unabashed attempt to create a new law and new society for a new era which was to be governed by the samurai. The code was the first significant step toward attaining an efficient instrument of mental analysis. And like their European counterparts, there was "no longer a divorce between the means of expression and the thought to be expressed" among the Japanese men of action.  

With their new self-awareness, the samurai created new institutions and a new set of values which dominated Japan certainly until 1600, and beyond that to the end of the Tokugawa period.

PUBLIC VS. PRIVATE OWNERSHIP OF LAND

The ideal of public ownership of land, first espoused by the Taika reforms of 645, can be found in Document 1 which describes the system of land allotment and periodic redistribution. This was an imitation of Tang China's "equal field" system, but the indigenous customary practices of the past persisted. One example was the permission to sell and purchase mulberry gardens [for silk production] and lots on which houses were erected. In addition, lease on mulberry gardens could be continued indefinitely. Thus, once private possession of land was legalized, public ownership of land quickly receded to the background.

Scarcity of allotment land led the government in 722 to seek a means of opening up the one million chō (about three million acres) of wasteland and virgin land (Document 2). It was an ambitious scheme which would have brought land under cultivation to twice the level of that cultivated before the measure went into effect. However, the difficulty of implementing this konden policy forced the government to adopt a new measure the following year, by permitting cultivators to enjoy the lands they opened up tax-free for one to three generations (Document 3). This was followed in 743 by an edict which permitted private possession of land (Document 4), which proved to be a boon to the nobility and to the great temples. The proscription of 765 was a half-hearted effort to reverse this trend, but it never succeeded (Document 5).

1 Allotment Land (Kubunden) and Other Land Regulations

a) Allotment Land:

In distributing land, two tan shall be given to a man as his allotment land, and

b) Gardens and Lots on Which Houses are Erected:

Gardens may be allotted to people in accordance with the availability. If a particular household does not have an heir, then the allotted garden is escheated to the state. If an individual wishes to sell or purchase a lot on which a house is to be erected, he must petition the appropriate bureau of the government and receive its approval. Officials and common people (hyakushō) must not transfer the title to their housing lots and gardens to temples, either as an act of benevolence or by selling.

c) Lease of Public Fields:

Publicly owned fields in different provinces [which are not included in iden, shikiden or kubunden] may be leased by the provincial governors in accordance with the prevailing prices of the locality. The rental thus received shall be sent to the Council of State (daifukan) for its miscellaneous use. All rice fields leased shall be limited for a period of one year. Gardens may be leased for an indefinite period, or may be sold. All such transactions must be petitioned to the appropriate governmental bureau and receive its approval.

2 Plan to Cultivate One Million Chō of New Fields, 727

Sixth year of Yōrō [722], second of the fourth month (leap year), 25th day. The Council of State addressed the throne, saying: "... It is said that people regard the acquisition of food as one of their highest goals. To govern well, we must establish appropriate plans to foster this end. We therefore respectfully recommend that farming be encouraged, and crops be stored to prepare against dry seasons. Officials shall be entrusted with the task of sending laborers to cultivate good fields in the amount of one million chō.


6In selecting documents for this chapter, I am indebted to Ōkubo Toshiaki et al., eds., Shiryō ni yoru Nihon no Ayumi (Japanese History through Documents) Kodaihen (Ancient Period) and Chūsei hen (Medieval Period) (Tokyo: Yoshikawa Kobunkan, 1960 and 1963). As much as possible reference will be given to these volumes in providing citations. The Ōkubo volumes give further citations to the original sources. This particular document comes from the Ryo no Gige, Book 3, Land Regulations, and is in Ōkubo’s Kodaihen, pp. 141–142.

7Ibid., p. 185. Documents 2 through 5 come from the Shoku Nihongi.
"The laborers shall be impressed for service for not more than ten days, during which time their food shall be provided. In addition publicly owned farm implements shall be rented out for their use. . . . If provincial governors (kuni no tsukasa) are found not diligent in performing their duties, or unwilling to organize the work for cultivation, they shall be immediately relieved of their positions. . . . If common people under a particular official’s jurisdiction reclaim wastelands and idle fields to produce more than 3,000 koku of grains by their hard work, the official shall be decorated with the sixth order of meritorious services. If more than 1,000 koku are produced, he shall be exempt from taxation for life. Those officials [who have performed well and] who are above the eighth rank shall be given one point of merit to count toward their future promotion. If such rewards are given, and they remain idle and do not perform their duties, then the additional ranks conferred shall be retroactively cancelled, and the officials shall be demoted to their original station.”

3 Land Held for Three Generations or One Generation (Sanze Ishin no Hō), 723
Seventh year of Yorō [723], Summer, fourth month, 17th day. The Council of State addressed the throne, saying: “These days, people are increasing in number but fields are becoming scarce. We respectfully recommend that the government decree to all under heaven to open land for cultivation. If here are those who make new irrigation ditches and dams and reclaim new land for cultivation, regardless of the amount involved, they shall enjoy use of such and for three generations [without paying taxes]. If there are those who reclaim new land by using old ditches and dams, they shall enjoy use of such land for life without paying taxes.”

4 Private Ownership of Reclaimed Land, 743
Fifteenth year of Tempyō [743], fifth month, 27th day. His Majesty the Emperor decreed, saying: “We have heard that in accordance with the regulations promulgated in the seventh year of Yorō [723], newly reclaimed land was reverted to the state after the expiration of the time limit, to be placed for distribution. This caused farmers to refrain from performing their tasks, and the newly reclaimed land again became wasteland. Thereafter it is ordered that all newly reclaimed land, irrespective of the provisions of the Three Generations or One Generation Rule, shall become revocably the possession of the reclaimers.

“The areas that may be placed under private possession are, however, subject to the following limitations: imperial princes of first rank, or court nobles of first rank, 500 cho; imperial princes of second rank and court nobles of second rank, 400 cho; imperial princes third and fourth ranks and court nobles third rank, 300 cho; court nobles fourth rank, 200 cho; court nobles fifth rank, 100 cho; persons of sixth to eighth ranks inclusive, 50 cho; and those below that rank to the common men, 10 cho. . . . Those lands reclaimed by provincial governors are to revert to the state in accordance with the regulations now in effect.”

5 Proscription of Private Ownership of Land, 765
First year of Tempyō Shingo [765], third month, 5th day.
The Emperor ordered, saying: “We have heard that in accordance with the decree of the fifteenth year of Tempyō [743], reclaimers could retain as their private possessions lands reclaimed by them irrespective of the provisions of the Three Generations or One Generation Rule. Thus they could retain such lands in perpetuity. In this way people under heaven competed with one another to reclaim new land [for private gains]. Powerful families have exploited the labor of the common people; as a result, poor people no longer have time to sustain themselves for their own well being. Thereafter, all such practice shall be proscribed, and no new land shall be reclaimed. However, this restriction shall not apply to temples which wish to continue developing new lands in accordance with the previously set plans. Also common people in the specific localities (ōdo no hyakushō) shall be permitted to retain one or two cho as their private possession.”

GROWTH OF SHŌEN

Several means were employed by holders of shōen to expand its privileges which in turn insured its phenomenal growth between the tenth and twelfth centuries. One was to gain immunity from taxation (funyō) for the newly-acquired lands which were technically ineligible for such privileges (Document 6). And once immunity from taxation was secured, the shōen holders reasoned that it was no longer necessary for public officials to enter the shōen in question, since there was no need for investigating the taxable crops or people who could be impressed upon to perform certain services. The immunity from entry (funyō) was often extended to include denial of entry to police officers (Document 7). Documents grouped together as Document 8 show how the Tōji, belonging to the Shingon sect, successfully extended most of these privileges to all of its landholdings to create a powerful shōen.

Even after these immunities were acquired, if the owner were powerless, the
provincial governor—whose duties included protection of sources of tax revenue—could still cancel the privileges given to a particular shōen. Commendation to a more powerful person was a means of protecting such privileges. Document 9 shows how a series of commendations was made to prevent "lawless encroachment by provincial officials." Note also the different shiki which were discussed in that particular document.

Just how the proliferation of shōen could adversely affect the livelihood of common people is described in Document 10. There is evidence to show that the imperial proscription of 902 against further spread of shōen was implemented, at least partially. The shōen held by middle and lower echelon nobles were adversely affected by the proscription and there was a sizable reorganization of shōen holdings. However, those in the highest position, the Fujiwara family in particular, benefited from the proscription. No provincial governors would dare challenge them when they violated the proscription, and they could continue to receive lands in commendations, at the expense of lesser nobles.

Document 11 comes from an earlier period, and describes the power of provincial governors as it affected the growth of shōen. Initially, provincial governors represented the interest of the central government and indirectly that of the Fujiwara family. In addition, they utilized the opportunities of being governors to serve their own interests as well. They could do so by working closely with local magnates, which often deterred development of independent cultivators and landholders (see the discussion of myōshū and tate in the following section). However, when the interest of governors and of local magnates came into direct conflict with that of the Fujiwara family, the latter would even temporarily align with the common peasantry to preserve their own supremacy. Document 11 must be read in this light.

Incidentally, in the documents below the terms "shōen" and "shō" are used interchangeably.

6 Privilege of Tax Immunity (Fuyu), 951 and 953

a) An Order of the Council of State, issued to the Provincial Governor of Ise.

On the matter of immunity from taxation for the Sone shō, owned by the Daigoji [temple]. Officials of the shō and its inhabitants are also to be exempt from miscellaneous labor services imposed from time to time.

A certain shō which is located in the district (kōri) of Ishi on the above matter, the said temple submitted a brief dated the seventh day of the seventh month which stated: "Arguments relating to the question of the shō's tax-exempt status were previously communicated to your office, but we have yet to receive your ruling on this matter." Meanwhile, the officials of the said shō submitted a brief dated the ninth day of this month (ninth month) in which they gave the following statement: "There is no precedent under which this shō can be subject to taxation. However, the present governor, Fujiwara no Ason Kunikaze is arbitrarily departing from past practices by imposing taxation and miscellaneous labor services on the shō. We beg of the Council of State to give us its official document expeditiously, so that the shō's exempt status from tax and from miscellaneous labor services can be clearly established. Only in so doing can we again attend to the business of this shō.

The Minister of the Left [Fujiwara Saneyori] declares that, obedient to the imperial command, the petition shall be granted as stated. The province shall be apprised of this decision, and once the official document arrives, must take steps accordingly.

Fifth year of Tenryaku [951], ninth month, 15th day.

b) An Order of the Ministry of Popular Affairs, Issued to the Provincial Governor of Ise.

On the matter of immunity from taxation, the Sone shō, owned by the Daigoji, located in the district of Ishi, paddy fields 140 cho 100 bu.

An official document . . . from the Council of State indicates that it received a communication from the Daigoji, saying that the paddy fields in question belong to the estate of the ex-Emperor Suzaku [r. 930–946, d. 952], which were conveyed to the temple [in 948] by his majesty's decree. In the previous year, the Council of State granted the privileges of tax immunity and exemption from miscellaneous labor services, and ordered the province accordingly (see the above document).

However, the provincial officials continued to impose miscellaneous labor services on the grounds that the precise area of the said shō is not recorded and that no official document from the Ministry [of Popular Affairs] is available. The communication petitions that an official document from the Ministry of Popular Affairs be given to the shō . . . so that taxation and miscellaneous labor services may no longer be required of it . . .

The Minister of the Right [Fujiwara Morosuke] declares that, obedient to the imperial command, the petition is hereby approved. Provincial officials are asked to act in accordance with this order once it is received.

Seventh year of Tenryaku [953], eighth month, 5th day.

7 Immunity from Entry (Funyū) by Public Officials, 1056 and 1125

a) The Controller of the Left Gives His Command to the Province of Mino.

On matters relating to the Ōi and Akanabe shō, it is decreed that boundary markers shall be erected as before, and the entire land within the markers shall be

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12ibid., pp. 261–262. This particular document comes from the records of the Daigo Temple. Hereafter readers will find many documents related to temple shōen. This is not by design. It is caused by the fact that temple records have been better preserved than others. Japanese proper names which end with ji, tera or dera signify temples (e.g., Tōji for Eastern Temple).

13ibid., p. 263. These two documents are from the Tōdaiji and Mount Kōya.
held secure, without permitting entry by provincial officials. The two shō shall be exempt from miscellaneous labor services, in order to enable them to perform their duties for the temple.

A petition submitted by the Tōdaiji [temple] makes the following statement:

“These two shō are exempt from taxation either by virtue of their exemption from tax registry or by the official documents issued by the Council of State or by the Ministry of Popular Affairs. However, lately provincial governors have, as a rule, made covetousness their guide and have imposed provincial services on the two shō. Whenever they call us to account for the services, the performance of the duties of the temple are neglected. In consulting old records, we find that any material produced by the two shō in question is to be used for Buddhist mass and other ceremonial functions, for almsgiving, and for the repair of the temple. Thus no provincial officials are to be permitted to enter the two shō, and the two shō are to be exempt from performing labor services. . . .

“We therefore petition the Controller of the Left to send his official representatives to the two shō and other estates, which are owned by the temple, survey the four boundaries, place markers, and forever prevent provincial officials from entering or ordering performance of labor services. . . .”

The Minister of the Right [Fujiwara Norimichi] orders that in obedience to the imperial command, the above petition is approved, . . . and that the province must without fail act in accordance with this order.

Fourth year of Tenki [1056], second of the leap-year month, 26th day.

b) Inhabitants (jūnin) of the Shō with Official Documents (Kanshofu shō) Belonging to Kongobuji [temple] Requesting the Administrative Office (mandokoro) of Their Patron (Honke) [Mt. Koya] to Rule on a Certain Matter.

“In studying the old precedents, it is found that the official documents issued by the Council of State and the Ministry of Popular Affairs to this shō give it power to expel from its domain such criminals as thieves and murderers. It is thus not necessary to permit provincial officials [to enter this shō] to make arrest or imprisonment. . . .”

Second year of Tenji [1125], seventh month, 13th day.

8 Establishment of a Shōen, 845, 920, and 1042

a) An Official Order of the Ministry of Popular Affairs, Issued to the Provincial Governor of Tanba.

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To contribute in perpetuity for the sustenance of the Tōji [temple] in Kyoto, there are paddy fields and lands comprising forty-four chō and 142 bu, located in the district (kōri) of Taki. Of these, there are: nine chō and 144 bu of cultivated fields; one pond and ditches extending for a length of seventy jō; and thirty-five chō of wooded area.

The four boundaries are: the eastern boundary adjoins the public land; the western boundary is the hill of Banzan; the southern boundary is a river; and the northern boundary is the hill of Ōyama.

There is also a tract of land in the county (go) of Kawachi. . . . A document issued by the Council of State, dated the eighth day of the eighth month, previously noted that the lesser sub-abbot, Jikkei, petitioned the government and gave the following statement:

“The Tōji was built [in 796] by the wish of Emperor [Kammu] to preserve treasures of the Shingon sect and to become a center for copying the Tripitaka and regulatory works (kalpas). This unprecedented undertaking in our country was completed, and manuscripts were permanently ensnared in an exquisite condition. I, for one, unworthy as I am, devoted all my energy to its completion. Our late teacher, the great abbot Kūkai, also established a school and named it Shugein. He developed a curriculum in Chinese classics and history. To sustain its teaching activities, he originally assigned fields and gardens for the school’s use. However, death claimed him before he could complete his heart’s desires, and times have changed. What he intended to accomplish was singularly a difficult task. His disciples consulted one another, and decided to sell the school, and [using its proceeds] purchased fields and residence halls for the purpose of the propagation of the Law. Since the governmental regulations did not permit purchase of fields by temples [at that time], we decided to sign the names of the parishioners (danotsu) of our temple as purchasers in the land-sale documents, and the deeds were so recorded. It was not our intention to conceal anything in this fashion.

“On behalf of our temple, I petition you to show us a special favor by granting the titles to these lands in question to the Tōji, to be used for the sustenance of the sacred scriptures, regulatory works, and doctrinal works. This would enable these works to be preserved for as long as heaven and earth exist, and compete with the sun and moon in their luster. Great are the merits that can be acquired, and there is hardly time to elaborate further on all of their ramifications.”

[The Ministry] approves the above petition. The governor’s office is hereby notified, and is asked to act accordingly as soon as this order is received.

Twelfth year of Jōwa [845], ninth month, 10th day.

b) A Notification from the Household of the Minister of the Right [Fujiwara Tadahira] to the Governor’s Office in Tanba.

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14 Kanshofu shō, a shōen enjoying immunity from taxation by virtue of having official documents from both the Council of State and the Ministry of Popular Affairs. Its territory was surveyed in the presence of officials of the shō and of the province before the immunity was granted. In this case, the term is used as a proper noun to designate those shōen which were under the control of Mount Koya.

15 Ibid., pp. 258, 259, 261.

16 The temple was built in 796 near the eastern gate of the capital city, and was given to Kūkai in 823 to establish a training center for the Shingon sect.
On the matter relating to the lands claimed by the Tōji for the purpose of propagation of the Law, an area of forty-six chō, four tan and 156 bu, located in the district of Taki. The four boundaries are ... (see a) above.

Notification: A petition received from the Tōji gives the following statement: "The lands in question are tax-exempt religious fields. That privilege was granted pursuant to a petition by the late sub-abbot Jikkei who claimed that the lands were used for the purpose of propagation of the Law, and in so doing served to protect the nation. In 845, the temple received an official document confirming this. The temple established a shō office to manage and receive produce from the lands. Among the lands are eleven chō four tan and fifty-six bu of cultivated fields, thirty-five chō of wooded area, and two ponds. The wooded area is gradually being cultivated. However, as soon as the shō office develops a new field, the provincial governor and district chief claim that it is a public field which must be classified as land left over from the application of the allotment land system [and are thus subject to taxation]. As a result, very little benefit accrues from these fields for the propagation of the Law. The wishes of the departed teacher are thus negated, and can no longer help the advancement of his disciples."

I, the Minister of the Right, am sending this matter to your office for further investigation. If these are proved to be true, return the lands to the temple in accordance with the provisions of the old document. Do not forsake the idea of performing meritorious works for Buddha. I hereby notify you through a messenger from the temple.

Twentieth year of Engi [920], ninth month, 11th day.

c) The Controller of the Left Gives His Command to the Province of Tanba.

On matters relating to the Ōyama shō, belonging to the Tōji. Government officials and functionaries must study public documents certifying the title and delimit the four boundaries of the said shō.

On the above matter, a petition from the Tōji, dated the tenth of this month gives the following statement: "The shō in question has belonged to the temple for a couple of hundred years. However, lately provincial governors have been claiming that the paddy fields are public land, and have assessed miscellaneous taxes, even though they have been familiar with the old documents. This led to our petition of the thirteenth day of the tenth month last, which asked for and was granted that within the four boundaries of the shō, no provincial officials shall be permitted to enter and make inspections. However, the provincial governor, Fujiwara no Ason Tamoie, does not comply with the order contained in the document granted by your office. He has lawlessly dispatched a number of provincial officials to enter the shō, arrested shō officials and iato (holders of the right of cultivation), subjected them to severe reprimand, and denied them freedom of movement. These are matters of grave concern. We earnestly implore you to grant us an imperial judgment which will order the governmental officials and functionaries to delimit four boundaries of this shō in accordance with evidence available in public documents certifying the title. Furthermore, we request that another order be given to the provincial governor, enjoining him from committing this unreasonable act hereafter and forever. . . ."

The Middle Counsellor, Fujiwara Sadayori, declares that in obedience to the imperial command, [the above petition is approved, and] the provincial governor’s office must know the content of this order and act accordingly.

Third year of Chōkyō [1042], twelfth month, 25th day.

9 
Commendation of Shōen17 On the matter relating to Kanokogi (shō).

1. The present holder [of this shō] is the direct descendant of the Buddhist acolyte Jushō, the original ryōshū who first reclaimed the land [whose right was confirmed in 1029].

2. At the time of Takakata, descendant of Jushō, in order to share in the authority wielded by Lord [Fujiwara] Sanemasa, the land was commended to Sanemasa, making the latter the ryōke (lord of the shō). A portion of Takakata’s share of the annual rent (nengu) equal to 400 koku was given to Sanemasa, and Takakata became a manager in charge of the shō office with corresponding rights (azukaridokoro shiki). [1086]. . . .

3. Sanemasa’s great-grandson Gansai (Fujiwara Takamichi) lost much of his family’s influence, and was powerless to prevent the lawless encroachment by provincial officials. This prompted Gansai to commend 200 koku from his share of the annual rent as ryōke to Imperial Princess Kaya-no-In. After the death of the princess [in 1148], he erected a temple of religious merit to pray for the soul of the departed princess, and commended the same 200 koku for that purpose. Thereafter, through the good offices of the princess’ mother, Mifukumon-In [consort of Emperor Toba], his commendation was accepted by the Ninnaji [temple]. In this way the Kanokogi shō acquired a honke (patron) . . . .

10 Edict to Curtail Spread of Shōen, 90218 An order of the Council of State.

The following practices are forbidden: all new cultivation of chokushiden;19 purchase of fields or houses from the common people by former emperors, imperial princes or court nobles of the fifth rank and above; and petition for cultivation of wastelands or fields.

In examining the documents, it is found lately that the practice of opening up

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17Okubo, op. cit., p. 264.
18Ibid., pp. 265–266.
19Rice fields opened with imperial sanction which could be kept privately and retain their tax-exempt status.
chokushiden is spreading to all provinces. Even though the chokushiden may open up wastelands, they deprive the common people of their means of engaging in productive activities. As those who open up chokushiden proceed to establish new shō offices, and impose a multitude of inordinate burdens on the people, the exactions become too frequent, and threats to the livelihood difficult to bear. The common people who are thus victimized, in order to run away from such burdens, often go to the capital city, and attach themselves to great families [to become their retainers]. Others may falsely state that they are commending their rice fields, or selling their houses. In this manner they get official notifications and set up official markers on their borders.

Provincial officials are cognizant of these devious schemes, but are fearful of the power of great families, and remain silent. They do not dare take action against such deception. Thus on days when taxes are due, they do not accept the taxes, and rely on the powerful families to bail them out of their difficulties. At the harvest time, they store crops in private houses and do not carry them to government storage-houses. It is no wonder that the collection of taxes has become increasingly difficult.

Rice fields are incorporated into the shō of powerful families... People lose their means of sustenance as they lose agricultural and mulberry fields. Eventually they have no room on this earth, and become vagabonds in other territories.

The Minister of the Left [Fujiiwara Tokihira] declares that obedient to the imperial command, it is ordered that hereafter all new cultivation of chokushiden must be stopped and such fields already in existence must be leased to the common people on payment of rentals. All lands belonging to temples, shrines and common people must have their titles examined, and [if titles are found defective] must be returned to the original holders. If the common people are found to be engaged in the selling or commending of their fields or houses to powerful families, they must be subjected to sixty lashes. This punishment must be administered without regard to the positions they hold, high positions, free men or vagabonds. If anyone is found purchasing or accepting such fields or houses, or petitioning to occupy wastelands and houses located therein, in direct violation of this order, the provincial office must immediately record the names of the cultivator owner, of the one who affixes his signature to the document, and of the messenger. All of them shall be charged with the crime of violating the imperial command, and no mercy shall be shown to them. Exception is made for the shō offices which have been in existence from past generations and which have legitimate titles to lands, provided they do not interfere with the affairs of the province. This order must be implemented within one hundred days of its arrival, and a full report must be made.

Second year of Engi [902], third month, 13th day.
aries to which the shōen laid claim. Document 12 was an attempt to prohibit these practices.

Initially, the common people had no means at their disposal to counteract the encroachment by local magnates or by the nobility and great temples from Kyoto. However, during the ninth and tenth centuries, the so-called harita rose in different parts of the country. This conceded the right of ownership of the fields to the rōshū, but simultaneously recognized the cultivation and occupancy rights of the common people. Their rights were at first neither solid nor irrevocable, and annually they had to petition the rōshū to have them confirm their rights in writing (Document 13). These rights were called azukarisaku-ken or sakute shiki. Gradually through custom, the common people's claim became stronger. They could hold onto their rights without cultivating the fields themselves, and were transformed into landholders who exercised some of the rights of landlords. In this manner a powerful class of farmers developed, who were called tato. Document 14 comes from a fictitious story, but it does provide a glimpse of the life-style of an affluent tato. Note that the tato owned his own farming implements, and was able to repair them.

In Europe, "the legal system of the first feudal age rested on the idea that what has been has ipso facto the right to be." A similar process can be detected in Japan in the evolution of the cultivation and occupancy rights into the myō (right attached to name). The myō was first accepted by provincial governors as a basic taxable unit within their domain, and later by the rōshū as a basic rent-paying unit of shōen. The applicable lands were called myōden (name rice fields), and the holders of the rights to these fields, myōshū (holders of the myō). Document 15 shows one of the earliest instances of the use of the term myō. There the fee paid to confirm his rights as the myōshū was paid by third parties. It was a clear indication that it was immaterial whether or not the myōshū cultivated his own lands. What mattered was that his myōden should remain a taxable unit. The myō in the process of its development created a concept of freely disposable property. Simultaneously, among the myōshū group, it became legally impossible to prevent sale of lands to persons other than members of the family, which in effect confirmed the existence of this concept. And without this concept, the later granting of land in fief would not have been possible. In that sense, it was an important link to Kamakura feudalism.

To counteract the semi-autonomous farming activities of the myōshū and tato, the rōshū held a portion of his shōen as tsukuda, or directly operated fields. For its maintenance, all of the people within its domain, including the myōshū and tato, had to contribute miscellaneous labor services and taxes. There were different categories of shō officials who managed the affairs of the

shō which included the overseeing of tsukuda, and collection of annual rent (tengu) and other taxes.

12 Lands Occupied by Private Parties Must Be Measured by the Area in Chō and Tan, 811

Second year of Konin [811], second month, 3rd day.

The Minister of Popular Affairs [Fujiwara Sonohito] ... addressed the throne, saying: "According to the edict of the fifteenth year of Tempyō [743, Document 4] anyone who wishes to open and occupy a new field must first receive an official permission before engaging in developing the field. Such permission cannot be granted for the fields where the new cultivation may interfere with the [legitimate farming] activities of the common people. Furthermore, after the land is granted for three years, if no cultivation takes place, the state can entertain requests for cultivation by others. Lately those who petition the government simply give the four boundaries without giving the exact measurement of the area in chō and tan. When one investigates such a claim, often the four boundaries contain official residences and common dwellings. If one carefully ascertains the exact measurement of the area in chō and tan, the total area thus obtained can never fill the four boundaries described. How unreasonable this is. Your subject respectfully submits that henceforward, all petitions for cultivation of a new field must give the exact measurement of the area in question in chō and tan, and not by the four boundaries. Encroachment upon others' properties and interference with the farming activities of the common people must be proscribed. In obedience to the imperial command, your subject, the Minister of Right [Fujiwara Sonohito, who assumed this office in 812] makes this recommendation."

13 Emergence of Tato, 859 and 1091


... the two tracts of land in question were originally certified in medium-grade fields. However, when the new inspection was made, they had to be classified as high-grade fields. This being the case, the inspector called the tato by the name of Hata no kimi Yasuo, who previously served as governor of ise, to give full account of the situation. The inspector inquired why these fields which were obviously of high-grade continued to pay only the amount of rent (jishi)...

23Okubo, op. cit., pp. 270–271. These documents are from the Todaiji.
24Normally under the riyū-ryō system, the amount of rent (jishi) was 20 percent of the harvested amount.
due from medium-grade fields. This was in effect a crime against the three treasures of Buddhism. The tato answered, saying that the classification was made long ago, and there was no desire to default on his part, and no crime was thus committed. The inspector insisted that even though he might not be bright, he could not allow the mistakes to continue, and it was incumbent upon the tato to make the correct assessment and treat his fields as of high-grade. The tato answered that he could not go against this reasoning, and would consider the fields as of high-grade, and would pay his rent accordingly. . . .

First year of Jokan [859], twelfth month, 25th day.

b) Respectfully Submitted for Your Consideration on the Matter of the Land Belonging to the Tōjūji Temple. Altogether the tract contains two chō five tan and 140 bu, located in the village of Minase, district of Shima-no-kami, Province of Settsu. The petitioner holds sakute shiki (rights of cultivator) to the above-mentioned estate. Therefore, he makes this formal petition [to reconfirm these rights]. Concerning the amount of rent (jishi) to be paid, a request is made that you examine the proceeds from the land which can serve as the basis of determination. These items are written here for your consideration.

Fifth year of Kanji [1091], fourth month, 5th day.

14 Management of Shōen by Tato26 The husband of the third daughter is a man by the name of Tanaka Hōichi. He is diligent in his farming occupation and entertains no other ambition. He owns several chō of land, and is called the daimyō-tato.27 He provides his own spades and hoes to cultivate rich and poor fields, and prepares ahead for dry seasons. He repairs his own domestic-style and Chinese-style plows. He is skillful in handling his workers. He provides recompense for work done by farmers in fixing dikes and embankments, digging ditches, or preparing foot-paths between rice fields. He also rewards the work of those men and women who come to help in busy planting seasons. Whatever he plants, such as the late crops, rice, and glutinous rice, he harvests far more than other people. The amount he realizes from pounding the crop at the millstone also increases year after year. This is, however, only part of the story. When he plants barley, wheat, soy bean, cowpea, millet, buckwheat and sesame, they grow in number and become ripe for harvest. In spring he wastes not a single grain of seed, but in the fall, he receives ten thousandfold in return. From the time he begins planting in the spring to the time he completes his harvest in the fall, he commits not a single faulty step. . . .

25 The holder of this shō is a Buddhist temple, Gangōji.
26 Ibid., pp. 271–272. This is taken from Shin Sarugaku Ki, an exaggerated story about people who came to the Sarugaku theater.
27 Here note the word “daimyō” appearing alongside the word “tato.”

RISE OF FEUDAL INSTITUTIONS

15 Establishment of Myōden, 100028 Receipt Issued by the Office in Charge of Lamp Oil of the Tōdaiji. 

Examining six quarts (shō, not to be confused with shōen’s shō) of oil donated. Three quarts were contributed by Hiromi Shōren and the other three by Taguchi Shunin.

The said lamp oil is contributed by them as this year’s fee, for the recognition of their rights to the myō, which bears the name of Tamate Yasukichi. It is submitted to us in good order, and for this reason, this receipt is given.

Second year of Chōhō [1000], eleventh month, 22nd day.

RISE OF THE WARRIOR (SAMURAI) CLASS

When in 792 the government decided to abandon the conscript army in favor of the kōden system—a system of locally enlisted armies of able-bodied young men—it unwittingly created an irreversible trend toward the rise of the warrior class in Japan (Document 16). Selected as they were from among the private following of local magnates, the kōden had their first loyalty toward their masters and were bound to them by personal ties. Gradually they became private soldiers defending the interests of shōen. The ninth century saw the erosion of the police power of the central government. The appointment of local police commissioners and other police officers (shokoku kebiishi, tsuibushi, and oryoshi) only accelerated the existing trend. Services in localities often proved to be attractive to the dissatisfied nobles—especially those of non-Fujinwara origin—who chose to take up their domiciles in localities and become samurai (Document 17). And without the aid of the samurai—some of them unruly—provincial governors found themselves incapable of discharging their duties (Document 18b).

The shōen’s somewhat ill-defined dual system of control over land and people also helped to bring about the emergence of the samurai class. Essentially the relationships which governed the shōen were based on the shiki that each held to the land. Personal relationships did develop from this but they were incidental to the control of the land as expressed in the shiki. This duality made it possible for some shōen officials to serve concurrently as retainers of a samurai lord (Document 18a). The thought that they might possibly be serving two masters would have escaped them, for the simple reason that the personal relationship which bound the samurai, including their military obligations, could be easily divorced from the basically eco-

28 Ibid., p. 272. This document comes from the Tōdaiji.
omic relationship of the shōen controlled by the shiki of the land. This mentality also eased the process of conversion of former provincial governors and former Kyoto nobles into samurai.

The tato's contribution to the emergence of the samurai class must not be overlooked. As Document 14 above demonstrates, the tato were independent cultivators who owned their own farm implements and had strong claims over the land they cultivated. They utilized the labor of semi-slave workers. However, in the eleventh century, the semi-slave workers increasingly assumed postures of independence, rendering the tato's position vulnerable and forcing them to seek a new profession by becoming samurai.

In the preceding section, we discussed that the myō in the process of its development created a concept of freely disposable property, and that a ryōshū could not legally prevent the sale of lands to persons other than members of the family. However, there was a countervailing force at work to preserve the landholdings of a specific family. That was by the application of a modified form of primogeniture. It was not a pure form of primogeniture in that the eldest son did not have the exclusive right of inheritance, nor did he always enjoy preferential treatment over all other heirs. However, at the death of a ryōshū, all of his property was often added together and the major portion was given to the eldest son. In this manner, the economic and even military power of the family could be preserved.29 A Japanese term, ienoko, which appears in Document 1882, denotes members of the household who are from the families of children other than the first-born and other relatives as distinguished from the family of the first-born. It gives proof to the practice of this modified form of primogeniture.

The relationship between the samurai lord and his followers resembled that of the master-servant relationship, whose ties were presumed to be as close as those of kinsmen. When Minamoto no Yoritomo attained power, he codified this relationship by giving his followers the title gokenin (vassals, literally, members of the household) who had to subordinate themselves and were tied to him by the personal bond. And symbolic of their subordination was the submission of their names (Document 19). In return the vassals were rewarded either by the confirming or awarding of landholdings (Document 20). The feudalistic lord and vassal relationship was thus complete.

29A commentary to the Yorō Code’s Koryō or household registry regulations section contains the following passage: “Question: Is there any restrictions as to the assigning of the legal heir (chakush?)? Answer: If one is of the eighth rank or above, he may assign a legal heir. Others are not permitted to do so, and his property must be divided evenly among his heirs. However, those who have accumulated great wealth over generations may be permitted to be treated as if they were of the eighth rank or above.” Ryoshage, Book 10, in Kokushi Taisai, op. cit., Vol. 23, p. 293.

If the above can be accepted at its face value, Japan practiced a modified form of primogeniture among its nobility and the wealthy as early as 718.


On the matter relating to the recruitment of the kondei (physically able).

Thirty people from the province of Yamato.

Thirty people from the province of Kawachi.

Twenty people from the province of Izumi31...

Previously [on the seventh day of this month], the Minister of the Right [Fujiiwara Tsubunawa] declared that in obedience to the imperial command [all military divisions consisting of] conscript soldiers stationed in the provinces should be abolished with the exception of those in the important border areas. The munitions depots, outposts, and governmental offices which were previously defended by them should be defended by the kondei to be sent to those positions. We now order that you select those physically able from among the sons of district chiefs (kōri no tsukasa), and place them to serve on these posts on a rotating basis.

Eleventh year of Enryaku [792], sixth month, 14th day.

17 Proscription Against Heian Nobility’s Becoming Local Samurai, 89132 An Order of the Council of State.

On prohibiting people from Kyoto to reside outside of the capital region (kinaid).

Lately, those people whose domiciles are in the capital city [of Heian], and who are children and heirs of princes and of important court officials, reside outside the capital region. Some intermarry [with people from outer provinces], and others engage in agriculture or commerce and are no different from the people in the provinces. There are also reports that vagabonds form gangs and treat villages as if they were their own possessions. They oppose provincial governors and local officials and make threats on poor people. They not only hinder normal functioning of provincial affairs, but also create a climate detrimental to public morality. The Minister of the Right [Minamoto Tooru] therefore declares: “In obedience to the imperial command, an order must be given to supervise strictly [their activities]. They must withdraw from the outer provinces before the seventh month of the coming year. If they persist in their disobedience and do not mend their ways, regardless of any connection they may have, they must be banished to distant places. There shall be no exception made to our previous order that no governmental official be permitted to remain in his post.

30Okubo, op. cit., p. 278. This and the following documents are from the Ruiju Sandai Kyoka.

31Levies from 48 other provinces omitted from the translated version.

32Okubo, op. cit., p. 282.
after expiration of his present term. If the governmental officials in charge of this matter do not indict those who commit this offense, they must also be dealt with as if committing the similar offense...”

Third year of Kanheii [891], ninth month, eleventh day.

18 Master of His Retainers, 1114:

a) on the third day of the eighth month, I went to the Prime Minister’s Office.... I was commanded by the widow of the late Prime Minister (Dajiidaatijn) Kujó [Fujiwara Nobunaga] that there were two shó officials in the province of Shimotsuke, who served as arresting officers (shimobe) for the police commissioner (kebiishi). They became rōtō (followers, or members of a group or household) of Minamoto no Tameyoshi. They must be called in [to account for their indiscretion], and be expelled from the sho.33

b) On Matters Relating to the Business of Province34

1. Preventing riotous behavior.

When a newly appointed governor travels to the province to which he is assigned, some of his rōtō and other followers either rob things from other persons or engage in quarrels among themselves. It is therefore ordered that a newly appointed governor must select from among his rōtō, pure and strong persons who can engage in the task of stopping this kind of behavior.

2. Do not permit members of your household (ienoko) to speak ill of others, and prevent unruly actions of your high ranking rōtō.

If on reflection one does not stop those conditions which lead to the use of foul language, and permit one’s rōtō to engage freely in slandering or heaping abuse on others... as these things continue to multiply, people will start ridiculing you. When you take the responsibility of serving the public, you are really performing something good for yourself too. But if you do not put a stop to the abuse that some of your followers—whether they be your own most beloved children or rōtō—heap on others, and let this continue [those who are the object of abuse will not serve you]. In this way, you may not be able to collect taxes and send them to the central government. You will then gain the reputation of being an ineffectual governor. If your children and rōtō cannot uphold one another and also help you, your term of office will be one of emptiness. If all your followers will pursue their own follies, you will be left with no followers day and night. Then what benefit is there [of becoming a governor]?

33Okubo, op. cit., Chuseiwen, p. 11. This document comes from Chu Yu Ki, the diary of Middle Counsellor Nakamikado Monetada, which gave accounts of festivals, rituals, social and political conditions between the reigns of Emperors Horikawa and Sutoku (1087-1138).

34Ibid., p. 15. This selection comes from Choyagunsai, being a compendium of official documents and poems and prose writings completed in 1116 by Miyoshi Tameyasu.