

THE LEGACY OF TOKUGAWA JUSTICE: PROBLEMS OF COMPARISON AND TRANSLATION

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Professor Dan F. Henderson

University of Tokyo

- I. WAS THERE ANY LAW IN EDO: WAS THERE "ADJUDICATION?" WERE THERE RIGHTS? LAWYERS? ANY JUDGES? ANY DUE PROCESS?
 1. If not, what was it? And, how do we foreigners talk about it in English so as not to confuse American lawyers or other readers of English today?
 2. There was "administration of justice"

- II. WHAT WAS THE KUJIKATA OSADAMEGAKI? WAS IT A CODE? OR A STATUTE? OR A RESTATEMENT? IS IT POSSIBLE TO CAPTURE THE MEANING OF ITS TITLE IN ENGLISH? HOW DO WE TRANSLATE "OSADAMEGAKI?"
 1. It was a confidential manual for top officials (bugyo) concerned with administering justice in Edo, Osaka and Kyoto
 2. It was not a code to be disclosed to others (only 16 copies, officially distributed; to be kept confidential)

- III. WHAT WERE ITS SOURCES AND ORGANIZING PRINCIPLES? WAS IT LEGISLATIVE?
 1. Based on extensive studies of Ritsuryo and Chinese institutions
 2. Sources mostly decrees and precedents drawn from Yoshimune's Kyoho reforms (75%) and drawn from compilations commissioned by Yoshimune to be made in the three Commissions
 3. It was legislative in the sense that, contrary to general conception, its content was largely created by Yoshimune's reforms, and not a simple restatement of principles of the past dating from Ieyasu

IV. HOW MUCH CHINESE INFLUENCE WAS THERE IN THE OSADAMEGAKI?

1. In conception and method it owed much to the study of Chinese models: Ritsuryo format; sub-statutes (tiao-i & kajo-tate)
2. But specific borrowings from China were minimal. In content, it was a thoroughly indigenous product

- Chinese:
- a. Abolition of harsh penalties (severing ears and noses)
 - b. Fines
 - c. Beating
 - d. Six admonitions
 - e. Complaint Box (Sojo-bako)

V. DID IT CHANGE AFTER 1742?

1. Three sections added to Bk I in 1754, but no other formal changes to the end (1868); Bk II changed more
2. But the major change was in the way it was used; the actual decision-makers came to be the clerks (Tameyaku), who treated the Osadamegaki as binding, and built up a body of precedent

VI. WAS THERE "CASE LAW", (AS IN THE ENGLISH COMMON LAW) IN TOKUGAWA GOVERNANCE, AS WIGMORE SUGGESTED?

1. Some similarities; Forms-of-action; precedents
2. Differences, perhaps more significant

VII. CONCLUSIONS

Tokugawa "administration of justice" was indeed pure administration, without the apparatus required for what we call "adjudication" today. Furthermore, to use the language of modern law and adjudication to try to describe it is not conducive to understanding the institutions and processes of the Edo period.