

第四節 帝国議会関係

九三 明治三十三年十二月七日 青木外務大臣演説

第一議会衆議院ニ於ケル外務大臣演説

○外務大臣子爵青木周蔵君 諸君、～～、衆議院議員新井章吾君其ノ他諸君、本月九日附ヲモチマシテ、我カ總理大臣山県伯へ提出セラレシ質疑ノ箇條ニ於テ、其ノ中第四項ノ部分、即條約改正ノ成行、及ビコレニ就イテ将来内閣ノ方針如何ト云フ、コレガ問題ニ就イテ本大臣ヨリ答弁ヲ望マレタ証デアリマス、力メテ拙者ハ諸君ノ満足ナサルヤウナ答弁ヲシタインデアリマス、併シあなた方ガ満足ナサルカ満足ナサラヌカ、又私ガ為シ能フカ為シ能ハヌカ、ソレニ就イテハ内国政ト違ヒマシテ、外国ノ事ト云フモノハ、皆さん御承知ノアリナサル通り、或区域ハ……最大キイ区域ニ於テハ秘密ヲ要スル事柄ガアリマス、其ノ秘密ヲ要スル事柄ニ至リマシテハ、只今新井章吾君ガ更ニ請求致サル、ニモ拘ラズ、或ハ答弁ヲスルコトガ出来ヌカモ知レマセヌ、サリナガラ此ノ事ノ答弁ヲ私ガ試ミマスルニ先チマ

ラヌコトヲ、私ハ申サウト思ツテ居リマス、又最ウ一言本題ニ掛ル前ニ申シテ置キマス、此ノ事柄ハ輿論ヲ聞ケ輿論ヲ聞ケト云フ、只今新井君ノお話ノ中ニモアリマス、無論輿論ヲ聞カヌト云フコトハ、恐ナガラ我ガ、聖上ニ於テモアラセラレヌデアラウシ、又私ガ内閣ノ國務大臣モ、無論自分ノ得手勝手、我儘勝手自由ノ考ヲ以テ、此ノ大疑問トナツテ居ル事柄ヲ、処シテ行カウト云フ了見ハ一切有リマセヌ、殊ニ拙者ニ於キマシテ尙更有リマセヌ、有リマセヌ所ノ事柄ハ追々演説ノ中ニ於テ、皆さんお分リニナルデアラウト思ヒマス

又最ウ一口申シテ置カナケレバナラヌノハ只今新井君ノお話ノ中ニ、秘密ト云フニモ種類カアル度ガアル、軍機ノ如キニ至ツテハ秘密デアルガ、外交ノ如キハ然ラズト、併シ此ノ又差別……事ニ依リ物ニ依ツタラバ、私ニ於テハ判然ト其ノ区別ヲスルコトハ、出来マイト思ヒマス

最ウ一口申シテ置キマスノハ、昨年内閣員ハ辞職セラレタガ、其ノ結果云々ト云フ間ハ、外務大臣ニ於テ答弁スル限デアルマイト思ヒマス、コレ丈ノ事ヲ一言申シテ置キマシテ、ソレカラ此ノ演説ニ掛リマス

諸君、——此ノ條約改正問題ト申スノハ、今ヲ去ル十八年

シテ、先ヅ一言ヲ諸君ニお話シ申サナケレバナラヌ

昨日政府委員ノ司法次官箕作麟祥君ガ演説サレタ時ニ、陛下ノ大權云々ト云フ言葉ガ出マシタ時ニ、諸君ハ……諸君ト申シテハ当リマスマイガ、數名ノお方ガ然ルベカラズト云フ、お言葉ガアリマシタカノヤウニ承リマシタ、サリナガラ私ハ此ノ演説ヲ為スニ當リマシテ、或ハ政府委員箕作麟祥君ガ立ツテ居ラレマシタ立場ト、私ノ立場ハ違ヒマスト云フコトハ、諸君モ無論御承知ノコトデアラウト思ヒマス、憲法第十三條ヲ讀ンデ、字ノ如ク御解釈ニナルナラバ無論、私ハ全クコレヲ歐羅巴ノ意味ニ取リマスカ、或ハ明ニ日本憲法ノ趣意ニ取リマシテ申サバ、無論勅令命令ノ区域ニ於テ行政ノ仕事ヲ、私ハスル積リデ居リマス責任ヲ以テ居リマス、サリナガラ其ノ行政ハ或ハ命令ト云フ台場ヲ築イテ、其ノ中ヘ閉籠ツテあなた方ニ、何モ言ハナイ精神デハ無論有リマセヌ、私ハ言ヒタイ又言ハネバナラヌ國務大臣ノ位地ニ立ツテ、我方良心ニ問フテ言ハナケレバナ

前ニ起リマシタ問題デアリマセウカ、又ハ十九年前デアリマセウカ、據其ノ條約改正問題ノ起ツテ來マシタ原因ハ、無論皆様モ御承知デ御坐リマセウ、或ハ御承知ノナイ方モ、此ノ中ニハ御在イマスト思ヒマスカラ、少シク話ガ長クナルカ知ラヌガ、抑々條約ノ成立ト云フモノハどう云フモノデアルカ、隨ツテ其ノ変遷ハどノ様ニナツテ居ルカ、然ラバ此ノ先どノ様ニ此ノ仕事ヲ処シテ、往カナケレバナラヌカト云フコトヲ、明瞭ニ云フト云ハヌトハ、貴君方ノ御判断ノ中ニ分ル様ニ致シマスカラ、ソレヲお聞取フ願ヒマス

抑々我ガ帝国ニ於キマシテ、外国ト條約ヲ結ビマシタノハ安政元年デアリマシタ、西洋歷ノ千八百五十四年デアリマシタ、其ノ條約ト云フモノハ何國ト結シングカト申シマスト、第一ニ亞米利加ノこんも一どる、ペリーノ條約、第二ニハ露西亞ノ條約、是ハ同年二月デ御坐リマシタ、第三ニハ英吉利ト結シング、千八百五十四年ノ十月ノ條約デアリマス、第四ニハ和蘭ト結シング條約、此ノ條約ノ性質ハどノヤウナル性質ヲ持ツタ條約デアルカト云フコトハ、諸君モ御承知デ御坐リマスルカ、ナケレバ私ノ申スコトヲお聴苦クトモ、暫クお聴キ下サレンコトヲ望ミマス、當時我ガ帝国

ノ有様タル無論鎖國ノ時デアリマシテ、歐羅巴亞米利加ノ
關係ハ、僅ニ出島一島ノ一小局ノ部分ヲ以テ居リマシタ位
デ御坐リマシテ、何分不完全至極ノ條約ノ性質デアリマシ
タ、殊ニ此ノ條約ノ中ニハ、唯外國ノ舟ガ參ツタ時ニ海
岸ニ難風デ寄セラレタトカ、或ハ淺瀬ニ懸リテ怪我ヲシタ
時ハ、薪水ヲ与ヘテ與レロト云フ位デアツタ、何ニモ立派
ナ込入ツタコトハ少シモナインデアリマシタ、稅權ノ如キ
或ハ租稅ニ闕スルモノ、如キ、或ハ治外法權ニ闕スルモノ
、如キハ、此ノ四ツノ條約ノ中ニハ少シモアリマセヌ、然
ルニ其ノ後我ガ帝國ノ形勢モ日一日ニ発達致シマシテ、安
政五年ニ致ツテ始メテ條約ラシイ條約ガ出来タノデ、尤安
政五年ト云フモノハ千八百五十八年デアリマシタカ、五十
七年ニ亞米利加ノ下田約束ト云フ此ノ條約ト云フモノガア
リマシタ、其ノ時ニ略安政五年ノ條約ノ端緒ヲ開イタモノ
デアリマス、其ノ條約ニ於キマシテハ、……安政五年ノ
條約ニ於キマシテハ、未ダ此ノ通商ニ闕スル取極ハ余程粗
略ナモノデアリマシテ、殆ドナイト申シテモ宜イ位ノモノ
デアリマシタ、尤モ安政五年ノ條約ノ取極メト云フハ私ノ
間違デ、取極ト云フハ通商ニ就テ其時ニ始メテ取極メガ起
ツタモノデ其ノ安政五年ノ條約ト申スモノハ、第一ニ安政

ニ、足ヲ踏ミ込シダ人ハ少ナク、又彼ノ國ヨリモ我国ニ來
ツタル者モ少ク、甚ダ簡略ニシテ粗漏ナル、不發達ナル條
約デアリマシタカラ、此ノ位ノモノデ余リ交際モ致シマセ
ヌ、然ルニ只今述ベマスルヤウニ、安政五年ノ條約即四箇
國力五箇國トノ條約ニ於キマシテ、始メテ通商ノコトガ出
テ来マシタノデアリマス、其通商ノ條約ニ依リマスト云フ
ト、皆さん御承知ノ通り稅ト申スモノハ、第四條ニ分ツク
モノデアリマシタ、其四條ニ分チマシテ、第二條ニハ是
レ、第二條ニハ斯ウト云フ事柄ヲ、一々此處ニ御話スルナ
ラハ、今晚カ明日ノ朝デナケレバ私ハ哨弁テハアリマスル
シ、御話ハ出来メト思ヒマスカラ委シクハ申シマセヌガ是
ハ條約裏纂ト云フモノデ、皆さん御覽ニナレバ分ル話ダカ
ラ、茲ニハ略シマスル、但其ノたり一ふ即稅則ト云フモノ
、取極ニ就イテ見マスルト云フト、今日ノ如キ不利ノ取
極デナク、我ガ帝國財政上ニハ頗利アツタ所ノ取極デアリ
マシタ、サリナガラ其ノ時ト同時ニ、更ニ不利ヲ惹起シタ
所ノモノモアルト云フコトハ、御忘ニナラヌ方ガ宜シカラ
ウト思ヒマス、ト云フモノハ即此ノ安政五年ノ條約ヨリ起
ツタモノデアリマス、一利一害相伴フテ起ツタノハ、即安
政五年ノコトデアリマス、尤此ノ安政五年ノ條約ノ貿易章

五年六月十日ノ米国ト條約ヲ結シ、其ノ年七月十一日ニ
露西亞ト結ビ、七月十日ニ和蘭ト結ビ九月三日ニ仏蘭西ト
結ビ、七月十八日ニ英吉利ト條約ヲ結シテ通商ノ條約ガ始
メテ出来マシタ、其ノ條約ガ出来マスルニ前ニ、話ガ少シ
あとニ戻リマスガ、御免ヲ願ヒマス、其ノ條約ノ出来ル前
ニ、只今トナツテ甚ダ遺憾ニモ互ニ思ヒ、又喜バシクモ
思フ事柄ガ残ツテ居リマス、其ノコトヲ一寸申シマス、此
露西亞ト結ヒマンク所ノ下田條約、安政元年十二月二十一
日ニ下田條約ト云フモノ、條約ニ於テ、あなた方顧ミテお
考ヘニ成リマスト、其ノ第十四條ニ於テ大層価値アル取極
ヲシテアツタモノデアリマス、ソレハ雙方ノ國ニ於テ、互
ニ治外法權ノ權ヲ以テ居タモノデアリマス、我帝國ノ領事
館カ、當時若シ或ハ其ノ翌々年カ其ノ後ニ於テ、魯西亞ノ
領分ニアリマシテ裁判等ノコトガ、起リマシタモノナラ
バ、日本ノ裁判官タル領事ハ日本法律ニ依ツテ、日本人ヲ
罰スルト云フ規則ガ、第十四條ニアリマシタコトデ御坐リ
マス、斯ノ如ク魯西亞トノ條約トハ、彼ノ國ノ友誼デモア
リマシクラウシ、我國ヲ輕蔑シテ居リマセナカツタ所ノ、
好意的ノ取極ガアツタモノデアリマス、尤當時此ノ両國ト
交通ノ有様タル、誠ニ我ガ帝國臣民ガ帝國魯西亞ノ境界

バ、三百萬円ヲ二百万円ニ減ジヨウガ然ラザレハ三百万円ヲ払ハスト云フ、談判ヲ受ケマシタ、然ルニ今日トナツテハ、税權ニ此條約ガ甚ダ不利ナル所ノ、基礎ヲツクラレマシタ云フモノハ、其以前成立テ居ツク所ノ、通商章程ニ依リマスト、二〇ば一せんと即二割以上、物ニ依ツタラハ、酒ノ如キハ三割以上ト云フ税ヲ取ツテアリマシタ、然ルニ此ノ文久二年、三年出来事ノ為ニ、我ガ政府ニ於キマシテハ、余程脅迫ラサレマシテ、僅ニ之ヲ五朱ニ直切ラレマシテ、其五朱ノ点デ取合ハネバナラヌト云フ所ニ、旧幕政府ガ立チ至リマシタノデアリマス、其ノ當時ノ慶應二年ニ出来マシタ所ノ税則ニ、關係ヲシテ居ル所ノ條約ハ、不利又不利ヲ重ネマシテ、其ノ後維新ノ始、或ハ維新ノ後ニリマス但シ此際、当局者ガ此條約ヲ結シングダノハ、如何ニモ不利デアルト云フコトヲ、知リツ、結シグダト云フモノハ、當時ノ歴史ハ委シク本員ニ於テハ存シマセヌガ、多少ノ望ミガアツテ、此條約ヲ不利トハ知リツ、結シデ置イタモノニアラウト思ヒマス、其事タル別段ノ事デハアリマセヌガ、千八百七十二年即明治五年ヲ期シテ、條約ヲ改正スル

又ソレト同時ニ最モ不利デアリマシタノハ、此ノ独逸條約ノ第十九條、澳地利匈牙利條約ノ第二十條デアリマス、前年以來我邦ニ於キマシテ數年ノ輿論、……輿論デアルカ輿論デアリマセヌカ、數多ノ新聞紙上ニ於テ書立テマシタ、彼ノ最惠國條款ノ如キ、學問上ト云ヒ實際上ノ議論ニ於キマシテハ、啻ニ我日本帝国内ニ於ケルノミナラズ、海外ニ於テモ此ノ事柄ニ就イテハ其ノ説区々御坐イマシタガ、只今ニ至リマシテハ歐羅巴大陸ノ執ツテ居リマスル説ハ、略一定シテ居リマス、然ルニ先刻申シマシタ第十九條、第二十條ニ於キマシテハ、大層區域ガ広イ、有ラユル特權ハ之ヲ此ノ国ニ許シタナラバ、彼ノ國ノ條約ニモ許シテ貰ヒタイ、許サウト云フコトニナツテ居リマス、コレガ今日ニナリマシテハ、我邦ノ立法権及び政權ニ頗不利ヲ与ヘタモノデアリマス、ソレデ徒ニ此ノ慶應二年ノ税則ト云フモノガ、我國ニ不利ヲ与ヘタノミナラズ、此ノ裁判権ト云フモノニ、彼此ノ差別ガ出来マシタ以上ハ、国籍ノ上ニシク申サバ裁判権、立法権、行政権ノ此ノ区域ニ、頗不利ヲ与ヘタ所ノ條約デアリマス、サリナガラ一旦与ヘテ……條約ニ依ツテ与ヘタ所ノモノハ、我ニ於テモ權利アルガ

ノ権利ト申スモノハ、千八百五十八年即チ安政五年ニ於テ、其ノ権利ト云フモノヲ取ツテアリマス、ソレジャニ依テ、七十二年即チ明治五年ニナツタナラバ、此ノ條約ヲ改正シヤウガ、其改正ハ我邦ニ利アル改正ヲシヤウト云フ意味カラシマシタ、姑息ト申セバ甚タ辞ニ弊ガアリマスガ、先ツ此處デ始未ヲ附ケヤウト云フ考ヘデアツタ考ヘマス、然シテ其ノ明治二年ノ正月ニ結ヒマシタル所ノ條約ハ、即當時ノ北独逸聯邦、唯今ノ独逸帝国トノ條約デアリマシタ、其ノ九月ニ結ビマシタル所ノ條約、澳地利匈牙利ト結ビマシタル所ノ條約デアリマス、此ノ條約ト云フモノハ、少シ日本ノ行政上ニ立法上ニ、……少シどころデハアリマセヌ、甚ダ不利ヲ与ヘタニハ相違アリマセヌ、段々利マシタ、故ニ此ノ二ノ條約モ稍々詳ガ緻密ニ拘ヘテアリマシテ、裁判権ノ如キニ至リマシテハ、又緻密ナルニ隨時ガ追リ発達ガ近寄リ、近寄ルニ隨テ徒ニ商売上ノ交通ノミナラズ、或ハ法律上ニ於テモ、日一日ト緻密ニナツテ参リマシタ、故ニ此ノ二ノ條約モ稍々詳ガ緻密ニ拘ヘテアリマシテ、裁判権ノ如キニ至リマシテハ、又緻密ナルニ随テ、成立ヤウニ出来テ居リマシタ、又治外法権ノ契約ニ於テ、彼ノ両國ノ領事即チ裁判官タル所ノ人ノ権利斯ノ如シ、又日本ノ官厅ノ権利ハ、斯ノ如シト云フ取極メハ、以前ニ比較シマスト、余程緻密ナモノガ出来テ居リマシタ、

ノ節新聞ヲ見マスルト、私へ向ツテノ請求中ニ、條約改正ハセにやナラヌ、ズルガヨイ、併シナガラ為シ能フダケノモノハ岩倉前ノ右大臣、既ニシテアツクモノモアリマセウカ、シテアリマセヌモノデアリマセウカ、用意スルモノデアリマセウカ、要セヌモノデアリマセウカ、かりそめニモ独立ノ一国ヲナシテ居ル我ガ帝国ニシテ、條約ノ明文ニ依ツテ條約ヲ改正スルト云フ権利ガアリマシタモノナラハ、どノ様ナ用意……其ノ用意ト云フコトニハ、狭イ意味モアリマセウ、広イ意味モアリマセウガ、方今ニ至ツテ拙者ニ請求スル意味ハ、余程広イ様デアリマス、之ヲ処スルニ當時明治五年ニ於テ、我ガ政府ハ何ノ用意ガアリマシタラウ、用意ハナクトモ此ノ国ノ権利デアリマス、此ノ国ノ権利ヲ拡張スルニ当ツテ、用意ハ要リハセヌコト、考ヘマス、此ノ條約ヲ改正セニやナラヌト云フノハ、即我ガ政府ノ義務デアリマス、此ノ義務ヲ充タスニハ、無論矢張均シク用意ハ要リマセヌ、充タサニやナラヌ義務デアリマス、然ルニ此ノ明治五年ニ於キマシテ、岩倉前ノ右大臣其ノ一行ガ亞米利加ニ先ヅ渡ラレマシテ、亞米利加ノ政府トどノ様ナル商議ヲシタト申スコトハ、皆さん御承知ニナツテ

置イタト云フコトハアリマセヌ、但寺島外務卿ノ時代ニ於キマシテハ……コレモ又公然タル秘密デアリマスル故ニ、皆さん御承知ノコトデ私一人之ヲ秘スルコトヲ要シマセヌ、其ノ時ノ趣意タル到底立法、行政ノ区域ニ於テ、只今権利ヲ果タサウト申シテモ、我カ内國ノ情況タル法律ハ未ダ成立セズ、又ハ法律上ニ於テモ思想力違ヒ、慣習ノ異ツテ居ルコトデアルカラ、容易ニ歐羅巴各國政府ノ協議ヲ、或ハ協賛ヲ得ルコトガ出来ナイデアラウト云フ考カラシマシテ、先ヅ税權ヲ恢復シヤウト云フ意味デアリマシタ、其ノ税權ト云フモノハ、どノ様ニ恢復スルト云フ事柄ニ至リマシテハ、隨分是ハ長イ話デアリマスガ、長イ話デアリマス丈私ハ茲ニハ喋々致シマセヌガ、此ノ寺島外務卿ノ案モ、遂ニ成立チマセンカツタノハ、余程意味ガアリマス、其ノ意味タル別段ナ……他ニ非ズ我ガ條約国ニ於キマシテハ、此ノ度ノ案ニ依ツテ見マスルト云フト、お前ノお国日本ニ於テハ、保護税ト云フモノヲ輸入ナサルカノ様ニ見受ケル、何ヲ保護ナサルノデアルカ、どう云フコトヲ保護ナサルデアルカト云フヤウナ、談判ヲ受ケタコトアルニ違アリマセヌ、彼ノ英吉利国ノ如キ貿易ト云フモノハ自由即自由ノ貿易デアル、歐羅巴大陸ニ於キマシテモ、貿易

居ナイ方モアリマセウ、併シ只今ニナツテハ歴史上ノ事デ秘スベキコトニ非ズ、公然タル秘密ニ過ギマセヌカラ、皆様御承知デモアリマセウ、私モ知ツテ居ル丈ハ御話シタイ、サリナガラ之ヲ喋々スルトキハ、時ガ費ヘマスカラ委シイコトハ述ベマセヌガ、其ノ時ノ我ガ政府ノ委員タル人等ノ立奏タル我ガ主権ヲ恢復シヤウ、即裁判権ノ区域ニ於テモ、税権ノ区域ニ於テモ、我ガ主権ヲ恢復シヤウト云フ意味ヲ持ツタニハ相違アリマセヌ、然ルニ時未ダ熟セザルモノト見エマシテ、亞米利加ノ政府ハコレニ同意ヲ表シマセヌ、隨分其ノ向フカラニチラノ提出案ニ、又更ニ提出ヲシタ所ノモノニハ、干渉がまシイ所ノ事柄ガアリマシタ故ニ、我ガ政府ニ於キマシテハ之ヲ潔シトセズ、隨ツテ其ノ商議ヲ水ク統ケテ、條約ヲ締結スルコトガ出来マセナカツタノデ、其ノ後明治八年ニナリマシテ、寺島外務卿ノ時ニ当リマシテハ、いつマデモ此ノ條約ヲ斯ウシテ置ケナイニ依ツテ、此ノ條約ヲ改正セニやナラヌト云フコトヲ又主張シマシテ、更ニ條約改正ヲ試ミマシタモノデアリマス、無論此ノ條約ヲ改正セニやナラヌノハ日本ノ義務デアリ、日本ノ権利デアルト云フコト、先刻お話ヲ申シマシタ通リノ訳デアリマス、隨ツテ政府ハ一日トシテ此ノ事業ヲ止メテ

タモノデアリマス、其後明治十三年ニナリマシテ、外務大臣ガ替リマシテ、井上伯爵ガ寺島伯爵ニ替ツテ外務大臣トナリマシタ、此井上伯爵ノ條約改正案ト申シマスモノハ、一方ニ偏シナイ考デアリマシタ一方ニ偏セヌト申ス趣意ハ、即裁判権ニモ拘泥シナイ又税権ニモ拘泥シナイ、此ノ一二ノ一ツヲ恢復スルト云フコトノミテハ事足ラズ、イヅレモ恢復シタイモノデアル、どこ迄恢復シタイカどれ程恢復ガ出来ルナト云フノハ、第二ノ疑問デアリマシタ、之ヲ以テ井上外務卿ハ頗ル此ノ主義ヲ拡張シマシテ、……拡張シマシタモノデアリマスカラ、明治十四年、十五年ノ際ニ於キマシテハ、殊ニ十五年ニ於キマシテハ各條約国ノ同意ヲ得マシテ、東京ニ於テ豫備會議ト云フモノヲ開イタ、是ハ皆サン御承知ノ通リデアリマス、此ノ豫備會議ト云フハ、何ノ為メニ開イタカト申シマスルト、即井上外務卿ガ提出シマシタ所ノ競權恢復、裁判権恢復ト云フ、此ノ案ノ事柄ニ就イテハ、我々條約國ガ日本帝國政府ノ請求ニ、どノ点マデ応ジ能フカ或ハ應ゼニやナラヌカト云フコトヲ、豫メ議スル為ニ集ツタモノデアリマス、其ノ豫備會議ニ於キマシテ、議シマシタ事柄ハ余程箇條ガ多クアリマシテ、一々此處ニ私ガ縷述スルハ、時ヲ費ヤシマスルニ依テ省キ

當時まだ世ノ中ノ發達ガソレマデハ進マナカツタモノデアリマスカ、成々ノ用意ガ整ハナカツタモノデアリマスカ、どうモ我ヨリ請求シタコトハまだ條約各國ニ於テ容易ニ之ヲ容レヤウト云フ模様ガ、見エナカツタノデアリマス、ソレニモ拘ラズ井上外務卿ハ、頗力ヲ尽シマシテ余程勉強シマシテ、談判ヲ致シタ訳デアリマス、然ルニどうモ彼ト是トノ協議ガ出来ナカツタ曉、遂ニ或二ツノ條約國カラ、斯ノ如キ案ニシテハどうデアラウト、向フカラ建議ガアリマシタ、其ノ建議ハ我ヨリ提出シタ案ヨリハ、事簡単ニシテ、或ハ我案ニ優ツテモ居ルカノヤウニ見エテアリマシタ、姑クソレニ依ツテ此ノ提起案ヲ基礎ト致シマシテ、更ニ明治十九年一月以来商議シタモノデアリマス、但此ノ商議タル當時御承知ノ通リノ結果ヲ持ツテ居ルモノデアリマスレハ、重ニ裁判管轄ノ事項ニ關係シタ商議デアリマシタ、通商航海ニ關係シテ居ルトコロノ商議ハ、當時拙者ガ條約改正委員ノ第二ノ委員トシテ、通商航海ニ關係スルコトニ当ツテ居ツタ訳デアリマス、併シ此ノ事柄ハまだ公然各國ノ委員ト商議ヲスル間ニ、持出スコトハ出来ナカツタ故ニ、充分協議ヲスル丈ニハ、運ンデ居ラナカツタモノデアル、彼ノ欲スルトコロハ我ニ欲セズ、我ノ欲スルトコロ

マスガ、要スルニ領事ノ特權、民事裁判権、刑事裁判権、行政規則、開港場居留規則及ビ借地法或ハ宗教ニ關スル事項海關ノ稅則貿易上ノ諸件、沿海貿易、燈台、港並ニ港規則、船稅或ハ外國船ヲ日本人ガ、どの様ナ手続デ傭入能フコト、難破船ニ關スル條、局外中立ニ關スルコト締約ノ期限、其締約ノ期限ノ如キニ至ツテハ此ノ井上外務卿時代ニ、既ニ議場ニ顯ハレマシタ如クデアリマシテ、日本ト各條約國トノ間ニ結ンデアル所ノ、條約ノ精神ヲ往々誤解シマシテ、内外ノ人共ニ之ヲ末代ヲ期シテ、結ンデアル條約ノ様ニ思フタノデアリマス、決シテ然ウデハアリマセヌ、千八百五十八年ノ條約ニ於テハ、其ノ權ヲ日本政府ニ於テハ充分ニ取ツテアルノデアリマシタナレドモ、奈何セン内外多端ノ時ニ此ノ權ヲ張ツテ、之ヲ恢復スルマダニ手ガ廻ラナカツタ時デアリマス、又時ガ承ク統ク其ノ間ニ、條約改正ガ容易ニ出来マセヌ、故ニ麥シテ慣習トナリ其ノ慣習ガ又麥シテ、權利トナラント欲スルトコロカラ、斯ノ如キ誤解ヲ生ジタコトデアリマシタ、ソレデ此ノ明治十五年ノ豫備會ニ於テ、凡基礎ト云フモノヲ定メマシタニ依リテ、其ノ基礎ニ又修飾ヲ加ヘマシテ、井上外務卿ガ、十九年ニ更ニ此ノ條約改正ノ案ヲ出シクノデアリマス、然ルニ

ラヌ位置ニ立テマシタノハ、困難ト申スモ甚シキ困難デアリマシタ、本大臣モ其ノ困難ヲ當時受ケタ一人デアリマス、其ノ時ニ当ツテ井上外務大臣ノ、困難中ニ勉強セラレタコトニ就イテハ茲ニ一言シ、其ノ人ニ対シテ謝シテモ宣シ様ニ存ジマス、其ノ後井上外務卿ハ職ヲ辞シマシテ、後ハ暫クノ内伊藤伯爵ガ、總理大臣ヨリ外務大臣ヲ兼ネクモノデアリマス、其ノ時ニ当ツテハ條約改正ノ問題ハ別ニ起ランカツタ、無論外務大臣其ノ人人ノ心中ニハ、此ノ條約改正ハセネバナラヌ、スル丈ノ権利ガアル、義務ガアルト云フコトハ忘レタモノデハアリマセヌ、ナレドモ未ダ井上伯ノ外務卿ヲ辭シテ日モナク、之レヲどの様ニ救濟シタラ宣カラウカト云フ案モ、或ハ胸中ニアツテ、白イ紙ノ上ニ黒イ墨デ、書ナカツタデアラウト思イマス、夫レ故ニ大隈伯爵ガ出マシタ迄ハ、條約改正ノ問題ハ少シモ起ラナカツタノデアリマス、其後明治二十一年ニ至リマシテ大隈伯ガ外務大臣ノ職ヲ襲ギマシテ、更ニ此ノ條約改正ヲ始メマシタノハ、皆さん御承知ノ通リデアリマス、此ノ大隈伯ノ案ト申スモノハ、井上伯ノ案ト天地ノ差ガアル訳デアリマセヌ、大体ハト申スト、矢張前ノ外務大臣ノ案ニ基イタモノデアツクニ相違アリマセヌ、尤モ裁判管轄法ノ如キニ至テハ、

アル、到底落着ク所ハどう云フ訳デアツタト云フコトハ甚ダ言フヲ欲セズ、私ハ言フヲ悲シム位ノコトデアル、其ノ出来事ガアツタカラ、三箇国ト結シダ條約ニ批准ヲ遊バスト云フコトハ、固ヨリ出来ナカツタ故ニ、此ノ條約ト申スモノハ、姑ク実施ノ効力ヲ中止セラレタ所ノモノニ成テ仕舞イマシタ、此ノ如ク一蹉一趺、明治五年以来條約改正ハ新井君ノお話ノヤウニ、為サント欲シテ止メ或ハ止メラレ、実ニ非常ノ困難ヲ、政府ハ今日迄感ジタ訳デアリマス、去リナガラ是ハ條約改正ヲシナイト云フコトハ、日本政府ノ義務ヲ充タサヌト云フコトデアリマス、日本政府カ此国ニ固有シテ居ル所ノ、権利ヲ拡張シナイト云フ事柄デアラウト忠ヒマスル、故ニ政府ガ尙ホ引続イテ、條約改正ノコトニ着手ヲ致シタ訳デアリマス、なぜ此ノ條約改正ハ止メラレスカト云フコトハ、茲ニ喋々拙者ノ縷述ヲ要シマセヌケレドセ、大凡我日本ノ臣民タル者ニセヨ、政府ノ者ニセヨ、此ノ日本ノ国是トシテ居ル所ハ、明治元年ニ於テ業ニ已ニ定マツテ居ルモノデアラウト思ヒマス、ソレハ他ナシ五條ノ誓文デアリマス、其ノ五條ノ誓文ノ第一條ニ基キ、お互ニ斯ノ如ク当场ニ於テ、御面会ヲ申シ互ニ説ラ吐ク訳

以前ノ井上伯ノ時ノ案トハ、余程簡単ニ成リマシテ、數デ譬ヘテ申シマセウナラバ、井上伯ノ案ガ十デアリマスナラバ、大隈伯ノ案ハ二ツニモ或ハ一ツ半ニモ減シマシタノデアリマス、其ノ上ニ大体ニ於テハ、大隈伯ハ國別談判ノ方針ヲ取リマシタモノデ、即チ此点ニ於テハ、井上外務卿ノ方針ト様子ガ違ツテ居タ訳デアリマス、要スルニ大隈伯ノ考ニ於テハ、國別談判ヲシナカツタナラバ、到底此ノ多數ノ人ヲ集メテ商議スルコトハ、むツかしいト云フコトカラ、此ノ方針ヲ採ツタモノト見ヘマス、然シマシテ、其ノ節大隈伯ノ商議ト申スモノハ、歩一歩ヲ進メマシテ、彼ノ亜米利加或ハ露西亞、独逸ノ三箇国ト條約ガ出来タト云フコトハ、是ハ公然タル秘密デアツテ、皆さん御承知ノ訳デアリマス、此ノ條約ハ末ダ世間ニ公ケニ成テ居リマセヌガ、其ノ條約ニ依テ拙者ノ手許ニ較ベテ見ルト、此ノ出来栄タル、無論明治二十年ノ七月調印ヲシタナラバ、（若シ為シタナラバ）其方ヨリ此方ガ出来ガ宜シカツタニ相違アリマセヌ、然ルニ當時甚ダ世間ニ於テハ、此ノ條約ニ反対ノ異論ガアリ、帝国政府ニ於テモ頗ル困難ヲ感ジタ訳デ

右大臣前キノ右大臣以後、我國ニ対シテどれ程マデノ厚意ヲ尽シタカ、殊ニ厚意ヲ表シタカ、殊ニ井上伯大隈伯ノ此ノ商議中ニ、どれ程ニ外國ノ政府カ、我方請求ヲ容レテ吳レタカト云フコトヲ考ヘテ見マスルト、此ノ外國ノ政府ハ我ガ政府ヲ信用シ、我ガ人民ヲ尊敬シテ居ルト云フ所ノ廉拙者ニ此ノ事ヲ任ジロト云フコトデアルナラバ、此ノ事ニ当ツテ見ヤウト云フ決心ヲ、私ハ致シマシタ訳デアリマス、畢竟此ノ諸外国ノ條約國ガ、我々ニ対シテ明治五年以来殊ニ明治十四五年以来、どれ程迄ニ請求ヲ容レクカト云フコトハ、他日歴史ノ上ニ就イテ、あなた方ガ能ク御覽ニナルコトデアラウト思ヒマス、之ヲ茲ニ公ケニスルコトハ私ノ権限外ニ渉リマス、要スルニ是丈ノコトヲ申スコトガ出来マス、維新以来此ノ日本人民ノ政事ノ区域ニ於キ、或ハ行政ノ区域ニ於キ、否立法ノ区域ニ於キ、日一日ト進歩スルコトハ、雷ニ言葉ノ上ノミナラズ、事實上ニ於テ斯ノ如ク進歩シタカラ、此ノ先キモ無論進歩スル所ノ、一ノ東洋ニ於ケル友達トナルベキ位置デアル……友達トスベキ人民デアルト云フ考ハ、各國ニ於テ持ツテ居ルト云フコトハ、拙者ハあなた方ニ向ツテ保証スルコトガ出来ル、此ノ

意味カラシテ我ガ請求ヲ容レラレル丈ノ点マデニハ、容レテ吳レタコトデアリマス、然ルニ本大臣カ此ノ艱難ナル所ノ局ニ当リマシタトキノ心、私カニ思ヒマシタコトガ一ツアリマス、外務大臣——大臣ト申スモノハ……私ハ何カ自惚シタヤウナ言葉カハ知リマセヌガ、舊ニ條約改正ト云フ疑問バカリヲ以テ、朝カラ晩マデ或ハ正月カラ大晦日マデ、始終掛ツテ居ル職デハアルマイト云フ考ヲ特ツテ居リマシタ、……今デモ其ノ考ヲ持ツテ居リマス、然レバ外務大臣ト云フモノハどんな仕事ヲセニやナラヌモノカ、外交ト云フモノヲ司ツテ居ルモノデアル、否外交ト云フ言葉デハ分リマセヌカ、外國ニ閑スル日本ノ政略ト云フモノヲ司ツテ居ルノカ、即外務大臣ノ職掌……職分デアル、然レバ一方ニ於キマシテ、我カ帝国ノ外國ニ於ケル……外國ニ対スル所ノ政略ト云フモノヲ、及バズナカラ執ツテ見ヤウト考ヘマシタ、又今モ其ノ考ガアリマス、其ノノ規則立ツタル此ノ外務ノ仕事ト云フモノヲやツテ見タイ、……シテ見タイト云フ考ヲ持ツテ居リマシタ、……ト申スモノハ、第一ノ疑問即外國ニ關係スル所ノ我ガ帝国ノ政略事務ト云フモノハ、皆様能ク御承知デアリマスカ、明治七年或ハ八年ニヤツテ居タモノデハアリマセスガ此ノ條約改

正バカリガ此ノ國ノ仕事デアリマスカ……外務大臣ノ専務デアリマスカ、拙者ニ於テハ左様ニハ考ヘマセヌ、抑々台灣事件ノ済ミマシタ後、どんナ外交問題ガ起ツテ参リマシタカ、此ノ條約ノ疑問ノ起ルヤ、忽チ此ノ條約改正ト云フ此ノ四字ノ文字ニ、天下ノ耳目ハ皆傾イテ仕舞ヒマンタ、此ノ問題ノ為ニ堂々タル我ガ帝国ハ、斯ノ如キ恵深キ位地ヲ、東洋ニ於テ持ツテ居ルニモ拘ラズ、條約改正ト云フ四字ニ、朝モ野モ皆引カサレテ仕舞ツテ、一寸モ仕事ヲスルコトガ出来マセヌ、全体私ハ慷慨スルノデアリマセヌ、又スルノモ欲シマセヌ、シナイ積リデアリマスガ、我ガ帝国ノ位置ト云フモノヲ考ヘタナラバ、我ガ帝国ノ外國ニ対スル政略ノ方針ニ就イテハ、朝トナク野トナク考ヘズアリマス、第二ニハ此ノ國ノ人民ハ発達シ能フカ、能ハナイカト云フ自分ノ量見ヲ定メルノデアリマス、此ノ國ノ位置ト云フモノハ、ヨイト云フコトハ誰デモ知ツテ居ル訳デアリマスカラ、細カク考ヲお費シニナツタナラバ、亞米利加ト云フ國ハ日本ニ背ヲ向ケテ居リマス、地形上ヲ御覽ナサイ亞米利加ノ西岸ニハ一モ良港ガアリマセヌ、其ノ上海ヲ隔ツルコト幾干……此ノ國ニハ大變縁ノ遠イ国デアリ

メ、彼ニ当ルノ覺悟ヲ為セト云フコトヲ示シテ居ル、指デ
示シタ所ノ形デハアルマイカト思ヒマス、又我ガ人民ノ性
質ハどうデアリマス、發達シ能ウ人民デアルカ、發達シ能
ハナイ人民デアルカト云フニ、我ガ人民ニ發達シ能ハナイ
ト云フナラバ已ム、私ハ何モ申シマセヌガ、サリナカラ拙
者ハ左様ニハ考ヘナイ、歐羅巴ノ言葉デ、ゼねらちぶ、ば
わート云ヒマスガ、此日本ノ人民ハ自然繁殖スルノ力ハ、
障分強イモノデアリマス、人間ノ性質精神ヲ學問ニ就イテ
考ヘ、性質精神ヲ論シテ、學問ノ上カラ考ヘテ見ルト、日
本人ハ充分發達シ能フ所ノ人民デアルト、私ハ斷定シテ居
リマス、斯ノ如キ位置ニ居リ、斯ノ如キ人民デアルナレ
バ、何ゼもう少シ此外國ニ關係スル日本ノ政略ト云フコト
ニ、朝モ野モ考ヲ注ガナイデアリセウカ、我日本ノ歴史ニ
就イテ溯ツテ、足利時代ノ末マデラ御覽ナサルト云フト、
我々ノ先祖ハ或ハ海賊ノ名カ附クカハ知リマセヌカ、足利
時代ニ當テハ、九州ノ豊前、筑前、肥前、長門、石州、芸
州近傍ノ人間ト云フモノハ、或ハ肥後ノモノモ居ラウシ、
又薩摩ノ者モ居ラウガ、彼ノ辺ノ人民ハ何ヲ生涯ニ致シタ
モノデアリマスカ、而モ小舟ニ飛乗ツテ、漁船ノ如キ小サ
ナモノニ乗ツテ、彼ノ四億萬ノ人民ガ住ンデ居ル所ノ海岸

ヲ、講究致シマシタガ、其講究スル場合ニ當リマシテモ、
我日本國ニ於テ、我四千萬ノ人民ノ上ニ於テ、どのやうナ
ル考、與論トデモ名ゲラレル、モノガアラウカト云フ、コ
トニ就テハ隨分我々モ新聞モ見マスガ、又新聞ノ外ニハ今
日斯ノ如ク、爰ニ於テ諸君ニ會スルコトノ出来又時節デア
ツテ、廣ク天下ノ公論トカ与論トカ云フモノトシテ、見ル
ニ足ルヘキモノガ、割合ニナカツタガ、夫ハ隨分見マシタ
併シ之レヲ私カ此處デ、此院ニ於テ圧道致シマシタナラ
バ、隨分御退屈デアリマセウ、サリナガラ要用ノ点丈ハ、
どうゾ私ニ言ハシテ下サル様ニ望ムノデアリマス、或新聞
ガ昨年十一月二十一日ニ何ト申シマシタカ、内地雜居ト領
事裁判トハ兩存スベキモノニアラズ、領事裁判ヲ存スル間
ハ内地雜居ヲ禁ズ可シ内地雜居ヲ許スノ日ハ、即領事裁判
ヲ廢スルノ日ナリ、日本ノ條約改正ニ當ルモノハ、此ノ二
ツノ關係ヲ以テ代金ト、實物トノ關係トナサ、ルベカラス
ト云ツタ新聞ガ一ツアリマシタ、又曰ク我輩ハ絶体的ニ内
地雜居ヲ批判スル者ニアラズ、只領事裁判權ニ伴フ内地雜
居ヲ批難スルモノナリ、又十一月二十七日ノ新聞ニ、治外
法權ニ同伴スル内地雜居ノ事、及ビ不動産ヲ所有スルノ權
ヲ外人ニ許ス箇條ハ、我輩ノ修正ヲ望ム所ノモノナリ、此

ヲどの様ニ煩ハシマシタカ、斯ノ如ク勇敢ナル人民デアリ
ナガラ、此人民ガ区々タル條約改正ト云フ、四字ニ屈曲シ
テ居ルト云フコトハ、私ハ余り小サイ話デハアルマイカト
実ハ考ヘテ居ルノデス、去リながら此疑問ハ大ナル疑問デ
アリマス、一朝ニシテ此疑問ヲ解クト云フモノハ、無論出
来マスマイ、今日話シガ長クナリマス故ニ、此事ニ就イテ
リマス、斯ノ如キ位置ニ居リ、之レハ今私ガ申シタ疑問ニ較
へテ見ルト、稍小サイヤウニ思ヒマス、去リナガラ今広イ
所ノ疑問ヲ解クニハ、階梯トナリマス、條約改正ハ疑問ハ
疑問デアリマスガ、其上十八九年以來、朝モ野モ此事ニ心
ヲ費シ、未ダ結局ヲ結バズニ居ル仕事デアリマスカラ、貞
今ニナツテモ、無論主トシテ此條約改正ハヤラネバナラヌ
ニ違ヒアリマセヌ、ソレジヤニ依テ、政府ハ昨年ノ冬以来、
頗ル考ヲ費ヒマシテ、此條約改正ハどのヤウニシタモノデ
アラウ、但シ條約改正タル一ノ政黨問題ニアラズ、かりそ
めニモ四千萬ノ人民ニ關係シテ居ル所ノ、純然タル國家問
題デアルト云フコトハ、政府ノ確信シテ居ル所デアリマ
ス、だニ依レテ、出来ルダケ、公平ナル考ヲ持チマシテ、
此ノ條約改正ハどのやうニシタラ、宜シカラウト云フコト

うゞ願ヒマス、彼ノ公文はモ公然タル秘密ト申シテいい丈ノ物デアルガ、彼ノ公文ヲ取消スガ如キ、法律ノ編成ニ時ヲ限ル約束ヲスルハ、いけナイト云フ日本新聞ノ注文デアル、此ノ事ヲ大隈伯カ甘ジテやツタデハ無論アリマセヌ、余議ナクヤツタコトニ違アリマセヌカ、其ノ後ヲ繼ギタル拙者ニ於キマシテモ、陛下ノお恩召ニヨリ内閣ノ協賛ヲ經テ此ノ事ニ就イテハ諸君ノ御安心ノ出来ル丈ノ仕事ハスル積リデアリマス、但外交官ノ身分トナツテ、コノ事柄ヲ取扱フニ少シク困難ヲ感スル訳デアル、只斯ウ云フ事ヲお前ニ許ストカ、許サヌトカ、禁スルトカ云フコトヲ言出スニハ、物ニハ理由ガナケレバナリマセヌ、其ノ理由タル世界ニ通用スルト申シマシタラ、余りひどイカ知リマセヌガ、日本国内ニ通用ノ理由デナケレバナラヌノハ当リ前デアリマス、其ノ他ニ出ル程ノ理由ナラ尙力ガ強イノデアル、ソコデ拙者ハ考ヘマシタニ、交際ヲ結ンデ居ル所ノ外国ニ対シテ、我国ノ請求ハドウ云フ請求デ、アツタデアラウカト云フコトヲ今一度顧マスルト、日本ニ於ケル裁判官ノ資格ガ低イデアラウカ、或ハ法律ト云フモノガナインオデアル、而シテ編纂ガ出来テ居ナイ、ソレニ反シテ我ガ交際國ハ……英吉利ノ法律ノコトハ知リマセヌガ、成文ガアツテ其

マス、此ノ編纂事業ト云フモノハ、実ニすばらシイ進歩的事業ト拙者ハ考ヘマス、彼ノ裁判構成法ノ如キハ、実ニ憲法ノ中ノ一部ト言ハナケレバナラヌ、無論一部ニ違アリマセヌ、著シク力ヲ——権利ヲ争フ点ニ於テ加ヘタモノデアリマス、斯ウ云ウモノモ出来マシタ、又昨日議論ノアツタ商法、此ノ商法ニ就イテ甚ダ失礼デアリマスガ、末松君ニ一言ヲ呈シマス、商法ヲ捨ヘタ原因ハ内閣ニ於テ、外ニ意味ガアツタラウト云ハレマシタガ、拙者ハ此言葉ハ受取マセヌ、条約ヲ改正スル為メニ、彼ノ二千カ三千ノ客分ニナツテ居ル所ノ外国人ノ為メニ、法律ヲ作ルト云フコトハ、政府ニ於テ毛頭アリマセヌ、四千萬ノ人ノ福利ヲ図ル為メノ法律デアリマスル、此国ノ秩序ヲ保持スル為メノ法律デアリマス、外ニ意味アツテ作ツタ法律デアリマセヌ、其他種々ノ法律ガ出来マシタ、(議長、安部井ト呼ブ者アリ)其他種々ノ法律ガ出来マシタ、尤モ法律中最上級ノ保證トモ申スベキモノハ憲法デアリマス

〔議長、安部井議員、言論ヲ駁撃スルコトハ議長ニ於テきつと差押ヘニナル様ニ願ヒマス〕

〔此時左ノ傍聴人中議員ヲ蔑視スルナト喚ブ声アリ〕

〔末松三郎君、傍聴人ヲ遠カニ退場セシメラレンコト 追補 帝国議会関係 九三

ノ成文ニ從ツテ裁判ヲスル事デアル、我ガ日本ハ然ウ云フ訳ニ往カヌガ、其ノ点ガ氣遣ハシイト云フ様ナコトニ、向フガ甚ダ氣遣フ点デアル、ソレニ就イテ日本ハどう云フ保證ヲ与ヘルカト云フ考、併シナガラ明治五年ニ於テ、我ガ政府ノ司法権ト行政権トノ区別ガ始メテ出来マシタ、此ノ司法権ト行政権トノ区別ト云フモノハ、全体我邦ノ歴史ニ於テ堂々タル進歩デアツタノデ、又明治十二年カ十三年カ、現行ノ刑法治罪法ガ行ハレタノデアル、此ノ刑法治罪法ト云フモノガ、どう云フ性質ノモノカト申シマスレバ、無論仏蘭西法律ヲ其ノ儘真似ラレルモノデハナイ、又ハ独乙流儀ノ輸入モ出来ナイノハ、誰デモ能ク御承知デアル、サリ乍ラ当ラズト雖モ遠カラザル的ニ、隨分立派ニ適用スル法シタカ、裁判官ノ試験法ト云フモノガ出来マシタ、此ノ裁判官試験法ノ意味タル、畢竟裁判官ヲ検査シナケレバナラヌ、裁判官ニ学問ヲ与ヘテやラウ、其ノ学問ヲ与ヘタモノハ試験ヲ経テ、然ウシテ裁判官トシテ裁判所ニ据ヘテ置カウ、是ハ大層ナ保證デアリマス、是ガ出来マシタ、此ノ結果タル甚ダ宜シイ、又其ノ後二十年以後ノ編纂事業デアリ

ヲ希望シマス、先ツ此処分ヲ願ヒマス、速カニ取調アランコトヲ希望シマス」

〔議長守衛ニ命シ取調ヘラ為サシム〕
今迄申シマシタル事柄タル、皆ンナ各國ノ政府各國人民ニ向ツテ与ヘル保證デアリマス、最モ大切ナル保證ト云フモノハ、我憲法デアリマス、此憲法ト申スモノガ今年先月ヨリ行ハレ……無論行ハレルト云フ訳デナケレバナラナイト云フコトハ、政府ニハ豫メ知ツテ居リマス、此ノ憲法ト云フモノハ出来マシタ以上ハ、新タニ出来マシタ所ノ法律ニ就イテモ、外國人カ我法律ニ信用ヲ置カナカツタ様ナコトデハナク、確カナル所ノ立法上ニ於テ、組織カ出来マシタ訳デアリマス、又三百人ノコノ衆議員諸君ガ集ツテ捨ヘラル、所ノ法律タル、啻ニ一個人カ或ハ二人三人寄ツテ捨ヘタ法律デナインハ分リキツタ話、無論保證ヲ与ヘ、信用ヲ人カラ受ケル法律ニ違ヒナイ、斯ノ如ク代議政体ガ出来タト云フ訳カラ、彼ノ條約改正ノ如キニ置キマシテモ、或ハ交際國ニ於テモ之ヲ保證ト見ルコトガ出来得ルグラウト、政府ハ考ヘマシタ、斯ク考ヘマシテ來マスルト云フト、此ノ明治五年以來、條約改正ノ事業ガ一蹉一跌致ス、其ノ事柄タル言葉ヲ換ヘマスレバ、寧ロ日本ノ進歩デアリ

マスル、戦ニ敗レタ事柄ハ其ノ時ニ当ツテハ、遺憾トモ思ツタカ知リマセヌ、併シナカラ後ニナツテ見マスレハ、歩一歩進メマシテ、斯ノ如キ保証モ、一方デ出来一方デハ我内國ノ状況ガ、能ク分ツテ來テ情実ガ相通シマシテ、ソレソレ我國ノ請求モ彼ノ國ニ於テ、たやすく容レ与フ地位ニ、ナツタラウカト思ヒマスレハ、此ノ一蹉一趺ハ、我國條約ノ歴史ニ於テハ固ヨリノコト、一般ノ歴史ニ於テ一ノ進歩ト申シテヨイ事柄ト思ヒマス、就キマシテハ此後どの様ナ矩合ニ、処置シタラヨカラウト云フニ付テハ、又一方ニ交際國ニ対シテ、日本政府ハ余程考ヘナケレハナリマセヌ、彼ノ交際國ガ今日マデ、我ガ請求ヲ容レテ、我ニ友誼ヲ示シタ云フ廉ヲ、一朝ニシテ破ルガ如クシテハ相濟マナイ訣デアル、又各国ハ現在ナル條約ニ依ツテ、收得シテ居ル所ノ権利ト云フモノヲ、一朝ニシテ棄却セラルト云フコトニナツタラ、忽チ不和ヲ生ズルコトハ当リ前デアリマスカラ、此ノ事ハ此ノ間ノ權衡ヲ、ドウ云フ風ニ取ツタラヨイカ、ドレマデ進ングラヨカラウカト云フコトハ、余程政府ニ於テ注意致ス訣デアリマス

ソレカラ此箇條ニ付テ、一寸言葉ヲ申シ添ヘマスカ、彼ノ明治初年以降外国ノ代表者タルモノカ、何力事ガアリマス八條ニ「天皇ハ公共ノ安全ヲ保持シ又ハ其災厄ヲ避ケル為メ云々」ト云フコトガアリマス、治外法權ガ行ハレテ居ル以上ハ、此八條ト抵触スルコトハアリハシマスマイカ、第五十七條ニ「司法權ハ天皇ノ名ニ於テ法律ニ依リ裁判所之ヲ行フ」ト云フコトガアリマスガ、條約改正ガ出来マセヌ以前ニハ「中略」我行政權ハ自由ニ行ハレズ、歩一歩檢束サレテ居ル「中略」然ラバ此一ノ独立シテ居ル帝國ノ内ニ、十數國ノ獨立國カ寄食シテ居ルト「中略」云フモノノデハアリマスマイカ、斯ウ云フ有様デアリマスレバ、どうシテモ條約改正ハシナケレバナラナイニ違ヒアリマセヌ、ソレカト申シテ先刻御話シ申ス通り、各條約國政府ノ感覺ヲ悪クシタリ、或ハ其權ヲ一朝ニシテ棄却スルコトハ出來ナイ話デアリマス、じやニ依テ我政府ハ商議ニ掛リマシタ、其ノ商議ニ掛リタル所ノ政府ノ意味ハ「中略」略ボ政府ハどう云フ方針ヲ取ツテ居ルト云フ、コレハお分リト思ヒマスガ、商議ヲシマシタ、扱其商議ノ内ニアル事柄ハ、どう云フ事柄デアルカ、言ツテ聽カセイト云フ御請求ニナリマシテハ、拙者甚ダ困リマス、其ノ所ニナツテハ出來マセヌ、「中略」或條約國ノ政府ガ、我々ニどのヤウナルコトノ返答ヲセラレタカ、どのヤウナル厚意ヲ、或條約國ハ持ツテ

スト云フヤウナ、例ノ脅迫手段トモ、殆ト申シテ宜シイヤウナ、拳動ガアリマスケレトモ、ソレハ以前ノ歴史ニ偏ズル話デ、只今ハ充分ノ厚意ヲ示シテアリマス、斯ノ如キ以前ノヤウノコトハ、少シモナイト云フコトハ、私ハ保証スルニ足リマス、併シナガラ又一方ニ於キマシテ、只今迄ハ殆ド法律上ノ区域ニ、私ノ話カ止ツテ居リマスガ、一方ニ眼ヲ転シテ考ヘテ見マスト、政略上カラ、或ハ立法的ニ考ヘマスト云フト、此條約改正ト云フモノハどうシテモ、セナケレバナラナイモノデアリマス、何セト申スト、我自由ノ権利——自由ト云フモノハ、天皇陛下ノ賜デアル、其ノ自由ノ主義カラ成立タ憲法ト云フモノデアリマセウ、夫ハ私ガ云ハズトモ皆様御承知ノコトデアリマス、憲法政治力茲ニ行ハレタ以上ハ、到底我立行政ガ不独立デアルト云フコトハ、云フベカラズ又行フベカラザルモノデアラウト考ヘル、然ルニ現今迄ノ有様ハ、どうデ御座リマセウ、皆さん能ク御承知デアリマセウ、「中略」我憲法第四條ニ依リ之ヲ行フ」ト云フコトガアリマス、領事裁判権カ成立テ居ル間ハ、之ト抵觸スルヤウナ廉ハアリマスマイカ、第

居ルカト云フコトヲお話スレバ、此ノ中ノ多分ノお方ハ満足スルデアラウト、拙者ニ於テモ推量致シマス、何カ此ノ事柄ハ拙者ガ内閣ニ於キマシテ同僚ノ協賛ヲ得ル為ニ明瞭ニ話ヲ「中略」スル様ニ、あなた方ニお話スルコトハ出来マセヌ、「中略」若シモ此ノ外交ト云フコトガ、或ハ欧羅巴デ申スじぶるましート云フ外交ノ技量技術ノコトヲ稍々御存知ノ方ガアツタナラバ、私ノ云フコトハ無論理解ナサルデアラウシ、又外交ノ技量ヲ御存知デアルナラバ、私ヲシテ板夾ノ位置ニお立タセナサラナカツダデアラウト私ハ思ヒマスケレドモ要スルニ我ガ政府ニ於キマシテハ、君主權ヲ拡張シ、經濟上、國ノ利益ヲどぞ迄モ進メル考デ御坐リマス、サリナガラ先刻申シマシタ通り、徧重徧輕ト云フコトハ出来マセヌ、ソレハ御國ノ為ニ即我々四千萬ノ為ニ、不利デアルカラ宣シクナイト考ヘル所以デ御坐リマス、何シロ此ノ二ツノ目的ニ成文……西洋語デ申スト、を一とのみかるデ日本ノ力ニ能フ丈ニ、裁判ノ事モ経済ノ事モ治メツツ政府ハアルノデ御坐イマス、「下略」

(衆議院議事録)

九四 明治三五年五月二六日 櫻本外務大臣演説

第三回 帝国議会貴族院議事民法商法施行延期法律案

第一読会櫻本外務大臣演説

別録一 新法典非難ノ批評 ボアソナード

二 英国外相宛英代理公使書翰

議長(侯爵蜂須賀凌韶君)外務大臣

「國務大臣子爵櫻本武揚君演壇ニ登ル」

國務大臣(子爵櫻本武揚君)諸君、法典ノ実施ト延期ニ關シマスル是非得失ハ今將ニ諸君ノ御討論中デゴザルカラ其討論ノ終結ニ至ラザル前ニ本官ハ一片ノ意見ヲ提出シマシテ諸君ノ御参考ニ供シマスル、即チ此問題ハ實ニ條約改正ト余程密接ノ關係ガアリマス、余程重大ナル影響ヲ及ボシマス、抑々現行條約ハ我邦目下ノ時世ニ適セザルヲ以テ一日モ早ク改正セネバナラスト云フハ既ニ全國ノ輿論ト認メマス、恐クハ誰一人ノ不ノ字ヲ説クモノハアリスマイト存ジマス、是レハ延期論者ノ方々モ矢張御同感ニ相違ナイ、其改正ヌベキ箇條ハ如何ナルモノカト申セバ其大要ハ我固有ノ國權ト國利ト保護スルノ一語ニ過ギマセヌ、而シテ此目的ヲ達スル手段ハドウデアルカト申セバ他ナシ普通文明世界ノ人民ニ當缺ルベキ法典ヲ制定シテ之ヲ實施ス

権ガ如何ニ金城鉄壁ナレバトテ今漸ヲ以テ之ヲ除カバ遂ニ全ク之ヲ撤去セシムルヲ得ベキ筈デアルト斯様ニ考ヘラレテ此ニ於テ種々ナル工夫手段ヲ以テ設ケラレテ其時條約改正豫議会ト云フモノヲ開カレマシタ、夫ヨリシテ明治十七年ニ又一種ノ案ヲ提出サレ十九年ニ至リ正式ノ條約改正會議ナルモノヲ開キ各國ノ全權使臣ト討論スル所ガアリマシタ、其節我ノ提出案ニ対シテ英公使ト独公使トガ所謂んぐる、ぜるまん、ぶろじゑくと、ト云フ即チ英獨案ナルモノヲ提出ナサレテ之ヲ我ガ政府ニ於テモ承知シテ之ヲ以テ談判ノ基礎トシテ互ニ討論ヲ始メマシタ、然ル所ガ結局此案モ又不十分ノ廉慟ナカラズト云フヲ以テ延期ニシタイト立消ヘマシタ、越テ明治二十一年ニ至リ大隈伯ノ條約改正ノ談判ノ時代トナリマシタ、而シテ此結果タルヤ諸君ノ御承知ノ通りデアリマスカラ本官ハ何ニモ申シマセヌ、扱右ノ通明治十五年ヨリ同ジク二十一年マデ引続キ時ノ当局者、而カモ我邦ニテ第一流ノ政治家ヲ以テ目セラル、井上伯大隈伯ノ如キ千辛萬苦シテ其末提出サレマシタル案ハ随分時ニ取テ無理ナラヌ考デアルマシク其苦心ハ實ニ推察スルニ余リアルコトデアリマス、然ルニ其好結果ヲ見ルニ至ラザリシハ詰ル所前ニ申シマシタ如ク到底文明ノ社會ニ適

ルニアルノミデス、斯ル法典ノ行ハレザル間ハ如何ニ上下挙ツテ熱心ニ完全無缺ノ條約ヲ望ムト雖モ決シテ与國ノ同意ヲ得ベカラザルハ疑ヲ容レザルコトデアリマス、今ノ世ノ現行條約ノ不完全ヲ論ズルモノハ大抵皆当初ニ遡リマンテ當局者ガ外國ノ事情ニ暗カリシニ坐セリト斯ウ言ハレル様デアリマスガ、三十年前即チ安政時代ノ當局者ガ外國ノ事情ニ通曉イタシテ居ラウ筈ガナイ、仮令通曉シテ居ル者アツテ負担シタニモセヨ當時締盟各國ガ其人民ノ貴重ナル生命財産ヲ拳テ我法律ノ下ニ一任スル筈ハナイ、ナゼナレバ彼等ノ生命財産ヲ托スベキ普通文明社会ニ通用スベキ法律ガゴザイマセナシ、是レガ即チ重ナル原因ト存ジマス、二三十年前ノコトハ暫ク置キ今ヨリ僅カ十年位迄ハ現行條約中最モ忌ムベク最モ嫌フベキ彼ノ領事裁判權ナルモノハ彼等ガ頼デ以ツテ金城鉄壁ト為ス所ニシテ我ハ速モ之ヲ撤去セシムルコトハ出来マセヌト世間一般ニアキラメテ居ツク姿デアツカト本官ハ存ジマス、其証拠ニハ明治十五年頃マデ條約改正談判ナルモノハ我内國ヲ開放シ彼人民ヲシテ尽ク我法律ノ下ニ服従セシメント欲スルガ如キコトガ談判ノ席ニ上ツタコトガナカツタカト存ジマス、然ルニ明治十五年井上伯ガ外務卿ノ時同伯ノ考ニハ縱令領事裁判

ちぢゆうと、どろわ、あんてるなしよなるトスウ申ス協会ガアリマス、此協会ノ総数ハ……・会員ノ総数ハ百二十名ヲ制限ト致シテアリマス而シテ此会ニ於キマシテ目下調査ニ着手シテ居リマスル第十二ノ問題ハ目下東洋各国ニ行ハレテ居ル領事裁判上ニ闕シ原告被告共ニ耶蘇教國ノ臣民ナル場合ニ於テハ此領事裁判權ニ如何ナル改正ヲ要スベキカト云フコトガ一案デアリマス、是レニハソレソレ

担当ノ報告委員モ選定サレテアリマス、諸君御承知ノ通士耳其、支那、ペルシヤ、暹羅是等諸國ニ所謂普通文明世界ノ人民ニ適スベキ法典ナルモノハアリマセメ故ニ領事裁判ノ撤去ナドト云フコトハ思ヒモ依ラヌコトデアリマス、是レ等ノ国内ニ於テ歐米各国民同士ノ争ガ起リマシタ時ハ領事裁判所ハ如何ナル改正ヲ加ヘテ宜カラウト云フ用意丈ノ話デアリマスガ、モツ他ノ一案ハ之ト異リマシテ日本國現行條約ト現ニ實施セラレ若クハ已ニ發布セラレテ居ル彼ノ刑法民法商法刑事訴訟法民事訴訟法ノ所謂此五大法典ナルモノヲ研窮スルタメ其法典ノ送附ヲ請求致シ越シテアリマス、而シテ日本ニ闕スル報告委員ハ是レマデ英國ノ國際公法家デ有名ナルさ一、つらぶあーす、つうゐすト申ス人、デアリマシタガ同氏ハ老年ニ依リ担当ノ報告委員ヲ辞

別録一

明治二十五年六月(カ) ボアソナード意見書

新法典非難ノ批評

ボアソナード 稿

吾雑誌記者ハ原来嚴正中立ヲ守リ日本帝国議会場裡及ビ新聞紙上ニ於テ論議分裂セル問題ニハ敢テ容喙セザラン事ヲ期シタリ。然リト雖モ新法典実施延期問題ノ若キハ事國際上ニ涉リ極メテ重大ニシテ其影響スル所少カラザルガ故ニ余輩ハ特ニ茲ニ之ヲ論ゼントス。蓋シ此問題ニ対シテ非難ヲ加ヘタル者少カラザルニアラズ然レドモ其基ク所ヲ観レバ概ネ日本新法ノ模範タル仏國法典ニ対スル非難ニアラザルハナシ。是ヲ以テ吾日本仏文雑誌ハ茲ニ其謬妄ヲ弁ゼントス。

日本新法及ビ仏法ニ対シ両院議員ノ加ヘタル非難ハ其暴御聞取り違ヒノナキコトヲ希望致シマス、勿論我法典ハ我人民ノ必要上ヨリ成リ立チマスルコトハ無論ノ義デ即チ彼ノ人民ヲシテ我法律ノ下ニ服從スルノ義務ヲ負ハシムルタメノモノデアリマス

(貴族院議事速記録)

テ彼ノ二法典ヲ發布シテ一千八百九十三年一月一日ヨリ之ヲ施行スベキヲ命ジタル一千八百九十年三月二十七日ノ勅令ヲ廢スルノ法律ト為ラズ。是ヲ以テ二法典ノ尙ホ維持セラレテ明年ヨリ施行セラルニ至ルヤモ未ダ知ル可ラズ。

又綻令本編ヲ世ニ公ニスルニ先チ二法典延期ノ勅裁アルモ

余輩ハ本編ヲ公行スルコトヲ憚カラザル可シ。何トナレバ

純然タル施政上ノ理由ニ出デ三大立法權ノ衝突ヲ避ケルニ至ルモ未ダ之ガ為メ余輩ノ茲ニ弁破セントスル謬説ノ如キ沿革上哲學上及ビ法律上ノ迷謬ヲ變化シテ真理トナラシムル能ハザレバナリ。

今若シ法典ノ効用漸ク顯レントスル時ニ方リ之ヲ拠棄スルコトアラン乎國家ハ他日斯ノ如キ虚妄ノ原因ニ誤ラレテ不幸ナル結果ヲ被リタルヲ自ラ怪ミ且之ヲ悔ユルニ至ル可シ。

余輩ハ固ヨリ法典ニ対シテ両院議員ノ加ヘタル非難ノミヲ批評スルニ止マルヲ得可キモ尙ホ日本法律家中嚮ニ一篇ノ意見書ヲ草シ議會ノ討議ニ先チ之ヲ議員其他全國到ル處ニ配布シテ輿論ヲ喚起セントシタル者アリテ輕々ニ看過スベカラザルガ故ニ併セテ其迷謬ヲ弁破セン。蓋シ其ノ意見書ノ誤謬ハ尽ク議會ニ於テ唱道セラレザリシト雖モ新聞雜

然リ而シテ余輩ハ茲ニ意見書ノ謬説中議會ニ於テ唱道シタル者アラザリシ点ノミヲ指摘攻撃スルニ止マルベシ蓋シ重復ヲ避ケンガ為メナリ。

今其民法（人事編）ノ家制ニ關シ國俗ヲ擲チタリトノ非難ハ議會ニ於テモ亦唱道シタル者アリンガ意見書ニ其論拠トシテ述ベタル所ハ實ニ怪訝ニ堪ヘザルモノアリ。意見書ニ曰ハク、今ヤ我民法ハ祖先ノ家制ヲ排却シ極端ナル個人本位ノ法制ヲ設ケ數千年来ノ國俗ヲ擲テ耶蘇教國ノ風習ヲ移入セントス。倫常ヲ壞乱セント欲スルモ豈ニ得ベケンヤ。夫レ一男一女情愛ニ因リテ其居ヲ同フスルハ所謂耶蘇救団ノ一家ナリ平等博愛君臣ノ別ナク父子ノ倫ナキハ耶蘇救団ノ常道ナリ。人類ノ敬ト愛トハ獨尊ノ耶蘇基督獨リ之ヲ專ニスル所君父ノ与リ知ルベキモノニアラズ。故ニ耶蘇基督ノ前ニ在テハ父子平等ニシテ尊卑ナシ祖先及ビ父ヲ敬慕スルハ却テ耶蘇基督ヲ侮辱スルモノナリ子孫豈ニ祖先ノ敬スベキヲ知ランヤ。是ニ於テカ孝道衰焉。故ニ耶蘇基督ノ前ニ在テハ君臣平等ニシテ上下ナシ。君主ヲ崇敬スルハ却テ耶蘇基督ヲ侮辱スルモノナリ臣民豈ニ君主ノ神聖ヲ認ムルコトヲ得ンヤ。是ニ於テカ忠君ノ道廢焉ト。

嗚呼吾人固ヨリ外救ヲ知ラザルモ敢テ不可ナリト謂フ可

誌ニシテ之ヲ敷衍又ハ転載シタルモノ鮮シトセズ。是ヲ以テ其謬説ハ法典ノ声価ヲ毀損シ隨テ両院ノ議決ニモ多少影響スル所アリシヤ必然ナリ。

是ヲ以テ余輩ハ先ズ彼ノ意見書ノ非難ヲ弁破シ次デ貴族院及ビ衆議院議員ノ非難ヲ反駁セん。

第一章 意見書ノ非難ヲ駁ス

今其反駁ヲ為スニ当リ其非難ヲ區別シ主トシテ民法ニ加ヘタルモノト民法商法ニ通ジテ加ヘタルモノト特ニ商法ニ加ヘタルモノトン其失當ナルヲ論明セン。

其一 主トシテ民法ニ対シ併セテ民法ト

商法トニ通ジタル非難ニ答フ

法典実施意見ニハ十一人ノ氏名ヲ掲ゲタリ。而シテ其過半ハ唯ダ英法若クハ米法ノミヲ学ビタル弁護士ニシテ就中二三者ハ知名ノ士ナリ。余輩固ヨリ其惡意ヲ挾ンデ言ヲ構フモノニアラザルヲ知ル。然レドモ亦其民法及ビ商法ニ対シテ不滿ヲ抱ク所以ノモノハ果シテ其学ブ所ニ偏スルモノニ非ザル無キ乎。新法實施ノ曉ニ至ラバ更ニ之ヲ研究セザル可カラザルヲ以テ不快トスルモノニ非ザル無キ乎。加之其法條ノ非難ヲ見ルニ往々其意義スラ猶ホ之ヲ理会セザルヲ證スルニ足ルモノナリ。

カラズ。若シ知ラズンバ宜ク語ラザルベキノミ知ラズシテ之ヲ論ズルハ徒ラニ識者ノ嗤ヲ招クノミ。論者ニシテ若シ伝導師若クハ基督教者ニ質サン乎其言ノ全ク基督教宗旨ニモ反スルヲ知ルベシ。蓋シ基督教ノ經文ニ「父母（勿論祖先ヲ含蓄ス）ヲ尊敬シ「ゼザール」ノ物ハ之ヲ「ゼザール」ニ還ヘシ、神ノ物ハ之ヲ神ニ納ムベシ」ト言ヘルハ即チ臣子タルノ分限ト基督教者タルノ義務トヲ調和シタルモノナリ。又耶蘇ノ「我レニ從ハントスル者ハ其父母ヲ辭セザル可ラズ」ト謂ヒシモ是レ決シテ現世人倫ヲ說キタルニアラズ後世未來ノ円満ヲ諭シタルノミ。是レ仏教ニ遁世ヲ說クニ異ナラズ毫モ法律ト相闘スル所ナシ。

論者ハ又日本家制ノ基督教家制ニ比シテ勝レルモノアルヲ指サントシ論ジテ曰ハク「一男一女情愛ニ因リテ其居ヲ同フスルハ所謂耶蘇救団ノ一家ナリ」ト、亦妄誕ノ言ノミ。論者ノ所謂单ニ男女ノ同居スルハ即チ野合ニシテ基督教亦固ヨリ不徳トシテ誠シムル所ノモノナリ。

日本國風ノ祖先ヲ尊ミ子孫ヲ卑ミ先天ヲ以テ後系ニ勝レリトスルハ余果シテ其歐洲國俗ノ卑屬親ノ為メニ尊屬親ノ躬ヲ顧ミザルヲ尙ムニ若カザルヤ否ヤヲ知ラズト雖モ子孫

ラズ萬邦普及ノ俗習ト謂フベシ。唯夫レ祖先ノ余教ヲ墨守シテ資産ノ分配及ビ料理ヲ為スニ至テハ國家經濟上容喙スベキ所ナシト謂フ可カラズ。蓋シ東洋國民ノ近世文化ノ域ニ進ムノ遅キハ主トシテ人民偏ヘニ其父祖ノ陋習ヲ株守シ更ラニ子孫ノ利ヲ圖ラズ百世ノ計ヲ画スルノ迂ナルニ由ル。

是ニ由テ之ヲ観ルニ新民法ハ從来ノ家制ヲ釐革セズ纔カニ二三ノ變更ヲ施シタルニ過ギズ。且相続ノ制ノ如キハニ嫡子権ヲ存シタルガ故ニ新法ノ果シテ從来ノ家制ヲ紊乱シタルヤ否ヤノ重問題ハ敢テ論ズルノ要アラザルナリ。

論者ハ更ラニ其論場ヲ転ジ民法ヲ非難シテ曰ク「古來ノ民法ニ在テハ人事ヲ重ンジ人事ヲ主トスルヲ通則トスレドモ顧ミテ我法典ヲ考フレバ財產ニ關スル規定ヲ主トシタリ云々」ト。

若シ夫レ法條ノ多寡ヲ標準トシテ法理ノ輕重ヲ知ルヲ得ベキモノトスレバ論者ノ非難當ヲ得タリト謂フ可キモ論者モ亦敢テ法文ノ多寡法理ノ輕重ニ相應スルモノト謂フノ意ニアラザルベシ。抑々財產編ノ人事編ニ比シ殆ト二倍ノ條項ヲ要シタル所以ノモノハ財產ヲ組織スル権利ノ種類多キト所有權及ビ債權義務ノ原因タル合意ノ理論ニハ細密ノ規

シ。蓋シ人事編ハ最モ後ニ之ヲ編纂シ且之ヲ制定スルニ當リ財產編中為ニ改正ヲ要シタル條項ノ多カラザリシヲ見テモ亦然ルヲ得ル所以ヲ知ルニ足ラン。加之人事編ノ編纂後其財產編ト相矛盾スル所ニ關シテハ財產編ニ更正ヲ加ヘタリ。故ニ民法ニ於テハ財產ヲシテ人事ニ適合シメタリト謂ハザルベカラズ。例ヘバ当初財產編ニ於テ多數相続ノ制ヲ認メタリト雖モ後日単數相続即チ嫡子相続ヲ認メンコトヲ決議スルニ至リ遺產分配ノ均不均ニ關スル條項ハ悉ク之ヲ財產編ヨリ削除シタリ。然ラバ則チ論者ノ所謂財產法ヲ先ニシテ人事法ヲ後ニシタルモノハ果シテ何クニカ在ル。之ヲ要スルニ論者ノ非難ハ全ク拋ル所無キモノナリト謂フ可シ。蓋シ財產人事二編ノ理論ハ概ネ各々獨立スベキモノニシテ固トヨリ其先後ノ問題ノ起ルベキ因縁アラザルナリ。唯一ノ場合ニ於テハ二理論ノ相牽連スルモノアリト雖モ民法ハ此ノ場合ニ於テ人事ヲ先ニシテ財產ヲ後ニセリ。故ニ此場合ニ付テハ論者人事ヲ措テ財產ヲ先ニシクリト強弁非難スルモ其非難ハ極メテ薄弱ナルノミ。

論者ノ所謂民法ハ耶蘇教主義ニ依リテ編纂シタルモノナリトノ説ハ毫モ論拠ナク其謬誕ナルヤ瞭然ナリ。論者ハ更ラニ謂フテ曰ク民法ニハ家及ビ戸主ナル空文ヲ存スルニ過

定ヲ要シ殊ニ人權ノ規定中ニハ其消滅ニ關スルモノヲ擇ゲザル可カラズニ由ル。之ニ反シテ家制及ビ人事ハ斯ノ如ク複雜ナルモノニアラズ。是レ財產編ノ條項人事編ヨリ多キ所以ナリ。

左レバ論者ノ財產編ヲ先ニシテ人事編ヲ後ニスルトノ言ノ若キハ其說全ク架空ニシテ余輩其論旨ヲ理會スルニ苦シム。顧フニ財產人事二編ノ理論ハ各々單行スベキモノニシテ即チ財產編ノ理論ハ道理公義公益ノ普通原則ニ基クヲ以テ時ト處トニ由リテ異ナルコトナシ。之ニ反シ人事ハ時ト處ヲ異ニスルニ從テ多少ノ異同ナキ能ハズ。若シ論者ニシテ諸外國ニ行ハレタル法律ノ沿革史ヲ繙カバ必ズヤ所有權義務及ビ債權担保ノ理論（此理論ハ總テ財產編ノ權利ヲ組織スル所ノ者ナリ）ハ希臘羅馬ニ於ケルト同ジク近世ニ於テモ概ネ其軌ヲ一ニスルヲ見ル可シ。之ニ反シテ家制ノ組織ハ古今ニ其趣ヲ異ニスルモノナリ。之ヲ要スルニ財產編ノ理論ハ時ノ古今ヲ問ハズ國ノ東西ヲ論ゼズ其綱領殆ンド同一ナリト雖モ民事上ノ能力婚姻及ビ養子ノ要件夫權及ビ親權ハ古來幾多ノ変革ヲ經テ今日ニ至リタルモノナリ。

是ヲ以テ日本ニ於テ仮リニ人事編ナク旧來ノ制度ヲ依然固守スルト為スモ猶ホ財產編以下ハ之ヲ施行スルヲ得ベ

ギズ云々然レドモ民法ノ所謂家ナル者ハ耶蘇教俗ノ家ナリ、數千年來吾人ノ認可セル一法人ニアラズシテ夫婦同居セル一概ノ總称タルニ過ギザレバ民法ハ飽迄個人ヲ以テ権利ノ主体ト為セリト。

斯ノ如キ非難ハ奈何ゾ嫡子権及ビ其必然ノ結果ヲ認許シタル法典ヲ施行スル邦國ニ於テ之ヲ主張スルヲ得ンヤ。且民法編纂者ハ家及ビ戸主ナル語ニ附スルニ從来日本ニ於テ使用シ來リタル意義ヲ以シタルノミ、決シテ其意義ヲ麥ジタルニハアラザルナリ。民法ハ多少戸主ノ權力ヲ制限シタリト雖モ敢テ之ガ為メ其性質ヲ變更セズ。是ヲ以テ編纂者ハ或ル論者ノ人心ヲ煽動セントシテ主張スルガ如ク国教ヲ紊亂シ家制ヲ破壊スベキ法律ヲ以テ民法中ニ設定シタルコトナシ。

論者ハ又新法典ヲ非難シテ云ハク、人事編ノ規定ハ父死亡スルトキ母ヲシテ当然後見人タルノ権利ヲ有セシメタリ、故ニ一家ノ財產ハ悉ク未亡人ノ意思ヲ以テ自由ニ之ヲ处分スルコトヲ得、是レ家ヲ重ンジ家ヲ以テ一法人トスルノ家制ニ適スルモノト謂フ可キカト。

論者ニシテ若シ右ノ規定ト後見ニ關スル規定ヲ对照スレバ母ノ權力モ亦普通後見人ノ權力ト同ク精密ナル親族会

議ノ監督ノ為メニ制限セラルルヲ見ル可シ（人事編第百九十四條）蓋シ後見人ノ管理其処ヲ得ザルコトアリ、加之往々其惡意ヲ挾ムコトアルハ今日既ニ其弊ニ堪ヘザル所ニシテ民法ノ之ヲ慮リテ未成年相続者ヲ保護シタルハ全ク其最恩恵ナリト謂ハザル可カラズ。夫レ親権ハ後見職ト等シク之ヲ執行スル者ヲシテ利スル所アラシメントシテ設定シタルモノニアラズ、一ニ未成年者ノ利益ヲ圖リタルニ出ヅルノミ。是ヲ以テ法律ハ家族中最モ信用スルニ足リ且未成年者ヲ慈愛スルコト深シト認ムベキ者ニ親権ヲ附与セザル可カラズ。若シ父ニシテ存在ゼン乎、父ノ親権ヲ行フ可キハ勿論ナリト雖モ父ニシテ既ニ死セン乎、母ハ自カラ未成年者ノ養育教育ヲ為シ身体上ノ監督者トナリ併セテ其利害ヲ計画シ法律上ノ監督者タル可キナリ。畢竟スルニ未成年者ノ身体利益ハ叔伯父ヲシテ保護セシメンヨリモ母ヲシテ保護セシムルヲ勝レリトスルヤ毫モ疑フ可キニアラズ。既ニ日本ニ於テハ女権ノ拡張ヲ唱フルニ至リタルニアラズヤ。民法ハ少シク母及ビ妻タルモノノ地位ヲ高メタルノミ。蓋シ文化既ニ進ミタル邦國ニ於テハ斯ノ如クナラザル可カラザレバナリ。然ラバ即チ親権及ビ後見職ヲ母ニ与フルニ於テ何ノ不可ナルコトカ之レ有ランヤ。

ルベシト謂ヘリ。然レドモ論者ノ言ハ毫モ其当ヲ得タルモノニアラズ。蓋シ法律ハ既ニ此危險ヲ予防シクレバナリ。夫レ養料ハ疾病其他本人ノ責ニ帰スベカラザル事故ニ因リテ生活スル能ハザル場合ニアラザレバ之ヲ給スベキモノニアラズ（人事編第二十七條）而シテ怠情ハ本人ノ責ニ帰スベカラザル不幸ノ原因ナリト謂フベカラズ。

論者又養料ノ給不給ニ付キ親子兄弟等屢々法廷ニ相争フニ至リ親族間ノ道義ハ漸ク廢穢シ本邦從来ノ美風ハ全ク地ヲ掃フニ至ルベシト云ヘリ。論者ノ所謂道義トハ奈如ナルモノカ、若シ養料義務ニシテ故障ナク執行セラレン乎、訴權アルモ之ヲ利用スルノ必要アラザルヲ以テ焉ゾ徳義ヲ害センヤ。又若シ養料義務ニシテ執行セラレザラン乎最モ貴重ナル義務ニ背キテ愧ヅルコトナキノ不德ヨリハ法廷ニ出訴シテ之ヲ執行セシムルノ勝レルニ若カサルベシ。

論者又私生子ノ父母ノ婚姻ニ因リテ嫡出子ト成リ得可キヲ見テ非難ヲ加ヘタリ。然レドモ法律ハ婚姻ノ行ハレタル日ヨリ以前ニ溯リテ私生子ヲ嫡出子ト為スコトヲ許サズ（人事編第百五條ヲ見ルベシ）故ニ結婚後夫既ニ他日一家ノ戸主タルベキ嫡出子ヲ設ケタルトキハ年長ノ私生子ヲ以テ嫡出子トスルモ之ニ長子ノ特權ヲ与フル能ハズ。是ヲ以

又論者民法ノ子孫ニ養料ヲ給スルノ義務ヲ命ズルヲ見テ之ヲ非難セリ。就中子ヲ設ケタル妻ニシテ離婚後其夫後妻ヲ迎フルニ当リ先妻ノ子其母ニ養料ヲ給セザル可カラザルヲ難ジテ謂ハク、是レ親子ノ間ニ確執ヲ生ジ一家ノ紛糾ヲ來スベシト。

然レドモ論者ハ離婚ニ因リテ家族タル法律上ノ關係絶ヘタル後尙ホ養料ヲ給スルノ義務ヲ負フ者ハ唯自己固有ノ財産ヲ持スルトキ其財産ヲ以テ之ヲ給スルノ義務アルニ止マリ一家ノ財産ヲ割キテ之ヲ給スベキモノニアラザルヲ知ラズ。夫レ然リ子ハ唯自己固有ノ財産ヲ有スルニ当リ、養料ヲ給スルニ止マルガ故ニ論者ノ恐ル、ガ如キ親子間ニ確執ヲ生ズベキモノニアラズ。彼ノ相続権ノ如キハ母ノ離婚後母子間ニ喪失スベシト為スラ以テ可ナリト雖モ養料ヲ給スルノ義務ノ如キハ人倫自然ノ大道ニ出ヅルノ法則ナルガ故ニ民法ハ之ヲ認メザル可カラズ。若シ之ヲ認メザラン乎、却テ野蕃草莽ノ陋法タル譏ヲ免レザル可シ。

論者ハ又兄弟姉妹ノ間ニ養料ヲ給スルノ義務アルヲ難ジテ此規定ハ養料ヲ受クル権利アル者ヲシテ怠情ニ陥ラシム

テ私生子ヲ嫡出子ト認ムルノ規定アルモ決シテ長次ノ順序ヲ素ルガ如キ結果ヲ生ズルコト無シ。論者ハ民法編纂者ヲ誹リテコンスタン帝ノ法律ニ倣ヘリト謂フト雖ドモ編纂者ハ敢テ之ヲ模倣シタルニアラズ。唯道理ニ照ラシ正當ニ婚姻シタル父母ノ子ヲ家族ノ内ニ加フ可カラザル理由無キヲ知リシノミ。論者ハ全力ヲ尽クシテ民法ノ声価ヲ減ゼントシテ基督教信者ヲ眩惑セントシ民法ハ基督教ノ主義ヲ執リテ編纂セラレタルモノナリト謂ヒ、又保守主義ヲ執者ヲ欺瞞セントシ民法ハ古來ノ家制ヲ紊乱スルモノナリト謂ヒ、遂ニ論鋒ヲ憲法問題ニ転ジ、大権及ビ議会立法権ノ護衛者ヲシテ民法ヲ厭惡セシメント圖リ民法ノ或ル規定ヲ指示シ大権及ビ議会立法権ト撞着スルモノナリトノ妄言ヲ吐キタリ。

論者ノ日本法典ハ共和主義ニ基キテ制定セラレタル仏法典ニ倣フガ故ニ君主國ニ之ヲ施行スペカラズト謂ヘルハ即チ大権ノ護衛者ヲシテ疑懼ヲ懷カシメントノ底意ニ出デタルヤ明カナリ。

余輩ニ左ニ其妄誕ヲ弁破セん。

論者ハ故ラニ附会ノ說ヲ唱道スルモノニアラザルベシト雖ドモ其說ハ歴史上ノ謬説ニシテ前キニ弁駁シタル宗教上

ニ闕スル謬説ト均シク之ヲ打破スルコトハ最モ容易ナリ。

夫レ仏國法典ハ一千八百三年共和政治ノ時ニ於テ制定セラ
レタリト雖モ當時既ニ拿破翁ハ終身一等岡士ニシテ其後幾
クモナク帝位ニ即キタリ。是ヲ以テ仏國法典ハ第一帝政ノ
時ニ施行セラレタルコト二十年間（一千八百四年ヨリ一千
八百十五年ニ至ル）後ブルボン家ノ再ビ仏國ニ君臨スル
ニ方リ施行セラレタルコト十五年間（一千八百十五年ヨリ一千
一千八百三十年ニ至ル）又ルウヰ、フイリップ、ドルレヤン
ノ王朝ノ下ニ施行セラレタルコト十八年間（一千八百三十年
ヨリ一千八百四十八年ニ至ル）ナリ。然レドモ未ダ曾テ其
綱領ヲ更メントシタルコトアラズ。爾後第二共和政府ノ興
ルニ当リ施行セラレタルコト五年間（一千八百四十八年ヨ
リ一千八百五十二年ニ至ル）ナポレオン第三世ノ政ノ時ニ
施行セラレタルコト十八年間（一千八百五十二年ヨリ一千
八百七十年ニ至ル）ニシテ現共和政府ハ既ニ二十年前ヨリ
之ヲ施行シ而シテ君主政治ニ於テ施行セラレタル体裁ヲ麥
ゼズ。仏國法典ハ其レスノ如ク共和政治ノ時ニ於テ施行セ
ラルコト二十七年君主政ノ上ニ於テ施行セラルコト六
十三年ノ長日月ニ亘ルモ猶ホ其体裁ヲ更メザルハ正ニ政体
ノ如何ニ拘ハラズ之ヲ施行スルヲ得ルヲ證スルニ足ルベ
ノナリト云ヘリ。

論者ノ言ニハ法律上二個ノ誤謬アリ。蓋シ議会權限ハ右
ノ規定ト抵触スルコトナシ、蓋シ議会ハ其決議ヲ以テ勅裁
ヲ經タル上法律ト為シ公有財産ヲ麥ジテ私有財産ト為シ然
ル後行政処分ヲ以テ之ヲ払下グルニ於テ何ノ妨ゲカ有ン
ヤ。然リト雖モ財産ノ國用ニ供セラレタル間ハ其代価ヲ國
庫ニ納ムルモ猶ホ勅令ノミヲ以テ之ヲ払下グ得可キモノト
謂フ可カラズ。蓋シ公有物ノ特殊ノ利益ハ其価額ノミニ存
セズ國家ノ需用ニ應ズベキ性質ニ在リ。是故ニ勅令ヲ以テ
公有財産ヲ讓渡スルトキハ必ラズヤ他物ヲ以テ之ニ代置セ
ザルベカラズ。然ルニ代物ノ価額一層巨多ナルカ又ハ其功
用一層少キコトナシトセズ。勅令ノミヲ以テストキハ公有
財産ヲ麥ジテ私有財産ト為スコト能ハズ、其性質ヲ麥ズル
ニハ必ズ法律ヲ以テセザル可カラズ。從來日本ニ於テ二物
ノ区劃判然タラザリシ所以ノモノハ一一天皇陛下ノ立法
行政ノ二大権ヲ掌握シ給フニ因ル。然レドモ今ヤ既ニ憲法
發布セラレテ二大権ノ区劃整然タルニ至リタルヲ以テ民法
モ亦之ニ吻合セザル可カラズ。

又論者ノ民法ハ勅諭ノ法律タルニモ拘ハラズ、大権ヲ制
限スルモノナリト謂フニ至テハ奇極レリト謂フ可シ。論者
ニ

シ。

然レドモ仏國法典ハ斯ノ如ク長日月ノ間全ク同一ニシテ
進歩セザルニアラズ。貴族院ニ於テ或ル議長ノ唱ヘタル所
ノ若キハ誤謬ノ最モ甚シキモノニシテ（余輩ハ第二章ニ之
ヲ論ゼントス）民法ノ數々修正アリタルコトハ吾人普ネ
ク知ル所ナリ。然レドモ其修正タルヤ政体ノ君主タルト共
和タルヲ問ハズ其体裁ト毫モ關係ヲ有シタルコトナシ。蓋
シ民法ハ私法ニシテ公法ト牽連スルモノニアラザレバナ
リ。

論者ハ又大権ノ保護者ヲシテ疑懼ヲ懷カシメントシテ非
難シテ謂ハク、新法ハ仏國民法ノ如ク人定法ニ先天ノ自然
法ヲ認ムルモノナリト、此非難ハ貴族院ニ於テ唱道シタル
者アルガ故ニ余輩ハ第二章ニ於テ之ヲ駁撃スベシ。

論者ハ大権ノ保護者ヲシテ民法ヲ厭惡セシメントシタル
ノミナラズ、又帝国議会ノ議員ヲシテ民法ヲ信ゼザラシメ
ントシテ民法ハ議会ノ立法権ト抵触スルモノナリト謂ヒ、
民法ニ於テ國家ノ公有物ハ讓渡ス可カラザルモノト規定シ
タルヲ非難シテ是レ議会ノ權限ヲ侵害スルモノナリト為
シ、加之公有物ハ一ノ勅令ヲ發シテ之ヲ払下グルヲ得ベク
唯払下ゲタル代金ニ至リテハ之ヲ國庫ノ總予算ニ組入ルマ
シ。

ハ裁判所構成法モ之ヲ改正スルニ法律ヲ以テスルヲ要スル
ガ故ニ亦大権ヲ侵害スルモノト謂ハントスルカ、（同法第
四條第八條第九條ヲ見ヨ）嗚呼論者ハ自カラ大権ヲ蔑視ス
ルモノナリ。然ルニ自カラ知ラズシテ大権ヲ保護スルノ説
ヲ唱フ、豈ニ奇ナラズヤ。蓋シ二法典ハ憲法ト俱ニ

陛下ノ發案権及ビ特権ニ拠リテ制定シ給ヒタル國典ニシ
テ立法上最重ノ事業タリ。然ルニ論者ハ濫リニ之ヲ誣ユル
ノ言ヲ吐キ毫モ憚ル所ナシ。是レ豈ニ大権ヲ蔑視スルニア
ラズシテ何ゾヤ。

論者ハ重ネテ國家ノ公有物ト私有物トノ區別ヲ論難シタ
リト雖モ其言ヲ所全ク論者一家ノ妄想ニ屬スル謬説ヲ基礎
トシタルモノニシテ重ネテ其民法ヲ解セザルヲ表證シタ
リ。即チ論者ハ民法ガ國家ニ法人ト私人トノ二資格ヲ認メ
タリト解シタルガ如シ。

然レドモ國家ハ二資格ヲ具フルモノナリトノ説ハ何人モ
未ダ曾テ唱ヘザリシ所ナリ。夫レ國家ハ一ニシテ公法人タ
ルノミ。唯其財産ニ至テハ之ヲ二種ニ区別シ一ハ公用ニ供
スルモノニシテ一ハ私人ノ財産ト同ジク其資産ニ属シ其
費用ニ充ツベキ收入ヲ生ズルモノトス。民法豈他ヲ言ハ
ヤ（財産編第二十一條乃至第二十三條ヲ參看スベシ）

論者ガ國家ハ公法人タルヲ以テ之ニ屬スル財産ハ總テ公有物タラザル可カラズト言フニ至テハ実ニ奇怪ナル謬言ナリ。思フニ論者ハ公有物ノ用法ヲ誤リタルモノナラン。

又論者ハ民法ノ公用徵収ヲ規定シタルハ豫算ノ原理ニ違フト云ヘリ。然レドモ其言極メテ迷謬ニ出ヅ、論者ノ誤謬ハ金ク公有徵収ト豫算法ニ由リ毎年臣民ノ負担スベキ租稅徵収トヲ混ズルガ故ニ生ジ来ルモノナリ。

動産公用徵収ハ歐州諸国ニ於テハ一般ニ行ハルヽモノニアラズ。唯戰時市府ノ重圏下ニ陥リタル時其他荒凶等ノ若キ非常ノ時ニ於テ日用品ニ付キ之ヲ行フノミ。初メ日本法典ヲ編纂スルニ当リテハ却テ一層動産徵収ノ区域ヲ拡張セントセリ。然レドモ國家ノ此權ヲ施行スルニ際リ時ニ濫用ノ弊ナキ能ハズ、又博物館等ニ備フルガ為メ珍奇ノ物品ヲ徵収スルガ若キハ仮令所有者ニ相当ノ金額ヲ給スルモ猶ホ不可ナルニ或ハ官厅ノ専横ニシテ之ヲ徵収スルノ懼無キニアラズ。是ヲ以テ新法典ハ此場合ニ於テ不動産ヲ徵収スルガ若キ行政処分ヲ以テ足レリトセズ特ニ法律ヲ發布スルヲ要ストセリ。蓋シ十分所有者ヲ担保スルガ為メナリ。是故ニ若シ人アリ土地ヲ開墾シテ一國ノ政治上若クハ美術上ノ沿革ニ關シ極メテ重要ナル物品ヲ發見シタルニ当リ之ヲ徵

(第一) 論者曰ク、新法ハ個人主義ノ法典ニシテ社会的共同体ヲ認メズト。然レドモ民法及ビ商法ハ私法典ナルガ故ニ社会的共同体ノ自体ニ闕スルモノニ非ズ。近代社会学ナル一派ノ學説生ジタルヨリ日本ノ壯年者流ハ好デ之ヲ講ジ言語思想共ニ漠然タルヲ喜ブト雖モ新法ノ起草者ハ毫モ是等ノ理論ニ闕スペキニ非ズ。但間々法典中社会的共同体ヲ代表スルモノトシテ國ノ事ヲ記スルコトアルモ是レ偏ヘニ其權利ヲ留存センガ為メニシテ敢テ之ヲ規定センガ為メニ非ズ。

右ノ非難ノ結果トシテ論者新法ノ主トシテ各人ノ契約ノ自由ヲ確認スルコトヲ非難シタリ。是レ論者ハ知ラズ識ラズ法典ノ長所ヲ挙ゲルモノト謂ブベシ。蓋シ私法典ニシテ合意ノ自由ヲ確認スルモノハ即チ一國ノ法典トシテ最モ望ムベキ所ノモノト云ハザルベカラズ。

尙ホ論者ノ言ニシテ余輩ノ会得シ難キ所ハ其新法典ノ合意ノ自由ヲ確認スルニ由リ強食弱肉ヲ獎励スト云フニ在リ。合意ノ自由ヲ確認スルト云ヒナガラ強食弱肉ヲ獎励スト云フニ至テハ全ク自家撞着ノ言タルヲ免レズ。尙ホ論者ハ益々自家撞着ノ言ヲ重ネントシテ合意ノ自由ハ政党熱ラ盛ニシ社会党ノ勃興ヲ促スモノナリト云ヘリ。斯ノ如ク法

收セントセバ即チ特別法ヲ制定シ其債金ヲ定メ然ル後之ヲ行フヲ要ス。

右ノ規定ハ立法上及ビ實際上或ハ其利害得失ヲ論ズルヲ得ン。然レドモ之ヲ論ゼントセバ先づ能ク法文ヲ理会セザルベカラズ。然ルニ論者ノ如ク第三十一條ハ臣民ノ毎年負担スベキ租稅ノ徵収ヲ規定スルモノナリト云フハ毫モ法文ノ意義ヲ理解セザルモノト謂ハザルベカラズ。要スルニ論者ハ公用徵収ト租稅徵収トヲ混ジタルモノナリ。夫レ公用徵収ハ強制ニ出ヅルモ尙ホ必ラズ人民償金ヲ受ケザル可カラズ。之ニ反シテ租稅ハ人民ヨリ払ハザル可カラザルモノナリ。故ニ納稅者ニシテ其義務ヲ怠ルトキハ債務者ノ如ク財產差押ヲ被ムルベキノミ。安ンゾ特別法ヲ要センヤ。

余輩ハ論者ノ非難ノ多キニ驚カズンバアラズ而シテ其非難ノ全ク兒戲ニ類スルモノナキニアラズ。然レドモ余輩ハ之ニ應ヘテ遺ス所ナカラントス。蓋シ論者ノ說ニシテ一トシテ認ム可キモノナキノミナラズ若シ余輩其非難中弁破セザルモノアラバ論者ハ之ヲ以テ暗黙ノ承諾ト為ス可ケレバナリ。要スルニ余輩ノ以下駁撃セントスル非難ノ妄誕ナルハ前ノ非難ト毫モ徑庭アルコトナシ。

今論者非難ノ順序ヲ遂フテ左ノ九点ヲ指摘弁駁セん。

典ノ意義ヲ矯メントスルハ實ニ讀者ヲ眩惑セントスルモノニ非ザルカ。

(第二) 論者ハ撞着ノ言ヲ重ネ新法典ハ國家思想ナシト云ヒナガラ民法ハ個人ノ権利ヲ保護シ債務ヲ履行セシムルニ付テハ個人ヲシテ國家ノ権力ヲ使用シテ充分余裕アラシメタリト云ヒ、以テ之ヲ非難シタリ。論者ハ債務者ヲシテ其債務ヲ行ヒ又所有者ヲシテ其権利ヲ行フニ何等ノ強制手段ヲモ有セシメザルヲ欲スルモノナルカ。且法典ノ視ル所ニ依レバ人民彼我ノ間ニ差別ヲ設クルコトナク普ネク其権利ヲ保護スルモノニシテ且人民其権利ヲ求ムルハ國ニ対スルニ非ズ、裁判所ニ對シ之ヲ求ムルモノニシテ裁判所ノ眼ニハ強弱大少ナク訟訴ヲ為ス者尽ク之ヲ平等視ス。嗚呼論者ハ弱者ヲ煽動シ強者ニ对抗セシメントシ自ラ社会党ノ拳ヲ為スモノニ非ザルカ。

(第三) 意見書ハ更ラニ妄説ヲ吐テ曰ク「債権者債務者ニ与フルニ一片ノ告知書ヲ以テスル以上ハ何人ニテモ其債権ヲ譲渡スルコトヲ得セシムルハ財産編第三百四十七條ニ認ムル所ナリ故ニ甲乙親友間ノ貸借モ忽チニシテ高利貸ニ對スル債務ト同ジク他ニ最モ恐ルベキ債主ニ對スル義務トメズベシ」ト。蓋シ論者ハ債権ノ譲渡ヲ以テ一二ニ債務者ノ

意思ニ闕セシメント欲スルモノナラン。然レドモ古來何レノ國ニ於ケルモ又已ニ日本ニ於ケルモ債権益其債権ヲ壳渡スコトヲ得クリシ少壯ノ立法者タラントスル論者ハ突然之ヲ麥ゼント欲スルモノノ如シ。果シテ然ラバ論者ハ旧慣ヲ破ラント欲スルモノナリ。蓋シ債権モ亦動産所有權ノ如ク一ノ財產ナレバ亦之ヲ讓渡スルコトヲ得ザル可カラズ。唯道理上公義上必要ナリトスル所ノ一ノ條件ハ債務者ラシテ之ヲ知ラシメ其重ネテ弁済ヲ為スノ憂ヲ免カレシムルニ在ルノミ。

縱令毫モ法律思想ナキ者タリトモ猶ホ斯ノ如キ孟浪無稽ノ言ヲ吐カバ既ニ怪訝ニ堪ヘザルベシ、況ニヤ法律家タルモノ斯ノ如キ迷信ヲ吐クハ愍ムニ余リアリ。

(第四) 民法ハ要約者正当ニシテ且金錢ニ見積ルベキ利益アルニアラザレバ要約ノ有効ヲ認メズ(財產編第三百二十

三條) 論者ハ此規定ヲ非難シテ是レ人民ノ名譽等ノ無形ノ利益ヲ保護セザルモノナリト云ヘリ。論者ノ此謬言ヲ吐クハ即チ契約ト犯罪トヲ混淆シタルガ故ナリ。民法ハ名譽ニ對スル犯罪ノ事ヲ直接ニ規定セズ、是レ刑法ノ範囲ニ屬スルモノニシテ刑法ハ誹謗ヲ罰スルニ禁錮及ビ罰金ヲ以テセリ。且夫レ民法ノ理論ハ極メテ妥当ノモノニシテ誹謗ヲ受

ヲ狹隘ニスルモ猶ホ足レリトシタリシモ之ヲ以テ新社會ノ需用ニ應ズルニ足レリト謂フ可カラズ。其證拠ハ既ニ法典実施前ニ在テ夙ニ銀行其他商工業會社其他ノ株式會社起り人ヲ集合スルニ非ズ資本ヲ集合シテ業ヲ營ミタルヲ見ルモ亦明カナリ。新法ハ尙ホ其會社ノ一層發達スルコトヲ獎励シ此事ニ闕スル法律ノ缺点ニ因リ生ジタル諸般ノ弊害ヲ豫防シ充分ノ注意ヲ施スモノナリ。

若シ夫レ小資本家ノ利益ヲ計リ大資本家ノ事業ヲ害スルハ腕力又ハ馬力ヲ以テ物ヲ運搬スルコトヲ獎励スルガ為メ器械其他ノ鐵道ノ使用ヲ打破セントスルト毫モ異ナルコトナシ。論者ハ宜ク經濟初學ノ原理ヲ講習スペシ。

又論者ハ新法典ノ農業組合ヲ保護セザルコトヲ難ズルモ、是レ亦妄言ノミ。農業組合ハ民法ノ發布ニ拘ハラズ更ニ成立スルモノ依然繼續スルヲ得ベク殊ニ新民法ノ會社ノ規則ヲ適用スベキモノハ主トシテ農業ノ組合等ナリ。何トナレバ商業及ビ工業ノ會社ニ至テハ商法ヲ以テ支配スベキモノナレバナリ。

又論者ノ羅馬法ハ古羅馬ノ小市府ニ於ケル法律ナリト云フニ至テハ誤謬モ亦太甚シ。實ニ論者ハ羅馬ノ盛時諸國ヲ服從スルニ至リ而シテ其之ヲ服從スルヤ先ヅ武威ヲ以テシ

ケタル当事者之ガ為メニ損害賠償ヲ求メントセバ(他人ヲ訴譏スル文章ノ取消及ビ判決ノ公示ノ外ニ)必ズ間接ナリトモ金錢上ノ損害アリタルコトヲ證明セザル可カラズ。是ニ由テ之ヲ觀レバ右ノ非難モ亦民法ト裁判所ノ職務トニ関スル初學ノ原則ヲ誤解遺忘シタルニ因ルモノナリ。

(第五) 意見書ハ重ネテ新法典ハ個人ノミヲ保護シ民人共同体ヲ顧ミザルモノナリト称シ技芸學術ノ組合ヲ以テ會社ト看做サザルヲ非難セリ。蓋シ技芸組合モ亦一ノ組合ナリト雖モ民事會社商事會社ノ規定ヲ之ニ適用セントスルハ極メテ失當ナリ。若シ論者ニシテ會社ノ真正ノ法律上ノ性質ヲ知了セバ斯ノ如キ妄言ヲ唱ヘザルベシ。抑々會社ノ主タル目的ハ金錢ニ見積ルベキ利益ヲ得、之ヲ社員間に分配スルニ在リ。然レドモ茲ニ彼等ニ対シ法律ノ講議ヲ為スハ徒齧ナルヲ以テ取テ之ヲ為サズ。

(第六) 論者ハ會社ニ闕スル新法ノ規定ハ富豪家ラシテ薄貧者ラ庄シ商業ノ專權ヲ蹂躪セシムルニ外ナラズト非難セリ。然ラバ則チ論者ハ商工業ノ退歩シ、往時ノ日本ニ於ケルガ如ク商工業共ニ一地方ノ小事業タルヲ望ムモノナルカ。封建ノ時各州交通ヲ相遮断シタル時ニ当テハ商工業ノ規模

後ニ至リ法律ヲ以テ之ヲ制御シタルコトヲ知ラザルモノト謂フベシ。而シテ羅馬ノ武威ハ其正道ナラザリシガ故ニ水ク継続セザリシモ其法律ニ至テハ人民相互ノ關係上公義道理ノ命ズル所ニ外ナラザリシヲ以テ、永ク其跡ヲ残スニ至リタリ。

(第七) 論者ハ地役ニ闕シ水ノ飲用ニ係ル二三ノ新制、就中自己ノ土地外ニ天然若クハ人造ノ水源ヲ有スル者隣地ヲ経過シテ水ヲ引クノ權ヲ(場合ニ依リ地上又ハ地下ヨリ)有スルヲ非難シ、又自己ノ地上ニ水ノ漲溢スルトキ隣地ヲ通過シテ之ヲ排斥スル權アルコトヲ駁撃シタリ(財產編第二百三十三條以下ヲ參觀スペシ)

論者ハ妄誕無稽ヲ顧ミザルヨリ右一個ノ法律上ノ地役ヲ非難スルガ為メ日本農業ノ性質上水ノ必要ナルコトヲ論拠トセリ。然レドモ是レ実ニ撞着ノ言ニシテ右ノ地役ハ水田ノ水ニ乏キ處ニ之ヲ導キ其過分ナルトキ之ヲ疏通スルヲ得セシムルモノニシテ因テ米作國タル日本ニ適當スルモノナリ。伊太利ノ如キ或ル部分ニ於テハ水田ヲ耕スヲ以テ其農業ト為ス國ノ法律モ亦日本ニ於ケルガ如ク同一ノ地役ヲ認メタリ。仏蘭西ノ如キ水田アラザル國ニ於テハ同一ノ理由アラザルモ猶ホ然リ。然ラバ則チ日本ノ農業家ハ論者ヨ

リ一層事理ニ通暁スベキヲ以テ却テ右ノ地役ヲ喜ブナラ
ン。

(第八) 意見書中ニハ終始撞着ノ言ノミヲ列スルニ因り尽
ク之ヲ枚舉スルハ際涯ナカルベキガ故ニ之ヲ省略スト雖モ
尙ホ二個ノ点ニ付キ一般ノ理論ニ闕シ撞着ヲ免カレザル所
アルガ故ニ之ヲ摘示セん。

意見書ニハ始メ民法ノ從來ノ慣習ニ反スルノ甚シク

天皇ノ大權及び議會ノ権利ヲ障害スルヲ非難シナガラ更ラ
ニ難ジテ曰ク、近世ノ社會ニ適用スペキ法理ヲ度外視シ云
々特別ヲ以テ将来ニ之ヲ定メンコトヲ約定シ又ハ之ヲ習慣
ニ一任スベキ者トセリ云々ト云ヘリ。是ニ由テ之ヲ観レバ
民法ハ決シテ論者ノ臆測スル如ク将来ニ向ヒ立法権ヲ制限
セントスルモノニ非ズ(民法ヲ以テ立法権ヲ制限セントス
ルガ如キハ到底得テ能ハザル所ナリ)又民法ハ賃貸借地役
習業契約ノ如キ全國一定ノ法律ヲ以テ規定ス可カラズ地方
ノ習慣ニ從フベキモノハ之ヲ存スルモノタルコト明瞭ニシ
テ論者モ亦自ラ認ムル所ナリト謂フベシ。

若シ民法ヲシテ特別法クラシメバ敢テ特別法律又ハ規則
ヲ引用スルコト非ザルベキモ、民法ハ普通法ニシテ諸般ノ
相異ナル事項ヲ包含シ而シテ其各事項間々細則ヲ要スルモ
(第九) 論者ハ又民法ハ租税ノ主義ト背馳スト云ヘリ。
然レドモ民法ハ秋毫モ租税ノ事ヲ規定スルモノニ非ズ。
但財產編第四十條第八十條第百十四條及ビ第百六十六條ヲ
以テ租税ハ或ル割合ニ從ヒ虛有者用益者使用者並ニ地上權
者等ノ負担タルベシト為スト雖モ、何レノ場合ニ於ケルモ
只利害關係人中結局租税ヲ負担スベキ者何人ナルヤラ定ム
ルニ過ギズシテ毫モ其租税ノ定率若クハ徵收方法ヲ規定ス
ルモノニ非ズ。今一例ヲ挙ゲテ之ヲ論ゼンニ、現時日本ニ
於テハ地租ヲシテ地価ニ割合ハシム、而シテ一個ノ土地ニ
用益權ヲ附スルモ亦之ガ為メニ其地租ヲ増減スルコトナ
シ。只善良ノ管理者タル者ハ租税ヲ払フニ土地收入ヲ以テ
スルモノニシテ而シテ其收入ヲ所得スル者ハ用益者ナルガ
故ニ結局毎年ノ租税ハ用益者ノ負担タルベキモノトスルノ
ミ。故ニ用益者ニシテ虛有者ニ代ハリ租税ノ支弁ヲ為シタ
ルトキハ虛有者ニ対シ求償權ヲ行フコト能ハズ。又用益者
之ヲ払ハズ虛有者官厅ヨリ之ヲ払フノ要求ヲ受ケタルトキ
ハ用益者ハ之ニ其租税ヲ償還スベキノミ。

然リ而シテ參政權ハ現時直税ヲ納ムルモノニ限り之ヲ許
与スルニ因リ、用益者之ヲ得ベキカ、論者ハ斯ノ如キ問題
ニ論及セザレトモ一言之ヲ説カノ。

ノアルガ故ニ、其細則ヲ定ムルハ民法中ニ於テセズ特別法
ヲ以テスベク徒ラニ民法ヲシテ浩瀚ニ失セシムコトナキヲ
要ス。加之民法ニ於テ引用スル所ノ他ノ法律ハ概ニ民法起
案ノ時共ニ起草中ニシテ今日ニ至テハ既ニ實施スル所ノ訴
訟法ナリ。

訴訟法ハ千八百九十年三月二十七日ニ之ヲ發布シ同年

十一月一日ヨリ之ヲ實施シタリ。故ニ議會ニ於テモ之
ニ対シ非難ヲ為スコトナシ。若シ民法及ビ商法モ亦共
ニ之ヲ實施シクリシナラバ議會モ敢テ之ニ容喙スルコ
トアラザリシナラン。今若シ民法及商法ノ實施ヲ延期
セバ(其實施延期ハ全部ノ破壞ニ外ナラザルベシ。何
トナレバ新法ノ修正ヲ為サントスルハ反對論者間ニモ
亦論議ノ合スルコト非ザルベケレバナリ)民事訴訟法
ハ恰モ攻繳ナル紡績機械ノ材料ナキモノノ如クニ至ル
ベシ。

地方ノ習慣ヲ以法典ト為サントスルニ至テハ毫モ必要ナ
キ所ナリ。何トナレバ地方裁判所及ビ地方ノ人民ハ充分其
習慣ヲ知了スルモノニシテ、且時ニ從ヒ多少ノ変動ヲ免カ
レザルガ故ニ之ヲ以テ一定不易ノ法律ト為スコト能ハザル
ベシ。

余輩ハ用益者結局租税ヲ負担スルモ尙ホ選挙人及び被選
挙人タルノ資格ハ依然虛有者ニ存スベキモノト信ズ。蓋シ
憲法ヲ以テ直税ヲ納ムル人ニノミ參政權ヲ附与シタルハ租
税ハ所有權ノ輕重ヲ代表スルモノニシテ而シテ所有權ノ多
キ者ハ少ナキ者ニ比シ一層國家ノ安寧秩底ヲ希望スルモノ
ナリト看做シタルガ故ナリ。然ルニ用益者ノ如キハ僅カニ
一時ノ権利ヲ有スルニ過ギズ其権利ハ自己ノ姓名ト共ニ消
滅スルモノナルガ故ニ或ハ貧者タルヲ免カレズ。

是ヲ以テ民法ハ決シテ租税ノ原理及ビ選挙參政ノ原則ニ
背馳スルモノニ非ズ

又論者ハ民法ヲ難ジテ曰ク「民法ノ實施ハ稅法ヲ改正シ
租税ヲ分テ通常租税及び臨時又ハ非常ノ租税ニ区分スルノ
必要ヲ生ズ」ト。然レドモ非常稅ナルモノハ其名稱ニ指示
スルガ如ク全ク非常ニシテ民法中用益權ノ事ニ付キ法文ノ
之ニ及ビタルハ只萬一ヲ計リタルノミ。決シテ租稅法ヲ改
正スルモノニアラズ(財產編第七十九條)蓋シ非常稅ナル
モノハ戰乱若クハ國家ノ災害アル場合ニ非ザレバ徵收スベ
キモノニ非ズ。然ルニ偶々斯ノ如キ場合アツテ特別法ヲ發
スルニ至ルトキハ虛有者ト用益者トノ關係ヲ定メザル可カ
ラザルモ、特別法ノ如キハ決シテ是等ノ事ヲ規定スルコト

アラザルベシ。若シ新法ニシテ是等ノ場合ヲ慮カラザリシナラバ却テ非難ヲ被ルベシ。

又新法ハ学理ニ偏シ法律学ノ講議録ニ似タリトノ非難アルモ、此点ニ付テハ後ニ至リ貴族院議員ノ陳べタル所ヲ反駁スルト共ニ之ヲ弁破スベシ。

又意見書ハ新法ノ羅馬法及ビ仏蘭西法ニ模倣セントシテ却テ其解釈ヲ誤リタリト云フト雖モ論者ハ羅馬法及ビ仏蘭西法ヲ解スルコト民法ノ編纂委員ニ及ハザルコト遠キモノナリ。貴族院ニ於テモ亦多少之ニ類スル非難ヲ唱ヘタルコトアリソ是其權力ヲ濫用スルノ致ス所ニシテ其無識ニ出デタルニハ非ザルベシ。

其一 特ニ商法ニ対スル非難ヲ反駁ス

論者ハ商法ニ対シ非難ヲ容ル、コト民法ニ対スルヨリ較々少ナシト雖モ其趣意ニ至テハ均シク拠ナキモノナリ。

(第一) 論者ハ商業帳簿調製ニ關スル規定ヲ非難シ是レ着実ノ小商人ヲ困却セシムテ投機的商人ヲ利セシムルモノニ非ズヤト謂ヘリ。

商業帳簿ノ調製ハ如何ナル理由ニ依リ特ニ投機的商人ヲ利セシムルカ、投機的商人モ亦同一ノ義務ニ服従スルニ非ズヤ。

生徒ヲ抱ヘザル可カラズト云ヘリ。其法學校ノ卒業生ヲ要スト云フニ至テハ謬妄モ亦甚シト云フベシ。何トナレバ如何ナル法學校ニ於ケルモ商業帳簿ノ調製ヲ講習スルモノアラザレバナリ。又簿記學校ノ卒業生ヲ雇フベシト云フニ至テモ營業ノ錯雜セル大銀行ニ必要ナルコトアルニ止マリ通常ノ商家ニ至テハ商人自ラ其帳簿ニ記入ヲ為スコト恰モ今日ノ狀態ニ於ケルト同ナルベキノミ。若シ偶々商人ニシテ帳簿ニ記入ヲ為シ其計算ヲ為スニ迂ナル者アラバ毎月末練達セル者ニ問フテ帳簿ヲ整頓スペキノミ。

論者ハ更ニ唱ヘテ曰ハク、若シ商法ヲ實施セバ投機的商人ヲ助長シテ着実の商人ヲ破壊スベシ、大商ヲ利シテ小商ヲ害スベシ、小商ハ刑セラレテ大商ハ免カル、着実商人ハ罰セラレテ投機的商人ハ免カレント。是レ日本ノ法官ヲ毀ルノ言ニ非ズシテ何ゾヤ。外国人ノ尙本治外法権ヲ保タントシ日本裁判官ノ独立ヲ疑フニ当リ小班ノ法学者ニシテ斯ノ如キ妄言ヲ吐クハ愛國ノ心ニ乏シキモノト謂フベシ。

(第二) 論者ハ破産法モ亦富豪者ヲシテ細民ノ職ヲ奪ハシムルノ一大利器ニ過ギズト云ヘリ。

蓋シ帳簿ノ調製ハ(第一)商人自身ヲシテ其債権者ト債務者ニ対スル自己ノ位置ヲ一目瞭然ニシ其資力外ニ債務ヲ負ハザルニ注意セシムルノ利アリ。(第二)其ノ破産スルニ當リ其債権者及ビ債務者ニ利アルモノナリ。論者ハ帳簿ノ記入ハ極メテ厳正詳密ニシテ萬一二モ誤テ秩序ナク記載シタルトキハ過怠破産ノ刑ヲ被ザルヲ得ズト云フト雖モ、是レ法律ヲ誤解スルモノニシテ帳簿ノ記入如何ニ秩序ナキモ此一事ニ因リ刑ヲ被ルコトナシ。其刑ヲ被ルニ至ルハ破産シタルトキノミニ限ル。然ラバ則チ何ゾ帳簿ノ調製ヲ要スルモ特ニ恐ルベキコトアランヤ。

又論者ハ帳簿調製ノ義務ヲ設ケタルヲ非難スルニ次第從来ノ商人ト雖モ大抵皆帳簿ヲ作リ大抵ノ事項ヲ記入セリト云ヘリ。是レ自家撞着ノ言ニシテ從來既ニ帳簿アラバ法典ヲ以テ之ヲ一般ノ義務トスルモ毫モ法典ニ非難ヲ容ルベキノ理ナシ。

論者ハ商業帳簿ノ記入ヲ為スニハ少ナクトモ簿記學校ノ卒業生ヲ雇ハザル可カラズ、財産目録貸借对照表ヲ造ルニハ其上別ニ一通り法律ニ通ジタル法學校ノ卒業夫レスノ如ク細民ヲ煽動シテ富豪者ニ対シ不満ノ意ヲ抱カシメントスルハ徒ラニ誇大ノ言ヲ吐クニ過ギズ且其所為甚ダ惡ムベキモノアリ。斯ノ如キ言ハ只民心ヲ煽動シ国安ヲ傷害スルニ至ルモノニシテ却テ論者ノ民法ニ誹ル所ノ社會的主義ニ屬スルヲ免カレズ。抑々破産法ヲ以テ破産者ノ財産ヲ隠匿シテ債権者ニ害ヲ加フルヲ豫防スルノ処分ヲ設ケタルハ、大商ト小商トヲ問ハズ均シク其利ヲ受クル所ニシテ彼我ノ間ニ區別アルコトナシ。實ニ権利ノ平等ハ即チ公義ナリト謂ハザル可カラズ。又小數額ノ身體限処分ハ債権者ラシテ徒ラニ費用ヲ負担セシムルニ過ギズ。故ニ破産法ニハ必ズ或ル程度ノ標準点ヲ設ケ負債ト財産ノ高トニ依リ執行手続ニ寛厳ノ差ヲ設ケザル可カラズト云ヘリ。

然レドモ負債ト財産トノ割合ニ応ジテ区別ヲ設ケ執行手続ヲ異ニスルハ必ズヤ立法者ノ專断タルヲ免カレザル可キヲ以テ商法ハ債権者ラシテ自ラ其利益ヲ保護スルノ任ニ当ラシメタリ。故ニ債権者ハ相協議シテ債務者篤実ナルモ一時困窮スルニ止マルトキハ之ニ期限ヲ与ヘ又ハ一分ノ免除ヲ為スコトヲ得ベシ(商法第十六十一條及第千六十三條ヲ參観スベシ)

(第三) 論者ハ航海商業ノ規定ヲ非難シ其民法ヲ論ズルトキト同ジク經濟ノ理ニ暗キヲ示シタリ。論者ハ日本人ノ所有スル船舶ヲ以テ日本船舶タルノ資格アルモノトスルヲ不充分ナリトシ将来航海ノ会社起ルニ当リテハ外国人其所有權ノ半以上ヲ得ルニ至リ沿海貿易權ハ外人ノ占有ニ帰スルニ至ルベシト云ヘリ。

若シ夫レ外国人ヲシテ日本ノ法律及ビ裁判所ニ服従セシムルモ、尙ホ日本ノ商業ニ外国資本ノ流入ヲ恐ルニ於テハ啻ニ航海業ノミニ限ラズ其他萬般ノ商工業ニ外国人ノ參與スルコトヲ禁ゼザルヲ要ス。是レ道理上法律上共ニ何人モ主張スルコト能ハザル所ナリ。加之外國資本日本ノ商工業ニ流入スルコトアルモ、是レ日本固有ノ資本不足スルカ、又ハ日本資本家ノ出資ヲ欲セザルトキニ限ルベキカ故ニ毫モ憂フベキコトナク、却テ日本ハ何等ノ事業モ発達セザルニ比スレバ利益ヲ得ルヤ明カナリ。現ニ今日アルモ既ニ外國資本ヲ以テ運転スル事業アルガ為メ日本ノ利益タルコト少ナカラズ。

船積証書ヲ有スペキ船舶ヲ十五噸以下ニスルノ當否ニ至テハ既ニ商法取調委員ニ於テ充分ノ調査ヲ遂ゲタル

十三條ニハ海難物ノ分配ヲ規定スルニ過ギザルモノナリ。殊ニ此規定ハ船舶ノ危険ヲ増加スルノ弊アリト云フニ至テハ亦一ノ妄想ニシテ毫モ其理由ヲ示サズ。此規定タル歐洲ニ於テハ古來普ネク行ハレタル所ニシテ何人モ未ダ會テ危險ヲ増加シタルモノナリト唱ヘタル者アラズ。若果シテ實際船舶ノ危険ヲ増加スペキモノナラバ海上保險会社ニ於テ苦情ヲ唱ヘザルノ理ナシ。然ルニ保險会社ハ未ダ嘗テ此規定ヲ非難シタルコトアラズ。

若シ以上ノ如キ理由ニ依リ商法ノ実施ヲ延期セントセバ是レ亦民法ニ於ケルト同ジク架空ノ理由ニ依リ其延期ヲ求ムルニ外ナラズ。

第二章 貴族院ニ於ケル法典

貴族院ニ於テ法典施行延期案ノ討議ニ附セラレタルハ實

ニ五月二十六日ニシテ、同案ハ百十六名ノ議員ノ名ヲ以テ提出セラレタルモノナリ。而シテ討議ハ開期ノ短キニモ係ハラズ三日ノ長キニ五レリ、以テ此問題ニ重キヲ置キタルヲ知ル可シ。而シテ委員会ヲ設ケントノ動議ハ第二日ニ至リテ始メテ提出セラレタルヲ以テ時期既ニ遅レタルモノト做シ之ヲ設ケズ、第三日ニ至リ終ニ逐次三讀会ヲ經テ議決

(第四) 商法第九百四十三條以下海難救助ニ關スル規定漠然タリト云フニ至テハ毫モ其理由トスル所ナク却テ同條以下ノ規定ハ頗ル詳密ナリ。故ニ此非難ハ只例ノ妄言ニ過ギザルナリ。加之論者ガ此規定ヲ非難シ從来我國ニ行ハレタル良習慣ヲ破壊スルト云フニ至テハ論者ノ言却テ漠然トシテ捕捉スベカラザルモノアリ。此場合ニ於テハ習慣ノ如何ヲ問フベキニ非ズ、只第九百四

セリ。夫レ此ノ如ク委員会ヲ設ケズシテ議決ヲ急ニシタルハ少シク法律精神ニ反スルノ嫌ヒナキニアラズ、然レドモ結局議決ニハ何等ノ差異モ生ゼザリシヤ明カナリ。

蓋シ提出案ハ討議ニ先チ既ニ百十七名ノ氏名ヲ列ネテ議場ニ顯レ、第一読会ニ於テ六十一ニ對スル百二十三、即チ議決ニ与カリタル者ノ三分ノ二ノ賛成ヲ得タレバナリ。

貴族院議員ノ唱ヘタル非難ハ意見書ニ比スレバ更ニ体裁ノ宜ヲ得且相互ニ矛盾スルコト少ク殊ニ一人ニシテ自家撞着ノ言ヲ吐ク者鮮カリシト雖モ、其根本ニ付テ之ヲ察スレバ其説ノ拠ル所無キハ稍ヤ意見書ト相似タルモノナリ。

三大臣其他法典維持説ヲ述ベタル者ハ反対説ヲ唱ヘタル者ヨリ其數多キノミナラズ、其見ル所高遠ニシテ其説論理ニ適シタリト雖モ、議案ノ提出セラレタル日既ニ勝敗ノ數決シタリシヤ明カナリキ。

(毫) 議案提出者ハ前元老院議官ニシテ法典取調委員タ

リシモノナリ。而ルニ議院ニ於テ其説ヲ述ブルニ方リテ法典ノ編纂ハ之ヲ急劇ノ間ニ終ラントシ毎日若干條ヲ議定シタリト云ヘリ。余輩ハ今茲ニ前元老院議官タリシ者ニシテ前職ニ関スル事實ヲ引證シテ政府ヲ攻撃スルノ材料ト為スノ當否ヲ論ズルヲ要セズ、唯一言セ

ザル可カラザルモノアリ。論者ノ説ハ議員ヲシテ僅々數月ニシテ法典ヲ編纂シアリタリト誤想セシメタルコト是レナリ（數月ニシテ法典ノ編纂ヲ了ラントスルガ若キハ到底不能ナルノミナラズ輕忽ノ誹ヲ負カレザルベシ）然レドモ民法八十有余年以來絶ヘズ之ヲ研究シ遂ニ其編纂ヲ了ルニ至リタルモノナリ。而シテ之ヲ調査スルニ方リ或ハ一タビ元老院委員会ヲ督促シタルノ觀ナキ能ハザル時アリシト雖モ此時ニ於ケル調査ハ最終ノ調査ニシテ屢々之ヲ行ヒタル後ニ在リシナリ。加之凡ソ大事業ノ価値ヲ論ズルニ当リテハ法律編纂タルト其他學術技芸建築等ニ關スルトヲ問ハズニ歳月ノ長短ヲ標準トス可カラズ。唯其本來ノ価値奈何ヲ量ルベキノミ。是ヲ以テ法典ニシテ若シ編纂者其人ヲ得ザリシナラン乎、二十年ノ歲月ヲ要スルモ争デカ今日ノ如キ法典ヲ見ルヲ得可ケンヤ。

（武） 民法ニ対スル非難ノ重ナルモノハ貴族院ニ於テモ亦人事ニ闕スル日本從来ノ慣習ヲ更ラタメタリト云フニ在リシ。然レドモ日本ノ慣習ハ己ニ各地方ニ於テ互ニ之ヲ異ニスルニアラズヤ。然ラバ則チ民法ノ是等地方慣習ト悉ク吻合シ能ハザルモ何ゾ驚クニ足ラン如キ法典ヲ見ルヲ得可ケンヤ。

シテ相争ヨリモ却テ一家ノ和合及び幸福ヲ害シ一國ノ德義心ヲ湮滅セシムルヤ必然ナリ。蓋シ権利アルモ法律ニ於テ之ヲ認メザルノ故ヲ以テ法律ノ保護ヲ受クルコト能ハザル者ハ惡意ノ故ヲ以テ敗訴スル者ヨリモ其地位更ラニ憐ム可ク又之ガ為メ一國ノ風俗ヲ害スルコト更ラニ大ナルモノアレバナリ。且制裁ヲ受クルノ恐レナキトキハ義務アルモ其義務ヲ履行スルモノ少キヲ保スベカラズ。辨済セザルモノ益々少キニ至ルベシ。民事上ノ義務皆然ラザルハナシ。豈独リ家族内ニ於ケル義務ノミ然ラザルヲ得ンヤ。

（參） 論者又云ハク、民法ハ仏國法典ニ倣ヒ商法ハ獨逸法典ニ倣フヲ以テ我二法典ノ間相抵触スル点少シトセズト。

論者ハ唯ダ二法典抵触スト言ヒ、而シテ其抵触スル所以ノ理ヲ言ハズ。之ヲ指示スルノ難キニ因ル歟。然レドモ余輩ハ云ハントス。論者ノ所謂抵触ハ要スルニ二法典ノ間に在ル可キモノニアラズ、蓋シ二法典ハ其目的ヲ異ニスレバナリ。思フニ民法ハ普通私法ニシテ商法ハ商取引及ビ商人ニ適用ス可キ特別法ナリ。是以テ二法典ノ規定ニ相異ナル所アルハ畢竟之ヲ適用

ヤ。人事ニ關シテモ全國通ジテ全ク其慣習ヲ相同フスルニアラズ、斯ノ如ク各州互ニ其慣習ヲ異ニスルハ數百年間封建制度ノ下ニ在リテ互ニ交通スルコト無カリシ時代ニ於テハ避ク可カラザル結果ナリシト雖モ今ヤ日本ハ帝国ニシテ各府県ハ唯帝国ノ行政画劃ニ過ギズ。又裁判ハ到ル所天皇ノ任命シ玉ヘル判事天皇ノ名ヲ以テ之ヲ宣告ス。是ヲ以テ帝国ヲ支配スル法律ハ帝国ニ通ズル一貫ノ法律ナラザル可カラズ。古來各地方ニ行ハレタル慣例及ビ法律ヲ参酌シテ統一ノ法典ヲ作リタルノ例歐洲各国ニ少シトセズ。仏國ハ一千七百八十九年ノ革命後全國普及ノ法律ヲ制定シ伊太利ハ一千八百六十年同盟後ニ於テ又日耳莫ハ千八百七十一年聯合ヲ組織シタル後ニ於テ皆ナ統一普及ノ法律ヲ發布シ以テ全國ノ慣例及ビ法律ヲ均一ニセリ。

民法ノ父子夫婦間ニ訴權ヲ与フルヲ非難スル者アリ。云ハク民法ハ一家ノ和合及び幸福ヲ害シ従テ一國ノ德義心ヲ湮滅セシムルモノナリト。

子ノ親ヲ艱ヒ夫ノ婦ヲ艱フ可キ義務アルハ何人モ非難セザル所ノモノナリ。然レドモ若シ此義務ヲ尽サザル者アルモ法律ニ制裁ナキトキハ父子夫婦ノ法典ニ反目抵触ト謂ハザル可シ。

然リ而シテ二法典ハ各別ニ之ヲ起草シタルヲ以テ起案ノ當時多少抵触スル所有リント雖モ個ハ後チ悉ク之ヲ簡易迅速ナル條件ヲ以テ足レリトス。是等ハ二法典ノ其性質ヲ同フセザルヨリ生ズル自然ノ結果ニシテ之ヲ観テ以テ二法ノ抵触ト謂フ可カラズ。商業手形ノ讓渡ハ裏書ノミヲ以テスルヲ得民事債権ノ譲渡ハ債務者ニ通知シ若クハ其承諾ヲ要スルガ如キモ亦同一ノ理ニ基クモノナリ。苟モ法律ヲ知ル者ハ此相異ヲ以テ立法ノ抵触ト謂ハザル可シ。

斯可キ範囲ノ同ジカラザルニ由ル。例ヘバ商事売買ノ成立及ビ之ヲ證明スルノ方法ニハ民事売買ニ比シ更ニ簡易迅速ナル條件ヲ以テ足レリトス。是等ハ二法典ノ其性質ヲ同フセザルヨリ生ズル自然ノ結果ニシテ之ヲ観テ以テ二法ノ抵触ト謂フ可カラズ。商業手形ノ讓渡ハ裏書ノミヲ以テスルヲ得民事債権ノ譲渡ハ債務者ニ通知シ若クハ其承諾ヲ要スルガ如キモ亦同一ノ理ニ基クモノナリ。苟モ法律ヲ知ル者ハ此相異ヲ以テ立法ノ抵触ト謂ハザル可シ。

ノモト為スベキ乎商事上ノモノト為ス可キ乎民事上ノモノト為スベキモノト為ス可キ乎

ヲ以テ其範囲内ニ含蓄スルモノトシテ之ヲ規定シタルコトアリ、是レ其間ニ抵触スル所アルヲ免カレザリソ以ナリ。然レドモ後之ヲ訂正スルニ当リ商法ト抵触スルモノハ悉ク之ヲ民法ヨリ削除セリ。

（肆） 貴族院ニ於テ或ル有名ナル学者ハ意見書ト同一ノ非難ヲ民法ニ加へ且間接ニ商法ヲ難ゼリ。而シテ其新

法ノ基礎ヲ攻撃スル点ニ至リテハ稍々反駁スベキノ価値アリ。其説ニ曰ク新法ハ人定法ニ先チ自然法ノ存在スルヲ認メタリ。夫レ自然法ハ我ガ憲法トハ併立スベキモノニアラズ、蓋シ我憲法ニ依レバ人民ノ権利ハ悉ク天皇ノ附与シ玉ヒタルモノナレバナリト。

論者ノ説ハ日本ニ於テ公法上ノ議論トシテ之ヲ見レバ間然ス可キモノナキヤ必セリ。蓋シ憲法発布以前ニ在リテハ臣民ハ大政ニ参与スル能ハズ、其今日アルニ至リシ所以ノモノハ全ク 天皇ノ恩賜ニ因ルモノナレバナリ。孰レカ人民ニ憲法以前ノ参政権アリト言フ者アランヤ。然レドモ民法及ビ商法ハ原ト公然ト牽連スルモノニ非ズ。且日本ニシテ若シ私法ノ準繩トス可キモノ從来特ニ發布シタル法令ヲ措テ他ニ之レ無シトスレバ其位置誠ニ痛嘆ス可キモノナリト謂ハザルベカラズ。蓋シ新法發布以前ニ在リテ民事及ビ商事ニ闊スル法令ノ發布アリタリト雖モ其數多カラズ。殊ニ特別法ノミニ限リタリ。斯ノ如ク法律不完全ナルモ（法典未ダ施行セラレザルヲ以テ現時尙ホ法律ノ不完全タルヲ免レズ）人民ノ訴訟ハ尙ホ之ヲ断ゼザル可カラズ。而シテ之ヲ断ゼントスルモ慣習ノ不足ナルノミナラズ往

法典ハ大権ヲ認メズト云フハ何ヲ以テ是レヲ謂フカ、夫レ法典ヲ公布シタルモノハ 王室ニアラズヤ。然ラバ則チ論者ノ所謂大権ヲ認メザル者ハ却テ論者ナリ。

又新法典ハ論者ノ云フ如ク議会ノ民法公布以後ニ得タル立法権ヲ認メザルニアラズ、蓋シ議会ニシテ若シ経験ニ徴シテ必要ト認ムルトキハ何時ニテモ之ヲ改正シ得ルヲ以テ議会ノ立法権ヲ認メザラントスルモ得可カラザレバナリ。然リ而シテ余輩ニシテ若シ他日議会ハ勅裁ヲ経テ二法典ヲ改良スルコトアラバ余輩ハ言ハントス。議会ハ自然法ヲ表示スルコト旧法ヨリモ更ラニ明確ニ至リタルモノナリト。蓋シ議会ハ法律ヲ改良スルニハ必ズ道理公義公益ヲ標準トセザルベカラズ、決シテ專横ニ之ヲ制定ス可カラザレバナリ。要スルニ新法ハ將來改良スルトスルモ今ヨリ直チニ之ヲ適用スルヲ得ベシ。唯法律家ハ更ラニ之ヲ完備センガ為メニ非難ヲ容ル、ヲ得可シト雖モ、法律家ノ精神ヲ照シテ法典ノ缺点ヲ知ラシムルモノハ常ニ自然法ナリト知ル可シ。

右ノ説タルヤ簡明シテ之ヲ理會スルコト甚ダ容易ナラ

々古來日本ニ於テ未ダ曾テ見ザル所ノ訴訟事件ノ生ジ來ルガ故ニ裁判所ハ自然法即チ道理ニ拠リ正当ト認ムル準繩ヲ基礎トシテ訴訟ヲ断定セザル可カラズ。幸ニシテ能ク自然法ヲ明確ニ指示セル仏國法典ノ在ルアリテ有司ハ明治ノ初年既ニ之ヲ翻訳セシメ以テ縦カニ日本法令ノ缺ヲ補ヒタリ。

天皇陛下ノ憂キニ憲法ヲ制定シ給ハントスルノ日ニ在テハ其綱領ヲ示シ給ヒタリ。是レ公權ハ臣民ニ之ヲ与フ可カラザルモノアレバナリ。然レドモ 天皇陛下ノ憂キニ民法及ビ商法編纂委員元老院議官及ビ其他ノ有司ニ法典ノ編纂ヲ命ジ給フニ当リテハ私權ノ標準ト看做ス可キ要領ヲ垂示シ給ハズ唯道理公義公益ヲ根拠トシ私權ニ閑スル人民ノ争訟ヲ断定スルノ準繩ヲ索リ以テ之ヲ明文ニ表ハス可キヲ命ジ給ヘルノミ。唯編纂委員ノ上奏シテ勅裁ヲ仰ギタルニ法典ハ自然法ノ最良ノ明文ナルヤ將タ更ラニ完全ノモノヲ制定シ得ベキ否ヤハ或ハ學理上之ヲ論ズルヲ得ン。然レドモ二法典ノ基礎トスル所ノモノニ至リテハ自然法ヲ措テ又他ニ之レ有ル可カラズ、自然法ヲ除ケバ則チ專断ノ外アラザル可シ。

自然法ヲ確定シテ之ヲ明文ニ表ハシタリト雖モ亦未ダ数百言ヲ費シテ法律家ニ之ヲ敷衍セザルヲ得ザルニ至リクルハ慨嘆ノ至リナリ。

然レドモ茲ニ一言セザル可カラザルモノアリ。民法ハ自然法ヲ確定シテ之ヲ明文ニ表ハシタリト雖モ亦未ダ自然法ノ解釈者タルニ止マラザルコト是レナリ。蓋シ自然法ニシテ一タビ体裁ヲ變ジテ法典ト為ルトキハ亦是レ人定法タレバナリ。是ヲ以テ民法ノ條項ハ千ヲ以テ数フ可シト雖モ自然法ニ從ヒ判決ヲ為ス可キコトヲ言フハ纏カニ二個條ニ過ギズ。一ハ財産取得編第二十二條ニシテ過多ノ法條ヲ設ケ複雜ヲ來サンコトヲ避ケ條理ヲ以テ之ヲ補フベシトシタルモノニシテ一ノ法律ヲ説明スルニ際シ法文ニ徴シ精神ニ照ラシ條理ニ依リ缺点ヲ補フ可キヲ判事ニ示シタルモノナリ。（證拠編第九條）

日本民法ハ所謂自然義務ノ為メニ別ニ第一章ヲ設ケタリ。（自然義務ノ為メニ第一章ヲ設ケタルハ日本法典ヲ以テ噶矢トス）或ル貴族院議員ハ大ニ之ヲ非難シタリ。此非難ハ上ノ非難ト性質ヲ同フスルモノニアラズト雖モ余輩ハ茲ニ之ニ應ゼントス。蓋シ非難者ハ有名

ノ法律家ナガラ其説大ニ謬リ余輩ノ驚愕ニ堪ヘザルモノアレバナリ。新法ニ規定シタル自然義務ニハ民事上ノ或ル効力ヲ与ヘタリ。是ヲ以テ此義務ハ純然タル法定義務トナリタルモノニシテ唯任意履行ヲ為スヲ得ルニ止マリ其履行ノ為メ直接訴權及び損害賠償ノ訴權アラザルノミ。是レ別ニ此義務ニ一章ヲ供セザル可カラザリシ所以ナリ。

余輩ハ今茲ニ自然義務ノ法定ノ効力ヲ詳論スルノ要ナシ。唯一言民法ニ定メタル所ヲ約言センニ時効債務者ノ利益ニ於ケル確定判決及ビ其他ノ場合ニシテ民法上債務者義務ヲ免カレタルノ推定アルトキト雖モ尙ホ自然存在スルコトアリ。是ヲ以テ此場合ニ於テ債務者其債務ヲ履行スルコトアラバ任意ノ履行ニシテ彼ノ返還義務ヲ生ズ可キ不当辨済アリタリト謂フ可カラズ。又之ヲ贈与ト做ス可カラズ。歐洲各国ニ於テハ此点ニ關シ屢々疑問ノ生ジタルコトアリ、若シ明文ニ微セバ日本ニ於テモ亦他日必ラズ然ルニ至ル可シ。是ヲ以テ法典ハ遠ク之ヲ慮リ特ニ法條ヲ設ケタルノミ。

(伍) 法典維持者ハ皆言ヘリ、法典ヲ施行シテ若シ不完全ナル個條アラバ特別法ヲ以テ之ヲ補フヤ甚グ易シ

ヤ。今醫師アリ自ラ良薬ト信ズルモノヲ患者ニ投ズルトキハ仮令不幸ニシテ其希望ニ反シ之ヲ医スル能ハザル時ト雖モ誰カ患者ヲ犠牲ニ供シテ自ラ経験ヲ為スモノト言ハンヤ。顧フニ法典維持者ハ必ズヤ自ラ法典ノ日本國ニ宏大ナル利益ヲ与フ可キヲ信ジ唯其適否ヲ知リ且ツ必要ノ生ズルアラバ将来之ヲ改良スルコトアルベシト云フノミ。然ラバ則チ貴族院ニ於テ或ル論者ノ非難シタルガ如ク法典ハ國民ヲ以テ試験ノ具ト為スモノト謂フベカラズ。

(陸) 又法典ニ對スルモノノ非難アリ、意見書ノ既ニ記載シタル所ニシテ或ル論者ハ貴族院ニ於テ再ビ之ヲ述べタリ。其説稍ヤ明瞭ヲ缺クト雖モ亦大ニ民心ヲ煽動スルニ足ルモノアリ。日本新法ハ外國法典ノ影響ヲ受クルモノナリトノ説即チ是レナリ。論者ハ説ヲ為シテ曰ク、是レ我大日本ノ名譽ヲ毀損スルモノナリト。思フニ日本ハ往古清國ヨリ哲学宗教及ビ文学ヲ輸入シ今日ハ泰西ヨリ理學交通運搬ノ方法、要塞ノ器具及ビ海陸軍ニ關スル學術等ヲ輸入シ而シテ未ダ之ヲ以テ自ラ其位ヲ失墜セリト為サザルニアラズヤ。又例ヲ法律ニ取リテ之ヲ言ハシニ日本ハ刑法ヲ制定スルニ際シ歐洲

ト。然ルニ反対論者ハ此説ヲ見テ云ク、是レ國民ヲ以テ法律ヲ經驗スル器械ト為スモノナリ。

維持者ノ腦中豈斯ノ如キ観念アルアランヤ。思フニ維持者ハ若シ法典ノ不完全ナル條項目前ニ表ハル、アラバ、自ラ進ンデ直チニ之ヲ改正シ之ガ為メニ施行ヲ延期スルガ若キハ毫モ厭フ所ニアラザルヲ示シタルモノラン。然レドモ延期論者ノ唱フル所ハ一モ明了ニ缺點ヲ摘示セズシテ架空ノ妄言タルヲ免カレズ。又其漠然タラザルモノハ謬説クルカ又ハ家制及ビ社會ノ秩序ニ關シ疑懼ヲ生ゼシムベキノ謔言タルノミ。若シ非難者ノ論法ヲ可ナリトセバ法典維持者モ亦法典ノ長所ヲ挙グルガ為メ同様ノ空言ヲ吐クヲ得可シ。況シヤ維持者ノ述ブル所ハ空言ニアラズ法典ヲ施行シ公平ニ之ヲ経験シタル後修正スベキヲ言フノミ。故ニ維持者ノ言ノ如クセバ能ク法典ノ適否ヲ知ルヲ得杜撰ニ陥ルコトナカルベシ。

立法者ニシテ若シ自ラ其制定スル法律ノ結果ヲ察スル能ハズシテ而シテ直チニ之ヲ施行スルアラバ即チ是レ法典ヲ試験スルモノニシテ容ス可カラザル所ナリト雖モ孰レカ敢テ斯ノ如キ無望ノ意志ヲ懷クモノアラン。ニ模倣シタルニアラズヤ。而シテ其刑法ハ往古支那ニ倣ヒテ制定シタル法律ニ比スレバ寬嚴宜ヲ得刑罰ト犯罪ト能ク應當セリ。日本ハ敢テ之ガ為メ國体ヲ恥カシメタリト謂フベケンヤ。又憲法ヲ制定セントスルニ當リテモ歐洲各國特ニ獨逸ノ制ニ倣ヒタルニアラズヤ。然ルニ獨リ民法商法ニ限り歐洲各國ニ倣ヘルノ故ヲ以テ之ヲ非難スルハ余輩之ヲ解スル能ハズ、蓋シ道理ハ一國民ノ特權ニアラズ。人類共有ノ無尽藏ナル泉源ナリ。各国民ハ敢テ恥ヂズ敢テ憚カラズ汲ンデ以テ其需用ニ充ツルヲ得可シ。今ヤ仏蘭西白耳義伊太利等ノ諸國銳意「各國ノ比較法律」ヲ講ズ、是レ之ヲ奇トスルガ故ニアラズシテ其國ノ法律ヲ改良セントスレバナリ。日本ハ其粹ヲ抜テ法典ヲ編纂ス、安ンゾ其國威ヲ失墜スルコトアランヤ。要スルニ日本新法典ハ歐洲法律家ノ注意ヲ惹キ彼等ハ之ヲ觀テ以テ各國ノ法律ヲ改良スル模範ト為スヲ得可シト言ヘリ。噫日本法典ハ嚮キニ各國ノ法律ヲ模範トシ今ヤ乃チ反テ各國ノ模範タラントス亦快ナラズヤ。

(漆) 又貴族院ニ有名ノ論者アリ、泰西ニ倣フテ以テ國威ヲ失墜スルモノト為サズ、然レドモ其論者ハ蓋シ独

逸法ヲ慕フモノ乎。日本民法ノ仏國法典ニ倣ヘルヲ大ニ非難シテ云ハク、抑仏國法典ハ一千八百四年ニ制定セラレタルモノニシテ爾來改良ヲ加ヘズ九十年以前ヨリ依然トシテ未ダ曾テ其形状ヲ更メズ然ルニ日本法典ノ之ニ倣ヘルハ迂モ亦甚シト謂フ可シト。然レドモ論者ハ仏國法典ヲ補充改竄スルコト數次以テ今日ノ必要ニ應ズルヲ知ラズヤ、法律家ニシテ此ノ如キ誤謬アルハ怪マザルヲ得ズ。余輩ノ計算スル所ニ由レバ其制定ヨリ今日ニ至ルマデ仏國法典ヲ改良シタル法典三十ヲ下ラズ。若シ細カニ之ヲ計算セバ必ラズヤ四十有余令アル可シ。而シテ多クハ法典ノ正條ヲ單ニ修正シタルモノナリ婚姻契約ノ公示及ビ離婚ノ制ヲ設ケタルトキノ如キ是レナリ。是ヲ以テ仏國法典ハ当初ノ体裁ヲ改メズ其正條亦順序ヲ変ゼズ然レドモ浩瀚ニ五ルノ故ヲ以テ法典ニ加ヘザルモノアリテ存ス。例ヘバ不動産譲渡ノ登記法水利灌溉法及ビ仏國人タルノ分限取得法ノ如キ是レナリ。

仏國法典ハ斯ノ如ク屢々之ヲ改良シタリ。然ラバ則チ日本法典ノ之ニ倣ヘル何ノ不可ナルコトカ之レ有ラシ。又論者ノ所謂法典編纂ハ一國ノ立法上法学上ノ發

達ニ一大障害ヲ与フルモノナリトノ理果シテ何クニアアル。若シ論者ノ説ヲシテ真ナラシメバ仏國ハ法学上最モ沈滯シタル国民ト謂フ可シ。然レドモ余輩ハ未ダ曾テ斯ノ如キ説ヲ為ス者アルヲ聞カズ、又若シ論者ノ進歩ヲ為スベキ筈ナリ。何トナレバ現今ニ至ル迄日本ニハ未ダ法律ノ編纂シタルモノ即チ民事上ノ慣例トシテ見ル可キモノアラザレバナリ。然ルニ日本ハ未ダ法学上最モ進歩ノ域ニ達シタル邦國トハ謂フベカラズ却テ彼ノ明治ノ初年ニ當リ仏國法典ヲ研究スルニ至ル迄ハ所謂法律学ナルモノラ殆ンド知ラザルヤ明カナリ。

(捌) 論者ハ又論法ヲ転ジテ云ヘリ。新法ハ三百代言流ヲシテ利益ヲ僥倖セシムルヲ得ベシト、其説奇ト謂フ可シ。

夫レ人定法ノ目的ハ私権ノ基礎ヲ確定スルニ在リ、所有権ヲ移転シ及ビ義務ヲ創造スル方法ヲ示スニ在リ、ノ効果ヲ明ラカニスルニ在リ、義務ニ附従ス可キ担保ヲ示スニアリ、法廷ニ於テ権利ノ發生及ビ消滅ヲ示ス

ベキ挙証ノ方法ヲ指定スルニアリ。約言スレバ從来ノ

確定セザルモノヲ明カニシ且訴訟ノ紛起ヲ豫防シ併セテ之カ裁断ヲ容易ニスルニ在リ。法律ノ目的タルヤ夫レ此ノ如シ。然バ則チ之ヲ制定發布スルモ安ンゾ論者ノ言フガ如ク訟師ノ不逞ヲ助長シ健訟ノ弊ヲ釀スノ理アランヤ。論者ノ説ハ恰モ当事者ノ証書ヲ作ルニ当リ細カニ相互ノ権利義務ヲ記載スルハ却テ主要ノ点ノミヲ定ムルヨリモ一層紛糾ヲ惹起スル危險アリト言フト幾ント相似タリ。若シ論者ノ論理ヲ以テスレバ公証人ノ手ヲ経テ完成スル近來ノ契約制度ハ法律ヲ知ラザル当事者ガ肆ニ締結スル從來ノ契約制度ヨリモ当事者間ニ争論ノ端ヲ開クコト多シト謂ハザル可カラズ。更ニ之ヲ言ヘバ燈火アルモ光明燐爛トシテ人目ヲ奪フガ如クナラズンバ反テ四隣ヲ暗黒ナラシムト云フモノト何シゾ捉バン。天下豈夫レスノ如キ理アランヤ。

縱令新法典ハ非断行論者ノ称スルガ如ク不完全ナリトスルモ加之其不完全ナルコト更ニ甚シキモノアリトスルモ猶ホ人定法及ビ私權ニ關シ確然一定ノ慣例ナキニ勝サルヤ必然ナリ。論者ハ又其説ヲ鞏固ニセントシテ民法ハ無用ノ條項多ク徒ラニ原則ノ適用ヲ示シ定義ヲ

下シ區別ヲ為シ法律学ノ講義錄ノ如シト云ヘリ。

論者ノ理由トスル所ハ其趣旨トスル所ト全ク撞着スルモノナリ。仮リニ論者ノ非難根拠アリトシ徒空ノ律文アリトスルモ真理ヲ掲ゲ適用ヲ示スハ何故ニ訴訟ノ原因ト為ル可キ乎。裁判官ノ為ニスル法律ノ講義ハ何故ニ不良ノ訟師ヲ利ス可キ乎。仮リニ法典ヲシテ全然一個ノ講義錄ナリト為セバ判事或ハ之ヲ繙クノ要ナカラシ。然レドモ判事タラントスル者ハ之ニ由リ以テ其思想ヲ養フヲ得可ク法典ノ順序ヲ逐ヒ正條ノミヲ講ズルモ猶未能ク法律ノ何タルカヲ知ルヲ得可シ。又一個人ガ契約ヲ締結シ又ハ訴訟ヲ起サントスルニ方リ法典ニ依リテ自ラ其権利義務ヲ明ラカニスルヲ得ベシ。然ラバ則チ一言ノ講義錄ニ等シキモノノトシテ法典ヲ非難シ其施行ヲ延期スルノ要何クニカ在ル。

(玖) 論者ハ法学ニ通ズルノ故ヲ以テ其名ヲ知ラル。故ニ

論者ノ一言一句ハ悉ク世ノ耳目ヲ聳動ス。是ヲ以テ余輩ハ尙ホ一ノ闡明セザル可カラザルモノアリ。蓋シ爰ニ所謂論者ノ非難ハ民法ノ要点ニ繫ルヲ以テ、若シ其説ヲシテ真ナラシメバ等閑ニ附ス可カラザルモノアリ。然レドモ其非難スル所ヲ察スレバ即チ論者ハ能ク

法典ヲ究メズシテ慢ニ之ヲ攻撃スルモノナルヲ證スル

ニ足ルモノアリ。

法典ニハ先取特權即チ債權ノ物上担保ニ闕スル規定アリ。例ヘバ雇人ハ主人ノ財産ト一ヶ年分ノ給料ニ対スル先取特權ヲ有シ（債權担保編第百四十一條）代価ヲ

受取ル能ハザル。壳主ハ渡物上ニ先取特權ヲ有スルガ如キ是ナリ（同第百六十六條）

論者ハ此二個ノ先取特權ヲ非難シテ云ク、此特權ハ其以前ニ得タル抵当權ト抵触スル可シト。若シ夫レ二者

抵触セバ是レ當然理ニ反スルモノト謂フ可ヘモ民法ハ雇人ノ事ニ闕シ明ラカニ反対ノ規定ヲ掲グルニアラズヤ（同第百四十四條第四号）而シテ壳主ニ闕シテ同一ノ規定ナキ所以ノモノハ既ニ普通原則ノミニ依リ事理明了ナレバナリ。実ニ壳主ハ如何ナル理由ニ基キ自己ニ對スル抵当債權者又ハ自己ノ占有スル不動產上從前ノ所有者ガ設定シタル抵当ヲ取得シタル者ニ優先スルヲ得ベキカ、其之ニ優先スペカラザルヤ明カナレバ論者ノ称スル如キ彼我抵触アラザルナリ。蓋シ壳主ノ為メニ優先セラル所ノモノハ、買主未ダ代價ヲ払ハザルニ當リ、之ヨリ抵当ヲ得タル者ノミ。而シテ壳主ノ

之ヲ優先スルハ條理ノ然カラシムル所ナリ。抑々不動產ノ壳主ニ先取特權アリ、且其特權ノ公示ヲ要スルノ制ハ民法編纂者ノ杜撰ニアラズ、而シテ歐洲学者未ダ會テ之ヲ以テ不條理ナリト称シタルモノアラザルナリ。

（拾）論者ハ其説ヲ終ラントスルニ臨テ曰ク、今法典ヲ実施スルトキハ後ニ之ヲ修正スルモ其要結果ハ五十年百年ノ後ニ及ブベシ。何トナレバ其以前ニ既得權生ズベケレバナリト。

夫レ將來民法ヲ改正スル法律ノ既往ニ遡リテ効力ヲ有セザレバ恰モ新法典ヲ施行スルニ当リ其効力ヲ既往ニ及ボスベカラザルガ如シ。是レ何人モ能ク知ル所ナリ。然レドモ各國ノ例ニ徴スルニ一箇ノ法律ヨリ他ノ法律ニ移ル経過ニ生ズル所ノ前後二法ノ交渉問題ハ數十年ノ後ニ至ルマデ生ズルモノニアラズ。蓋シ契約ノ期トスル歲月ハ概ニ際限アレバナリ。貸貸借ニ闕シテモ亡当事者ヲ三十年（永貸借ニ付テハ五十年）以上束縛スル能ハザルニアラズヤ。然ラバ則チ論者ノ言フガ如ク何ゾ法律ノ改正ハ其余響ヲ百年ノ後ニ遺スコトアランヤ。他日貸貸借ニ闕シ民法ヲ改正スルコトアルモ改正

ニ先チテ結約シタル貸貸借ヲ害スルノ多カラザルベキコト恰モ現今ノ民法ヲ施行スルニ際リ既ニ結約シタル貸貸借ヲ害スルコト多カラザルト一般ナリ。

是ニ由テ之ヲ觀レバ論者ノ説ハ法律ヲ知ラザル者ヲシテ疑懼ヲ懷カシムニ過ギザルヲ知ル可シ。

（拾考）又貴族院ニ一論者アリ、法律學ニ通ズルヲ以テ其名ヲ知ラル。法律ヲ非難スルコト前論者ヨリモ更ラニ細密ニシテ稍ヤ人心ヲ喚起セリ。然レドモ人心ヲ喚起シタルハ其説ノ価値アルガ故ニアラズ唯其難聞ノ多キニ因ル今悉ク之ニ答ヘントスレバ徒ラニ煩雜ヲ來スニ過ギズ。故ニ余ハ唯其主要ノ点ノミニ付キ其妄ヲ弁ゼン。

（第一）用益者ト虛有者トノ間ニハ如何ナル親族ノ關係

アルモ、之ヲ以テ用益者ニ保證人ヲ立テ又ハ保證ヲ与フルノ義務ヲ免ズルノ理由ト為ス可カラズ。例ヘバ用益者ハ寡婦ニシテ虛有者其子タルトキニ於テモ亦然リトス。蓋シ用益者ノ母タリトスルモ寡婦ナレバ則チ再び婚姻スルコトニアリテ或ハ管理宣シカラザルコトモアルベク或ハ後夫ニ煽動セラレテ其子ニ不利ナル行為ヲ為スコトモアル可ケレバナリ。然レドモ法典ハ用益

然レドモ若シ議会ニシテ取得篇第十三第十四第十五ノ三章ヲ以テ人事篇ニ置カントセバ政府ニ勧告シテ体裁ヲ改メ以テ更ラニ民法ヲ布告セシム可シ又安ンゾ順序ノ故ヲ以テ民法施行ヲ延期スルノ要アランヤ。

又若シ順序ニ闕シ法典ノ体裁ヲ改メントスレバ宜ク五百二通ジテ正條ヲ計算スルノ方法（第一條ヨリ第七百六十二條ニ至ル可シ）ヲ取ルベシ。意フニ現今ノ方法ハ每篇條目ヲ新ニスルヲ以テ複雜ノ嫌無キニアラズ。

（第四） 民法ニ先妻ヲ虐待スルノ故ヲ以テ後妻ヲ離別スルヲ許サザルハ夫其權威ヲ以テ妻ノ虐待ヲ制止シ子ヲ擁護シ得可ケレバナリ。

（第五） 大叔叔伯父ト其姪トノ婚姻ハ民法編纂者モ亦之ヲ認メザルヤ明カナリ。而シテ其間ニ婚姻スルヲ禁ズル德義上ノ理由ハ叔姪ノ間ニ婚姻ヲ禁ズルト其理全ク同一ナリ。蓋シ叔伯父ハ父ノ地位ニ在レバ則チ大叔父ハ祖父ノ地位ニアラザルモノナレバナリ。后後日此ノ如キ事件ノ生ズルアラバ裁判所ハ必ラズヤ余ノ説明スル如ク法律ヲ解釈スルニ躊躇セザルナル可シ。羅馬法ニ法律ノ解釈ニ闕スル原則アリ「新ニ法律ニ明文ヲ加

級ヲ均一ニスルハ危害アリト、論者ハ吾人ヲ彼ノ刑ハ士ニ轟クシテ農工商ニ重キ時代ヲ恢復セントスル乎。果シテ然ラバ則チ亦刑法ノミ改正セザル可カラザルニ至ラン。

余輩ハ今茲ニ論者ノ説ハ斯ノ如ク復古ノ傾向アルモノナルヲ明カニシテ止マントス。今ヤ日本国民ハ民事上四民対等ナラザル可カラズトハ既ニ一箇ノ定説ト為り又動カス可カラザルヲ以テ、論者ノ説ハ國中到ル処協賛ヲ得可カラザレバナリ。

（第九） 論者又云フ、新法典施行セラルレバ訴訟ノ紛起スルヤ疑ナシト。夫レ法律アレバ縱ヒ不完全ナルモ猶ホ訴訟ノ起ルコト法律ノ設ケナキトキニ比シ必ズ減少セザルベカラズ。是レ既ニ余輩ノ論明セシ所ナリ。余輩ハ尙ホ言ハントス、何レノ世何レノ邦ニ於テ最モ訴訟ノ多カリシヤヲ知ラント欲セバ先ダ各邦国及ビ各時代ニ於テ取り扱ヒタル訴訟特ニ契約ニ闕スル裁判所事件ノ數ヲ比較ス可シ。之ヲ比較シテ而シテ其原因ヲ究ムレバ必ラズヤ自ラ覺ル所アルベシ。之ヲ日本ニ徵スルニ今日ハ從來ニ比スレバ訴訟事件ノ増加シタルコト夥シキモノアリ。是レ新法典ノ發布セラレタルニ因ル

フルトキハ毎ニ解釈ト判例トニ依リテ同一ノ目的ヲ有スル規定アルヲ見テ之ヲ非難セリ。其説奇ト謂フ可シ。

現今ニ至ルマデハ未成年者ニシテ其父ヲ喪ヘベ乃チ其財産ヲ安全ニ保護スル者少ナク、徒ラニ後見人ノ貪慾ヲ充タスノ資タルニ過ギザリキ。噫未ダ嘗テ生難易

ヲ知ラザル孤提ノ利益安ゾ其レ等閑ニ附シ去ル可ケンヤ。是ヲ以テ新法ハ未成年者ニ後見人ノ不動産上ニ法律上一般ノ抵当権ヲ与ヘタリ。亦論者ハ之ヲモ廢セントスル乎。

（第七） 民法ハ華族ノ爵名及ビ爵名世襲ニ闕スル特別法ニ反スルモノニアラズ。此特別法ハ即チ民法ノ例外ノミ。

（第八） 維新以来士風衰ヘ一国ノ德義地ヲ掃ヘリトハ是レ維新ノ業ヲ蔑シスルモノニアラザルカ。又昔日德義ヲ守リタル者武士ノミナリト云フ、亦平民ヲ譏ルモノニアラザルカ。他ノ論者既ニ云ヘリ、民法ノ國民ノ階

乎、余輩其然ラザルヲ知ル。蓋シ民事上及ビ商業上ノ契約増加スレバ即チ必ラズヤ訴訟ノ起ルコト更ラニ多キヲ免レザルハ是レ一般ノ通則ナリ。當日本ニ於テ訴訟ノ起ルコト多キハ即チ諸種ノ契約増加シ從テ世上ノ關係錯雜ニ赴キタルニ因ル。殊ニ日本ニ於テ維新前法ヲ断ゼン者ハ多クハ所謂武士ナルモノニシテ法官ニアラズ。然レドモ今ヤ組織整齊セル裁判所アリ、從来曲直ヲ断ゼシムルニ手段乏シカリシ者モ今ヤ憑リテ以テ之ヲ断ゼシムルヲ得ベシ。是レ亦方今訴訟ノ増加シタル原因ノ一ナル可キ乎。

夫レ社会ニシテ發達スレバ其機関モ亦從テ更ラニ運転セザル可カラズ。故ニ方今ノ有司ハ從來ノ有司ヨリモ裁決セザル可カラザル事物更ラニ多シ。是レ法律ノ増加シタルガ故ニアラズ。社会ノ活動漸ク盛ニシテ從テ利益ト利益トノ衝突スルコト漸々多キニ因ラズンバアラズ。

余輩ハ反対論者ヲ指名スルコトヲ避ケタリト雖モ維持者ニ對シテハ然ルヲ要セズ。是ヲ以テ余輩ハ今トシテ維持説ヲ唱ヘタル者ヲ指シ肯テ聊カ其説ヲ妄評セン。法典維持説ヲ唱ヘタル者大木伯ヲ以テ其巨擘トス。伯ハ當時文部ニ大

臣タリント雖モ嚮キニハ司法大臣トシテ法典編纂ヲ監督シ爾來元老枢密院ニ議長トシテ法典ノ分布ニ与カリテ大ニ力アリ。次ヲ司法大臣田中子、外務大臣樺本子トス。三好司法次官、箕作君島尾子、渡辺、大河内、清浦諸君、黒田侯等ハ熱心ニ法典断行説ヲ主張セリ。

維持者ハ國家ノ利害及ビ必要上ヨリ断行説ヲ主張シ敢テ細目ニ涉ラズト雖モ大木伯ハ独リ民事ニ鬨シ人定法ニ先チ自然法ノ存在ヲ認ムベキ所以ヲ論ゼラレタリ。尙ホ法典断行スペキノ一大理由アリ。事頗ル重要ナルモノ貴族院ニ於テ異議ヲ受ケタルガ故ニ茲ニ默過スベカラザルニ因リ之ヲ一言ゼン。

外務大臣ハ若シニ法典ノ実施延期セラレ徒ラニ法学講究ノ村料タルニ至テハ余輩ノ多年切望シタル候約改正ノ事業モ止ムヲ得ズ。中止セザル可カラザルニ至ルベキコトヲ貴族院ニ於テ演説セラレタリ。實ニ從來條約改正ノ最大障害ハ民法商法ノ制定ナカリシニ在リ。今ヤ漸ク此障害ヲ除キ得べキ時機ニ達シテ而シテ之ヲ除クヲ圖ラズ。是レ策ノ得タモノト謂フ可カラズ。

法典ヲ施行セザル可カラザル理夫レ此ノ如ク明カナリ、然レドモ天下ノ人挙ク之ニ同意セザルハ誠ニ悲シム可シ。

第三章 衆議院ニ於ケル非難ヲ反駁ス

余輩ハ衆議院ノ討議ニ付テハ長弁ヲ費サザル可シ。蓋シ反駁セザル可カラザル非難多カラザレバナリ。而シテ衆議院ニ於テハ討議三日ニ涉リ貴族院ト異ナリテ委員会ヲ設ケ以テ問題ニ闕スル報告ヲ為サシメタリ。然ルニ委員会員ノ過半ハ貴族院ノ議決セルガ如ク施行延期ヲ主張シ其少數ハ人事編、相続編、婚姻契約篇ノ延期ヲ主張セリ。

委員会ノ少數ノ意見、即チ折衷説ハ延期論者ノ説ニ勝ルヤ遠シ。蓋シ國民ノ身分相続等ニ關シテハ慣習未グ明ラカラザルノミナラズ又未ダ足レリトス可カラザルモノアルベシ。是ヲ以テ此等諸篇ノ寔施ヲ延期スルモ國家ノ經濟上ニ關スル利益ヲ害スルコト他ノ諸篇及び商法全部ヲ延期スルガ如ク甚シカラザレバナリ。加之ナラズ人ノ來リテ日本國民ト家族及ビ相続ニ關スル利益ヲ争フハ何レノ時ニ在ルカ未ダ知ル可カラズ。故ニ右ノ諸篇ハ條約改正ト關係有アラザレバナリ。然レドモ全部延期説議場ヲ制シ一日ノ間ニ三議會ヲ了ヘリ遂ニ全部延期ヲ議決セリ。

衆議院ノ延期論者ハ亦余輩ノ前ニ反駁シタル二三ノ非難ヲ引証シテ法典ヲ攻撃セリ、然レドモ其説ヲ奇トス可キモノナシ。唯注意ヲ惹クモノハ論者ノ尙ホ法律上ノ経歷ニ

論者曰ク僅少外国人ノ為ニ同胞四千萬人ヲ犠牲ニ供スベカラズト。

然レドモ前ニ述ル所ニ由テ觀ルモ國民ノ民事上及ビ商業上ノ利益ハ決シテ法典施行ノ為メニ害セラルルコトアラザフ知ルニ足ル可シ。蓋シ法典ニ掲載スル原則ハ到ル所法理公義及び公益ヲ保護スルノ最良具ナレバナリ。当初新法典ヲ起草スルニ當リテハ專ラ日本ノ民事ニ關スル人定法ナキガ為ミニ受タル不利ヲ医治スルヲ以テ最大ノ主眼トセルヤ疑ナシ。然レドモ亦併セテ法典ヲ實施シ、以テ條約改正ヲ容易ニシ且其成功ヲ速カニセンコトヲ図リタルモノナリ。蓋シ法典ヲ實施シテ國民ノ利益ヲ保護シ併セテ治外法權ヲ撤去シ、國威ヲ復シ専國ニ對シテ完全ノ獨立ヲ保ツハ國家ノ為メニ一舉両全ノ策ニアラザル乎。思フニ論者モ條約改正ノ一日モ早ク功ヲ奏スルヲ希望スルナル可シ。彼等日本法典ノ泰西ノ法律ニ倣ヘルノ故ラ以テ國威ヲ失墜スルモノト為シテ而シテ三十年以來日本國土ニ於テ外國法官ノ外國法律ヲ施行シ而シテ日本國民ノ債務者タルモ日本國ノ法律ハ之ニ對シテ權力ナキヲ見テ國家ノ尊嚴ヲ害スルモノト為サザルモノノ如シ。所謂自家撞着トハ夫レ論者ノ説ヲ謂フモノ歟。

對米ノ經理シテ可ナリヤ。

註 一書テ筆者ニテ正法大臣ニ提供シタル處事案施
延期辨妄正統】篇トニ本稿ト同案ノ申ハニ書
くハニ

別 番11

英国外相宛英代理公使書翰 丁 丁

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M. de BUNSEN to the Marquis of Salisbury.

(Received August 1.)

Tokio, June 30, 1892.

No. 30.

My Lord,

I have the honour to transmit copies of an English

Report of the proceedings of the Extraordinary Session of the Japanese Diet, which came to a close on the 14th instant, together with a careful translation by Mr. Hobart-Hampden of Viscount Enomoto's speech, showing how closely the prospects of Treaty revision are bound up, in the opinion of the Minister for Foreign Affairs, with the question of the postponement of the operation of the Civil and Commercial Codes.

no doubt that the supporters of the postponement will agree with me when I say that public opinion is unanimously in favour of an immediate revision of the Treaties now in force as being unsuited to the present circumstances of Japan. I imagine that not a single voice would be heard in dissent. In considering the clauses in need of revision as a whole, our motto must be simply the protection of our ancient national rights and national interests, and for the accomplishment of this purpose there is one method, and one only, that of enacting and carrying into effect a Code of Laws fit to be accepted by the civilized nation of the world.

However eagerly all classes of Japanese may desire to possess a Treaty free from all imperfections and defects, it admits of no manner of doubt that until such a Code of laws shall be in operation friendly countries will withhold their consent (to revision). Those persons who descend upon the shortcomings of the present Treaties are in the habit of looking back to the time of their inception, and attributing their defects to the limited knowledge of foreign affairs possessed by the Minister of the day. But the Minis-

As your Lordship is aware, the Bill for the postponement was carried in both Houses, notwithstanding the protests of the Government, and the fact that the Imperial assent has not even yet been given may be taken as showing that His Majesty's more intimate advisers are alive to the importance of the issue.

I have, &c.

(signed) M. DE BUNSEN.

Viscount Enomoto's Speech on the connection between the Codes and Consular Jurisdiction.

Delivered May 26 in the Upper House.

(Translation.)

While the question of the postponement of the Codes is under discussion, and before this debate closes, I desire to offer for your consideration my views upon one aspect of the question. It is one which has a most intimate connection with, and a most important bearing upon, Treaty revision. I have

ters of thirty years ago could not possibly be intimately acquainted with the circumstances of foreign countries, and even granting the necessary experience in exceptional instances, the Treaty Powers could not have been induced to subject the precious lives and property of their subject to the laws of Japan, and that for the very good reason that there were at that time no laws fit to be enforced in a civilized society, to whose protection their lives and property could have been committed. I believe that until about ten years ago, to say nothing of a period dating back twenty or thirty years, it was a view generally acquiesced in that when foreign Powers took their stand upon that most objectionable provision of the present Treaties—Consular jurisdiction—their position was absolutely impregnable, and in proof of this statement I urged the fact that until the '80's no such idea as that of throwing open the country and bringing all foreigners under Japanese law had ever presented itself at the Treaty Revision Conferences. But in 1882 it occurred to Count Inouye, then Minister for Foreign Affairs, that Consular jurisdiction, unassailable as it seemed, might yet, by a process of

gradual change, be ultimately completely abolished. The outcome of his various schemes was the Preliminary Conference for the revision of the Treaties opened in 1882. Two years later, again, a draft scheme was presented, and in 1886 the actual Conference for the revision of the Treaties was opened, and discussion with the Plenipotentiaries of foreign Powers commenced. On this occasion the so-called Anglo-German project was put forward by the English and German Ministers in answer our proposals, and being accepted by the Imperial Government as a basis for the negotiations, came up for discussion, but subsequently this draft also was declared in many respects effective, postponement was proposed¹, and the negotiation came to nothing.

The fate of the negotiations upon Count Okuma's scheme, which appeared in 1888, is known to you, and requires no word of explanation from me. Thus from 1882 to 1888 successive foreign Ministers—men reputed first-rate statesmen like Counts Inouyé and Okuma—had strenuously toiled at this work, and the proposals they put forward were, under the circumstances, fairly satisfactory. Great, indeed, their la-

mate connection existing between the Codes and Treaty revision—a subject in which a far keener interest is felt throughout the whole Empire (than in the Codes). Gentlemen, I have still one or two points which I desire to offer for your consideration. You will, no doubt, have heard of the "Institut de Loi Internationals," a Society established at the instance of jurists of Europe and America in 1873, and limited to 120 members. The twelfth subject laid before the Society, upon the investigation of which it is now engaged, is the "Necessary alterations to be effected in the constitution of Consular Courts in the East where both parties to a suit are subject of Christian countries," and a Committee composed of Delegates representing various countries has elected to report upon the subject. You are aware that Turkey, China, Persia, and Siam are countries possessing no Codes suitable for acceptance by the civilized nations of the world, and consequently there is no prospect of Consular jurisdiction being abolished there, so that this proposal of amending the constitution of Consular Courts is limited in its scope to cases where differences arise between suitors of European or American na-

hours were, as one may well imagine, but that they did not see them crowned with success was due, as I have already stated, simply to the fact that no Codes adequate for civilized society had been completed, and consequently the Governments of the Treaty Powers would not lightly consent to the abolition of Consular jurisdiction.

Gentlemen, I appeal to you: is it not imperative that these Codes—our indispensable weapon of offence, so to speak, against these hated Consular Courts—should be duly carried into operation from the beginning of next year? At the present moment, when the whole nation is bent upon revising the Treaties, and the operation of the Codes is the *sine qua non* for the attainment of that object, is it not the height of inconsistency to seek to have them postponed? It is not that I maintain that all the 2,826 sections of the Civil and Commercial Codes are absolutely without a flaw, and stand in need of amendment; let sections requiring revision be revised by all means. All that I contend is that the term of the operation of the Codes be not postponed, and to this one contention I adhere on the ground, as stated just now, of the inti-

tionality resident in those countries. To allude to another and different subject, the Society has asked to be furnished with copies of our Codes in order that the present Treaties of Japan and such portions of the five great Codes, namely, the Civil, Commercial, and Criminal Codes, and the Codes of Criminal and Civil Procedure, as are actually in operation or have been promulgated, may be submitted to an investigation. The member of the Committee representing Japan, an eminent English international jurist, having on the plea of old age resigned his position on the Committee, it was decided last year to elect a Japanese as a member, and the choice fell upon the Chief Secretary of this House, Mr. Kabeko Kentaro, a selection which is an honour at once to the gentleman himself and to Japan. The Society holds a meeting in Switzerland in October next, and one of the subjects in connection with which a Report will be furnished to the Society, and the Society's decision made public to the world, is the "Adequacy of the Japanese Codes for protecting the lives and property of Europeans and Americans in the event of Consular jurisdiction, now secured under the Treaties, being

abolished." A Report of this kind cannot of course be taken to represent the views of the various Governments, but it will undoubtedly have some influence upon public opinion in Europe and America. But if at the moment when Mr. Kaneko is about to attend this meeting with these precious Codes, a number of persons in Japan arguing against their enforcement should stay their operations for a period of four years, with no possibility, moreover, of fixing four years with any certainty as an absolute term, will not the realization of our hopes for the abolition of Consular jurisdiction be rendered problematical? This is a suicidal policy indeed. Mr. Kaneko's case will resemble that of a man who should set out to make purchases with money no longer current. I ask you particularly to give your careful consideration to this point.

There is one other subject to which I wish to allude. Some days ago, at a private conversation held by certain foreign Representatives, the substance of which has indirectly come to my ears, the rumour of the contemplated introduction in the Diet of a Bill for postponing the operation of the Codes was alluded

to, and it was suggested that should the Bill be carried they would be spared the trouble of proceeding with Treaty revision negotiations, and that from the retrospective tendency that had now taken the place of the progressive principles acted upon of late years in Japan, it was possible to foresee the ultimate fate of the Codes. This rumour is most disquieting, and it is no idle fabrication, and I have therefore brought it to your notice. In conclusion, I would say that in the speech I have just delivered I have not dealt with the merits of the Codes, but have merely drawn attention to the effect which their enforcement or postponement will have upon this country's foreign policy; but I hope you will not so far misunderstand me as to suppose that I only acknowledge the indispensability of the Codes by reason of their effect upon foreigners. It is obvious that their existence is of prime importance to ourselves also, while they serve the (additional) purpose of bringing foreigners into subjection to our laws.

II

Mr. de Bunsen to the Margins of Sulisby.

(Received September 28.)

Tōkyō, August 10, 1892.

No. 31.

(Extract.)

I have the honour to report the resignation of Count Matsukata, the Japanese Minister-President, together with several other Cabinet Ministers.

A new Cabinet has now taken office under the Presidency of Count Ito, composed as follows:—

Minister-President, Count Ito.

Minister of the Interior, Count Inouye.

Minister of Foreign Affairs, Mr. Mutsu Munemitsu.

Minister of Finance, Mr. Watanabe Kunitake.

Minister of Justice, count Yamagata.

Minister of War, Count Oyama.

Minister of Marine, Viscount Nire.

Minister of Education, Mr. Kono.

Minister of Communications, Count Kurada.

Minister of Agriculture and Commerce, Count Goto.

Of the late Cabinet, only Count Goto and Mr. Kono continue to hold office. It was expected that Viscount

現行條約勵行建議案ニ対スル意見

現行條約勵行建議案ノ要旨ハ現行條約ノ実施上我帝國ノ権利ヲ汚損スル所アルヲ以テ政府ハ須ラク條約ノ権義ヲ確メ嚴且密ニ之ヲ勵行セラレンコトヲ期スト云フニ在リ

建議案ガ以テ我帝國ノ権利ヲ汚損セラレタリトスルノ理由

ハ數千言ニ涉ルト雖モ要ハ外國人ノ條約侵犯及我行政規則ノ彼ニ及バザル事例ヲ列舉シタルニ過ギズ故ニ本案ノ當否ヲ判断スルニハ其ノ所謂條約侵犯トハ果シテ正当ノ見解ナルヤ否又我領事裁判制及居留地ノ制アル今日ニ於テ我行政

規則ヲ直ニ外國人ニ適用シ得ルヤ否ヲ講究スルヲ要ス

建議案ニ曰ク、現行條約アツテ特ニ領事裁判ノ約束ヲ為シ特別ナル例外ノ規定ヲ設タル前記ノ如シト雖モ、其明文ナルモノハ主權ノ原則ニ從ヒ我主權ヲ以テ之ヲ支配スペキト固ヨリ当然ナリトス而シテ事例決シテ此ノ如クナラズト案ズルニ現行條約ハ今ヲ去ル三十有余年前ニ締結シタル綱則タル而已爾來實際ノ必要ヲ認東照会公文等ヲ以テ其不足ヲ補充シ又ハ三十三年來ノ慣例ニ依リ自然ニ默諾上ノ約束トナレルモノ其他國際公法上ヨリ外国人ガ當然享有スル権利等其數決シテ勘シトセズ是等

四條ニ曰ク

外國人ハ法律又ハ條約ニ禁止アルモノヲ除ク外私権ヲ享有ス

但民法ハ末グ実施セラレザルヲ以テ直ニ其明文ニ依拠スペカラズト雖モ從来法制上ノ沿革ニ就テ之ヲ見ルトキハ当初ヨリ外國人ニ私権ヲ認許シタルモノト言ハザルテ得ズ即チ明治初年以來今日ニ至ルマデ外國人ノ私権ヲ禁ズルモノニ限り特ニ法律ニ之ヲ明言シ其他ハ之ヲ默許シタリ例之ハ土地所有ノ禁止（明治六年一月十七日第十八号布告）株式所有ノ禁止（例之ハ明治九年八月一日第百六号布告）國立銀行條例第一條同年八月第一百五号布告米商會所條例九一一、十一年五月第八号布告株式取引所條例第二十四條）又ハ鉱業禁止（明治二十三年九月法律第八十七号鉱業條例第三條）ノ如キ是ナリ

此ノ如ク外國人ニ対シ特ニ禁令ヲ設ケタル所以ノモノハ畢竟其ノ禁制ナキ私権ハ法理上當然享有セシムルガ為メナリ依是觀之ハ建議案ガ製造業農業漁業等ハ總テ之ヲ許サズトハ法律ヲ顧ミザル妄言ト謂ハザルヲ得ズ但シ條約ハ外國人住居地ヲ限定シタルヲ以テ（住居遙

ノ專ハ今日ニ於テ双方ノ合意アルニアラザレバ之ヲ更スルヲ得ザルハ言ヲ俟タズ然ルニ建議案ハ單ニ三十

年前ノ條約文而已ヲ標進トシテ我國ト外國トノ關係ヲ論断セントス是既ニ立論ノ根柢ヲ過ルモノニシテ其例

拳シタル事例ノ往々謬見タルヲ免レザルハ蓋シ茲ニ胚

胎スルナルベシ

建議案ニ曰ク、現行條約（墨斯哥條約ヲ除キ）ハ外國人ガ帝國ノ開港場ニ在住シ及ビ貿易ヲナシ及ビ規定ニ從ツテ遊歩又ハ旅行スルヲ許ス。而シテ製造業農業及鉱業ハ總テ之ヲ許サザルナリト

案ズルニ本論ハ外國人ハ法律又ハ條約ニ依リ明許セラレタルトキニアラザレバ私権ヲ享有セザルモノトノ誤解ヨリ生ジタルナリ。抑々昔時法学未開ノ世ニ於テハ斯ル原則ノ行レタルコトナキニアラズト雖モ近世ハ私権ナルモノハ各人其ノ生存ヲ完フルニ缺クベカラザルモノナレバ凡ソ法律命令又ハ條約ヲ以テ特ニ禁ゼザル私権ハ外國人ヲシテ悉ク之ヲ享有セシムルヲ例トス是法学上ノ議論タル而已ナラズ各國實際亦然ルナリ（白耳義民法第五十條節太利民法第三條）

我日本ニ於テモ亦其ノ原則ヲ取レリ即テ民法人事編第

歩ノ如キハ條約ヲ以テ許シタルニアラズ、寧口其場所ヲ限定シタリト謂フベシ）自然ニ其ノ住居地内ニ於テ充分ニ製造業農業漁業等ヲ為スラ得ザルノ事實アレドモ法理上ハ之ヲ禁ゼザルナリ

建議案ニ曰ク、現行條約ハ前記ノ如ク在住貿易遊歩及旅行ヲ規定シテ之ヲ許可シ且ツ之ニ直接附隨スル諸業ニ至ツテハ之ヲ許スヲ適當ト見做スペシト雖モ此等ノ諸業ニ關シ帝國普通ノ行政権ヲ施行シ課税スペキハ之ヲ課税シ取締ルベキハ之ヲ取締ル是レ我國ノ権利ナリト

本論ノ如キ現行條約ノ規定ヲ熟読セズシテ唯妄想ヲ吐露シタルモノト言フノ外ナシ日壇條約第八條末項ニ曰ク墳地利及洪渴利人民ハ條約ニ附屬スル稅目ニ擧タル租稅而已ヲ相納メ他ノ諸稅ハ總テ払フニ及バズト建議案ハ外國人ガ開港場ニ在住シ其以外ニ転住スルコトヲ得ザルヲ認知スルニアラズヤ而テ其開港場ニ於テ外國人ガ旅宿店、飲食店、医業等ヲ営ムハ貿易ヲ為ス自然ノ結果トシテ已ムヲ得ズ之ヲ許スト明言シタルニアラズヤ然ルニ其許可シクリト言フ所ノ諸業ニ課稅スペシト云フトキハ是レ明カニ條約第八條ノ末項ヲ犯スモノナリ何トナレバ第八條末項ハ開港場ニ於テ外國人ハ

濫リニ租税ヲ賦課セラレザルヲ保証シタルモノナレバ
ナリ或ハ本論ハ開港場外ニ於テスル外国ノ事業ニ課稅
スルノ精神ナリト弁疏ゼンカ外国人ハ開港場外ニ於テ
營業スルノ場合甚ダ稀レニシテ別ニ課稅スルノ必要ナ
キヲ如何セン其他売買取引上ノ事ニ關シテハ條約第十
條以下ニ於テ免稅ノ事ヲ規定シアレバ論者ノ言フ如キ
課稅ハ實行スベカラザル空論タルヲ免レズ

更ニ進デ理由中ニ掲タル各事項ニ就キ論駁ヲ下サントス

民事裁判権ノ事

建議案ニ曰ク、（前略）由於観之本條約ノ範囲ハ日本ノ人
民ヨリ我國ニアル外國ノ人民ニ對シテ訴ヲ起シタルトキ彼
レ外國ノ人民ハ自國領事ノ裁判ヲ受クルノ權ヲ得タルモノ
ナリト雖モ若シ政府ガ直ニ外國人ヨリ侵害ヲ受ケタル場合
ノ如キハ彼レ外國人ハ決シテ自國領事ノ條約ヲ受ケシムル
ベカラズ當サニ我裁判権ヲ以テ之ヲ処分スベキナリ

此原則ヲ直ニ軍艦千島事件ニ當テ以テ政府ノ处置ヲ攻
撃セリ抑々軍艦千島事件ハ國庫ガ外國会社ニ對スル損害
害要償ノ訴訟ニシテ純然タル民事ナリ既ニ民事タル以
上ハ國家ガ其法人ノ資格ヲ以テ一個人ト同一ノ訴訟ヲ
起スコトヲ得ルハ法理上ニ於テ當然ノ事ナリ建議案ヘ

リ。之ヲ以テ政府ノ处置ヲ失体ナリト云フニ至リテハ
法理ヲ解セゼルモノト言フノ外ナシトス

建議案ヘ、裁判所ノ用語ニ付外人ガ原告トナリ我法廷ニ於
テ日本語ヲ用ヒザルニ拘ラズ日本人ガ原告トナリテ領事序
ニ起訴スルトキハ日本語ヲ以テスルコトヲ得ズ又外國人ハ
者ノ為メ通事ヲ用ヒシムルノ余地ヲ与ヘタリ故ニ同條

訴訟印紙ノ貼用ヲ為サズト云フ

是れ亦現行法ト事實トヲ知ラザルモノハ論ナリ抑々我
裁判所ニ於テ日本語ヲ用フベキハ裁判所構成法第百十
五條ノ命ズル所ナリ然レドモ法律ハ日本語ニ通ゼザル
者ノ為メ通事ヲ用ヒシムルノ余地ヲ与ヘタリ故ニ同條
第二項ニ曰ク

当事者ハ證人文ハ鑑定人ノ日本語ニ通ゼザル者アルト
キハ訴訟法又ハ特別法ニ通事ヲ用キルコトヲ要スル場
合ニ於テ之ヲ用ユ

民事訴訟法第百二十五條ニ曰ク裁判所ハ弁論ニ与カル
者日本語ニ通ゼザルトキハ通事ヲ立会シム
故ニ外國人ノ訴訟ニ付通常ニ用ユルヲ見テ之ヲ不當ト
云フハ總テ理由アルヲ認ムルヲ得ズ領事序ニ訴ヲ為ス
トキニ於テモ亦其ノ訴訟手続ハ領事ノ屬スル本国ノ法
律ニ從ハザルヲ得ザルヲ以テ（我法例第十三條ニ曰ク
律ニ從ハザルヲ得ザルヲ以テ（我法例第十三條ニ曰ク

條約文中「日本人ヨリ墳地利及溝渠利人ニ對シ訴訟ス
ルコトアラバ云々」ノ一句ヲ見テ直ニ日墳両國ノ一個
人而已ニ限リ領事裁判ノ制アルノミト断定シタルハ法
理ニ暗シト言フノ外ナシ條約文中某國臣民トアルハ一
個人ヲ指スハ勿論一個人ト同一ノ権利義務ヲ有スル法
人ヲモ亦包含スルハ法理上当然ノ事ナリ今ヤ文明諸國
ニ於テ國家府県郡市町村其他ノ会社團体等ニ法人ノ資
格ヲ有セシメ財產上ノ事ニ付一個人ト同一ノ権務ヲ行
ハシムルハ普通事ニシテ我國亦然リ。即チ法律ナリ命
令ナリ條約ナリ其文明中ニ一個人ニ付与セラレタル権
利義務ハ當然法人ニ附与セラレタルモノトス何トナレ
バ財產上ノ事ニ付キ法人ト一個人トハ同一ノモノニシ
テ法人即チ一個人ナレバナリ試ミニ見ヨ内地ニ於テ政
府ガ内國ノ汽船会社ヨリ損害ヲ受ケタリトセンニ政府
ハ法人ノ資格ヲ以テ内地ノ司法裁判所ニ損害要償ノ訴
訟ヲ起スコトヲ得ルニアラズヤ千島艦事件ハ政府ガ外
國ノ汽船会社ヨリ損害ヲ受ケタルナリ故ニ之ガ訴訟ハ
内地ノ司法裁判所ノ管轄ニ属セザルハ我民事訴訟法ノ
命ズル所ナリ之ニ反シテ條約ノ明文ニ依レバ領事裁判
管轄ニ屬スルヲ以テ政府ハ其明文ニ依リ起訴シタルナ

刑事裁判権ノ事

建議案ノ警察権ノ事ニ付、我警察権ヲ充分ニ外人ニ施行セ
ザルヲ論難セリ。然レドモ現行條約ノ下ニ在テ司法警察権
ハ外人ニ適用スベカラザルコトヲ覺悟セザルベカラズ抑々
司法警察権ハ刑事訴訟手続ノ一部ニ屬スルモノナレバ（刑
事訴訟法第四十六條乃至四十八條）裁判権ノ一部ナリ從ツ
テ我國ノ裁判権ニ屬セザル外人ニ對シ、直ニ司法警察権ヲ
施行スルハ條約違犯トナル（二十六年九月二十六日司法省
民刑局甲一七四号司法警察官執務心得第二十三條）唯現行
犯ノ場合ニ於テハ之ガ处分ヲ猶豫スベキニアラザルヲ以テ
逮捕引致ヲ為スコトヲ得ルノミ（外國人取扱巡査心得第十

條、二十一條、二十五條、二十六條、四十七條、明治七年九月太政官第百二十八号達司法警察規則附錄第三十六條、九年十月二十日太政官ヨリ司法省向へ指令) 司法警察權ニシテ已ニ條約ノ結果ニ依リ外国人ニ施行スルヲ得ザル以上ハ余ス所ノ行政警察ハ設令我ニ於テ之ヲ行フヲ得ルモノナルコトヲ得ザルハ理ノ観易キモノナリ蓋シ行政警察權ハ司法警察權ニ相待チテ始メテ目的ヲ達スルコトヲ得ルモノナルニ單ニ行政警察而已ヲ行フトキハ所謂説諭豫防制止等ヲ行フ而已ニシテ其以後ノ处分權ナシ加之其行政警察權モ居留地取締規則同取極書又ハ覺書等即チ特別ノ約束ニ依リ多少ノ制限ヲ受タルガ故ニ我行政警察權ハ目下狹隘ナル範圍内ニ於テ動作セザルヲ得ズ是皆既定約束ノ結果ナレバ今ハ双方ノ合意アルニアラザレバ之ヲ変更スルコトヲ得ズ

前記ノ事由ヲ理由スルトキハ建議案ノ列挙シタル事例ハ大半其ノ価値ヲ失フニ至ルベシ例之ハ神戸大阪ニ設置シアル行司警察ノ如キハ幕府以来ノ約束ニ依ツテ成立スルモノナレバ建議案ハ其ノ不当ヲ鳴ラシテ外国人ニ警察權ノ掌握セラレタルヲ非難スト雖モ今ハ其約束ヲ変更スルニアラザレバ之ヲ撤去スルヲ得ズ又建議案ハ行政警察ノ施行ニ付内外人其取扱ヲ異ニスルコト

十七條) 皆行政警察權ノ實行ニアラザルハナシ故ニ建議案ニ言フ如ク行政警察權ヲ行フノ権利ナキヲ是認シタルモノト言フヲ得ザルナリ唯其警察ノ制止又ハ説諭ニ応ゼズ公力ヲ用フル場合ハ既ニ司法警察權ニ屬スルヲ以テ斯ノ如キコトハ巡查ヲシテ專断施行セシムルヲ許サダルノミ建議案ハ行政警察權ハ外国人ノ身体及財産ニ及バズト云フト雖モ、彼ノ旅行免狀ノ條件ニ背キタルトキ其旅行ヲ禁止シ、居留地外ニ於テ商業ヲ為シタルトキ其物件ヲ差押ヘ又ハ居留地僑寓ノ場合ニ於テ其地方ノ規則ヲ遵守セズ又ハ区長若クハ巡查ノ命令ニ背キタルトキ其ノ僑寓ヲ禁止めスル如キ(明治八年七月内務省達内地旅行外国人心得同月十八日内務省達丙第四十四号中内地外国人心得十年十月三日警視庁第九十三号達外国人市場外僑寓取締規程十八年十月二十日内務省達外国人取扱巡查心得二十一條二十五條三十三條三十七條四十一條等) 是皆外国人ノ身体財產ニ対シテ行政警察權ヲ實行スルモノナリ彼ノ神戸ニ於ケル風俗壞乱事件ノ如キ賭場開設ノ如キハ行政警察權ヲ行ハザルニアラズ其事密行ニ係リ之ヲ未然ニ發見スルコトヲ得ザリシニ由ルナリ然レドモ外国人ノ家宅ニ在ル本邦人ニ対シテハ建議案

ヲ非難シ外国人車馬通行ノ禁止ヲ犯スノ一例ヲ挙ゲテ警察官ノ怠慢ヲ責ムト雖モ是亦上文ニ述ブルガ如ク素ニ司法警察權ナキガ故ニ單ニ行政警察權ノミヲ以テ之ヲ制止スルヲ得ルモノナレバ其制止ヲ背ゼズシテ通行禁止ノ地ヲ通行セシムトスルトキハ即チ行政警察ヲ離レ司法警察ノ区域ニ入ルモノナレバ我警察權ノ及バザルナリ故ニ外国人取扱巡察心得ニハ此場合ニ於テ其巡察ヲシテ直ニ警察部ニ申報セシムベシト命ジ事後ノ处分ハ警察ノ指揮ヲ受ケテ之ヲナサシメントスルナリ是司法警察權ニ無キ結果トンテ止ムヲ得ザルノ方法ト言ハザルヲ得ズ其他無免状又ハ免許日限経過ノ外国人ヲ発程地ニ立戻ラシメ(外国人取扱巡察心得第十條) 又ハ遊歩規程外ノ者ヲ規程内ニ立戻ラシメ(同第十五條) 僮伏ニ障害ナカラシシムルガ為メ説諭シ(同第十八條) 発砲又ハ火器ヲ弄ブヲ制止シ(同第三十條) 失火場ノ妨害トナルトキ退去セシメ(同第三十四條) 居留地外ニ於ケル商業ヲ禁ズルガ如キ(同第三)

内地商業ニ闢スル事

建議案ハ、外国人ノ内地商業ニ闢シ（第一）内地ニ於テ外国人公然開店營業スルコト（第三）居留地ニ於テ諸種ノ製造所ヲ設置スルコトヲ條約侵犯ト為シテ政府ガ之ヲ等閑ニスルヲ非難セリ

案ズルニ外国人ガ内地ニ於テ店舗ヲ設ケ商業ヲ營ムコトヲ得ザルハ無論トコトナレバ政府ハ既ニ外国人取扱巡査心得第三十七條東京開市場外、外国人寓居取締規程明治二十一年十一月十二日外務省内訓導ヲ以テ之ガ取締ヲ為セリ故ニ外国人ニシテ若シ果シテ内地ニ商店ヲ開設スル者アルトキハ之ヲ禁止スルノ道備ハレリ然レドモ日本人ニシテ外国人ノ資本ヲ借入シ商業ヲ營ム者ノ如キ又ハ外国人ト特別ノ約束ヲ結ビ外国品ヲ販売スルモノハ如キハ條約違反ニ非ズ又法律ヲ以テ禁ズベキモノニ非ズ

東京府水道鉄管受負入札ノコトハ必ズシモ條約侵犯ト云フヲ得ズ日墳條約第十三條第一項ニ曰ク

墳地利洪牙利ノ人民ハ諸種ノ商物ヲ日本人ヨリ買入

課税ニ關スル事

建議案ニ曰ク、（前略）苟モ日本国内ニ住居スル外国人ハ日本人ト同様ニ國稅及地方稅ヲ收ムル義務アリ、且ツ是等外国人ニシテ若シ此ノ義務ヲ怠ルトキハ租稅滯納处分法ニ照シ其財產ヲ差押ヘテ徵收スルモ決シテ不当ノコトニ非ルナリト

外國課稅ノコトハ既ニ本書ノ初ニ於テ論ズル如ク日墳條約第八條末項ニ免稅ノ規程アルヲ以テ建議案ニ云ヘル如ク為スコトヲ得ザルモノトス

建議案ハ、神戸居留地内雜居地ノ租稅ニ付キ其滯納者ニ向テ滯納処分ヲ施サザルヲ不當ナリト云フ

然レドモ神戸雜居ニ於ル租稅ノコトハ固ト特別約束ニ依ルモノナレバ若シ滯納者アルトキハ約束違反者ト為ル故ニ約束違反者ハ我租稅滯納処分法ヲ以テ処分スルコトヲ得ザルハ少ク法理ニ明カナル者ノ皆知悉スル所ナリ即チ此場合ニ於テ外國領事ニ起訴スルニ於テ何ノ不可アラン其ノ他外国人ニ地方稅ヲ賦課セントノ議論ハ今日ノ所特別ノ約束ヲ以テスルニ非ザレバ到底实行スルコト能ハザルベシ

レ又ハ日本人ニ壳渡スコトヲ得ベシ。其壳買或ハ代價受取払ノ時ニ当テ日本官吏之ニ關係スルコトナカルベシ

此ノ明文ハ外国人ガ日本人ト壳買取引スルコトヲ広ク認許シタルモノニシテ開港場内ニ於テスルト開港場外に於テスルトノ區別ヲ問ハザルナリ故ニ外国人ハ内地ニ於テ店舗ヲ設ケル事ヲ得ザレドモ唯日本人ト壳買取引ノ契約ヲ為スコトヲ得ルハ此條約第十三條第一項ノ保證スル所ナリ而シテ受負入札ノ如キハ壳買ノ契約ヲ為スモノナレバ外国人ガ之ヲ為シタリトテ條約侵犯ト云フヲ得ズ若シ夫レ東京府下居留地外ニ於テ公然店舗ヲ開ク外国人アルトキハ明治二十一年十二月一日ノ外務省訓令ニアル如ク直ニ之ヲ禁止スルノミ外国人ガ居留地内ニ於テ製造所ヲ設ケルハ既ニ本意見書ノ初メニ論ズル如ク直ニ以テ條約侵犯ト云フヲ得ズ即チ外国人ハ我国ニ於テ法律ノ禁ゼザル限り總テノ私權ヲ享有スルモノナレバ其居住地ニ於テ法ノ禁ゼザル事業ヲ營ムハ何ノ妨ゲアランヤ是等ノ事ヲ以テ條約勵行ト云フハ何ノ意タルヤヲ知ラズ

外國軍艦不回港ヘ回航ノ事

建議案ハ、嘗テ仏國軍艦ノ不開港ニ回航セントシタル事例ヲ挙テ我國權ヲ辱シメタルモノノ如ク云ヒ做シテ自今其回航ヲ拒絶スルハ政府ノ負担スル責任ナリト云フ

案ズルニ外國軍艦ガ我開港場及不開港場ニ入港スルコトハ清國修好條約第十四條ヲ除クノ外各國條約ニ其明文ヲ掲ゲズ故ニ各國軍艦ニシテ日本ノ各港ニ寄港シ得ルヤ否ヤハ一ノ問題タルモノ、如シト雖モ今各國交際ノ通義特ニ國際法ノ條規ニ照スニ抑々軍艦ナルモノハ其掲グル所ノ旗章ノ國ヲ代表スルヲ以テ巡洋ノ際不時ニ寄港スルモ一概ニ之ヲ拒絶スルコトヲ得ザルモノトス只其地方ノ治安ニ害アリト認ムルトキハ地方官ニ於テ之ヲ拒絶スルノミ此主義ヨリ我政府ハ明治三年二月二十九日ノ布告ヲ以テ不開港場取締規則ヲ設ケタリ。又明治二十年五月二日外務、内務、陸軍、海軍ノ四省指令モ此ノ主義ニ基ケリ。故ニ拒絶ヲ以テ國權恢復トスル如キハ國際法ノ通理ニ戾ルモノト謂ハザルヲ得ズ若シ夫レ建議案ノ主義ヲ貫徹セントスルトキハ外國軍艦ノ横浜、神戸等ニ入港スルコトヲモ亦拒絕セザルヲ得ザルベシ

検疫規則設定ノ事
ト我政府トノ間ニ於テ條約上ノ範囲ヲ確守シテ相讓ラザル
事例ヲ挙ゲタリ。其事例ハ必ズシモ尽ク事実ニ止マリ現今ハ外国
軍艦及商船ヲシテ實際我国ノ法律ヲ遵守セシムルコトナレ
バ別ニ論駁スルノ必要ナシ

銃獵免許ニ關スル事

銃獵免許ニ關シ建議案ノ曰フ所ハ、現ニ外国人民ガ遵守ス
ル所ノ我銃獵規則ハ日本政府ト外國銃獵者トノ間ニ取結ビ
タル條件付ノ契約ニシテ毫モ我行政規則ノ性質ヲ有スルモ
ノニ非ズト云フ

銃獵免許ノ如キハ契約ヲ以テスルモ行政規則ヲ以テス
ルモ政府ノ隨意ナリ此ノ如キ例ハ内國臣民ニ對シテ往
々見ル所ニシテ別ニ怪シムニ足ラズ然レドモ今ハ之ニ
対シテ輪弁スルノ必要ナシ何トナレバ狩獵規則ヲ遵守
セシムレバナリ（明治二十五年十一月十日警視庁内訓
第四号）

外国人ノ内地旅行ニ關シ建議案ノ曰フ所ハ、候約侵犯ト云
旅行ニ關スル事

外国人ノ内地旅行ニ關シ建議案ノ曰フ所ハ、候約侵犯ト云

テ未ダ之ヲ實施シタルヲ聞カザルナリト

案ズルニ各般ノ行政規則ニシテ外國人ニ適用スペキモ
ノハ之ガ制定ノ手続ヲ定メタリ（明治十四年十二月十
五日太政官第百五号達ニ曰ク外國人ノ遵奉スベキ行政
規則設立候節ハ自今外務省ト協議ノ上施行可致此旨相
達候事）ト雖モ其手續ニ依リタルト否トヲ問ハズ苟ク
モ性質上外國人ニ適用スペキモノハ無論之ガ施行ヲ為
スベキモノナリ故ニ鐵道規則及罰則ノ如キハ各國公使
ニ於テモ各臣民ニ之ヲ遵守セシムベキ旨ヲ承認シタ
リ。（明治五年五月十二日英公使同六月十五日西公使
問答其他ハ略ス）此承認ハ元來之ヲ要セザルモノナリ
ト雖モ當時特ニ通牒シテ之ガ承認ヲ為サシメタルモノ

ナリ其他火薬取締規則阿片壳買規則、遺失物規則、漂

流物規則、西洋形船水先免状規則、西洋形船長運転手
機関手免状規則ノ如キ皆之ヲ實行セリ例ヘバ外國船舶

又ハ出帆ノ際船具積荷等ノ沈没センモノヲ漂流物取扱
規則ニ依テ之ヲ処分シタルガ如キ（明治九年五月二十
二日太政官ヨリ神奈川県ヘ指令）又西洋形船長運転手
機関手免状規則第十三條ニ依リ外國人ノ業務ヲ停止シ
又ハ免状ヲ沒收シタルガ如キ屢々官報ニ見ユル所ナリ

フニ非ズ又法律違反ト云フニ非ズ只行政官ガ旅行免狀ヲ下
附スルニ當リ厳正ニ規則ヲ執行セント云ツテ在ルノミ。是
レ行政官ノ手心ニ属スルモノナレバ之ニ對シテ論駁スルノ
必要ナシトス

密獵船取締ノ事

建議案ハ、密獵船ノ取締ヲ嚴ニセント云フノ主旨ナレバ、
別ニ論ズルノ必要ナシ

教会党取締ノ事

外国人宗教ノ取締ニ關シ建議案ハ、其取締法ヲ設ケント云
フニ在リ案スルニ現行條約ニ於テハ外國人ヘ其ノ居留
地ニ於テ各信教ノ自由ヲ許スノ規定ナレバ其居留地外
ニ於テハ我臣民ト同ジク憲法ニ依リ我臣民タルノ義務
ニ背カザル範囲内ニ非ザレバ信教ノ自由ヲ有サザルナ
リ而シテ政府ハ法律上我帝国固有ノ宗教ヲ認定スルニ
止ルヲ以テ若シ外教ノ取締ヲ設ケントスルトキハ先づ
外教ヲ認メザルベカラズ

各般ノ行行規則ニ關スル事

建議案ニ曰ク、各般ノ行政規則ニシテ外國人ニ適用スペキ
モノノ即チ鐵道規則及罰則、石油取締規則、藥用阿片輸入
規則、輸出物規則等皆各國公使ト協議熟セザルノロ実ヲ以

（最近ノ一例明治二十六年三月二十三日官報）故ニ各
般ノ行政規則ニシテ外國人ニ對シ實行スト雖モ、其制
裁ニ至ツテハ我法律ヲ以テ処分スルヲ得ザルニ依リ新
聞紙條例ノ如キ居留地内ニ於テ之ヲ、發行スル者ニ對シ
固ヨリ之ヲ適用スペシト雖モ彼國法ニ存セザルモノニ
シテ我國法ニ之ヲ処罰スルモノ即チ發行及び停止禁止
ノ如キ制裁其他性質上當然彼ニ適用スペカラザルモノ
ノ如キハ到底治外法権ノ存スル今日ニ在テハ施行スル
コト能ハザルナリ

註 十二月二十九日衆議院ニ於ケル陸奥外務大臣ノ

演説ハ右意見ニ基イテナサル第四卷五六文書別
録参照

五六 明治三七年一月二十四日 二條基弘公外意見書

皇内閣諸公

某等謹テ内閣諸公閣下ニ白ス夫レ外國條約ノ件タル実ニ
國家興廢ノ係ル所、國民利害ノ關スル所而シテ其改正ノ期
ヲ過ギ徒ラニ歳ヲ送ルコト二十有余年先ニハ井上伯ノ談判ニ
ニ其志ヲ達セズ後ニハ大隈伯ノ談判ニ其ノ功ヲ奏セズ是レ

皆條約改正其物ノ難キニアラズシテ全ク我力國權ヲ愛護シ
以テ民權ヲ損傷セザランコトヲ期スレバナリ今ヤ我國民ハ
旧時ノ國民ニアラズ學識ハ内外ニ通ジ利害ヲ各國ノ得失ニ
鑑ミ以テ外交ノ是非ヲ講究スル者朝野ニ満ツ其國家自衛ノ
念ニ促サレ暎ヲ對外政策ニ容ルルニ至ルハ蓋シ國民ノ至情
ノミ深ク怪ムニ足ラザルナリ其所論或ハ外交上円滑ノ主旨
ニ合セザルモノアルモ是レ人文進運ノ一大徵候ニシテ國家
ノ依テ立ツ所ノモノ亦茲ニ在リト謂ハザルヲ得ズ

帝国議會ノ開設以来衆議院ノ傾向ハ毎々豫算上ニ於テ專
ラ削減ノミ事トシ、殆ンド他ノ國務ヲ顧ミザルモノノ如シ
是レ國家財政ノ整理ニ急ナルモ某等窃ニ恐ル其傾向ノ延テ
議政ノ本旨ヲ失セんコトヲ、然ルニ今ヤ從來ノ慣行ヲ改メ
國權ノ退縮ヲ憂ヒ官紀ノ弛廢ヲ悲ミ或ハ上奏シ或ハ建議セ
ントセリ是大政翼賛ノ道ニ向ヒ國家利弊ノ根原ニ着眼シ其
蹇々ノ誠ヲ致スモノ素ヨリ議員當然ノ職分ナリトス

然ルニ諸公ハ議會行動ノ意旨ヲ誤認シ開國進取ノ國是ヲ
阻格スルモノナリト速断スルガ如キハ某等ノ甚ダ疑惑スル
所ナリ夫レ天下ノ広キ或ハ一二ノ頑固者ナシト謂ヒ難シ文
明ヲ以テ自負スル歐米人亦異種人異邦民ヲ忌嫌シ之ヲ虐待
スルモノナルニアラズヤ況ンヤ本邦開國以来日猶ホ淺シ間

々事理ニ通ゼザル頑迷ノ徒アルハ數ノ免レザル処ナリ雖然衆議院議員ノ如キハ多クハ一地方ノ俊士ニシテ決シテ彼レ頑迷事理ニ通ゼザルモノト同一視スベキニアラズ然ルニ諸公ハ議会ノ多数ヲ擧ゲテ彼徒ト同一視スルガ如キハ某等ノ窃カニ諸公ノ為メニ取ラザル処ナリ且ツ其建議セント次スル所ノ現條約勵行案ナルモノハ要スルニ政府ニ対シ現條約規定ノ如ク之ヲ実践履行センコトヲ希望スルニ過ギザルベシ若シ夫レ吾ガ国家ニシテ條約ヲ実践履行セザレバ縱令所謂對等條約ヲ訂結スルモ是文言上ノ対等ニシテ決シテ國家ノ実権ヲ維持スベカラズ何トナレバ條約アリテ其美行ヲ顧ミザレバ是レ條約ナキナリ啻ニ條約ナキノミナラズ遂ニハ國家自身ノ綱紀ヲモ弛廢スルニ至ラン顧フニ衆議院議員多数ノ意見モ亦之ニ過ギザルベシ。若シ其所論事宜ニ合セザルモノアルガ如キハ諸公宣ク叮嚀反覆其是非得失ヲ弁明スルノ責ニ当リ彼ヲシテ其所論ヲ尽サシムルハ蓋シ議会ノ本義ナリ然ルニ事茲ニ出デズ直ニ臆断シ開國進取ノ国是ヲ阻格スル者トナシ停会ヲ奏請シ議員ノ言論ヲ壅塞スルガ如キハ某等ノ深ク諸公ノ為ニ取ラザル所ナリ伏シテ惟フニ我国家ハ我天皇陛下ノ祖宗ヨリ繼承シ給ヒ立憲以テ上下ノ意志ヲ貫通シ以テ國家ヲ經營シ給フ所ニシテ吾臣民ノ一致

協力以テ 聖旨ニ奉対スル所ノモノナリ若シ夫レ諸公衆議院議員ノ多數ヲ誤認シテ恰モ攘夷論者ノ如クセバ啻ニ諸公輔弼ノ責任ニ応ゼザルノミナラズ却テ國民ノ反抗ヲ來シ延テ外人ノ疑心ヲ招キ遂ニ國家将来ノ一大不幸ヲ譲成スルニ至ルモ亦知ルベカラズ是某等ガ深ク國家ノ為ニ憂慮スル処ナリ且議会ノ停会解散ハ実ニ
陛下ノ大権ニシテ諸公ガ卒然ノ意氣ニ任セ猥ニ奏請スベキニアラズ蓋シ 詔勅ハ萬民ノ敬信順奉スベキ 玉声ナレバナリ然ルニ諸公ハ二週間ノ停会ヲ奏請シ勅書已ニ下リ僅ニ一夜ヲ隔テ又解散ヲ奏請シ遂ニ前勅ヲ徒為ニ帰セシム是又某等ノ深ク國家ノ為ニ歎惜スル處ナリ噫既往ハ追フベカラズ将来ハ猶及ブベシ諸公願クハ某等ノ無言ヲ棄テズ翻然其非ヲ改メ以テ我陛下ノ御信任ニ奉答アランコトヲ某等再挙

貴族院議員子爵佐竹義理

貴族院議員公爵 同
二條基弘 同
近衛篤麿 同
島津忠亮 子爵
忠内惟 柳末德 同
弘志同

追補 帝國議會關係 九六

貴族院議員男爵 小沢 武雄
同 同 槍 取 素彦
同 同 渡 边 清
同 同 松 岡 康 稲 貞
同 同 安 場 保 和
同 同 長 谷 川 貞 雄
同 同 原 田 一 道
同 同 宮 本 小 一
同 同 富 田 鉄 之 助
同 同 原 口 忠 順
同 同 關 口 弱 五

九七 明治三七年三月十日 伊藤首相答書

貴族院議員公爵二條基弘外卅七名ノ意見書ニ
対スル答書

公爵二條基弘君外三十七君貴下 諸君ガ衆議院解散ニ付
テ博文及ビ同僚ニ忠告セラル、一書ヲ領ス諸君情誼ノ殷ナ

ノ説明ノ如キ殆ド耳ニ入ル所ニ非ル幸ニ第四議会ハ聖明ノ
盛徳ニ依リ至仁ノ 優詔ヲ垂レ玉フアリテ協賛ノ任ヲ尽シ
閉会ニ至ルヲ得タリト雖モ第五議会モ亦第四議会開期ノ當
初ニ於ケルガ如ク諸党派ハ開会ノ前ヨリシテ已ニ互ニ相排
擣スノ發達ニ資シ今ノ国情民度ト方ニ相適當スルノ組織ヲ
立テ由テ以テ前年度削減額ノ外更ニ巨額ノ節減ヲ經常ノ行
政諸費ニ加ヘ得ル所ノ余剩ハ之ヲ以テ国家民人ノ急需ニ供
セントシ改正官制及び其他ノ勅令ニ基キテ明治二十七年度
ノ豫算ヲ調製シ必要ナル事業計画ヲ定メ 勅允ヲ得テ之ヲ
提出シタルニ拘ラズ衆議院ノ豫算委員ハ政府提案ノ趣旨ノ
在ル所ヲ推第セズ直ニ前期即チ行政未タ整理ヲ加ヘザルノ
時ニ提出シタル豫算ニ対シテ作リタル旧査定方針ナルモノ
ヲ取り以テ直ニ新豫算ヲ審査修正スルノ標準トナシタリ然
レドモ閣臣ハ獨苦心經營ノ存スル所ヲ貫徹セントシ、委員
会ニ出席シテ十分弁明ヲ与ヘタルニ委員会ハ始メ閣臣ノ出
席弁明ヲ求メタルニ拘ラズ多ク抗議スル所アラズシテ而モ
頑然査定方針ナルモノヲ固執シ自ラ改ムルコトヲ為サズ而
シテ其査定シタル所ニ依レバ客歲二月十日ニ下サレタル
詔勅ノ趣旨ニ違ヒ官吏俸給十分一納付ノ制ヲ廢シ更ニ憑拋
ナキノ削減ヲ加ヘントシ又国防ノ急要事業トシテ提出シタ

ル海峡砲台造築ノ費額ヲ削リ而モ其籍口スル所ハ政府ノ舉
行シタル改革ノ其前会期ニ宣言シタル所ニ違フトスト雖モ
抑モ衆議院ガ政府ノ意向ヲ聞クタメ選挙シタル委員ニ対シ
博文ガ當時ニ宣言シタルハ官吏ノ俸給ヲ減ゼズ、組織ヲ簡
ニシ吏員ヲ汰スルト云フニ止マル而シテ時宜ノ緩急ヲ計リ
行政ノ組織ヲ立ツルハ素ヨリ政府ノ責任ニ屬シ一々局外者
ノ言議ニ徇フ能ヘズト雖モ苟モ議会ノ審議ニ依テ知見ノ至
ラザルヲ補フヲ得バ博文亦喜デ之ニ就クベシ独リ事實ヲ究
メズ理由ヲ尋ネズ行政組織ノ観念ナクシテ輕々臆断シ概シ
テ政府ノ措画輿論ニ反スト称シテ排撃スルガ如キハ博文ガ
和協ノ望ヲ絶タザルヲ得ザル所ナリ然レドモ是レ豫算委員
ノ言動ニ屬シ院議ノ決ニ至テハ未ダ知ルベカラザルモノア
リトスルモ豫算委員ハ議院ノ屬望ヲ以テ選バレタルモノニ
シテ其意見ハ即チ實際ニ院議ヲ代表スト認ムベキモノアル
ノミナラズ現ニ各党派ノ豫算ニ就テ論議スル所ヲ聞クニ之
ニ加フルコトアルモ決シテ之ニ滅ゼザリシハ諸君モ亦其記
憶ニ存セラル、ノミナラン來諭乃チ衆議院ハ豫算削減ノ慣
行ヲ改メ大政翼賛ノ道ニ向ヒ其蹇々ノ誠ヲ致スト云フ是レ
博文ガ事實ニ徵シテ諸君ト其見ル所ヲ同クスル能ハザル所
ナリ開國進取ノ國是ハ政府ノ萬難ヲ排シテ奉行セザルベカ

ラザル所而シテ條約ヲ勵行シテ國權ヲ拠ムベキハ素ヨリ之ヲ勵行スベキノミナラズ苟モ國權ヲ主張スルノ必要アラン乎亦之ヲ排除訂正スルニ務メザルベカラズ然ルニ現在ノ條約ハ維新前後ノ締結ニ係リ今日ノ事情ニ適セザルモノ多ク、其條文ヲ墨守スルハ却テ國家ニ不利益ナルモノニシテ足ラズ其得失ヲ推第セズシテ一概ニ勵行セント云フガ如キハ不稽モ亦甚シ政府ハ素ヨリ其利害ノ在ル所ヲ講第シテ其宜ヲ制シ以テ外政ノ衝ニ當ル徒ニ事ヲ好ミ端ヲ發シ以テ平和ヲ傷クル如キハ務メテ之ヲ避ケザルベカラズト雖モ亦未ダ曾テ國權ノ汚辱侵蝕ヲ條約ノ外ニ受ケズ而シテ議院ノ數党派ハ連合シテ政府ヲ以テ國權ヲ汚損ストスルノ建議案ヲ提出シ又名ヲ條約ノ勵行ニ託シテ現ニ條約ノ本文ニ抵触スルヲモ顧ミズ外人ヲ畏怖シ之ヲ攔沮スルノ目的ヲ以テ種々ノ方案ヲ立テ甚シキハ外交ノ運用ガ如何ニ重大ノ干繫ヲ國家ニ及ボス乎ヲ熱議セザルモノアルヲ利トシ其説ヲ誇張シテ以テ一時ノ感情ヲ動カシ以テ党勢拡張ノ資ト為サントスルニ至ル是レ實ニ國家ノ大計ヲ玩弄スルモノト謂ハザルヲ得ズ政府ハ維新後半ノ事業トシテ條約ヲ改正シ対等ノ國権ヲ收復スルニ汲々タルガ故ニ從來屢着手シテ屢其成ルヲ見ザルニ拘ラズ百折不撓以テ早晚國是ノ目的ヲ貫徹センコ

望ナシト認メシメタル所以ノモノニシテ一件ハ一件ヨリ迫リ層疊累積シテ政府ヲ排撃スルモ一面ニ議院ノ法定要務ヲ緩漫ニシ他ノ一面ニ國家民人ニ利スルノ計画ヲ阻廢スルノ外成積見ルベキモノアラズ而モ往々自ラ休会シテ其職任ヲ曠クセントスルニヨリ政府ハ茲ニ断ジテ解散ヲ奏請セントシ之ガ準備ヲナスノ目的ヲ以テ先づ停会ヲ奏請シタリ停会ノ期日ヲ豫定シタルハ國法ノ規程ニ遵ヒタルニ過ギズ其翌日解散ヲ奏請シタルハ停会期日ノ経過ヲ待ツノ必要アラザルヲ見タルガ為ニシテ俄ニ廟議ヲ麥ジテ解散シタルニ非ズ其 詔勅ヲ重ネザルヲ得ザリシハ憲法ノ定ムル所停会ハ解散準備タルト否トニ関セズ必ズ大權ノ示命ヲ待ツヲ以テノミ抑解散ハ大權ノ發動ニシテ閣臣苟モ責任ヲ取り奏請奉行ス素ヨリ必シモ一事一件ヲ以テ断案トスルヲ要セズ然レドモ強テ断案ヲ求メバ今回ノ解散ハ博文衆議院ヲ以テ和協ニ由リ大業ヲ翼賛スルノ望ナシト認メタルニ出ヅト断言スルニ憚ラズ夫レ和夷ナルモノ固ヨリ此レヲ以テ彼レニ徇フノ謂ニ非ズ博文素ヨリ衆議院ヲ以テニニ政府ノ提議ニ雷同スベシト望ムモノニ非ズ俱ニ國務ニ就テ得失ヲ審議シ互ニ憲法上ノ権域ヲ守リテ相踰越スルコトナクンバ立憲ノ美果亦之ヲ取ムルニ難カラザルベシ顧フニ去年二月十日ノ 詔勅

トヲ期ス。顧フニ此目的ノ一定不動ナルニ於テ政府ガ時宜ニ応ズルハ復タ内外ニ對シテ其言ヲ一二ニスルノ要ヲ見ズ亦実ニ會テ之ヲ二三ニセザルナリ是ヲ以テ政府ハ永久無限ニ現條約ニ服従シテ以テ我國家ノ権利ヲ犠牲ニスルコトヲ甘受スルノ義務ヲ負ヘザルヲ確信スルト同時ニ亦徒ニ遠来ノ外人ノ為ニ不便不利ヲ蒙ラシメ以テ自ラ勇トスルノ陋ヲ学ブヲ欲セズ而シテ衆議院ニ於ケル連合諸党派ノ要望スル所ヲ視レバ其主眼上スル所全ク彼ニ存セズシテ此ニ存シ而モ一意之ヲ迷執シテ毫モ慎重ニ對外ノ要務ヲ審議スルノ誠意ヲ認ムベカラザリシハ閣臣ガ外政ノ方針ヲ演説シタル時ノ状況ニ就テモ観ルヲ得ベシ則チ條約勵行ニ闕スル諸議案ハ固ヨリ國民多數ノ真正ナル意思ト符合セザルモノタルヲ確信スト雖モ衆議院ニ於テハ其勢ノ馳致スル所ハ明カニ推定スベキモノアリ而シテ建議案ノ本文ニ政府國權ヲ汚損スト明言シ其理由書亦多ク無稽ノ事實ヲ陳ネ外人攔沮ノ意思班々見ルベキハ諸君モ亦其本誓ニ就テ知ラル、所ナルベシ博文素ヨリ議院ノ國權ヲ以テ念トスルヲ喜ブト雖モ慎思熟計俱ニ開國進取ノ大計ヲ講ゼントスルノ誠ヲ存スルニ非ズシテ無責任ノ言葉ヲ弄スルモノニ与スル能ハズ以上ノ數件ハ博文ヲシテ衆議院ハ到底共ニ大業ノ翼賛ニ和協スベキノ

其趣旨亦此ニ外ナラズ博文同僚ト共ニ服膺他ナシ。博文素ヨル諸君ノ忠告ニ對シ徒ニ抗議ヲ試ルニ非ズ唯諸君ノ功思ノ厚キニ対シテ聊カ心衷ヲ披陳スルノミ 博文 敬具
明治廿七年二月十日

別 錄

内閣總理大臣伯爵 伊藤博文

英國外相宛英國代理公使書翰 (1)(1)

(+) *Mr. de Burzen to the Earl of Rosebery.*
(Received March 26.)
Tokio, February 14, 1894.

No. 39
My Lord,

I mentioned in a previous despatch that a section of the Japanese House of Peers had made a representation to the Government criticizing the policy pursued by the latter in advising the dissolution of the Diet, I have now the honour to transmit to your Lordship a translation from the "Japan Mail" of Count Ito's answer, which seems worthy, as a public declara-

tion of the policy of the country, to be set aside by side with Mr. Mutsu's speech in the Lower House on the eve of the dissolution.

The Minister President explains that dissolution was forced upon the Government in the first place by the persistent and indiscriminate rejection of Government measures. The Session was tumultuous and noisy, and the Chamber had acted from the first in disregard of the law by which its functions are defined. Passing over the prescribed formality of appointing the Standing Committees, they had opened their proceedings with an attack upon their President, followed up by a vaguely-worded and ill-considered Address to the Throne, for which they were obliged to apologize when it was returned to them with a request for explanations.

Undeterred by this lesson, and without as much as giving notice of their intention, they had voted a further Address to the Throne accusing the Government of "laxity of official discipline," and they had shown disrespect towards the Emperor by impatiently pressing for a reply.

The Budget had been framed by the Government

Inclosure in No. 39.

Extract from the "Japan Mail" of

February 14, 1894.

Count Ito's Answer to the Opposition Peers.—We publish the above communication addressed to the Cabinet by thirty-eight Members of the Upper House with reference to the dissolution of the Diet. The following answer has been given by the Minister President of State, Count Ito, and Published on the 13th instant by the vernacular press:—

"To Prince Niijo Motohiro and thirty-seven other Members of the House of Peers.

"My Lords and Gentlemen,—I beg to acknowledge the receipt of the communication you did me and my colleagues the honour of addressing to us, in which you have been so good as to favour us with your opinions concerning the late dissolution of the House of Representatives. I desire to express my deep sense of gratitude for your extreme consideration in the matter. Unworthy as I am, I have been charged with the grave responsibility of exercising general control over the conduct of the administrative affairs of the State, and upon me devolves the duty of

in accordance with a carefully considered scheme of reduced establishments. The Budget Committee, and assuredly the Chamber, would have swept it away without an attempt at securing agreement with its authors.

The attitude assumed by the House with regard to foreign affairs was incompatible with the progressive policy of opening up the country, which the Government could not consent to abandon. The Government "was assiduously engaged in the recovery of the sovereign rights of the country by Treaty revision." No mere policy of vexation and annoyance in their dealings with foreigners could hasten the attainment of this end. Yet to such a petty policy as that the House had given its preference.

With a Chamber so devoid of all proper sense of responsibility no harmonious co-operation on the part of the Government was possible. Dissolution was the only remedy.

I have, &c.

(Signed) M. DE BUNSEN.

tendering advice to the Sovereign. But I have not assumed such heavy responsibility without some corresponding sense of confidence in myself.

"The general purport of your communication to us is to criticize the Government's conduct in advising the Emperor, towards the end of last year, to dissolve the House of Representatives. I must, therefore, explain to you the reasons why I advised such dis-solution.

"The proper carrying out of the Constitution depends upon the harmonious working of the different parts of the machinery of State. That is precisely what His Majesty was pleased to announce at the time of the promulgation of the Constitution, and it has been repeated in the Imperial Speeches at the openings of the successive Sessions of the Diet.

"That was made especially clear and definite by the Imperial Rescript of the 10th February last year.

"The Houses of the Diet and the Ministers of State are equally under obligation to duly observe the above precept. In obedience thereto, the Houses of the Diet and the Ministers of State are bound to confine themselves within the limits of their respective

functions when considering matters of State. By doing so, notwithstanding occasional differences of opinion between them, they ought to find no difficulty in promoting, in concert, the progress of the country, in so far as relates to the more important affairs of State. Since accepting office I have diligently applied myself to the discharge of the grave responsibilities connected with the post I occupy, and I have been at particular pains never to take any precipitate course of action. I shall always be glad to have the opinion of the two Houses of the Diet on any subject, and hope thereby to acquire the means of supplying my own deficiencies. Therein lies, it is my conviction, the duty which the Constitution lays upon me. The House of Representatives, on the other hand, has been making it its principal business to oppose the important measures of the Government without taking the trouble to consider the advantages or disadvantages of such measures. For instance, the House of Representatives endeavoured to effect such reductions in the Budget as would have been difficult to carry out in practice, while on the question of national defence attempts were made to suspend measures of the most urgent

had to apologize for the ignorance it had displayed.

“Can such conduct be considered appropriate to men qualified to take part in the management of national affairs?

“The maintenance of official discipline is, of course, a duty incumbent upon the Government. Had the House put questions or offered advice to the Government, at the same time plainly pointing out in a frank and disinterested manner the facts that formed the subject of complaint, the Government would have gladly met the House in a like spirit of frankness. But, in point of fact, the House of Representatives very suddenly voted an Address to The Throne on the subject, without having even given notice of the motion by placing it on the order of the day. The House appealed to the Imperial judgment in this manner, perhaps, because it had thought from the beginning that the Government was not worthy of being taken into its councils. A few days afterwards the House, not having yet received any intimation of the Imperial pleasure, passed a Resolution which, under the pretence of expediting the Govern-

ment's decision, really pressed for an Imperial reply to the House's Address.

“How was it possible that with such a House harmonious co-operation could be maintained?

“In obedience to the Imperial Rescript of the 10th February of last year, my colleagues and I introduced reforms in the various branches of the Administration. With due regard to the requirements of the machinery of State, to the greater development of various useful undertakings, to the convenience of the people, and to the economic growth of the country, we devised a plan consistent with the actual condition of the country and the people; and, on the basis of that plan, reductions of a large amount were effected in the ordinary expenses of administration, over and above the decrease in the Budget for the proceeding year. The amount thus obtained was to be employed for meeting various urgent requirements of the State and of the people.

“In conformity with the official organization thus amended, and with other Imperial Ordinances, the Budget for the twenty-seventh fiscal year was compiled with due provisions for all the various measures

whose importance gave them a title to consideration.

"When this Budget was introduced by Imperial permission the Budget Committee in the House of Representatives, without taking the trouble to ascertain the general purpose of the Bill, adopted as a standard for the amendment of the Budget precisely the same general plan of reductions that had been drawn up in the preceding Session in connection with the Budget compiled before the abovementioned administrative reforms and been carried out. The Ministers of State, on their part, gave full explanations at the meetings of the Budget Committee, so that the objects and motives of the Government might be duly appreciated by the members of the Committee. The latter, through they at first demanded explanations from the Ministers of State in person, did not extensively criticize or oppose the statements made by the Ministers, but contented themselves with obstinately adhering to the general scheme of reductions above alluded to and manifested no inclination to recede from their original attitude. As a result of their investigations, they proposed the abolition of the contribution of one-tenth of the salaries of officials—a proposition contrary

them. But when the measures proposed by the Government are indiscriminately opposed on the vague plea that they are not indorsed by public opinion—no trouble being taken either to ascertain actual facts or to consider the reasons assigned for those measures, and not the least attention being paid to the requirements of the administrative machinery of the State—I have then to abandon all hope of harmonious co-operation with the Diet.

"It may be contended that, however true these observations may be so far as relates to the conduct of the Budget Committee, the House of Representatives itself had not yet pronounced any verdict on the subject. But the Budget Committee's opinions may practically be regarded as reflecting the views of the House by which it had been elected. Moreover, as you will no doubt remember, the opinions which were then publicly expressed on the subject by members of the different political parties were, if anything, more unreasonable than those advanced by the Committee. You state in your communication that 'the House of representatives had changed its accustomed policy with regard to the reductions in the Budget,

and manifested a tendency to consider the affairs of State in a spirit of sincerity and disinterestedness.' But on this point actual facts compel me to entertain an opinion at variance with your own.

"The progressive policy of opening the country must be carried out by the Government, in spite of all difficulties and dangers. It is, of course, necessary to strictly enforce such provisions of the existing Treaties as are essential to the assertion of the national rights; and when required, efforts must be put forth for the abolition and amendment of such provisions as may interfere with the exercise of the sovereign rights of the country. It must, however, be borne in mind that, the existing Treaties having been concluded previous to the Restoration, or immediately after it, their provisions in many cases are not responsive to the actual state of affairs of the present day. It is, consequently, not advantageous for the country to adhere too rigidly to the letter of those provisions. It would be the height of folly to seek to enforce them indiscriminately, without considering the practical consequences of such a course. In the conduct of its

foreign policy, the Government is obliged to give due

consideration to all the different aspects of contemplated steps, so that propriety of action may always be secured. Care must also be taken not to endanger peace by wantonly originating causes of complications out of pure love of contention. Yet, while pursuing such a deliberate course, the Government has never once suffered any encroachment upon or derogation from the rights of the country save such as have been consequences of the Treaties now in force. But several parties in the House of Representatives combined together for the introduction of a representation, the purport of which was to charge the Government with having suffered the rights of the country to be injured; and on the pretext of securing strict enforcement of the Treaties, they concocted various projects for restraining the movements of foreigners, heedless of the fact that such measures were in conflict with the provisions of the present Treaties. Moreover, taking advantage of the ignorance under which some persons labour, as to the important bearings which the conduct of foreign affairs has upon national interests, they even tried to promote the aggrandizement of their parties by disseminating exaggerated opinions

parties in the House of Representatives was to have the Government pursue the latter rather than the former course. That, in their blind adherence to erroneous ideas, they were wanting in the sincerity of minded essential to the calm and deliberate discussion of the country's important foreign affairs, was shown by their manner of listening to the speech which the Minister of State concerned addressed to them on the subject of our foreign policy.

"Thus, although I am convinced that the various measures brought in concerning strict enforcement of the Treaties were antagonistic to the true sentiments of the nation, it was, nevertheless, not difficult to foresee, from the attitude of the House, the verdict which a majority of the members were resolved to pronounce on the subject.

"It declared in the representation that the Government had permitted encroachments to be made upon the rights of the country, and in the explanatory document attached there were advanced various unfounded assertions which plainly indicated that the object of the introducers of the motion was to keep foreigners at arm's length.

on the subject, thereby exciting the passions of the public.

"Such persons must be considered triflers with the grave and important interests of the Empire.

"The Government is assiduously engaged in the recovery of the sovereign rights of the country by the route of Treaty revision—a task which is regarded as forming part of the great work of the Restoration. Nothing daunted by repeated failures in the undertaking, the Government is determined, sooner or later, to attain the great aim kept in view by the country. This determination on its part being fixed and irrevocable, the Government does not find it necessary, in deference to political considerations, to use, nor has it ever used, inconsistent or equivocal language on this subject, either to the Japanese people or to foreign nations. The Government is convinced that Japan is not called upon permanently and indefinitely to sacrifice her rights by complying with the existing Treaties. The Government is at the same time opposed to that pettiness which excels in the subjection of people from distant realms to vexatiously conceived inconveniences and disadvantages. The object of the allied

"These things must of course have been noticed by you.

"I am pleased to believe that members of the Diet have the rights of the country so much at heart. But I cannot approve the conduct of those who, instead of deliberately and calmly striving to promote the progressive policy of opening the country, indulge in discussions which exclude the idea of a proper sense of responsibility.

"The facts thus far dwelt upon induced me to conclude that there was no hope of co-operating harmoniously with the late House of Representatives towards the furtherance of the national policy of the country.

"While, on the one hand, continuously increasing in the violence of its opposition to the Government, that House, on the other, had nothing to show for itself, unless, indeed, that it neglected its legitimate duties of legislation, and prevented the carrying out of measures highly beneficial to the country and to the people.

"The House even tried more than once to neglect its functions by proposing adjournment.

“The Government consequently decided to advise the dissolution of the House, and, as a preparatory step leading up to that measure, sought His Majesty's consent to prorogation.

“The period of prorogation had to be fixed, for it is so required by the law of the country. The dissolution was recommended to the Emperor on the following day, because there was no necessity to wait for the expiration of the period of prorogation, and not because any change had taken place in the views of the Government. In other words, it was necessary that the Imperial orders should be issued in rapid succession, simply because the Constitution requires that the prorogation of the Diet, whether as a step preparatory to dissolution or otherwise, is to be announced through the exercise of the prerogative of the Emperor. Dissolution takes place by the exercise of the Imperial prerogative upon the responsible advice of the Ministers of State, and it is not therefore necessary that the measure should be decided upon in direct consequence of any particular questions.

“But if it be required to point out the reason why

consideration you have displayed towards myself and my colleagues.

“I remain, &c.

(Signed) “Ito Hirobumi.

“February 10, 1894.”

II

Mr. de Bunsen to the Earl of Rosebery.

(Received March 26)
Tokio, February 14, 1894.

No. 40.

My Lord,

Mr. Mutsu complained to me a day or two ago of the tone of certain British newspapers at Yokohama, by which the prevailing anti-foreign feeling in this country has been grossly exaggerated of late, in a manner to cause it to be believed that the position of foreigners in the capital is seriously menaced. The London press, his Excellency said, had reflected this view, and he thought it unfortunate that public

opinion should be thus misled at a time when a new negotiation is hanging in the balance.

I assured Mr. Mutsu that your Lordship would not be influenced by reports coming from such a quarter.

In Mr. Mutsu's opinion, a new Treaty would remove at once one-half of the unpopularity of the foreigner. His Excellency is most anxious to bring about this result, and he trusts your Lordship will see nothing in the struggle between the Executive and the Chamber to delay the renewal of formal negotiations.

His Excellency repeated his conviction that no Treaty negotiation could be satisfactory from which England stood aloof. He fixed his hopes, therefore, upon your Lordship; and it would be, he said, a great blow to his policy if he should be compelled, by meeting with discouragement in London, to turn to other Powers, or to resort to other means of asserting what Japan believes to be her rights.

Perhaps there may be some connection between this last remark of Mr. Mutsu's and a recent article in the Government organ, the “Nichi Nichi Shimbun,” in which repudiation of the Treaties is spoken of as

the present dissolution was advised, I do not hesitate to declare that the measure was recommended to the Emperor because the conviction had been forced upon me that there was no hope of furthering the grand policy of the Empire in harmonious co-operation with the late House of Representatives.

“Harmonious co-operation does not mean blind compliance with the wish of others, and I do not expect the House of Representatives to extend indiscriminate approval to measures introduced by the Government. If both the Government and the House consult together on the affairs of State gravely and soberly, and if each confines itself within the limits of its own legitimate functions, it will not be difficult to secure the proper working of the Constitution. Such, indeed, was the injunction contained in the Imperial Rescript of the 10th February, 1893, an injunction which it is the constant effort of myself and of my colleagues to obey. It is not my desire to controvert the opinions you have been so good as to address to us. But I have here frankly revealed my sincere opinions to you, in deference to the kind

the ultimate resource of Japan in case her overtures be rejected. Your Lordship will also perceive that Count Ito, Minister President, has placed on record in his answer to the Peers' representation, inclosed in my preceding despatch, the conviction of the Government, that "Japan is not called upon permanently and indefinitely to sacrifice her rights by complying with the existing Treaties."

I have, &c.,

(Signed) M. de Bunsen.

(英國議会文書)

予爵 谷 干 城
公爵 近衛 篤 麗
内閣總理大臣伯爵 伊藤博文殿

(前略)

九八 明治二十七年三月十九日 近衛公谷子再提意見書並
伊藤首相ノ答書ニ關シ近衛公爵谷子爵再提意見書
別録 英国外相英國公使往復書翰
拝啓陳者先般愚衷ヲ開陳シ諸公ノ審省ヲ希願致候處何ゾ
圖ラン辱クモ之ヲ奉被供 天覽候趣閣下ノ劣生等ノ言ヲ重
ゼラルヽ厚誠不堪感謝候然ルニ尊書ヲ熟読玩味仕候頗

ル服シ難キモノアリ、措テ而テ止ント欲スル事ハ小ナリト
雖、事已ニ達

天聴默シテ言ハザレバ誣罔ノ責輕シトセズ故ニ不得止貴
論ニ難服ノ理由ヲ別紙ニ開陳シ再ビ奉煩貴聴候
猶先般連名ヲ以テ差出候モ帰県其他病氣等ノ為貴書拝読

ノ節モ欠席ノ者有之候得共現場出席人員ノ惣代トシ劣生等
両名ヨリ別紙進呈致候間御一覽之上諸公ヘモ御披露可被下
候 匆々 頤首

一一月十九日

リ之ヲ厲行スベキノミナラズ苟モ國權ノ主張スルノ必要
アラン乎亦之ヲ排除訂正スルニ勉メザルベカラズト云フ
ニハ非ズヤ。建議案ノ精神タル亦之ニ外ナラザルヲ認ム
而ルニ諸公ハ故サラニ斥ケテ以テ徒ラニ條文ヲ墨守シ
國家ニ不利益ナルモトス謬モ亦甚シカラズヤ且ツ厲行
案ニシテ直チニ國家ニ不利ナルヤノ疑点ヲ含有セバ之ヲ
院議ニ上セシメ仮スニ審議討論ノ時日ヲ以テシ諸公タル
モノ之ニ対シ反覆論弁其不可ナル諸点ヲ正ス可シ諸公ノ
說ニシテ理アランカ議院亦一概ニ一切厲行ヲ主張セザラ
ン然ルニ諸公ハ官紀振東ノ 上奏ニ於テハ其唐突ニシテ
答弁ヲ容レザリシト咎メナガラ厲行案院議ニ上ラントス
レバ即チ停会ヲ奏請シテ發案者ノ説明ヲタニ終ラシメ
ズ。諸公或ハ事外政ニ關シ公開ノ論弁ヲ不可ナリトスル
カ秘密會ヲ請求スル亦可ナリ何為ゾ其レ停会ヲ用キンヤ
而シテ議院其議ヲ再タビセントスレバ復タ發案者ノ言論
ヲ遮リ一外務大臣ノ口ヲ仮リテ議院ヲ攘夷の意想ノ行動
ト罵リ真個開國進取ノ大計ヲ翼賛セント欲スル全國ノ代
議士ヲ誣ヒテ攘夷ノ徒ナリトシ而シテ議院ヲシテ其説ヲ
譲曉セシメント欲ス抑々亦無理ナラズヤ而シテ議院説明
ヲ求メントズレバ倉皇逃避シテ之ニ対セズ復タ直チニ停

会ヲ奏請シ又從テ解散ヲ奏請ス。事実昭々斯クノ如キア
リ和協ヲ破リタルノ責誰カ之ニ任ズ可キヤ尙ホ退キテ此
厲行案ヲ以テ諸公ノ思惟スルカ如ク國家ニ不利ナルモノ
ト仮定スルモ、又閣臣ノ反覆論争シタルニ關ラズ議院之
ヲ是決シタリト仮定スルモ是レ單ニ一ノ建議案ノミ政府
必ズシモ悉ク執行ノ責ニ任ズルノ要ナシ。而シテ斯ク
ノ如キ議案ヲ以テ解散ノ理由トセバ何ノ議案ガ解散ノ理
由タラザラン是レ果シテ立憲的行為トシ許スヲ得ルカ余
等ノ知ル所ニ非ズ

一、余等曩ニ諸公ガ二週間ノ停会ヲ奏請シ 勅書已ニ降リ
僅ニ一夜ヲ隔テ又解散ヲ奏請シ終ニ前 勅ヲシテ徒為ニ
帰セシメタルヲ痛嘆シ将来ノ為メニ忠言ヲ惜マズ然ルニ
復論ハ停会ヲ以テ単ニ解散ノ準備ナリト弁ズ準備モ亦可
ナリ、但シ之ヲ準備ナリトセバ何ゾ二週間ヲ要センヤ一
日ノ準備ハ一日ニシテ足レリ二日ノ準備ナラバ二日ニシ
テ足レリ今如何ニ準備ナリト弁ゼラルヽモ二週間ノ停会
ヲ宣示シ僅ニ一夜ヲ隔テ、解散ヲ奏請シ前 勅ヲシテ徒
為ニ帰セシム其責奈何ゾ辞スルヲ得ンヤ

セ亦行政上輕拳ヲ戒メザル可カラズ若シ政府ニシテ一旦ノ意發ニ任シ一時ノ怒氣ニ驅ラレ輕拳躁施敢テ自カラ検セザルアラバ其國家ニ禍スル其レ將タ如何ゾヤ議會解散ヘノ以テ大權ノ發動ニ出ヅルヤ論ヲ待タズ然レドモ解散ヘ國ノ重事國務紛糾ノ分ル、所故ニ之ヲ奏請スルハ議院ニシテ國家ノ命脈タル豫算案ヲ議セズ若クハ一切否決スルカ否ラガレバ國家至重ノ法律案ヲ否斥スル等ノ場合ニ於テ斯可キノミ是レ実ニ閣臣タル者ノ責任ナリ然ルニ第五議會ハ一モ是等ノ因由ヲ有セズ而シテ諸公ハ敢然認ノ一字ヲ以テ断ジ大政ノ翼賛上以テ和協ニ任ゼズトナス諸公ノ為ス所ヲ以テ議院ノ和協ヲ求ムルハ木ニ縁リテ魚ヲ求ムルノ類ノミ。余等ノ曩ニ書ヲ致ス徒ラニ諸公既往ノ過挙ヲ咎ムルニ非ズ偏ニ詔勅ノ眞ヲ服膺ナレ今後議院ニ対シ前轍ヲ改メハシノコトヲ求メシノミ然ルニ余等ノ主旨透徹セザルモノアルカ反テ縷々解散ノ理由ヲ明示セラル乃チ已ムラ得ズ愚意ヲ被陳シ以テ前書ノ尽サシルヲ補ヒ敢テ再慮ヲ汚ス

明治二十七年二月十九日

前件ニ付伊藤首相再答書

近衛公爵谷子爵及ビ両君ノ代表セラル、諸君再應ノ來示ヲ熟読スルニ唯々前議ヲ反覆主張セラルニ止マリ一モ新ニ答フルノ要アリト認ム、キ論点ヲ見出サズ國家各機關ノ和衷協同ハ素ヨリ其一ヲ以テ其他ニ屈從スルノ謂ニ非ザルコト博文既ニ之ヲ言ヒ諸君亦之ニ同ズ憲法上特立ノ権能ヲ行フニ方リ互ニ慎重ヲ以テ論ズベキハ無論ナルモ議論ノ異同ハ人々ノ所見ニ依ル素ヨリ相強フベキニ非ズ博文前簡答復シタルノ理由ニ依リ責任ヲ以テ憲法命ズル所ノ権能ヲ行フ其國家ノ為ニスル所以素ヨリ直ラ信スル所ノモノアリ諸君若シ博文ノ為ス所ヲ以テ意ニ満ズトセバ是レ亦諸君自由ノ見解ニ存ス博文諸君ノ來示ニ服スル能ハザル亦諸君ガ博文ノ間フ所ニ服スル能ハザルト同一ナルノミ。再論ヲ悉シ茲ニ答復ス 敬具

別 錄

英国外相英國公使往復書翰 丁丑正月五日

丁

*The Earl of Kimberley to Mr. Fraser.
Foreign Office, March 28, 1894.*

No. 41.

Sir.

The Japanese Minister inquired of me to-day whether I had considered the project of Treaty revision with Japan.

I said I had done so, and I would make a few observations upon it.

In the first place, it struck me that the Japanese Government asked for very large concessions, and proposed to give us but little in return.

I thought that when Her Majesty's Government was asked to make so great a change as the abandonment altogether of our right of Consular jurisdiction, they ought to be met in a more generous spirit.

I mentioned as specially objectionable to Her Majesty's Government the stipulations as to the duration of the Treaty in Article XIX of the project.

I also referred to the refusal to open the country to trade, to accord the right to possess land, and to the last paragraph in Article II, which it appeared to me, by enabling the Japanese to make special laws,

Sc., affecting foreigner, might be used to set aside the provisions of the Treaty.

On the whole, however, I thought the project afforded a basis for negotiation, and as the Japanese Government had recently shown its determination to protect foreigners, I was willing that the negotiation should be proceeded with.

Viscount Aoki replied that the existence of Consular jurisdiction was so obnoxious to the Japanese that it rendered it very difficult for his Government to treat foreigners more favourably; when once that jurisdiction had been removed, the prejudices against foreigners who would gradually diminish, and it would become much easier to adopt such measures as Her Majesty's Government desired.

Viscount Aoki expressed his satisfaction at the willingness of Her Majesty's Government to negotiate.

I am, &c.,

(Signed) KIMBERLEY.

Mr. Fraser to the Earl of Rosebery.

(Received April 3)

Tōkiō, February 29, 1894.

No. 43.

My Lord,

I called yesterday upon Mr. Mutsu, the Japanese Minister for Foreign Affairs, and he told me that he would visit me this morning in order to speak about Viscount Aoki's mission to London.

He came accordingly, and said that he felt anxious for news that the Treaty revision negotiation had at least made a beginning. He did not at all wish to hurry its course when once started, but it was very important to the Imperial Government at this moment to know that it had really begun. The anti-foreign feeling in Japan, about which exaggerated reports had unfortunately been published in the newspapers, was unreal, and a mere consequence of party agitation. The prior engagement to treat with Great Britain upon a given basis had served lately to impede an arrangement with the Portuguese Government on the lines on the Treaty with Mexico. The present Ad-

ministration was the strongest which the Empire could produce, and if they failed to effect Treaty revision nobody could do it. Nor did the Japanese Government consider themselves bound to acquiesce for ever in its present position, or to go on maintaining indefinitely a system of relations with foreign Powers which they considered to be no longer compatible with the progress and changed institutions of the country.

I could not tell his Excellency anything about the course of affairs in London since the date of my own departure from England, nor did it seem worth while to remind him of the delays which Treaty revision had suffered in Japan itself; but I deprecated impatience, expressed my readiness to give any possible help, and volunteered to telegraph to your Lordship a short report of what had been said to me.

I have, &c.,

(Signed) HUGH FRASER.

III
The Earl of Kimberley to Mr. Fraser.
Foreign Office, April 13, 1894.

(Telegraphic.)

No. 45.

Mr. De Burse, in his despatches of the 14th February last, reported that Count Ito and Mr. Mutsu had used language implying that Japan would resort to the repudiation of her Treaty engagements should her overtures for Treaty revision be rejected. The attention of the Japanese Minister was called to these utterances when he came to this Office on the 2nd instant to discuss the subject of revision, and he was warned that if his Government made use of language appraching to a threat to repudiate existing Treaties in support of their proposals, Her Majesty's Government would refuse to consider them.

Viscount Aoki was also told that the principles respecting the sanctity of Treaties recorded in Protocol No. 1 of the London Conference of the 17th January, 1891, continued to be those held by Her Majesty's Government.

The Japanese Minister has, since the interview of

the 2nd instant, by direction of his Government, denied that Mr. Mutsu ever used expressions conveying a threat of repudiation.

III
The Earl of Kimberley to Mr. Fraser.
Foreign Office, April 16, 1894.

No. 47.

Sir,

I have received your despatch of the 29th February, reporting a conversation which you had on the preceding day with the Minister for Foreign Affairs on the subject of Treaty revision.

I notice therein an observation by Mr. Mutsu to the effect that the Japanese Government do not consider themselves bound to acquiesce for ever in the present position of the question, or to go on maintaining indefinitely a system of relations with foreign Powers which they consider to be no longer compatible with the progress and changed institutions of the country.

You should point out to the Japanese Government that such expressions as those used by Mr. Mutsu

(and reported in Mr. de Bunsen's despatch of the 14th February), viz., that he "might be compelled by meeting with discouragement in London to resort to other means of asserting what Japan believes to be her rights," if they mean that she will set aside her Treaty obligations, will retard rather than advance the revision which they desire.

When Viscount Aoki came, on the 2nd instant, to discuss the new Japanese proposals, it was then impressed upon him that as Japan desired to enter the comity of Western nations, the Japanese Government must remember that one of the first principles of those States is the respect for Treaties, which cannot be revoked by one party merely because the Treaty provisions happen to be distasteful to it,

I am, &c.,

(Signed) KIMBERLEY.



Mr. Fraser to the Earl of Kimberley.

(Received May 21.)

Tōkiō, April 18, 1894.

which he had held to myself on my return to this country in reference to Treaty revision lest that also might give alarm to Her Majesty's Government when it arrived in London.

Mr. Mutsu told me that he had received similar intelligence from Viscount Aoki; that he would give me a written answer later for your Lordship's satisfaction; but in the meantime, although he could not answer exactly for what he might have said, he could assure me that there had been no intention on his part to threaten or to suggest the possibility of a renunciation of the existing Treaties by the Japanese Empire. He showed me the Japanese text of Count Ito's letter to Prince Niijo, and pointed out a discrepancy between that and the translation published in the "Japan Mail" which sufficed to make it clear that the meaning had really been exaggerated in translation.

I went afterwards to Count Ito's office, and received from him also assurances of a similar nature. Consular jurisdiction, his Excellency said, was certainly incompatible with the Constitutional government which Japan has adopted and put in practice, but no

No. 52.
My Lord,

During the evening of Saturday, 14th instant, I had the honour to receive your Lordship's telegram of the 13th, informing me of the impression which the perusal of Mr. de Bunsen's despatch of the 14th February, reporting the language of the Japanese Ministers upon Treaty revision, had produced upon your Lordship's mind; the consequent declarations made to the Japanese Envoy to the effect that the existing Treaties with Japan must be considered inviolable, and Her Majesty's Government would not negotiate in the presence of anything resembling a threat to abandon them; and the explanations which your Lordship had since received from this Government through Viscount Aokio.

I saw Mr. Mutsu as soon as possible on Monday morning, and left with him, for such explanation as he might think fit to give me at his leisure, in writing, a paraphrase of your Lordship's communication to myself, with a short extract from Mr. de Bunsen's despatch. I thought it better to add an extract from my own report to your Lordship of the language

more had been intended than an abstract assertion of this conviction. Later, there came to me from the Foreign Department copy of a telegram which had just been transmitted to Viscount Aoki, and yesterday Mr. Mutsu sent me the verbal note which I have the honour to submit to your Lordship in original herewith. It relieves me from all necessity of further explanation.

I reported to Your Lordship by telegraph yesterday afternoon the result of my action.

I have, &c.

(Signed) HUGH FRASER.

Inclosure 1 in No. 52.

Paraphrase of the Earl of Kimberley's Despatch to Mr. Fraser.

I had an interview on the 2nd April with the Japanese Minister, and drew his attention to the language used by Mr. Mutsu, as reported in Mr. de Bunsen's despatch of the 14th February, and also to Count Ito's reference in his speech of the 13th February.

I warned the Japanese Minister that I could not entertain any proposals supported by anything in the shape of menace or denunciation. Protocol No. 1 of London Conference of the 17th January, 1871, was quoted at our interview as to the sanctity of Treaties.

Extract from Mr. de Bunsen's despatch,

February 14, 1894.

His Excellency repeated his conviction that no Treaty negotiation from which England stood aloof could be satisfactory. He fixde his hopes, therefore, upon your Lordship and it would be, he said a great blow to his policy if he should be compelled, by meeting with discouragement in London, to turn to other Powers, or to resort to other means of asserting what Japan believes to be her rights.

Extract from Mr. Fraser's despatch,

February 29, 1894.

The present Administration was the strongest which

Japan are incompatible, and I advanced that fact, in my conversations with the British Minister and Mr. de Bunsen, as most important reasons for urging Treaty revision. These conversations both times were the same sense. Mr. de Bunsen appears to have misconstrued the same as meaning "to report to other means of asserting what Japan believes to be her rights." You may point out to British Government that this passage is quite contradictory to the sense of the preceding passages of the same despatch, which plainly manifested solicitude for Treaty revision. As to the statement of Count Ito, it was only an abstract reference to the incompatibility above mentioned, as is plain from its Japenes text.

(Signed) MUTSU.

Inclosure 3 in No. 52.

Memorandum.

The Imperial Government have never attempted to conceal the fact that Consular jurisdiction, as understood and practised in Japan, is incompatible

the Empire could produce, and if they failed to effect Treaty revision, nobody could do it; nor did the Japanese Government consider themselves bound to acquiesce for ever in its present position, or to go on maintaining indefinitely a system of relations with foreign Powers which they considered to be no longer compatible with the progress and changed institutions of the country.

Inclosure 2 in No. 52.

Mr. Mutsu to Viscount Aoki.

April 16, 1894.

(Telegraphic)
Had an interview with the British Minister on the subject of your telegram to-day. He has shown me

telegram from his Government, and also extracts of Mr. de Bunsen's despatch as well as his own. I repeat to you my former assurance that Japanese Government have no intention whatever to renouncing existing Treaties, and much less of assuming menacing attitude. Existing Treaties and present condition of

with a Constitutional from of government. They have on the contrary, pointed out on all suitable occasions that the endeavour indefinitely to perpetuate the two institutions side by side must in the nature of things finally result in a conflict, more especially in the matter of legislation. In view of that incompatibility, and the consequences which, in reason, may be expected to flow from it, the Imperial Government have been particularly urgent on the subject of Treaty revision.

In the matter of the adoption of the Constitution they felt assured of the hearty sympathy of Great Britain, and they believed that, by frankly pointing out the danger arising from the present situation, they might confidently count upon the cordial co-operation of Her Britannic Majesty's Government in the effort to relieve the Constitution of that stress which the existence of Consular jurisdiction places upon it.

It was in this sense, and in this sense alone, that Mr. Mutsu spoke to Mr. de Bunsen. Anything even suggestive of denunciation was wholly foreign to his intention, as it certainly is antagonistic to the policy

of the Imperial Government.

Fully impressed as he was, and is, with the necessity of Treaty revision, and the commanding advantages of a speedy adjustment of the question, Mr. Mutsu said he might, under certain circumstances, be compelled to approach other Powers on the subject before bringing the negotiations with Great Britain to a conclusion. It was more especially with a view to prevent such a conjunction that he urged, through Mr. de Bunsen, prompt action on the part of the British Government. He had no intention whatever of intimating that the Imperial Government might in any event resort to any means other than Treaty revision to accomplish the desired end.

Any understanding, therefore, on the part of Mr. de Bunsen of Mr. Mutsu's remarks inconsistent with the foregoing avowals is solely attributable to a misapprehension of the meaning which Mr. Mutsu desired to convey.

The observations made by Count Ito, in his reply to Prince Nijo and others, if read in the light of the surrounding circumstances, will be found to be in perfect harmony with the declared policy of the

a modification of their Treaties except by the method clearly prescribed in those Treaties.

The Guaimusho, Tōkiō, April 16, 1894.

Inclosure 4 in No. 52.

Translation of passage
in Count Ito's Letter
to prince Nijo.

Mail.

Those national rights which may be asserted by the strict enforcement of the Treaties should, of course, be strictly enforced; and, moreover, should it be necessary to insist upon our national rights, we must labour to abolish and amend the provisions of such Treaties.

It is, of course, necessary to strictly enforce such provisions of the existing Treaties as are essential to the assertion of the national rights, and, when required, efforts must be put forth for the abolition and amendment of such provisions as may interfere with the exercise of the so-

Government. It was essential for him to show, on the hand, that the Cabinet was fully alive to the necessity of Treaty revision; and, on the other, he was anxious to satisfy those to whom the communication was addressed, and through them the country at large, that the Imperial Government would exhaust every means in their power to secure a just modification of Japan's international engagements.

The conscientious endeavour on the part of the Imperial Government to fulfil in good faith their existing Conventional obligations, coupled with their recent attitude on the subject of the strict enforcement of Japan's Treaties, are in themselves strong guarantees that the Imperial Government have no thought of resorting to denunciation in order to free the Empire of those Treaties.

It only remains for the Imperial Government unequivocally, and without any reservation whatever, to declare that the proposals now under consideration of Her Britannic Majesty's Government rest solely upon their own inherent merit. They are not supported by any menace of denunciation, and the Imperial Government have no wish or intention of attempting

sovereign rights of the country.

* * *

The Government is convinced that it does not lie under the obligation of willingly acceding in the sacrifice of Japanese rights by submitting to the present Treaties permanently and indefinitely.

* * *

大正 昭和廿一年四月十六日 伊藤總理大臣演説

第六回 帝國議會衆議院「於ケル伊藤總理大臣

施政方進演説

○大正總理大臣(伯爵伊藤博文君)諸君、諸君へ總選舉へ

總選舉依クテ新選出され候。詔命ヲ奉ム此節本議場

御議會に開成ニマシタリ誠イチ本大臣く國家總要ノ事件タ

ル即チ追加豫算及法律案ヲ同ジク 詔命ニ奉ジテ諸君ノ前ニ提出致シテ置キマシタニ依ツテ、諸君ハ十分ニ審議ヲ尽サソコトヲ希望致シマス又本大臣ハ政府ノ取ル所ノ方針所見ヲ諸君ノ前ニ陳述致ス積デアリマス、其事ハ余事ニアラズ即チ日本ノ外交問題ノコトデアリマスル、此外交問題トハ即チ條約改正ノ問題デアリマスルガ、條約改正ノ問題ニ就キマシテハ勿論諸君ノ御熟知ノ通今日迄維新以来ノ方針ハ一定シテ動カヌ所ノモノデアリマスルガ（「のー／＼」ト呼フ者アリ）御品評ハ後トデ如何様ニモ願ヒマス、我政府ハ從来屢々條約改正ノコトニ就イテハ著手致シテ屢々其目的ヲ達シナカツタコトハ是又多弁ヲ俟チマセヌコトデアリマスルガ、併シ今日ト雖モ尙ホ其方針ハ麥ゼヌノデアリマス、然ルニ甚ダ痛嘆ニ堪ヘヌ訣デアリマスルガ、前期衆議院解散ノ止ムコトヲ得ザルニ立至ツタノモ均シク此問題ニ牽連ヲシテ居ルノデアリマスル、或ハ政府ト議会ト所見ヲ異ニシタコトハ勿論事実デアルニ相違アリマセヌガ、此解散ノ止ムヲ得ザルニ出デマシタノハ即チ此厲行法案デアリマス、厲行法案ニ政府ハ最モ重キヲ置イタノデアリマス、厲行法案其者ニ就イテ特ニ重キヲ置クト云フ訣デアリマセヌガ、厲行法案ノ出處成立ト云フモノニ邀ツテ見ル

テ議会ト衝突スルコトハ決シテ好ムノデハナイ、唯政府ハ之ニ対シテ所見ヲ異ニシタノデアル、決シテ非内地難居ニアラズ又尙早論ニアラズト云ヘバ、是亦政府ノ大ニ喜ブ所デアル（「固ヨリ然リ」ト呼フ者アリ）対等ノ條約ヲ結バウト云ウコトト非内地難居ト云フコトハ両立ノ出来ルコトデハナイ（「のー／＼固ヨリ非内地難居ニアラズ」ト呼フ者アリ）維新以来ノ方針ハ諸君ノ御熟知ノ通ニ開國ノ主義ヲ取ツテ行クト云フ以上ハ、独立国ノ得ベキ権利ヲ得ヤウト云フノデアルガ、ソレヲ得レバ即チ萬国公法ノ條規ニ從ツテ交際ヲシヤウト云フノデアル、其萬国公法ノ條規ニ從ツテ交際シヤウト云フコトニナレバ、萬国普通ノ慣例ニ依ツテ交際スルノ必要ガアル（中村彌六君「普通ヨリハ譲ツテ居ル」ト呼フ）今日ノ條約ハ即チ時体ニ適セナイ、今日ノ條約ガ即チ時体ニ適セヌ、故ニ改正ヲシナケレバナラヌノデアル（「改正ガ出来ナイデハナイカ」ト呼フ者アリ）改正ノ事ニ就イテハサウ容易ク行ク訣ノモノデハナイ（柴四朗君「朝鮮ガ怖イ位デハトテモ出来ナイ」ト呼ヒ、笑声起ル）一説ニ承ル所ニ依レバ條約厲行ヲ以テ改正ヲ促スノ手段トサレルト云フ説モ承リマスケレドモ、政府ハ其方法え取テヌノデアル（「ソレガイカヌノダ、取得ナイノダ、

ト云アト、即チ非内地難居尙早論ヨリ起ツタノデアリマス、（「のー／＼」ト呼フ者アリ、議場騒然タリ）一変シテ以テ厲行法案ト相成ツタノデアリマス。（「のー／＼」ト呼フ者アリ）其一言ハ私ハ間違マシタカラ何時デモ取消シマス、建議案デアリマス、——即チ建議案デアリマス、勿論議会解散ノ止ムヲ得ザルニ出デタコトハ種々ノ事ガ湊合シテ居リマスルガ、夫レヨリシテ此立法行政ノ衝突ト相成リマシタガ、最モ重キハ厲行案ニ置イタニ相違ナイ、政府ハ之ニ絶對的ノ反対デアツタ（「ドノ点ガ」ト呼フ者アリ、又「何故ニ反対ダ」ト呼フ者アリ）若シ此建議案ニシテ万ノ多數ヲ占ムルニ至レバ其影響ノ及ブ所容易ナラヌコトト見タノデアル（「エライ、嚇シ付ケル」ト呼フ者アリ、又「私ハ肯キマセヌ」ト呼フ者アリ、又「何處ノ点ガ害ニナルカ明ニ言ヘ」ト呼フ者アリ）今ハ即チ從来ノ方針ニ依リ條約改正ノコトニ断ヘズ著手シツツアル時デアル、「為シ得ルヤ否ヤ」ト呼フ者アリ、又「六ヶ敷イ」ト呼フ者アリ）勿論成シ遂ゲル見込ナケレバ決シテ著手致シマセヌ（「今迄ノ御手際ハドウデアル」ト呼フ者アリ、又「信用シマセヌ」ト呼フ者アリ）其為ニハ諸君モ勿論諸君ノ見ル所ニアツテ提出サレタノデアリマセウカラ政府ニ於

此外交ノ問題ニ就イテ、政府ハ勿論責任ヲ取ル積デアル、然ル以上ハ此中外ニ關係スル所ノ問題ヲ以テ暫ク政治上ノ紛争ヲ止メテ貰ヒタイト考ヘルノデアル（「出来ナイ、自ラ其道ヲ尽セ」ト呼フ者アリ）諸君ノ中ニヘ勿論外交ノ事ニ御懲知ノ方モ沢山アルコトヲ信シテ居リマスガ、此條約改正ヲスル杯ト曰フコトニ就イテハ唯脅迫的ノ手段ヲ以テ行ケルモノゾハナイ、双方協議テ行カナケレバナラヌ（「専ぐハかテモ行ケマセヌ、腰ガ弱クテハ行ケマセヌ」ト呼フ者アリ）今政府ノ見ル所ニ依レバサウ幾度モ著手ガ出来ルモノゾハナイ、ソレデ是非此節ハ此目的ヲ貫ク考ヘデアル（「考丈ハ宜シイ」ト呼フ者アリ）併シ諸君ニ今虚心ニ御懲知願ヒタイト申シタノベスウ云フ問題ヲ以テ政府ト議念ト始終衝突シテ居ツテ、而シテ國家急要ナル事業ヲ後ニ残サヌケレバナラムト云フコトハ甚ダ痛嘆ニ堪ヘヌ所デアル（「其処為ハ何處ニアル、必要ナルモノゾダカラ衝突シテ居ルノデアル、我々ハ止ムラ得ヤルノデアル」ト呼フ者アリ）ソレキ諸君ハビウゾ此節モ亦此問題ニ就イテ上奏ヲ提出シテ居ルト曰フコトヲ承ツテ居ル（「固ヨリ」ト呼フ者アリ）幾度モ同様ナル衝突シテ而シテ此国防上實業上ノ問題ヲ最後ニ残シテ其運ノ付カヌ様ナコトリ至ルト

（衆議院議事速記録）

別 錄

英国外相宛英代理公使書簡

Mr. Paget to the Earl of Kimberley.

(Received July 26.)

Tōkyō, June 10, 1894.

No. 64.

My Lord,

I have the honour to inclose herewith an account of the proceedings of the Sixth Session of the Japanese Diet. The House of Representatives was dissolved on the 2nd instant.

I have, &c.

(Signed) R. S. PAGET.

* *Inlosure in No. 64.*

Memorandum.

(Extract.)

On the 16th May, in the Lower Chamber, the Premier (Count Ito) delivered a speech on the subject of Treaty revision, of which the following, taken

with slight corrections from the "Japan Mail," is a translation:—

"Gentlemen,-Having been returned to the Diet at the last general election, you have been summoned by Imperial Writ to meet together in the present Session. Important measures of State, namely, a Supplementary Budget and various Projects of Law, have already been placed in your hands, in accordance with the Imperial commands. I hope that you will bestow most deliberate consideration upon these measures.

"I purpose, Gentlemen, to avail myself of this opportunity to say a few words on the Government's attitude with respect to Treaty revision. As you may be aware, the Government's policy of this subject has never changed since the time of the restoration. (Cries of 'No, no,' and various remarks.) I beg that you will reserve criticisms until I have finished my speech. It is scarcely necessary to state that the Government has repeatedly attempted to solve this problem and has repeatedly failed to attain its object. But, in spite of failure, the Government

is still pursuing the same line of policy followed in former years.

"It is a matter of deep regret that the dissolution of the late House of Representatives was connected with this subject of Treaty revision. (Cries of 'Mis-understanding.') It is a fact that there was a difference of views between the Government and the House of Representatives, and the consequent dissolution of the House was principally attributable to the introduction of a representation on the strict enforcement of the Treaties. In itself, that representation seemed to be of slight consequence; but the Government attached much importance to it, because it owed its origin to a movement against the opening of the interior for mixed residence. ('No, no.') To that representation, therefore, the Government was positively opposed. Its passage through the House was considered by the Government as likely to be productive of highly injurious results. ('Explain yourself more fully.') The Government is now conducting negotiations on the subject of Treaty revision along the lines hitherto pursued. ('No hope of success.') The Government, let me assure you, would not have undertaken the

enforcement as a means of expediting Treaty revision. The Government, however, does not indorse such a view. Of course, the Government is strictly enforcing the provisions of the present Treaties in so far as their enforcement is deemed necessary.

"But the Government's gravest responsibility in connection with the policy of the country is to accomplish the revision of the existing Treaties. The Government is now diligently engaged in the prosecution of that task, and is determined to sweep every obstacle out of its path. ('Be brave with foreign countries, not with your own country-men only.') The Government is perfectly aware that its views may not be acceptable to you, but I think it not altogether unnecessary to lay my opinion on the subject before you, and appeal to your candid judgment. In any case, it is the intention of the Government now as ever to accomplish their purpose of revising the Treaties, and we are confident that the consummation of our object is not far off. We will abide by the result of our endeavours on the question of Treaty revision. It is, then, the Government's earnest desire that, in view of these circumstances,

task had there not been hope of success. In introducing the representation already alluded to, you must doubtless have had good reasons for your conduct; and although the Government was sincerely sorry to bring things to a crisis, it was absolutely necessary, under the circumstances, to advise the Emperor to dissolve the House of Representatives. But I am now glad to learn directly from you that you were not actuated by any sentiments antagonistic to the opening of the country for mixed residence. You will, then, be ready to acknowledge that the demand for the conclusion of equal Treaties and the opposition to mixed residence are incompatible. The Government's policy, as you well know has always been since the restoration to open the country and maintain the Empire's independent position within the pale of international law. In other words, our aim has been and is to hold intercourse with other nations by conforming with the customs prevalent among the principal States of the world.

"The existing Treaties are unsuited to the present state of things, and must be revised. If my information is not wrong, some of you seem to regard strict

you will for the present desist from purely political agitation. There are among you not a few well acquainted with diplomatic affairs. Such persons no doubt will agree with me when I say that revision of the Treaties cannot be accomplished merely by means of intimidation. It must proceed by negotiation between the parties concerned. In the opinion of the Government, the repeated entering upon fresh negotiations cannot continue, and this time it is their firm resolution to bring the task to a happy issue. And I wish to call your attention to the fact that it is extremely regrettable to occasion frequent collisions between the Government and the Diet on a subject like the present. ('We are compelled to oppose the Government.') I am informed that you are going to debate an Address to the Throne on this matter. In that case another collision will be unavoidable, and it will again be impossible to dispose of the question of the national defences and other measures of vital importance. For such a regrettable contingency you cannot but be held responsible. I earnestly hope that you will not compel the Government to advise His Imperial Majesty to adopt the last resource.

(‘Mr. President, stop the Premier’s speech; it is intimidation. We are not assembled here to listen to the Cabinet’s intimidation.’) I do not seek to intimidate you; my only purpose has been to bespeak your sober and candid deliberation.”

Several Members rose to interpellate the Premier, but Count Ito requesting that all questions might be presented in the usual manner, i. e., in writing, left the House. Two Members, acting on this suggestion, drew up questions asking the Government’s intentions on various points connected with Treaty revision, such as judicial autonomy, mixed residence, denunciation, and in particular as to the new Tariff, whether it would be Conventional, and whether the Diet’s consent would be sought to it; but the Minister for Foreign Affairs briefly replied that to give information at the present stage would be at once impolitic and contrary to international usage. On receipt of this reply, the House, feeling the necessity of placing on record its views with regard to the submission for the Diet’s approval the new Tariff, passed almost unanimously the following Resolution:—

“The conclusion of Treaties is among the Imperial to negotiate a Treaty on equal terms, the Government should adopt decisive measures toward that country.”

The Six Sections, in opposing this representation, were actuated probably by purely party considerations, but their opposition was ostensibly grounded on the inconsistency of addressing Ministers, generally discredited as weak and vacillating, in language implying a certain confidence in their ability to adopt a strong policy. One Member made an insinuation (which has been since echoed in the “Kokkai” newspaper) that the representation was introduced at the instance of the Minister for Foreign Affairs with a view to strengthening the hands of the Government, but the suggestion was received with indignation and ridicule by the Radical Members. On a division the numbers were 140 for, 150 against, the representation.

The following is the text of a question put in the House, and of the Government’s answer, with reference to the abolition of Consular jurisdiction and the granting of mixed residence in the case of Hawaiian subjects in Japan:—

“Whereas the urgent importance of Treaty revision is an indisputable fact, and whereas those intrusted with the direction of the country’s foreign policy have repeatedly failed to accomplish revision, so that it remains to this day unachieved, to the great regret of the entire nation: therefore, this House resolves that the Government should, with all expedition, carry the work of revision to completion, in accordance with the views contained in the House of Representatives, Address to the Throne passed in the Fourth Session; and further, that if any foreign State refuses

prerogatives; nevertheless, matters connected therewith that call for the enactment of new laws, or matters relating to a change of taxation, require the consent of the Imperial Diet according to the provisions of Articles 5, 37, 62, and 63 of the Constitution.”

On the 22nd May a representation to the Government relating to Treaty revision, introduced by a member of the Radical party, was debated. This representation, the intention of which, as one speaker said, and as the mover admitted, may be summed up in the words “revision or denunciation,” read as follows:—

“Whereas the Imperial Ordinance No. 41 of the present year, proclaiming the abolition of Consular jurisdiction in the case of Hawaiian citizens, and the grant to them of the privilege of mixed residence, the result of mutual agreement between the Governments of the two countries? Has the privilege of mixed residence been granted conditionally on the abolition of Consular jurisdiction, or has it been granted as a consequence of the abolition of such jurisdiction? What were the manner in which and the reasons for which this arrangement was effected?

“2. Japan can, of her pleasure, either grant or withhold the privilege of mixed residence. For what reason has it been granted in the case of Hawaiians, without any limitations, and without recovering Tariff autonomy in accordance with the Addressee to the Throne presented in the Fourth Session of the Diet?

“3. The grant of mixed residence should properly be effected by means of either a Treaty or a Law.

Why has it been granted in the present instance by means of an Imperial Ordinance?

"The above question is introduced in accordance with Article 48 of the Law of the Houses, and a speedy answer thereto is expected.

(Introducer) "Node Shozaburo.

"Dated May 24, 1894."

(And 38 others.)

"Answer to Mr. Node Shozaburo's Question relating to Imperial Ordinance No. 41 of 1894.

"1. It was, of course, the result of mutual agreement between the Governments of the two countries concerned that the Imperial Government, by Imperial Ordinance No. 41 of the 12th April of the present year, abolished the provisions relating to Consular jurisdiction in the Treaty concluded with the Hawaiian Government on the 4th day of the 7th month of the 4th year of Meiji (19th August, 1871), at the same time giving permission to Hawaiian residents in the Empire to live and travel and engage in business or any other lawful occupation in any part of the

of the former any limitations beyond those specified in the case of the latter:

"3. The grant of mixed residence to Hawaiian residents was, as already stated, due to the provisions of Article II of the Treaty with Hawaii, which places Hawaiians in the same position as Mexican citizens. And this arrangement having been effected as the result of the abolition of Consular jurisdiction by the mutual consent of the Governments of the two countries, it was but proper that the fact was promulgated by an Imperial Ordinance.

"The above answer is hereby submitted.

(Signed) "Mutsu Munemitsu,

"Minister or State for Foreign Affairs.

"Dated May 30, 1894."

100 明治十六年五月一日 近衛篤麿公質問書
日本新條約ノ闕スル近衛篤麿公ノ質問主意書

country within the limits of Laws and Ordinances.

As to the privilege of mixed residence, it was granted to Hawaiian not as a condition of the abolition of Consular jurisdiction, but as the consequence thereof. When the Hawaiian Government consented to the abolition of Consular jurisdiction in this country, it followed as a natural consequence that Hawaiian residents should, in accordance with Article II of the existing Treaty between the two countries, be entitled to the same treatment as the subject or citizens of Treaty Powers which do not maintain unequal stipulations in respects of Consular jurisdiction, Tariff Regulations, and so forth. In other words, Hawaiian residents are to be treated in the same way as the citizens of Mexico.

"2. The Treaty with Hawaii does not contain any special stipulation on the subject of Tariff, and consequently there is not any necessity for replying to that portion of the question relating to the recovery of Tariff autonomy. With regard to mixed residence, Hawaiian residents being, as stated in the foregoing paragraph, entitled to the same treatment as Mexican citizens, there is no necessity to provide in the case

日英新條約ノ闕スル質問主意書

1 本條約第十一條ハ沿海貿易ノ事ヲ規定セラレバ然ル「第三項但シ書」ハ「本條約ノ期限間ニ満テ大不列顛國船舶カ帝國ノ現開港場ノ積荷ヲ運搬スルコトヲ許バロトヲ承諾ス」トアリ然ラハ第三項但書ハ第一項第一項規定ノ効力ヲ抹消セシ者ハシテ沿海貿易ノ規定ハ現條約ト異ナル無キ結果ヲ生セバヤ此ハ如ク實行ノ意ナキ條件ヲ前項ハ規定シ更ニ末項ヲ以テナラ取消シタルく如何ナル理由ハ専ム載且ツ本條第三項中「現開港場間ニ積荷ヲ運搬ス」トハ海外仕出シ港ニ於テ積載シ他ハ一港ニ於テ船卸ベキ貨物ノ運搬ヲ専包専ペル哉

1 本條約第十八條ハ本條約實施ニ至テ「外国人居留地」我カ市區ニ編入セラレテ地方組織ノ一部ト為ルベク尤從來ノ永代借地券ハ有効ノモノト確認セラレ其借地券ノ載セタル條件ノ外ニ何等ノ條件ヲモ附セサルハント規定セラリ

今ノ居留地果シテ市區ニ編入セラレテ地方組織ノ一部ト

為レル已上ハ自ラ地方税ヲ負担セサルヘカラス然ルニ地

方税中地租割ノ如キ市税地租附加ノ如キ特別税地租割ノ如キハ都テ借地人ニ賦課スヘカラサルハ当然ナリトス然ルトキハ政府ハ地主ノ資格ヲ以テ該地方税ヲ國庫ヨリ支出スヘキ見込ナリ哉

本條約第三項ニ外国人居留地公共ノ目的ヲ麥セサル限り永代無税ニテ保存セラルヘキモ土地収用權ニハ從フヘシト規定セシモ第二項外国人一箇人ニ貸与セシ土地ニ就キテハ其條件ヲ規定セス然ラハ反テ外国人一箇人ノ借地ニハ土地収用權ヲ施行シ得サルモノト認ムルノ外ナシ是レ何等ノ理由ニ出ル哉

一 本條約第十九條ノ規定ヲ審按スルニ印度外十一箇所ノ英領及其殖民地ニ此條約ヲ適用セストアリ然ラハ此ノ印度外十一箇所在籍ノ英人ハ追テ新タニ條約ヲ結フマテハ我国ニ對シテ無條約国人タルヘキヤ將タ本條約ノ規定ニ從ヒ我帝国ニ渡來シ内地何レノ所ニモ居住シ自由ニ輸出入貿易業ヲ始メ其他ノ商業ニ從事スルヲ得ルコト英本国ノ臣民ト異ナル所ナキ哉

又我帝國ノ臣民ハ前項ニ反シ該十二箇所ノ英領地内ニ於テ本條約ノ規定ニ拠リテ業務ニ從事スルコトヲ得サルモ

ノナリ哉

又本條約第二條ニ於テハ両締盟國ノ一方ノ臣民ニシテ他ノ一方ノ版圖内ニ住居スル者ハ陸海軍護國軍等ニ論ナク

總テ強迫兵役ヲ免除セラレ且服役ノ代償タルヘキ一切ノ納金ヲ免カレ又一切ノ強募公債及軍事上ノ賦斂捐資ヲ免

カルヘシト相互平等ニ規定セラレシニ「キムバーレー」

伯ハ本條約調印ト同日ノ公文ヲ以テ英國ノ或ル殖民地及領地カ本條約第二條ニ記載シタル兵役ニ關スル規定ニ從ハサル條件ヲ以テ本條約ニ加入スヘキコトヲ請求シ青木公使ハ之ヲ承諾シタリ是ニ由リテ我カ臣民ハ印度外十一箇所ノ英領地内ニ渡航シ業務ヲ當ムニハ其地ノ兵役ニ服セサルヘカラス兵役代償ノ納金ヲ払ハサルヘカラス軍事上ノ課税捐資強寡公債ニ應セサルヘカラサルカ之ニ反シテ我国内ニ渡航シ業務ヲ當ム印度外十一箇所ノ英領地ノ英國々民ハ此等ノ義務ニ服スルコトナカルヘキ哉

英領地ノ海關稅率ハ各領地自主ノ制定ニシテ英本国ノ稅率ト等ニ非サルナリ故ニ我カ貿易ヲ英領地ニ輸入ゼンニハ各々其地方ノ稅率（濠洲諸港現稅率ハ原価ニ対シ多キハ六割少キモ二割）ニ從ヒ課稅セラレサルヘカラス之ニ反シテ各英領地ノ貨物ハ本條約ノ規定ニ從ヒ議定書附

屬稅目ニ由リテ我國ニ輸入スルノ便宜ヲ得ヘキヤ又ハ此條約外トシテ我國定稅率ヲ以テ課稅スヘキ哉

一 本條約第二十一條ニ拠レハ本條約實施ノ通知ハ調印ノ日ヨリ四箇年ヲ経タル後何時ニテモ為スコトヲ得ヘントアリテ我實施通知ノ權ニ於テ毫モ拘束セラル、所ナシ然ルニ本條約調印ト同年月日ニ青木公使ヨリ英國キムバーレー伯ニ致セル公文ニハ日本各法典ノ實施ニ至ルマテ本條約實施ノ通知ヲ為サヘル旨ヲ確約シテ本條約ニ規定セル通知權ヲ拘束シタリ即チ我

右議院法第四十八條ニ依リ政府ニ對シ及質問候也

明治二十八年三月二日

質問者 公爵 近衛篤麿
賛成者 公爵 二條基弘

外二十九名

近衛篤麿公說明演說

諸君、軍國多事ノ今日ニ当リマシテ軍國ノ事ニ關係ノナイ問題ヲ持出シテ内閣ノ諸公ヲ煩ハスト云フコトハ甚ダ忍ビナイコトデアリマス、併ナガラ今回ノ戰争ハ益々良結果ヲ奏シマシテ戰フ毎ニ必ズ勝チ攻ムル毎ニ必ズ取ルト云フノ有様デゴザイマス、此有様デ往ツクナレバ戰争ノ終局ノ後ニ於テハ日本ノ地位ハ如何ナル処マデ高マルデアラウカ、又諸外国ハ必ズ我國ヲ見ルニ於テ決シテ從前ノ通リノ眼ヲ以テ見ナイデアラウト云フコトハ想像が出来ルノデアル、果シテ我國ガ地歩ヲ進メルモノトシタナレバ又之ニ対スルダケノ我國ノ責任ト云フモノガ夫レダケ重クナルト云フコトハ覺悟シナケレバナラヌト思フ、シテ見タナレバ將

一 本條約中ノ正文ニ係ラス海關稅率、法典實施、英國殖民地及領地ニ關スル規定ノ如キ総シテ議定書又ハ公文ヲ以テ本條約當然ノ作用ヲ拘束シテ其大要領ノ實ヲ失ヒ反テ同年月日ニ發シタル議定書及公文ニ実効ヲ有スルコト

来ニ日本ガ夫レダケノ地歩ヲ進メルモノトシタナラバ今日ヨリシテ苟モ我国ノ國權ノ消長ニ關係スルコトデアルナレバ十分ニ攻究シテ置クト云フコトハ決シテ是レハ徒労デナカラムト思フ、其國權ニ關スル事柄デ其最モ大ナルモノハ何デアルカト云ツタナレバ即チ條約ノコトデアル、夫レガ此戰争ノ最中デアルニモ拘ラズ此問題ヲ持出シテ政府ニ質問ヲスル次第デアリマス、我国ノ條約改正ニ從事シマシタノハ彼ノ岩倉大使ガ歐米諸國ヲ巡回セラレタトキニ始ツテ今日ニ至ルマデ數回ニ及ビマシタ、併ナガラ未ダ一度モ其効ヲ奏シタコトハナイノデ、或ハ先方ノ不同意ニ依ツテ廢棄ニナツタコトモアリ、或ハ國民ノ輿論ガ之ヲ攻擊シタガタメニ終ニ無効ニ帰シタコトモアル、夫レ故ニ今日マデノ條約改正ノ談判ノ沿革ヲ見タナレバ實ニ失敗ノ歴史デアルト云フコトハ争ハレヌ事實デアルト思フ、然ルニ昨年七月十六日ヲ以テ我ガ全權公使ノ青木子爵、英國ノ外務大臣きむば一れー伯トノ記名調印シタル所ノ通商航海條約ト云フモノハ即チ同年八月二十八日ヲ以テ御批准ニナツテ居リマス、其當時此新條約ガ世ノ中ニ現レルト同時ニ實ニ立派ナ対等ノ條約ガ出来タト言ツテ隨分世ノ中デハ之ヲ持囃シタノデアリマス、此ノ如ク此日英條約ト云フモノハ世ノ中ニ

ヲ圖ラナケレバナラヌト云フコトハ是レハ申スマデモナイコトデアル、況ヤ又此戰後ニ於テ東洋ノ航海権ヲ握ラナケレバナラヌ、サウデナイトキニハ二億余萬円ノ軍費ヲ費シ幾多ノ生命ヲ犠牲ニ供シテ此日本ガ名譽ナル勝利ヲ得ナガラ其結果モ半バ其効ヲ失ツテ仕舞ウデアラウト思フ、我ガ政府ハ必ズ大イニ航海業ノ發達ヲ圖ラネバナラズ又圖ラルデアラウト云フコトハ私ノ信ジテ疑ハヌ所デアリマス、然ルニ此日英條約ノ規定スル所ニ就イテ見マスルトドウ云フコトガアルカ、本條約ノ第十一條「兩締盟國ノ沿海貿易ハ本條約ニ於テ規定スルノ限ニ在ラス各其法律、勅令及規則ニ從ヒ之ヲ規定スヘキモノトス、然レドモ日本國皇帝陛下ノ版圖内ニ於ケル日本國臣民ハ此事項ニ關シテハ各右法律勅令及規則ヲ以テ他ノ外國臣民或ハ人民ニ許与シ若ハ許与セラルヘキ諸權利ヲ享有スヘキモノトス」斯ウ云フコトガ第一項ニアリマス、デ第十項ハ沿海貿易ニ制限ガ附ケタル、第二項ニ於キマシテハ「大不列顛國皇帝陛下ノ版圖内ノ二箇以上ノ港ヘ仕向ケタル荷物ヲ外國ニ於テ積載シタル日本國船舶及日本國皇帝陛下ノ版圖内ノ二箇以上ノ港ヘ仕向ケタル荷物ヲ外國ニ於テ積載シタル大不列顛國船舶ハ外国貿易ヲ許サレタル仕向港ノ一一ニ於テ其積荷ノ一部ヲ陸

揚スル為メ他ノ一港若ハ數港ヘ進航スルコトヲ得ヘシ但シ常ニ両國ノ法律及税關規則ニ從フヘキモノトス」斯ウ云フコトガアリマシテ、是レハ輸入船舶ガニツ以上ノ港ヲ連航スルコトニ就イテノ規定デアリマス、夫レデ是レダケデアレバ誠ニ立派デアル、然ルニ其第三項ノ但書ニハドウ云フコトガアリマスカト云フト「但シ日本國政府ハ本條約ノ期間是迄ノ通り大不列顛國船舶ガ帝國ノ現開港場間ニ積荷ヲ運搬スルコトヲ許スコトヲ承諾ス尤大阪新潟及東港ハ此ノ限ニ在ラス」殆ド此第三項ノ但書デ以テ前ノ二項ハ抹殺シテ仕舞ツタ様ナモノト見エルノデアリマス、デ此ノ如キ條約ヲ承諾セラレタト云フモノハ如何ナル理由デアルカ、沿海貿易ノ事ハ最モ能ク将来ニ於テ注意シナケレバナラヌ所ノコトデアル、然ルニ其事柄ヲ立派ニ前ノ二項ニ於テ掲ゲテ置キナガラ第三項ノ但書ヲ以テ消滅ニ帰セシムルト云フコトハドウ云フ理由デアルノカ夫レデモ更ニ差支ナイト云フ御見込デアルカト云フコトヲ伺ヒタイ、是レガ先ヅ一ノ間デアリマス且ツ此條ノ第三項中ニ「現開港場間ニ積荷ヲ運搬ス」ト云フコトガアリマス、是レハ海外仕出港ニ於テ積載スル所ノ貨物ノミヲ言フノデアルカ、將又帝國開港場ノ一ノ港ニ於テ積載セル他ノ港ニ於テ船卸スル貨物ノ運

撒ヲモ意味スルノデアルカ、夫レ等モ一ツ伺ヒタイト云フ
條項ノ一デアル、此沿海貿易ノ事ハドコノ國デモ隨分喧マ
シイ制限ヲ立テ居リマシテ、英國ノ如ク總テ自由主義ヲ
執ツテ居ル様ナ國デアリマシテモ尙彼ノ航海律ト云フモノ
ガアツテ、既ニ此三四十年前マデ行ツテ居ツタト云フ位ナ
コトデアル、況ヤ英國ノ如クマダ鎖國ノ夢ノ醒メテカラ後
僅ニ二三十年シカ過ギナイ位ノ國デアツテ、殊ニ海國デア
リナガラ航海ノ事ニ闇イ国ニ在ツテハ尙更注意スベキコト
デアルト思フニモ拘ラズ、此條約ニハ此ノ如キ規程ノアル
ト云フコトハ甚ダ不審ニ堪ヘヌノデアリマスカラ此一箇條
ヲ先ヅ第一ニ伺ヒタインデアリマス、夫レカラ其次ニアリ
マスノハ居留地ノ事デアリマス、是レハ本條約ノ十八條、
第十八條ニハ「大不列顛國政府ハ同政府ハ同國地方組織ノ一部トナ
ルヘシ」斯ウ云フコトデアリマシテ、居留地制度ト云フモ
ノハ全ク是レデ廢スルト云フコトニ外觀上ナツテ居ル、サ
ウシテ其是レマデノ居留地ト云フモノハ日本ノ市ノ中ニ組
入レルト云フコトニナツテ居ル、是レハ誠ニ結構デアリマ
スガ、併ナガラ從來カラ永代借地券ト云フモノガアリマシ

ヲ置クトカ云フ場合ニハ夫レハ土地收用權ノ作用ニ從ハナ
ケレバナラスト云フコトガアリマス、併ナガラ特ニ土地收
用權ニ從ハナケレバナラスト云フコトガ出テアルケレドモ
外国人一個人ノ借りテ居ル所ニ附イテハ何モナイ、シテ見
レバ外国人一個人ノ借りテ居ル即チ公共ノコトデナイ所ノ
地所ニハ土地收用權ハ施行スルコトガ出来ナイト云フコト
ヲ規定シタ様ニ解釈ガ出来ルノデアリマス、其邊ハドウ云
フモノデアルカ、夫レモ質問ノ一ツ、マー居留地制度ノ事
ハ先ヅ其位ニシテ置キマシテ其次ニ本條約第十九條「本條
約ノ規定ハ法律ノ許ス限ハ大不列顛國皇帝陛下ノ殖民地竝
ニ其海外領地ニ適用スヘシ但シ左ニ列記スル所ハ此限ニ在
ラス印度加奈太領地ニユ一・フワウンドランド、喜望峯殖
民地」云々、サウシマスルト云フト此條約ト云フモノハ法
律ノ許ス限リハ英國ノ殖民地ニハ成ルベク適用スルコトガ
出来ル併ナガラ是々ノ所ハナラスト云フ箇所ガ十二箇所ア
リマス、殆ド英國ノ殖民地ノ重ナルモノ、主要ナルモノハ
大抵此中ニ網羅シテアル、サウシテ見ルト此條約ハ英吉利
本国バカリニハ適用スルケレドモ其外ノ殖民地ニハ適用ス
ルコトガ出来ナイ結果ニナル様ニ見エマス、若シモ夫レガ
事実デアルナラバ是レ等ノ印度以下十一箇所ト云フ所ノモ

テ、夫レハ矢張リ有効ノモノト確認セラレテ、其借地券ニ
載セタル條件ノ外ハ總テ何等ノ條件ヲモ附セサルヘシ、ト
此中ニ書イテアル、然ラバ此今ノ居留地ト云フモノガ果シ
テ市區ニ編入サレテ地方組織ノ一部トナツタ以上自カラ地
方稅ノ負担ト云フモノガナケレパナラヌ、然ルニ地方稅ノ
中デ地租割ノ如キ、市稅地租附加ノ如キ、特別稅地租割ノ
如キ、總テ借地人ニ賦課スルコトガ出来ナイモノニナル、
所ガ其借主ハ外国人デアル、地主ハ誰レカト云ヘバ政府デ
アル、シタナラバ其地主ノ資格ヲ以テ其地方ノ借地料ト云
フモノハ政府ガ負担スルノデアルデアラウカ、是レガ先ヅ
質問ノ一ツノ箇條デアリマス、夫レカラ其次ハ此箇條ノ第
三項「外国人居留地公共ノ目的ノ為メ無借料ニテ既ニ貸与
シタル各地所ハ永代ニ保存セラルヘシ且該地所ニシテ最初
貸与シタルトキノ目的ニ使用セラル限ハ總テノ租稅及徵
收金ヲ免スヘシ但シ土地收用權ニハ從フヘキモノトス」斯
ウ云フコトガアル、夫レデ此箇條ハ居留地ノ中公共ノ目的
ノ為メニ貸与シテアル所ノ地所ハ其目的ヲ變ヘナイ、例ヘ
パ公園デアレバ何時マデモ公園デ置ク限リハ永代無代デ貸
シテ置ク、併ナガラ土地收用權ニハ從ハナケレバナラヌ、
若シモ其公園ノ内ニ鐵道線路ヲ敷クトカ或ハすてしよん

テアルカラ少シモ差支ナイ様ニアリマス、併ナガラ此本條約ト共ニ同一ニ調印サレタ所ノ公文ガアリマスガ、其公文ニハ英國ノ或ル殖民地及領地ガ本條約第二條ニ記載シタル兵役ニ關スル規定ニ從ハザル條件ヲ以テ本條約ニ加入スベキコトヲ請求シ青木公使ハ之ニ承諾ヲ与ヘテ居ル、之ニ依ツテ見ルト我国ノ臣民ハ印度其外十一箇所ノ殖民地ニ往ツタ時分ニハ矢張リ其兵役ニモ服サナケレバナラヌト云フ様ナ結果ガ出テ來ルノデアリマス、又其外強迫兵役ハ勿論ノ話軍事上ノ事或ハ其外ノ負担ハ總テ印度其外ノ殖民地ノ人民ト同ジ様ニ負担ヲシナケレバナラヌト云フ様ナ疑ガ此本文ニ依ツテ見ルト生ジテ來ルノデアリマス、其辺ハ如何ナモノデアリマスカ、又英吉利領地ノ海關稅率ト云フモノハ各領地ハ皆自主ノ制度デアツテ英本国ノ稅率トハ皆異ナツテ居ルノデアル、デ我国ノ品物ヲ英吉利ノ領地或ハ印度デアルトカ或ハ其外ノ加奈太喜望峯デアルトカ云フアタリヘ持ツテ往ツタ時分ニハ其土地ノ稅率ニ從ハナケレバナラヌ、之ニ反シテ英領地ノ貨物ハ英本国ノ品物ト同ジ様ニ日本へ持ツテ來テ日本デハ此間規定サレタ議定書中ニ在ル稅率ヲ以テ賦課サル、ト云フコトデアツテハ是レ又頗ル不權衡ノ至ト思フノデアリマス、シタナラバ是レ等ノ諸國ニハ

ノ事ハ總テ帝国議会ノ協賛ヲ經ナケレバナラヌト云フコト

ハ憲法ノ示ス所デアル、然ルニ此議定書ヲ御覽ナサレバ分

ルガ青木公使トキムバ一れし伯トノ記名調印シタル議定書

ノ附屬稅目ヲ以テ帝国議会ノ協賛ヲ經ズシテ直ニ定メテ仕

舞ツク、是レハ若シヤ憲法ノ正條ニ反シテ居ルモノデハナ

イカ、是レモ質問ノ一ツ、本條約ノ正文ニ拘ラズ海關稅率

又ハ法典實施殖民地及領地ニ關スル規定ノ如キハ總テ議定書或ハ公文ヲ以テ本條約ニ規定スル所ノモノヲ拘束シテ仕

舞ツテ夫レガタメニ本條約ノ要領ヲ失ツテ却ツテ其同ジ時ニ発布シタ所ノ公文ト議定書ト云フモノヲ以テ取消シタガ

タメニ其本條約デナイン所ノ議定書ト公文ト云フモノガ實効ヲ奏スル様ニナツテ來タ、夫レハドウ云フ誤デアルカ、何

ガ故ニ本條約ニ規定シタ所ノモノヲ公文又ハ議定書ヲ以テ夫レヲ拘束シ或ハ變更シタノデアルカ、先ヅ私ノ質問シタ

イト云ブ所ハ其位デアリマス、尙ホ其外ノ箇條ハ幾ラモア

リマセウケレドモ此位ノ事ガ大眼目ト思ハルルカラ政府ニ

於テハドウカ詳細シ……勿論此事ハ政府ノ枢機ニ属スル様ナコトデ言フヨトノ出来タ様ナコトガアルカモ知レ

マセヌ、ゲレドモ差支ナイ限ハ御示アラムコトヲ希望スルノデアリマス、之ヲ以テ此質問書ヲ提出致シマシタ理田ト

更ニ又一定ノ稅率ト云フモノヲ以テ課稅スペキデアルカ如何デアルカ、夫レカラ其次ニ於キマシテハ本條約ノ第十一條ニ於テ「本條約ハ調印ノ日ヨリ少クモ五箇年ノ後迄ハ

実施セラレサルモノトス而シテ日本帝國政府ニ於テ本條約ヲ実施セント欲スル旨ヲ大不列顛國政府ニ通知シタル後一箇年ヲ經ルニ非サレハ實施セラレサルモノトス尤此通知ハ

調印ノ日ヨリ四箇年ヲ經タル後何時ニテモ為スコトヲ得ヘシ又本條約ハ其ノ実施ノ日ヨリ十二箇年間効力ヲ有スルモノトス」斯ウ云フノデアリマス、然ルニ本條約同一ニ調

印ヲセラレタ所ノ青木公使トキムバ一れし伯トガ調印サレタ公文ハ日本各法典ノ実施ニ至ルマデハ本條約実施ノ通知ヲナザル旨ヲ約ス、斯ウ云フコトガアルノデ、シテ見ルト云フト從來法典ト云フコトハ始終條約ノ條件ノ一ツニナ

シテ居ツタノガ今度條約ノ正文バカリヲ見ルト更ニサウ云フ條件ハナイケレドモ矢張リ此公文ヲ見マスト其條件ガ附

テ居ルモノト思ハル、ノデアリマス、所ガ天皇陛下ノ御批准ニナツタ所ノ條約ノ正文ト云フモノヲ僅ニ夫レニ附

帶スル所ノ公文ヲ以テ之ヲ更訂シタト云フノハ……改メタ様ナ姿ノアルハ是レハドウ云フモノデアルカ、是レモ

一ツノ質問ノ箇條デアリマス、夫レカラ又稅率制定及变更致シマス、

（貴族院議事速記録）

右質問ニ對シテハ他ニ交渉中ノモノアリ目下答弁ノ時期ニ非ラザル旨書面ヲ以テ應答アリ
一一 明治三年三月三十四日 元田肇外質問書

日獨條約ニ關スル帝国議会ニ於ケル質問書并ニ
説明演説及大隈外務大臣答弁書

質問書

一 本月十七日外務大臣大隈伯ハ本院ニ於テ日獨條約第十
七条ノ特許権商標権等ニ付テハ兩國全権委員ノ締結セル
議定書ニ依リ改正條約實施以前ノ今日ヨリ之ヲ獨逸國臣民ニ認許シタルモ之ニ關スル裁判権ハ帝國之ヲ有セスト
公言セラレタリ然ルニ該議定書第四号ニ依レハ「兩締盟
國ハ他ノ一方ノ臣民カ發明見本（實用ニ供スル見本共）、
雑形商標製造商社号及其他ノ商号ノ保護ニ關シ法律ニ定
メタル條件ヲ遵守スルトキハ各其版圖内ニ於テ該臣民ニ
右ノ保護ヲ與フルコトニ同意ス」トアリテ別段裁判権ニ

、関シ治外法権ノ特約ナシ然則該議定文ニ所謂「保護ニ関シ法律ニ定メタル條件ヲ遵守スルトキハ各其版図内ニ於テ該臣民ニ右ノ保護ヲ与フルコトニ同意ス」トアルハ則右保護ニ関スル法律ヲ遵守シ独逸國版圖内ニ在リテハ独逸國ノ裁判権ニ服スヘク帝国ノ裁判権ニ服スルノ趣旨ナルコト明白ナリトス

仮リニ該議定文ハ裁判権ニ關シ規定セサルトスルモ他ニ治外法権ヲ置クノ特約ナキニ付一方ノ版図内ニ於テノ争訟ハ其國ノ裁判所之ヲ審判スヘキカ如ク他ノ版図内ニ於テノ争訟ハ亦其國ノ裁判所之ヲ審判スヘキハ固ヨリ当然ノ條理ニシテ此間些ノ疑ヲ容ルヘキナシ而ルニ外務大臣大隈伯ハ我邦駐在ノ独逸領事ニ於テハ是等商標等ニ關シ生スル争訟ニ付裁判権ヲ有セサルコトヲ明認シナカラ我

帝国ニ於テモ亦裁判権ナシト断言セラレタルハ本員ノ解スル能ハサル所ナリ知ラス右ハ外務大臣大隈伯ノ失言ニ非ルナキ乎若シ外務大臣大隈伯ノ失言ニ非ストセハ政府ノ見ル所亦我帝国ニ裁判権ナシトスル乎

二 抑裁判権ノ得喪ハ國権ノ伸縮ニ關スル甚タ大ナリ故ニ若シ政府ニ於テモ大隈外務大臣ノ公言セシ如ク我ニ裁判権ナキモノトセハ該議定書ノ事項ハ我ニ寸毫ノ益ナクシ

テ徒ニ貴重ノ権利ヲ独逸國ニ譲与シ從テ最惠國條款ノ規定アル他ノ締盟各國ニ對シ悉ク是等ノ特權ヲ認許セサルヲ得サルニ至ルモ我ニ於テハ裁判権ヲ失シ國権ヲ毀損スルコト甚シキモノナリ政府ハ何故ニ斯ル重大ノ過失アル當局全権委員青木周藏子ヲ寃枉シ今日ニ至リタリトスル乎

右及質問候也

明治三十年二月二十四日

提出者 元 田 肇

賛成者 新 田 毅

(外三十二名略)

右提案理由ニ關スル説明演説

○元田肇君(百十二番) 諸君私ハ単簡ナル質問デゴザイマスルガ、其質問ノ關係致シマスルコトハ、重大ナル關係ヲ我國権ノ上ニ持ツト存ジマスルカラシテ、ドウカ諸君ニ於テ暫クノ間、此質問ノ趣意ニ御耳ヲ御借シ下サラシコトヲ切望致シマスルコトデゴザイマス、質問ノ次第ハ唯今述べマス趣意デゴザイマスガ、本月十七日本院ニ於キマシ

テ、外務大臣大隈伯爵ノ外交ノ方針ニ對スル御演説ガアリマシタ、其際本員ヨリ大隈外務大臣ニ對シマシテ、日獨條約ノ上ニ就イテ見マスルノニ、條約改正即チ改正シタル條約ノ未ダ実施セラレザル今日ヨリ独逸帝国臣民ニ對シテハ、我帝国ハ是マデ与ヘテナイン所ノ専売特許、商標権等ノ享有ヲ許スト云フコトガ規定致シテアリマスルデ、是等ハモウ明白ナコトデアリマスルガ、此條約文ニ添フタル所ノ議定書ニ於キマシテハ、若シ是等ノ専売特許或ハ商標等ニ就イテ、争訟事件ガ起ツタ時分ニハ、裁判ハ何レノ国ガスルト云フコトニ就イテ、如何ナル意見ヲ政府ハ持ツテ居ルデアリマセウカト考ヘマシテ、大隈外務大臣ニ質問ヲ致シマシタ所ガ、本員ニ於キマシテハ誠ニ意外ノコトデアリマシタ、我日本帝国ニハ此事ニ就イテハ裁判権ナシト云フコトヲ、大隈外務大臣ハ断言セラレタコトデアリマスル、私ハマサカニ斯ル議定ニナツテ居ルコトデハアルマイ、政府ノ見ル所モ左様デハアルマイト信ジマシタ故ニ、間違デハナカラウカト考ヘマシテ、再三問返シマシテゴザイマスガ、断ジテ裁判権ハナイト云フコトヲ確言セラレタコトデアリマス、デ、此事ニ就イテ裁判権ノ有無ハ實ニ非常ナ關係ヲ持ツコトデアラウト思ヒマスル、條約改正ヲ急イダ中

ル、此事ニ就キマシテ独逸ノ條約ヲ見マスルト云フト、條約文ニ於キマシテハ、改正條約ノ実施セラル、時カラ行レルコトガ書イテアルノデアリマスル、然ルニ両國全權委員ノ締結致シマシタ所ノ議定書ト云フモノガアリマスルガ、此議定書ノ第四号ニ於キマスルト云フト、此事ガ書イテアルノデ、其四号ニヘ何ト書イテアルカト申シマスレバ「両締盟國ハ他ノ一方ノ臣民ガ發明、見本（實用ニ供スル見本共）雑形、商標、製造標社号及其ノ他ノ商号ノ保護ニ關シ法律ニ定メタル條件ヲ遵守スルトキハ各々其版圖内ニ於テ該臣民ニ右ノ保護ヲ与フルコトニ同意ス」ト、斯ウ云フ明文ガアルノデアリマスルデ、此文ニ就キマシテハ、明ニ裁判権ハ何レニ在ルカト云フコトハ記載ハ致シテゴザイマセヌケレドモ、本員抒ノ解釈ヲ致シマスル所ニ依リマスレバ、保護ニ關シ法律ニ定メタル條件ヲ遵守スルトキハト云フコトガ上ニゴザイマシテ、各々其版圖内ニ於テト云フコトガ次ニ受ケテ居リマス、故ニ治外法権ガ此点ニ關係致シテモ尙ホ存シ置クト、或ハ新ニ是丈ノコトハ別段ニ裁判管轄ヲ異ニスルト云フコトハ、約定ガ此文ノ中ニアレバ、格別デアリマスガ、ソレガナイ以上ハ、即チ此條約文議定文——ト申シクガ穩デアリマセウガ、ソレニ於キマシテモ、

セウカ、我帝國ニ於テモ裁判権ナシト云フコトヲ輕々ニ答ヘラレタト云フコトハ、实ニ不可思議千萬ノコトト本員ハ存ズルノデアリマス、デハ此大隈外務大臣ノ答ハ一時ノ間違デアリハシナカツタラウカト、本員ハ今日マデ過ギタコトデゴザイマスルガ、然ルニ官報ニモ載ツテ居リマスルシ、議事筆記ニモアルニ拘ラズ、外務大臣ヨリ今日マデ取消スト云フコトガ出テ來ヌ所ヲ以テ見マスレバ、我國權ニ關係ヲシテ、堂々タル帝国ノ外務大臣ガ帝国議會ニ向ツテ明答セラレタコトハ、是ヲ不聞ニ付シテ置クコトガ出来ナイト私ハ信ジマスノデアリマス、

ソレ故ニ本員ハ以上ノ理由デアルニモ拘ラズ外務大臣ガ我日本帝国ニ於テ裁判権ナシト答ヘラレタト云フコトハ、是ハ外務大臣ノ失言デハナイカト云フコトノ質問ヲ茲ニ發スルノデアリマス、失言デアレバソレマデノコトデアリマス、デ、若シ大隈外務大臣ニ於テハ斯ル解釈ヲ執ツテ居ラレルト云フコトデ飽クマデゴザイマスナラバ、人ヲ拳ゲテ言フノハ甚ダ異デゴザイマスケレドモ、我政府全體ノ意見モ、亦斯ル解釈ヲ執ツテ居ラルルコトデアルデアラウカ、併テ是ヲ質問スル訳デアルデゴザイマス、第一ニ質問ヲ致シマスル箇條ハ裁判権ヲ失フ、失ハヌト云フコトハ、本年

無論我日本帝国ノ裁判権ニ服シナケレバナラヌト云フコトハ、政府ガ明言ガ出来ルグラウト恩フノデアリマス、又仮ニ此議定書ノ文面ニ依リマスレバ、裁判権ト云フコトガ明ニ書イテナイ以上ト云フモノハ、其事ハ暫ク茲ニ規定シテナイモノト仮定シマシタ所デ、若シ裁判権ニ就イテ特ニ規定シタルコトガナイ以上ハ、即チ我国ニ在ツテ我国ノ保護ヲ受ケル事件ニ就イテハ、我帝国ノ裁判ノ下ニ服スルト云フコトハ當然ノ解釈デアラウト信ズルノデアリマス、デ、私共ハ此解釈ヲ断言シテ疑ハズニ居リマシタ所ガ、去ル十七日ノ大隈外務大臣ノ御言葉ニ依リマスルト、独逸ノ領事ニ於テモ裁判権ハ無論持ツテ居ラヌガ、日本帝国ニ於テモ亦裁判権ヲ持ツテ居ラヌト云フコトヲ答ヘラレタノハ、實ニ本員ノ解スルコトガ出来ナイコトデアリマスル、独逸ノ領事ノ持ツテ居ラヌ限ハ、即チ我帝国ニ於テ保護ヲ受ケル所ノ独逸臣民デアル以上ハ、是等ノ事項ニ關係シテ起ツタ裁判事項ニ就イテハ即チ我帝国ノ裁判ノ下ニ服サナケレバナラヌト云フコトハ、殆ド吾々ハ説明ヲ俟タズシテ明ナコトデアラウト思フノデアル、然ルニモ拘ラズ、大隈外務大臣ハ独逸帝国ノ領事裁判ニナキコトヲ——此裁判権ナキコトヲ明言セラレテ茲ニ公言致サレナガラ、何故デゴザイマ

國權ヲ毀損スルト云フ結果ニナルノデザイマス、斯ノ如

キ重大ナル過失アル青木全権公使ヲ、何故ニ今日マデ政府

ハ独逸國ニ駐劄セラレテアルデアラウカ、未ダ懲戒ニ付シ

タト云フコトヲ聞カナイ、此事ニ就イテ御咎ヲ蒙ツタコト

ヲ聞カナイ、如何ニモ分ラヌコト、思フノデアリマス、我

政府ハ昨年ノ何時頃デアリマシタカ、官紀ヲ振肃スルト云

フコトニ就イテハ、天下ニオラビ出シテ居ル政府デアル、

然ルニマア少シ位ノコトノ不都合ガアツタカ何トカ云フ

コトデゴザイマスマスレバ默過シテ居ルノヲ、堂々タル帝

國議會ニ於テ吾々ガ喋々スル価値ガナイカモ知リマセヌ

ガ、日本帝国ノ國權ヲ傷ケタ青木子爵ニ就イテ、今日マデ

何等ノ問フ所ノナイト云フノハ、本員ノ信ズル如ク、本員

ノ解釈スル如ク、裁判權ハ議定文ニ依ツテ、日本帝国ニア

ルト云フ結果ニ出来テアルノデナイカ、若シサウデナイナ

ラバ、政府ハ官紀ヲ振肅スルコトヲ天下ニ誓ヒナガラ、實

ニ官紀不振肅ノ甚シキモノデアルト恩ヒマス、此点ニ就イ

テ今日ハ政府ニ向ツテ答弁ヲ求ムル訣デアリマス、答弁ノ

アリマシタ以上ニ於テ、再び質問スルコトガアルカモ存ジ

マセヌカラ、是丈質問致シマス

衆議院議員元田肇君ヨリ提出ノ質問ニ對スル
答弁書

三二八

第一問ニ對シテハ日獨新條約第十七條及議定書第四項第一

節ニ於テ兩締約國ハ他ノ一方ノ臣民力發明、見本、雛

形、商標、製造標、商社号及其他ノ商号ノ保護ニ關シ法

律ニ定メタル條件ヲ遵守スルトキハ各其ノ版圖内ニ於テ

内國臣民ト同一ノ保護ヲ与フヘキコトヲ約定セリ故ニ帝

國ニ於テ前記發明等ノ保護ヲ享受セムトスル獨逸國臣民

民ハ帝國法律ニ規定セル諸般ノ條件ヲ遵守シ且帝國特許

事件ノ裁判權ニ至リテハ該條約及議定書中何等規定スル

所ナシ而シテ法律ノ保護スル權利ヲ享有スルコト、其國

ノ裁判權ニ服従スルコト、ハ二者素ト別物ニシテ獨逸國

ハ現行條約ニ依リ帝國ニ於テ其裁判權ヲ執行スルノ權利

ヲ有シ且新條約第二十條ニ於テ特ニ明文ヲ掲ケテ新條約

實施ノ期日マデ依然之ヲ保有スルノミナラス他國ノ領事

裁判權廃止ニ至ルマテ之ヲ拋棄セサルヘシトハ該條約附

屬ノ書翰ニ明言スル所ナルカ故ニ條約又ハ議定書等ニ於

テ第十七條ニ規定セル事項ニ關シ獨逸國臣民ニ對シテ發

生スヘキ民刑事案件ハ右第十七條ノ実施ト同時ニ帝國ノ裁判權ニ屬スヘキコトヲ明約セサル以上ハ條約ノ文理上帝

國ハ新條約全部ノ実施期日ニ至ルマテ右事件ニ關スル裁判權ヲ有スト言フヲ得サルナリ

第二問ニ對シテハ茲ニ答弁スヘキノ限ニ在ラス

右及答弁候也

明治三十年三月十日

外務大臣伯爵 大限重信

日獨條約ニ關スル再質問

日獨條約第十七條及同議定書第四項ニ關スル本員ノ質問ニ對シ外務大臣大隈伯ハ本月二十三日ヲ以テ本院ニ答弁書ヲ送付セラレタリ而ルニ本員ハ尙了解ニ苦ム所アルヲ以テ更ニ左ニ質問ス

一 新條約第二十條ニ於テ領事裁判權ヲ依然保有ストア

ルハ現條約ニ認許シタル範囲内ノ事ニ過キス新條約

ニ依リ新ニ認許シタル特許意匠等ニ關シテハ該議定

追補 帝国議会關係 一〇二

問書ニ對シテハ漫ニ新條約第二十條ニ附会シ我帝国

ニ裁判權ナシ却テ独乙領事之ヲ保有ス答弁セラレタ

ルハ本員ノ益々怪訝ニ堪ヘサル所ナリ知ラス政府ハ

三二九

尙ホ之ヲ以テ大隈外務大臣ノ誤解失言ニ非スト為ス

乎

二 独乙国ノ法律ニ拠レハ領事ニ於テハ特許意匠等ニ關スル訴訟ニ付テハ審判權ヲ有セス若シ果シテ然ラハ我帝国ニ於テ審判ヲ与フルノ外是等ノ訴訟ニ付テハ如何ニシテ保護ヲ全フセントスル乎況ヤ内地臣民ト同一ノ保護ヲ与ヘントスルニ於テラヤ此点更ニ明答ヲ求ム

三 大隈外務大臣ノ答弁書ニ拠レハ議定書文中ノ「保護ニ關シ法律ノ定ムル條件」トハ裁判以外ノ保護ナリトスルモノナリ果シテ然ラハ独乙領事ニ訴出テタルトキニ当リ独乙領事ハ權利享有ニ關スル我法律ニ拠リ審判スルモノト為サハル可ラス政府ハ獨國領事ヲシテ獨國ノ法律ニ反スルモ能ク我帝国ノ法律ヲ遵守

右及質問候也

明治三十年三月二十四日

提出者 元 田 肇
賛成者 新 田 毅

(外三十三名)

四 政府答弁ノ如クナレハ青木公使ハ我國權ヲ傷ケタルノ甚シキモノナリ政府ハ曩キニ官紀ヲ振肅スルコトヲ誓約セラレタル以上ハ該公使ニ對シ相當ノ処分ヲ為サハルノ理由ナシ而ルニ之ニ關スル本員ノ質問ニ對シ答弁ノ限リニ非スト為スハ果シテ何等ノ理由ニ拠ル乎若シ理由ナキニ於テハ政府職員ノ責免カレサルナリ敢テ之レカ明答ヲ求ム

第五節 新條約実施準備雜件

一〇三 明治三十九年三月三十一日 大隈外務大臣ヨリ 在歐米各帝國公使宛

新條約実施準備参考事項調査ニ關スル件

英送第一一〇号 米送第一九号

露送第一四三号 独送第一四二号

伊送第一四四号 仏送第一三四号 大隈外務大臣

塊送第一二七号 蘭送第一〇号

(欄外註記)
「追而本文報酬金額ニ付テハ電報ニテ本大臣へ経伺ノ上御約定可被成事ト御心得相成度候也」

(下巻貼紙)

1 青木公使ヘハ

「獨逸國及白耳義國ニ於ケル分」ト記スル事

2 會爾公使ヘハ

「仏國及西班牙國ニ於ケル分」ト記スル事

(一) 国内ニ到来、旅行住居スル権利ニ關シ外国人ニ向

テ或ハ一般ニ若クハ特別ニ又ハ其ノ国籍、種類若クハ性質ニ因テ何等ノ制限ヲ附スルコトアルヤ

(二) 内国人ト外国人トノ間及外国人ニシテ住居ヲ定ムヲ選定シ相当ノ報酬ヲ与フルコトヲ約シテ(任國、任國及兼任國)ニ於ケル分ヲ為取調可成速カニ御報告相成候様致度候

右申進候敬具

追補 新條約実施準備雜件 一〇三

三三一

(四) 如何ナル度合迄旅行券ヲ要スルヤ