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Law and Politics in Japan

Part II: Japan's Legal System in a Historical Perspective

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「ノリ (nori)」 法・憲・典・則・制・式
　= nominalization of the verb「ノル (noru)」

　「宣る（ノル）」= to convey the divine will
　　cf.「祝詞（ノリト norito）」: Shinto prayer

「ノリ」= divine order (conveyed by authorities)
　　　= order handed down by authorities

cf.
　- something right
　　- right
　　- Recht
　　- droit > dreit > directum > directus (= "sans courbure")
　- something which has been laid down
　　- law > lag > laid
　　- Gesetz > setzen
　　- loi > legem > lex

Ancient Era (-14c)

Legislation

- 律令(ritsuryo): codes based upon the Chinese model of the Tang Dinasty (618-907)
  - 近江令 (Ohmi Ryo, 668?)
  - 飛鳥浄御原令 (Asuka Kiyomihara Ryo, 689?)
  - 大宝律令 (Taiho Ritsuryo, 701)
  - 養老律令 (Yoro Ritsuryo, established in 718?; promulgated in 757)

- 格式 (kyakushiki): supplementary legislations
  - collections of kyakushiki
    - 弘仁格式 (Konin Kyakushiki, 829)
    - 貞観格式 (Jogan Kyakushiki, 869, 871)
    - 延喜格式 (Engi Kyakushiki, 907, 927)
    - 類聚三代格 (Ruiju Sandai Kyaku, 1002-1089)

Commentaries

- 令義解 (Ryo no Gige, 833): official commentary

- 令集解 (Ryo no Shuge, 868?): private commentary
- 法曹至要抄 (Hoso Shiyo Sho, -1210?): private commentary
  - "private" commentaries edited by 明法博士 (Myobo Hakase), law professors at 大学寮 ("universities" but rather "Ecole nationale d'administration")
    - legal opinions to courts and governments
    - law-creating effect of their opinions

Medieval era (12c-16c): Legal plularism

- 公家法 (Kuge Ho: Law applicable to the nobles)

- 武家法 (Buke Ho: Law applicable to Samurais)
  - Code: 御成敗式目 (Goseibai Shikimoku, 1232)
  - 道理 (dori: reason, equity) > code
    ← the weak central authority (幕府 bakufu) & strong local samurais

- 本所法 (Honjo Ho: Law applicable in an estate or manor)

- 村法 (Son Po: Law applicable in a village among common people)
  - basically customary, but some written laws
  - equipped with its own dispute settlement procedure

- 座法 (Za Ho: Law applicable among merchants)
  - basically customary
  - some codifications by merchants
    - 廻船式目 (Kaisen Shikimoku: Maritime rules, 1223?)

Pre-modern era (17c-19c): Gradual Centralization

- 公家法 (Kuge Ho: Law applicable to the nobles)
- 武家法 (Buke Ho: Law applicable to Samurais)
  - 幕府法 (Bakufu Ho: Law enacted by the Bakufu)
    - Codes
      - 武家諸法度 (Buke Shohatto: Rules for Samourais, 1615)
      - 禁中並公家諸法度 (Kintyu narabini Kuge Shohatto: Rules for the Imperial Family and the Nobles, 1615)
      - 寺院法度 (Jiin Hatto: Rules for Buddhist Temples, 1601-1610)
      - 諸社禰宜神主法度 (Shosha Negi Kannushi Hatto: Rules for Shinto Shrines, 1665)
      - 公事方御定書 (Kujikata Osadame Gaki: Code of Penal Law and Judicial Procedure, 1742)
    - Case Reports
      - 御仕置例類集 (Oshioki Reirui Shu: Collected Case Law, 1804-)
      - 長崎犯科帳 (Nagasaki Hanka Cho: Criminal Reports of Nagasaki, 1666-)
  - 藩法 (Han Ho: Law applicable in a feudal domain)
- 村法 (Son Po: Law applicable in a village among common people)
- 仲間法 (Nakama Ho: Law applicable among grouped merchants)

(De-)Centralization of Powers

- Birth of the Imperial (Tenno) System: 7c
  - Codification: Ritsuryo

- Establishment of the Bakufu in Kamakura: 12c
  - Legal plularism

- Monopolization of legitimate violence by the Bakufu
  - 喧嘩両成敗法 (Both parties are to be punished in a fight)
    - 「故戦防戦」禁止令 (Prohibition of Private Justice, 1346-)

- Pax Tokugawa: 17c
  - Codification: applicable to nobles, temples and shrines
  - Regulation of vendetta killing (17c-)
    - notification required
    - "transfer of power of punishment to the family of the victim"

Court System

- Established under the Asuka Kiyomihara Ryo (689?)
  - mainly penal
  - how effective?
  - applied also 条理 (jori: reason, equity)
- Developed under Buke Ho

The data exhibit a sizable volume of business which was handled by the judicial officers [in Edo]. Annual caseloads ranging from 10,000 to 60,000 were as high as in metropolitan courts today. A task of this size required a permanent organization. [...] Buildings existed in Edo with a capacity for crowds of 300 petitioners waiting to be heard by the officers. The nucleus of a legal profession developed from the keepers of about 200 specialized "suit inns" (*kuji yado*) where nonresident plaintiffs found shelter and advice on how to succeed before the authorities. The metropolitan centers were far from being non-litigious societies.

Christian Wollschläger, "Historical Trends of Civil Litigation in Japan, Arizona, Sweden, and Germany", *in* Harald Baum ed., *Japan: Economic Success and Legal System*, Berlin, Walter de Gruyter, 1997, p. 89, pp. 111-112.