

The *Hossō shiyō shō*:
A Compilation of Traditional
Legal Thought in Japan

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The legal tradition of the classical age in Japan is rich in codes and subsequent commentaries. Following the first code promulgated during the Asuka era (552-646), legal institutions were refined and improved until they reached a stage of full maturity in the middle of the Nara era (710-794). These traditions continued to evolve in the early Heian era (794-897) and then began to fall into abeyance during the late Heian era (908-1185) as the feudal traditions began to supplant those of the imperial court.¹ It was during this latter period that an attempt was made to codify and standardize the legal codes in order to strengthen their influence. One of these final compilations was the *Hossō shiyō shō* of which The University of Iowa has a copy of the original printed edition. This late compilation is highly significant in the study of Japanese legal institutions, in that it tried to incorporate into its contents the codes, commentaries and compilations that preceded it.

All of these prior legal documents were highly influenced by the Chinese codes of the Sui and T'ang dynasties, and followed the practice of dividing laws into four categories, namely *ritsu*, *ryō*, *kyaku* and *shiki*. These may be regarded as prohibitive and disciplinary regulations of a penal character, but not strictly a penal code (*ritsu*), administrative and civil codes (*ryō*), regulations issued *ad hoc* to meet changing conditions which modified or replaced laws no longer appropriate (*kyaku*) and detailed rules and forms supplementing the codes and necessary for their practical action (*shiki*). The distinction

¹ Ryōsuki Ishii, *Japanese Legislation in the Meiji Era* (Tokyo, 1958), p. 6.

between the latter two forms was clear in Sui and T'ang administrative codes but tended to disappear in the Japanese modifications.²

The Japanese were familiar with Chinese administrative and judicial methods dating from early intercourse with the continent, but they did not begin in earnest to compile laws until the time of the Taika reform edict, promulgated during the five years of Taika (645-650) in the reign of Emperor Kōtaku. Although this reform is no longer extant, it is known from later sources that it was a direct copy of some of the codes of T'ang China, and it began the custom of following the Chinese *ritsuryō kyakushiki* method of compiling laws. The Taika reform was soon replaced by the first true legal code in Japan, the code of Emperor Tenchi, issued in 662. This code is not extant either, but it is mentioned in later commentaries.

Though the above legal documents are interesting only as historical models, the *Taihō ryō*, the earliest extant legal code, is the basic text from which the *Hossō shiyō shō* is compiled. Written in Chinese in imitation of the Chinese code of Yang-Hui (650-655) by Fujiwara no Fubito, Awata no Mahito and other legal scholars of the time, it was issued by Emperor Mommu in the first year of Taihō (701). Consisting of 30 sections, covering every branch of public and private law, it took over many Chinese forms of government and administration, but still it is not a mere copy of Sui and T'ang precedents as it contains new provisions for the Shinto priesthood and other peculiarly Japanese institutions. It continued to be the basic legal code of Japan until the Meiji Restoration of 1868.³ The other document that also formed the basis of the *Hossō shiyō shō* is the *Yōrō ryō*, issued in 718, but not enforced until 757. It also is divided into 30 sections and is a revision of the *Taihō ryō*, taking into account the continuing rise of non-Chinese customs that were influencing the Japanese legal structure more and more.

The *Hossō shiyō shō* compiles not only the two above codes but also the commentaries that followed. The two commentaries that are most quoted in the *Hossō shiyō shō* are the *Ryōnogige* and the *Ryōnoshūge*. The *Ryōnogige*, a series of comments on the *ryō* of the Taihō code, was compiled by Koyohara no Natsuno at the order of the Emperor Junna in the tenth year of the Tenchō period (833) and was put into effect in the first year of the Jōwa period (834). Divided again into thirty sections, it attempts to standardize the interpretation of the Taihō and Yōrō texts which until then had varied with the individual in-

² Sir George Bailey Sansom, *A History of Japan* (Stanford, 1958), v. 1, p. 111.

³ Ryūsaku Tsunoda, William Theodore de Bary, and Donald Keene, *Sources of the Japanese Tradition* (New York, 1958), p. 81.

法曹至要鈔中目錄

○禁制條

一 在法事

二 雙六事

三 私飼雁鳥鸚事

四 黃丹事

五 紅染事

六 染摺成文衣袴事

七 絹絕衣袴事

Recd. of
Osaka Library

奈良
文庫

Title page and table of contents of volume two of *Hossō shiyō shō*, 1662 edition, with seals of the Osaka Governmental Library and the Nara Library.

terpreter. It quotes the *Yōrō ryō* in full and is the primary source for that text.

The second compilation, the *Ryōnoshūge*, is similar to the *Ryōnogige*, but is far more extensive. Compiled by Koremune no Naomoto in about 880, it adds various annotations on *ryō* which came to be ignored after the issuance of the *Ryōnogige*. It reproduces the entire text of the *Ryōnogige* and includes a detailed commentary, citing several different annotations and views. Although 10 volumes out of the original 50 have been lost, this document is not only a basic source for interpretations of *ryō*, but also contains fragments quoted from other texts, and, what is especially important, it makes possible the restoration of much of the *Taihō ryō*.

Besides the codes and their annotations, the new regulations (*kyaku*) and rules for their implementation (*shiki*) are also included in the *Hossō shiyō shō*. Collections of these *kyaku* and *shiki* on a large scale were accomplished by the government in the Kōnin, Jōgan and Engi periods. The *Kōninkyakushiki*, the first attempt at such a collection, was completed by Fujiwara no Fuyutsugu under the Saga Emperor in the eleventh year of Kōnin (820) and was later revised and enacted under Emperor Junna in the seventh year of Tenchō (830). Consisting of 40 volumes, the code compiles the rules, regulations and precedents covering 119 years since the proclamation of the Taihō code. Most of the volumes have been lost, with only a part of the *shuzeishiki* (tax laws) and *shikibushiki* (ceremonial regulations) remaining. The *Jōgan-kyaku* and *Jōganshiki*, compiled under the Emperor Seiwa in 869 and 871 respectively, are supplements to the Kōnin compilations.

Among the legal documents that influenced the *Hossō shiyō shō*, the most important compilation is the *Engikyakushiki*. The *Engikyaku*, compiled in the ninth year of Engi, added to the previous collections of *kyaku*, but did not supplant them. Only fragments are still extant. The *Engishiki*, however, compiled by Fujiwara no Tadahira in the seventh year of Enchō (929) and enacted in the fourth year of Kōhō (967), included all of the *shiki* of both the *Kōninshiki* and the *Jōganshiki*, with added revisions and supplements. Superseding the former compilations, it consists of 3,300 articles in 50 volumes which regulate many governmental offices. All of these volumes are extant and were a valuable source for the *Hossō shiyō shō* compilation.

As mentioned above, the traditional legal system reached its maturity in the middle part of the Nara period and began to decline in the Heian period. By the late Heian period, as the centralized imperial court in Heian (present day Kyoto) was giving way to the up-and-coming feudal families, an attempt was made to summarize in

simpler terms the many codes and commentaries in existence. This task was undertaken by official scholars, called *Myōhō hakase* (Illuminators of the Law). Outstanding examples were the *Seiji yōryaku*, the *Hossō ruirin* and the *Hossō shiyō shō*. The first of these, the *Seiji yōryaku*, was compiled by Koremune no Masasuke during the reign of Emperor Ichijō (986-1011). Of the original 130 volumes, only 26 have survived. The existing volumes, however, quote many important documents on law including the *Ritsunoshūge* and the *Kōninkyakushiki*. The *Hossō ruirin*, compiled by Fujiwara no Michinori in the middle of the twelfth century, is said to have originally contained either 230 or 730 volumes, but only three have survived. The text assembles, classifies and edits various questions and answers as well as many *kamon* (statements of opinions and memorials) made by jurists on political matters.

The last of these important later compilations is the *Hossō shiyō shō*. The exact authorship of the text is still in dispute, with three opinions put forward by various scholars. One opinion ascribes the book to Sakanoue no Akikane (1079-1147), a *Myōhō hakase* from a family that had many outstanding jurists during the Heian period. Akikane, who served under the Emperors Toba, Sutoku and Konoe, was the most erudite jurist of his time. The second theory suggests that Sakanoue no Akimoto (1138-1210), also a *Myōhō hakase* and grandson of Akikane, compiled the book. It is known that Akimoto did compile, in 1207, the *Saiban shiryō shō* which discusses such complex subjects as ownership of property, buying and selling, lending and borrowing, and inheritance of property. The third opinion is that a number of jurists, including Akikane and Akimoto, took part in the compilation that continued over many years. On the whole the last theory seems to be the most likely.

The *Hossō shiyō shō*, in three volumes, compiles and discusses 177 major points of contention over the interpretation of existing texts, with solutions for each. These solutions contain quotations from the texts of the *Taihō ryō* and *Yōrō ryō* and the commentaries in the *Ryōnoshūge* and the *Engikyakushiki*. In addition the author (or authors) has appended his own comments based upon his knowledge of prior legal documents. This text came to be regarded as a classic interpretation of Japanese traditional law and was used as a basic text until Japan promulgated a modern constitution in the early years of Meiji.

Three manuscript copies of the *Hossō shiyō shō* are still extant in Japan. The oldest copy, held by the Yōmei bunko, dates from the

Kōchō period (1261-1263). A later manuscript in the Jingū bunko dates from the Enin period (1293-1298) and contains an additional supplement (*okugaki*). Another manuscript in the Tōyō bunko was made in Muromachi times (1392-1568).⁴

In The University of Iowa Libraries is a copy of the earliest printed version of the *Hossō shiyō shō*, published in October of the second year of Kambun (1662) by the printer Munakami of Kyoto. It was issued in three volumes, hand-sewn on double-folded rice paper. As mentioned above, it enumerates 177 points of dispute with solutions for each, based upon prior sources and upon the opinion of the author. The various topics are as follows: Volume 1—Punishments (*zaika*), 62 points; Volume 2—Prohibitions (*kinsei*), 14 points; buying and selling (*baibai*), 10 points; government loans (*sueko*), 6 points; borrowing (*karimono*), 3 points; pawning (*shichimono*), 4 points; deposits (*asukemono*), 1 point; undeveloped land (*arachi*), 3 points; miscellaneous affairs (*zatsuji*), 17 points. Volume 3—contracts (*sobun*), 17 points; mourning dress (*sōfuku*), 5 points; other mourning dress (*fukuka*), 23 points; and various taboos (*zatsue*), 12 points. A new addition to this edition is a commentary by Nagaharu which appears at the back of the last volume.

This first printed edition is mentioned in the comprehensive bibliography of classical Japanese literature, the *Gunsho ruijū* (volume 6, number 77). It also appears in the *Nihon daihō ten*, the *Mishima Tsuruo no seikai* and in the *Nihon keizai daiten*, and was reprinted in full in the *Zoku gunsho ruijū kanseikai* (Tokyo, 1932, p. 71-136).

The copy at The University of Iowa has an interesting history in itself. The seal of the Government Library of Nara appears on the title page of each volume. Later these volumes were transferred to the Government Library of Osaka, whose seal also appears on each title page. A note in Volume One indicates that this copy was sold by the Osaka library in the twenty-first year of Meiji (1889), and in 1904 a Mr. H. R. Saiki of Kyoto presented it as a gift to Mr. C. A. Ficke of Davenport, Iowa. It was finally donated to the Davenport Public Library and is now on permanent loan to The University of Iowa Libraries.

⁴ *Sekai daihyakka jiten* (Tokyo, 1960), v. 26, p. 454.