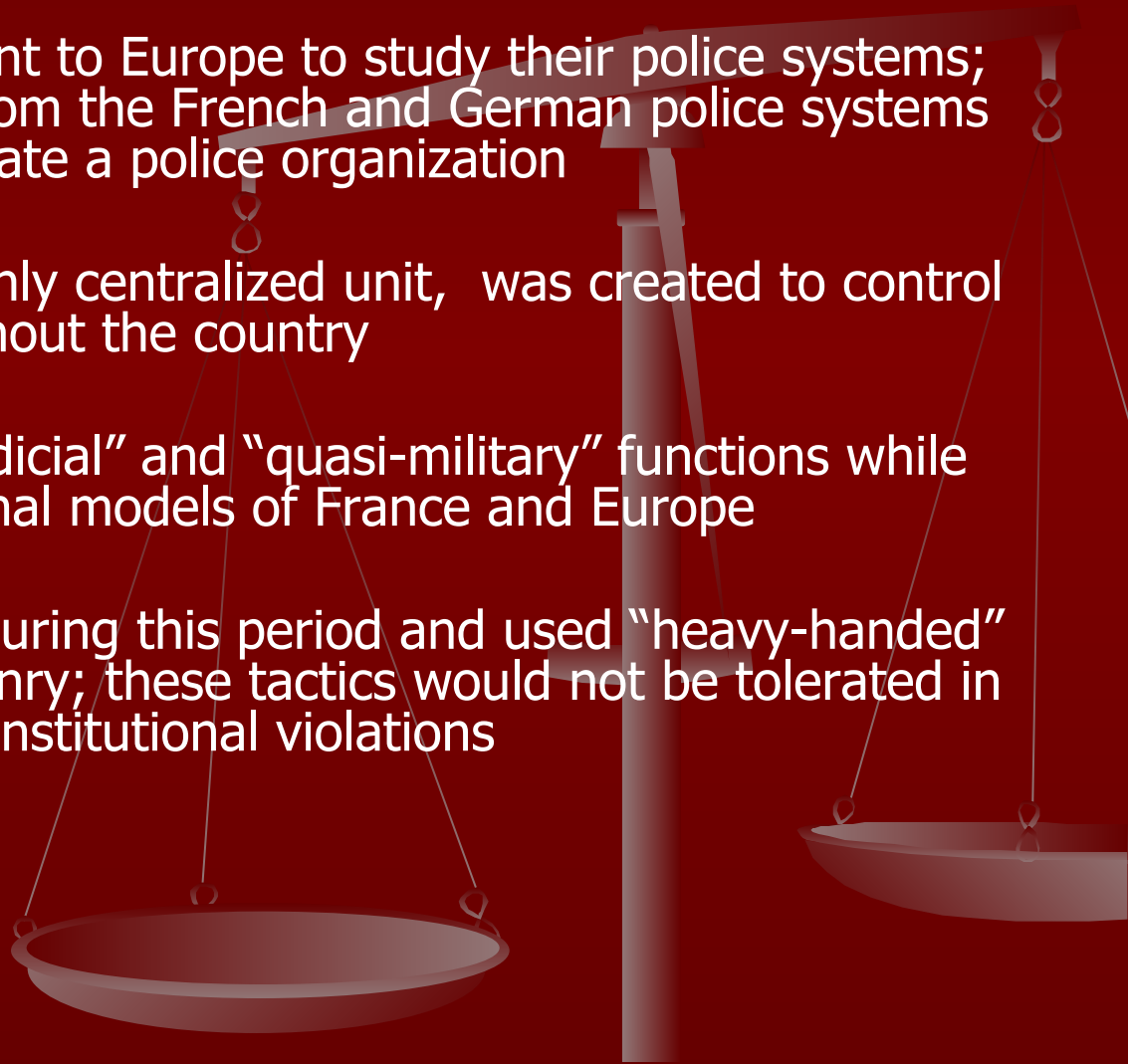
- With the marked unification of Japan, a centralized police organization was established
- Similar to the French, Japan created a secret law enforcement agency to identify government corruption and to spy on those who opposed Tokugawa rule
- Magistrates were established throughout the country and given the authority to serve as police chiefs for their regions
- They created detective units, mounted and foot patrol units to handle problems of crime



The Police

Meiji Restoration (1868-1912)

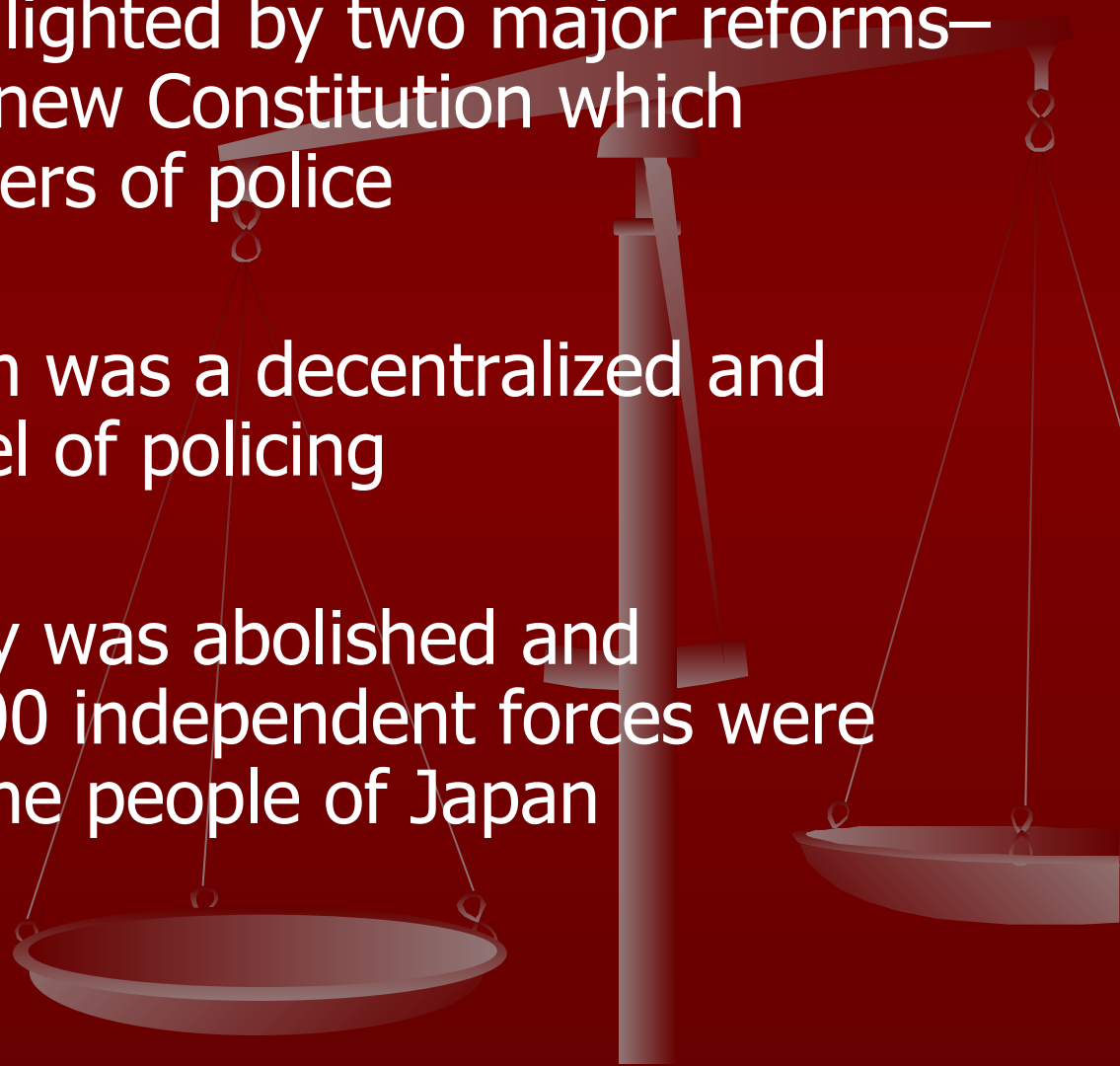
- Kawaji Toshiyoshi was sent to Europe to study their police systems; it, along with the ideas from the French and German police systems were later adopted to create a police organization
- The Home Ministry, a highly centralized unit, was created to control the police system throughout the country
- Police retained “quasi- judicial” and “quasi-military” functions while incorporating organizational models of France and Europe
- Police became powerful during this period and used “heavy-handed” tactics to control its citizenry; these tactics would not be tolerated in U.S. today because of constitutional violations



The Police

The American Occupation (1912-1948)

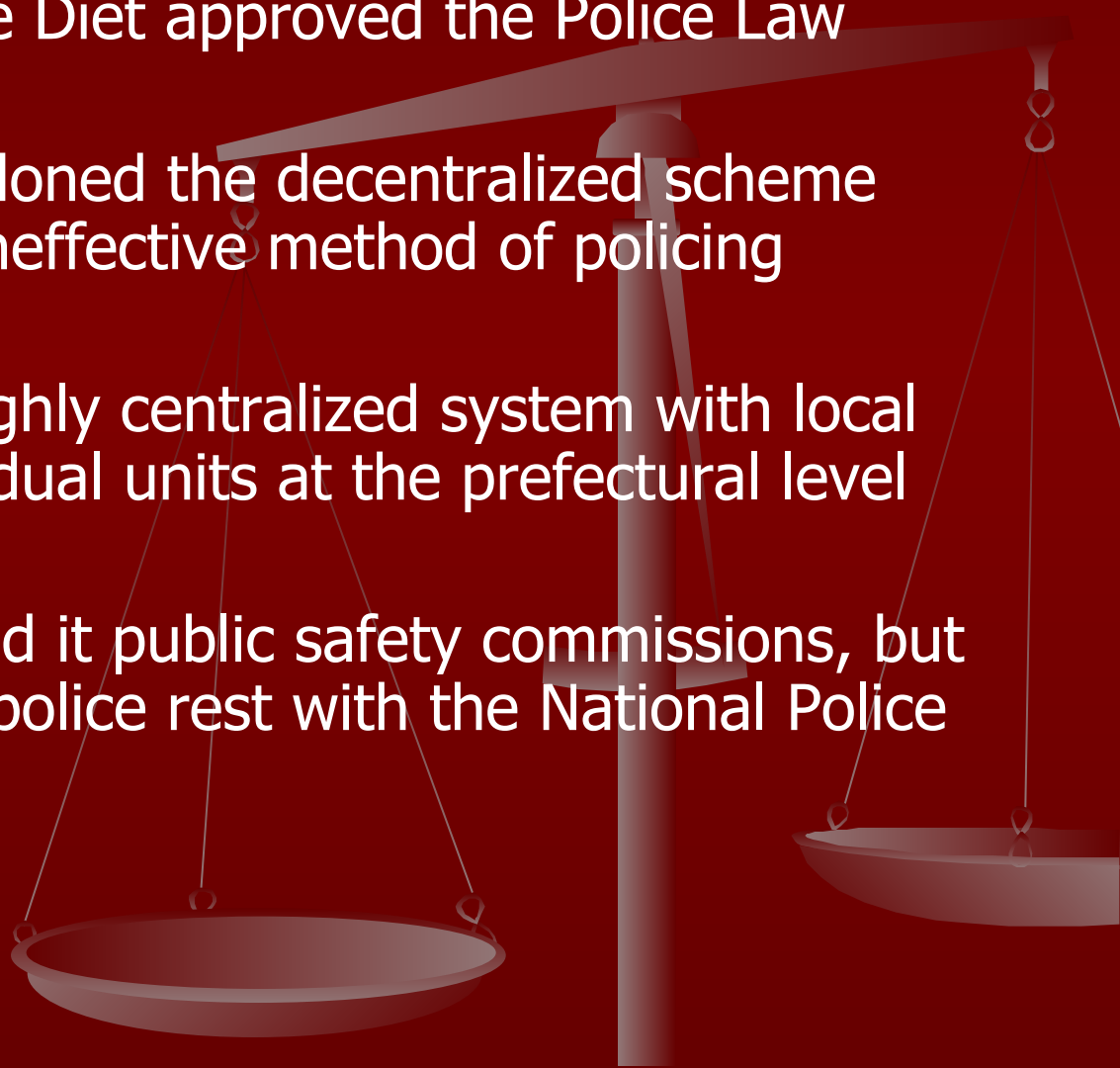
- This period is highlighted by two major reforms—the adoption of a new Constitution which restricted the powers of police
- The second reform was a decentralized and autonomous model of policing
- The Home Ministry was abolished and approximately 1600 independent forces were created to serve the people of Japan



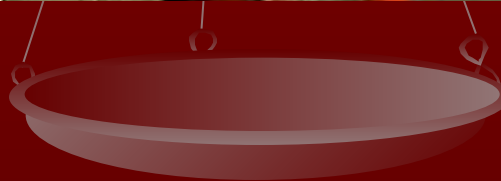
The Police

The Police Law (1954-)

- During this period the Diet approved the Police Law
- This legislation abandoned the decentralized scheme which proved to be ineffective method of policing
- Japan returns to a highly centralized system with local autonomy with individual units at the prefectural level
- The Japanese retained it public safety commissions, but the actual control of police rest with the National Police Agency



The Police Kobans



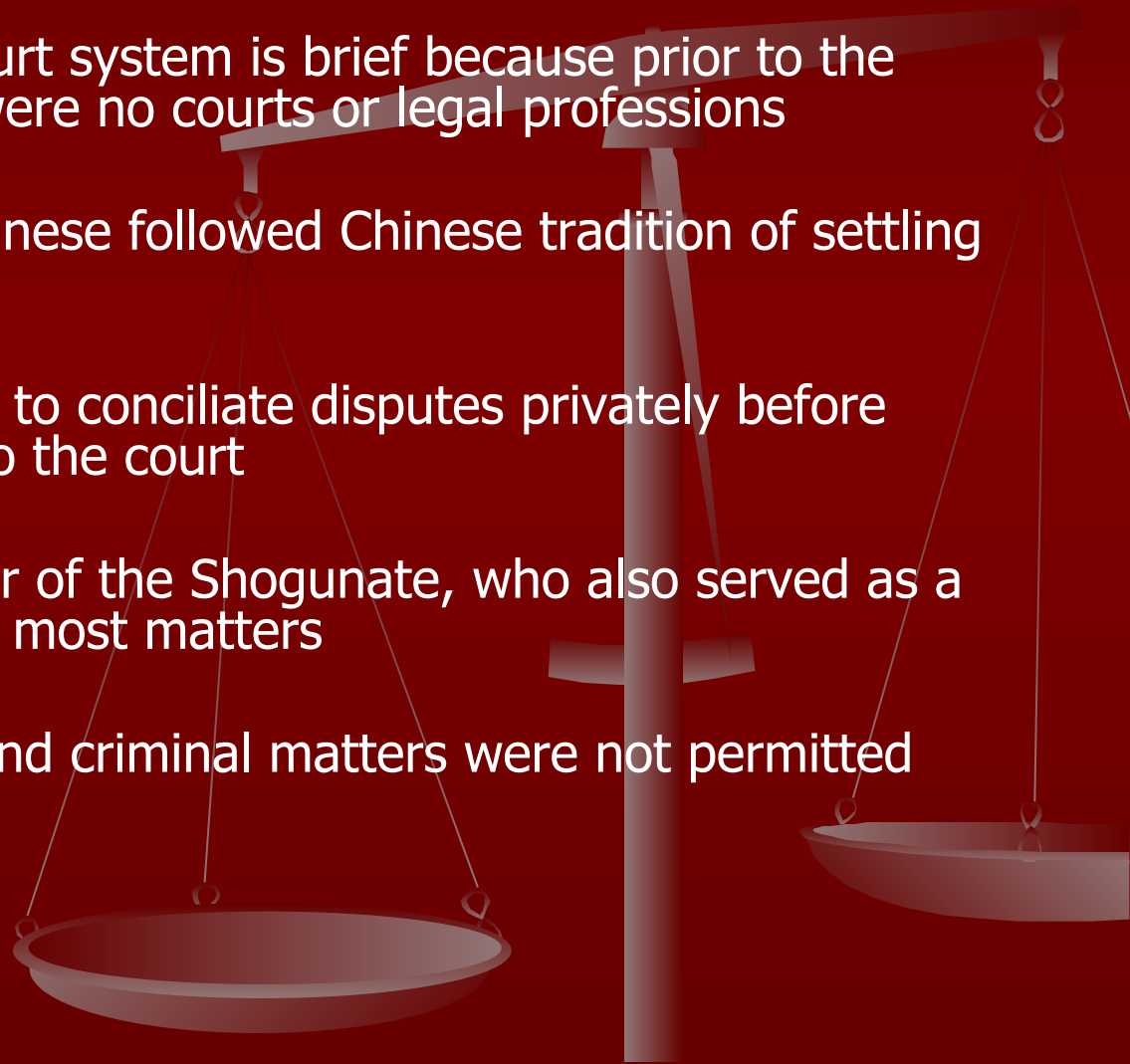
The Japanese Court System



The Courts

The Tokugawa Period (1600-1868)

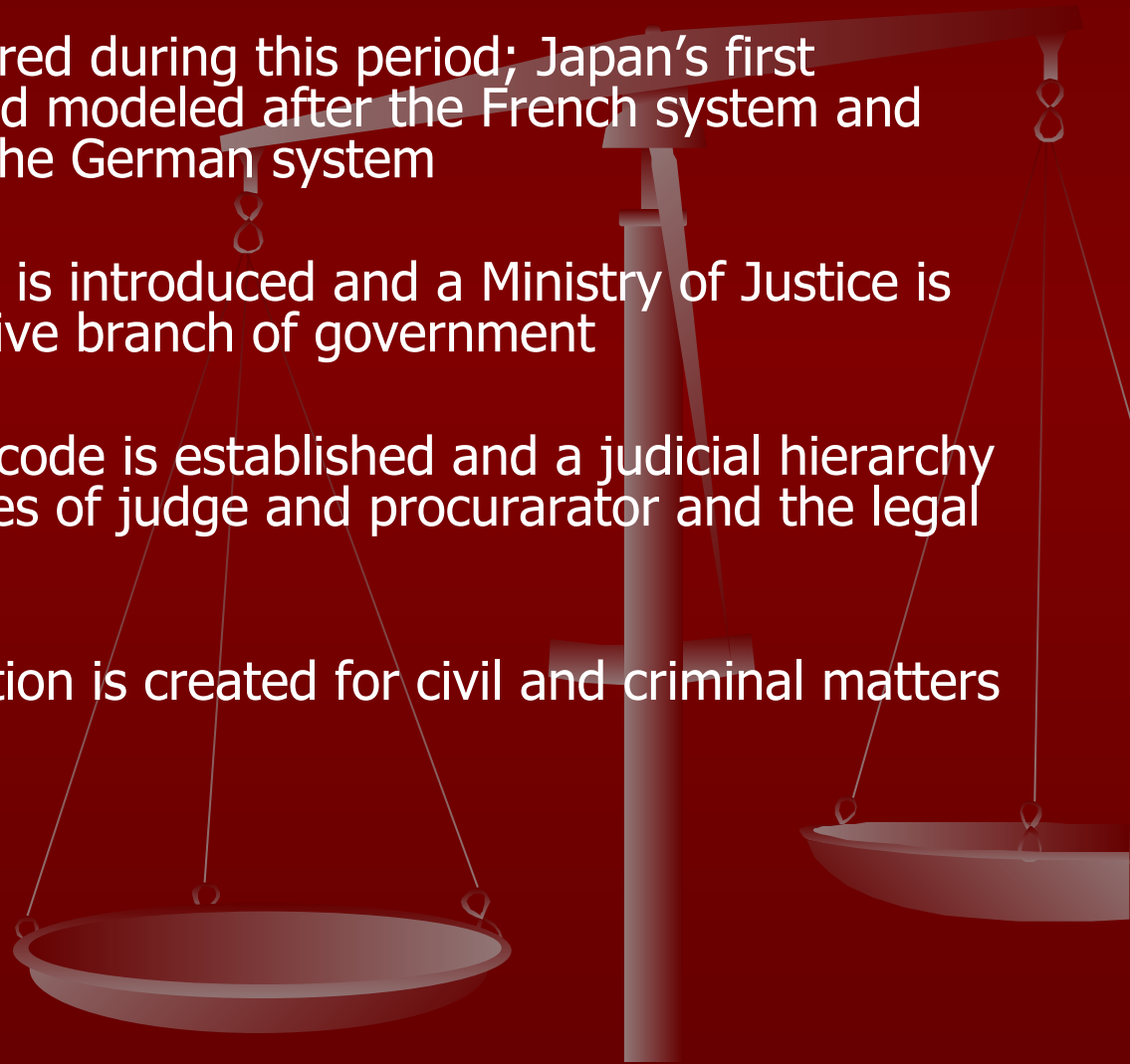
- The history of Japan's court system is brief because prior to the Meiji Restoration, there were no courts or legal professions
- Prior to Meiji period, Japanese followed Chinese tradition of settling disputes
- Attempts were first made to conciliate disputes privately before turning the matter over to the court
- Next, a local administrator of the Shogunate, who also served as a magistrate, would handle most matters
- The parties in both civil and criminal matters were not permitted legal representation



The Courts

Meiji Restoration (1868-1912)

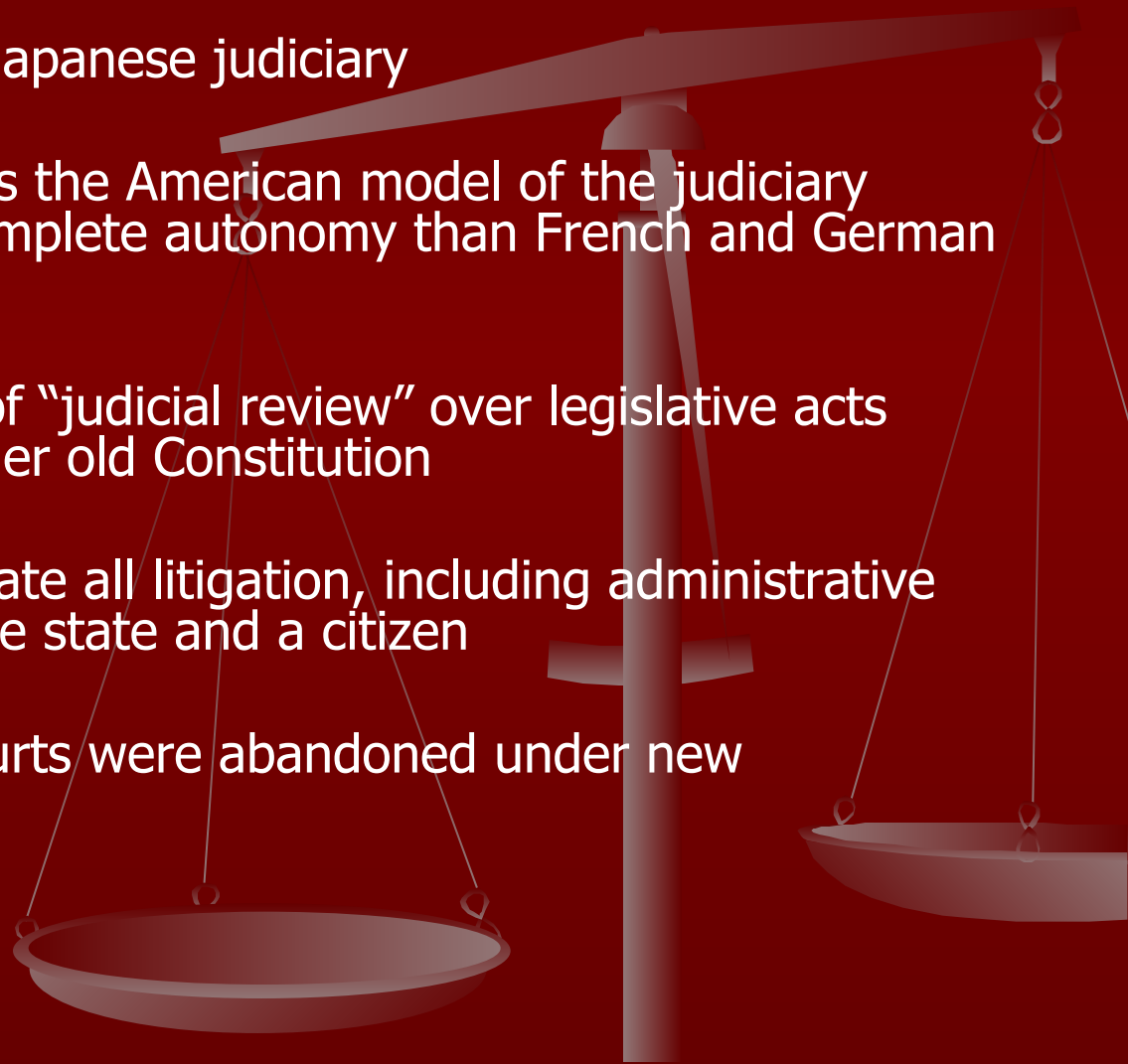
- Significant changes occurred during this period; Japan's first Constitution is created and modeled after the French system and later redrafted to model the German system
- The separation of powers is introduced and a Ministry of Justice is created under the executive branch of government
- In 1872, the first judicial code is established and a judicial hierarchy is created with legal offices of judge and procurator and the legal profession is also created
- Legal counsel representation is created for civil and criminal matters



The Courts

The American Occupation

- Reform continues in the Japanese judiciary
- A new Constitution adopts the American model of the judiciary which gave the courts complete autonomy than French and German systems
- Judges given the power of “judicial review” over legislative acts which was prohibited under old Constitution
- Courts could now adjudicate all litigation, including administrative court matters between the state and a citizen
- Special administrative courts were abandoned under new Constitution



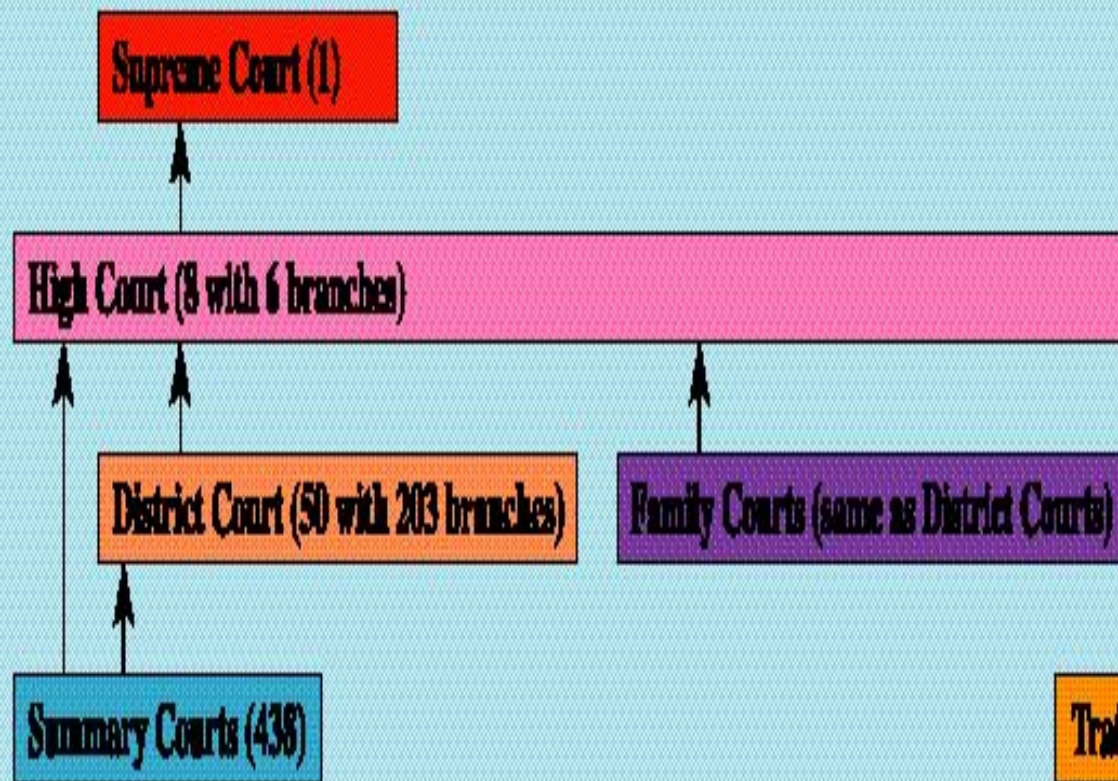


Fig. 1 Japanese Court System

Source: "The Japanese Legal System" Hiroo Tanaka, University of Tokyo Press

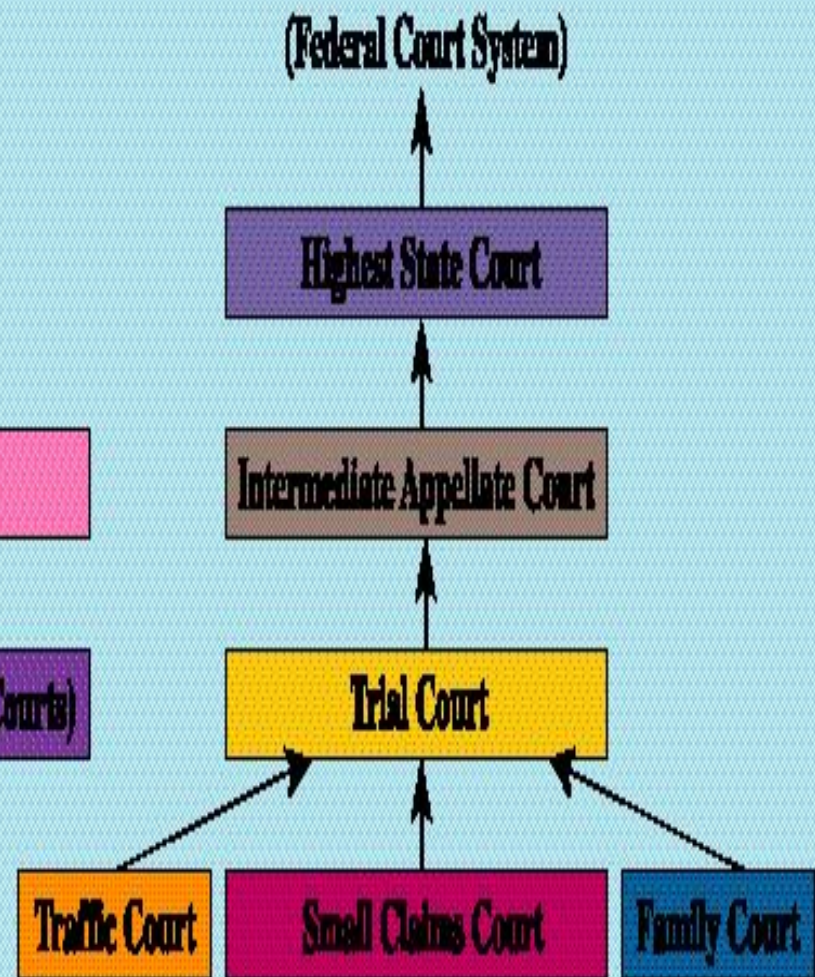


Fig. 2 US State Court System

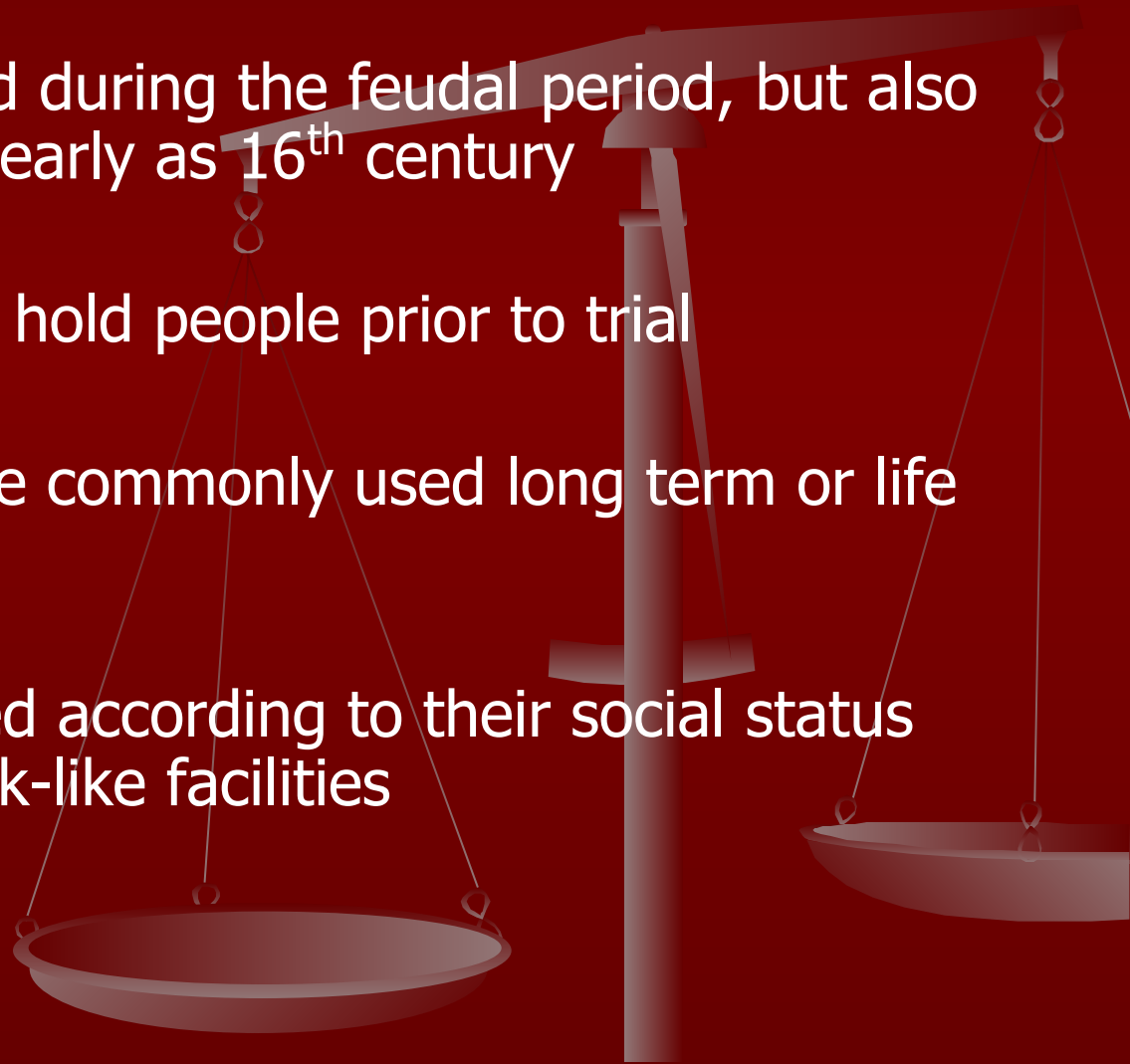
Source: "American Democracy 2nd Edition" St. Martin's Press NY 1989

Correctional System in Japan



Corrections Tokugawa Period

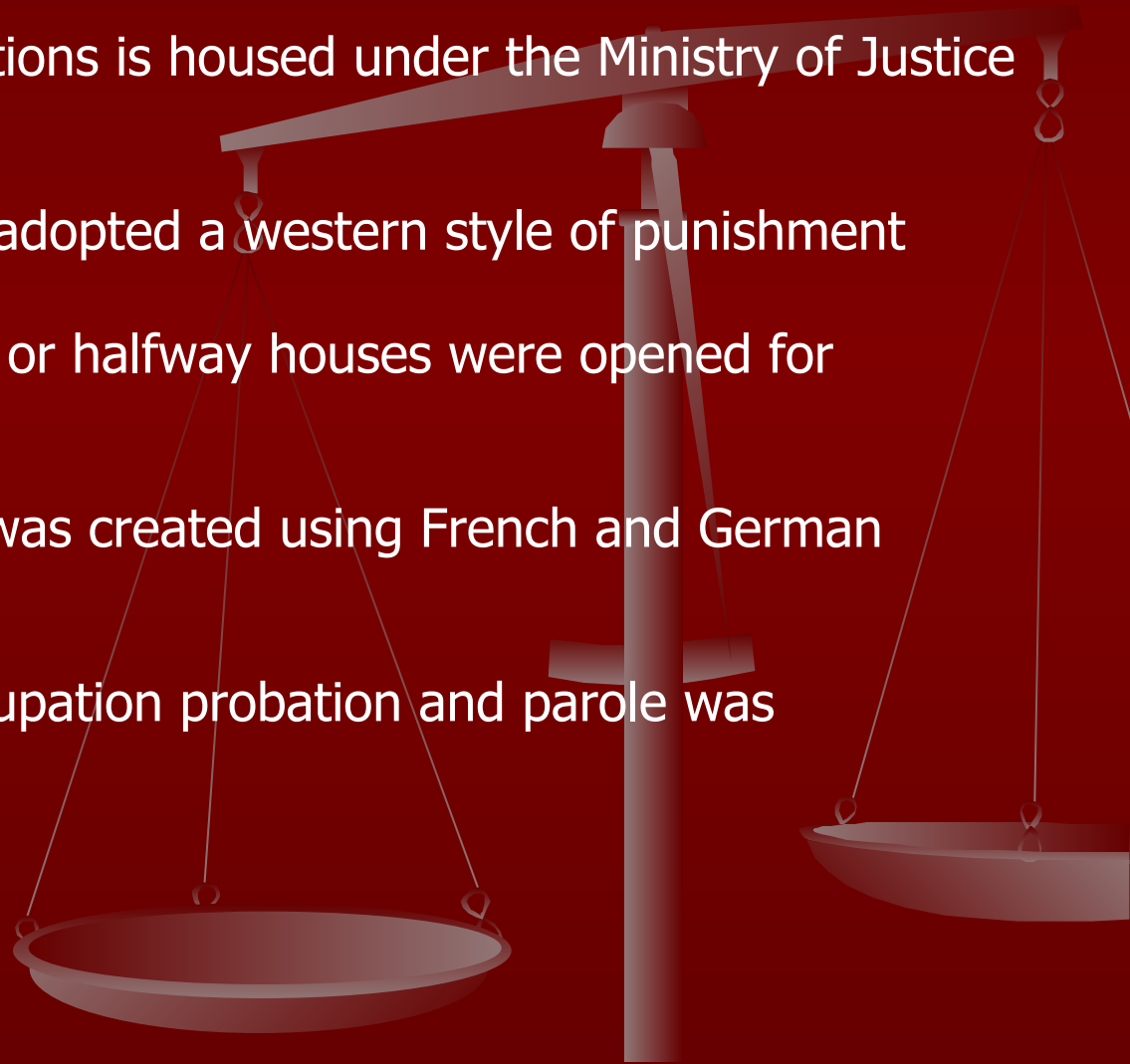
- Use of prisons existed during the feudal period, but also been said to exist as early as 16th century
- Usually functioned to hold people prior to trial
- Since executions were commonly used long term or life sentences were rare
- Prisoners were treated according to their social status and housed in barrack-like facilities



Corrections

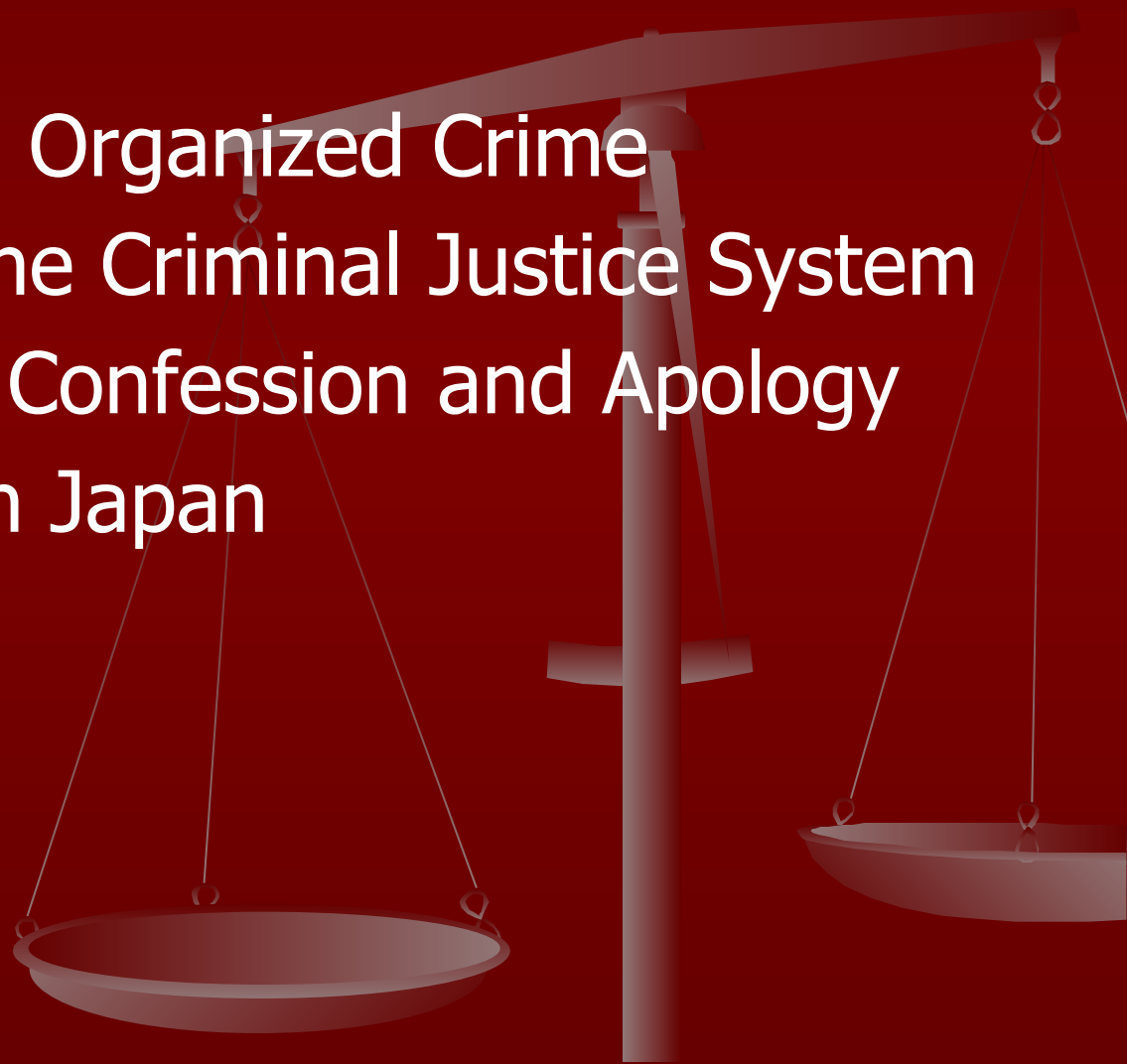
Meiji Restoration/American Occupation

- Japan's Bureau of Corrections is housed under the Ministry of Justice and called the
- During this period Japan adopted a western style of punishment
- In 1888 aftercare hostels or halfway houses were opened for released prisoners
- The Penal Code of 1908 was created using French and German ideas of punishment
- During the American Occupation probation and parole was introduced to Japan



Criminal Justice Issues in Japan

- Crime in Japan
- The Yakuza and Organized Crime
- Minorities and the Criminal Justice System
- The Role of the Confession and Apology
- Human Rights in Japan



Is there a Japanese Identity in Criminal Justice?

